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INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

SPECIAL CHAMBER

CASE NO. 23

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

VOLUME I

COUNTER-MEMORIAL OF THE REPUBLIC OF CÔTE D'IVOIRE

4 APRIL 2016

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INTRODUCTION

1. By Order of 24 February 2015, the President of the Special Chamber of the International Tribunal for the Law of the Sea (hereinafter referred to as "ITLOS") fixed the date for the filing of the Memorial of the Republic of Ghana (hereinafter referred to as "Ghana") at 4 September 2015 and the date for the filing of the Counter-Memorial of the Republic of Côte d'Ivoire (hereinafter referred to as "Côte d'Ivoire") at 4 April 2016. On 4 September 2015, Ghana lodged its Memorial on the merits of the dispute with the Registry of ITLOS in accordance with the specified procedural timetable.

2. Côte d'Ivoire hereby submits the present Counter-Memorial pursuant to that Order.

3. In accordance with article 62(2) of the Rules of the Tribunal, in this Counter-Memorial Côte d'Ivoire sets out the arguments of fact and of law on which its claims are based. Côte d'Ivoire also responds to the statements of facts and of law made by Ghana in its Memorial.

I. Procedure

4. On 19 September 2014, Ghana communicated to Côte d'Ivoire a notification of the submission to an arbitral tribunal provided for in Annex VII of the United Nations Convention on the Law of the Sea of 1982 (hereinafter referred to as "UNCLOS" or "the Convention") of the delimitation of the maritime boundary between the two countries.

5. In that notification Ghana stated that "[d]espite [intensive] efforts of both parties and extensive negotiations since 2008, Ghana and Côte d'Ivoire have not succeeded in agreeing upon a maritime boundary in any part of the Atlantic Ocean".[1]

6. The notification by Ghana also appointed Judge Thomas Mensah as arbitrator in accordance with article 3(b) of Annex VII.

7. In its response dated 15 October 2014, Côte d'Ivoire appointed Judge Ronny Abraham as arbitrator in accordance with article 3(c) of Annex VII in order to reserve its rights, despite the questionable admissibility of the Ghanaian notification.

8. On a proposal by Côte d'Ivoire and at the invitation of the President of ITLOS, the Parties held consultations on 2 and 3 December 2014 under the benevolent attention of President Golitsyn with a view to transferring the arbitral proceedings instituted by Ghana to a Special Chamber of the Tribunal. At the end of those consultations the Parties concluded a Special Agreement which formalized both their agreement to

[1] Notification under article 287 and Annex VII, article 1 of UNCLOS and the Statement of the claim and grounds on which it is based, 19 September 2014.

transfer the proceedings and the composition of the five-member Special Chamber, which included two Judges *ad hoc* chosen by the Parties: Boualem Bouguetaia, Rüdiger Wolfrum, Jin-Hyun Paik, Thomas Mensah, Judge *ad hoc* (Ghana), and Ronny Abraham, Judge *ad hoc* (Côte d'Ivoire).[2]

9. It was agreed between the Parties that the Special Agreement thus concluded on 3 December 2014 and notified to the Registry of ITLOS on that same date "shall constitute the notification contemplated in article 55 of the Rules of the Tribunal".[3] Mr Bouguetaia was appointed President of the Special Chamber.

10. By Order of 12 January 2015, ITLOS decided "to accede to the request of Ghana and Côte d'Ivoire to form a special chamber of five judges to deal with the dispute concerning delimitation of their maritime boundary in the Atlantic Ocean"[4] and confirmed its composition in accordance with the views expressed by the Parties in their Special Agreement.

11. On 27 February 2015, Côte d'Ivoire submitted a request for the prescription of provisional measures under article 290, paragraph 1, of the Convention. By Order of 25 April 2015, the Special Chamber prescribed the following provisional measures:

> "(a) Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area as defined in paragraph 60 [of the Order];
>
> (b) Ghana shall take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire;
>
> (c) Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment;
>
> (d) The Parties shall take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its superjacent waters, in the disputed area and shall cooperate to that end;
>
> (e) The Parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute."[5]

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[2] Special Agreement and Notification, 3 December 2014.

[3] *Ibid*.

[4] ITLOS, Order 2015/1, 12 January 2015.

[5] *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures*, *ITLOS, Order of 25 April 2015,* para. 108.

II. The dispute

12. The dispute between Côte d'Ivoire and Ghana dates back almost three decades. In that time Côte d'Ivoire has always sought to avoid any conflict with Ghana and to reach an agreement on delimitation by way of bilateral negotiation. In addition, Côte d'Ivoire has made clear that the oil practice of the Parties could not interfere with the delimitation process. Ghana, for its part, has unilaterally continued oil exploration and production in the area of the Gulf of Guinea which is disputed between the Parties, despite the objections raised by Côte d'Ivoire. Since 2008 it has claimed that the western limit of its oil blocks created under these conditions should be adopted as the maritime boundary.

13. In 1988, at the first bilateral meeting between the Parties concerning delimitation of their maritime boundary, Côte d'Ivoire put forward a proposal for a boundary line consisting in extending seaward the terminus segment of the land boundary between posts 54 and 55. Ghana did not respond to that proposal and the following year conducted its first drilling operation in the maritime area claimed by Côte d'Ivoire, without even informing Côte d'Ivoire.

14. In 1992, when it was planning to conduct a number of drilling operations in that area, Ghana requested the resumption of negotiations on the maritime boundary. Following its 1988 proposal, Côte d'Ivoire welcomed this initiative, while demanding that Ghana immediately cease all oil activities carried out by it unilaterally in the maritime boundary area. However, Ghana did not take any further action in respect of either the negotiation process or the demands made by Côte d'Ivoire.

15. From 1993, following the death of President Félix Houphouët-Boigny, Côte d'Ivoire gradually slipped into a lengthy period of serious political and social instability. These internal political tensions led to a military coup, and then a civil war, which destabilized the country significantly. The internal situation in Côte d'Ivoire did not become a little calmer until 2007, with the assistance of the United Nations, ECOWAS and France.

16. As Côte d'Ivoire was beginning to escape the crisis, in 2007 Ghana announced the discovery of a sizeable oil deposit close to the disputed area and requested that negotiations with Côte d'Ivoire be resumed in order to delimit their maritime boundary.

17. In 2008 Ghana made a delimitation proposal for the first time, almost 20 years after Côte d'Ivoire. It proposed the adoption of the western limit of Ghana's oil blocks as the maritime boundary on the ground that it supposedly coincided with an equidistance line.

18. Between 2008 and 2014 the Parties met on ten occasions to negotiate the delimitation of their maritime boundary.

19. Côte d'Ivoire always approached the talks with Ghana in good faith and demonstrated a high degree of flexibility in its positions with a view to achieving an equitable solution. In the course of the negotiations it proposed various delimitation lines based on the application of different methods, including the bisector method.

20. Ghana, for its part, always showed itself to be inflexible during the negotiations; it invariably rejected these proposals and claimed that only the limit of its oil blocks could constitute the maritime boundary between the two Parties. As justification for its claim, it simultaneously invoked the application of the equidistance/relevant circumstances method, the notion of tacit agreement and the concept of customary line.

21. While Côte d'Ivoire was awaiting confirmation of an 11th round of negotiations, scheduled to take place in Accra, Ghana suddenly broke off the talks and, on 19 September 2014, without giving notice, instituted arbitration proceedings. Three days later, on 22 September 2014,[6] Ghana withdrew its Declaration dated 15 December 2009 by which it had declared, in accordance with article 298 of UNCLOS, that it did not accept any of the dispute settlement procedures provided for in UNCLOS in matters of maritime boundary delimitation. Although Côte d'Ivoire was surprised by this behaviour, it nevertheless decided to continue with the proceedings in order to resolve the maritime dispute with Ghana.

22. Two obvious conclusions can be drawn from the background to the dispute.

23. *First*, the maritime boundary between Côte d'Ivoire and Ghana is still to be delimited. There is no formal or tacit agreement on delimitation of the boundary and Ghana cannot silence Côte d'Ivoire in this regard by applying the doctrine of estoppel. Côte d'Ivoire has consistently demonstrated its desire to achieve a delimitation of the boundary between the two countries by way of bilateral negotiation and has regularly objected to the oil practice of Ghana interfering with such an agreement in any way.

24. *Second*, Ghana's conduct in the disputed area is contrary to international law. Rather than taking heed of the repeated calls made by Côte d'Ivoire to cease all activity in the disputed area, Ghana stepped up its oil operations there from 2007/2008, at the very time the Parties were beginning the formal negotiation process on their maritime boundary. Ghana is at present continuing these activities in the disputed area, although Côte d'Ivoire is not able precisely to assess their nature or their scale in the absence of detailed information provided by Ghana to that effect. Nevertheless,

[6] Ghana, Declaration relating to article 298 of UNCLOS, 22 September 2014, CMCI, vol. III, Annex 51.

published information suggests that Ghana is not complying with the Order of the Special Chamber of 25 April 2015.

25. The *fait accompli* strategy employed by Ghana during the negotiations cannot dictate the outcome of the dispute. Since the Parties have not reached agreement on delimitation of their maritime boundary, the Special Chamber must now adopt the appropriate method to achieve an equitable solution, which is the overriding objective of any delimitation method.

26. The "bisector method" is the most appropriate method in the present case in view of the macro-geography and the coastal micro-geography and the small number of relevant base points, which are, moreover, located on a tiny portion of the two States' coastlines, and which are unstable in nature insofar as the eastern part of Côte d'Ivoire's coast is concerned.

27. Using this method, Côte d'Ivoire proposes, as the maritime boundary between the two countries, the adoption of the bisector of the angle formed by the two segments from the terminus point of their land boundary (post 55) and joining, respectively, the terminus point of the boundary between Liberia and Côte d'Ivoire and the terminus point of the boundary between Ghana and Togo.

28. That line allows an equitable solution to be achieved in light of the two-fold concave and convex configuration of the coastlines of the Parties. Côte d'Ivoire's coast can be divided into three segments, each with a different overall orientation, giving it a concave character. Ghana's coast also consists of three sections of coastline with distinct overall orientations, giving it a convex character.

29. The bisector proposed by Côte d'Ivoire makes it possible to attenuate the effects generated by the concavity of Côte d'Ivoire's coast and the convexity of Ghana's coast and thus to respect the overall orientation of the coasts of the Parties.

30. It makes it possible to eliminate the significant cut-off effect of the Ivorian coastal projections, in particular in respect of the coast between post 55 and Abidjan, which are produced by the line claimed by Ghana.

31. The bisector proposed by Côte d'Ivoire is also justified insofar as it allows the interests of the Parties' neighbouring States to be respected, avoiding setting a precedent that is detrimental to them. The geographical configuration of the coasts of Togo and Benin in relation to the coast of Ghana is very similar to the situation in the present case, in particular in view of the concavity and convexity of the coastlines of Togo and Benin. The application of the bisector method makes it possible to avoid the cut-off effect in respect of the maritime areas of Togo and Benin for the benefit of Ghana, which would give Ghana a disproportionate maritime area within the Gulf of Guinea.

32. Although any maritime boundary delimitation must be examined on a case-by-case basis, the use of the bisector method in the present case would ensure equity and stability for delimitations of future maritime boundaries between States in the region.

33. In the unlikely event that the Special Chamber were to employ the "equidistance/relevant circumstances" method in this case, the same equitable result as produced by the application of the bisector method can be obtained by adopting a provisional equidistance line adjusted as appropriate.

34. The Special Chamber will find, first of all, that the base points proposed by Ghana are technically incorrect since they are based on obsolete cartographic data. Accordingly, only base points taken from a new topographical study can be used to ensure the proper construction of a provisional equidistance line. It should also be observed that this provisional equidistance line cuts through a number of oil fields identified in the area claimed by the two Parties.

35. Second, the Special Chamber will have to adjust that provisional line in light of the relevant circumstances of this case, namely the cut-off effect produced by the specific coastal configuration of the Parties, the effect generated by the strip of Ghanaian land which protrudes into Ivorian territory in the boundary area, and the location of the oil resources.

III. Structure of the Counter-Memorial

36. This Counter-Memorial comprises five parts, which are divided into nine chapters.

37. **Part 1**, which is divided into two chapters, presents the general background to the dispute.

38. In **Chapter 1**, Côte d'Ivoire sets out the geographical and geomorphological context of the dispute, describing the human geography of the Parties, their coastal geography and the geological and geomorphological factors that are significant for the purposes of delimitation.

39. **Chapter 2** explains the historical background to the dispute. It describes the socio-political context in Côte d'Ivoire, the history of the bilateral negotiations concerning delimitation of the maritime boundary between the two Parties and their respective oil activities. In that chapter, it is explained that Côte d'Ivoire has never accepted any "customary line" and has always opposed any boundary delimited on the basis of the strict equidistance method.

40. **Part 2**, which has a single chapter, presents the applicable law in the present case.

41. **Chapter 3** identifies the various inconsistencies in Ghana's arguments regarding applicable law and sets out the key principles for maritime delimitation. As is well established in international jurisprudence, the main objective of delimitation is to achieve an equitable result. The delimitation method fulfils that objective and no one method has primacy over another. Consequently, the bisector method can be applied if geographical conditions so require.

42. In **Part 3**, which is divided into two chapters, Ghana's main arguments concerning the existence of an alleged tacit agreement on delimitation of the maritime boundary of the two Parties and the applicability of the doctrine of estoppel vis-à-vis Côte d'Ivoire are refuted.

43. In **Chapter 4**, Côte d'Ivoire shows that Ghana does not prove the existence of a tacit agreement between the Parties relating to their maritime boundary. The bilateral contacts between the Parties clearly demonstrate that they have never agreed on their maritime boundary. In addition, none of the evidence produced by Ghana, including the Parties' maritime legislation, their oil practice, oil concession maps and their submissions to the Commission on the Limits of the Continental Shelf, demonstrates any recognition of a maritime boundary by Côte d'Ivoire.

44. **Chapter 5** refutes the applicability in the present case of the doctrine of estoppel, which would effectively prevent Côte d'Ivoire from opposing the existence of a purported "customary equidistance line". Even if the concept of estoppel were applicable in this case, Ghana does not prove that the conditions for its application are met.

45. **Part 4**, which is divided into three chapters, sets out Côte d'Ivoire's arguments in support of an equitable delimitation of its maritime boundary with Ghana.

46. In **Chapter 6**, Côte d'Ivoire shows that the application of the bisector method is the most appropriate method in light of the geographical circumstances of the present case. Côte d'Ivoire explains why its proposed bisector produces the most equitable result insofar as it attenuates the concavity and convexity effects of the Ivorian and Ghanaian coastlines and most accurately reflects their general direction, thereby avoiding setting a precedent that is detrimental to the interests of the neighbouring States in the sub-region.

47. **Chapter 7** argues, in the alternative, that in the unlikely event that the Chamber were to reject the bisector method, the same equitable result could be achieved by applying the "equidistance/relevant circumstances" method. Supposing, for the sake of argument, that appropriate base points could be selected, a number of relevant circumstances would justify the adjustment of the provisional equidistance line in order to achieve an equitable result.

48. **Chapter 8** deals with Côte d'Ivoire's claims in respect of the continental shelf beyond 200 nautical miles, which are based on the application of the same delimitation methods as within 200 nautical miles.

49. **Part 5**, which has a single chapter, sets out the reasons for which Ghana is liable vis-à-vis Côte d'Ivoire.

50. **Chapter 9** thus demonstrates that Ghana's unilateral activity in the disputed area has violated the sovereign rights of Côte d'Ivoire, article 83 of UNCLOS and the Order of the Special Chamber on provisional measures.

51. This Counter-Memorial concludes with the submissions of Côte d'Ivoire.

PART 1

BACKGROUND TO THE DISPUTE

CHAPTER 1

GEOGRAPHICAL CONTEXT OF THE DISPUTE

I. General presentation of the Parties

A. Côte d'Ivoire

1.1 Located in West Africa on the Gulf of Guinea, Côte d'Ivoire covers an area of 322,000 km². It shares a common border with Liberia and Guinea to the west, Mali and Burkina Faso to the north, and Ghana to the east.

1.2 The mainland of Côte d'Ivoire comprises 31 regions. It consists mostly of a vast plateau extending from the north to the south coast. The 18 Mountains region in the north-west adjacent to Guinea has peaks the highest of which reach around 1,500 metres. Mount Nimba, which peaks at an altitude of 1,752 metres, is Côte d'Ivoire's highest summit. The landmass is crossed by four major rivers, which run in parallel from north to south and drain into the Gulf of Guinea: the Cavally, the Sassandra, the Bandama and the Comoé.

1.3 The population of the coastal towns and cities increased fivefold between 1975 and 2007 and accounts for around 30% of the Ivorian population, which is in excess of 23 million. This population growth was accompanied by considerable development in economic activity concentrated in the coastal area where the main Ivorian towns and cities are located.

Sketch map 1.1: Côte d'Ivoire and Ghana

1.4 The Ivorian economy is based mainly on agriculture (aside from oil production, which will be discussed in Chapter 2,[7] in particular in the south-east of the Ivorian coast, close to the land boundary with Ghana), with notable crop production levels (cocoa, coffee, pineapples, bananas, cashews, cotton, sugar, food crops, etc.). The fishing industry, which produces between 11 and 14 kg/inhabitant/year, is both an importer and an exporter.[8] Two forms of fishing are used on the Ivorian coast:

- non-industrial fishing represents 59% of Côte d'Ivoire's production of fisheries products. Such fishing takes place on waterways and lagoons and off the entire Ivorian coast. The cities of Abidjan and San Pedro and the towns of Grand-Bassam and Assinie are the main landing sites;[9]

- industrial fishing represents 39%[10] of Côte d'Ivoire's production of fisheries products. It can be subdivided into four types of fishing: trawler, sardine, tuna and shrimp fishing. It began in 1950 when the first trawl nets were introduced and has grown progressively. It is present mainly in the south-east of Côte d'Ivoire, offshore from the terminus point of the land boundary with Ghana,[11] where sardines are particularly abundant.[12] The port of Abidjan, which has substantial infrastructure that can be used by the fishing industry (canneries, ship repair yard, etc.), plays a leading role in the development of industrial fishing in Côte d'Ivoire.

1.5 The exploitation of Côte d'Ivoire's maritime assets can also be seen in the dynamic growth of seaside tourism. In the 1970s a Ministry of Tourism was established, the Assouindé holiday resort was opened in the Assinie region and the Code on tourism investments entered into force.[13] Tourism in Côte d'Ivoire then expanded considerably in the 1980s. The difficult global economic situation at the end of the 1970s had effectively forced Côte d'Ivoire to diversify its economy by developing new resources, in particular tourism. Seaside tourism is focused mainly in the south-east of Côte d'Ivoire, close to the land boundary with Ghana, in Assinie, in the

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[7] See *infra.*, para. 2.96 *et seq.*

[8] Report of the Food and Agriculture Organization of the United Nations, *Vue Générale du secteur des pêches national – La République de Côte d'Ivoire*, January 2008, p. 2, CMCI, vol. VI, Annex 164.

[9] R. Coulibaly, "Analyse de la contribution de la pèche à l'économie ivoirienne", Programme de formation en gestion de la politique économique, 2010, p. 14, CMCI, vol. V, Annex 99.

[10] The remaining 2% is accounted for by aquaculture-related resources.

[11] Report of the Food and Agriculture Organization of the United Nations, *Vue Générale du secteur des pêches national – La République de Côte d'Ivoire*, January 2008, p. 10-16, CMCI, vol. VI, Annex 164.

[12] Y. Koffie-Bikpo, "La pèche maritime en Côte d'Ivoire face à la piraterie halieutique", *Les cahiers d'Outre-Mer*, July-September 2010, pp. 323-324, CMCI, vol. V, Annex 100.

[13] G. Aphing-Kouassi, "Le tourisme littoral dans le sud-ouest ivoirien", Thèse de doctorat de géographie, Université d'Abidjan, 2000, p. 7; see also p. 170 *et seq.*, CMCI, vol. V, Annex 93.

Ehotilés Islands National Park, which is a UNESCO World Heritage Site, and in the surrounding area, where many hotels and tourist complexes have been built.[14]

B. Ghana

1.6 Ghana is located in West Africa and covers an area of 238,540 km². It shares a common border with Côte d'Ivoire to the west, Burkina Faso to the north, and Togo to the east. It is bordered by the Gulf of Guinea to the south.

1.7 Ghana's demography, like that of the other States on the Gulf of Guinea, has experienced marked urban growth and a constantly increasing concentration in coastal areas.[15] This population growth has been focused above all on the major urban centre on the coast, the administrative region of Greater Accra, whose population has soared since Ghana gained independence to its present level of around 2 million.[16]

1.8 Until recently, the country's economic engines, which benefit from the attractive force of the coast, were located mainly on the east of the Ghanaian cost, in the Greater Accra and Volta regions. In more recent times, exploitation of maritime resources has intensified in the south-west of Ghana. Fishing has grown substantially, driven by the ports of Axim and Takoradi. However, offshore oil production in Ghana and the construction of the Atuabo gas plant at the end of 2014, located around 50 kilometres from the border between Côte d'Ivoire and Ghana, have had a negative impact on maritime fishing activity in the west of national waters. The fishing community has complained of difficulties in coastal areas and a significant fall in production.[17]

II. The coastal geography of the Parties

A. Sub-regional geography

1.9 The present case concerns delimitation of the maritime boundary between Côte d'Ivoire and Ghana. It should nevertheless be placed in the geographical context of the Gulf of Guinea and West Africa, where the majority of States have the same geographic characteristics as Côte d'Ivoire and Ghana.

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[14] C. Hauhouot, "Le littoral d'Assinie en Côte d'Ivoire: dynamique côtière et aménagement touristique", *Les Cahiers d'Outre-mer*, no. 251, July-September 2010, p. 305 *et seq.*, CMCI, vol. V, Annex 10l.

[15] Report of the Food and Agriculture Organization of the United Nations, *Rurality in motion in West Africa*, March 2007, pp. 9-12, CMCI, vol. VI, Annex 162.

[16] P.W.K. Yankson and M. Bertrand, "Les défis de l'urbanisation au Ghana", *Accra, capitale en mouvement*, 2012, pp. 12-13, CMCI, vol. V, Annex 103.

[17] Africa no. 1, *Au Ghana, pêcheurs et fermiers craignent l'essor du pétrole et du gaz*, 8 November 2015, CMCI, vol. V, Annex 133.

1.10 Côte d'Ivoire and Ghana both lie on the Gulf of Guinea, which is an indentation of the Atlantic Ocean on the western coast of Africa. The African west coast between Morocco and South Africa runs in a general north-south direction. In the Gulf of Guinea the coastline changes direction abruptly for around 1,300 km between Côte d'Ivoire and Nigeria and follows a general east-west direction. Beyond that point, the coast resumes its general north-south direction to the Cape of Good Hope in South Africa, as is shown in **Sketch map 1.2** below.

Sketch map 1.2: The African continent

1.11 The regional context (see **Sketch map 1.3** below) can be illustrated by three segments based on the direction of the coastline:

- one segment running in a general north-south direction between Pointe des Almadies in Senegal and Cape Palmas in Liberia;

- one segment running in a general east-west direction between Cape Palmas and Lekki Lagoon in Nigeria;

- one segment running in a general north-south direction between Lekki Lagoon and Cape Lopez in Gabon.

Sketch map 1.3: West Africa

1.12 Two observations should be made regarding the geography of the States in the sub-region.

1.13 *First*, the coastlines of those States are very different in length. Of the 14 countries between Senegal and Gabon, ten have coastlines greater than 300 km in length.[18] By contrast, four have much shorter coastlines than their neighbours, including Benin (121 km of coast) and Togo (56 km of coast), the latter country being among the 20 coastal countries in the world with the shortest length of coastline.[19] The length of

[18] According to the Central Intelligence Agency World Factbook, the coasts of the States in the sub-region have the following lengths: Senegal: 531 km; Guinea-Bissau: 350 km; Guinea: 320 km; Sierra Leone: 402 km; Liberia: 579 km; Côte d'Ivoire: 515 km; Ghana: 539 km; Togo: 56 km; Benin 121 km; Nigeria: 853 km; Cameroon: 402 km; Equatorial Guinea: 296 km; Gabon: 885 km; https://www.cia.gov/library/publications/resources/the-world-factbook/index.html, accessed on 29 March 2016.

[19] Central Intelligence Agency World Factbook, https://www.cia.gov/library/publications/resources/the-world-factbook/index.html, accessed on 29 March 2016.

coastline directly affects access to the sea and a country's maritime area, thereby creating a considerable disparity between States in the region, as can be seen in the present case.

1.14 *Second*, the Gulf of Guinea as a whole is subject to significant erosion. The instability of the estuaries and lagoon systems in West Africa is a known, documented phenomenon common to all the countries bordering the Gulf of Guinea. For example, some regions in Togo are experiencing erosion at a rate of around 2 metres each year.[20] Similarly, post 0 on the land boundary between Togo and Benin has been swept away by coastal erosion, as was established by the Benin-Togo Joint Commission on boundary delimitation in connection with its work to delimit their common maritime boundary.[21] A number of programmes to combat coastal erosion in the Gulf of Guinea have been introduced over the last decade, in particular under the auspices of UEMOA (the West African Economic and Monetary Union, which brings together eight States including Côte d'Ivoire[22]), in order to:[23]

- undertake an assessment of coastlines particularly affected by erosion, especially in Benin, Côte d'Ivoire, Guinea-Bissau, Senegal, and Togo;

- determine measures to be taken to preserve the coastline;

- rectify and prevent serious harm suffered by the damaged coastline.

B. The coastal geography of Côte d'Ivoire

1.15 The Ivorian coast, which is bordered to the south by the Atlantic Ocean and the Gulf of Guinea, measures 515 km in length[24] and extends from Cape Palmas to the west (on the Côte d'Ivoire/Liberia border) to boundary post 55 to the east (on the Côte d'Ivoire/Ghana border). It has three main characteristics. It is:

- concave (*1*);

[20] A. B. Blivi and P. Adjoussi, "La cinématique du trait de côte au Togo vue par télédétection", *Geo-Eco-Trop*, 28, 2004, 1-2, p. 30, CMCI, vol. V, Annex 95.

[21] Agence béninoise de Gestion Intégrée des Espaces Frontaliers, *Frontières maritimes*, undated, p. 31, CMCI, vol. VI, Annex 185.

[22] The other UEMOA member States are Benin, Burkina Faso, Guinea-Bissau, Mali, Niger, Senegal, and Togo.

[23] UEMOA, *Programme régional de lutte contre l'érosion côtière*, 2007, p. 3, CMCI, vol. VI, Annex 160.

[24] Central Intelligence Agency World Factbook, https://www.cia.gov/library/publications/resources/the-world-factbook/index.html, accessed on 29 March 2016.

- mainly sandy (*2*);

- shifted by around 40 kilometres to the west within Ivorian territory by a thin strip of land belonging to Ghana (*3*).

1. The concave character of the Ivorian coast

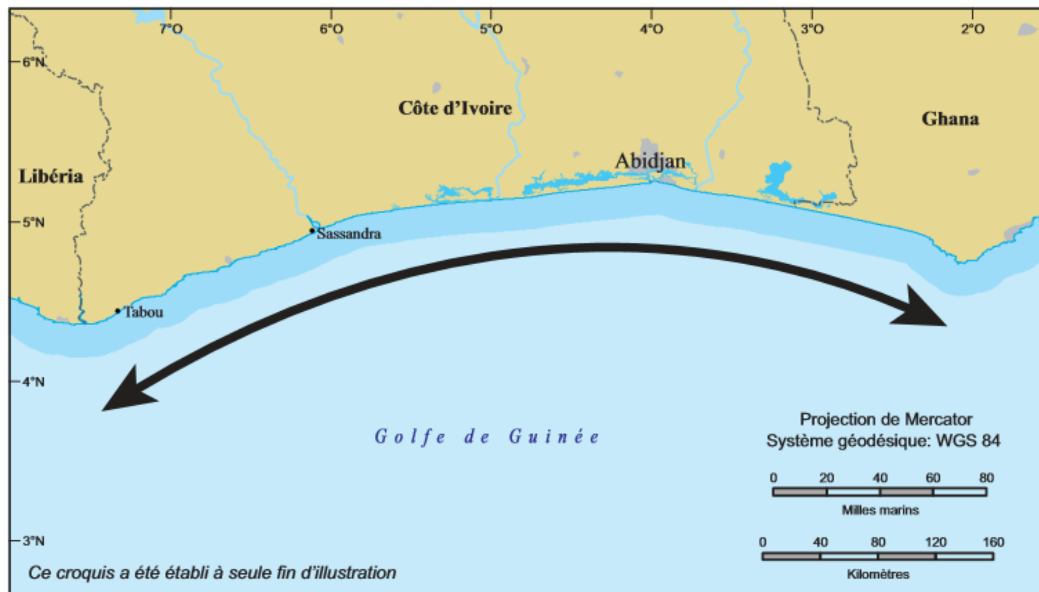
1.16 The Ivorian coast can be subdivided into three sectors, each with a distinct general orientation:

- between Tabou and Sassandra, north-east;

- between Sassandra and Abidjan, east-north-east;

- between Abidjan and the Côte d'Ivoire/Ghana border, east-south-east.

1.17 The Ivorian coastline has a concave character, as illustrated by the arc in **Sketch map 1.4** below.



Sketch map 1.4: The concavity of the Ivorian coast

2. *The mainly sandy character of the Ivorian coast*

a. *The four lagoons on the Ivorian coast*

1.18 One of the characteristic features of the Ivorian coast is its mainly sandy character. The Ivorian coastline can be divided into two segments on either side of Sassandra: to the west a rocky coastline, accounting for around one third of the coast, alternates with sandy beaches and cliffs and to the east an exclusively sandy shore, formed mainly of lagoons, represents around two thirds of the coast. This sandy coast borders four lagoons between Fresco and Assinie, on the Côte d'Ivoire/Ghana border (see **Sketch map 1.5** below).

Sketch map 1.5: The lagoons on the Ivorian coast

1.19 These lagoons are:

- Fresco lagoon, the smallest and shallowest in the Ivorian lagoon system, covering an area of 17 km²;
- Grand-Lahou lagoon, which comprises the Tagba, Mackey, Tadio and Niouzounou lagoons;
- Ebrié lagoon, the largest set of lagoons in Côte d'Ivoire and in West Africa, stretching over 130 km from east to west and 7 km wide in places;
- Aby lagoon, a vast body of water covering 424 km² and comprising three lagoons, Aby itself, Ehy and Tendo (see **Sketch map 1.6** below).

Sketch map 1.6: Aby lagoon

b. The instability of the Ivorian coast

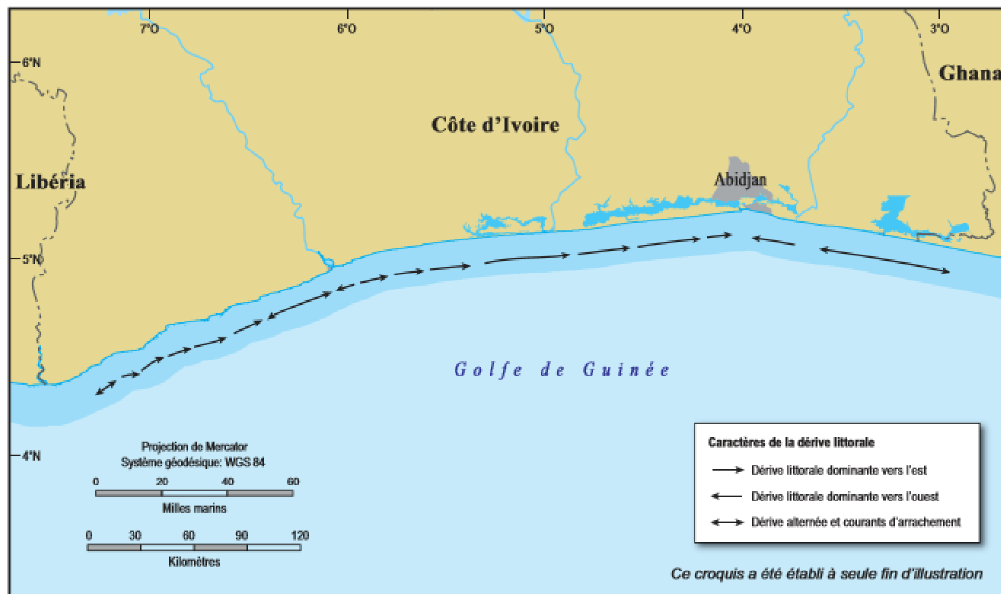
1.20 The Ivorian coast has a mainly sandy character which, because of sea movements, makes it particularly unstable.

1.21 The phenomenon of coastal erosion or accretion is caused by movement of sediment by currents and waves. This sediment movement, known as longshore drift, occurs gradually as each wave breaks on the shoreline. Just after the waves have broken, a silted water mass moves up the beach as a result of the swash phenomenon. The sediment picked up by the impact is carried then moved by the backwash current which carries it back to the sea and finally seaward or in a lateral direction, depending on the currents.

1.22 The significant instability of the Ivorian coast is due to the combined effect of two factors. The first relates to the existence of a heavy swell. Swells higher than or equal to 2 metres in amplitude and lasting for periods in the order of 12 seconds statistically represent 40-60% of the observations recorded in May and June on the coast. The second factor is the oblique nature of the coastline in relation to the swells, which causes lateral longshore drift. The swells, which originate in the South Atlantic, reach the shore in a general north-north-east direction. As the Ivorian coast is concave in shape,[25] the longshore drift caused by the wave swell is not consistent in direction:

[25] See *supra.*, paras 1.16 and 1.17.

between Fresco and Abidjan the swells, which come from the south-south-west, break laterally on the coast facing east-north-east and transport sediment from the west to the east. Between Abidjan and Assinie the coastline takes an east-south-east direction and the waves therefore reach the coastline face on, making it more unstable (see **Sketch map 1.7** below).



Sketch map 1.7: Longshore drift off the Ivorian coast

1.23 The combination of these two factors causes significant instability in the Ivorian coastal lagoon area. Thus, the Fresco lagoon barrier beach is suffering erosion at a rate of 1-2 metres per year and longshore drift is reflected in an estimated sediment transportation of 800,000 m³ per year.[26] The same holds for the Grand Lahou lagoon, which is open to the sea at its eastern end, at the point where the Bandama River flows into the ocean. The swells travel in a north-north-east direction, reaching Grand Lahou lagoon, which has an east-west orientation. They have a peak period of 7-11 seconds and a significant wave height of 1.3 metres. The angle of incidence of the swells in relation to the coast produces a dominant longshore drift from west to east and also estimated sediment transportation of 800,000 m³ per year.[27] The large quantity of sand transported from the west by longshore drift causes seasonal silting of the lagoon channel. This erosion phenomenon is such that in 1973 the Ivorian authorities decided to relocate the town of Grand Lahou by about 20 kilometres in order to escape the constantly rising sea level.[28] Similarly, in 2006 approximately

[26] C. Hauhouot, "Le littoral d'Assinie en Côte d'Ivoire: dynamique côtière et aménagement touristique", *Les Cahiers d'Outre-mer*, no. 251, July-September 2010, p. 314, CMCI, vol. V, Annex 101.

[27] M. Robin, C. Hauhouot, K. Affian, P. Anoh, A. Alla Della and P. Pottier, "Les risques côtiers en Côte d'Ivoire", *BAGF-Géographies*, 2004, p. 301, CMCI, vol. V, Annex 96.

[28] RFI, *La lente disparition de Grand-Lahou*, 18 September 2007, CMCI, vol. V, Annex 116.

15,000 inhabitants of Grand Lahou living close to the lagoon mouth had to be moved.[29]

c. The instability of the coast around boundary post 55

1.24 The eastern part of the Ivorian coast, which comprises a section of about 20 kilometres extending to the border with Ghana and represents around 4% of the national coastline, is subject to the continuous action of a regular swell which reaches the coast face on. This swell, which is formed by high pressure in the Antarctic region and strengthened by the St Helena High and is highly dynamic during the rainy season in the northern hemisphere, has two features: it has a large wavelength of between 150 and 225 m and travels at a speed above 15 metres per second. These two features give it considerable energy potential when it breaks on reaching the coast.

1.25 The combined action of this strong swell and the oblique nature of the coastline in relation to its direction of propagation has the effect of destabilizing the barrier beach. Studies of the Ivorian coastal regime confirm that the coastline, which is eroded during the period when the strongest swells occur, from March to July, and recovers in the other seven months of light swells, is subject to recurring fluctuations over the course of the year.[30]

1.26 The changes to the mouth of Aby lagoon between 1953 and 2014 are a particularly good indication of the instability of this stretch of coastline, as is shown by an analysis of satellite images and aerial photogrammetric surveys carried out during that period.[31]

1.27 In 1953 the lagoon mouth included several islands and washed up to the Assinie-Mafia peninsula. To the south of Assinie-Mafia a barrier beach several hundred metres wide separated the lagoon from the Gulf of Guinea. To the south-west of the mouth, the town of Assinie-France was established on a barrier beach around 1 km wide. Sixty years later, it can be seen that:

- the Assinie-Mafia peninsula has moved south such that it joins the barrier beach separating the lagoon from the Atlantic Ocean;
- the barrier beach becomes around 100 metres narrower before widening at its south-east end, which currently measures more than 500 metres in width;

[29] RFI, *Grand Lahou, un village en sursis sur le littoral ivoirien*, 21 March 2014, CMCI, vol. V, Annex 120.

[30] C. Hauhouot, "Le littoral d'Assinie en Côte d'Ivoire: dynamique côtière et aménagement touristique", *Les Cahiers d'Outre-mer*, no. 251, July-September 2010, pp. 313-314, CMCI, vol. V, Annex 10l.

[31] See IGN Photothèque, photo 1953_AOF027_0012, CMCI, vol. II, Annex Cl, and photo 1962_NB3OIX-X_0256, CMCI, p. 301, vol. II, Annex C2.

- the Assinie-France peninsula has shifted around 200 metres to the south-east and measures no more than around 100 metres in width, thereby losing four fifths of its surface area in 60 years;
- more generally, the direction of the mouth of Aby lagoon has changed; whereas it faced south-south-west in 1953, the flood tide now sets south-easterly (see **Sketch map 1.8** below).[32]

Sketch map 1.8: The mouth of Aby lagoon in 2014

3. The shifting of the coastline by around 40 kilometres within Ivorian territory by a thin strip of land belonging to Ghana

1.28 The land boundary between Côte d'Ivoire and Ghana takes a general north-south direction. A feature of the line taken by this land boundary is that it follows a north-south direction for around 650 km then deviates sharply a few kilometres from the coast to take an east-west direction for its last 40 kilometres. A legacy of the colonial era, a strip of land around 40 km in length is thus created, forming part of Ghana's territory and protruding into Ivorian territory. The width of the strip of land varies between 4 km in its western part and 10 km in its eastern part (see **Sketch map 1.9** below).

[32] See Pléiades image, 2014, CMCI, vol. II, Annex C3.

Sketch map 1.9: The strip of land

1.29 The existence of this strip of land is the result of colonial agreements concluded between France and England at the end of the 19th century and at the beginning of the 20th century to delimit the land boundaries between their possessions in West Africa. In their delimitation agreement concluded in 1889, France and Great England fixed as the starting point of the land boundary between Côte d'Ivoire and Ghana the "sea coast at Newtown, at a distance of 1,000 metres to the west of the house occupied in 1884 by the English Commissioners".[33] The land boundary was delimited between 1901 and 1905,[34] then between 1963 and 1988.[35]

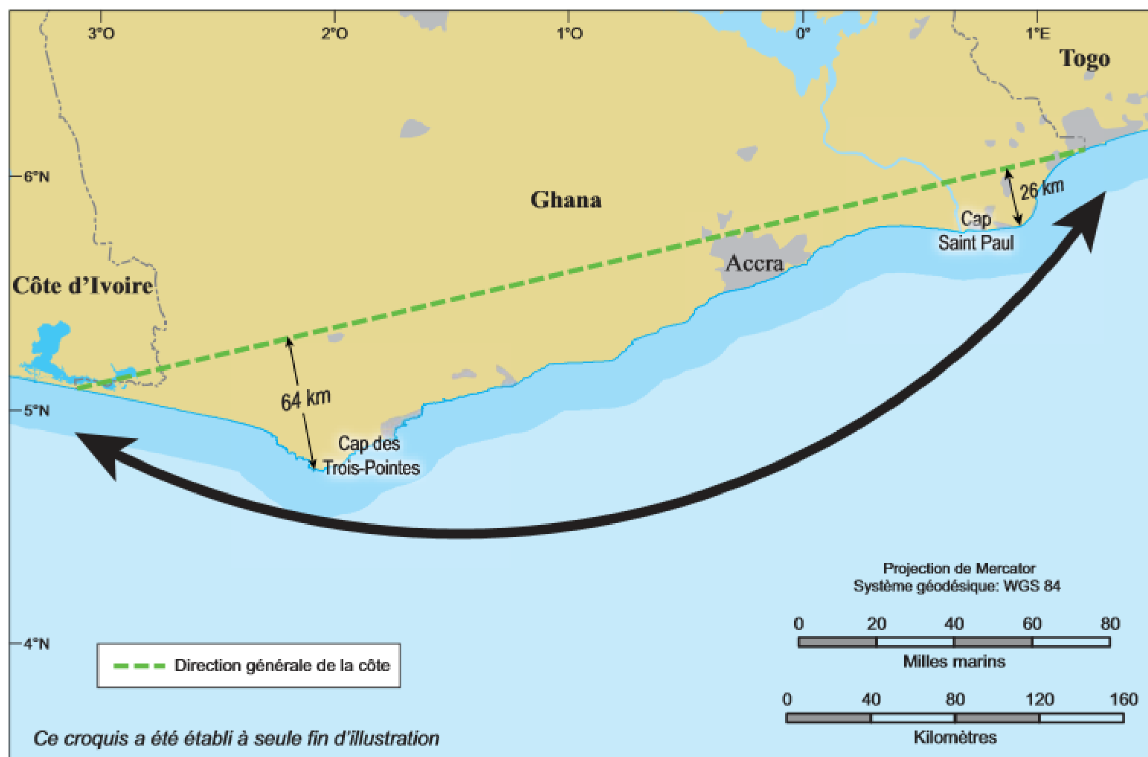
[33] Agreement concerning the Delimitation of the English and French possessions on the West Coast of Africa, 10 August 1889, article III, CMCI, vol. III, Annex 3.

[34] Agreement between France and Great Britain concerning the boundary between the Ivory Coast and the Gold Coast between the sea and the 11th degree of latitude, 11 May 1905, CMCI, vol. III, Annex 10.

C. The coastal geography of Ghana

1.30 The Ghanaian coast, which is 539 km in length,[36] has two main characteristics. *First*, unlike the Ivorian coastline, it is convex in shape. The convexity of Ghana's coast is caused by the existence of two capes, which both lie close to Ghana's land boundaries (see **Sketch map 1.10** below).

1.31 To the south-west, Cape Three Points is a peninsula located 120 km from the Côte d'Ivoire/Ghana border. It takes its name from its geographical configuration: two rocky capes protrude into the sea on either side of the main point, thus forming three points. This cape, which is the southernmost point in Ghana, is a projection of around 64 km in relation to the coastline, that is to say, the segment between the two Ghanaian terminus boundary posts. To the south-east, Cape St Paul, which is located 45 km from the land boundary between Ghana and Togo, is a projection of around 26 km in relation to the coastline.



Sketch map 1.10: The convexity of the Ghanaian coastline

1.32 The Ghanaian coastline thus consists of three coastal sections, the general orientations of which are:

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[35] See *infra.*, paras 2.29-2.32.

[36] Central Intelligence Agency World Factbook, https://www.cia.gov/library/publications/resources/the-world-factbook/index.html, accessed on 29 March 2016.

- between the Côte d'Ivoire/Ghana border and Cape Three Points, east-south-east;

- between Cape Three Points and Cape St Paul, east-north-east;

- between Cape St Paul and the border with Togo, north-east.

1.33 The convexity of the Ghanaian coastline is reflected is an outflow to the sea of 15,788 km² compared with its neighbours, Côte d'Ivoire and Togo. As far as Côte d'Ivoire is concerned, the concavity of the coastline loses it 13,706 km² compared with a line drawn between the terminus boundary posts (see **Sketch map 1.11** below).

Sketch map 1.11: The two-fold concave and convex character of the coastlines of Côte d'Ivoire and Ghana

1.34 *Second*, like the Ivorian coastline, the Ghanaian coastline includes sandy, unstable sections.[37] Some regions, lying mainly on the east of the Ghanaian coastline, are more heavily affected, such as the region of Ada and the neighbouring Keta protected lagoon area, which are suffering erosion at a rate of approximately 4 metres per year,[38] and the Accra region, which has experienced a recession of its coastline at a

[37] D.O. Anim, P.N. Nkrumah, N.M. David, "A rapid overview of coastal erosion in Ghana", *International Journal of Scientific and Engineering Research*, Volume 4, no. 2, February 2013, p. 2, CMCI, vol. V, Annex 104.

[38] R.B. Naim, K.J. MacIntosh, M.O. Hayes, G. Nai, S.L. Anthonio, W.S. Valley, "Coastal Erosion at Keta Lagoon, Ghana – Large Scale Solution to a Large Scale Problem", *Coastal Engineering*, 1998, pp. 3194-3195, CMCI, vol. V, Annex 92.

rate of around 1.2 metres each year.[39] This significant erosion is caused primarily by the swell breaking on the shore, which is characterized by average significant wave heights of around 1.2 metres, with wave periods of between 10 and 15 seconds, generating longshore sediment transport of between 400,000 and 750,000 m³ each year.[40] Because of this alarming erosion, the Ghanaian authorities have recently implemented a number of coastal defence and protection plans, including the construction of a sea defence wall off the coast at Ada, with an estimated budget of EUR 68 million.[41]

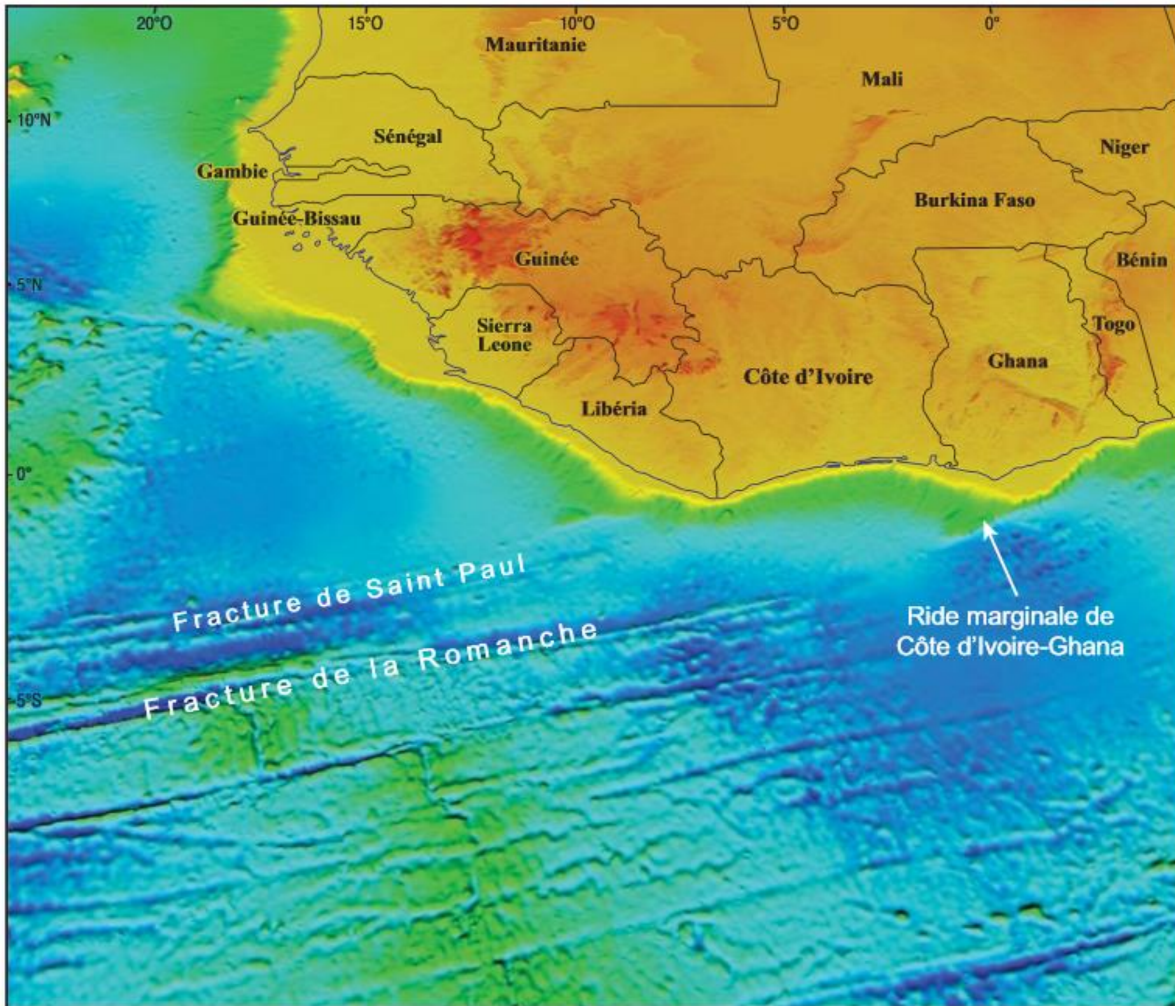
D. The geological and geomorphological situation of the Parties

1.35 The geomorphological structure of the Parties is shaped by a remarkable geological accident. The Atlantic Ocean is crossed from north to south by a ridge called the Mid-Atlantic Ridge: to the west lies South America and to the east the African coast. The ridge is cut through by transform faults and fracture zones running from east to west, the two largest of which, at the equator, are the Romanche Fracture and the Saint Paul Fracture. The Côte d'Ivoire/Ghana marginal ridge is an extension of the Romanche Facture, reaching as far as off Cape Three Points in Ghana (see **Sketch map 1.12**).

[39] K. Appeaning Addo, "Detection, Measurement and Prediction of Shoreline Change in Accra, Ghana", *ISPRS Journal of Photogrammetry & Remote Sensing*, April 2008, p. 15, CMCI, vol. V, Annex 97.

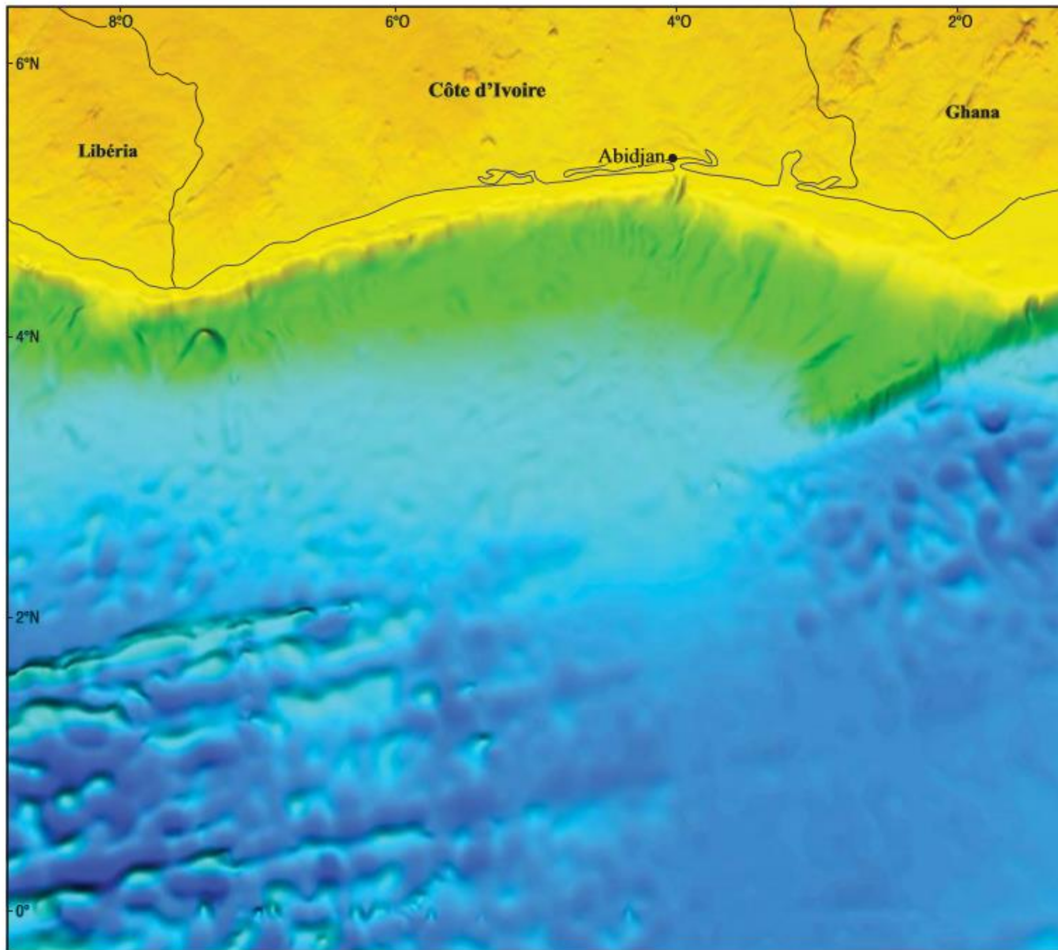
[40] K. Appeaning Addo, "Detection of coastal erosion hotspots in Accra, Ghana", *Journal of Sustainable Development in Africa, Volume Il, no. 4, 2009, pp. 256-257*, CMCI, vol. V, Annex 98.

[41] Ministry of Finance – Ghana, Government secures 68 million Euro for Ada sea defence wall, undated, CMCI, vol. V, Annex 152.



Sketch map 1.12: The Romanche and Saint Paul Fractures

1.36 In its western part the Côte d'Ivoire-Ghana marginal ridge takes the form of a gentle incline, which gradually sinks up to Liberia, then to the Romanche Facture. This incline forms the Deep Ivorian Basin. In contrast, the front of the Côte d'Ivoire/Ghana marginal ridge is a slope which deepens sharply to the abyssal plain.



Sketch map 1.13: The Côte d'Ivoire-Ghana marginal ridge

1.37 The Côte d'Ivoire/Ghana marginal ridge has created the Ivorian sedimentary basin, where the vast majority of the oil activities of Côte d'Ivoire and Ghana and the most recent discoveries of deposits are concentrated. Combined with the two-fold concave and convex character of Côte d'Ivoire and Ghana, the shape of the western part of the ridge is conducive to the accumulation of a substantial sedimentary deposit on account of the gentle incline of its continental margin, while on the slope to the east there can be no deposit as a result of the change in gradient (see **Sketch map 1.13** above).

CHAPTER 2

HISTORICAL BACKGROUND TO THE DISPUTE

2.1 In its presentation of the background to the dispute, Ghana has provided a partial compilation of information and documents in order to foster the illusion of a tacit agreement on the maritime boundary with Côte d'Ivoire, which it claims to exist.[42]

2.2 In order to offer the Chamber clarification regarding the historical background, there will first be a brief outline of the socio-political context in Côte d'Ivoire insofar as it usefully casts light on the conduct of the Parties (**I.**). There will then follow a detailed chronological presentation of the bilateral exchanges between the Parties on boundary matters (**II.**) and their respective oil activities (**III.**).

I. The socio-political context in Côte d'Ivoire

A. Decolonization and the Ivorian economic miracle

2.3 The Ivorian sovereign State was born on 7 August 1960, following a decolonization process set in motion immediately after the Second World War in accordance with the principle of self-determination.

2.4 Félix Houphouët-Boigny, a member of the French Parliament and a major actor in local political life, brought about the emancipation of Côte d'Ivoire. His domestic political legitimacy and the legitimacy acquired in France made him the natural first President of Côte d'Ivoire. On 7 November 1960 he gained 98.7% of the vote following an election with a high turnout.

2.5 The first three decades of Ivorian independence under his Presidency were marked by a climate of peace and great stability. Spectacular changes took place in all sectors of the Ivorian economy, such that this time has been retrospectively described as an "economic miracle".

2.6 This political stability, which was a driver for economic prosperity, started to decline in 1993 upon the death of the "father of the nation", before collapsing in 1999, dragging Côte d'Ivoire into a succession of socio-political crises which would not end until 2011.

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[42] MG, vol. 1, Chapter 3.

2.7 Within the space of a few decades, the "flagship" State of West Africa during the golden years of the 1980s became a "heavily indebted poor country"[43] which did not re-establish its economic and social stability until 2012.[44]

B. 1993-2007: from the death of President Houphouët-Boigny to the Ouagadougou Agreement, 14 years of instability interspersed with periods of civil war

1. 1993-1999: the beginnings of a long period of instability

2.8 When Félix Houphouët-Boigny died on 7 December 1993, Henri Konan Bédié, at the time President of the National Assembly, became President of the Republic.

2.9 In October 1995 he won the Presidential elections but the vote was actively boycotted by the majority of the opposition, heralding the coming political and social tensions.

2. 1999-2002: coups and the division of the country

2.10 The exacerbation of these political and social tensions, the imprisonment of a number of opposition leaders and dissatisfaction within the army led to the coup which took place on 24 December 1999, when Henri Konan Bédié was overthrown by the army and General Robert Guéï was made Head of State.

2.11 The military junta asked the political parties and civil society to draft a new constitution, which was adopted on 1 August 2000, and organized Presidential elections in October 2000. General Robert Guéï, who declared himself the winner of the ballot, was driven away by street demonstrations. 303 people died, 65 disappeared and 1 546 were injured as a result of the violence at the beginning of 2000.[45]

2.12 The Supreme Court proclaimed the results and declared Laurent Gbagbo the winner. He launched a national reconciliation forum and then appointed a government of national unity.

2.13 However, the debate on nationality and citizenship, which became known as the "Ivoirité crisis", and the resulting crises, including over home ownership, led to an attempted coup on 19 September 2001. The coup failed but the rebel forces, known as "Forces Nouvelles", gathered in the north of the country, occupying more than 60% of the land.

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[43] United Nations, *World Economic and Social Survey 2005*, 2007, extracts, Explanatory Notes, p. xxvii, CMCI, vol. VI, Annex 161.

[44] World Bank, *Côte d'Ivoire – Country Overview*, 22 October 2015, CMCI, vol. VI, Annex 168.

[45] RFI, *Côte d'Ivoire – le bilan officiel des violences*, 31 August 2001, CMCI, vol. V, Annex 113.

3. 2002-2007: civil war and a series of peace agreements

2.14 Following the failed coup, a number of intervention forces were deployed by France, ECOWAS and then the United Nations in a "zone of confidence" located between the northern zone, controlled by Forces Nouvelles, and the southern zone, which was under Government control.[46] During this period many violent crimes were committed within Côte d'Ivoire.

2.15 A resolution of the conflict seemed to emerge in January 2003 with the signing of the Linas-Marcoussis Agreement in France between the Government, Forces Nouvelles and leaders of a number of Ivorian political parties.[47]

2.16 On 13 May 2003, the United Nations Security Council adopted resolution 1479, which created the United Nations Mission in Côte d'Ivoire (MINUCI)[48] to facilitate the implementation of the Linas-Marcoussis Agreement and the cease-fire. However, the agreement was not respected.

2.17 Ghana played an important role in the efforts to implement the Linas-Marcoussis Agreement. Mediation was undertaken, in vain, by the Ghanaian Head of State, in his capacity as President of ECOWAS,[49] throughout the day of 24 March 2004. Between 2002 and 2004, Ghana more generally hosted a series of meetings between the different parties in the Ivorian conflict,[50] which led to three agreements.[51] Ghana was thus fully informed of the internal situation in Côte d'Ivoire. The report of the International Commission of Inquiry mandated by the United Nations to look into the human rights situation in Côte d'Ivoire concluded that serious humans rights violations took place during the period under consideration (September 2002-October 2004), both civil and political rights and economic, social and cultural rights.

2.18 On 6 April 2005, all the parties to the Ivorian conflict signed the "Pretoria Agreement on the Peace Process in Côte d'Ivoire",[52] which provided for Presidential elections to be held in October 2005 and for a joint declaration of the end of war and the restoration of State administration in the north of the country. On 9 July 2005 a new

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[46] French Ministry of Defence, Press pack, *De l'opération Licorne aux forces françaises en Côte d'Ivoire*, 23 January 2015, CMCI, vol. VI, Annex 167.

[47] *Ibid.*, p. 15.

[48] United Nations, MINUCI, *Background to the mission*, extract from the Report of the Secretary-General on Côte d'Ivoire, S/2003/374, March 2003, CMCI, vol. VI, Annex 158.

[49] John Kuofor was President of ECOWAS from 2004 to 2005.

[50] UNOCI, *Le contexte*, July 2007, CMCI, vol. VI, Annex 163.

[51] Accra peace agreements, 29 September 2002 (Accra 1), 7 March 2003 (Accra 2), 30 July 2004 (Accra 3).

[52] RFI, *Côte d'Ivoire – l'accord de Prétoria du 6 avril 2005*, 6 April 2005, CMCI, vol. V, Annex 114.

agreement was concluded by the Ivorian Government and Forces Nouvelles on the implementation of a disarmament, demobilization and reintegration programme.

2.19 Those agreements failed once again. The tense political climate did not allow elections to be held and they were postponed four times,[53] leading to a situation described by the OECD as a "political impasse".[54]

2.20 The peace negotiations between the Government of President Laurent Gbagbo and Forces Nouvelles eventually led to the Ouagadougou Political Agreement, signed on 4 March 2007, and to a further postponement of Presidential elections until February 2008. This agreement was then confirmed by all the Ivorian political forces, marking a decisive turning point in escaping the crisis.

C. 2007-2011: from the most recent peace agreement to post-electoral unrest

2.21 The Ouagadougou Political Agreement instituted a normalization of the political situation and allowed progress to be made in the reunification of the country and national reconciliation. The zone of confidence in the centre of the country was gradually dismantled and replaced by a green line within which brigades formed by the forces of the parties to the conflict were posted to ensure security.

2.22 Côte d'Ivoire painfully began to take stock of the war years. In July 2007, immediately following the signature of the peace agreements, the United Nations estimated that 45% of the Ivorian population was living below the poverty line, compared with 38% before the start of the conflict.[55] By way of comparison, in 1985 the proportion of the population living below the poverty line was only 10%.[56] The years of crisis brought about marked impoverishment and massive population exodus, the abandonment of the northern part of the country by weakened State institutions and a significant fall in the growth rate. The human development index also fell significantly between 2002 and 2008 throughout the northern half of the country.[57]

2.23 After two years of relative stability, the elections held in November 2010 plunged Côte d'Ivoire back into an acute crisis. In the second round of voting on 28 November 2010, Alassane Ouattara won the Presidential election with 54% of the vote, according to the Independent Electoral Commission (IEC) and United Nations

[53] UNOCI, *Le contexte*, July 2007, CMCI, vol. VI, Annex 163.

[54] OECD, *African Economic Outlook 2005/2006, Côte d'Ivoire*, 2006, CMCI, vol. VI, Annex 159.

[55] UNOCI, *Le contexte*, July 2007, CMCI, vol. VI, Annex 163.

[56] World Bank, *Côte d'Ivoire – Country Overview*, 22 October 2015, CMCI, vol. VI, Annex 168.

[57] UNDP, *National Human Development Report 2013, Employment, Structural Changes and Human Development in Côte d'Ivoire*, 2013, p. 27, CMCI, vol. VI, Annex 166.

observers. However, following accusations of electoral fraud in pro-Ouattara regions in the north and even though international observers did not report any serious problems in the electoral process in that area, the Constitutional Court declared the election results void in the northern regions and awarded victory to President Laurent Gbagbo.

2.24 Six months of violence followed, during which humanitarian organizations reported dozens of massacres and violent crimes, with more than 3,000 victims and almost one million displaced persons.[58] President Laurent Gbagbo only stepped down from power after pro-Ouattara military forces had taken control of the country and defeated pro-Gbagbo forces in Abidjan in early April 2011, with the support of United Nations forces and French forces intervening pursuant to United Nations Security Council resolution 1975.[59] Alassane Ouattara formally took office in April 2011.

2.25 The twenty "glorious" years of the Ivorian miracle were thus followed by twenty "tumultuous" years marked by recurrent crises of varying degrees, which some have been quick to call a "State crisis", describing the "complete absence of regulation and, therefore, of governance"[60] in a young country divided in two and much weakened.

II. Bilateral consultations concerning the boundaries between Côte d'Ivoire and Ghana

2.26 From 1963 Côte d'Ivoire and Ghana held regular bilateral exchanges relating to the demarcation of their land boundary within the Joint Commission on Redemarcation (A.).

2.27 It was in that Joint Commission that Côte d'Ivoire raised the question of delimitation of the maritime boundary in 1988 and made a proposal for a boundary line, to which Ghana failed to respond. Four years later, in 1992, the Parties attempted to meet once again to discuss delimitation of their maritime boundary, but their efforts were in vain (B.).

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[58] Radio Canada, *Près d'un million de déplacés en Côte d'Ivoire, selon le HCR*, 25 March 2011, CMCI, vol. V, Annex 117.

[59] United Nations Security Council, *Resolution 1975 (2011) S/RES/1975/2011*, 30 March 2011, CMCI, vol. VI, Annex 165.

[60] *Ibid., p.* 60.

2.28 It was only from 2008 that the Parties initiated proper bilateral negotiations on this question, which, despite six years of intense, regular exchanges, failed to produce results on account of Ghana's inflexibility and its lack of true willingness to negotiate.

A. 1963-1998: bilateral exchanges concerning the redemarcation of the land boundary

2.29 The land boundary between Côte d'Ivoire and Ghana, the total length of which is 720 kilometres, was progressively delimited through the conclusion of a succession of arrangements and agreements between France and the United Kingdom, as the colonial powers, between 1889 and 1905,[61] and then demarcated by the placement of boundary posts.

2.30 In 1963, shortly after they gained independence, representatives of the Governments of Côte d'Ivoire and Ghana met in a bilateral commission to "to consider unlawful logging in the area of the international boundary between the two States",[62] which subsequently became the "Joint Commission on Redemarcation". At the end of that meeting, Côte d'Ivoire and Ghana decided to redemarcate their boundary and in the meantime, as a "provisional measure",[63] prohibited logging operations at a distance of 800 metres either side of the boundary in order to avoid any disputes.

2.31 Against this background, Côte d'Ivoire established the National Commission on Boundary Redemarcation [64] ("the National Redemarcation Commission") in 1972 with the task of proposing and implementing all measures relating to the delineation

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[61] Agreement concerning the Delimitation of the English and French possessions on the west coast of Africa, 10 August 1889, article III, CMCI, vol. III, Annex 3;

- Agreement between Great Britain and France for the demarcation of their respective spheres of influence in Niger districts, 26 June 1891, CMCI, vol. III, Annex 4;

- Agreement between Great Britain and France fixing the boundary between the British and French possessions on the Gold Coast, 12 July 1893, CMCI, vol. III, Annex 5;

- Anglo-French Convention, 14 June 1898, CMCI, vol. III, Annex 6;

- Letter from the Governor of Côte d'Ivoire to the Gold Coast, 17 April 1901, CMCI, vol. III, Annex 7; Letter from the Governor of Côte d'Ivoire to the Gold Coast, 20 June 1901, CMCI, vol. III, Annex 8;

- Agreement regarding the boundary from Nugua to the 9th parallel, 1 February 1903, CMCI, vol. III, Annex 9;

- Anglo-French Agreement regarding the boundary of the Ivory Coast and the Gold Coast between the sea and the 11th degree of latitude, 11 May 1905, CMCI, vol. III, Annex 10.

[62] Joint minutes of the meeting of the Commission established by agreement between the Government of Ghana and the Government of Côte d'Ivoire to consider unlawful logging in the area of the boundary between the two countries, 10 December 1963, CMCI, vol. III, Annex II.

[63] *Ibid.*

[64] Decree no. 72-605 establishing a National Commission on Boundary Redemarcation, 18 September 1972, CMCI, vol. III, Annex 1.

and redemarcation of boundaries between Côte d'Ivoire and its neighbouring countries. That Commission was also given a consultative role in matters relating to border disputes.

2.32 It took Côte d'Ivoire and Ghana more than 15 years to conclude this redemarcation work, which was completed in 1988.

B. 1988-1992: the first bilateral exchanges concerning delimitation of the maritime boundary

2.33 In 1988, as the work on redemarcation of the land boundary was being concluded, Côte d'Ivoire referred the question of the maritime boundary between Côte d'Ivoire and Ghana to the Joint Commission on Redemarcation and made a delimitation proposal (*1.*). Ghana held its silence vis-à-vis this proposal until 1992, when it suggested relaunching negotiations in order to attempt to secure an intensive drilling programme in the area claimed by Côte d'Ivoire, to which Côte d'Ivoire formally objected (*2.*).

1. July 1988: Côte d'Ivoire proposes a line for the maritime boundary between Côte d'Ivoire and Ghana

2.34 As cooperation with Ghana within the Joint Commission had proven to be harmonious and effective, Côte d'Ivoire decided to continue its efforts and to utilize that same channel to push forward delimitation of the maritime boundary between the two countries.

2.35 Prior to the 15th ordinary session of the Joint Commission on Redemarcation, which was scheduled to take place in Abidjan from 18 to 20 July 1988 to "assess progress in redemarcation of the land boundary between Côte d'Ivoire and Ghana",[65] the Ivorian Party requested that the "delimitation of the maritime and lagoon boundary" be added to the agenda.[66] Ghana accepted that request.

2.36 In accordance with that agenda, in the course of that bilateral meeting, Côte d'Ivoire explained its position on delimitation of the maritime boundary[67] and proposed a

[65] Minutes of the 15th regular Session of the Joint Commission on Redemarcation of the Boundary between Côte d'Ivoire and Ghana, 18-20 July 1988, CMCI, vol. III, Annex 12.

[66] Under the Anglo-French agreements of 1893 and 1905, Tendo and Ehy lagoons are neutral zones which do not belong to either Côte d'Ivoire or Ghana.

[67] Minutes of the 15th regular Session of the Joint Commission on Redemarcation of the Boundary between Côte d'Ivoire and Ghana, 18-20 July 1988, p. 5, CMCI, vol. III, Annex 12.

boundary line consisting in extending seaward the terminus segment of the land boundary between posts 54 and 55.[68]

2.37 Although delimitation of the maritime boundary had been formally included on the agenda by Côte d'Ivoire prior to that meeting, the Ghanaian Party declared that it did not have a mandate to discuss the question and stated that it would inform its Government with a view to the next bilateral meeting. However, Ghana failed to respond to the Ivorian proposal on delimitation of the maritime boundary for almost four years.

2. 1992: the Parties seek to relaunch discussions regarding the maritime boundary

a. February 1992: the Ghanaian proposal for a meeting

2.38 At the beginning of February 1992, the Ghanaian Government, which appeared at the time to be planning to carry out drilling in the maritime boundary area, proposed to the Ivorian Government that a meeting of experts be held on 12 February 1992 to discuss delimitation of their maritime boundary and exchange seismic data.[69]

2.39 Côte d'Ivoire welcomed this request and, in order to prepare for this meeting with the Ghanaian Party, undertook to substantiate and document its position. This task was entrusted to the National Commission on Boundary Redemarcation, which was itself assisted by an *ad hoc* technical committee set up specifically for that purpose on 12 March 1992.[70] At the end of its work, the Commission invited the Ivorian authorities to

> "refer the proposal [to extend seaward the land boundary between posts 54 and 55, made in July 1988 by Côte d'Ivoire] for discussion during the upcoming negotiations with Ghana" and
>
> "send the Government of Ghana a note verbale, in reply to the request of Ghana's Secretary of Energy, stating that Côte d'Ivoire wished to consider the issue of delimitation of the maritime boundary between Côte d'Ivoire and Ghana and that Ghana must refrain from operations or work that might be detrimental to Côte

[68] Minutes of the meetings of the National Commission on Boundary Redemarcation, 12 and 19 March 1992, CMCI, vol. III, Annex 13.

[69] Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, vol. III, Annex 16.

[70] Minutes of the meetings of the Technical Committee responsible for gathering and updating information on the delimitation of the maritime boundary between Ghana and Côte d'Ivoire, 16-18 March 1992, CMCI, vol. III, Annex 14.

d'Ivoire's interests in the maritime zone, the status of which had yet to be determined".[71]

2.40 This proposal from the Commission was confirmed on 27 March 1992[72] by the Minister for Foreign Affairs, the Minister for the Interior, the Minister for Mines, Energy, Postal Services and Telecommunications and the Minister for the Environment.

b. April 1992: the Ivorian response to the Ghanaian authorities

2.41 The Ivorian Minister for Foreign Affairs asked his Ambassador in Accra to send a note verbale to the Ghanaian Government stating that he welcomed the Ghanaian initiative, which had been awaited since July 1988, and requested, pending the forthcoming meeting between the Parties, that they refrain from any drilling operations or works in the area whose status was still to be determined.[73]

2.42 By telegram to his superiors dated 30 April 1992 confirming that the note verbale had been sent,[74] the Ambassador of Côte d'Ivoire in Accra stressed "the critical importance of the issues to be discussed at this [bilateral] meeting" on account of "the many ongoing drilling projects in the maritime boundary zone". He stated that "Ghana intends to drill ten oil wells in the Tano River basin over the next two years" and that "exploration projects concerning three wells, one of which is nearly complete, are planned in the aforementioned zone".[75]

c. No response from Ghana to the note verbale sent by Côte d'Ivoire

2.43 However, there was no response to the note verbale.

2.44 This silence on the part of Ghana can probably be explained by the fact that it abandoned its planned drilling projects in the area claimed by Côte d'Ivoire, as Côte d'Ivoire was able to establish following a survey mission in the boundary area carried

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[71] Minutes of the meetings of the National Commission on Boundary Redemarcation, 12 and 19 March 1992, CMCI, vol. III, Annex 13.

[72] Minutes of the meeting of the National Commission on Boundary Redemarcation, 27 March 1992, CMCI, vol. III, Annex 15.

[73] Telegram from the Ivorian Minister for Foreign Affairs to the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, vol. III, Annex 16.

[74] Telegram from the Ambassador of Côte d'Ivoire in Accra to the Ivorian Minister for Foreign Affairs, 30 April 1992, CMCI, vol. III, Annex 17.

[75] Telegram from the Ambassador of Côte d'Ivoire in Accra to the Ivorian Minister for Foreign Affairs, 30 April 1992, CMCI, vol. III, Annex 17.

out in September 1992, the purpose of which was to provide "Côte d'Ivoire with irrefutable evidence against Ghana".[76]

2.45 In the course of this aerial surveillance mission, which was conducted on 12 September 1992[77] and of which the Ghanaian authorities were given advance notification,[78] 126 images were taken over an area of 250 km². It was observed that "[t]here was no sign of surface oil-related activity".[79]

2.46 It was only in 2007, following the discovery of significant hydrocarbon deposits in the boundary area that Ghana finally took up again the initiative to hold negotiations in order to secure the intensive oil activities which it had already authorized there.

2.47 During this period the socio-political crisis forced Côte d'Ivoire to focus its efforts on the resolution of domestic problems.[80]

C. 2008-2014: resumption and failure of the bilateral consultations concerning delimitation of the maritime boundary

2.48 Between 2008 and 2014 Côte d'Ivoire and Ghana met on many occasions to discuss delimitation of their maritime boundary.

2.49 Over those six years of negotiations, Ghana pursued a single objective: to impose on Côte d'Ivoire as the maritime boundary the western limit of the Ghanaian oil blocks so as to secure the activities which it had already authorized there. To carry out this *fait accompli* strategy, Ghana gave Côte d'Ivoire the illusion of holding negotiations, without, however, showing any flexibility or planning to modify its position in any way. This attitude would inevitably lead to the failure of the negotiations.

2.50 Up to 2011 the Parties extensively debated the delimitation methods applicable under international law and the factual and legal aspects justifying the application of one method or another to the case in hand (*1*).

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[76] Minutes of the meeting of the National Commission on Boundary Redemarcation relating to the dispatch of an observation and survey mission, 3 September 1992, CMCI, vol. III, Annex 21.

[77] Reports on ground and aerial survey missions, 11 and 16 September 1992, CMCI, vol. III, Annex 24.

[78] Note verbale no. 7472/AE/AP/RB-AF/2 from the Ministry of Foreign Affairs of Côte d'Ivoire to the Embassy of Ghana in Abidjan, 4 September 1992, CMCI, vol. III, Annex 23; Official telegram sent by the Ministry of Foreign Affairs of Côte d'Ivoire to the Embassy of Côte d'Ivoire in Accra relating to the dispatch of a survey team to the boundary area with Ghana, undated, CMCI, vol. III, Annex 22.

[79] Reports on surface and aerial survey missions, 11 and 16 September 1992, CMCI, vol. III, Annex 24.

[80] See *supra.*, paras 2.21-2.25.

2.51 When the bilateral consultations were resumed in 2013, after being suspended for two years, the Parties focused on essentially technical discussions (*2*).

1. 2008-2013: exchanges on the delimitation methods claimed by the Parties

2.52 By note verbale dated 20 August 2007, Ghana proposed to Côte d'Ivoire that a bilateral meeting be held to deliberate on the delimitation of their maritime boundary.[81] Côte d'Ivoire agreed to this proposal immediately.

2.53 In order to host their bilateral meetings, the Parties set up the "Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary" ("the Joint Commission"), which met ten times between July 2008 and May 2014.

2.54 At its first meeting in Abidjan on 16 and 17 July 2008,[82] Ghana made a delimitation proposal for the first time, based on the application of the equidistance method:

> "The International Maritime Boundary between Côte d'Ivoire to the west and Ghana to the east is therefore defined by the following geographical coordinates (WGS 84), coincident with the terminal points of petroleum concessions on both sides and shown in fig. 3 […].
>
> The boundary line is then continued, based on the internationally acceptable median rule, to as far as the intersection with the 200 nautical mile (M) line at Point X (Fig. 2)".[83]

2.55 On 23 February 2009,[84] Côte d'Ivoire responded to the Ghanaian proposal, reiterating the position it had already set out in 1988 and 1992 to the effect that their maritime boundary could be delimited only by express agreement in accordance with UNCLOS:

> "[This proposed drawing], which is used by the oil exploration companies operating in Ivorian territorial waters is meant to avoid any border disputes and *is not supported by any official agreement between our two countries after bilateral*

[81] Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d'Ivoire in Accra, 20 August 2007, CMCI, vol. III, Annex 25, and Note verbale from the Embassy of Côte d'Ivoire in Accra to the Minister for Foreign Affairs of Côte d'Ivoire, 24 August 2007, CMCI, vol. III, Annex 26.

[82] Minutes of the maiden meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 16 and 17 July 2008, CMCI, vol. III, Annex 29.

[83] Opening statement by Ghana at the maiden meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 17 July 2008, CMCI, vol. III, Annex 28.

[84] Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, vol. III, Annex 30.

> *negotiations* for the demarcation of the maritime border between Côte d'Ivoire and Ghana as recommended in Articles 15, 74 and 83 of the Montego Bay Convention";[85]

and that, in the meantime, the Parties should refrain from any activity in the area to be delimited:

> "Moreover, important exploration and evaluation works were undertaken in 1980 by Ghana in the maritime border zone between the two countries. These works are still ongoing, in spite of representations made by Côte d'Ivoire in 1988 and 1992 to Ghana requesting the latter country to stop any unilateral activity In the neighbouring maritime border until a determination by consensus of the maritime border between our two coastal States and *also not to undertake any works likely to eventually undermine the interests of Côte d'Ivoire*".[86]

2.56 Having recalled this principle, in order to achieve an equitable result having regard to the particular features of the coastline of the Parties (namely its concave/convex character and the effects of erosion), Côte d'Ivoire proposed that the boundary be delimited using the geographical meridian method.[87]

2.57 At the Commission's second meeting, held in Accra on 26 February 2009, Ghana refused to state its position on this Ivorian proposal on the ground that it would not be examining it until after 13 May 2009, the deadline for submitting preliminary information on the continental shelf to the Commission on the Limits of the Continental Shelf (CLCS).[88]

2.58 The question of delimitation of the maritime boundary was raised again, at the very highest level, directly between Heads of State, during an official visit to Ghana by the Ivorian President, Laurent Gbagbo, in November 2009. On that occasion, the two Heads of State:

> "[…] agreed on the need for reactivating the work of the Côte d'Ivoire-Ghana Commission on the delimitation of the boundaries in order to consider the aspects related to the land and maritime borders. They recognized the importance of well-defined land and maritime borders. The two leaders indicated that the land borders were delimited whereas the discussions on the delimitation of the maritime border had been started by the two countries. *They exhorted the*

[85] Italics added.

[86] Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, vol. III, Annex 30.

[87] *Ibid.*

[88] Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, Minutes of the second meeting held in Accra, 26 February 2009, CMCI, vol. III, Annex 32.

competent jurisdictions of the two countries to continue their discussions for a rapid conclusion".[89]

2.59 The third meeting of the Joint Commission took place against this background in Abidjan on 19 November 2009.[90]

2.60 Despite the declaration of intent made by its President, Ghana entrenched its position by lodging a declaration under article 298 of the Convention with the United Nations on 15 December 2009, by which it excluded any judicial remedy to settle questions of delimitation of its maritime boundaries, including the delimitation being negotiated with Côte d'Ivoire:

> "In accordance with paragraph 1 of Article 298 of the United Nations Convention on the Law of the Sea of 10 December 1982 ('the Convention'), the Republic of Ghana hereby declares that it does not accept any of the procedures provided for in section 2 of Part XV of the Convention with respect to the categories of disputes referred to in paragraph 1 (a) of article 298 of the Convention."[91]

2.61 This ploy by Ghana heralded the deadlock which it imposed throughout the years of negotiations that followed, during which, despite lengthy exchanges on different possible boundary lines, it invariably claimed the line of its oil concessions as the maritime boundary, invoking a variety of legal bases.

2.62 At the fourth meeting of the Joint Commission held in Accra on 27 and 28 April 2010, Ghana reiterated its initial proposal based on the equidistance/relevant circumstances method.[92]

2.63 The Ivorian delegation nevertheless noted the points of agreement between the Parties, namely "the joint observation of BP 54 and 55" and "the application of the provisions of the United Nations Convention On The Law Of The Sea, which provides for the principles of negotiation and equity".[93]

2.64 Côte d'Ivoire provided more detailed observations on Ghana's position in a communication dated 31 May 2010,[94] in which it explained at length the justifications for rejecting the equidistance method, namely:

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[89] Joint communiqué issued at the end of the official visit to Ghana of His Excellency Laurent Gbagbo, President of the Republic of Côte d'Ivoire, 3-4 November 2009, CMCI, vol. III, Annex 34.

[90] This meeting is mentioned in the Communication from the Ivorian Party of 31 May 2010 in footnote 5; no minutes of this meeting seem to have been produced by the Parties.

[91] Ghana, Declaration under article 298 of UNCLOS, 16 December 2009, CMCI, vol. III, Annex 35.

[92] Minutes of the fourth meeting between Ghana and Ivory Coast on maritime boundary delimitation, held in Accra, 27-28 April 2010, CMCI, vol. III, Annex 37.

[93] *Ibid.*

[94] Communication of the Ivorian Party in response to the Ghanaian proposals of 27 and 28 April 2010, 31 May 2010, CMCI, vol. III, Annex 38.

1. the cut-off effect to the detriment of Côte d'Ivoire resulting from the particular geometry of the coastlines of Côte d'Ivoire and Ghana (concavity/convexity);

2. the "spectacular effects of amputation and enclosure" resulting from the application of this method in the Gulf of Guinea, which is advantageous only to Ghana and is detrimental to its neighbours.

2.65 Consequently, Côte d'Ivoire underlined that the equidistance method claimed by Ghana was misfit, inappropriate and non-equitable and reiterated its proposal to use the meridian method, while nevertheless accepting, as Ghana had proposed, that the border starts from border post 55.[95]

2.66 Lastly, the Ivorian Party reaffirmed to Ghana that the line utilized by the oil companies was intended solely to avoid frontier conflicts and could not constitute an official agreement on delimitation of the maritime boundary between Côte d'Ivoire and Ghana.

2.67 In its response dated 31 August 2011, Ghana reiterated its proposal to adopt its oil concession line as the maritime boundary on the ground, put forward for the first time, that it was supposedly an equidistance line adjusted to the east in order to follow the limit of its oil blocks, which constituted a relevant circumstance.[96]

2.68 In that response, Ghana also introduced the notion of tacit agreement into the debate for the first time, without, however, explaining its purpose, its effects or its link with the application of the equidistance method which it had just invoked.[97]

2.69 The fifth meeting of the Joint Commission was held in Accra on 2 November 2011.[98] For the Ivorian Party it was the first meeting of the Commission under the aegis of the new Government appointed after stability had been re-established in Côte d'Ivoire and a functioning state apparatus had been restored.

2.70 It was against this background that, in a spirit of cooperation, Côte d'Ivoire made a new proposal for delimitation based on a method which had not yet been discussed with Ghana, the bisector method. In support of this new proposal, Côte d'Ivoire submitted a presentation setting out in detail its foundations in international law and

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[95] *Ibid*.

[96] Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, vol. III, Annex 39.

[97] *Ibid.*

[98] Minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation [fifth meeting], 2 November 2011, CMCI, vol. III, Annex 40.

its factual bases (the specific features of the coastlines of Côte d'Ivoire and Ghana, geography of the Gulf of Guinea, etc.).

2.71 Côte d'Ivoire also stated that oil practice could not under any circumstances be translated to mean the existence of a tacit agreement and reiterated its request, which had already been made in 1992 and 2009, that oil activities in the maritime boundary area be suspended pending a bilateral delimitation agreement, to which Ghana had thus far been invariably unresponsive.

2.72 In response, Ghana did not comment on the substance of the new Ivorian delimitation proposal, explaining that it needed time to study it, and once again rejected its request that activities in the disputed area be suspended, invoking for the first time the notion of "customary boundary line".[99]

2.73 In March 2012, Ghana sent Côte d'Ivoire a note, dated 15 February 2012, in response to the Ivorian proposal made on 2 November 2011.[100] The majority of the arguments put forward in that document were concerned with setting out the basis in jurisprudence for the application of the equidistance method claimed by Ghana.

2.74 However, oil practice was no longer raised by Ghana as constituting a tacit agreement (and it would not be raised again until the present proceedings), as it seemed to suggest at the preceding meeting of the Joint Commission, but merely as a relevant circumstance justifying the modification of the strict equidistance line, as the Ghanaian Party had stated in its communication of 31 August 2011.

2. *2013-2014: towards the unilateral breaking off of negotiations by Ghana*

2.75 At subsequent bilateral consultations Ghana confined the discussions to strictly technical aspects, primarily the base points of the Parties' coasts.

2.76 At the sixth meeting of the Joint Commission, held in Accra on 12 and 13 November 2013, the Parties agreed to exchange technical data on their base line, as had been proposed by Ghana in August 2011, and also made the arrangements for a joint mission to verify boundary post 55.[101] That mission was carried out on 26 November 2013[102] and allowed both sides to validate the coordinates for that boundary post

[99] *Ibid.*

[100] Ghana Boundary Commission, Response to Côte d'Ivoire memorandum of November 2, 2011 on maritime delimitation, 15 February 2012, MG, vol. V, Annex 54.

[101] Minutes of the meeting of negotiation on the delimitation of the maritime boundary between Côte d'Ivoire and Ghana [sixth meeting], 12-13 November 2013, CMCI, vol. III, Annex 41.

[102] Minutes of the visit to BP 55 by the Ivorian-Ghanaian Joint Technical Committee, 26 November 2013, CMCI, vol. III, Annex 42.

during the seventh meeting of the Joint Commission held in Abidjan on 5 and 6 December 2013.[103]

2.77 In the course of the eighth and ninth meetings of the Joint Commission, held respectively in Yamoussoukro on 18 and 19 February 2014 and in Accra on 23 and 24 April 2014, the Parties exchanged base point data for their respective coasts.[104]

2.78 Côte d'Ivoire also presented the bisector method and the boundary claimed on that basis, whose construction it demonstrated on a map using two segments linking boundary post 55 and the Côte d'Ivoire-Liberia land boundary terminus point on one side and the Ghana-Togo land boundary terminus point on the other. The only response from the Ghanaian Party was to state that "it did not raise questions on the Côte d'Ivoire's bisector method because its concerns had already been officially communicated to the Ivorian side in March 2012".[105]

2.79 The tenth and last meeting of the Joint Commission took place in Abidjan on 26 and 27 May 2014.[106] At that meeting the Parties noted that the base points exchanged were unusable as they stood, either because they fell in the sea, in the case of the Ghanaian points, or because they fell on land, in the case of the Ivorian points.

2.80 Côte d'Ivoire also reiterated its proposal for delimitation based on a bisector line, which it justified principally on grounds of: (i) marine erosion, which made the coastline unstable; (ii) the concave shape of the Ivorian coast; and (iii) the regional specificities of the Gulf of Guinea. It should be borne in mind that Côte d'Ivoire had already explained this latter regional argument at length in its communication of 31 May 2010, then at the meeting of the Joint Commission on 2 November 2011. However, Ghana rejected this argument without even discussing its merits, claiming that it had not been raised before. At the end of the meeting the Parties concluded that a "specific method of delimitation has not yet been agreed by both parties".[107]

2.81 It was at this point that Ghana suddenly unilaterally broke off the bilateral negotiations, in disregard of good neighbourly relations. Although four days previously it had contacted Côte d'Ivoire to organize the eleventh meeting of the Côte

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[103] Minutes of the seventh meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 5-6 December 2013, CMCI, vol. III, Annex 43.

[104] Minutes of the eighth meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana,, 18-19 February 2014, CMCI, vol. III, Annex 44; Minutes of the ninth meeting of the Ghana-Côte d'Ivoire maritime boundary negotiations, 23-24 April 2014, CMCI, vol. III, Annex 47.

[105] Minutes of the eighth meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 18-19 February 2014, CMCI, vol. III, Annex 44.

[106] Minutes of the tenth meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 26-27 May 2014, CMCI, vol. III, Annex 48.

[107] *Ibid.*

d'Ivoire/Ghana Joint Commission, which was scheduled to be held in Accra from 30 September to 3 October 2014,[108] on 19 September 2014 Ghana performed an about-face, cancelling the meeting due to "*unforeseen circumstances*".[109] At the same time, Ghana sent Côte d'Ivoire a request to submit the dispute to an arbitral tribunal,[110] before withdrawing its declaration excluding judicial remedies which had been lodged with the United Nations in 2009,[111] in questionable conditions of admissibility.

2.82 Alongside these bilateral contacts, Côte d'Ivoire and Ghana have developed their offshore oil activities. Ghana has used these to attempt to justify its argument of the existence of a tacit agreement.[112] The progress of the development of the relevant oil activities will therefore be described thoroughly in order to provide clarification for the Chamber.

III. The unilateral oil activities of the Parties

2.83 The first permits for oil exploration off the coasts of the Parties were granted unilaterally towards the end of the colonial period, in 1956 by the British colonial power and in 1957 by the French colonial power. Those permits were quickly abandoned in the absence of any discoveries that were deemed conclusive.

2.84 Following independence, Ghana was the first, in 1968, to create and award an oil block in the maritime boundary area on a unilateral basis. However, oil activity in that area remained relatively modest until 2007, when Ghana stepped up its activities following significant hydrocarbon discoveries (A.). Côte d'Ivoire created its first offshore oil block in 1970, taking care to express reservations regarding the legal implications of this unilateral act. This prudent attitude has guided Ivorian oil policy to this day (B.).

A. Ghana's oil activities

2.85 In 1968 Ghana divided the entire maritime area off its coast into 22 blocks with a view to awarding the blocks to oil companies. The creation of blocks in the maritime

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[108] Letter from the Ambassador of Ghana to Côte d'Ivoire to the Ministry of Foreign Affairs of Côte d'Ivoire, no. ABJ/HMFA/COR.VOL.l8, 15 September 2014, CMCI, vol. III, Annex 49.

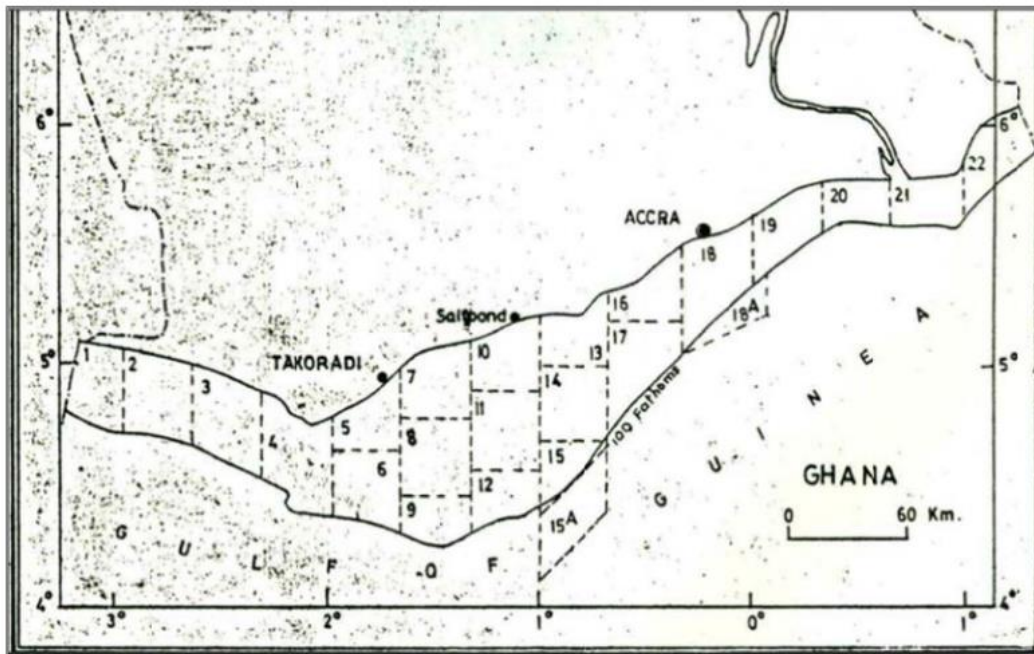
[109] Letter from the Ambassador of Ghana to Côte d'Ivoire to the Ministry of Foreign Affairs of Côte d'Ivoire, no. ABJ/HMFA/COR.VOL.l8, 19 September 2014, CMCI, vol. III, Annex 50.

[110] Notification of arbitration, 19 September 2014.

[111] See *supra.*, para. 21.

[112] MG, vol. I, para. 5.89: "the customary equidistance line reaches the 200 M limit at 1° 48' 300 N and 3° 47' 180 W […]".

boundary area was a unilateral act without any prior consultation of Côte d’Ivoire (see **Sketch map 2.1** below).



Sketch map 2.1: Offshore oil concessions created by Ghana, 1968

2.86 The limits of this oil area defined by Ghana were:

- to the west: a line starting approximately at the terminus point of the land boundary between Côte d’Ivoire and Ghana and running seaward in a south-south-west direction in the maritime area off the Ivorian coast;
- to the east: a line starting approximately at the terminus point of the land boundary between Ghana and Togo and running seaward in a south-south-east direction in the maritime area off the Togolese coast;
- offshore: a line located, for the westernmost blocks 1 and 2, approximately 22 miles off that coast.

2.87 The oil area thus delimited by Ghana, which is flared in shape, widens advantageously out to sea. Ghana states in its Memorial that these limits are equidistance lines,[113] without, however, it being possible to verify this from the very small-scale – and erroneous – maps produced by it.[114]

[113] MG, vol. l, paras 3.14-3.16.

[114] MG, vol. II, Annexes M20 and M54.

2.88 At that time the Ivorian offshore area was free from any activity, like the Togolese offshore area.[115] Since then Ghana has gradually extended seaward the limits of those first oil blocks as blocks have been unilaterally awarded over subsequent decades, now going as far as considering them to constitute its maritime boundaries with Côte d'Ivoire and with Togo. According to the Ghana National Petroleum Corporation (GNPC), the Ghanaian offshore oil area extends:

> "from the Côte d'Ivoire-Ghana maritime border in the west to the Ghana-Togo maritime border in the east".[116]

2.89 This maritime area, which was unilaterally defined by Ghana, comprises three different sedimentary basins: the eastern basin known as the Accra-Keta Basin, the central basin known as the Saltpond Basin, and the western basin known as the Tano Basin.[117]

2.90 The development of Ghana's oil industry is a recent phenomenon and has been concentrated mainly on the western Tano Basin, starting in 2007, following the discovery of a number of significant hydrocarbon deposits (see **Sketch map 2.2** below). Up to that point Ghana had mainly carried out exploration activities, without any major discoveries; just one deposit containing a low volume of hydrocarbons was exploited in the central Keta Basin.[118]

2.91 During this period only three drilling operations were conducted in the disputed area, in 1989, 1999 and 2002, before being quickly abandoned. In 2006 a consortium of oil companies led by Tullow was awarded the Deepwater Tano block, which is located to the far west of the Ghanaian offshore area. The exploration activities carried out in this block led to the discovery of significant hydrocarbon reserves.

2.92 On 18 June 2007, Tullow announced that it had discovered a significant oil deposit with the Mahogany-1 well.[119] The scale of the discovery was subsequently confirmed by the positive results from the Hyedua-1 well located a few hundred metres west of Mahogany-1.[120] This is the Jubilee field, one of the largest recent hydrocarbon discoveries in West Africa. It was in these circumstances, after 15 years of delaying

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[115] Togo did not conduct any oil activity off its coast or delimit concessions with a view to awarding them until 1997: UFC Togo, *Le Togo carbure au pétrole*, 24 November 2005, CMCI, vol. V, Annex 115.

[116] Website of the Ghana National Petroleum Corporation, *History of Exploration in Ghana*, undated, CMCI, vol. IV, Annex 88.

[117] GNCP map, *Offshore activity map*, reproduced as Sketch map 7.11 *infra.*

[118] The "Saltpond" field in the central Ghanaian Keta basin, where the maximum production rate was 4,800 barrels/day in 1978, before falling to 580 barrels/day in 1985. Production has continued to decline since then (Ghana Oil Watch, *Saltpond Field*, undated, CMCI, vol. IV, Annex 90).

[119] Tullow press release, *Significant oil discovery offshore Ghana*, 18 June 2007, CMCI, vol. IV, Annex 73.

[120] Tullow press release, *Ghana Exploration Update - Hyedua-1 well, Deepwater Tano*, 22 August 2007, CMCI, vol. IV, Annex 74.

tactics, that Ghana approached Côte d'Ivoire on 20 August 2007 to organize a bilateral meeting to discuss delimitation of the maritime boundary.[121]

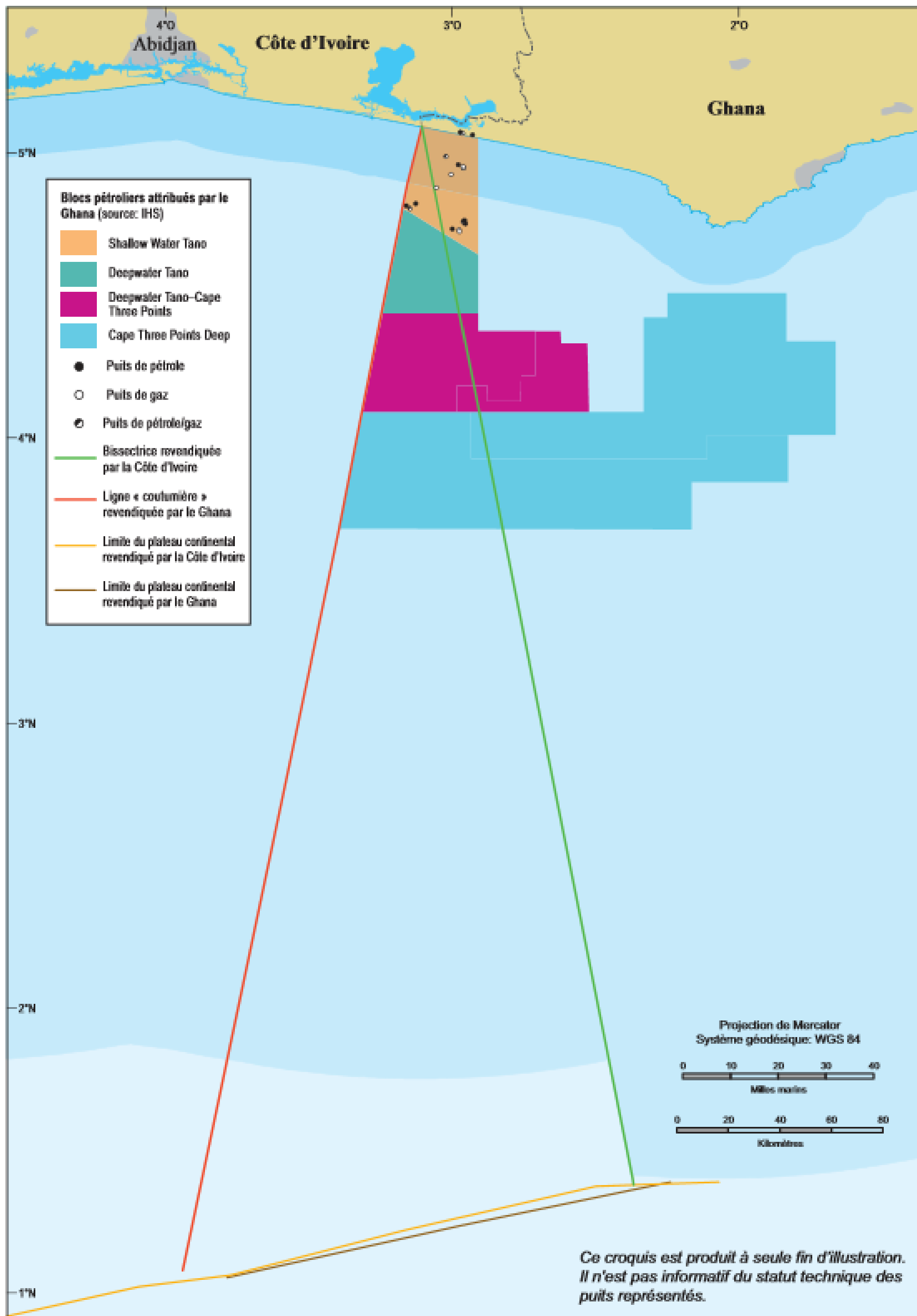
2.93 The Jubilee area subsequently experienced intense activity (drilling, subsea construction works etc.) to allow the field to go into production. The field began exploitation in 2010 and since then has produced around 85,000 barrels per day.

2.94 At the same time, Tullow undertook exploratory drilling around 25 kilometres to the west of the Jubilee field, immediately next to the western limit of its oil block. These drilling operations revealed the presence of hydrocarbons and a number of additional drilling activities were carried out, leading to the discovery of three substantial oil fields: Tweneboa, Enyenra and Ntomme (TEN).

2.95 In view of this intensification of oil activities in the boundary area and the ineffectiveness of the requests for the suspension of oil activities it had made to Ghana, Côte d'Ivoire had no other choice but to write directly to the oil companies operating there, including Tullow, on 26 September 2011, to request them to suspend their activities in the disputed area.[122] Under these circumstances, between 2009 and 2014, as is shown by **sketch map 2.3** below, no fewer than 34 exploration and development wells were drilled under licence by Ghana in the TEN field in the disputed area, even though maritime delimitation negotiations were still in progress.

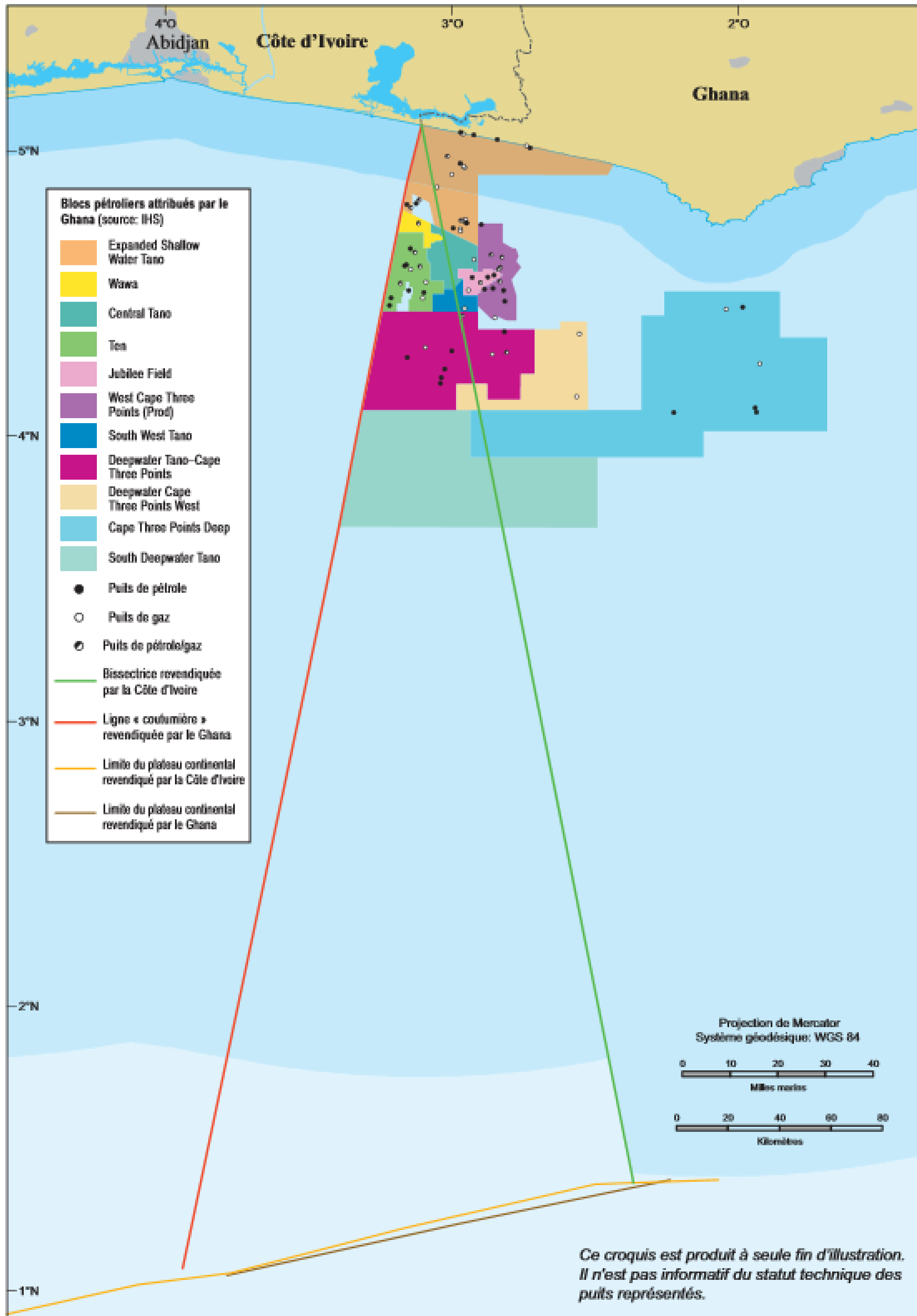
[121] Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d'Ivoire in Accra, 20 August 2007, CMCI, vol. III, Annex 25, and Note verbale from the Embassy of Côte d'Ivoire in Accra to the Minister for Foreign Affairs of Côte d'Ivoire, 24 August 2007, CMCI, vol. III, Annex 26.

[122] Communiqué from the Director of Petroleum to oil operators in the Ivorian offshore area, 26 September 2011, CMCI, vol. IV, Annex 71.



Sketch map 2.2: Status of oil activities in the west of the offshore oil area delimited by Ghana, April 2007[123]

[123] Source: IHS map, *Ghana coastal zone*, April 2007, CMCI, vol. II, Annex C4.



Sketch map 2.3: Status of oil activities in the west of the offshore oil area delimited by Ghana, December 2014[124]

[124] Source: IHS map, *Ghana coastal zone*, December 2014, CMCI, vol. II, Annex C5.

B. Côte d'Ivoire's oil activities

2.96 Côte d'Ivoire granted its first licence for oil exploration in an offshore area to a consortium formed by Esso, Shell and ERAP in 1970, ten years after the first oil blocks had been awarded by Ghana.

2.97 Côte d'Ivoire's aim was to create a new lever for growth in its economy, which was at the time driven mainly by the agricultural sector, while maintaining the country's stability and its good relations with its neighbours.

2.98 At the time Côte d'Ivoire did not have a specialized petroleum service (the Ministry of State for Mines was not established until the following year, in March 1971) and therefore relied largely on Esso to set up this first oil project.

2.99 On 29 September 1970, the Ivorian National Assembly adopted a "Law authorizing the President of the Republic to sign with the Consortium formed by the oil companies ESSO, SHELL and ERAP the Convention concerning exploration and production of liquid and gaseous hydrocarbons in Côte d'Ivoire".[125] The Convention, which was annexed to that Law, was subsequently signed by the different parties on 12 October 1970. On 14 October 1970, President Félix Houphouët-Boigny adopted a Decree granting an exclusive petroleum exploration permit to the companies Esso, Shell and ERAP "according to the clauses and conditions set forth in the Convention of 12 October 1970".[126]

2.100 Like Annex I to the Convention of 12 October 1970, the Decree drew up the list of points forming the limits of the oil block awarded to the three oil companies. For the 20 points delimiting this area, the documents draw a distinction between 14 points whose coordinates are given specifically and six other points (A, B, K, L, M and T) whose coordinates are "approximate" and which correspond to the western and eastern limits of the oil block, located in the boundary areas with Ghana and Liberia.

2.101 It was in these circumstances and in these terms that the first Ivorian oil block was delimited, as was summarized by the Technical Committee responsible for gathering and updating information on delimitation of the maritime boundary between Ghana and Côte d'Ivoire:

[125] Law no. 70-573 Law authorizing the President of the Republic to sign with the Consortium formed by the oil companies ESSO, SHELL and ERAP the Convention concerning exploration and production of liquid and gaseous hydrocarbons in Côte d'Ivoire, 29 September 1970, CMCI, vol. IV, Annex 58.

[126] Decree no. 70-618 granting an exclusive petroleum exploration permit to the companies ESSO, SHELL and ERAP, 14 October 1970, CMCI, vol. IV, Annex 59.

> "[t]he boundary drawn by Esso Exploration on the oil map constituted *a unilateral security act* for which the Ivorian Government assumed no responsibility".[127]

2.102 On 29 October 1975, the petroleum exploration permit granted to Esso, Shell and ERAP was renewed by Presidential Decree. This time the position of the Ivorian authorities regarding the limits of the oil block in question was reiterated even more explicitly:

> "The coordinates of reference points M, L and K separating Côte d'Ivoire and Ghana are given by way of indication and *cannot in any case be considered as being the national jurisdiction boundaries of Côte d'Ivoire*".[128]

2.103 Côte d'Ivoire thus intended to make clear, in an official public document, that the line used as the eastern limit of the block awarded to Esso and its partners did not under any circumstances constitute an international maritime boundary approved by it, but a practical line used exclusively for the purposes of its oil activity.

2.104 Côte d'Ivoire has regularly expressed such a reservation in connection with its oil activities.

2.105 In 1975 Côte d'Ivoire granted a second offshore oil block to a consortium of oil companies. This oil block was adjacent to the southern limit of the oil block granted in 1970 to the consortium led by Esso and thus extended the Ivorian offshore area seaward. It had the same eastern limit (see **Sketch map 2.4 below**).

2.106 The oil contract awarding this oil block, signed by President Houphouët-Boigny on 14 January 1975, expressed the same reservation as was made when the permit granted to Esso was renewed:

> "The coordinates of reference points K, Y, X and W are given by way of indication and cannot in any case be regarded as being the national jurisdiction boundaries of Côte d'Ivoire".[129]

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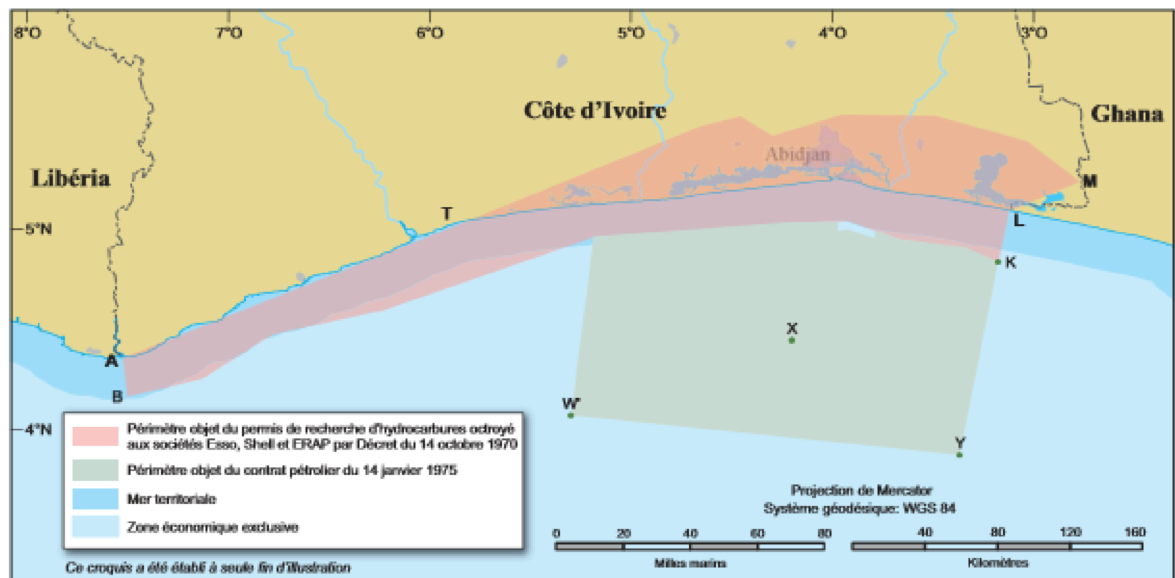
[127] Minutes of the meetings of the Technical Committee responsible for gathering and updating information on the delimitation of the maritime boundary between Ghana and Côte d'Ivoire, 16-18 March 1992, p. 2, italics added, CMCI, vol. III, Annex 14.

[128] Decree no. 75-769 renewing petroleum exploration permit no. 1, 29 October 1975, CMCI, italics added, vol. IV, Annex 61.

[129] Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Agip S.A., Getty Oil Company (Ivory Coast), Hispanica De Petroleos (Hispanoil) S.A., Philips Petroleum Company Ivory Coast, 14 January 1975, CMCI, vol. IV, Annex 60.



Sketch map 2.4: The area covered by the oil contract of 14 January 1975

2.107 In 1990 Côte d'Ivoire also drew up a new standard oil production sharing contract to be signed with oil companies. The purpose of this standard contract was to modernize the Ivorian oil regime so as to attract investors and foreign oil companies again. The standard contract included an annex describing the area covered by the contract, in which the following note appeared:

> "These coordinates are indicative and *cannot be regarded as the limits of the national jurisdiction of Côte d'Ivoire*".[130]

2.108 In 1993 Côte d'Ivoire modified its standard oil production sharing contract to make it more attractive. The new standard contract reproduced the reservation mentioned in the 1975 Esso and Agip contracts and in the 1990 standard contract and further stated that that reservation was

> "to be added if the block concerned is located to the far west/east of Côte d'Ivoire".[131]

2.109 Under these standard contracts, this reservation was reproduced in many offshore oil contracts signed by the Ivorian State,[132] in particular:

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[130] Standard production sharing contract drawn up by the Republic of Côte d'Ivoire, 1990, italics added, CMCI, vol. IV, Annex 62.

[131] Standard production sharing contract drawn up by the Republic of Côte d'Ivoire, 1993, CMCI, vol. IV, Annex 64.

[132] Oil production sharing contract concluded between the Republic of Côte d'Ivoire and UMIC, 27 June 1992, CMCI, vol. IV, Annex 63; Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Apache, 14 December 1994, CMCI, vol. IV, Annex 65; Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Ranger, Clyde and Gentry, 22 December 1997, CMCI, vol. IV, Annex 66; Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Ranger and Svenska, 9 April

- in 2004, in the contract concluded with Tullow relating to the CI-108 offshore block, adjacent to the Ivorian coast, off the town of Sassandra;[133]

  when Ghana awarded Tullow a block located to the far west of its oil area in 2006, Tullow was informed, like Ghana, that the limits of its oil area were not the limits of the national jurisdiction of Côte d'Ivoire;

- in 2007, in another contract concluded with Tullow, relating to block CI-103.[134]

2.110 Between 2008 and 2011 Côte d'Ivoire's oil policy was brought to a standstill by the political instability which had hit the country, peaking at the end of 2010 in the wake of the Presidential election.[135]

2.111 Côte d'Ivoire began to pursue an active oil policy again when stability returned in spring 2011, awarding new permits more quickly to foreign companies (Taleveras, Total, CNR, etc.) and extending its offshore petroleum industry to the area disputed with Ghana.[136]

2.112 The creation of new blocks in this area was a way for Côte d'Ivoire to assert its rights there, at a time when Ghana:

- was stepping up its unilateral oil activities there, despite repeated objections from Côte d'Ivoire;
- was completely inflexible in the ongoing bilateral negotiations which it was conducting with the sole purpose of imposing the western limit of its oil concessions as the maritime boundary;
- had excluded any judicial remedies by means of a declaration to the United Nations.

2.113 Unlike Ghana, however, Côte d'Ivoire refrained from authorizing the performance of activities in the disputed area so as not to aggravate the dispute further.

1998, CMCI, vol. IV, Annex 67; Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Vanco, 20 April 1999, CMCI, vol. IV, Annex 68.

[133] Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Tullow, 7 May 1999, CMCI, vol. IV, Annex 69.

[134] Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Tullow, 5 April 2007, CMCI, vol. IV, Annex 70.

[135] See *supra.*, paras 2.21-2.25.

[136] Communiqué from the Director of Petroleum to oil operators in the Ivorian offshore area, 26 September 2011, CMCI, vol. IV, Annex 71; see also IHS Energy Group, *Côte d'Ivoire* (December 2014), Ghana MG, vol. II, Annex M48.

PART 2

APPLICABLE LAW

CHAPTER 3

CLARIFICATIONS REGARDING APPLICABLE LAW

3.1 The applicable law in the present case should not *a priori* raise any particular difficulties: Côte d'Ivoire and Ghana have both ratified UNCLOS, on 26 March 1984 and 7 June 1983, respectively. Article 293 of UNCLOS (Applicable law) specifically provides that

> "A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention".

3.2 Since the dispute brought before the Chamber essentially concerns delimitation of the maritime boundary between Côte d'Ivoire and Ghana in the Atlantic Ocean, the relevant provisions of the Convention are applicable. These are articles 15, 74 and 83 relating to delimitation of the territorial sea, the exclusive economic zone and the continental shelf. In addition, as the dispute extends to delimitation of the continental shelf beyond 200 nautical miles, "article 76 of the Convention is also of particular importance".[137]

3.3 Furthermore, article 293 of the Convention refers to "other rules of international law not incompatible" with the Convention. In this regard customary law and jurisprudence can usefully supplement the provisions of UNCLOS. As ITLOS held in its Judgment in the *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, "the law applicable under the Convention with regard to delimitation of the exclusive economic zone and the continental shelf includes rules of customary international law"[138] and "[d]ecisions of international courts and tribunals, referred to in article 38 of the Statute of the ICJ, [which] are also of particular importance in determining the content of the law applicable to maritime delimitation".[139]

3.4 Ghana's Memorial, which does not contain a chapter or section on applicable law, clouds the picture as regards legal principles considerably. After highlighting the inconsistencies in Ghana's position (I), Côte d'Ivoire will briefly outline the

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[137] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 54.

[138] *Ibid.*, para. 183.

[139] *Ibid.*, para. 184.

principles which must guide the Chamber in delimiting the maritime boundary between the Parties (II).

I. The inconsistencies in Ghana's legal position

3.5 The indecision in Ghana's legal position can be seen in its claims, which are difficult to reconcile with one another (A.) and which are simply an unmistakeable reflection of the indecision over the legal bases for those claims (B.).

A. Ghana's indecision with regard to its claims

1. Claims concerning the establishment of an alleged agreement and the creation of a delimitation based on objective principles

3.6 A reading of Ghana's Memorial suggests that Ghana is asking the Chamber both to find the existence of an agreement and to apply one of the objective delimitation methods based on international jurisprudence – namely equidistance – so that it can itself draw the boundary between the Parties' maritime areas. However, the Chamber cannot grant both requests at the same time. If there were an agreement on delimitation – as Ghana claims – the Chamber can only find its existence and define its content. It can no longer apply objective delimitation methods in respect of the same maritime areas, not even with a view to achieving an equitable result. From this point of view, written or tacit agreements on delimitation must be respected by courts and tribunals in the same way as any other international treaty: "It is the duty of the [Chamber] to interpret [them], not to revise them".[140]

3.7 Ghana nevertheless makes constant reference in its Memorial to articles 15, 74 and 83 of UNCLOS, which govern delimitation of the territorial sea, the exclusive economic zone and the continental shelf.[141] It is true that these three provisions stipulate that an agreement between the Parties determines their maritime boundary.[142] However, Ghana does not simply plead the primacy of the agreement. It also requests that the Chamber make the delimitation itself by applying objective methods.

[140] *Interpretation of Peace Treaties (second phase), Advisory Opinion: I.C.J. Reports 1950*, p. 229.

[141] MG, vol. I, p. 8, para. 1.27; p. 23, para. 2.23; p. 89, para. 4.2; p. 90, para. 4.4; pp. 91-92, paras 4.7-4.8; p. 109, para. 4.59; p. 110, para. 4.62; pp. 115-116, paras 5.4-5.5; p. 125, para. 5.36; p. 149, para. 6.1; p. 154, para. 6.14; p. 155, para. 6.17; p. 156, para. 6.21; p. 158, para. 6.24; p. 159, para. 6.29.

[142] See the reference in article 15 to agreement between two States "to the contrary" and in articles 74 and 83 to agreement between States with opposite or adjacent coasts.

3.8 Thus, in addition to the claim concerning the existence of a tacit agreement based on oil practice, by its repeated reference to equidistance Ghana urges the Chamber to apply that method to the territorial sea,[143] to the exclusive economic zone and to the continental shelf beyond 200 nautical miles.[144] It could be thought that Ghana is requesting the Chamber to apply the objective equidistance/relevant circumstances method only as part of a subsidiary claim, while its main claim concerns the finding of the existence of an agreement. At least that it how it is possible to interpret Ghana's clear-cut assertion that

> "In Ghana's submission, this now-standard method [equidistance/special circumstances] is inapplicable in the present case because the maritime boundary between Ghana and Côte d'Ivoire has been settled by agreement of the Parties".[145]

3.9 However, Ghana does not take long to abandon this basic position, as it goes to great lengths to attempt to show that the boundary line claimed by it is equitable.[146] Nevertheless, the special agreement between the Parties, if it exists – which is not the case in this instance – must be respected *ipso facto* by the Chamber, which cannot depart from it, even for the purposes of the application of equitable principles.[147] By entering into the verification of the equitable character of its line, Ghana shows that it has doubts itself as to the existence of such an agreement.

3.10 This melting pot of claims is even more noticeable in the discussion of the continental shelf beyond 200 nautical miles. First, Ghana takes up the mantra of tacit agreement. It thus asserts that the Parties had agreed that the alleged customary line extends beyond 200 nautical miles, which the Chamber should simply establish.[148] At the same time, it requests the Chamber to apply a new delimitation method, which consists in extending beyond 200 nautical miles, without change of azimuth, the line used for delimitation of maritime areas within 200 miles, in the name of the oneness of the continental shelf.[149] In its submissions, however, Ghana abandons any reference to tacit agreement; it also gives up seeking to establish its new delimitation "method" and refers only to equidistance:

> "2) The maritime boundary in the continental shelf beyond 200 M follows an extended equidistance boundary along the same azimuth as the boundary within 200 M, to the limit of national jurisdiction".[150]

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[143] Cf. MG, vol. I, p. 92, para. 4.10, and MG, vol. I, p. 29, para. 3.2; p. 92, para. 4.8.

[144] See MG, vol. I, pp. 115-116, paras 5.4-5.5.

[145] MG, vol. l, p. 144, para. 5.85, and p. 146, para. 5.92.

[146] MG, vol. l, pp. 140-147, paras 5.75-5.84.

[147] See *supra.*, paras 3.6 and 3.13.

[148] MG, vol. l, p. 154, para. 6.13, p. 161, para. 6.35.

[149] MG, vol. l, p. 160, paras 6.30-6.34.

[150] MG, vol. l, p. 163.

2. *Claims concerning the establishment of a two-fold agreement: on a delimitation method and on a boundary line*

3.11 This indecision by Ghana between the subjective ground of the finding of the existence of a delimitation by way of agreement and the objective ground of the application of delimitation methods by the Chamber extends to the very heart of its arguments on the agreement. Thus, Ghana constantly pleads a two-fold primacy which it asks the Chamber to affirm: on the one hand, "the primacy of agreement"[151] and, on the other, "the primacy of the equidistance method in international boundary delimitation".[152]

3.12 By making reference to the objective rule of equidistance, Ghana is undoubtedly hoping to get round the obstacle posed by the extreme reticence of international courts and tribunals to establish the existence of a tacit agreement on delimitation based solely on the Parties' practice as regards oil concessions.[153] Following Ghana's logic, the agreement between the Parties therefore concerns a delimitation method: equidistance. Nevertheless, in its final submission, Ghana certainly asks the Chamber to uphold the line of its oil concessions as being "the customary equidistance boundary mutually agreed by the Parties".

3.13 However, there are a number of obstacles to Ghana's argument. First, the two claims cannot be reconciled in law. If Ghana is asking the Chamber to establish the existence of an agreement, it does not matter whether or not that agreement is based on equidistance or on some other delimitation method. As delimitation methods are not matters of mandatory law, the Chamber is not concerned with the compatibility of the agreement with those objective delimitation methods. If the existence of an agreement is established, the Chamber is not required to ascertain that the resulting boundary line is consistent with equidistance or even that it is equitable. The Chamber does not have the power to substitute its assessment of equitable character for that of the Parties, as expressed in any agreement they may have concluded.

3.14 Second, the history of the exchanges between the Parties contradicts the existence of any agreement on a delimitation method. It should be noted in this regard that during the negotiations Ghana initially relied on the equidistance rule,[154] claiming that there

[151] MG, vol. l, p. 92, para. 4.8.

[152] MG, vol. l, p. 108, para. 4.54. See also MG, vol. l, p. 97, para. 4.22.

[153] See *infra.*, paras 4.35-4.37.

[154] Opening statement by Ghana at the first meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 17 July 2008, CMCI, vol. III, Annex 29; Minutes of the fourth meeting between Ghana and Ivory Coast on maritime boundary delimitation, held in Accra, 27-28 April 2010, CMCI, vol. III, Annex 37.

were no circumstances to warrant a departure from that rule.[155] Subsequently, and more specifically from the time when Ghana realized that its oil concessions did not follow the equidistance line,[156] it started to claim both the adjustment of equidistance through the consideration of the concessions as relevant circumstances and the existence of a tacit agreement.[157] It is thus clear that Ghana's very position regarding the delimitation method has fluctuated over the course of the negotiations.

3.15 It is true that, in a spirit of compromise, Côte d'Ivoire has also proposed a number of delimitation methods,[158] for which Ghana has not hesitated to criticize it. It should be observed in this regard that the negotiations show a fundamental disagreement on the delimitation methods to be used. That disagreement continues in the present proceedings. Although Ghana is requesting the Chamber to find that the Parties reached agreement on a delimitation method, there is no factual evidence to support that claim.

3.16 As regards the alternative argument (or possibly the cumulative argument, as here too Ghana's position is unclear) that the Parties reached agreement on a boundary line based on their oil practice, it should be noted that the two States never agreed on, or even exchanged, the coordinates of their respective oil concessions. Furthermore, Ghana itself was ambivalent on this aspect, as the coordinates which it had provided to Côte d'Ivoire during the negotiations[159] do not correspond to those communicated to the Chamber in these proceedings.[160] Lastly, the coordinates of the two Parties' oil concessions have changed over time, as is acknowledged by Ghana in its Memorial.[161]

3.17 *Lastly*, the line of the Ghanaian oil concessions does not coincide with an equidistance line, as is acknowledged, moreover, by Ghana itself.[162] In addition, the oil concessions do not cover all the maritime areas concerned. This also explains Ghana's efforts to increase the number of legal bases for its claims.

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[155] Minutes of the fourth meeting between Ghana and Ivory Coast on maritime boundary delimitation, held in Accra, 27-28 April 2010, CMCI, vol. III, Annex 37.

[156] See *infra.*, paras 4.35-4.37.

[157] Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, vol. III, Annex 39.

[158] See, in general, *supra.*, paras 2.33-2.82.

[159] Minutes of the first meeting of the Côte d'Ivoire-Ghana Joint Commission on Delineation of the Maritime Boundary, 16 and 17 July 2008, CMCI, vol. III, Annex 29.

[160] Letter from the Co-Agent of Ghana to the ITLOS Registry, 9 April 2015.

[161] MG, vol. I, pp. 112-113, paras 4.67-4.68.

[162] MG, vol. I, pp. 145-146, paras 5.89-5.91.

B. Ghana's confusion over the legal bases for the line claimed

3.18 In the hope of boosting its chances of convincing the Chamber of the validity of the boundary line claimed by it, Ghana accumulates legal bases without explaining how these principles are combined, if they can be at all (1.). Côte d'Ivoire is therefore compelled to make certain suppositions and to assume that it is tacit agreement that constitutes the main foundation for Ghana's position. However, clarification must be given at the outset of the conditions laid down in jurisprudence for recognition of the existence of such an agreement (2.).

1. Bases referring to tacit agreement, to custom and to estoppel

3.19 Ghana's Memorial suffers from considerable terminological confusion, which is quite simply a reflection of its uncertainties over the legal bases of its claims. Without even entering into the body of the analysis, these are highlighted by a quick glance at the Table of contents. Chapter 3 is entitled "The Customary Equidistance Boundary: History of the Parties' Agreement". The first section of that chapter is entitled "Laws, Concessions, Agreements and Maps Reflecting the Parties' Agreement on the Customary Equidistance Boundary". That introductory legal chapter thus mentions both agreement and custom.

3.20 The Memorial then contains a chapter dedicated to delimitation of the territorial sea (Chapter 4), another on delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles (Chapter 5) and, lastly, a chapter on delimitation of the continental shelf beyond 200 nautical miles (Chapter 6). In Chapter 4, section III concerns the "Agreement on the Delimitation of the Territorial Sea" and section V "The Customary Equidistance Boundary between Ghana and Côte d'Ivoire". Similarly, Chapter 5 begins with section I on "The Parties' Agreement on the Maritime Boundary" and, after an interlude on jurisprudence, continues with section III entitled "Côte d'Ivoire is Estopped from Objecting to the Customary Boundary". Ghana thus asserts that agreement and custom provide distinct bases for its claims and, as if those bases might not be sufficient in themselves, it adds "estoppel".

3.21 The same holds for Ghana's submissions, which mention, pell-mell, "[the] recognized, *agreed* and applied equidistance-based boundary",[163] the fact that Côte d'Ivoire is "*estopped* from objecting to the agreed maritime boundary"[164] and "the customary *equidistance* boundary mutually agreed by the Parties".[165]

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[163] MG, vol. l, p. 163, submission no. l, emphasis added.

[164] MG, vol. l, p. 163, submission no. 3, emphasis added.

[165] MG, vol. l, p. 163, submission no. 6, emphasis added.

3.22 Tacit agreement and estoppel are thus the two main legal bases relied on by Ghana. However, they are distinct legal constructs with distinct regimes and they cannot be applied cumulatively, as will be fully demonstrated in Chapters 4 and 5 of this Counter-Memorial.

3.23 These main bases are supplemented, in Ghana's arguments, by a reference to custom, whose omnipresence is matched only by the invalidity of its legal justifications. Particular attention must be given to this aspect in this chapter, as Côte d'Ivoire does not intend to return to it in its Counter-Memorial. It is clear from reading its Memorial that Ghana does not invoke customary norms in respect of their codification in articles 15, 74 and 83 of UNCLOS,[166] but a special, bilateral custom, which has developed in the relations between the two Parties. This is, at least, what is referred to indirectly by the omnipresent use of the expression "customary equidistance line" or "customary equidistance boundary".[167] However, if Ghana is seeking the application of the theory of bilateral custom, it is very strange that its Memorial does not contain any analysis of the conditions under which a bilateral custom is established: there is no mention of the two-element theory (*consuetudo* and *opinio juris*)[168] and no reference to the judgment in *Right of Passage over Indian Territory*, which to this day represents the only undeniable instance where the concept of bilateral custom has been affirmed in jurisprudence.[169]

3.24 According to the principle of *actori incumbit probatio*, Ghana must provide "evidence of a general practice accepted as law",[170] that is to say, it must establish the existence of the two elements of custom in connection with the purported rule on delimitation based on a line which is similar to equidistance without corresponding to it precisely. It is not for Côte d'Ivoire to refute a position in advance when it is manifestly inarticulate in law. Ghana's Memorial provides evidence of neither the material element of custom nor its psychological element. Accordingly, the present Counter-Memorial will not discuss at any greater length the customary basis of Ghana's claim.

3.25 Côte d'Ivoire thus understands that Ghana relies primarily on the existence of a tacit agreement and it is on this aspect that this Counter-Memorial will focus the

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[166] See *supra.*, para. 3.3.

[167] There are 304 occurrences of these expressions in Ghana's Memorial.

[168] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 44, para. 77; *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, pp. 122-123, para. 55.

[169] *Case concerning Right of Passage over Indian Territory (Merits), Judgment of 12 April 1960: I.C.J. Reports 1960*, p. 39. See also ILC, *Identification of customary international law, Text of the draft conclusions provisionally adopted by the Drafting Committee*, Draft conclusion 16 [15], 67th session, 2015, doc. A/CNA/L.869, p. 5.

[170] See article 38 of the Statute of the International Court of Justice.

refutation.[171] As regards estoppel, the arguments will concern both the uncertainty over the existence, in the law on delimitation, of an autonomous concept that is distinct from the concept of tacit agreement and its inapplicability in the present case.[172]

2. Ghana's silence over the nature and scope of the alleged tacit agreement

3.26 Where one of the Parties invokes the existence of an agreement on delimitation, whether express or tacit, it must prove that such an agreement is established for each of the maritime areas claimed on that basis. Contrary to the view apparently taken by Ghana, there is no presumption that the tacit agreement, if it is established, extends to all the disputed maritime areas. According to jurisprudence:

> "The word 'agreement' in paragraph 4 [of Articles 74 and 83] refers to an agreement delimiting the exclusive economic zone (Article 74) or the continental shelf (Article 83) referred to in paragraph 1. *State practice indicates that the use of a boundary agreed for the delimitation of one maritime zone to delimit another zone is effected by a new agreement*."[173]

3.27 Accordingly, a State which relies on the existence of an agreement (whether written or tacit) must provide two-fold proof that the agreement is applicable to each of the maritime areas claimed (territorial sea, exclusive economic zone and continental shelf) and to their entire geographic extent. That was the reasoning adopted by the International Court of Justice in *Maritime Dispute (Peru* v. *Chile)*, where, after establishing the existence of an agreement confirmed in writing, the Court stated:

> "the 1954 Special Maritime Frontier Zone Agreement refers to the existing boundary for a particular purpose; that is also true of the 1968-1969 arrangements for the lighthouses. *The Court must now determine the nature of the maritime boundary, the existence of which was acknowledged* in the 1954 Agreement, that is, *whether it is a single maritime boundary applicable to the water column, the sea-bed and its subsoil, or a boundary applicable only to the water column*";[174]

and the Court continued with this line of argument:

> "The Court now turns to consider the extent of the agreed maritime boundary. It recalls that the purpose of the 1954 Agreement was narrow and specific […]: it refers to the existing maritime boundary for a particular purpose, namely to establish a zone of tolerance for fishing activity operated by small vessels. […] The Court will examine other relevant practice of the Parties in the early and mid-

[171] See *infra.*, Chapter 4.

[172] See *infra.*, Chapter 5.

[173] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 86-87, para. 69, italics added.

[174] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 41, para. 100, italics added.

1950s, as well as the wider context including developments in the law of the sea at that time. It will also assess the practice of the two Parties subsequent to 1954. This analysis could contribute to *the determination of the content of the tacit agreement which the Parties reached concerning the extent of their maritime boundary*".[175]

3.28 It is self-evident that Ghana must provide proof that the purported agreement is applicable to the maritime areas claimed in their entirety: "no written agreement existed and therefore any implicit agreement had to be established as a matter of fact, with the burden of proof lying with the State claiming such an agreement to exist".[176] Ghana's Memorial, which claims the existence of a tacit agreement based solely on the oil concession practice of the two States,[177] does not, however, provide any proof in relation to the practice of the Parties in respect of the waters superjacent to the seabed. As regards the exclusive economic zone, the "tacit agreement" has become an "agreement by way of contamination".

3.29 The same contamination process is at work in the determination of the geographic scope of the alleged agreement: Ghana's oil concessions, which are the almost exclusive basis for its claims, do not extend as far as its boundary claims. Thus, in their most recent form, the Ghanaian oil concessions run to an approximate distance of 87 nautical miles, which is less than half of the length of the boundary line claimed by Ghana.

3.30 Ghana cannot disregard the importance of the geographic scope of the proof on which an alleged tacit agreement is based. In *Peru* v. *Chile*, the International Court of Justice ruled that

> "the acknowledgment, without more, in 1954 that a 'maritime boundary' exists is too weak a basis for holding that it extended far beyond the Parties' extractive and enforcement capacity at that time".[178]

3.31 This is the most recent judgment on maritime delimitation and also the only judgment to recognize the existence of a tacit agreement, having regard to what had been expressly confirmed in writing in that case.[179] It is particularly surprising that Ghana completely ignores this judgment in its Memorial.

3.32 In any event, as will be made clear in Chapter 4 below, Ghana does not even provide proof of the fact that the oil practice, which is, moreover, geographically limited,

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[175] *Ibid.*, p. 41-42, para. 103, italics added.

[176] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 86, para. 68.

[177] See *infra.*, paras 4.25-4.110.

[178] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 57, para. 149.

[179] See *infra.*, paras 4.6-4.7.

constitutes an agreement on delimitation in respect of the continental shelf. The absence of any evidence relating to the exclusive economic zone or the continental shelf beyond 200 nautical miles merely confirms that no boundary, of any type or of any length, has been agreed between the Parties.

3.33 Against this background, Ghana's claims and the legal bases for those claims appear both contradictory and inadequate. Once the legal fog in which Ghana's arguments are developed has cleared, and after establishing that the Parties have not agreed on delimitation of their maritime boundary, whether within or beyond 200 nautical miles, the Chamber will have to proceed to delimit the maritime boundary between Côte d'Ivoire and Ghana.

II. Finding an equitable solution: the primary task of the body adjudicating on delimitation

3.34 Modern law on maritime boundary delimitation is dominated by the fundamental principle that any delimitation must achieve an equitable solution (A.) The delimitation method is adjusted in order to attain that objective; for this reason, international courts and tribunals have never established a single method and have instead availed themselves of opportunities to adapt their solutions to the circumstances of the specific case (B.).

A. A cardinal principle of the law on delimitation

3.35 Finding an equitable solution is expressly enshrined in article 74, paragraph 1, and article 83, paragraph 1, of UNCLOS:

> "The delimitation of the exclusive economic zone [of the continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, *in order to achieve an equitable solution*."[180]

3.36 This principle is regularly reiterated in jurisprudence. For example, in the first delimitation case referred to it, the International Tribunal for the Law of the Sea stated:

> "The Tribunal observes that the issue of which method should be followed in drawing the maritime delimitation line should be considered in light of the circumstances of each case. The goal of *achieving an equitable result* must be the paramount consideration guiding the action of the Tribunal in this connection. Therefore the method to be followed should be one that, under the prevailing

[180] Italics added.

geographic realities and the particular circumstances of each case, *can lead to an equitable result*."[181]

3.37 ITLOS bases this statement on well-established jurisprudence. Thus, in *Tunisia/Libyan Arab Jamahiriya* the ICJ had stated that it was "bound to decide the case on the basis of equitable principles" and it had the "task of ascertaining what are the relevant circumstances and assessing their relative weight for the purpose of achieving an equitable result".[182]

3.38 Similarly, in *Bangladesh* v. *India*, the Arbitral Tribunal constituted in accordance with Annex VII of the Convention stated that

> "international courts and tribunals are guided by a paramount objective, namely, that the method chosen be designed to lead to an equitable result and that, at the end of the process, an equitable result is achieved".[183]

3.39 Finding an equitable solution is not just part of the objective law which must be applied by the Chamber, but its constant compass. Its application in the present case is particularly vital as the two Parties to the dispute have regularly recalled their commitment to this fundamental principle. Thus, even before their bilateral dispute had crystallized, Côte d'Ivoire and Ghana declared at the Third United Nations Conference on the Law of the Sea that delimitation should be guided by equity, putting an end to any dogmatic commitment to equidistance.

3.40 Côte d'Ivoire thus declared that

> "The 12-mile limit for the territorial sea and the 200-mile limit for the exclusive economic zone were incorporated in the domestic legislation of the Ivory Coast. As far as the work of the Second Committee was concerned, the delimitation of the maritime boundaries of States with adjacent or opposite coasts should be agreed between the parties and should be based on the principle of equity, taking account of all the relevant factors. His delegation was convinced that that principle was in the common interest of all who wished to have matters settled equitably without sacrificing their individual interests."[184]

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

[182] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Judgment, I.C.J. Reports 1982*, pp. 59-60, para. 70.

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

[184] Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIII, Summary Record, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session, 139th Plenary meeting, doc. A/CONF.62/SR.l39, p. 68, paras 100 and 103, 27 August 1980, CMCI, vol. VI, Annex 155.

3.41 Similarly, Ghana, together with 18 other States, including Côte d'Ivoire,[185] proposed that the provisions on delimitation of the exclusive economic zone be worded as follows:

> "Article 8
> 1. The delimitation of the exclusive economic zone between adjacent or opposite States shall be done by agreements between them on the basis of principles of equity, the median line not being the only method of delimitation.
> 2. For this purpose, special account shall be taken of geological and geomorphological factors as well as other special circumstances which prevail."[186]

3.42 During the bilateral negotiations on delimitation of their common maritime boundary, both Côte d'Ivoire and Ghana declared that they would adopt an approach of seeking an equitable result. From the very first meetings the Parties agreed to apply articles 15, 74 and 83 of UNCLOS, which, according to the two States, provide for "the principles of negotiation and equity".[187]

3.43 Thus, looking ahead to the fifth meeting of the Côte d'Ivoire-Ghana Joint Commission, Côte d'Ivoire stated that

> "Ghana and Côte d'Ivoire jointly declare the need for ensuring a consensual delimitation of the maritime boundaries between the two countries, by way of agreement, following *bilateral negotiations founded on equity*".[188]

3.44 That was the spirit displayed by the two States during the negotiations, on which Côte d'Ivoire had relied. As Chapter 2 has already highlighted, the failure of the negotiations was caused by Ghana's intransigent refusal to act in that spirit.[189]

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[185] Gambia, Ivory Coast, Kenya, Lesotho, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Senegal, Sierra Leone, Sudan, Tunisia, Cameroon, Tanzania and Zaire.

[186] Official Records of the Third United Nations Conference on the Law of the Sea, Volume III, Documents of the Conference, First (New York, 3-15 December 1973) and Second (Caracas, 20 June to 29 August 1974) Sessions, doc. A/CONF.62/C.2/L.82, p. 240, emphasis added, CMCI, vol. VI, Annex 154.

[187] Minutes of the fourth meeting between Ghana and Ivory Coast on maritime boundary delimitation, held in Accra, 27-28 April 2010, CMCI, vol. III, Annex 37; Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on Delimitation of the Maritime Boundary between Côte d'Ivoire and Ghana, 23 February 2009, para. 7, CMCI, vol. III, Annex 30.

[188] Communication of the Ivorian Party in response to the Ghanaian proposals of 27 and 28 April 2010, 31 May 2010, para. 9, italics added, CMCI, vol. III, Annex 38; see also, along similar lines: Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, p. 5, CMCI, vol. III, Annex 39; Minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation [fifth meeting], 2 November 2011, p. 3, CMCI, vol. III, Annex 40.

[189] See *supra.*, paras 2.48-2.55.

B. The existence of a margin of flexibility for the body adjudicating on delimitation

3.45 The need for an equitable result goes hand-in-hand with the existence of a necessary margin of discretion to achieve that aim. This means that there is flexibility in two respects: the judicial body may both choose the delimitation method (1.) and adjust its application in order to achieve an equitable solution (2.).

1. A variety of delimitation methods

3.46 Judicial bodies have consistently held that

> "the method to be followed should be one that, under the prevailing geographic realities and the particular circumstances of each case, can lead to an equitable result."[190]

3.47 Similarly, the Arbitral Tribunal in *Bangladesh* v. *India* stressed that there is no mandatory delimitation method:

> "Since articles 74 and 83 of the Convention do not provide for a particular method of delimitation, the appropriate delimitation method – if the States concerned cannot agree – is left to be determined through the mechanisms for the peaceful settlement of disputes. In addressing this question, international courts and tribunals are guided by a paramount objective, namely, that the method chosen be designed so as to lead to an equitable result and that, at the end of the process, an equitable result be achieved."[191]

3.48 That being said, it is true that the equidistance/relevant circumstances method was "adopted by international courts and tribunals in the majority of the delimitation cases".[192]

3.49 Nevertheless, this line of case-law does not deprive courts and tribunals of their discretionary power to assess the circumstances of the individual case. The preferential application of the equidistance/relevant circumstances method is a choice

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[190] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012,* para. 235; see also: *ibid.*, para. 338; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 49, para. 50; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 30, para. 28.

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

[192] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012,* para. 238; see also *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 65, para. 180, citing *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), I.C.J. Reports 2009*, p. 101-103, paras 115-122, and *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Merits, Judgment, I.C.J. Reports 2012 (II)*, p. 695-696, paras 190-193.

for all international courts and tribunals which are asked to delimit maritime boundaries. Thus, the ICJ has held that

> "The jurisprudence of the Court sets out the reasons why the equidistance method is widely used in the practice of maritime delimitation: it has a certain intrinsic value because of its scientific character and the relative ease with which it can be applied. However, the equidistance method does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate".[193]

3.50 Maintaining the principle of a variety of delimitation methods is inherently linked to finding an equitable solution in maritime delimitation. That is how Côte d'Ivoire had interpreted UNCLOS during the negotiations and why it had agreed to discuss a number of alternative delimitation methods. It is in this same spirit that in the present proceedings it considers it appropriate to claim, as a principal plea, the application of the bisector method and, only as a subsidiary measure, the equidistance/relevant circumstances method, even though in practice both methods produce the same equitable result.

2. *Consideration of the circumstances of the individual case*

3.51 Article 15 of UNCLOS advocates using the equidistance line or the median line for delimitation of the territorial sea, but the basic rule may be subject to exceptions if special circumstances exist. As the Arbitral Tribunal in *Bangladesh* v. *India* recently noted:

> "the methods governing the delimitation of the territorial sea are more clearly articulated in international law than those used for the other, more functional maritime areas. It emphasizes that in the first sentence of article 15, the Convention refers specifically to the median/equidistance line method for the delimitation of the territorial sea failing an agreement between the parties concerned. […] [In] its second sentence article 15 of the Convention provides for the possibility of an alternative solution where this is necessary by reason of historic title […] or 'other special circumstances'".[194]

3.52 Ghana and Côte d'Ivoire both consider that special circumstances exist and they make it necessary for the Chamber to delimit the territorial sea using a method other than

[193] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 741, para. 272. Similarly: "This Tribunal wishes to add that transparency and the predictability of the delimitation process as a whole are additional objectives to be achieved in the process. The ensuing – and still developing – international case law constitutes, in the view of the Tribunal, an *acquis judiciaire*, a source of international law under article 38(1)(d) of the Statute of the International Court of Justice, and should be read into articles 74 and 83 of the Convention." (*Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014*, para. 339).

[194] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014,* paras 246-247. See also *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 740, para. 269.

the equidistance line. However, the two States do not adduce the same circumstances: the circumstance put forward by Ghana is based on the existence of an alleged agreement on delimitation;[195] Côte d'Ivoire bases its position on the existence of particular geographic and geomorphological characteristics which warrant the application of the bisector method.

3.53 Beyond the territorial sea,

> "[g]eneral international law, as it has developed through the case-law of the Court and arbitral jurisprudence, and through the work of the Third United Nations Conference on the Law of the Sea, has employed the concept of 'relevant circumstances'. This concept can be described as a fact necessary to be taken into account in the delimitation process".[196]

3.54 In the view of Côte d'Ivoire, the same geographic and geomorphological circumstances are applicable to delimitation of the territorial sea and of the maritime areas beyond the territorial sea. They will be addressed in greater depth later in this Counter-Memorial, given that their consideration beyond the territorial sea is all the more pressing, as

> "the distorting effects of lateral equidistance lines under certain conditions of coastal configuration are nevertheless comparatively small within the limits of territorial waters, but produce their maximum effect in the localities where the main continental shelf areas lie further out".[197]

3.55 The specific features of the present case therefore require the Chamber to opt for a method other than the equidistance/relevant circumstances method. Chapter 6 thus deals with the objective circumstances which make the application of the bisector method more appropriate in this case. Chapter 7 shows, on a subsidiary basis, that if the Chamber were to opt for the equidistance/relevant circumstances method, such circumstances do exist in the present case and necessitate the adjustment of the provisional equidistance line in order to achieve an equitable result.

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[195] See *infra.*, paras 7.60-7.62.

[196] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 442, para. 289, citing *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports* 1993, p. 62, para. 55.

[197] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 37, para. 59, cited in *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 741, para. 269.

PART 3

NO AGREEMENT ON THE MARITIME BOUNDARY

CHAPTER 4

NO TACIT AGREEMENT

4.1 Ghana's entire line of argument, as set out in its Memorial, rests on the claim of the existence of a tacit agreement concluded with Côte d'Ivoire on the establishment of a maritime boundary based on a "customary equidistance line" or "historically agreed line". Ghana does not assert that there is any formal agreement between it and Côte d'Ivoire. On the contrary, it states several times that such an agreement does not exist.[198]

4.2 In the absence of a formal agreement, Ghana attempts to prove the existence of a tacit agreement. However, the extremely strict conditions laid down by jurisprudence to characterize such an agreement are not met in the present case (**I.**).

4.3 An analysis of the bilateral contacts between the Parties shows that no tacit agreement on maritime delimitation exists (**II.**). Since 1988 Côte d'Ivoire and then Ghana have proposed negotiations with a view to concluding an agreement on their maritime boundary and no fewer than 10 negotiation meetings took place between 2008 and 2014.[199] In 2009 the Presidents of the two countries agreed on the importance of reaching an agreement on the maritime boundary,[200] thereby reaffirming at the very highest level that no agreement existed. It was not until 2011, during negotiations, that Ghana mentioned for the first time the existence of a tacit agreement or a "customary line".[201]

4.4 Furthermore, the evidence produced by Ghana does not demonstrate at all any recognition or acceptance by Côte d'Ivoire of a tacit maritime boundary, whether in the maritime legislation of the Parties, their oil practice, the maps of their oil concessions or their submissions to the Commission on the Limits of the Continental Shelf (**III.**).

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[198] MG, vol. l, paras 2.1, 3.1, 4.19 and 4.65.

[199] See *supra.*, paras 2.33-2.82.

[200] See *supra.*, para. 2.58.

[201] See *supra.*, paras 2.67-2.68.

I. The high standard of proof required in order to characterize a tacit agreement on delimitation

4.5 The conditions for recognition of a tacit agreement on maritime delimitation are particularly strict. Case-law in this regard is consistent:

> "evidence of a tacit legal agreement must be compelling. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed."[202]

4.6 Although the jurisprudence does not always require a treaty, the absence of a written instrument makes proof of the agreement particularly difficult for the State claiming that such an agreement exists. For example, the existence of an agreement on maritime delimitation (or rather its non-existence) was at the heart of the dispute between Peru and Chile.[203] In that case, which is the only case in which the existence of a tacit agreement on delimitation of a maritime boundary has been recognized, the Court took into account the text of a 1954 agreement between the Parties which expressly recognized the existence of a maritime boundary approved by the two Parties.[204] The Court ruled that

> "[t]he 1954 Special Maritime Frontier Zone Agreement does not indicate when and by what means that boundary was agreed upon. The Parties' express acknowledgment of its existence can only reflect a tacit agreement which they had reached earlier. […] In this case, the Court has before it an Agreement which makes clear that the maritime boundary along a parallel already existed between the Parties. *The 1954 Agreement is decisive in this respect. That Agreement cements the tacit agreement*".[205]

4.7 Accordingly, the crucial factor in recognition of a tacit agreement was the existence of a treaty between the Parties which expressly referred to that tacit agreement. It would therefore be more accurate to state that in *Peru* v. *Chile* the Court took into account the written confirmation of the existence of the boundary. In the present case Ghana does not claim that any express confirmation exists; on the contrary, it explicitly acknowledges that there is no written agreement.[206]

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[202] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 735, para. 253. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), I.C.J. Reports 2009*, p. 86, para. 68; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012,* para. 95.

[203] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 38, para. 91.

[204] *Ibid.*, p. 38, para. 90.

[205] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, pp. 38-39, para. 91, italics added.

[206] See *supra.*, para. 4.1

4.8 The question of the existence of a tacit agreement was also raised before the International Tribunal for the Law of the Sea in the case between Bangladesh and Myanmar.[207] Bangladesh contended that the Parties' fishing, oil exploration and navigation activities on either side of the median line, extending over a period of more than 30 years, represented recognition of a tacit agreement.[208] Adopting the standard of proof in respect of tacit agreement applied by the International Court of Justice, the Tribunal concluded that the evidence presented by Bangladesh fell short of characterizing the existence of a tacit agreement.[209]

4.9 These convergent decisions allow a number of conclusions to be drawn. First, the burden of proof for the tacit agreement lies with the State which claims it. The conditions required for providing that proof are very strict, which explains why the argument has generally been rejected by judicial bodies. The only time when a court or tribunal recognized the existence of a tacit agreement concerning a maritime boundary *(Peru* v. *Chile)*, it took into account the explicit terms of a treaty in force between the Parties.

II. The bilateral contacts confirm that no tacit maritime boundary agreement was made between the Parties

4.10 Côte d'Ivoire has always made clear that a maritime boundary had to be fixed by agreement between the Parties, as has been consistently acknowledged by Ghana. That was the purpose of the negotiations proposed by Côte d'Ivoire from 1988 (A.), then by Ghana in 1992 (B.), which did not actually commence until 2008 (C.)

4.11 These bilateral contacts between the Parties between 1998 and 2014, and their failure, are the very proof of the fundamental disagreement between the Parties on a delimitation method and *a fortiori* on delimitation of their maritime boundary. As had been noted by the Arbitral Tribunal in the *Case concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau*, "the conflicting nature of the Parties' claims and of their measures of application is enough to exclude any notion of implicit agreement on any lateral delimitation of the maritime zones".[210]

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

[208] *Ibid.*, pp. 40-41, paras 101-105.

[209] *Ibid.*, pp. 44-45, paras 117-118.

[210] Decision of 14 February 1985, *Case concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau, RIAA,* vol. XIX, p. 175, para. 66.

A. The discussions and the maritime boundary line proposed by Côte d'Ivoire from 1988

4.12 From 18 to 20 July 1988 the 15th ordinary session of the Joint Commission which had been set up several years previously to establish the land boundary between Ghana and Côte d'Ivoire took place in Abidjan. Prior to that meeting, the Ivorian Party requested that the "delimitation of the maritime and lagoon boundary" be added to the agenda. Ghana agreed to that addition.

4.13 At that bilateral meeting Côte d'Ivoire set out its position on the question of delimitation of the maritime boundary and proposed a maritime boundary line consisting in extending seaward the terminus segment of the land boundary between posts 54 and 55.

4.14 Although this question had been included on the agenda, at the meeting Ghana declared that it did not have a mandate to discuss it and stated that it would inform its Government and keep the Ivorian Party informed with a view to the next bilateral meeting. However, Ghana failed to respond to the Ivorian proposal.

4.15 This exchange shows that from 1988 Côte d'Ivoire has made clear to Ghana (i) that it considered no agreement on delimitation to exist between the Parties, (ii) that it wished to conclude such an agreement by way of bilateral negotiation, and (iii) that it claimed a maritime boundary which proves to be distinct from the line which Ghana is suddenly now calling the "customary line".

B. The negotiations on the maritime boundary proposed by Ghana in 1992

4.16 Almost four years later, in February 1992, Ghana then proposed to Côte d'Ivoire that the question of maritime delimitation be dealt with bilaterally. Following considerable preparatory work, Côte d'Ivoire replied in April 2002,[211] welcoming the Ghanaian proposal and accepting its invitation to negotiate. It also requested that Ghana refrain from any activity in the area to be delimited during the negotiations.

4.17 It was thus clear at the time that no agreement on delimitation existed between the Parties. Ghana never responded to the Ivorian note verbale.

4.18 In September 1992 Côte d'Ivoire informed Ghana by note verbale that it was sending a mission into the boundary area, *inter alia* to investigate the activities taking place there. Once again there was no response from Ghana.

[211] Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, vol. III, Annex 16; see *supra.*, paras 2.41-2.42.

4.19 During these exchanges Ghana did not at any time suggest that it considered the limit of its oil concessions to constitute an "agreed maritime boundary".[212] On the contrary, its proposal to initiate maritime negotiations suggested that it considered that no tacit agreement on delimitation existed between the two States.

4.20 Bilateral negotiations on delimitation of the maritime boundary finally began in 2008. However, the passage of time cannot turn the absence of an agreement, which was noted by the Parties in 1988 and 1992, into a tacit agreement or into an agreement of any kind.

C. The negotiations and exchanges on delimitation from 2008 to 2014

4.21 Ghana first fails to mention a relevant meeting which was held on this matter between the two Heads of State in 2009. The Ivorian and Ghanaian Heads of State met on 3 and 4 November 2009 during an official visit to Ghana by the Ivorian President, Laurent Gbagbo. They declared that the maritime boundary between Côte d'Ivoire and Ghana had not been delimited, despite the ongoing discussions to that end, and therefore exhorted the competent authorities to continue the discussions for a rapid conclusion.[213]

4.22 Ghana also offers an incomplete and inaccurate picture of the ten meetings of the Joint Commission on delimitation of the maritime boundary which took place between July 2008 and May 2014.[214] Those negotiations have been described in Chapter 2 above. They bear witness to the constructive efforts of Côte d'Ivoire to achieve a negotiated settlement. Ghana, for its part, barely negotiated, invariably maintaining its position that the oil concessions line was the only acceptable outcome and refusing to put forward any other proposal.

4.23 The following points must be stressed, as they are particularly enlightening with regard to the absence of any tacit agreement between Côte d'Ivoire and Ghana on their maritime boundary:

- during the first meeting on 16 and 17 July 2008, Ghana made a delimitation proposal for the first time, suggesting "that the border currently used by the international oil companies and the national companies, that is the National Petroleum Operations Company (PETROCI) of Côte d'Ivoire and Ghana National Petroleum Company (GNPC) of Ghana, should be formalized and

[212] MG, vol. I., Submissions.

[213] Joint communiqué issued at the end of the official visit to Ghana of His Excellency Laurent Gbagbo, President of the Republic of Côte d'Ivoire, 3-4 November 2009, CMCI, vol. III, Annex 34.

[214] MG, vol. I, paras 3.102-3.117.

recognized within the framework of a bilateral agreement as being the maritime border between the two countries".[215] According to Ghana, that line was justified by the fact that it was based "on the internationally acceptable median rule";[216]

- on 23 February 2009, Côte d'Ivoire sent Ghana a communication with a view to the second meeting of the Joint Commission scheduled for 26 February. It informed Ghana that it opposed the maritime boundary line based on the Ghanaian oil concessions line:

> "This proposed drawing, which is used by the oil companies operating in Ivorian territorial waters in order to avoid boundary disputes does not constitute an official agreement between the two countries following bilateral negotiations with a view to delimitation of the maritime boundary between Côte d'Ivoire and Ghana, as recommended in articles 15, 74 and 83 of the Montego Bay Convention".[217]

On this occasion Côte d'Ivoire reiterated its request that Ghana "stop any unilateral activity in the neighbouring maritime border until a determination by consensus of the maritime border",[218] as it had already done in 1992;[219]

- the fourth meeting on 27 and 28 April 2010 was an opportunity for the two States to agree on the need to delimit their maritime boundary by consensus on the basis of articles 15, 74 and 83 of UNCLOS and on "the need to have a permanent maritime boundary under a bilateral treaty".[220] The Parties also substantiated their respective positions on the applicable delimitation method;[221]

- looking ahead to the fifth meeting of the Joint Commission, Côte d'Ivoire submitted a communication dated 31 May 2010 in which it reaffirmed that "the proposed maritime limits utilized by the oil companies operating in Côte d'Ivoire's territorial waters, in order to avoid frontier conflicts, could not

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215 Minutes of the maiden meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 16 and 17 July 2008, CMCI, vol. III, Annex 29.

216 Opening statement by Ghana at the maiden meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 17 July 2008, CMCI, vol. III, Annex 28.

217 Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, vol. III, Annex 30.

218 Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on Delimitation of the Maritime Boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, vol. III, Annex 30.

219 Telegram from the Ivorian Minister for Foreign Affairs to the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, vol. III, Annex 16; see *supra.*, paras 2.41-2.42.

220 Minutes of the fourth meeting between Ghana and Ivory Coast on maritime boundary delimitation, held in Accra, 27-28 April 2010, CMCI, vol. III, Annex 37.

221 *Ibid.*

constitute an official agreement between our two sovereign states since it does not emanate from bilateral negotiations on the delimitation of the maritime boundaries between Côte d'Ivoire and Ghana as recommend by the Convention of Montego Bay";[222]

- in response, Ghana explained that the line it had claimed since 2008 was justified as it was an equidistance line modified in light of oil practice, while for the first time it claimed the existence of a "tacit agreement", without, however, clarifying its purpose, scope or effects;[223]

- at the sixth meeting of the Joint Commission on 12 and 13 November 2013, the Parties reviewed the points of agreement: delimitation from boundary post 55, organization of a joint survey mission for that boundary post, negotiation on the basis of international maritime law and delimitation by way of agreement.[224] No reference was made to an agreement, tacit or otherwise, on the establishment of the maritime boundary itself.

4.24 In summary, the minutes of the negotiations, the related documents and the joint communiqués published on the occasion of the meetings of the two Heads of State cast light on a number of important aspects. In particular, they show that:

(i) the two Parties agreed on the need to delimit their maritime boundary in accordance with international law in order to achieve an equitable result;

(ii) there was no "tacit agreement" on the maritime boundary between the Parties;

(iii) the Parties envisaged a number of delimitation methods which could be used to delimit their common maritime boundary without agreeing on any one of them; and

(iv) during the negotiations Côte d'Ivoire reiterated its request that Ghana stop its oil activities in the disputed area.

[222] Communication of the Ivorian Party in response to the Ghanaian proposals of 27 and 28 April 2010, 31 May 2010, CMCI, vol. III, Annex 38.

[223] Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire-Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, vol. III, Annex 39.

[224] Minutes of the meeting of negotiation on the delimitation of the maritime boundary between Côte d'Ivoire and Ghana [sixth meeting], 12-13 November 2013, CMCI, vol. III, Annex 41.

III. Refutation of the evidence produced by Ghana in support of the existence of a tacit agreement

4.25 Ghana's argument that there is a "customary equidistance line" between the Parties is based almost exclusively on their oil activities.

4.26 This section refutes Ghana's attempts to establish the existence of a tacit agreement on delimitation of the maritime boundary (or a "customary equidistance line") based on the maritime legislation of the two Parties (A.), their oil practice (B.), the maps of their oil concessions (C.) and their submissions to the Commission on the Limits of the Continental Shelf (D.).

A. The maritime legislation of the Parties

4.27 In support of its argument that there is a "customary equidistance line", Ghana makes reference in its Memorial to the maritime legislation of each of the Parties. As a preliminary point, it should be stated that a country's legislation cannot under any circumstances establish the existence of an agreement between two States. A law may confirm an agreement, but it cannot create it. In this specific case, the maritime legislation of the Parties does not in any way demonstrate the existence of an agreement on delimitation.

1. Maritime legislation of Ghana

4.28 Ghana thus refers to its 1986 Maritime Zones (Delimitation) Law,[225] Section 7 of which provides that

> "[T]he lines of delimitation of territorial sea, exclusive economic zone and continental shelf as drawn on official charts are conclusive evidence of the limits of the territorial sea, exclusive economic zone and continental shelf".[226]

4.29 In reality, that Law makes absolutely no reference to a maritime boundary. Section 7 concerns the definition of Ghana's maritime areas from its base points by reference to the provisions of article 15 of UNCLOS on the definition of the territorial sea from the base points drawn on the official charts of the State. Section 7 of the 1986 Law does not offer any assistance as it refers to official charts representing maritime

[225] MG, vol. I, para. 3.49.

[226] MG, vol. III, Annex 6.

boundaries and these have never been produced. If they had been, they would only have represented Ghana's position and not an agreement between the Parties.

2. *Maritime legislation of Côte d'Ivoire*

4.20 As far as Ivorian legislation is concerned, Ghana makes reference mainly to the 1977 Act delimiting the maritime zones placed under the national jurisdiction of the Republic of the Ivory Coast.[227] Ghana cites an English translation of article 8 of that Act, which provides:

> "with respect to adjoining coastal States, the territorial sea and zone referred to in Article 2 of this Law shall be delineated by agreement in conformity with equitable principles and using, if necessary, the median lines or the equidistance line, taking all pertinent factors into account".[228]

4.31 Ghana claims that article 8 "officially recognized the principle of equidistance as the most appropriate method of delimitation of Côte d'Ivoire's maritime boundaries", which "can be understood as an explicit acceptance by Côte d'Ivoire that equidistance was recognized as offering as equitable solution with respect to its maritime boundary with Ghana".[229]

4.32 This is an incorrect reading of article 8. Article 8 does not state that equidistance is the most appropriate delimitation method. Nor may it be understood as providing that equidistance offers an equitable solution for delimitation of the maritime boundary between Ghana and Côte d'Ivoire. On the contrary, it provides that the maritime boundaries of Côte d'Ivoire must be delimited "by agreement in conformity with equitable principles", using, "if necessary", the equidistance/relevant circumstances method. It thus reflects the state of the law on maritime delimitation as it stands. It is not disputed that the equidistance/relevant circumstances method can be used – "if necessary" – to obtain an equitable solution, but that has no bearing on the delimitation of the maritime boundary at issue. Accordingly, that Act and the legislation which refers to it do not in any way determine the position of the maritime boundary between the Parties and certainly do not rule out the possibility of utilizing other recognized delimitation methods (such as the bisector method). Ghana's analysis of the content of Decree 70-618 and of the Ivorian concession agreement

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[227] MG, vol. l, para. 3.29; MG, vol. IV, Annex 24.

[228] The French version of article 8 of the 1977 Act provides that "*[l]a délimitation de la mer territoriale et de la zone visée à l'article 2 de la présente loi, par rapport aux États riverains limitrophes, se fait par voie d'accord, conformément à des principes équitables, en utilisant, le cas échéant, la ligne médiane ou la ligne d'équidistance, et en tenant compte de tous les facteurs pertinents*".

[229] MG, vol. l, para. 3.30.

with the consortium led by Esso dated 12 October 1970 also contradicts its own argument.[230]

4.33 In the arbitral award in *Barbados* v. *Trinidad and Tobago*, the Arbitral Tribunal rejected a similar view to that put forward by Ghana:

> "365. The fact that in 1978 Barbados enacted legislation providing that in the absence of agreement with a neighboring State the boundary of its EEZ would be the equidistance line does not result in any form of recognition of, or acquiescence in, the equidistance line as a definitive boundary by any neighbouring State.
> 366. The Tribunal accordingly does not consider that the activities of either Party, or the responses of each Party to the activities of the other, themselves constitute a factor that must be taken into account in the drawing of an equitable delimitation line."[231]

4.34 Consequently, Ghana's position regarding the 1997 Ivorian Act has no foundation.

B. The oil practice of the Parties

1. Law: oil practice is insufficient proof of the existence of a maritime boundary delimitation

4.35 International jurisprudence has had occasion several times to make clear that the existence of oil concession lines between adjacent States is not in itself sufficient proof of the existence of a maritime boundary between them.

4.36 In *Tunisia/Libyan Arab Jamahiriya*, the Court examined a delimitation line perpendicular to the coast, which had been developed by Italy, the colonial power in Libya, and to which France, the colonial power in Tunisia, had never objected. That line was a sort of *modus vivendi* which the two States had continued to respect after they had gained independence, in particular for determining the location of their respective oil concessions. The Court rejected Libya's argument that this line should be regarded as a tacit agreement on the maritime boundary between the Parties. It ruled that "the evidence of the existence of such a *modus vivendi*, resting only on the silence and lack of protest on the side of the French authorities responsible for the external relations of Tunisia, falls short of proving the existence of a recognized maritime boundary between the two Parties".[232]

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[230] See *infra.*, paras 4.53-4.56.

[231] *Barbados* v. *Trinidad and Tobago, Award of 11 April 2006*, *RIAA, vol. XXVII*, pp. 241-242, paras 365-366.

[232] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Judgment, I.C.J. Reports 1982*, pp. 70-71, para. 95.

4.37 In particular, the Court stressed that the oil practice of the Parties along that line could not prove the existence of a tacit agreement.[233] A crucial factor in the Court's reasoning was that the *modus vivendi* between the Parties' oil concessions was not used for other purposes, for example for delimiting fishing zones or surveillance areas. Since it did not constitute a tacit agreement, the *modus vivendi* could not prevent the Parties from making alternative proposals for maritime boundaries.

4.38 The *Gulf of Maine* case confirmed this approach. In that case Canada had invoked the *Tunisia/Libya* judgment to assert that the Parties' conduct in relation to oil demonstrated the existence of a *modus vivendi* or a *de facto* maritime boundary. [234] The Chamber of the Court rejected that argument, stating that "even supposing that there was a *de facto* demarcation between the areas for which each of the Parties issued permits", the situation was not comparable to the *Tunisia/Libya* case:

> "It is true that the Court relied upon the fact of the division between the petroleum concessions issued by the two States concerned. But it took special account of the conduct of the Powers formerly responsible for the external affairs of Tunisia – France – and of Tripolitania – Italy –, which it found amounted to a *modus vivendi*, and which the two States continued to respect when, after becoming independent, they began to grant petroleum concessions".[235]

4.39 The Chamber thus recognized the high standard of proof for establishing the existence of a tacit agreement and, in that specific case, ruled that a line between the two Parties' petroleum concessions fell short of satisfying that standard.

4.40 In *Cameroon* v. *Nigeria* the Court again expressed its reticence to treat an oil concession line as a maritime boundary:

> "Only if [oil concessions and oil wells] are based on express or tacit agreement between the parties may they be taken into account".[236]

4.41 Consequently, the mere fact that there are oil concessions along the same line does not in itself provide any proof of the existence of a tacit or *de facto* agreement. The existence of such an agreement must first be proven for oil concessions to provide effective support for proof of the existence of a maritime boundary.

4.42 The Court reached the same conclusion in the *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan*. In that case Indonesia claimed that the alignment of the Parties' oil concessions along the same line demonstrated the agreement between

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[233] *Ibid.*, para. 118.

[234] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 246.

[235] *Ibid.*, p. 310, para. 150.

[236] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 447, para. 303.

the Parties on the limits of their respective jurisdictions.[237] The Court rejected that argument, holding that the Parties' respect for such a limit could be entirely for reasons other than formal recognition of a maritime boundary. The Court offered the following analysis:

> "These limits may have been simply the manifestation of the caution exercised by the Parties in granting their concessions. This caution was all the more natural in the present case because negotiations were to commence soon afterwards between Indonesia and Malaysia with a view to delimiting the continental shelf".[238]

4.43 In the absence of clear proof of the existence of a tacit agreement, the Court held that the oil practice of the Parties along the same line was not sufficient in itself to require the Parties to respect a maritime boundary that is legally binding in international law.

4.44 The Court adopted the same reasoning in *Nicaragua* v. *Honduras*. In that case Honduras asserted that the oil concessions and naval and fishing activities, which were all aligned along the 15th parallel, demonstrated the existence of a "traditional boundary" or a "tacit agreement" on the existence of a boundary along the 15th parallel.[239]

4.45 Once again the Court asked Honduras to satisfy its high standard of proof to establish recognition of an oil line or *de facto* line as constituting a tacit agreement on the maritime boundary between the Parties. The Court observed:

> "A *de facto* line might in certain circumstances correspond to the existence of an agreed legal boundary or might be more in the nature of a provisional line or of a line for a specific, limited purpose, such as sharing a scarce resource. Even if there had been a provisional line found convenient for a period of time, this is to be distinguished from an international boundary."[240]

4.46 In that case, although the Court recognized that the 15th parallel had been able to serve as a limit between the two States for certain activities, in particular oil activities, it nevertheless concluded that there was no tacit agreement concerning the maritime boundary between the Parties.[241]

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[237] *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 625, para. 78.

[238] *Ibid.*, para. 79.

[239] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007*, p. 729-730, paras 238-241.

[240] *Ibid.*, p. 735, para. 253.

[241] *Ibid.*, p. 736, para. 256.

4.47 Arbitral tribunals have also generally disregarded the existence of oil concessions in determining maritime delimitations.[242] In the case between Guyana and Suriname, for example, after examining the jurisprudence, the Tribunal concluded that

> "The cases reveal a marked reluctance of international courts and tribunals to accord significance to the oil practice of the parties in the determination of the delimitation line".[243]

4.48 Thus, in accordance with the jurisprudence of the International Court of Justice, the Tribunal denied the significance of the Parties' oil concessions in delimitation of the maritime boundary insofar as they did not reflect the existence of an agreement between the Parties in this regard.[244]

2. *The oil practice of the Parties does not demonstrate the existence of an agreement on delimitation*

4.49 Ghana seems to claim, in essence, that since the very beginning of their offshore oil activities the Parties have respected, as far as those activities are concerned, a line on either side of which each has plotted its oil concessions and carried out seismic studies and drilling operations.

4.50 However, an analysis of the documents produced by Ghana relating to the line for oil concessions (*a.*) and to requests for seismic studies (*b.*) does not demonstrate the existence of a tacit agreement on maritime delimitation in accordance with the high standard required by jurisprudence.

a. The lines for oil concessions

4.51 First of all, Ghana refers to the practice of the colonial powers.[245] As has been stated above, in *Tunisia/Libya* the Court stressed the importance of the earlier colonial practice as a prerequisite to examining the practice of the Parties as independent States.[246] In the present case, such colonial practice is virtually non-existent.

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[242] *Case concerning delimitation of the maritime boundary between Guinea and Guinea-Bissau, Decision of 14 February 1985*, *RIAA,* vol. XIX, p. 174, para. 63; see also *Case concerning the delimitation of maritime areas between Canada and France, Award of 10 June 1992, RIAA vol. XXI,* pp. 295-296, paras 89-91.

[243] *Guyana* v. *Suriname*, *Award of 17 September 2007, RIAA vol. XXX,* p. 108, para. 390; see also pp. 105-108, paras 378-390.

[244] *Guyana* v. *Suriname*, *Award of 17 September 2007, RIAA vol. XXX,* p. 108, para. 390.

[245] MG, vol. 1, paras 3.9-3.12.

[246] See *supra.*, paras 4.36-4.37.

4.52 Ghana also makes reference to the 1984 Ghanaian Law on petroleum, under which the Ghanaian Secretary for Fuel and Power was given the task of preparing a map of oil blocks under the jurisdiction of Ghana.[247] It is clear that the Ghanaian legislation does not give any indication as to the existence of a maritime boundary with Côte d'Ivoire, less still as to its course. In 1984 the Law on petroleum exploration and production did nothing more than authorize the competent authority to create oil blocks in the Ghanaian offshore area.

4.53 Furthermore, Ghana makes reference to Ivorian Presidential Decree 70-618[248] of 14 October 1970 granting a petroleum exploration permit to the companies Esso, Shell and ERAP in accordance with the petroleum agreement of 12 October 1970. Ghana claims that:

> "The Decree affirmed that the boundary of the concession in the east is '*[T]he border line separating the Ivory Coast from Ghana between points K and L.*' The issuance of Decree 70-618, signed by the President, constitutes an explicit and unambiguous recognition by Côte d'Ivoire's head of State of the existence of a maritime border between Ghana and Côte d'Ivoire that follows an equidistance line".[249]

4.54 However, a simple reading of the provisions of the Decree – which are identical to those of the petroleum agreement – shows that Ghana is distorting the wording for its own purposes, deliberately ignoring the fact that the Decree distinguishes between points whose coordinates are given specifically and other points (such as points K and L) whose coordinates are "approximate". According to the wording of the Decree, the eastern marine limit of the concession is defined:

> "by the border line separating the Ivory Coast from Ghana between points K and L […]. The coordinates of points A, B, K, L, M and Y are approximate".[250]

4.55 It is significant, moreover, that article 1 of the Decree concerns the limits of the coastal part of the concession. That article does not contain any reference to a "customary equidistance line" or to any other recognized boundary. Its only purpose is the organization by Côte d'Ivoire of exploration of its oil reserves.

4.56 It can also be noted that article 1 of the 1970 Decree uses identical terms to describe the eastern limits of Côte d'Ivoire with Ghana and the western limits with Liberia. To accept Ghana's position seeking to establish a new maritime boundary with Côte

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[247] MG, vol. 1, pp. 24-25, paras 2.27-2.28.

[248] Decree no. 70-618 granting an exclusive petroleum exploration permit to the companies Esso, Shell and ERAP, 14 October 1970, CMCI, vol. IV, Annex 59.

[249] MG, vol. I, p. 38, para. 3.20, emphasis in the original.

[250] Decree no. 70-618 granting an exclusive petroleum exploration permit to the companies Esso, Shell and ERAP, 14 October 1970, CMCI, vol. IV, Annex 59.

d'Ivoire, claiming a long-term agreement, would therefore effectively lead the Chamber to establish a new boundary between Côte d'Ivoire and Liberia. This unprecedented position, which has far-reaching consequences, cannot be legitimately upheld.

4.57 For the sake of completeness, it should be observed that Decree 75-769 of 29 October 1975, which renewed the hydrocarbon exploration permit granted to the consortium led by Esso, for a smaller area this time, contained the following reservation in article 4:

> "The coordinates of reference points M, L and K separating Côte d'Ivoire and Ghana are given by way of indication and cannot in any case be considered as being the national jurisdiction boundaries of Côte d'Ivoire".[251]

4.58 In order to attempt to minimize the importance of the provisions of that Decree, Ghana turns round its explicit wording, claiming that the indicative character of the coordinates for the eastern limit of the block does not contradict the existence of a tacit agreement. By making this mental pirouette, Ghana is trying to end any discussion on the real significance of the Decree without offering compelling arguments.[252] In reality, article 4 of the Decree makes clear that the limits of the concession certainly do not represent the maritime boundaries of Côte d'Ivoire, which is expressly contrary to Ghana's position that the boundary is precisely located between points L and K.

4.59 Indeed, by simply looking at the diagram showing points L, M and K in the abovementioned 1975 Decree, it can be seen that those points do not correspond to a political boundary, but to the limit of the oil concessions in question. The diagram makes clear that the line drawn between points L and M does not constitute the land boundary between the two States, just as the line drawn between points L and K does not constitute the maritime boundary (see **sketch map 4.1** below).

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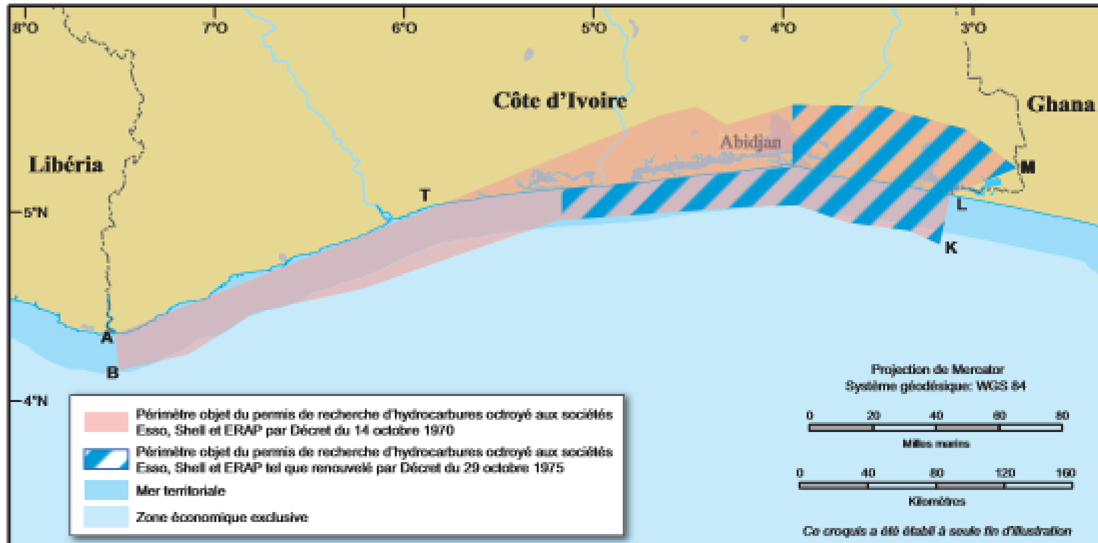
[251] Decree no. 75-769 renewing petroleum exploration permit no. 1, 29 October 1975, CMCI, italics added, vol. IV, Annex 61.

[252] MG, vol. 1, para. 3.24 *et seq*.



Sketch map 4.1: Oil area granted to the companies Esso, Shell and ERAP

4.60 Furthermore, Ghana's interpretation of the 1970 and 1975 Decrees is not consistent with its interpretation of the 1977 Ivorian Act delimiting maritime zones.[253] It should be recalled that Ghana refers to article 8 of that Act, which is cited in paragraph 4.30 above. Ghana wrongly considers that article to constitute recognition that equidistance is the accepted method for the *future* establishment of Côte d'Ivoire's maritime boundaries.[254]

4.61 This position conflicts with Ghana's interpretation of article 1 of the 1970 Decree (promulgated seven years before the 1977 Act), which constitutes "an explicit and unambiguous recognition by Côte d'Ivoire's Head of State of the existence of a maritime border between Ghana and Côte d'Ivoire that follows an equidistance line".[255] If that were the case, the 1977 Act would be unnecessary and meaningless, Côte d'Ivoire already having established its maritime boundaries in 1970.

4.62 In actual fact, Ghana's assertion that there is a tacit agreement is based almost exclusively on the oil concessions of the Parties and the maps to which it attaches so much importance are no more than an illustration of those concessions. As is made clear by jurisprudence, such an assertion cannot serve as the basis for the existence of a maritime boundary.

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[253] Act no. 77-926 delimiting the maritime zones placed under the national jurisdiction of the Republic of the Ivory Coast, 17 November 1977, CMCI, vol. III, Annex 2.

[254] MG, vol. I, para. 3.30.

[255] MG, vol. I, para. 3.20.

4.63 It is not surprising that, while Ghana claims to refer to the jurisprudence mentioned in paragraph 2 above, it relies primarily on *Tunisia/Libya*,[256] as the oil concession practice of the Parties was taken into account by the ICJ in that case, but it did not recognize a tacit agreement between the two States. Nevertheless, that jurisprudence has limited relevance in the present case for several reasons.

4.64 First, the judgment calling into question the principles applicable to the delimitation between Libya and Tunisia was handed down in 1982, before UNCLOS entered into force and before the Court and the other international courts and tribunals had contributed to the development of the jurisprudence on delimitation of maritime boundaries.

4.65 Second, the ICJ has held that petroleum concessions do not provide sufficient proof of the existence of a tacit agreement or allow the Parties' claims to be limited.[257] That decision clearly refutes Ghana's current position.

4.66 Third, the ICJ has clearly stated that the petroleum concessions of the Parties were relevant only in light of other existing factors, including a long-term *modus vivendi* "regarding an all-purpose maritime boundary" which formed part of colonial legislation.[258] As has already been stated, in the present case Ghana is interested only in the oil practice of the Parties.

4.67 In addition, as was mentioned in Chapter 2,[259] Côte d'Ivoire has been consistent by including in contracts signed with oil companies a note that the coordinates for oil blocks:

> "are indicative and cannot under any circumstances be regarded as the limits of the national jurisdiction of Côte d'Ivoire".

4.68 That note was introduced as from 1975 in a number of oil contracts concluded by Côte d'Ivoire with foreign oil companies[260] and in Ivorian standard contracts in 1990 and in 1993. This reservation was also made in the contract concluded by Côte d'Ivoire with Tullow before it entered into a contract with Ghana.[261]

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[256] MG, vol. I, para. 5.40: "the most pertinent of the decided cases is the ICJ's Judgment in the *Case Concerning the Continental Shelf (Tunisia/Libya)*".

[257] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 84, para. 118; see *supra.*, paras 4.36-4.38.

[258] *Gulf of Maine, Judgment, I.C.J. Reports 1984*, p. 310, para. 150.

[259] See *supra.*, paras 2.102-2.106.

[260] See *supra.*, paras 2.105-2.109.

[261] Oil production sharing contract concluded between the Republic of Côte d'Ivoire and Tullow, 7 May 1999, CMCI, vol. IV, Annex 69.

4.69 Lastly, Ghana itself confirmed that there is no maritime boundary between Côte d'Ivoire and Ghana in a letter sent to Tullow at the end of 2011:

> "as regards the maritime boundary, as you are aware, it has been publicly known that the Republic of Ghana and the Republic of Côte d'Ivoire have not yet delimited their maritime boundary. 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."[262]

4.70 In conclusion, the oil concessions line on which Ghana relies does not in any way prove the existence of a tacit maritime agreement between the Parties.

b. Requests for seismic studies

4.71 In its Memorial, Ghana refers to virtually no "practice" other than that relating to the oil concessions of the Parties, which, as has been shown, is insufficient to establish the existence of a maritime boundary in law. In this same context, Ghana adduces two exchanges of letters, dating from 1997 and 2008 respectively, concerning seismic studies around the alleged customary equidistance line.[263]

4.72 According to Ghana, the fact that in those exchanges the two Parties make reference to zones under their respective jurisdictions in connection with seismic studies reflects the existence of a tacit agreement on the oil concessions line. If account is taken of the two Parties' activity in the disputed area, this very small number of exchanges demonstrates an absence of practice in this regard, rather than its existence.

4.73 Ghana relies first on an exchange of letters dating from 1997, in which, by letter of 31 October, Ghana requested Côte d'Ivoire's Director of Petroleum to grant permission to a vessel to shoot seismic tie lines "in Ivorian waters" with the aid of an accompanying map.[264] Ghana attaches considerable importance to Côte d'Ivoire's response, which granted permission for such activity "in Ivoirian *[sic]* territorial waters near the maritime boundary between Ghana and Côte d'Ivoire" and requested that the data collected be communicated.[265]

4.74 However, the words used in the request and in the response show that there was no agreement on a maritime boundary. Ghana's request makes no mention of any existing boundary and does not refer to its location:

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[262] Letter from the Ministry of Energy of Ghana to Tullow, 19 October 2011, CMCI, vol. IV, Annex 78.

[263] MG, paras 3.71-3.76, paras 5.13-5.17.

[264] MG, para. 3.72.

[265] Paras 3.73-3.74, 5.17. With regard to the legal value of maps, see *infra.*, paras 4.83-4.110.

> "Dana Petroleum Ghana Limited and Seafield Resources (Ghana) LLC, operators in a Petroleum Agreement with the Government of Ghana and the Ghana National Petroleum Corporation (GNPC) are embarking on a seismic data acquisition programme offshore West Tano, Ghana.
>
> […] We wish to seek your permission and authorization on behalf of the above mentioned companies […]."[266]

4.75 Like the other maps on which Ghana relies, the map attached to the letter makes no reference to a boundary and does not include a legend indicating the existence of a boundary; the only indicative information contained refers to Ghana's oil concessions.[267]

4.76 Côte d'Ivoire's response dated 28 November 1993 is even more revealing in respect of the absence of an accepted maritime boundary. It simply refers to areas near the maritime boundary. Although there is no question that a notional boundary exists in a disputed area, the failure by the Parties to mention the existence of an agreement on a boundary or its precise location is particularly significant:

> "By letter dated October 31, 1997, your national petroleum operations company, the GNPC, sought the approval of the authorities of the Republic of Côte d'Ivoire to conduct seismic recordings in Ivorian territorial waters near the maritime boundary between Ghana and Côte d'Ivoire […]".[268]

4.77 The other example cited by Ghana is of the same nature and has similar consequences. Ghana refers to an exchange of letters in 2008, by which on 3 November 2008 Ghana sought permission from the Minister for Mines to conduct a seismic study "in Ivorian waters".[81] Like the preceding and only other Ghanaian request, Ghana fails to mention any maritime boundary existing between the Parties or its location:

> "[…] We therefore wish to seek permission and authorization on behalf of Hess Corporation Ghana Limited for the following: […] allow the seismic vessel to turn in Ivorian waters".[269]

4.78 In its response dated 11 December 2008, the Ivorian Ministry of Mines and Energy authorized the seismic studies "in Ivorian waters":

> "[…] you requested for an authorization from the Minister of Mines and Energy, Côte d'Ivoire to access the Ivorian territorial waters and Ivorian-Ghanaian maritime borders in respect of seismic work […]. I have the pleasure to inform

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[266] MG, vol. VI, Annex 67.

[267] MG, Figure 3.30; MG, vol. II, Annex M60.

[268] MG, vol. VI, Annex 68.

[269] MG, vol. VI, Annex 69.

you that the Minister of Energy and Mines of Côte d'Ivoire has favourably agreed to your request […]".[270]

4.79 Once again Ghana concludes from this that Côte d'Ivoire "unambiguously recognized" the "customary equidistance line",[271] when such a conclusion cannot be drawn at all from the text.

4.80 However, and as in 1997, here too the Ivorian response illustrates the fact that the theoretical maritime boundary which lies somewhere within the disputed area has not yet been delimited, without specifying the precise location of that boundary. All that can be said is that the request to conduct a seismic study relates to a location near the boundary, wherever it may be.

4.81 For the record, as has been mentioned above, ITLOS held in *Bangladesh/Myanmar*, as the ICJ did in *Peru* v. *Chile*, that a similar practice could not constitute a tacit agreement on a maritime boundary.

4.82 These two exchanges of letters confirm precisely what the ICJ has already held in similar cases, namely the appropriate prudence demonstrated by Côte d'Ivoire vis-à-vis Ghana's territorial claims pending a formal delimitation of their maritime boundary, with a view to maintaining good neighbourly relations.

C. Oil concession maps

1. *In law: the limited probative value of maps in delimitation of maritime boundaries*

4.83 Insofar as Ghana relies almost exclusively on oil concession maps to establish the existence of a tacit agreement between the Parties, it is important to consider the probative value that jurisprudence attaches to such maps in the context of maritime boundary delimitation.

4.84 The ICJ has always been reticent to base its analysis on maps when determining maritime boundaries. With regard to the probative value of maps in this context, in the *Frontier Dispute Case (Burkina Faso/Republic of Mali)* the Court set out the following general principle:

> "Whether in frontier delimitations or in international territorial conflicts, maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic

[270] MG, vol. VI, Annex 69.

[271] MG, vol. l, paras 3.75 and 5.17

legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts".[272]

4.85 The Court continued its analysis with the following argument regarding the limited role played by maps in the delimitation of boundaries:

> "Since relatively distant times, judicial decisions have treated maps with a considerable degree of caution: less so in more recent decisions, at least as regards the technical reliability of maps. But even where the guarantees described above are present, maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps. In consequence, except when the maps are in the category of a physical expression of the will of the State, they cannot in themselves alone be treated as evidence of a frontier, since in that event they would form an irrebuttable presumption, tantamount in fact to legal title. The only value they possess is as evidence of an auxiliary or confirmatory kind, and this also means that they cannot be given the character of a rebuttable or *juris tantum* presumption such as to effect a reversal of the onus of proof."[273]

4.86 Although they may be useful in certain cases, maps have been considered at best as subsidiary proof.[274] The Court confirmed this very prudent approach in two recent judgments, as did the Arbitral Tribunal constituted under annex VII of UNCLOS in *Bangladesh v. India*.[275]

4.87 Several examples where this general principle has been applied by international courts and tribunals are relevant to the present case. For instance, in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria*, the Court used certain maps to clarify ambiguities which existed in the wording, but only those annexed to the relevant legal texts.[276] In *Bangladesh* v. *India* the Arbitral Tribunal used the map

[272] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 582, para. 54; see also: *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 666, para. 118; and *Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005*, p. 119, para. 44.

[273] *Frontier Dispute (Burkina Faso/Republic of Mali, Judgment, I.C.J. Reports 1986*, p. 583, para. 56.

[274] V. Prescott and G. Triggs, *International Frontiers and Boundaries: Law, Politics and Geography*, Leiden, 2008, p. 203, CMCI, vol. V, Annex 109.

[275] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 588, para. 66; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 661, para. 100; *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014,* para. 184.

[276] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening*, Judgment, *I.C.J. Reports 2002*, p. 345, para. 58, and p. 383, para. 144.

drawn up by Sir Cyril Radcliffe attached to the decision of the Radcliffe Commission in 1947 in the same way.[277]

4.88 In the *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan*, the Court considered as irrelevant maps produced by Indonesia showing the location of possible future oil licences.[278] The Court also disregarded the maps produced in the same case by Malaysia, stating that "each of these maps was produced for specific purposes and it is therefore unable to draw from those maps any clear and final conclusion as to whether or not the line defined in Article IV of the 1891 Convention extended to the east of Sebatik Island".[279] In addition, the Court pointed out Malaysia's inability to find a legal basis for the lines drawn on the maps produced. It noted that this factor called into question the relevance of the information contained in those maps for the delimitation of the border.[280] In accordance with previous jurisprudence, the Court thus stated that the only maps that could be considered relevant by the Court were those annexed to the agreement concluded by the Parties in 1915, which corroborated the view taken by the Court.[281]

4.89 In the *Case concerning Territorial and Maritime Dispute*, the ICJ denied the probative value of certain maps produced by Colombia in support of its argument concerning the existence of a maritime boundary along the 82nd meridian on the grounds that

> "[t]he Court does not share Colombia's view that its maps, dating back to 1931, which allegedly show the 82nd meridian as the boundary dividing the maritime spaces between Nicaragua and Colombia, demonstrate that both Parties believed that the Treaty and Protocol had effected a general delimitation of their maritime boundary. An examination of these maps indicates that the dividing lines on them are drawn in such a way along the 82nd meridian between the San Andrés Archipelago and Nicaragua that they could be read either as identifying a general maritime delimitation between the two States or as only a limit between the archipelagos. Given the ambiguous nature of the dividing lines and the fact that these maps contain no explanatory legend, they cannot be deemed to prove that both Colombia and Nicaragua believed that the Treaty and Protocol had effected a general delimitation of their maritime spaces. Nicaragua's failure to protest the maps does not therefore imply an acceptance of the 82nd meridian as the maritime boundary".[282]

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[277] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014,* para. 184.

[278] *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 667-668, para. 90.

[279] *Ibid.*

[280] *Ibid.*

[281] *Ibid.*, pp. 661-662, para. 72, and p. 668, para. 91.

[282] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007,* p. 868, para. 118.

4.90 It does not really seem surprising that international courts and tribunals have been more ready to take into account maps annexed to treaties or judicial decisions, as such maps are the most manifest reflection of the agreement between the Parties.[283] In *Peru v. Chile*, Chile also relied on maps and illustrations, some taken from Government-approved educational works and others published by different Ministries for specific purposes, in order to demonstrate the existence of a tacit agreement.[284] However, the Court did not accept their relevance for determining the existence and the scope of a tacit agreement.

4.91 The low importance attached to maps by courts and tribunals is even more evident in cases where one party claims that a boundary has been established by a tacit agreement. In these situations such maps could provide support for proof of agreement between the Parties. In cases of this kind, use of unclear, or indeed ambiguous, maps cannot satisfy the high standard developed by jurisprudence in relation to tacit agreement.

2. The maps produced by Ghana do not demonstrate the existence of an agreement on delimitation of the maritime boundary between Côte d'Ivoire and Ghana.

4.92 Throughout Chapter 3, Section 1, of its Memorial, Ghana accumulates references to maps of the oil concessions of the Parties. Each of the maps reproduced by Ghana in its Memorial will be examined.

4.93 Ghana claims that even before independence, the oil practice of the colonial powers followed a "customary equidistance line". However, the evidence in support of this position is limited, to say the least. It amounts to two illegible concession maps, which were, moreover, published in a private publication, the Bulletin of the American Association of Petroleum Geologists.[285] The maps themselves do not contain any useful information on the position of the boundary, its coordinates, its location or its nature. Furthermore, the maps are inaccurate insofar as they show the eastern limit of the 1957 Ivorian block when it was undefined; the instrument establishing that block did not include any maps and simply stated that the block was limited to the east by "the limit of the territorial waters of Côte d'Ivoire and the Gold Coast",[286] without giving the location of that limit.

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[283] V. Prescott and G. Triggs, *International Frontiers and Boundaries: Law, Politics and Geography*, Leiden, 2008, p. 207-208, CMCI, vol. V, Annex 109.

[284] ICJ, *Maritime Dispute (Peru* v. *Chile),* Counter-Memorial of the Government of Chile, 9 March 2010, vol. l, p. 141, see also p. 174 *et seq*.

[285] MG, vol. l, para. 3.9, Figure 3.1, and para. 3.10, Figure 3.2.

[286] Decree granting the Société africaine des pétroles a type "A" general exploration permit in Côte d'Ivoire for mineral substances in the first category, 29 July 1957, CMCI, vol. IV, Annex 57.

4.94 After the concession granted to Gulf Oil by the British colonial power was abandoned in 1963, no oil activity was carried out by Ghana until 1968, when it divided its maritime area into 22 oil blocks.[287] Two sketch maps of these blocks are presented by Ghana. In its view, they show "that Ghana's most western concessions were bounded by the equidistance line, and that the equidistance boundary itself began to extend seaward, beyond the concession limits".[288]

4.95 However, like all the cartographic material presented by Ghana, these maps do not constitute relevant proof. No reference is made to any maritime boundary. In addition, most of the maps mentioned by Ghana were drawn up by Ghana or by oil companies operating under its control. They are exclusively concession maps and not official charts representing any maritime boundary. Figure 3.4 does contain a box showing a smaller-scale map of the region, presumably to place the larger-scale concession map in a geopolitical context. That map illustrates the boundaries accepted by the Parties. However, they are exclusively land boundaries. No boundary line is shown in the maritime area.

4.96 It is equally significant that Ghana does not produce any documents issued by Côte d'Ivoire to demonstrate the existence of a maritime boundary. It is therefore difficult to understand how Ghana can seriously claim that there was any practice before the time of independence and then in the following decade. If any practice does exist, it is non-acceptance of any maritime boundary between the Parties.

4.97 Ghana is nevertheless quick to claim that the practice in the 1970s "sustained and reaffirmed [the] recognition of the customary equidistance boundary".[289]

4.98 Ghana asserts that the map included in Côte d'Ivoire's 1975 standard concession contract also states that

> "the limit of the eastern-most concession is the customary equidistance boundary. Moreover, the map shows the boundary with Ghana starting on land and continuing out to sea, extended beyond the eastern limit of the concession along the same azimuth by means of a line indicated by two dots and a dash, a common symbol for an international boundary."[290]

4.99 Like the preceding sketch maps, Figure 3.6 does not contain any reference to a maritime boundary or indicate Ghanaian or Ivorian maritime jurisdiction. The countries' names are mentioned only on land. It is clear that the sole purpose of these maps is to delimit oil blocks and that they were not drawn up in order to establish an

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[287] MG, vol. l, para. 3.12.

[288] MG, vol. l, para. 3.14, Figures 3.3 and 3.4.

[289] MG, vol. l, para. 3.17.

[290] MG, vol. l, para. 3.25.

international maritime boundary. As regards the symbols shown on the maps, as Côte d'Ivoire explained in the provisional measures phase, they are not symbols commonly used to represent an international boundary and the importance which Ghana insists on giving to a line formed by two short dashes and one long dash certainly does not constitute proof that a maritime boundary is shown.

4.100 Ghana then refers to a 1976 map published by the Ivorian Ministry of Economy and Finances,[291] which is similar to the sketch maps mentioned above. Ghana claims that the legend on this sketch map indicates that the dashed line drawn on the map constitutes the boundary. However, the map shows only the limits of the concessions and not a recognized maritime boundary. The map does not contain the information described by Ghana.

4.101 In the case of the next sketch map presented by Ghana, a map of oil concessions published by PETROCI in 1983 (which is labelled "Côte d'Ivoire Petroleum Permits and Well Locations"), Ghana stresses that this map, unlike the others, makes reference to the "*limite nominale*" ["nominal limit"], which extends beyond the concessions shown on the map[93] and suggests that that reference confirms the existence of a maritime boundary.

4.102 That map does not support Ghana's argument.[292] The Parties actually agree on one thing: the nominal limit is indicative. A limit is classified as nominal where it exists in name but not in fact. The term "nominal limit" is not covered by the international law on boundaries. The reference to a "nominal limit" shows that a boundary has not been established and must still be established. Furthermore, the nominal limit is included on the map only for the purpose of identifying the position of certain "well locations" for the exploitation of oil concessions. To conclude that the reference to a nominal limit represents proof of an established maritime boundary would effectively distort the ordinary meaning of the words and modify them to suit Ghana's argument regarding the existence of a "customary equidistance boundary".

4.103 This reference to a "nominal limit" has similarities with the claim made by Honduras in the *Case Concerning Territorial and Maritime Dispute* for recognition of a "traditionally accepted line" which has not "been legally delimited". The Court held that the boundary had never been precisely and legally accepted and concluded that no tacit agreement existed.[293]

4.104 In its Memorial Ghana attempts to attribute to the State of Côte d'Ivoire maps which were actually produced by PETROCI. In doing so, Ghana ignores the fact that

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[291] MG, vol. l, Figure 3.7.

[292] MG, vol. l, para. 3.35.

[293] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 736-737, para. 257-258.

PETROCI is a private-law body governed by the laws applicable to private companies in Côte d'Ivoire.[294] PETROCI cannot under any circumstances represent or enter into commitments for the Ivorian Government, and in particular does not have any capacity to enter into commitments for Côte d'Ivoire in respect of delimitation of its land and maritime boundaries. PETROCI's maps cannot support Ghana's position.

4.105 Therefore, none of the maps presented by Ghana, nor any of the legends on those maps, mentions a legally accepted maritime boundary. The Ivorian maps show the positions of oil blocks and do not either mention or provide any evidence of the existence of a boundary. They have no purpose other than to facilitate oil activities and do not reflect any acceptance of a maritime boundary.

4.106 The illustrations and legends from Ghana's own maps[295] likewise do not include any reference to a maritime boundary. The only information provided concerns the position of oil blocks. They are certainly not official marine maps illustrating any maritime boundary. None of the maps produced by Ghana in these proceedings was published by the Ivorian or Ghanaian Government authorities responsible for cartography, namely the Centre for Cartography and Remote Sensing (CCT) in Côte d'Ivoire[296] and the Hydrography and Navigation Services Division of the Ghana Maritime Authority. It is surprising that to support its case Ghana relies on maps, none of which makes reference to an accepted and delimited maritime boundary.

4.107 For example, Ghana relies on the map included in the oil contract concluded with Phillips on 3 April 1978.[297] Ghana asserts that this map "expressly recognized the western limits of the concession area as the maritime boundary".[298] That is not the case. The map includes only a marking consisting of dots and dashes, without any legend indicating their meaning (Côte d'Ivoire has already put forward its point of view regarding the meaning that Ghana gives to certain cartographic symbols[299]) and without any mention of a boundary.

4.108 Ghana takes up more or less the same argument when it examines a map published this time by Phillips, showing its concessions in Ivorian and Ghanaian maritime areas. The map is identical to the preceding one insofar as its constituent elements have no probative value.[300] These maps once again highlight the weakness of Ghana's arguments.

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[294] MG, vol. IV, Annex 29, articles 3-4.

[295] MG, vol. l, Figures 3.9-3.14.

[296] Under the aegis of the National Office of Technical Studies and Development (BNEDT).

[297] MG, vol. I, para. 3.43.

[298] MG, vol. I, para. 3.43, Figure 3.10.

[299] See *supra.*, para. 4.99.

[300] MG, vol. I, Figure 3.11.

4.109 Ghana repeats the same argument when considering a long list of oil concession maps.[301] On the basis of the volume of maps produced, the following very simple finding can be made: none of the maps produced mentions an international maritime boundary or an agreement on such a boundary.

4.110 As was stated above, the International Court of Justice refuses to accord any probative value to maps which do not reflect a clear and unequivocal agreement between the Parties on a maritime boundary. It would be contrary to maritime delimitation law and to common sense in general to take into consideration the ambiguous maps produced by Ghana to characterize the agreement between the Parties on their maritime boundary.

D. Submissions to the Commission on the Limits of the Continental Shelf

4.111 Ghana refers several times in its Memorial to Côte d'Ivoire's submission to the Commission on the Limits of the Continental Shelf, asserting that the submission can be regarded in some way as recognition of a tacit agreement on the "customary equidistance line".[302] In particular, according to Ghana, Côte d'Ivoire's submission "asserted a claim beyond 200 miles *only to the west* of an equidistance boundary with Ghana" and Ghana's submission "asserted a claim only to the east of the equidistance boundary".[303] According to Ghana, this shows recognition by Côte d'Ivoire in an official statement "that show[s] clearly its acceptance of the customary equidistance boundary".[304] Ghana states:

> "both Parties appear to have accepted that the customary equidistance line that defines their boundary through the first 200 M of the continental shelf extends beyond 200 M, to the full extent of their maritime entitlements, including the outer continental shelf".[305]

4.112 As is explained below, Côte d'Ivoire's submission to the CLCS certainly does not constitute such acceptance. Furthermore, Ghana's own submission to the CLCS in 2009 and its amendment in 2013 clearly show that there is no agreement on the maritime boundary between the two countries.

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[301] MG, vol. I, Figures 3.12-3.30.

[302] MG, vol. l, paras 3.78, 6.13.

[303] MG, vol. l, para. 3.78.

[304] MG, vol. l, para. 3.81.

[305] MG, vol. l, para. 6.13.

4.113 The submissions by Côte d'Ivoire and Ghana to the CLCS were made pursuant to article 76, paragraph 8, of UNCLOS, article 8 of Annex II thereto and the rules of the CLCS. Article 76, paragraph 10, of UNCLOS reads as follows:

> "The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts."

4.114 For coastal States for which UNCLOS entered into force before 13 May 1999, the ten-year time period for making their submission for the extension of the continental shelf is taken to have expired on 13 May 2009.[306] In light of that deadline, at a meeting of experts held between certain member States of ECOWAS on the extension of the outer limits of the continental shelf,[307] Côte d'Ivoire, Ghana, Benin, Nigeria and Togo agreed, in a spirit of cooperation, not to make objections to their respective submissions for the extension of the outer limits of their continental shelf and that

> "[i]ssues of the limit of adjacent/opposite boundaries shall continue to be discussed in a spirit of cooperation to arrive at a definite delimitation even after the presentation of the preliminary information/submission".[308]

4.115 In light of that decision Ghana and Côte d'Ivoire made their respective submissions to the CLCS, both prepared with assistance from the same expert, Dr Karl Hinz.

4.116 On 8 May 2009, pursuant to article 76, paragraph 8, of UNCLOS, Côte d'Ivoire submitted to the CLCS information on the limits of the continental shelf in its eastern continental shelf region.[309]

4.117 The submission included the following declaration:

> "Côte d'Ivoire has overlapping maritime claims with adjacent States in the region, but has not signed any maritime boundary delimitation agreements with any of its neighbouring States to date".[310]

4.118 The submission stated, among other things, that its submission of information was without prejudice to delimitation of the maritime boundaries with the Republics of

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[306] Eleventh Meeting of States Parties to the United Nations Convention on the Law of the Sea, 14-18 May 2001, document SPLOS/72, 29 May 2001, CMCI, vol. VI, Annex 156.

[307] Minutes of the Experts Meeting of ECOWAS member States on the outer limits of the continental shelf, Accra, 25-26 February 2009, CMCI, vol. III, Annex 31.

[308] *Ibid.*

[309] Submission by the Government of Côte d'Ivoire for the Establishment of the Outer limits of the Continental Shelf of Côte d'Ivoire pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, Executive summary, 8 May 2009, para. 4.1, CMCI, vol. VI, Annex 175.

[310] *Ibid.*, para. 4.1.

Ghana, Benin, Nigeria and Togo.[311] It also declared that the consideration of the Ivorian submission "will not prejudice matters relating to the determination of boundaries between Côte d'Ivoire and any other State(s)".[312]

4.119 In a statement on the progress of work in the Commission on 1 October 2009, the Chairman of the CLCS stated that

> "the submission made by Côte d'Ivoire is without prejudice to the delimitation of boundaries with Benin, Ghana, Nigeria and Togo, and that the note verbale from Ghana reflected the above agreement, by indicating that the submission made by Côte d'Ivoire did not prejudice future delimitation of maritime boundaries".[313]

4.120 By a note dated 28 July 2009,[314] with reference to the agreement concluded by the members of ECOWAS, Ghana stated that it had

> "no objection to the submission made by Côte d'Ivoire which shall be without prejudice to the final delimitation of the boundary between Ghana and Côte d'Ivoire, and that the actions and recommendations of the Commission on the Limits of the Continental Shelf shall not prejudice matters relating the future final delimitation of the continental shelf between Côte d'Ivoire and Ghana, adjacent coastal states".

4.121 On 24 March 2016 Côte d'Ivoire lodged an amendment to that submission, providing further data and information concerning the outer limits of its continental shelf.

4.122 Ghana lodged information on the limits of the continental shelf with the CLCS on 28 April 2009.[315] Ghana's submission stated:

> "Ghana has overlapping maritime claims with adjacent States in the region, but has not signed any maritime boundary delimitation agreements with any of its neighbouring States to date."[316]
>
> "This submission of information to the Commission on the Limits of the Continental Shelf of Ghana is without prejudice to delimitation of the maritime

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[311] *Ibid.*, para. 5.2.

[312] *Ibid.*, para. 5.4.

[313] Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work, document CLCS/64, 1 October 2009, p. 25, para. 117, CMCI, vol. VI, Annex 178.

[314] Commission on the Limits of the Continental Shelf, Communications received with regard to the submission made by Côte d'Ivoire to the Commission on the Limits of the Continental Shelf, Ghana, 28 July 2009, CMCI, vol. VI, Annex 177.

[315] Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, Executive Summary, 28 April 2009, MG, Annex 74. On 25 August 2009, Ghana submitted an addendum to its submission following the acquisition of additional seismic and bathymetric data.

[316] *Ibid.*, p. 4, para. 4.1.

boundaries with the Republic of Togo, the Republic of Benin, the Federal Republic of Nigeria, and the Republic of Côte d'Ivoire".[317]

4.123 In June 2013 Ghana provided additional data and information to the subcommission responsible for considering its submission and on 12 September 2013 Ghana communicated a Revised Executive Summary to the CLCS.[318] That document contained the same statements as those mentioned above.

4.124 On 10 March 2014, the subcommission responsible for considering Ghana's submission made its recommendations, which were accepted by Ghana. The subcommission refused to accept point OL-GHA-9 for the following reasons:

> "In the absence of an international continental shelf boundary agreement between Ghana and Côte d'Ivoire, the Subcommission does not make recommendations with respect to the outer limit fixed point OL-GHA-9 as originally submitted by Ghana on 25 August 2009".[319]

4.125 The recommendations were adopted by the CLCS on 5 September 2014.[320]

4.126 Ghana's argument that Côte d'Ivoire's 2009 submission constitutes an official statement "that show[s] clearly its acceptance of the customary equidistance boundary"[321] is therefore unfounded. There is no requirement to include in a single submission all the data and information concerning the outer limits of a State's continental shelf. Amendments or revisions may be submitted subsequently. Just like Ghana's submission in 2009, Côte d'Ivoire's submission was prepared in haste, by the same person, in order to meet the deadline; it certainly does not state that it constitutes a full presentation, as Ghana claims in its Memorial. In fact, just like Ghana, Côte d'Ivoire recently made a revised submission to the CLCS.

4.127 In any event, it is clear on reading the submission lodged by Côte d'Ivoire in 2009 that there is no agreement on the maritime boundary between Côte d'Ivoire and Ghana. The submission expressly stated that "Côte d'Ivoire has overlapping maritime claims with adjacent States in the region, but has not signed any maritime boundary delimitation agreements with any of its neighbouring States to date".[322] This position

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[317] *Ibid.*, p. 5, para. 5.3.

[318] Revised Executive Summary of the Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana, Accra, 21 August 2013, MG, Annex 78.

[319] Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Ghana on 28 April 2009, p. 13, para. 60, MG, Annex 79.

[320] Progress of work in the Commission on the Limits of the Continental Shelf, 24 September 2014, document CLCS/85, MG, Annex 80.

[321] MG, vol. l, para. 3.81.

[322] Submission by the Government of Côte d'Ivoire for the Establishment of the Outer limits of the Continental Shelf of Côte d'Ivoire pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, Executive summary, 8 May 2009, para. 4.1, CMCI, vol. VI, Annex 175.

was reiterated by Ghana in its note of 28 July 2009, which stated that the submissions of the Parties were "without prejudice to the final delimitation of the boundary between Ghana and Côte d'Ivoire".[323]

4.128 The absence of an agreed maritime boundary is also clear in Ghana's submission and in the amendment to that submission (2009 and 2013), which stated that "Ghana has overlapping claims with adjacent States in the region, but has not signed any maritime boundary delimitation agreements with any of its neighbouring States to date".[324]

Conclusion

4.129 As has been demonstrated in this chapter, Ghana is not able to prove the existence of a tacit agreement on delimitation between the Parties; its position is unfounded and does not satisfy the criteria laid down by jurisprudence. The "proof" provided by Ghana does not demonstrate what it claims and, specifically, the existence of a tacit agreement.

4.130 It is clear from the jurisprudence that in the single case where the existence of a tacit agreement was accepted, it was not based on unconvincing evidence relating to practice, but rather on the explicit recognition of the Parties concerned *in writing*. In *Peru* v. *Chile* the 1954 agreement on fishing zones contained express acknowledgement of the existence of a tacit agreement.[325] As the Court stated, "[t]he 1954 Agreement is decisive in this respect. That Agreement cements the tacit agreement".[326] If the Parties had not signed an agreement confirming the existence of a maritime boundary, the Court would not have recognized the existence of a tacit agreement.

4.131 The Court has held that only a written agreement mentioning the express and undeniable recognition of a boundary could satisfy the standard that "[e]vidence of a tacit legal agreement must be compelling"[327] and that other evidence is of no use in this regard.

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[323] Commission on the Limits of the Continental Shelf, Communications received with regard to the submission made by Côte d'Ivoire to the Commission on the Limits of the Continental Shelf, Ghana, 28 July 2009, CMCI, vol. VI, Annex 177.

[324] Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, Executive Summary, 28 April 2009, para. 4.1, MG, Annex 74; Revised Executive Summary of the Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana, Accra, 21 August 2013, p. 4, MG, Annex 78.

[325] See *supra.*, para. 3.27.

[326] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 38, para. 91.

[327] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, Judgment, I.C.J. Reports 2007*, p. 735, para. 253.

4.132 In light of these considerations, no tacit agreement exists in the present case.

CHAPTER 5

ABSENCE OF ESTOPPEL

5.1 According to Ghana, "by its acts, Côte d'Ivoire is estopped from objecting to a boundary based on equidistance, and on the customary equidistance line as the maritime boundary".[328] In making this assertion, Ghana is attempting to employ the uncertain concept of estoppel as a way to circumvent the well-established rules applicable to tacit agreements, requiring compelling evidence, which is lacking in this case (**I.**). Moreover, while recognizing that this doctrine may be pleaded, the necessary conditions for its application are in any event not met in the present case (**II.**).

I. The concept of estoppel in the decisions of international courts and tribunals

5.2 It is clear from the outset that neither the International Court of Justice nor the International Tribunal for the Law of the Sea has based any decision on the notion of estoppel, even though estoppel was been invoked on several occasions by Parties in support of their position.[329]

5.3 If estoppel is rarely applied by judicial bodies it is because it tends to be confused conceptually with the notion of a State's international commitment. That commitment may be based on (express or tacit) agreement or may be unilateral, but nothing is added to it by recourse to estoppel. The award made in the *Chagos Marine Protected Area Arbitration*, which applied the concept of estoppel in very specific circumstances, is based on this conceptual amalgam: the Tribunal opted to take estoppel into account when it concluded that "Mauritius was entitled to rely upon the representations made by the United Kingdom which were consistently reiterated after independence in terms which were capable of suggesting *a legally binding commitment* and *which were clearly understood in such a way*".[330] It is difficult to see what this latter clarification adds to the preceding one – a legally binding commitment is … legally binding however it is represented by the party to which it is addressed. The subjective character of this criterion of "representation" makes it particularly difficult to handle.

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[328] MG, vol. l, para. 5.55.

[329] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 26-27, paras 30-33; *Barcelona Traction, Light and Power Company, Limited, Preliminary Objections, Judgment, I.C.J. Reports 1964*, p. 25; *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, pp. 307-308; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS,* p. 45, para. 125.

[330] *Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom), Award of 18 March 2015,* para. 447, emphasis added.

5.4 As a general rule, estoppel is invoked to conceal a party's inability to prove the existence of a tacit agreement with the other party and thus to compensate for failure to conclude an agreement-based process. That was the case in *North Sea Continental Shelf*, in which Denmark and the Netherlands invoked estoppel as an alternative to ratification of the 1958 Geneva Convention on the Continental Shelf, which Germany had not carried out.[331] Similarly, in *Cameroon* v. *Nigeria*, having failed to show that the Parties had tacitly agreed on using methods of dispute settlement excluding recourse to the ICJ, Nigeria claimed in the alternative "that by its conduct Cameroon is estopped from turning to the Court".[332] In addition, in the absence of a tacit or *de facto* agreement establishing the existence of a maritime delimitation, Bangladesh attempted (in vain) to invoke estoppel in its dispute concerning the *Bay of Bengal*.[333]

5.5 In Ghana's Memorial, the argument of estoppel also appears as a substitute for tacit agreement (the weakness of which has not escaped its notice). It is difficult to distinguish how the legal effects which Ghana attributes to estoppel are different from those of tacit agreement (whose existence has not been established and cannot be established). The two arguments pursue the same purpose, which is to impose on Côte d'Ivoire the alleged "line tacitly agreed by the Parties" (or "customary equidistance boundary"):

> "Section III demonstrates that Côte d'Ivoire is now estopped from opposing the customary equidistance boundary in this arbitration because of its consistent representations and conduct recognizing it, and Ghana's reliance on those long-standing representations and conduct."[334]

5.6 It is true that in principle a State could have acquired sovereignty or sovereign rights over the disputed area following acquiescence by another State. Nevertheless it is important to highlight specifically the meeting of wills of the two States, whether reflected in positive acts or in an expressive silence. International law requires that proof of this meeting of wills be established beyond doubt:

> "Under certain circumstances, sovereignty over territory might pass as a result of the failure of the State which has sovereignty to respond to conduct *à titre de souverain* of the other State or, as Judge Huber put it in the *Island of Palmas* case, to concrete manifestations of the display of territorial sovereignty by the other State (*Island of Palmas Case (Netherlands/United States of America)*, Award of 4 April 1928, RIAA, Vol. II, (1949) p. 839). Such manifestations of the display of

[331] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 26-27, paras 30-33.

[332] *Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 275, para. 48. See also, to the same effect, *The Republic of the Philippines* v. *The People's Republic of China, Jurisdiction and Admissibility*, *Award of 29 October 2015*, paras 250-251.

[333] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012,* paras 119-125.

[334] MG, para. 5.3; see also *ibid.*, paras 1.37 and 5.54.

sovereignty may call for a response if they are not to be opposable to the State in question. The absence of reaction may well amount to acquiescence. The concept of acquiescence

> 'is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent' (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 305, para. 130).

That is to say, silence may also speak, but only if the conduct of the other State calls for a response."[335]

5.7 Ghana's arguments show that its recourse to estoppel is an admission that it is unable to establish the existence of a tacit agreement on delimitation of its maritime boundary with Côte d'Ivoire. Ghana knows that it bears the burden of proof as regards the existence of the agreement claimed by it; it also knows that the proof must be unequivocal; in addition, it is fully aware that it has no case. Facing the predicament of a lack of objective proof, Ghana falls back on the uncertain notion of estoppel, which is confined to requiring the highly subjective proof of its perception of the attitude taken by Côte d'Ivoire. Ghana cannot avoid establishing proof of a tacit agreement by invoking estoppel in the vain hope of bypassing the well-established jurisprudence regarding tacit agreements.

II. The conditions for estoppel are not met in the present case

5.8 Moreover, even if it were recognized that estoppel is accepted in international law and may be invoked by Ghana in the present case, the *cumulative* conditions necessary for its recognition, as described by Ghana itself in its Memorial, are evidently not met:

> "5.57 Three elements are thus required for a situation of estoppel to exist: there must be 1) conduct by one State creating the appearance of a particular situation; 2) good faith reliance by the other State on such conduct; and 3) a resulting detriment to the latter State."[336]

[335] *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008*, p. 50, paras 120-121.

[336] MG, para. 5.57. These conditions were also identified by ITLOS in its judgment of 14 March 2012, *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012*, para. 124. It should be noted that the Arbitral Tribunal in *Mauritius* v. *United Kingdom* identified four criteria: "438. Further to this jurisprudence, estoppel may be invoked where

(a) a State has made clear and consistent representations, by word, conduct, or silence;

(b) such representations were made through an agent authorized to speak for the State with respect to the matter in question;

(c) the State invoking estoppel was induced by such representations to act to its detriment, to suffer a prejudice, or to convey a benefit upon the representing State; and

A. By its conduct Côte d'Ivoire has not created the appearance of a particular situation

1. No appearance of acquiescence to any boundary line

5.9 The first condition in considering the possibility of estoppel is the existence of clear and consistent conduct on the part of the State against which it is invoked. That conduct must demonstrate unequivocally a commitment or characterization made by its author regarding a particular legal situation.

5.10 In *Gulf of Maine*, the Chamber of the ICJ held that

> "the concepts of acquiescence and estoppel, irrespective of the status accorded to them by international law, both follow from the fundamental principles of good faith and equity. They are, however, based on different legal reasoning, since *acquiescence is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent, while estoppel is linked to the idea of preclusion*. […] Without engaging at this point on a theoretical debate, which would exceed the bounds of its present concerns, the Chamber merely notes that, since the same facts are relevant to both acquiescence and estoppel, except as regards the existence of detriment, it is able to take the two concepts into consideration as different aspects of one and the same institution."[337]

5.11 This parallel must be drawn even though acquiescence and estoppel are not located at the same "moment" of reasoning: acquiescence occurs at an earlier stage and is the manifestation of the State's agreement or consent to a fact or a situation; estoppel takes place at a later stage. It is the *consequence* of acquiescence: in light of the circumstances, the State which has acquiesced cannot retract its position. Thus, to prove an estoppel, it is first necessary to prove acquiescence (or recognition of a *de facto* or *de jure* situation).

5.12 Ghana certainly has not proved that Côte d'Ivoire has recognized the existence of any maritime boundary based on oil concessions. On the contrary, as is clear from Chapter 4, Côte d'Ivoire has expressed its firm opposition to the so-called "customary equidistance boundary" being regarded as a boundary. Côte d'Ivoire will not repeat the arguments put forward in the preceding chapter:[338] whether it be for the purposes of the case made in the chapter concerning the tacit agreement or for the purposes of estoppel, the same facts demonstrate that Côte d'Ivoire has not acquiesced to a

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(d) such reliance was legitimate, as the representation was one on which that State was entitled to rely." (*Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom)*, *Award of 18 March 2015*, para. 438).

[337] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 246, para. 130.

[338] See *supra.*, Chapter 4.

boundary based on oil practice. Consequently, preclusion cannot be raised as a plea against Côte d'Ivoire.

2. No appearance of acquiescence to the Ghanaian activities in the disputed area

5.13 Since Ghana claims, moreover, that it relied on Côte d'Ivoire's conduct in investing and conducting activities in the disputed area,[339] it should be pointed out that that allegation is entirely unfounded. Not only has Côte d'Ivoire never acquiesced to a boundary based on oil concessions but, in addition, it has proposed a different boundary since 1988 and has regularly objected to the activities conducted by Ghana in the disputed area. It should be noted in this regard that between 1989 and 2009 Ghana carried out three drilling operations in the disputed area and that the wells drilled in 1989, 1999 and 2002 were quickly abandoned, [340] although they were still a cause for concern for Côte d'Ivoire.

5.14 As the Ghanaian authorities did not see reason to inform the Ivorian authorities of the works conducted in 1989, Côte d'Ivoire was uncertain as to the progress of the activities in the disputed area. It became all the more necessary to clarify the situation when Ghana proposed to Côte d'Ivoire "a meeting of Ghanaian and Ivorian experts to discuss the question of delimitation of boundaries and exchange of seismic data".[341]

5.15 In preparation for those negotiations, Côte d'Ivoire reactivated the National Commission on Boundary Redemarcation, which recommended that the Ministry of Foreign Affairs "send the Government of Ghana a note verbale, in reply to the request from Ghana's Secretary of Energy, stating that […] no operations or work that might be detrimental to Côte d'Ivoire's interests in the maritime zone, the status of which had yet to be established, should be carried out".[342] In response to that recommendation, on 1 April 1992 the Ivorian Minister for Foreign Affairs instructed the Ambassador of Côte d'Ivoire in Accra by telegram to communicate to the Ghanaian authorities the request to cease all potential activity in the area to be delimited:

> "The Ivorian Government […] therefore hopes that, pending the meeting of the Joint Commission on Boundary Redemarcation, the two countries will refrain

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[339] MG, vol. I, p. 135, para. 5.62.

[340] See *supra.*, para. 2.91.

[341] Ghanaian fax N° 233-21-668 262 from the Office of the Secretary for Energy, mentioned in the telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, vol. III, Annex 16.

[342] Minutes of the meetings of the National Commission on Redemarcation of Boundaries, 12 and 19 March 1992, CMCI, vol. III, Annex 13. This recommendation is mentioned in the Summary report on the work of the Commission on Redemarcation of Maritime Boundaries between Ghana and Côte d'Ivoire, 1 September 1992, p. 3, CMCI, vol. III, Annex 19.

> from any drilling operations or works in the area whose status is still to be determined."[343]

5.16 Alongside this official message to be sent to the Ghanaian authorities, the Minister asked the Ambassador to "find out discretely whether the Ghanaians have undertaken works or exploration in the maritime boundary area".[344] This shows that, without even knowing the scale (which was, after all, minimal at the time) of the drilling operations carried out by Ghana in the area to be delimited, Côte d'Ivoire had demonstrated its fundamental opposition to the drilling operations.

5.17 Confirming that this message had been sent to the Ghanaian authorities, in his acknowledgment of receipt the Ambassador of Côte d'Ivoire in Accra stressed "the critical importance of the issues to be discussed" in bilateral meetings with Ghana on account of "the many ongoing drilling projects in the maritime boundary zone". [345] The results of the investigations undertaken by the Ambassador of Côte d'Ivoire in Accra raised concerns in Abidjan, as is shown by the minutes of the meeting of the Ivorian National Commission on Boundary Redemarcation of 15 July 1992:

> "in light of the information, provided by the Ministry of Mines and Energy and confirmed by the Embassy of Côte d'Ivoire in Ghana, that Ghana had begun to drill oil wells in the Tano river basin".[346]

5.18 The information is communicated and supplemented by the summary report of the same Commission, dated 1 September 1992, which notes that "in June and July 1989, the ARCO-Ghana corporation began drilling exploitation wells at coordinates virtually identical to the line that Côte d'Ivoire had proposed as the maritime boundary".[347]

5.19 Côte d'Ivoire's wish for Ghana to suspend drilling activities was reiterated at a meeting of the Ivorian Council of Ministers on 2 September 1992, during which it was decided to "[s]end[ing] a government mission to Ghana to notify the Ghanaian authorities of the need to suspend drilling operations".[348] Before that Government mission was dispatched, a technical team was set up to monitor the boundary area so

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[343] Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, vol. III, Annex 16.

[344] *Ibid.*

[345] Telegram from the Ambassador of Côte d'Ivoire in Accra to the Ivorian Minister for Foreign Affairs, 30 April 1992, CMCI, vol. III, Annex 17.

[346] Minutes of the meeting of the National Commission on Redemarcation, AP/RB/AF.1., 15 July 1992, CMCI, vol. III, Annex 18; see also Reports on surface and aerial survey missions, 11 and 16 September 1992, CMCI, vol. III, Annex 24.

[347] Summary report on the work of the Commission on Redemarcation of Maritime Boundaries between Ghana and Côte d'Ivoire, 1 September 1992, CMCI, vol. III, Annex 19.

[348] Minutes of the meeting on delimitation of the maritime and land boundary between Côte d'Ivoire and Ghana 2 September 1992, CMCI, vol. III, Annex 20.

as to "provid[e] Côte d'Ivoire with irrefutable evidence against Ghana".[349] However, from the aerial shots taken by that mission "[t]here was no sign of surface oil-related activity within the 250 km^2 (25,000 hectare) area overflown and photographed".[350] There is nothing surprising about this finding as Ghana did not have any activity in the geographical boundary area in 1992 and the wells drilled in 1989 had been abandoned and were not visible.

5.20 Over the subsequent period, oil activities in the disputed area were reduced.[351] Things changed in May 2008 when the Ambassador of Côte d'Ivoire in Accra alerted the Ivorian authorities to the fact that "[f]or some time, the Ghanaian press has been reporting the discovery of oil deposits" and "exploitation of these deposits had begun, in some cases in late 2008 and in others in 2009 or 2010". He added that "[i]n order to avoid any conflict between the two countries on the issue of oil exploitation, it would be highly desirable for the recently-established Joint Ivoiro-Ghanaian Commission on the Demarcation of the Maritime Border between Côte d'Ivoire and Ghana to consider this matter as well".[352]

5.21 Ghana actually resumed its activities in the field in 2009 and intensified them further from 2011. As early as the second meeting of the Joint Commission, Côte d'Ivoire had reiterated its request for the "suspension by Ghana of all unilateral […] activities until the final determination of the maritime limits between the two countries by means of consensus as requested for by correspondence forwarded to the Ghanaian Government in 1988 and 1992".[353]

5.22 Without responding to that request, Ghana failed to make any representations whatsoever to the oil companies operating under its control. On the contrary, while the Tullow agreement regarding exploration in the disputed area provided for an extension or denunciation period in January 2009,[354] the co-contractors opted to continue their activities despite the objections raised by Côte d'Ivoire.[355] As soon as Côte d'Ivoire became aware of this, by letter of 13 October 2009, the Ambassador of Côte d'Ivoire in Accra wrote to the Ivorian Minister for Foreign Affairs:

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[349] Minutes of the meeting of the National Commission on Boundary Redemarcation relating to the dispatch of an observation and survey mission, 3 September 1992, CMCI, vol. III, Annex 21; see also *supra.*, para. 2.44.

[350] *Ibid.*

[351] According to the information currently available to Côte d'Ivoire, two drilling operations had been conducted there, relatively far apart in time, in 1999 and 2002; see also Status of activities in oil blocks awarded by Ghana in the disputed area, 27 February 2015, CMCI, vol. IV, Annex 83.

[352] Letter from the Ambassador of Côte d'Ivoire in Accra to the Ivorian Minister for Foreign Affairs, 9 May 2008, CMCI, vol. III, Annex 27.

[353] Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, Minutes of the second meeting held in Accra, 26 February 2009, CMCI, vol. III, Annex 32.

[354] Petroleum Agreement between GNPC and Tullow, Sabre and Kosmos in respect of the Deepwater Tano Contract Area, 10 March 2006, CMCI, vol. IV, Annex 72.

[355] See Statement of Tullow, Ghana, PM, vol. III, Annex S-TOL, para. 32.

> "I have the honour to inform you that reports indicate that the Ghanaian authorities have commenced exploitation of the oil deposits discovered on the maritime boundary between Côte d'Ivoire and Ghana.
>
> It should be noted that the second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary […] stipulated 'the suspension by Ghana of all unilateral exploration activities'. If, despite these findings, the reports prove to be accurate, Côte d'Ivoire should draw the attention of the Ghanaian Party to the need to cooperate in handling this matter".[356]

5.23 The subject was also on the agenda at the Commission's fourth meeting on 27 April 2010;[357] Côte d'Ivoire reiterated its request that works be stopped, at the fifth meeting, which was held in Accra on 2 November 2011.[358] The subject was not addressed again directly after that time, both to preserve an atmosphere of goodwill, which was the only way that negotiations would be a success, for which Côte d'Ivoire was striving, and because subsequent meetings focused on the technical aspects of delimitation.[359]

5.24 Accordingly, far from substantiating Ghana's argument of estoppel by omission, the actions of Côte d'Ivoire show that it has always been concerned by the activities undertaken by Ghana (or authorized and encouraged by it) in the disputed area. When those activities were marginal (and often discreet), the protests by Côte d'Ivoire mainly took the form of questions and enquiries, but also requests that activities be suspended.[360] Their urgency increased from 2009.[361] Nevertheless, this harder line, caused by the intensification of Ghana's activities in the disputed area, certainly does not signify a change in attitude on the part of Côte d'Ivoire; it is in line with its consistent conduct in response to Ghana's initiatives.

5.25 Since the first condition necessary for the existence of an estoppel is not met, there is no need to analyse the others. However, Côte d'Ivoire wishes to show, *ex abundante cautela*, that they too are not met.

B. Ghana could not rely in good faith on the conduct of Côte d'Ivoire

[356] Letter no. 564/ACI-GH/EF from the Ambassador of Côte d'Ivoire in Accra to the Ivorian Minister for Foreign Affairs, 13 October 2009, CMCI, vol. III, Annex 33.

[357] Presentation by the Ghanaian Party at the fourth meeting of the Joint Commission, 27 April 2010, CMCI, vol. III, Annex 36.

[358] Minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation [fifth meeting], 2 November 2011, CMCI, vol. III, Annex 40; see also *supra.*, para. 2.95.

[359] See *supra.*, paras 2.75-2.77.

[360] See *supra.*, paras 5.17-5.19.

[361] See also *supra.*, para. 2.71.

5.26 In order to meet the second (cumulative) condition necessary for the existence of an estoppel, the Party invoking it must demonstrate that it relied in good faith on the conduct of the other State. In the present case, the Ghanaian Party claims that:

> "5.62 Based on its understanding that Côte d'Ivoire accepted the customary equidistance line as an international boundary, Ghana engaged in a long-term, capital-intensive offshore exploration and exploitation program based on the expectation that these investments would set a solid and sustainable basis for its economic development".[362]

5.27 According to Ghana, its invasive unilateral activities in the area were conducted in the belief that Côte d'Ivoire did not have any objections. It has just been shown that Côte d'Ivoire's repeated opposition to activities in the maritime area to be delimited means that this claim has no objective basis.[363] However, even more seriously, far from having demonstrated good faith over those years, Ghana sought to create a *fait accompli* which was detrimental to the relations between the Parties in general and to the maritime negotiations in particular. As is clear from the minutes of the meetings of the Côte d'Ivoire-Ghana Joint Commission,[364] and as Côte d'Ivoire has argued above,[365] from the very beginning of the negotiations between the two countries it declared its opposition to Ghana's unilateral activities.

5.28 Ghana does not deny that it was aware of these protests. It quite simply ignored them and gave the go-ahead to drilling operations despite Côte d'Ivoire's requests that it should not proceed with them. In doing so, Ghana opted for the adventurous route of *fait accompli*, the disadvantages of which for Côte d'Ivoire the Order of the Chamber of 25 April 2015 sought to limit. This conduct by Ghana violates the principles established by article 83 of UNCLOS and, as such, incurs its international liability.[366] At this stage of the presentation of arguments, it need only be noted that in view of the bad faith shown by Ghana during the negotiations, it cannot benefit from its unlawful activities by invoking the doctrine of estoppel vis-à-vis Côte d'Ivoire.

5.29 Ghana's attitude during the negotiations is marked by its fundamental intransigence and by procrastination as, at the same time, Ghana stepped up its activities in the disputed area significantly. That attitude is manifestly incompatible with the obligation to negotiate in good faith and "not to jeopardize or hamper the reaching of the final agreement" (article 83, paragraph 3, of UNCLOS).

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[362] MG, vol. l, para. 5.62.

[363] See *supra.*, paras 5.13-5.24.

[364] Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on Delimitation of the Maritime Boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, vol. III, Annex 30. See also Presentation by the Ghanaian Party at the fourth meeting of the Joint Commission, 27 April 2010, CMCI, vol. III, Annex 36.

[365] See *supra.*, paras 5.13-5.23.

[366] See *infra.*, paras 9.40-9.41 and 9.49-9.50.

5.30 Lastly, in order to attempt to create an argument for estoppel, Ghana outlines a very incomplete and specious chronology of events. It describes investments made "over more than five decades";[367] however, the investments in the disputed area were made only from 2008, precisely when the two States entered into an active phase of negotiations during which Ghana was fully informed of the protests raised by Côte d'Ivoire. In any case, as in the past, Côte d'Ivoire expressed its opposition.

5.31 The intensification of activities in the disputed area followed the discovery and confirmation of the commercial viability of the Jubilee field, which was announced publicly in 2007.[368] This field, which has required major investments, is evidently not located in the disputed area, although it is close to that area.[369] However, its discovery whetted the appetites of Ghana and oil companies for exploration in the disputed area itself, which resulted in new oil blocks being awarded; concessions for eight oil blocks were awarded to oil companies between 2008 and 2014.[370] Furthermore, exploration activities have been constantly intensified since 2008, when the Côte d'Ivoire-Ghana Joint Commission was set up, despite the protests made by Côte d'Ivoire.

5.32 As it was undoubtedly aware that its activities ran counter to the principle of good faith and were in breach of its international obligations, Ghana endeavoured to evade any legal proceedings by excluding, in its declaration of 15 December 2009, the judicial mechanism for settlement of disputes relating to maritime boundary delimitation, even though it had accepted that mechanism for more than 25 years, since its ratification of UNCLOS (on 7 June 1983).[371]

5.33 In those circumstances, Ghana cannot therefore seriously claim that it had relied on Côte d'Ivoire's acquiescence or even passivity in developing its investments in the disputed area; first of all, because Côte d'Ivoire objected to them from the time those activities began to be developed and, second, because Ghana and its operators chose

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[367] MG, vol. l, p. 83, para. 3.111.

[368] MG, vol. l, p. 25, para. 2.30.

[369] Ghana's submissions in this regard are misleading. It makes muddled references to activities inside and outside the disputed area (see MG, vol. l, p. 25, para. 2.30; p. 65, para. 3.67; p. 136, para. 5.63), whereas the latter references do not require any response from Côte d'Ivoire and cannot be relevant for the application of the doctrine of estoppel. Furthermore, certain statements made by Ghana suggest that the Jubilee field, which lies outside the disputed area, is connected to the TEN field, which lies within the disputed area: "The TEN oil field is an extension of the existing Jubilee Oil Terminal which is approximately 32 nautical miles off the coast of the western region of Ghana in the Atlantic Ocean" (International Maritime Organization, Sub-Committee on Navigation, Communications and Search and Rescue, *Routeing measures and mandatory ship reporting systems, Amendment to the existing Area to be Avoided off the coast of Ghana in the Atlantic Ocean, document submitted by Ghana*, NCSR 3/3/6, 24 November 2015, p. 2, para. 3, CMCI, vol. VI, Annex 169).

[370] See also Status of activities in oil blocks awarded by Ghana in the disputed area, 27 February 2015, CMCI, vol. IV, Annex 83.

[371] See *supra.*, paras 2.60-2.61.

to ignore those protests and instead forced matters, knowing that it was protected from any legal proceedings brought by Côte d'Ivoire. This shows that Ghana has not acted in good faith in carrying out its unilateral activities.

C. The absence of prejudice suffered by Ghana

5.34 The third condition necessary for recognition of an estoppel is the existence of a prejudice resulting from the change in conduct of a State to the detriment of the other. This condition is also not met in the present case.

5.35 It should be borne in mind that one of the most evident purposes – and probably the primary objective – of the negotiations between Côte d'Ivoire and Ghana resumed in 2008 was to ensure the legal certainty required for oil investments.[372] As a very well-informed observer had stated a few years previously.

> "To the east of Liberia, Côte d'Ivoire, after a period of relative stability, has now slipped into a state of uncertainty requiring further intervention by the ECOMOG peace-keeping forces. Once again, the political situation is unlikely to be conducive to boundary negotiation at the present time, but Côte d'Ivoire is keen to promote its nascent oil industry which may provide a political incentive to restore peace as rapidly as possible. […] *The necessity for certainty in the Gulf of Guinea, particularly as far as commercial interests are concerned, has been a driving force in the high level of maritime boundary making activity which has taken place there over the past ten years*".[373]

5.36 However, Ghana decided to continue to authorize investments in the disputed area even though legal certainty – which was being sought through negotiations – had not been established. Ghana and the oil companies which it selected for exploration and production in the disputed area therefore knowingly and willingly took a risk, being aware that the area could belong to Côte d'Ivoire. Since they deliberately and knowingly took the risk of making unlawful investments in a disputed maritime area, Ghana and the concessionary oil companies clearly cannot rely on entirely false assurances supposedly given by Côte d'Ivoire and less still claim any resulting prejudice, which is the third element necessary for the existence of an estoppel.

1. The prejudice allegedly suffered by Ghana itself

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[372] See *supra.*, paras 2.48-2.82.

[373] T. Daniel, "African Maritime Boundaries", in *International Maritime Boundaries*, Nijhoff Publishers, vol. 5, 2005, pp. 3431-3432, emphasis added, CMCI, vol. V, Annex 108.

5.37 As the Special Chamber has stated, during the provisional measures phase Ghana focused on the risk which is, in its view, entailed by the suspension of works in the disputed area:

> "85. Considering that Ghana explains that stopping the project 'would have the most impacts on the investments already made in relation to both facilities and equipment for which construction is far advanced' and that '[e]quipment will degrade and Ghana will possibly lose its contractors entirely'".[374]

5.38 The Chamber was not insensitive to this concern and sought to limit the risks of serious harm connected with the suspension of ongoing activities, stating the view that

> "the suspension of ongoing activities conducted by Ghana in respect of which drilling has already taken place would entail the risk of considerable financial loss to Ghana and its concessionaires and could also pose a serious danger to the marine environment resulting, in particular, from the deterioration of equipment"[375]

and ruling that

> "Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area".[376]

5.39 By that decision the Chamber thus held that, if it granted Côte d'Ivoire's application for the suspension of activities connected with the drilling operations already carried out, the resulting prejudice for Ghana would be excessive in the event of all or some of those rights being awarded to it at the merits stage. That protection is, by definition, provisional and operates only *pendente lite*. In its Memorial Ghana nevertheless tries to make it definitive, asserting that any rights it might be awarded in the judicial proceedings have become acquired rights and merit protection as such. That is why Ghana is attempting to foster confusion between recognition by the Chamber of the potential prejudice resulting from the suspension applied for by Côte d'Ivoire as a provisional measure and the prejudice that it would suffer as a result of a decision on the merits delimiting the boundary in a manner not in accordance with Ghana's wishes.[377] In other words, Ghana thinks that the Chamber should draw a line based on its oil practice because it has made investments in the area. That is, in short, a policy of *fait accompli*.

5.40 It is true that, precisely because of its policy of *fait accompli* in the disputed area, Ghana's interests would be prejudiced by a decision of the Chamber which did not

[374] *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015,* para. 85.

[375] *Ibid.,* para. 99.

[376] *Ibid.*, para. 108(1)(a).

[377] See in particular MG, vol. I, para. 5.66.

recognize its sovereignty or its sovereign rights over all that area. However, Ghana cannot claim legal protection against the prejudice to its investments made in a disputed maritime area as that prejudice did not result from the violation of one of Ghana's rights, but solely from its interests, which are, moreover, illegitimate. The well-known distinction drawn by the ICJ in the *Barcelona Traction* case between injury in respect of a right and injury to a simple interest is particularly apt:

> "evidence that damage was suffered does not *ipso facto* justify a diplomatic claim. Persons suffer damage or harm in most varied circumstances. This in itself does not involve the obligation to make reparation. *Not a mere interest affected, but solely a right infringed involves responsibility*".[378]

5.41 In addition, the extent of this alleged prejudice must be put into perspective. Ghana states that its economy has up to now profited from enormous investment which has had beneficial effects on employment, GNP growth and reducing poverty.[379] However, some of these benefits derive from exploration and exploitation of resources located in the disputed area, to which Côte d'Ivoire has been opposed, as Ghana has been fully informed. On the other hand, Ghana fails to mention that Côte d'Ivoire has been deprived of all these benefits.

5.42 Ghana also complains about losses that it would suffer *through* the concessionary oil companies[380] if the delimitation of the maritime boundary deprived it of the disputed area. Aside from the fact that these losses would not be suffered by Ghana but by the companies in question, it should be noted that these investments have generated tax revenue in Ghana. Consequently, it is not a matter of losses, but of profits for Ghana, which are far from negligible[381] and from which, as far as Côte d'Ivoire is concerned, it should never have benefited.

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[378] *Barcelona Traction, Light and Power Company, Limited, Judgment*, *I.C.J. Reports 1970*, p. 36, para. 46 (italics added).

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

[380] See in particular MG, vol. I, paras 5.63 and 5.67.

[381] For example: "In 2010, Tullow (Ghana) Ltd, Kosmos Energy Ltd and SOPCL reported payments of US$ 63,866.95, US$ 48,751.00 and US$ 907.00 respectively. In 2011 Tullow Ghana Ltd and Kosmos Energy reported surface rental payments of US$ 63,886.95 and US$ 29,427.00 respectively. SOPCL did not report of any surface rental payment in 2011" (Ghana, Ministry of Finance and Economic Planning, *Report on the Aggregation and Reconciliation of Oil & Gas, Sector Payments and Receipts*, 2010-2011, CMCI, vol. IV, Annex 76). Furthermore: "The Jubilee field is Tullow's flagship operated offshore asset which contributed around 40% of the Group's production last year. In 2013, we paid our first income tax to the Government of Ghana of $107 million. Withholding tax on imports almost doubled from $38 million to $61 million between 2012 and 2013 as the TEN Project moved into the development phase. Spend by Tullow on behalf of our industry partners with local suppliers increased by 85% to $128 million (2012: $69 million). Total payments to the Government of Ghana, including production entitlements in barrels of oil, were over $300 million." (Tullow report, *Tullow in Ghana*, 2014, pp. 6-7, CMCI, vol. IV, Annex 80. More generally, see Tullow report, *Payments to Governments - Ghana*, undated, CMCI, vol. IV, Annex 89).

5.43 In any event, the interests asserted by Ghana are not legitimate since, as Côte d'Ivoire has shown above, they have not been implemented in good faith, but in defiance of the repeated opposition of Côte d'Ivoire: a refusal to take into account Côte d'Ivoire's repeated opposition to its oil activities in the disputed area; a refusal to negotiate in good faith in order to establish a maritime boundary;[382] and continued activities in the disputed area despite the obligation to refrain from carrying out such activities pending the conclusion of an agreement (or in the absence of an agreement, a decision by a tribunal).

5.44 In any event, Ghana has not fulfilled its duty to inform the oil companies about the uncertain legal situation in the disputed area or about the protests made by Côte d'Ivoire despite the practice usually followed by States, which is to avoid creating an irreversible situation in a disputed maritime area.

5.45 If Ghana had taken the precaution, as it should have done, of warning the oil companies and informing them of the situation, the investments in question would possibly not have been made or, if they had been, it would have been at the risk of the investors.

5.46 In the present case Ghana is even less justified in relying on injury to its illegitimate interests insofar as it not only failed to warn the relevant oil companies about the risks arising from exploration and exploitation of the blocks located entirely or partly in the disputed area, but it also adopted an evasive attitude in its relations with private operators. For example, when the President and General Manager of Tullow sent a letter in September 2011 informing the Government of Ghana that the Ivorian Government had given the oil companies formal notice that they should stop all activity in the area,[383] Ghana replied:

> "The Government of the Republic of Ghana rejects the statement and claims of Côte d'Ivoire in the subject communiqué as without any basis in international law or the practice of the parties, and will vigorously protect and defend against any infringement of Ghana's sovereignty and jurisdiction over its offshore area.
>
> 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. 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."[384]

[382] See *supra.*, para. 5.26.

[383] Letter from Tullow to Ghana, 14 October 2011, CMCI, vol. IV, Annex 77.

[384] Letter from the Ministry of Energy of Ghana to Tullow, 19 October 2011, CMCI, vol. IV, Annex 78.

5.47 This is more an encouragement to invest than a warning. Therefore Ghana has not suffered prejudice on which recognition of an estoppel could be based. It quite simply took an informed risk.

2. Damage allegedly suffered by the oil companies

5.48 Ghana's argument that the oil companies which were awarded concessions for blocks located entirely or partly in the disputed area are likely to suffer serious prejudice if the Chamber were to grant the applications made by Côte d'Ivoire[385] does not have any legal relevance. A distinction should be drawn in this regard between Ghana's own rights and the interests of Tullow and the other oil companies operating in the disputed area, which neither are protected by international law nor, in any event, may be invoked against Côte d'Ivoire. Those oil companies are not parties to these proceedings. It is Ghana that entered into a contractual relationship with them. That relationship is *res inter alios acta* vis-à-vis Côte d'Ivoire and, if any damage arises, it must be covered by Ghana.

5.49 It should be noted, *ex abundante cautela*, that Ghana has not established the reality of the prejudice allegedly suffered by the concessionary companies. The only evidence in support of this argument has been provided by Tullow alone. No other oil company has supplied figures in this regard. Furthermore, some of Tullow's figures relate to investments made by other oil companies when they no longer operate in the disputed area. In addition, the figures are to be treated with caution.

5.50 First of all, it must be stated that the figures are taken from affidavits[386] provided by the company itself during the provisional measures phase. International courts and tribunals give little weight to such means of evidence.[387]

5.51 In addition, and as regards the actual figures supplied by Ghana, Tullow mentions an investment of US$ 630 million before 2011 (when Côte d'Ivoire sent a formal warning to all the oil companies operating in the disputed area[388]). The statement by Paul McDade, Chief Operating Officer of Tullow, does not specify a breakdown of that expenditure and does not provide supporting documents for the sums mentioned.

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[385] See MG, vol. l, pp. 136-139, paras 6.63-5.72.

[386] Statement of Tullow, Ghana, PM, vol. III, Annex S-TOL.

[387] See ICJ, Judgment, 16 December 2015, *Certain Activities Carried Out by Nicaragua in the Border Area Costa Rica* v. *Nicaragua), Proceedings joined with Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)*, para. 83; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012,* paras 112-115, citing ICJ, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, *Judgment, I.C.J. Reports 2007*, p. 731, para. 244.

[388] Communiqué from the Director of Petroleum to oil operators in the Ivorian offshore area, 26 September 2011, CMCI, vol. IV, Annex 71.

5.52 Furthermore, the figures put forward are investment figures. This still does not mean that those investments represent net losses, even if the company has not recorded operating revenue. Investments in exploration are generally regarded as high-risk investments (particularly where the results are negative or unsatisfactory in terms of resources discovered) and the results are integrated as such into the oil companies' annual accounts. In addition, exploration activities are themselves economic activities (for a long time Tullow was exclusively an exploration operator before becoming involved in production activities). Consequently, the companies obtain revenues from the commercialization of information on the resources obtained through exploration activities. This is the case in particular if the company decides to sell its interest in a block.[389] Publication of exploration findings has also increased Tullow's funding (its share price rose following the announcement of the discoveries made in the Jubilee field (outside the disputed area) and the Ebony and TEN (Tweneboa, Enyenra and Ntomme) fields).[390] These aspects are ignored entirely in Ghana's Memorial. For the fields located within the TEN block, Tullow chose to take on the role of operator. It renewed its contracts with Ghana, even though it had the opportunity to terminate them in 2009, then in 2011, and then in 2013,[391] that is to say at times when neither Tullow nor Ghana could be unaware of Côte d'Ivoire's claims to the disputed area.

5.53 Be that as it may, as a major oil company, Tullow must have been aware that the maritime area in which it was operating was not delimited and that negotiations between the two States were ongoing. Furthermore, although it did not have any legal obligations vis-à-vis the private companies that were dealing with Ghana, Côte d'Ivoire also informed them of its position, as a courtesy to them. Thus, Tullow had formally been notified of Côte d'Ivoire's objections to the unilateral activities authorized by Ghana in the disputed area at least from 26 September 2011[392] and its Director for Africa had been summoned to a meeting at the Ministry of Petroleum in Abidjan on 26 October 2011.[393] Ghana and Tullow nevertheless chose to push ahead

[389] Tullow did this in 2009 for the Shallow Water Tano block, which lies within the disputed area: "In February 2008 the Odum field was discovered in the West Cape Three Points block, some 13 km east of Jubilee. This discovery opened up a new Campanian geological play in a previously unexplored reservoir interval. In November, Tullow drilled the Ebony-1 commitment well in the Shallow Water Tano block which encountered normal pressured oil sand and an over-pressured gas-condensate sand up-dip from Tweneboa-1. Data acquired from the recent Tweneboa-1 well demonstrated that although charged through Tweneboa, Ebony is not presently in pressure communication and as a result Ebony was determined to have a subcommercial resource potential. Tullow will therefore relinquish its interest in the Shallow Water Tano licence" (Tullow report, *2008 - Full Year Results*, undated, CMCI, vol. IV, Annex 75.

[390] See London Stock Exchange, Statistical table for 2006-2013 on Tullow stocks, CMCI, vol. IV, Annex 91; see also J.P. Wilhelmsen and M. Lorentzen, "Investment Case (Tullow Oil Plc.)", Master Thesis, Copenhagen Business School, June 2012, p. 8, CMCI, vol. V, Annex 102.

[391] Petroleum Agreement between GNPC and Tullow, Sabre and Kosmos in respect of the Deepwater Tano Contract Area, 10 March 2006, article 3, CMCI, vol. IV, Annex 72.

[392] Statement of Tullow, Ghana, PM, vol. III, Annex S-TOL, para. 31, and Communiqué from the Director of Petroleum to oil operators in the Ivorian offshore area, 26 September 2011, CMCI, vol. IV, Annex 71.

[393] Letter from Tullow to Ghana, 14 October 2011, CMCI, vol. IV, Annex 77.

and the company decided to continue as the production operator. The documents submitted by Tullow itself show that it largely ignored the warnings given by Côte d'Ivoire and that it even stepped up activities in the disputed area;[394] for example, the very expensive contract for the FPSO was concluded in August 2013,[395] less than three months after the approval of the development plan in May 2013,[396] which was itself approved less than six months after the commercial viability of the TEN discoveries had been confirmed in November 2012.[397] The majority of Tullow's investments in the disputed area were therefore made after the warnings had been given by Côte d'Ivoire.

5.54 According to estimates by Tullow, the TEN project should cost US$ 4.5 billion.[398] However, at the time when the company received an express formal notice from Côte d'Ivoire (in autumn 2011),[399] it had, by its own admission, invested (with its partners) only US$ 630 million. Assuming that amount to be correct (once again, there is no way to verify whether it is), it represents less than 15% of the final investment. Tullow should at least have calculated the risks that it was taking by investing in the disputed area despite the warnings given by Côte d'Ivoire, which had formally asserted its sovereign rights in that area.

Conclusion

5.55 Knowing that it is not able to prove the existence of a tacit agreement establishing its maritime boundary with Côte d'Ivoire, Ghana thought that it could seek help in the concept of estoppel. Estoppel is not applicable in the present case, firstly because it is a contested notion which is very rarely applied in public international law and secondly because it is clear that none of the three cumulative conditions for its application is met:

- the conduct of Côte d'Ivoire did not establish a colour of right on which Ghana could rely in good faith in continuing its oil activities in the disputed area. Côte d'Ivoire has never accepted or indicated that it considered oil practice to form the

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[394] Statement of Tullow, "Tullow announcements (press releases, interim results) relating to Deepwater Tano block (with chronological index), 2006-2015", Ghana, PM, vol. III, Annex S-TOL, Appendix 8.

[395] Rigzone, *MODEC Bags FPSO Contracts for TEN Project*, 5 August 2013, CMCI, vol. V, Annex 119. See also Statement of Tullow, Ghana, PM, vol. III, Annex S-TOL, para. 34.

[396] Statement of Tullow, Ghana, PM, vol. III, Annex S-TOL, para. 29.

[397] Statement of Tullow, Ghana, PM, vol. III, Annex S-TOL, para. 29.

[398] Statement of Tullow, Ghana, PM, vol. III, Annex S-TOL, para. 96. At the same time, Mr McDade states that "the implementation of the approved TEN Development Plan involves the investment of approximately a further US$ 4 billion (not including very substantial leasing costs for the long term contracted FPSO)" (*ibid.*, para. 34), which takes the cost to US$ 5 billion.

[399] Letter from Tullow to Ghana, 14 October 2011, CMCI, vol. IV, Annex 77.

basis for a maritime delimitation. Furthermore, it has consistently challenged the unilateral activities carried out or authorized by Ghana in respect of assessment, exploration and oil production in the disputed area;

- it is particularly inappropriate for Ghana to claim damage which the suspension of activities would allegedly cause to its economy and to economic operators when it has deliberately ignored the protests made by Côte d'Ivoire and has sought to establish a *fait accompli*;

- moreover, it is somewhat paradoxical that Ghana complains that it has suffered prejudice when it has disregarded the obligation to refrain from carrying out activities in a disputed maritime area in full knowledge of Côte d'Ivoire's positions[400] and when it has derived economic benefits from those activities for almost a decade.

5.56 The doctrine of estoppel cannot therefore be applied in the present case.

[400] On the other hand, this breach of the principle of "economic neutralization" of disputed maritime areas renders Ghana liable irrespective of the outcome of the proceedings (in this regard, see *infra.*, paras 9.40-9.57).

PART 4

DELIMITATION OF THE IVORIAN-GHANAIAN BOUNDARY

1. It is clear from the preceding part, that Ghana's principal argument indicating that the two Parties were in tacit agreement about a maritime boundary following the practice of oil concessions is unfounded. The present Chamber should thus delimit the maritime boundary between Côte d'Ivoire and Ghana by applying the principles of UNCLOS and the methods deriving from jurisprudence.

2. As concerns the delimitation method to be applied, Ghana considers that, in the event of its principal argument being rejected, the Chamber has no other choice than to apply the three-stage equidistance/relevant circumstance method, it being understood that, according thereto, there is only one circumstance which would substantiate adjustment of the provisional equidistance line, and that is oil practice. Thus Ghana continues to claim the line of its oil concessions which, seaward, would be extended to the outer limit of the continental shelf beyond 200 nautical miles. Ghana is wrong here on two counts.

3. The equidistance/relevant circumstance method is no way obligatory, nor is it the most suitable method in this particular case. At all events, UNCLOS requires the method used to lead to an equitable result. That is why Côte d'Ivoire is arguing for the application of the bisector method, which is still the appropriate and equitable method in the light of the configuration of the two Parties' coasts (**Chapter 6**). In addition, assuming that the Chamber opts for the application of the equidistance/relevant circumstance method, numerous circumstances of a geographical nature – and not human, as Ghana erroneously states – substantiate an eastward adjustment of the provisional equidistance line (**Chapter 7**). Finally, Côte d'Ivoire will present its proposal for the delimitation of the maritime boundary on the continental shelf beyond 200 nautical miles (**Chapter 8**).

CHAPTER 6

APPLICATION OF THE BISECTOR METHOD

I. The choice of the bisector method is appropriate in the present case

A. Application of the bisector method according to jurisprudence

6.1 In order to reflect more faithfully the prominent geographical circumstances in the present case and to arrive at an equitable result, international courts and tribunals may have recourse to the bisector method, which is considered "a viable substitute method in certain circumstances where equidistance is not possible or appropriate".[401] This is the case in the present instance.

6.2 Thus, the International Court of Justice recognized in the *Nicaragua* v. *Honduras* case that "the equidistance method does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate".[402] In the *Bangladesh/India* case, the Arbitral Tribunal clearly recalled the same principle in the following terms:

> "Since articles 74 and 83 of the Convention do not provide for a particular method of delimitation, the appropriate delimitation method—if the States concerned cannot agree—is left to be determined through the mechanisms for the peaceful settlement of disputes. In addressing this question, international courts and tribunals are guided by a paramount objective, namely, that the method chosen be designed so as to lead to an equitable result and that, at the end of the process, an equitable result be achieved".[403]

6.3 Jurisprudence has long shown the reasons as to why delimitation can be carried out according to different equidistance methods, and in particular by applying the bisector method. Justification for this method is two-fold.

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[401] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, Judgment, I.C.J. Reports 2007*, p. 746, para. 287.

[402] *Ibid.*, p. 741, para. 272.

[403] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014,* para. 239.

6.4 *First*, it enables an equitable result to be attained. Thus, in the *Gulf of Maine* case, the Chamber considered that:

> "[t]he practical method to be applied must be a geometrical one based on respect for the geographical situation of the coasts between which the delimitation is to be effected, and at the same time suitable for producing a result satisfying the repeatedly mentioned criterion [that is to say, division of the areas of overlap into equal parts] for the division of disputed areas".[404]

6.5 Similarly, in the *Case concerning the Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, the Tribunal refrained from simply considering the position of the two Parties and placed the delimitation of the maritime boundary between them in a broader regional perspective. It thus sought a solution which "takes account of the entire configuration of the [west-African] coast" and which would result in a delimitation which "lends itself to equitable integration in the existing delimitations in the west-African region and in future delimitations which might reasonably be envisaged on the basis of the principles of equity and most probable hypotheses" *[translation provided by the Registry]*.[405]

6.6 *Furthermore*, it allows any disproportionate effect of coastal irregularities on the line to be avoided. Thus, in the *Tunisia* v. *Libya* case, the Court applied the bisector method owing to the presence of the Kerkennah Islands to which the Court wished to attribute a partial effect:

> "Taking into account the position of the Kerkennah Islands, and the low-tide elevations around them, the Court considers that it should go so far as to attribute to the Islands a 'half-effect' of a similar kind. On this basis the delimitation line, seawards of the parallel of the most westerly point of the Gulf of Gabes, is to be parallel to a line drawn from that point bisecting the angle between the line of the Tunisian coast (42°) and the line along the seaward coast of the Kerkennah Islands (62°), that is to say at an angle of 52° to the meridian".[406]

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[404] *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, *Judgment, I.C.J. Reports 1984*, pp. 332-333, para. 212.

[405] *Case concerning the Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, *Judgment of 14 February 1985*, *RIAA,* vol. XIX, p. 189, para. 109.

[406] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 89, para. 129.

6.7 Similarly, in the *Gulf of Maine* case, the base points were situated on small rocks, low-tide elevations, islets in some cases located at a considerable distance from the coast. Since the equidistance method did not allow the area of the Gulf to be divided equitably and fairly, the Chamber resorted to the bisector method.

6.8 Selecting the bisector as the delimitation method is therefore not based on subjective factors, nor on a subjective idea of equity. On the contrary, it is dictated by the coastal geography. As the International Court of Justice stressed in *Nicaragua* v. *Honduras*:

> "The justification for the application of the bisector method in maritime delimitation lies in the configuration of and relationship between the relevant coastal fronts and the maritime areas to be delimited".[407]

Hence, again according to the Court:

> "Rather, the key elements are the geographical configuration of the coast, and the geomorphological features of the area where the endpoint of the land boundary is located".[408]

6.9 This is precisely what Ghana is failing to do, in advocating the application of the equidistance method, determined according to base points which, in this instance, do not take the geographical configuration of the Parties' coasts into account.

[407] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007,* p. 746, para. 287.

[408] *Ibid*., p. 748, para. 292.

B. The location of the base points argues in favour of application of the bisector method

6.10 In the present case, the Parties have identified different base points for establishing the provisional equidistance line up to 200 nautical miles[409] (*1.*). All of these base points are problematic on several counts (*2.*).

1. The base points selected by the Parties

6.11 In its Memorial, Ghana sets out the nine base points from which the equidistance line up to 200 nautical miles claimed by Ghana would be established:[410]

Cote d'Ivoire base points		
ID	**Latitude (dms)**	**Longitude (dms)**
CI1	5° 05' 25" N	3° 06' 31" O
CI2	5° 05' 43" N	3° 08' 05" O
CI3	5° 05' 55" N	3° 09' 44" O
CI4	5° 06' 09" N	3° 10' 22" O

Ghanaian base points		
ID	**Latitude (dms)**	**Longitude (dms)**
GH1	5° 05' 22" N	3° 06' 14" O
GH2	5° 05' 22" N	3° 06' 13" O
GH3	5° 05' 20" N	3° 06' 10" O
GH4	5° 04' 52" N	3° 04' 06" O
GH5	5° 04' 40" N	3° 03' 16" O

6.12 However, these base points are incorrect in fact and inappropriate in law.

6.13 In its Memorial, Ghana states that it used the Caris Lots software to determine the base points to be used for establishing its provisional equidistance line.[411] Caris Lots software is a geographical information software package specifically intended for

[409] MG, vol. I, paragraph 5.87.

[410] MG, Figure 5.8, page 147.

[411] MG, vol. I, paragraph 5.87.

delimiting maritime boundaries and for delineating the continental shelf beyond 200 nautical miles. For delimiting a maritime boundary, once the coastlines of the States concerned have been integrated into the software, Caris Lots then automatically identifies, on the basis of the data and in particular the coastline which one party has input, the base points from which a provisional equidistance line is drawn. It then proceeds to calculate this line. Hence, when incorrect data are input into the Caris Lots software, as they were by Ghana in this instance,[412] the base points and calculation of equidistance used by Caris Lots are likewise erroneous.

6.14 The coastline taken by Ghana in order to determine the base points to be used for establishing the provisional equidistance line is that shown on British Admiralty chart n°1383 on a scale of 1:350,000, drawn up on the basis of ancient topographical surveys dating from between 1837 and 1846. This chart has the two-fold disadvantage of, on the one hand, lacking precision owing to its small scale and, on the other, of being obsolete owing to the age of the readings on the basis of which it was drawn up.[413] Hence, the Caris Lots software can allow the appropriate base points to be identified only on the basis of this chart.

6.15 In order to overcome these technical difficulties and ensure that the base points are accurate and able to reflect the coastal geography of the States, Côte d'Ivoire has published new, highly accurate, charts prepared on the basis of topographical surveys of the entire Côte d'Ivoire coast at the end of 2014 and of recent high-resolution satellite images. After inputting this coastline into the Caris Lots program, Côte d'Ivoire identified a total of ten base points[414] necessary for establishing the provisional equidistance line. They are plotted according to the geodetic reference system of Côte d'Ivoire (WGS84, ITRF 1996 Epoch 1998.2).

[412] See *infra*, para. 7.23.

[413] See *infra*, paras 7.10-7.15.

[414] The coordinates of the base points identified by Côte d'Ivoire are rounded to the nearest 10th of a second.

6.16 These base points are:

Côte d'Ivoire base points		
ID	**Latitude (dms)**	**Longitude (dms)**
C1	5° 5' 25.0'' N	3° 6' 22.3'' O
C2	5° 5' 25.8'' N	3° 6' 26.9'' O
C3	5° 7' 08.9'' N	3° 16' 41.7'' O

Ghanaian base points		
ID	**Latitude (dms)**	**Longitude (dms)**
G1	5° 5' 24.2'' N	3° 6' 17.5'' O
G2	5° 5' 21.9'' N	3° 6' 04.2'' O
G3	5° 5' 17.1'' N	3° 5' 38.3'' O
G4	5° 5' 08.5'' N	3° 4' 54.0'' O
G5	5° 5' 01.6'' N	3° 4' 19.1'' O
G6	5° 4' 30.5'' N	3° 1' 49.9'' O
G7	4° 44' 20.4'' N	2° 5' 35.7'' O

6.17 Even after correction of Ghana's errors, it would appear that the valid base points used by Côte d'Ivoire are not adequate to render the equidistance method appropriate.

2. The base points selected are problematic on several counts

a. The base points are located on a strip of land

6.18 All the base points located in Ghana – whether chosen by Côte d'Ivoire or by Ghana – are located on a strip of land resulting from agreements concluded between France and England at the end of the 19th century and at the beginning of the 20th century; this strip of land constitutes an excrescence of Ghanaian territory at the south-eastern end of Côte d'Ivoire's territory.[415] These points are in particular situated on the western part of the strip of land, at its narrowest part. This strip constitutes an historical irregularity of which the geographical consequences could be exploited only to the detriment of one or other of the Parties.

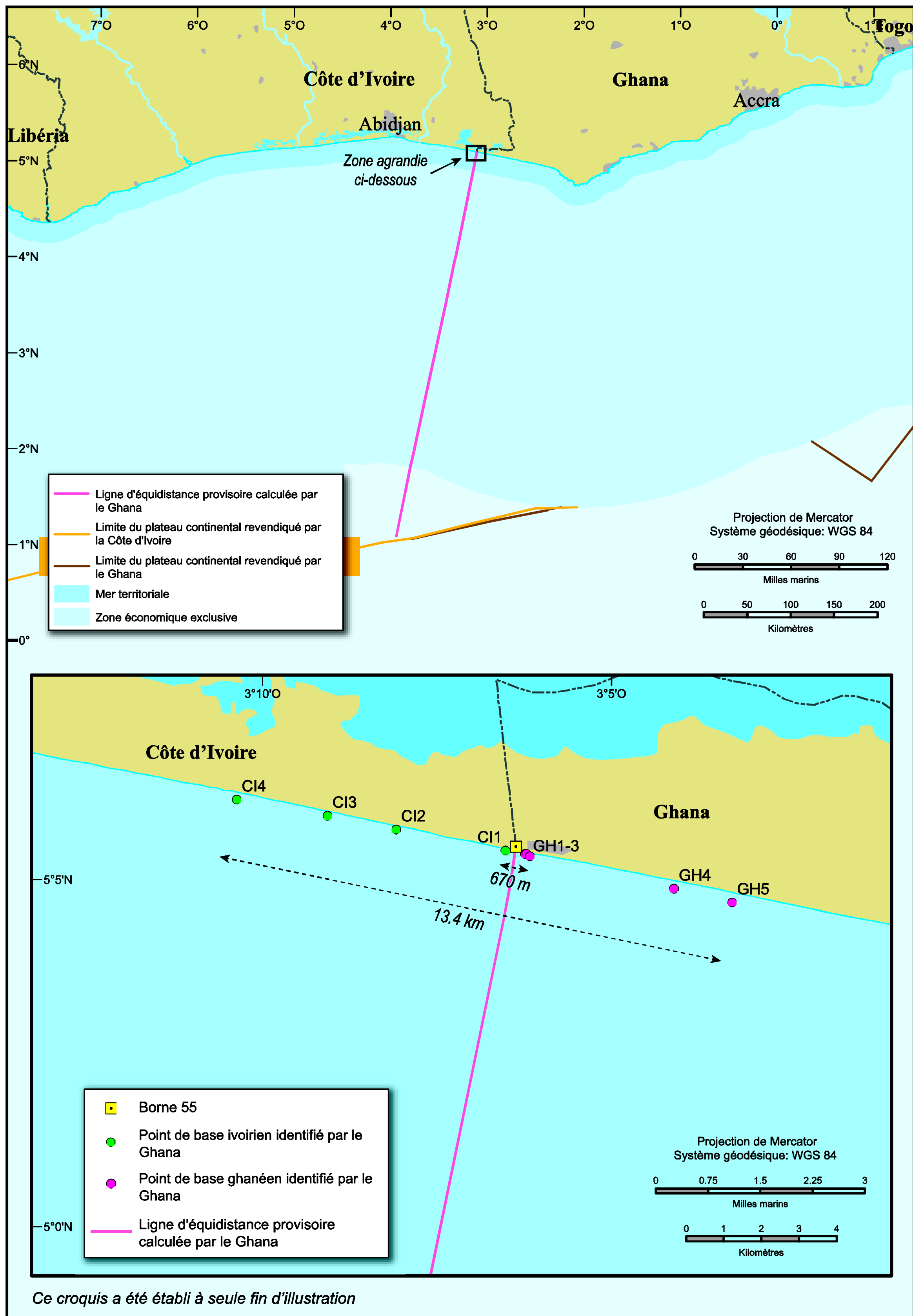
[415] *Supra*, paras 1.28-1.30.

b. The base points selected are located on a tiny portion of the Ivorian-Ghanaian coasts

6.19 As concerns the nine points selected by Ghana,

- they are located on a 13.4 km portion between the most westerly Côte d'Ivoire point (point CI4) and the most easterly Ghanaian point (point GH5), as shown in **Sketch map 6.1** below. Four points are located on the Côte d'Ivoire coast (CI1 to CI4), the most westerly (CI4) being located 7.5 km from the endpoint of the land boundary (boundary post 55). Five points are located on the Ghanaian coast (GH1 to GH5) up to a distance of 5.9 km from boundary post 55;

- four of the nine points selected by Ghana – located on a 670-metre portion – define the line up to a distance of 71 nautical miles, that is, points CI1, GH1, GH2 and GH3. The five others define the line up to 200 nautical miles. It is thus a portion of the Côte d'Ivoire-Ghanaian coasts of less than 700 metres which defines more than one third of the maritime boundary, up to a distance from the coast within which the oil resources identified are situated.

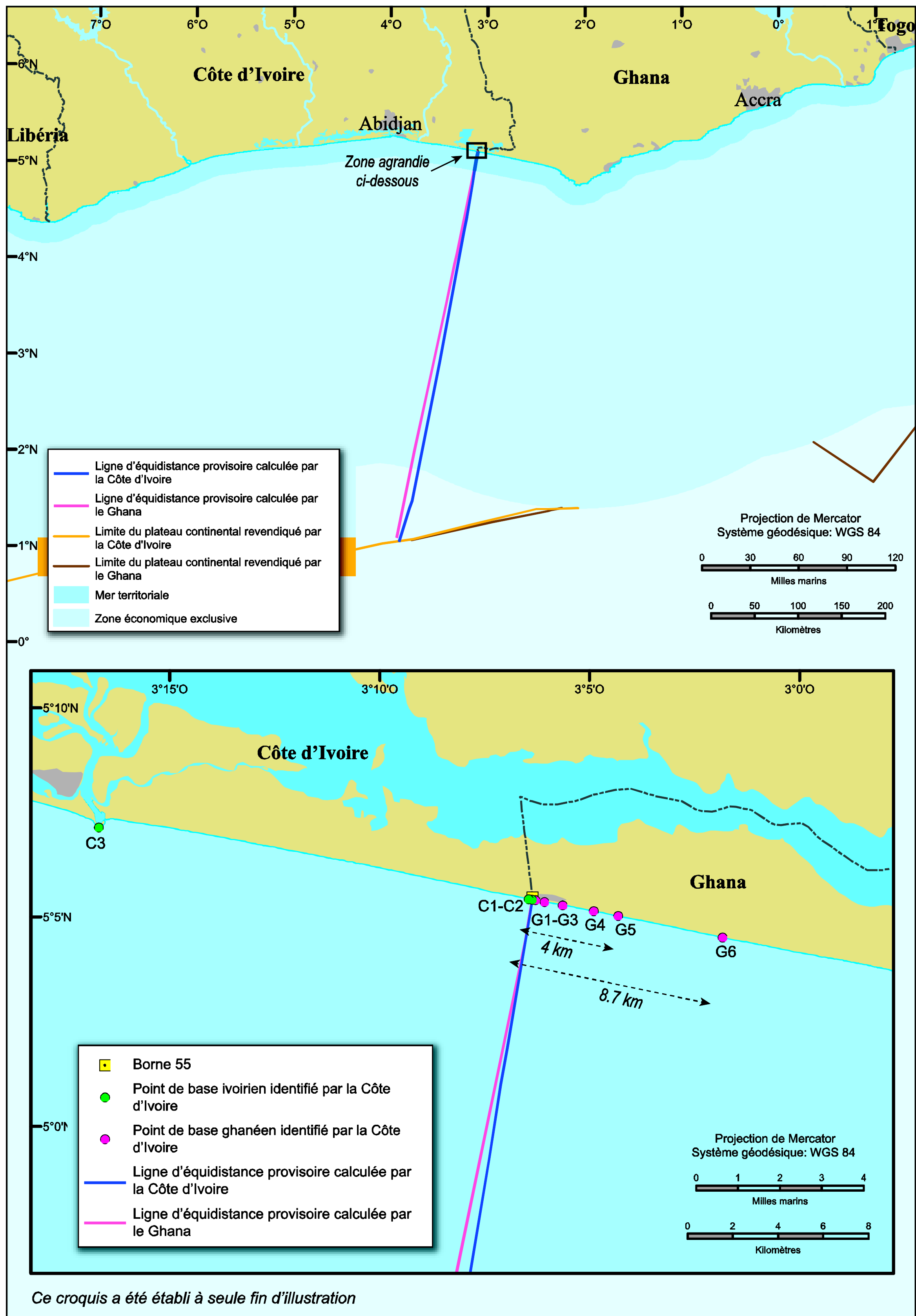


Sketch map 6.1: Base points selected by Ghana

6.20 As concerns the ten points selected by Côte d'Ivoire, eight define the equidistance line up to 200 nautical miles, points C1 and C2 being situated on the Côte d'Ivoire coast and points G1 to G6 on the Ghanaian coast. Thus,

- the latter are situated on a portion of the coast of less than 9 km. Only two points are located on the Cote d'Ivoire coast (points C1 and C2), the most westerly point (C2) being located only 176 metres away from boundary post 55. The other six points are located on the Ghanaian coast, 8.5 km away from boundary post 55, the most easterly of these points being point G6, as shown in **Sketch map 6.2** below;

- the seven points (C1 and C2 and G1 to G5) which define the line up to 132 nautical miles are located on a coastal portion of only 4 km; this represents more than two-thirds of the continental shelf, and includes all the oil blocks claimed by the two Parties.



Sketch map 6.2: Base points selected by Côte d'Ivoire

6.21 Thus, none of the coastal portions on which the base points selected by the Parties are located and which define the line up to 200 nautical miles reflects the true geographical situation of the Parties' coasts.

6.22 Delimitation of a maritime boundary founded on the basis of the aforementioned points would thus take account of a portion of less than one percent of the entire coasts of the two Parties. More importantly, the portions of coast in question (8.7 km according to Côte d'Ivoire and 13.4 km according to Ghana) are perfectly straight and hence reflect neither the concavity of the Côte d'Ivoire coast nor the convexity of the Ghanaian coast, in particular the influence exerted by Cape Three Points.

6.23 In the *Case concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau*, the Arbitral Tribunal acknowledged that the concavity of the coasts of one of the States is a geographic circumstance necessitating a departure from the equidistance method and "a method which does not have the disadvantages of the equidistance line"[416] *[translation provided by the Registry].* The method used by the Tribunal was the bisector method. It first drew a straight line from Point Almadies (in Senegal) to Cape Shilling (in Sierra Leone) in order to approximate the "coastal front" of the coast of "the whole of West Africa" which would "lend greater weight to the general direction of the coast"[417] and eliminate the effects of the distortion arising from the concavity of the Ghanaian coast. The Tribunal then drew a perpendicular – the bisector of a 180º angle – from this straight front and adopted it as the coastal front.

6.24 It thus appears that the base points identified both by Côte d'Ivoire and by Ghana on the basis of which the equidistance line would be drawn do not reflect the coastal geography, in that they are situated on a very straight portion of the coastline, near the endpoint of the land boundary and, further, disregard the two-fold convexity and concavity of Côte d'Ivoire and Ghana. In this particular case, this dual insufficiency argues in favour of the application of the bisector method. As the International Court of Justice noted,

[416] *Case concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau, Arbitral award, 14 February 1985*, *RIAA,* vol. XIX, p. 189, para. 109.

[417] *Ibid.,* pp. 189-190*,* paras 108-110.

> "[t]he equidistance method approximates the relationship between two parties' relevant coasts by taking account of the relationships between designated pairs of base points. The bisector method comparably seeks to approximate the relevant coastal relationships, but does so on the basis of the macro-geography of a coastline as represented by a line drawn between two points on the coast".[418]

c. The base points selected by the Parties are located on an unstable coastline

6.25 An additional difficulty associated with the use of the base points identified by the Caris Lots software is due to the fact that the points used for establishing the bisector, and chosen both by Côte d'Ivoire and Ghana, are located between Assinie and New Town in the extreme south-east of the Côte d'Ivoire territory, as **Sketch map 6.3** below shows.

6.26 Like all the lagoon coasts marking the Côte d'Ivoire shoreline, the coast between Assinie and New Town is subject to a high degree of instability, owing to the combined action of powerful surges and the oblique nature of the coast relative to these surges, which cause lateral longshore drift.[419] As set out in Chapter I of the present Counter-Memorial,[420] the Côte d'Ivoire coast, and in particular the portion between Assinie and boundary post 55, is subject to recurrent instability depending on the portion of coast concerned.

6.27 The instability of the coastline presents serious risks to the reliability of a maritime boundary established according to base points which are located on these shifting coasts and which, hence, are also variable. The base points identified both by Côte d'Ivoire and by Ghana for establishing the line up to 200 nautical miles are located on 9 and 13.4 km portions, respectively, either side of the endpoint of the land boundary.

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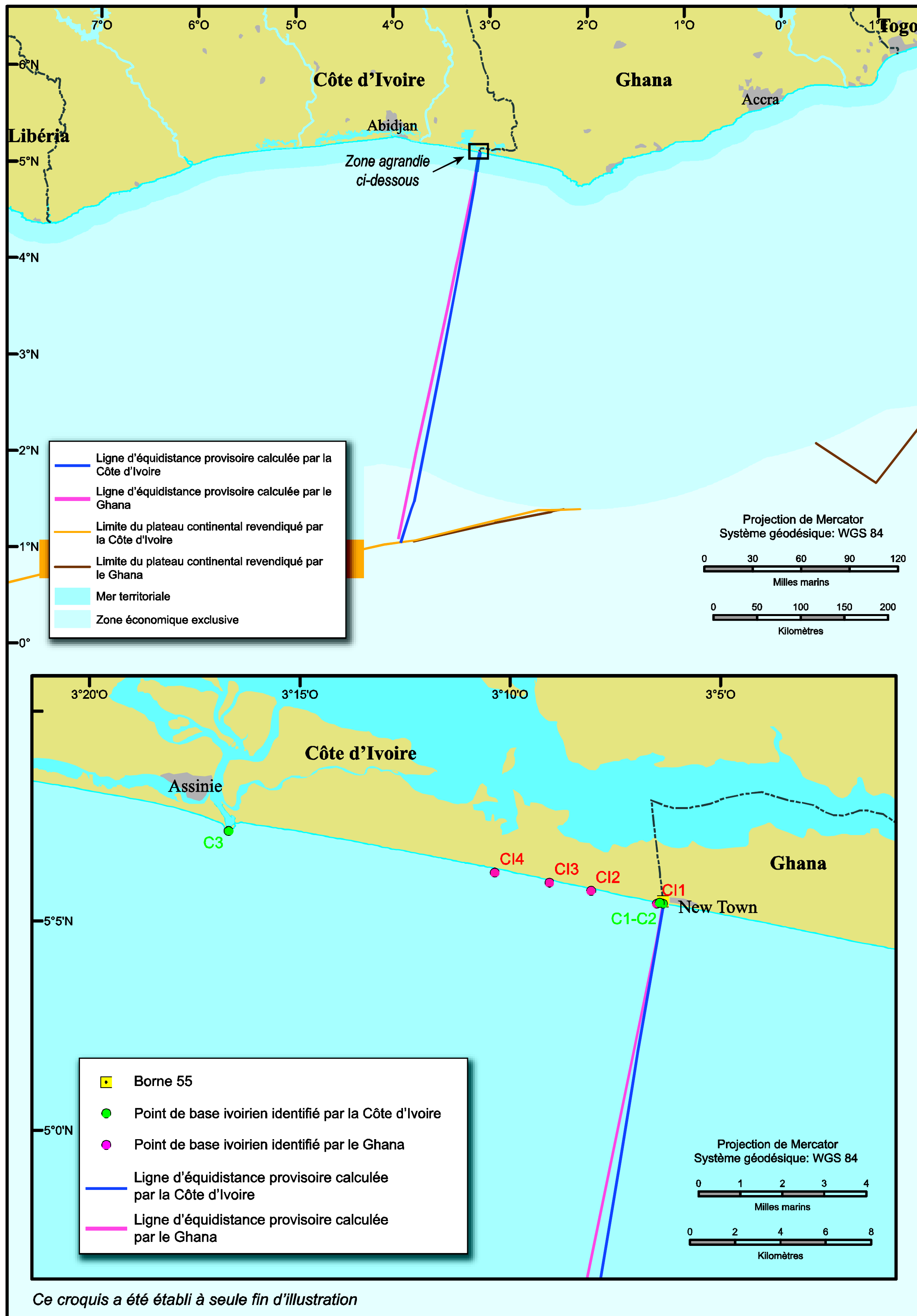
[418] *Case concerning territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007,* p. 747, para. 289.

[419] *Supra*, paras 1.20-1.23 and Sketch map 1.7.

[420] *Supra*, paras 1.20-1.28.



Sketch map 6.3: The base points located on the Côte d'Ivoire coast

6.28 The slightest shift in the position of the base points owing to the instability of the coast has a direct and serious effect on the course of the line, as jurisprudence has acknowledged. In the *Nicaragua* v. *Honduras* case, two of the points enabling a provisional equidistance line to be established were located on the banks of the Coco River, which are highly unstable owing to erosion. The Court specifically noted the influence of the location of base points on an unstable coastline:

> "Taking into account Article 15 of UNCLOS and given the geographical configuration described above, the pair of base points to be identified on either bank of the River Coco at the tip of the Cape would assume a considerable dominance in constructing an equidistance line, especially as it travels out from the coast. *Given the close proximity of these base points to each other, any variation or error in situating them would become disproportionately magnified in the resulting equidistance line.* The Parties agree, moreover, that the sediment carried to and deposited at sea by the River Coco have caused its delta, as well as the coastline to the north and south of the Cape, to exhibit a very active morpho-dynamism. *Thus continued accretion at the Cape might render any equidistance line so constructed today arbitrary and unreasonable in the near future*".[421]

6.29 As early as 1992, the Côte d'Ivoire Technical Committee for gathering and updating data on the delimitation of the maritime boundary took note of the influence of the instability of coastlines on the delimitation of the maritime boundary:

> "[t]he median line had been unstable over time since the coastline used as a reference was subject to change as a result of erosion".[422]

6.30 During their negotiations, Côte d'Ivoire will on several occasions remind Ghana that "littoral erosion […] significantly alters the geometry of the coast with time".[423] In 2014, Côte d'Ivoire expounded at length on the effect of coastal erosion on the course of the maritime boundary between Côte d'Ivoire and Ghana, during the tenth meeting

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[421] *Case concerning territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 742, para. 277; italics added.

[422] Minutes of the meetings of the Technical Committee responsible for gathering and updating data on delimitation of the maritime boundary between Ghana and Côte d'Ivoire, 16 and 18 March 1992, CMCI, vol. III, Annex 14.

[423] Communication of the Côte d'Ivoire party, Second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, vol. III, Annex 30.

of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, as follows:

> "Following the presentation on the equity and merits of the equidistance method by the Ghanaian side, the Ivorian side made the following comments:
>
> 1. As regards the base points, the Ivorian side explained that Côte d'Ivoire has coastal belts subjected to marine erosion of about 3m per year in some places, which makes the baseline unstable on the coastal belts".[424]

6.31 Howbeit, Ghana accepted that "erosion ha[s] a long-term effect".[425]

6.32 These circumstances – the fact that the base points applicable to the delimitation of the Côte d'Ivoire-Ghanaian boundary should be situated on a tiny portion of the States' coasts which does not reflect their coastal geography, as well as the fact that they are unstable – justify the use of an alternative method to that of equidistance. In this particular case, the appropriate method for delimiting the boundary between Côte d'Ivoire and Ghana is the bisector method. Insofar as this method is established only on the basis of two portions taking account of two points located at the boundary between Liberia and Côte d'Ivoire and the boundary between Ghana and Togo, it avoids arriving at an arbitrary and unreliable result, as acknowledged by the Court in *Nicaragua* v. *Honduras*:

> "one of the practical advantages of the bisector method is that a minor deviation in the exact position of endpoints, which are at a reasonable distance from the shared point, will have only a relatively minor influence on the course of the entire coastal front line".[426]

6.33 The geographical circumstances of the delimitation of the maritime boundary between Côte d'Ivoire and Ghana are similar to those prevailing between Nicaragua and Honduras: an equidistance line would be established on the basis of a small number of base points, which are extremely close to each other and situated on an unstable portion of the coastline.

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[424] Minutes of the tenth meeting of the Côte d'Ivoire-Ghana Joint Commission on the Côte d'Ivoire-Ghana maritime boundary delimitation, 26-27 May 2014, p. 4, CMCI, vol. III, Annex 48.

[425] *Ibid*.

[426] *Case concerning territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 748, para. 294.

6.34 Having accepted that the most appropriate method in this particular case is the bisector method, the bisector which is to constitute the Côte d'Ivoire-Ghana boundary then has to be determined.

II. The bisector claimed by Côte d'Ivoire is equitable

A. The course of the bisector claimed by Côte d'Ivoire

6.35 Pursuant to the international jurisprudence presented above, the first stage in applying the bisector method consists in representing the Parties' coastlines as straight coastal fronts.

6.36 In *Nicaragua* v. *Honduras,* the Court stated that:[427]

> "If it is to 'be faithful to the actual geographical situation' (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985,* p. 45, para. 57), the method of delimitation should seek a solution by reference first to the States' 'relevant coasts' (see *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Judgment, I.C.J. Reports 2001*, p. 94, para. 178; see also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), I.C.J. Reports 2002*, p. 442, para. 90)). Identifying the relevant coastal geography calls for the exercise of judgment in assessing the actual coastal geography. The equidistance method approximates the relationship between two parties' relevant coasts by taking account of the relationships between designated pairs of base points. The bisector method comparably seeks to approximate the relevant coastal relationships, but does so on the basis of the macro-geography of a coastline as represented by a line drawn between two points on the coast. Thus, where the bisector method is to be applied, care must be taken to avoid 'completely refashioning nature' (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 49, para. 91)".[428]

6.37 Far from refashioning nature, the bisector proposed by Côte d'Ivoire reflects the coastal geography more faithfully insofar as it takes account of all the relevant coastlines of the two Parties and cancels out the concavity/convexity between them.

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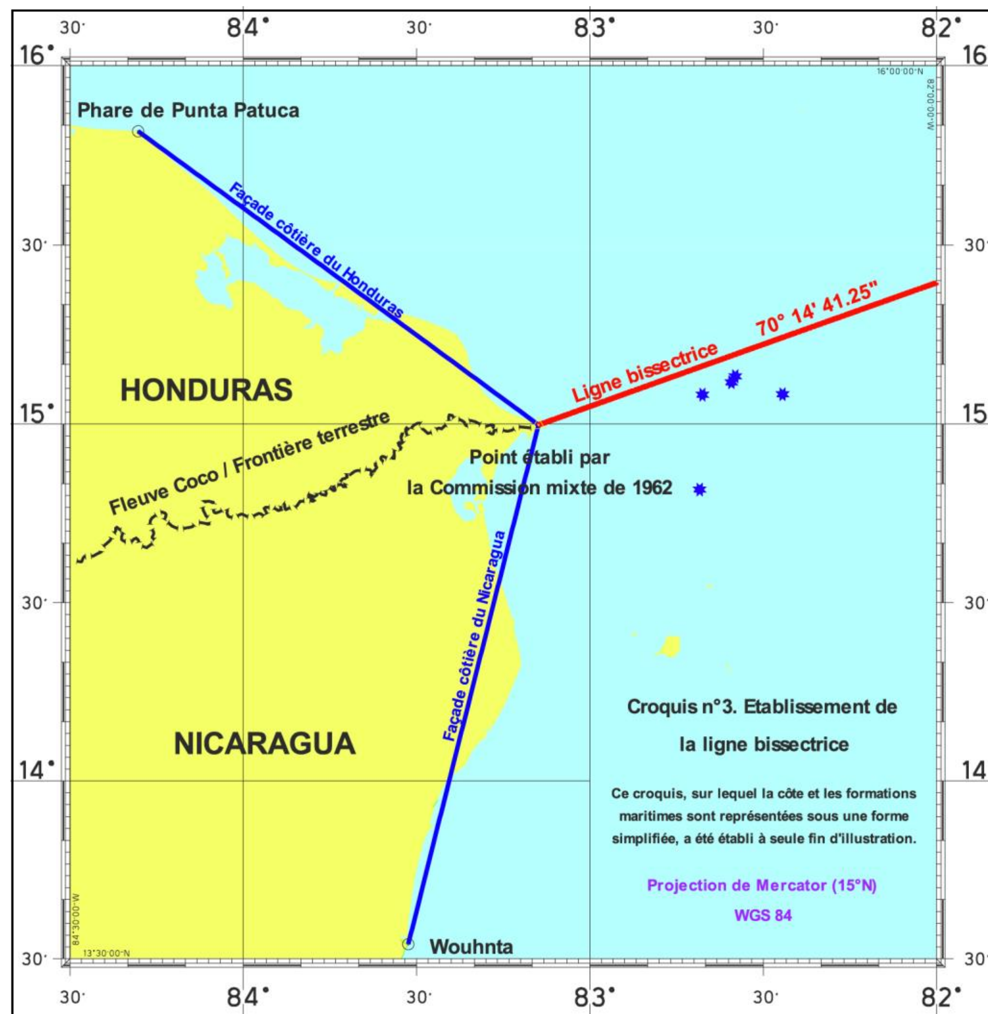
[427] *Ibid*., p. 747, para. 289.

[428] *Ibid.*

6.38 It is enlightening to analyse the cases in which the bisector method has been used for identifying the coastal fronts used for establishing the bisector. There are two possible ways.

6.39 In *Nicaragua* v. *Honduras,* the Court drew two straight lines to show the general direction of the respective coasts alone of the Parties; it then calculated the bisector of the angle formed by these two lines, as shown in **Sketch map 6.4** below.[429]



Croquis 6.4 Nicaragua c. Honduras, croquis n° 3, établissement de la ligne bissectrice

Sketch map 6.4: *Nicaragua* v. *Honduras*, Sketch map no. 3 establishing the bisector

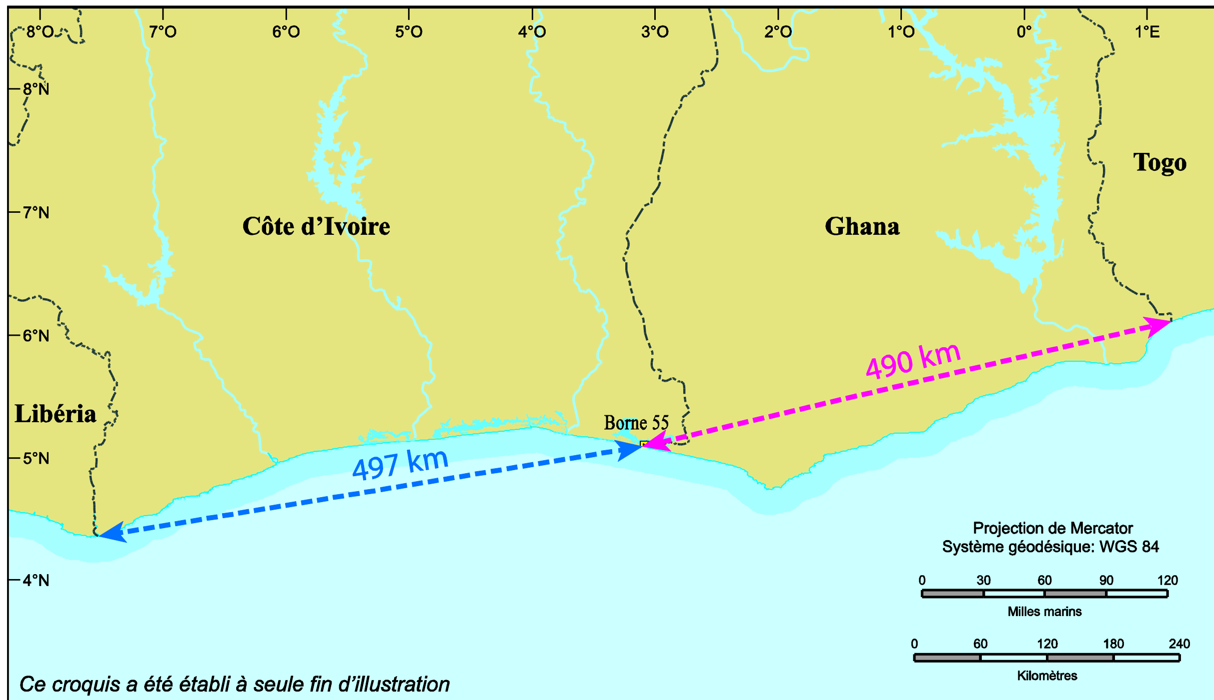
6.40 The same approach was used in the *Gulf of Maine* case.

[429] Source: *Ibid.*, p. 750, Sketch map n°3.

6.41 Another method for identifying the relevant coastlines was used in the *Guinea* v. *Guinea-Bissau* case. The Arbitral Tribunal adopted a sub-regional approach by drawing a single line perpendicular to the general direction of the West African coastline between Point Almadies in Senegal and Cape Shilling in Sierra Leone; it then drew the perpendicular to that line, as shown in **Sketch map 6.5** below.

Sketch map 6.5: The maritime boundary between Guinea and Guinea-Bissau

6.42 In the present case, all the coasts of both States should be used for drawing the bisector, as shown in **Sketch map 6.6** below. This is the only way of "be[ing] faithful to the actual geographical situation"[430] of the Parties.



Sketch map 6.6: Simplified representation of the Parties' coasts used for establishing the bisector

6.43 This choice is relevant on several counts.

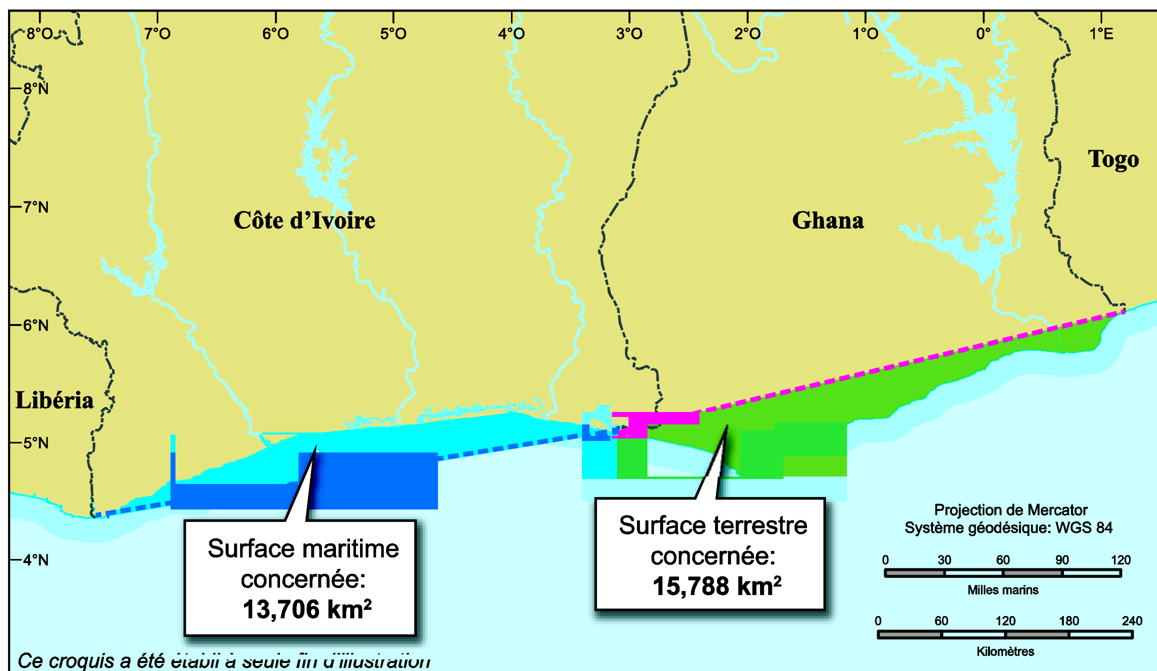
6.44 *First*, the length of the coastlines of Côte d'Ivoire and Ghana is very similar: 515 km for the Côte d'Ivoire coastline and 539 km for the Ghanaian coastline. The difference between the lengths of these two coastlines is 24 km and is even less when the coastlines are represented by a straight line showing their general direction. As **Sketch map 6.6** above shows, it is then only 7 km.

6.45 *Next,* the two straight lines drawn in this way follow the course of the coastline of the Gulf of Guinea on which Côte d'Ivoire and Ghana are situated. The simplified representation of all the coasts of the Parties, from boundary post to boundary post,

[430] *Ibid.*, p. 747, para. 289.

respectively, results in two straight lines being drawn, both of which follow a general east-north-easterly course, and hence the same direction as those of the sub-region in which Côte d'Ivoire and Ghana are located.

6.46 *Lastly*, the simplified representation of all the coastal fronts of the Parties enables the dual concavity/convexity of the Côte d'Ivoire and Ghanaian coastlines to be corrected almost perfectly. As **Sketch map 6.7** below shows, the line drawn between the respective boundary posts of the Parties erases the concavity of the Côte d'Ivoire coast over an area of approximately 13,650 km² and the convexity of the Ghanaian coastline over an area of approximately 15,850 km². Since these areas are very similar, the course of these lines enables the impact of the dual concavity/convexity of the Parties' coastlines to be reduced to next to nothing and thus to fall in with the procedure recommended by the Court in *Nicaragua* v. *Honduras*, that is, to take "the macro-geography of a coastline"[431] as a basis.



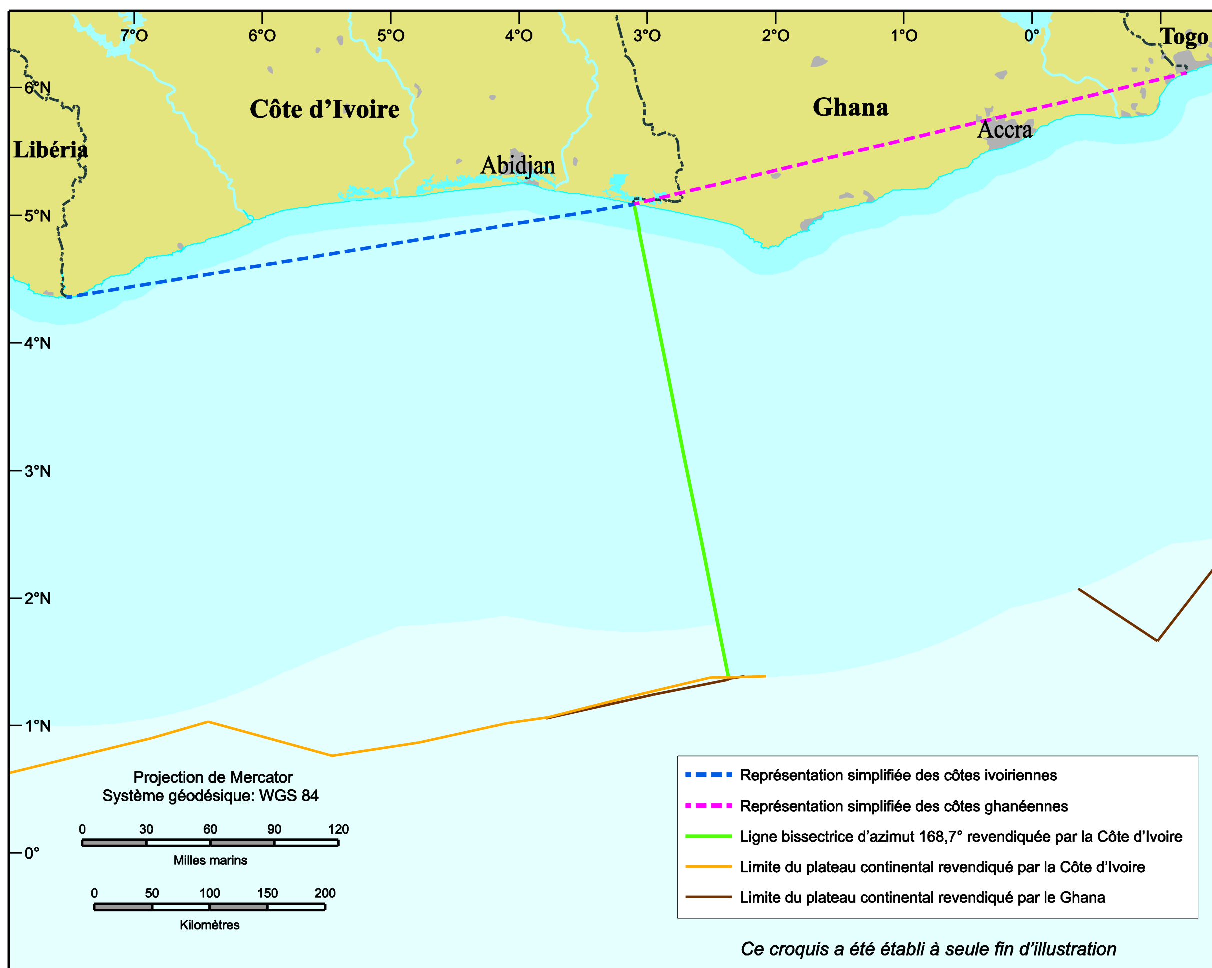
Sketch map 6.7: The effect of the simplified representation of the Parties' coastlines used to establish the bisector

6.47 Once the States' coastlines to be used have been determined and represented by the drawing of two straight lines, the azimuth of the bisector of the angle formed by these

[431] *Ibid.*

two segments then has to be determined. A simple arithmetical calculation is all that is needed to determine the bisector: since the Côte d'Ivoire coastline is oriented at an angle of 80.5° and the Ghanaian coastline at 76.5°, the azimuth of the bisector is 168.7°. Finally, this 168.7° azimuth bisector is transposed to boundary post 55, of which it is the starting point. The coordinates of boundary post 55 are:[432] 05° 05' 28.4'' N latitude north, 03° 06' 21.8'' W longitude west.

6.48 **Sketch map 6.8** shows the 168.7° azimuth line, which, in the view of Côte d'Ivoire, has to be the maritime boundary between itself and Ghana.



Sketch map 6.8: The azimuth 168.7° bisector

[432] The coordinates refer to the WGS84 system.

B. The bisector claimed by Côte d'Ivoire respects the rights and interests of neighbouring States

6.49 The States situated on the section of the Gulf of Guinea in the general east-north-easterly direction (between Cape Palmas in Liberia and the mouth of the Nun River in Nigeria), that is, Côte d'Ivoire, Ghana, Togo and Benin, have not delimited their maritime boundaries by way of agreement.

6.50 Côte d'Ivoire and Ghana are the first of these countries to have conducted negotiations in the true sense in order to delimit their common maritime boundary and to have submitted a case to an international tribunal owing to the failure of these negotiations. The Ivorian-Ghanaian maritime boundary will thus be the first to be delimited in this region. The drawing of this boundary and the methods relating to it will be sure to have an influence on the methods used by neighbouring States to delimit their maritime boundaries. The present delimitation should, as far as possible, not interfere with their interests.

6.51 The International Court of Justice and arbitral tribunals, being fully aware of the influence which their decisions might have on neighbouring States, take sub-regional interests into account when delimiting maritime boundaries (*1.*). The respect of sub-regional interests was also central to the negotiations between Côte d'Ivoire and Ghana concerning the delimitation of their common maritime boundary (*2.*). The bisector claimed by Côte d'Ivoire is unlikely to create a precedent which would be prejudicial to the interests of neighbouring States in the Gulf of Guinea (*3.*).

1. Consideration of sub-regional interests by jurisprudence

6.52 Within the context of delimitation of a maritime boundary, judicial bodies take the existence and respect of the rights and interests of neighbouring States into consideration when delimiting a maritime boundary between two States.

6.53 Thus, the jurisprudence of the International Court of Justice, like that of arbitral tribunals, adopts a macro-geographical view of disputes and takes account of recognized rights as well as potential rights of neighbouring States in the same area.

To that end, judges and arbitrators take into consideration the "effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region".[433]

6.54 In this particular case, the delimitation of the maritime boundary between Côte d'Ivoire and Ghana will not encroach upon the rights of third States since the Gulf of Guinea is open to the ocean. Hence, the Côte d'Ivoire-Ghanaian maritime boundary is not likely to prejudice directly Liberia, Togo or Benin or the other Gulf of Guinea States.

6.55 Nevertheless, delimiting this boundary in the manner advocated by this Chamber would be liable to create a sub-regional precedent. In that respect, this precedent should not be such as to harm the interests of neighbouring States when they undertake the delimitation of their own maritime boundaries, by way of agreement or through a court.

2. Consideration of sub-regional interests by Côte d'Ivoire and Ghana during their negotiations

6.56 Initially, the negotiations between Côte d'Ivoire and Ghana were in keeping with the desire to respect the interests of third States in the sub-region.

6.57 During the first five meetings of the Côte d'Ivoire-Ghana Joint Commission, Ghana agreed to take account of sub-regional interests. Their representative himself recalled at the first meeting of the Joint Commission, held on 16 and 17 July 2008:

> "Finally, I wish to draw your attention to Figure 4 which shows the course of maritime boundaries in the Gulf of Guinea from Côte d'Ivoire to Gabon, which may serve as a guide for our deliberations".[434]

6.58 Some months later, on 25 and 26 February 2009, a meeting was held between Ghana, Côte d'Ivoire, Benin, Togo and Nigeria, under the aegis of the Economic Community

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[433] *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, *Judgment, I.C.J. Reports 1969*, p. 54, para. 101.

[434] Opening speech of Ghana at the first meeting of the Ivorian-Ghanaian Joint Commission on the delimitation of the maritime boundary, 16-17 July 2008, CMCI, vol. III, Annex 28.

of West African States (ECOWAS), concerning the submission of their respective requests for the extension of the outer limits of the continental shelf, which was to take place before the summer of 2009.[435] During that meeting, the States reaffirmed that they should continue their negotiations on their common maritime boundaries "in a spirit of cooperation".[436] During the fifth meeting of the Joint Commission, Côte d'Ivoire sent a communication to Ghana in which it stated that the equidistance method would have an unfavourable result for the other Gulf States, in particular Togo and Benin:

> "(i) Togo would have an atrophied maritime space with double symmetrical bevel whose point at sea would be located on a line clearly below 100 nautical miles; thus this coastal State would be deprived of a true legal continental shelf whereas in spite of its narrow coasts adjacent to the Ghanaian coasts to the West and to the Benin coasts to the East, this country has a littoral opening to the high sea;
>
> (ii) Benin would have a narrowed legal continental shelf, ending in a double dissymmetrical bevel on a line in the vicinity of the 200 nautical miles, without a true direct access to the high sea;
>
> (iii) Ghana and Nigeria, which have neither adjacent coasts, nor coasts which face each other, would share maritime boundaries on the Eastern and Western edges of their extended continental shelves, respectively".[437]

And, in conclusion:

> "thus, the delimitation of the maritime boundaries between the five coastal States of the Gulf of Guinea based on the application of equidistance would be to the sole advantage of Ghana and to the detriment of Côte d'Ivoire, Togo, Benin and Nigeria; consequently, the Ivorian Party declares the method of the equidistance suggested by Ghana misfit, inappropriate and non equitable (inequitable)".[438]

6.59 It was only at the final negotiation meeting, that is, some months before the present proceedings were initiated, that Ghana opportunely altered its position on the issue

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[435] *Supra*, para. 4.114

[436] Minutes of the meeting of experts of certain Member States of the ECOWAS on the outer limits of the continental shelf, Accra, 25-26 February 2009, CMCI, vol. III, Annex 31.

[437] Communication of the Cote d'Ivoire party in response to the proposals of 27 and 28 April 2010 of the Ghanaian party, 31 May 2010, page 8, CMCI, vol. III, Annex 38.

[438] *Ibid.,* p. 10.

and "objected to references to Togo and Benin [by Côte d'Ivoire] in [its] presentation".[439]

3. The bisector claimed by Côte d'Ivoire is unlikely to create a precedent which would be prejudicial to the interests of neighbouring States in the Gulf of Guinea

6.60 Côte d'Ivoire invites this Chamber to keep in mind the interests of the neighbouring States in the process of delimiting the maritime boundary between Côte d'Ivoire and Ghana.

6.61 The specific geographical features of these States are similar to those of Côte d'Ivoire and Ghana, i.e., the concavity of their coastlines and instability of their shores. The effect of a strict application of the equidistance method would be to cut off their access to maritime areas in a highly significant manner.

6.62 Driven by this desire to reach an equitable result, the States in the region, having already initiated the delimitation of their maritime boundaries, opted for a different method to that of equidistance. For example:

- Senegal and the Gambia delimited their common maritime boundary according to the parallels of latitude method;[440]

- Guinea-Bissau and Senegal opted for the bisector method and delimited their common maritime boundary according to a 240° azimuth line.[441]

6.63 Similarly, the Arbitral Tribunal dealing with the delimitation of the maritime boundary between Guinea and Guinea-Bissau opted for the bisector method, as **Sketch map 6.5** of the present Counter-Memorial shows.[442]

[439] Minutes of the tenth meeting of the Côte d'Ivoire-Ghana Joint Commission for delimitation of the maritime boundary between Ghana and Côte d'Ivoire, 26-27 May 2014, p. 5, CMCI, vol. III, Annex 48.

[440] A. O. Adede, "The Gambia-Senegal. Report Number 4-2", *in* J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries,* 1993; p. 850, CMCI, vol. VI, Annex 181.

[441] A. O. Adede, "Guinea-Bissau-Senegal. Report Number 4-4", *in* J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries*, 1993, p. 868, CMCI, vol. VI, Annex 180.

6.64 When the equidistance method was adopted for the delimitation of the maritime boundaries of certain States in the region, the explanation for the use of this method is either that their coasts were opposite and not adjacent, as is the case of Côte d'Ivoire and Ghana,[443] or that the geographical circumstances of the States were very different from those of Côte d'Ivoire and Ghana.[444]

6.65 As concerns the States whose boundaries have yet to be delimited – including Togo and Benin in particular– they argue in favour of the application of an alternative delimitation method to equidistance, which would be highly unfair.

6.66 Togo and Benin claim the use of the meridian method for delimiting their common maritime boundary. Togo adopted a decree of 6 July 2011, concerning "delimitation of the maritime boundaries of the Togolese Republic with the Republic of Benin to the east and the Republic of Ghana to the west by the meridians of the boundary posts located on the baseline of the territorial sea of the Togolese Republic"[445] *[translation provided by the Registry].* The negotiations concerning the maritime boundary between Benin and Togo were held under the aegis of the Benin-Togo Joint Commission on boundary delimitation, which was established in 1977 and has met on thirteen occasions. During these negotiations, the two States are believed to have envisaged using the meridian method for delimiting their maritime boundary, although no agreement has been signed as yet.[446]

6.67 The preliminary information indicative of the outer limits of the continental shelf of Benin filed with the Commission on the Limits of the Continental Shelf on 12 May

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[442] *Supra*, para. 6.41.

[443] D.A. Colson, "Equatorial Guinea-Sao Tome and Principe. Report Number 4-8", *in* J.I. Charney and R.W. Smith (eds.), *International Maritime Boundaries*, 2002, p. 2648, CMCI, vol. VI, Annex 182; D.A. Colson, "Equatorial Guinea-Nigeria. Report n°4-9", in J.I. Charney and R.W. Smith (eds.), *International Maritime Boundaries*, 2002, page 2658, CMCI, vol. VI, Annex 183; T. Daniel, "Gabon-Sao Tome and Principe. Report n° 4-11", *in* J.I. Charney et R.W. Smith (eds.), *International Maritime Boundaries*, 2005, p. 3684, CMCI, vol. VI, Annex 184.

[444] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002,* page 303.

[445] Ecofin agency, *Le Togo protège ses frontières maritimes*, 4 August 2011, CMCI, vol. V, Annex 118.

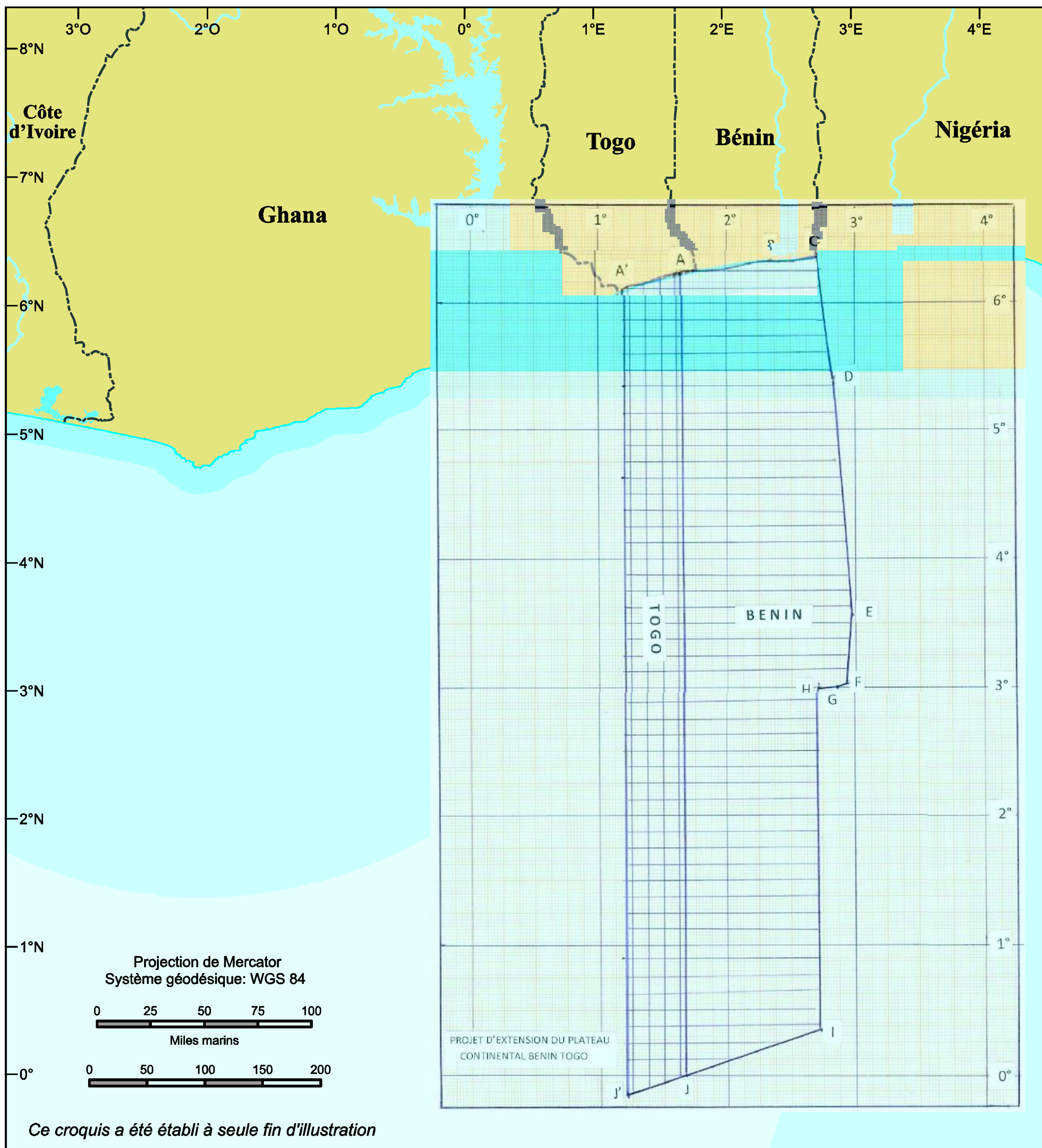
[446] Agence béninoise de Gestion Intégrée des Espaces Frontaliers, *Frontières maritimes*, undated, CMCI, vol. VI, Annex 185.

2009 reflect the common position adopted by Togo and Benin and the application of the meridian method[447] (see **Sketch map 6.9** below).

6.68 Similarly, Benin refuses to use the equidistance method to delimit its maritime boundary with Nigeria. On 4 August 2006, a treaty was signed between Benin and Nigeria, at Abuja in Nigeria, concerning delimitation of the maritime boundary between these two States. This treaty provides for a maritime boundary drawn according to the equidistance method, as reported by Benin in the preliminary information indicative of the outer limits of Benin's continental shelf submitted by that State to the CLCS, which shows that the boundary with Nigeria corresponds to the adjusted equidistance method. Nevertheless, in December 2011, the Beninese politicians refused to authorize ratification of this treaty, describing it as "theoretical". They considered that the use of the equidistance method "does not safeguard Benin's interests, in particular as concerns the extension of the continental shelf […] beyond 200 nautical miles"[448] *[translation provided by the Registry].* In December 2011, a joint Beninese-Nigerian boundary commission was established which met in mid-January 2014; however, it is not known whether the subject of the maritime boundary between the two States was broached.

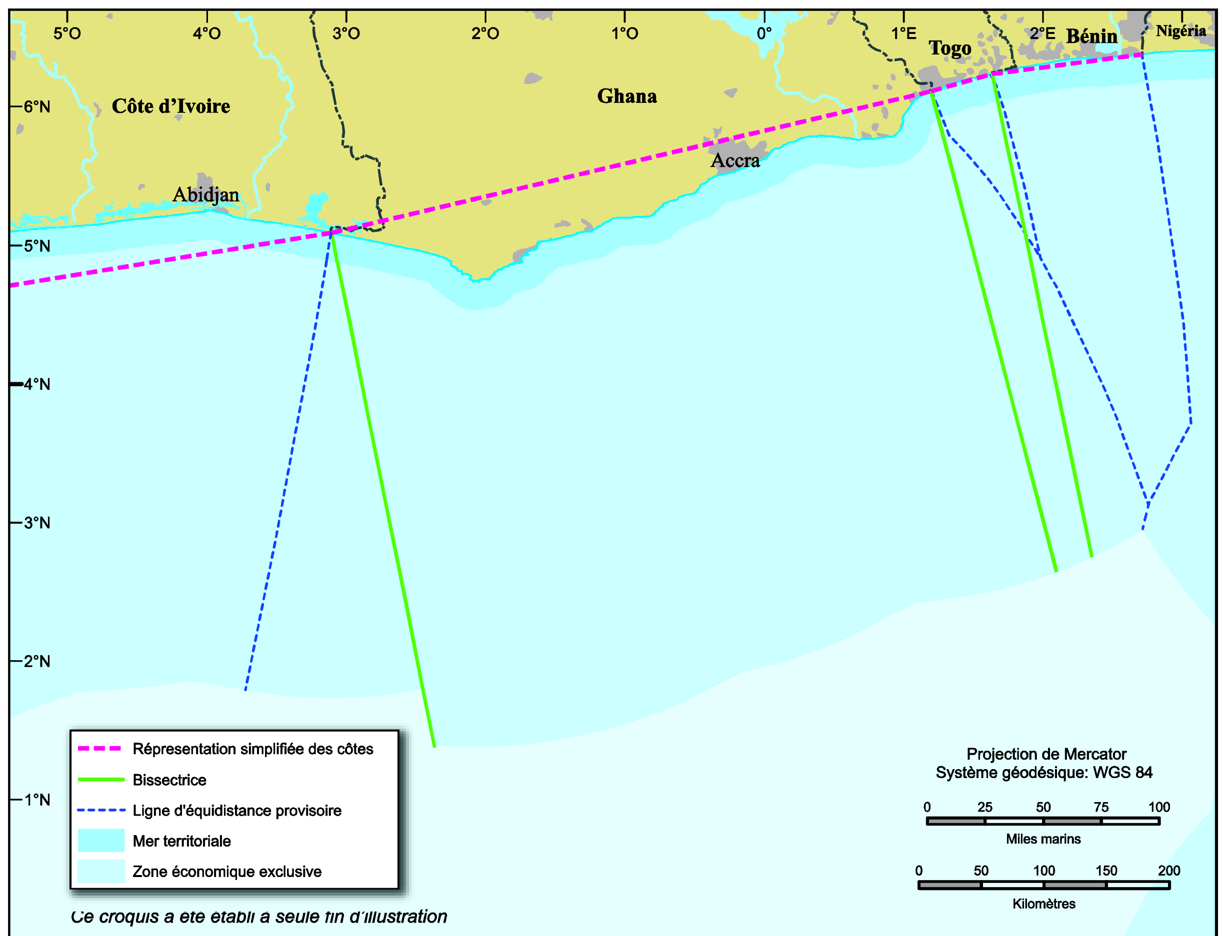
[447] Preliminary information indicative of the outer limits of Benin's continental shelf, 12 May 2009, Annex 2, p. 30, CMCI, vol. VI, Annex 176.

[448] Agence béninoise de Gestion Intégrée des Espaces Frontaliers, *Frontière bénino-nigériane*, undated, CMCI, vol. VI, Annex 186.



Sketch map 6.9: Planned extension of Benin and Togo's continental shelf

6.69 Contrary to the equidistance method, the bisector method claimed by Côte d'Ivoire does not establish any harmful precedent. As **Sketch map 6.10** below shows, if Togo and Benin wished to follow the line of the precedent set by the Chamber by using the bisector method, it would be respectful of their rights and interests insofar as both would benefit from an appropriate maritime area.



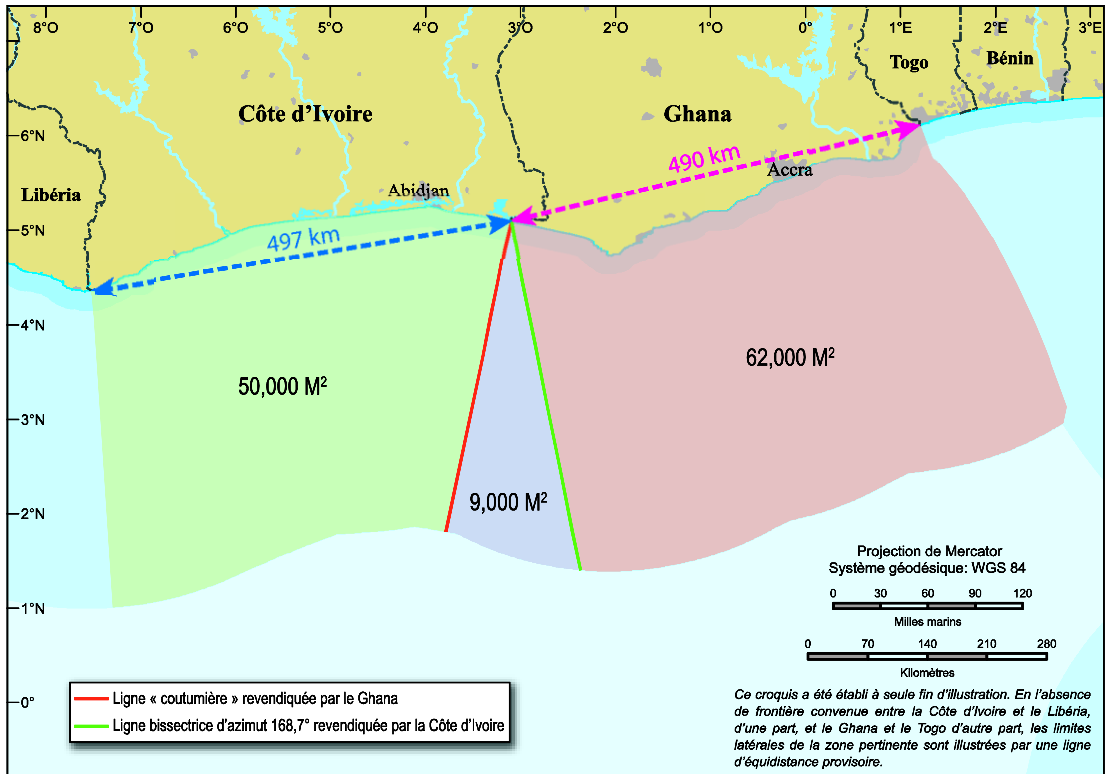
Sketch map 6.10: Application of the bisector method to the sub-region

Conclusion

6.70 For the reasons set out above, Côte d'Ivoire requests this Chamber to delimit the Ivorian-Ghanaian maritime boundary in the territorial sea, the exclusive economic zone and the continental shelf up to 200 nautical miles according to a 168.7° azimuth line from boundary post 55.

6.71 This 168.7° azimuth line would indeed allow an equitable result to be attained. The result is equitable insofar as it reflects the geography of the coastlines of the two States and fairly divides the maritime spaces between Côte d'Ivoire and Ghana in the Atlantic Ocean. Côte d'Ivoire would thus be granted an area of 59,000 nm^2 and Ghana 62,000 nm^2.

6.72 The bisector also enables the interests of States neighbouring the Parties to be respected, by avoiding the establishment of a precedent which would be prejudicial to their interests and by eliminating any unfairness resulting from the equidistance method.



Sketch map 6.11: The equitable nature of the 168.7° azimuth line

CHAPTER 7

APPLICATION OF THE EQUIDISTANCE/RELEVANT CIRCUMSTANCE METHOD

7.1 If the present Chamber were to consider the bisector method inapplicable to this particular case, it might arrive at an equitable result by delimiting the Parties' maritime areas according to the equidistance/relevant circumstance method. According to well-established jurisprudence, this method consists in drawing, first, a provisional equidistance line, which then has to be adjusted in a second stage, if necessary, depending on the relevant circumstances, before, finally, ensuring that the result attained does not engender a marked disproportion between the lengths of the relevant coastlines and maritime areas attributed to each of the Parties.[449]

7.2 During the ninth meeting of negotiations, Côte d'Ivoire had, in a spirit of compromise, explicitly envisaged the application of the equidistance method as an alternative to the bisector method.[450] Nevertheless, it had insisted on the inequitable nature of equidistance *stricto senso*, and had emphasised the indissociable nature of the two elements on which this jurisprudential method is based: equidistance *and* relevant circumstances.[451] During the tenth and final meeting, Ghana refused to discuss these circumstances,[452] thus demonstrating that, far from applying the method in three stages, it wished to stop at the first stage without any concern about arriving at an equitable solution.

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[449] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014,* page 35, para. 180. See also: *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 101-103, paras 115-122; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, pp. 695-696, paras 190-193; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012,* paragraph 240.

[450] Presentation of Côte d'Ivoire's position during the ninth negotiation meeting between Ghana and Côte d'Ivoire on the maritime boundary, concluding remarks on PowerPoint, Accra, 23-24 April 2014, CMCI, vol. III, Annex 46.

[451] *Ibid*.

[452] "[T]he three (3) stage-approach to maritime delimitation […] would be the best way forward for both countries since there are no relevant circumstances". (Government of Ghana, Presentation of Ghana to the 10th Ghana-Côte d'Ivoire Meeting (May 2014) (MG, Annex 62A)). See also Minutes of the 10th meeting of the Côte-d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 26-27 May 2014, CMCI, vol. III, Annex 48.

7.3 In the present case, the application of the three-stage method should, in the opinion of Côte d'Ivoire, lead to a line which is identical to that resulting from the use of the bisector method, since the same geographical circumstances which led Côte d'Ivoire to propose the bisector method substantiate the adjustment of the provisional equidistance line. It is thus only as a subsidiary measure that Côte d'Ivoire is putting it forward in the present chapter.

I. Establishment of the provisional equidistance line

7.4 The provisional equidistance line (B.) is established on the basis of base points identified on normal baselines (A.).

A. Determination of the base points

7.5 The first stage in determining base points is to establish the baseline by virtue of which the base points are to be identified. Article 5 (*Normal baseline*) of UNCLOS provides:

> "Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State".

7.6 In the present case, neither of the two States had either declared or claimed straight baselines. It is thus as a function of the normal baseline, that is, the "low-water line along the coast" that the base points from which the provisional equidistance line is established have to be identified.

7.7 Determining base points for the purposes of delimitation is a question of fact, entirely dependent on the coastal geography:

> “The low-water line along the coast is a fact irrespective of its representation on charts. The territorial sea exists even if no particular low-water line has been selected or if no charts have been officially recognized”.[453]

7.8 On numerous occasions, international courts and tribunals have underlined that it was for them to determine the base points in an objective manner, distancing themselves as necessary from the Parties’ positions:

> “The Tribunal observes that, while coastal States are entitled to determine their base points for the purpose of delimitation, the Tribunal is not obliged, when called upon to delimit the maritime boundary between the parties to a dispute, to accept base points indicated by either or both of them. The Tribunal may establish its own base points, on the basis of the geographical facts of the case”.[454]

7.9 Hence it is for the Special Chamber to determine “the appropriate base points by reference to *the physical geography at the time of the delimitation* and to the low-water line of the relevant coasts*”*.[455] It must therefore take as a basis the most recent data available to it, i.e., those providing the most reliable description of the coastal geography which the Chamber must take as a basis for validating the base points proposed by the Parties or determining the points which it should use:

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[453] United Nations, Division for Ocean Affairs and the Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea.*, United Nations Publications, E.88.V.5* (1989), paragraph 12. In the same vein, the report of the International Law Association Committee on Baselines concluded that: “the legal normal baseline is the actual low-water line along the coast at the vertical datum, also known as the chart datum, indicated on charts officially recognized by the coastal State. The phrase ‘as marked on large-scale charts officially recognized by the coastal State’ provides for coastal State discretion to choose the vertical datum at which that State measures and depicts its low-water line. The charted low-water line illustrates the legal normal baseline, and in most instances and for most purposes the charted low-water line provides a sufficiently accurate representation of the normal baseline. As a matter of evidence for proving the location of the normal baseline the charted line appears to enjoy a strong presumption of accuracy. However, where significant physical changes have occurred so that the chart does not provide an accurate representation of the actual low-water line at the chosen vertical datum, extrinsic evidence has been considered by international courts and tribunals in order to determine the location of the legal normal baseline”, International Law Association, Report entitled *Baselines under the International Law of the Sea*, Sofia Session, 2012, CMCI, vol. V, Annex 110.

[454] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 264. See also: *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, para. 117, or p. 108, para. 137; *Case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, Judgment, I.C.J. Reports 2012 (II)*, p. 698, para. 200; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India), Award of 7 July 2014,* paras 252-253.

[455] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014,* para. 223, emphasis added.

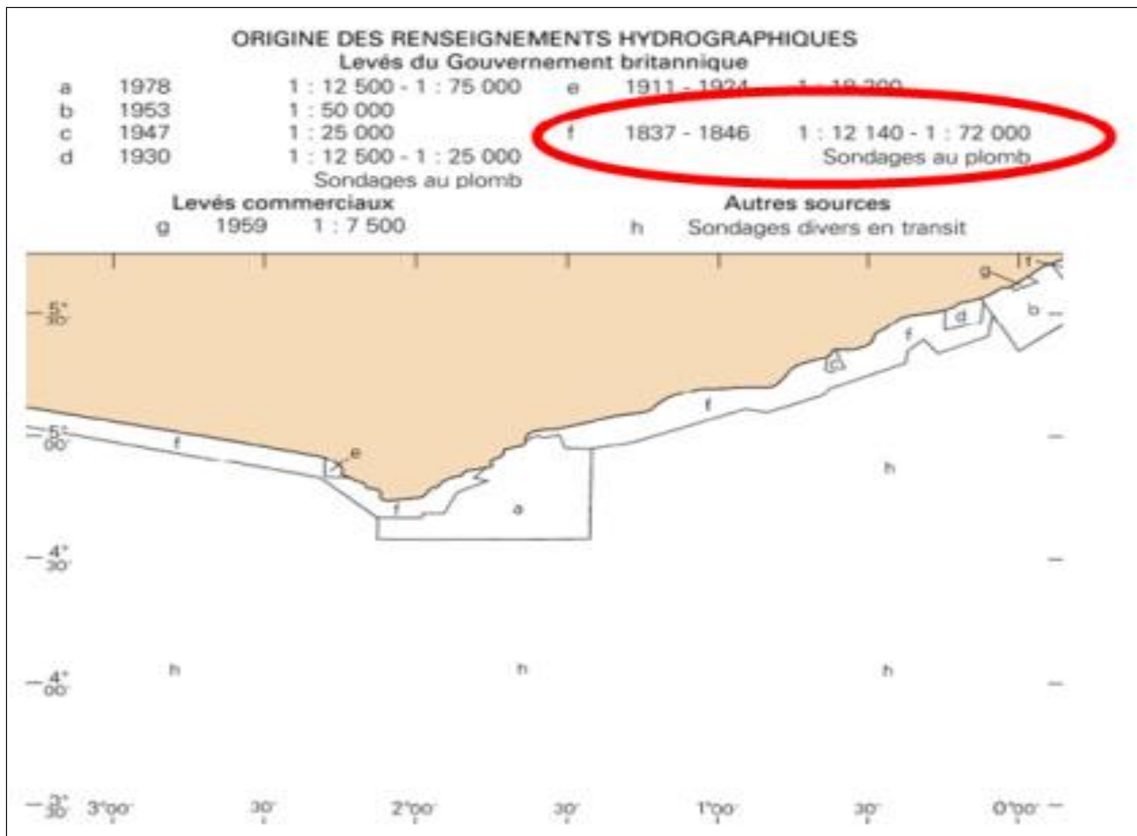
> "The Parties have presented opposing views on the accuracy of the maps and charts produced, due in particular to the rapid erosion of the coastline. *The Tribunal will avail itself of the most reliable evidence, resulting from the latest surveys and incorporated in the most recent large scale charts officially recognized by the Parties* in accordance with article 5 of the Convention".[456]

1. The need for new topographical surveys for establishing a baseline

7.10 Until recently, neither Côte d'Ivoire nor Ghana had produced national charts. The Gulf of Guinea was shown on a series of international charts on a scale of 1:350,000, produced by the *Service hydrographique de la marine française* (SHOM) (Naval Hydrographic and Oceanographic Service) in collaboration with the United Kingdom Hydrographic Office (UKHO). The regions of the border coasts between Côte d'Ivoire and Ghana appear on chart no. INT 2806, produced by the UKHO under number BA 1383, and reproduced in identical fashion by the SHOM under number SHOM 7786.

7.11 This chart has two disadvantages: first, it is on a scale of 1:350,000, which is insufficiently precise for delimitation purposes. Second, this margin of error is amplified by the fact that the coastline of the border regions between Côte d'Ivoire and Ghana was surveyed a very long time ago: as the table showing the sources of the international charts which is reproduced below indicates, the relevant coastlines of Ghana and Côte d'Ivoire were determined as far back as 1837 to 1846.

[456] *Ibid*., para. 224, emphasis added.



Sketch map 7.1: Table showing the sources of chart INT 2806 (BA 1383 / SHOM 7786) on the scale of 1:350,000.

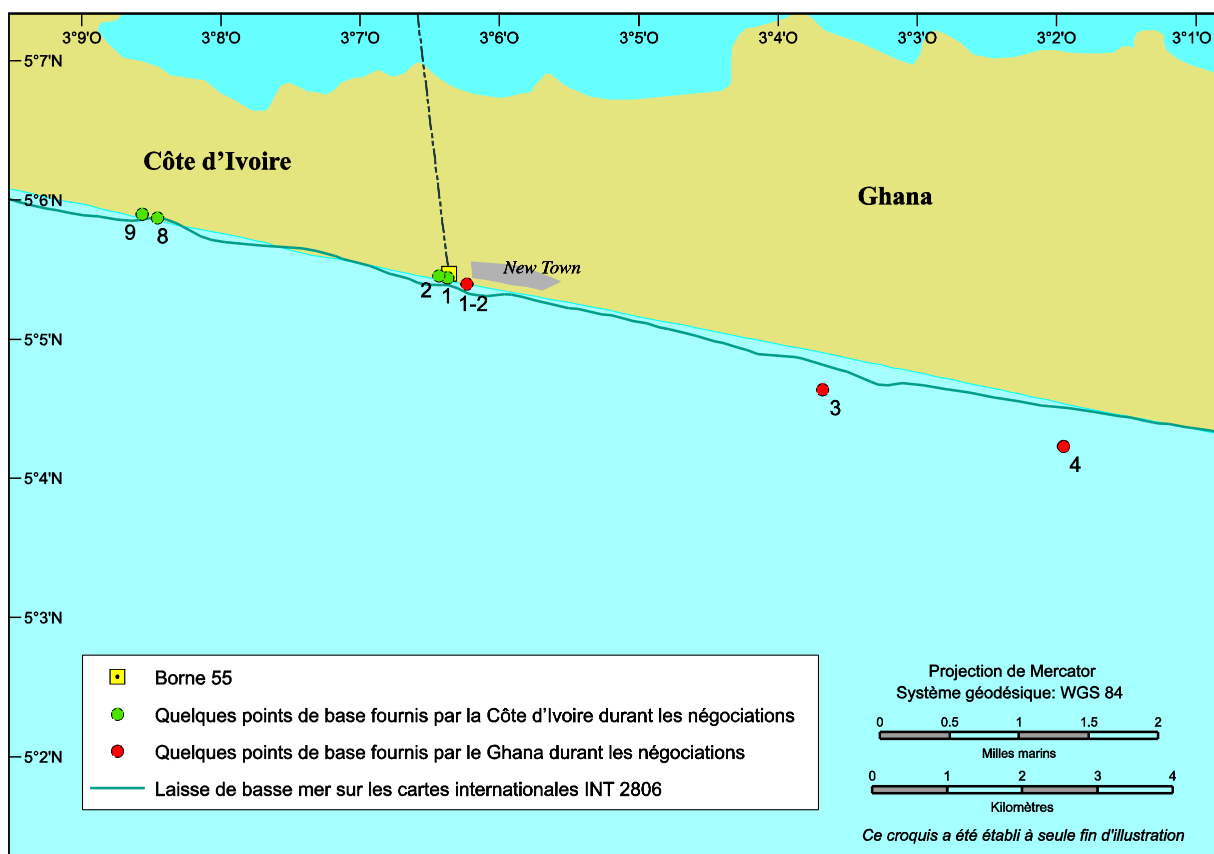
7.12 It is this cartographic basis which Ghana is using in its Memorial for determining the base points and, consequently, for establishing the "strict equidistance line" which appears in Sketch map 5.8 of its Memorial.[457] More specifically, in its Memorial, Ghana is taking as a basis chart British Admiralty n°1383[458] in which the coastline was established on the basis of the same topographical surveys carried out by the British government in 1837-1846. It is thus not surprising that the heading "*Chart Accuracy"* warns that "owing to the age and quality of the source information, some detail on this chart may not be positioned accurately".[459] Ghana took this chart as its basis, without even enquiring into the probative nature of the information it provides, despite its manifest inaccuracy.

[457] Ghana used neither these charts nor this coast line when granting its oil concessions. Its so-called "customary line" is thus not identical to the equidistance line. Furthermore, Ghana itself admits this (see MG, paras 5.93-5.94 and Figure 5.10).

[458] See MG, vol. I, p. 145, para. 5.87 and MG, vol. II, Annex M61.

[459] MG, vol. II, Annex M61.

7.13 This problem of the obvious inaccuracy of the coastline shown on the different charts in circulation was stressed during the negotiations between Côte d'Ivoire and Ghana, which is when the two States realized that their data were manifestly incompatible. Thus, no fewer than five meetings (out of ten) were dedicated to the topographical and cartographic aspects, in particular to the exchange and discussion on the base points, without the Parties' being able to agree.[460] Several sources of errors were mentioned, including the use of different cartographic bases, the obsolescence of the sources, the inaccuracies of the geodetic systems, the taking account of varying restoration surveys, and the instability of the coast as a result of erosion or accretion.[461]



Sketch map 7.2: The base points identified by the Parties during the negotiations

[460] The technical aspects were discussed, sometimes at length, during the sixth, seventh, eighth, ninth and tenth meetings. See *supra,* paras. 2.75-2.79.

[461] See in particular Minutes of the ninth negotiation meeting between Ghana and Côte d'Ivoire concerning the maritime boundary, 23-24 April 2014, p. 4, CMCI, vol. III, Annex 47 ; see also: Government of Ghana, Presentation of Ghana to the 10th Ghana-Côte d'Ivoire Meeting (May 2014) (MG, Annex 62A).

7.14 Following technical verification, it appeared that the base points determined both by Ghana and by Côte d'Ivoire did not reflect the coastal reality. As **Sketch map 7.2** shows, some of them differ both with respect to the coastline shown on certain international charts on the scale of 1:350,000[462] and with respect to the low-water line identified in more recent studies. The base points provided by Ghana are located several hundreds of metres seaward, whilst "[the] majority of the base points supplied by Cote d'Ivoire fall landward of the coastline", as Ghana itself noted during the negotiations.[463] The consequences of this inadequacy of the base points are even more significant for the equidistance line in that very few points have been used for establishing it.

7.15 The inaccuracy of the existing cartographic data has led Côte d'Ivoire to seek the assistance of French hydrographic experts commissioned to undertake new coastal surveys.[464] This step is, moreover, in line with the recommendations of the United Nations Division for Ocean Affairs and the Law of the Sea, which noted in its study of the baselines that:

> "Undoubtedly, it is desirable to use existing charts wherever possible; however, a problem may arise in cases where there are no suitable charts because either the existing charts are too old and no longer sufficiently accurate […] or they are of too small a scale. In practice *this is less likely to be a significant problem in the case of the normal baselines* than in the case of straight or archipelagic baselines […], *but it may also arise if a boundary is to be negotiated, or if there is an agreement on access to resources with the State's zones of jurisdiction*.
>
> 5. If the problem does arise, *the ideal solution would be to have the coasts resurveyed and charted*. At best that is a long-term solution, although in some cases small local check surveys may suffice. It may be expedient, therefore, *to prepare and print special baseline charts compiled on a suitable scale on the basis of* existing *official land* (topographical) *maps*, which are likely to be relatively up to date".[465]

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[462] See *supra*, para. 7.10.

[463] Government of Ghana, Presentation of Ghana to the tenth Ghana-Côte d'Ivoire Meeting (May 2014) (MG, Annex 62A).

[464] Presentation by the Argans company to the Ivorian delegation, March 2014, CMCI, vol. III, Annex 45.

[465] United Nations, Division for Ocean Affairs and the Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea. E.88.V.5** (1989), pp. 1-2, paras 4-5, italics added.

7.16 These studies led to Côte d'Ivoire's publication of a new series of charts, and in particular of one on a scale of 1:100,000[466] and one covering the entire Côte d'Ivoire coast, on a scale of 1:1,000,000;[467] these charts were communicated to the United Nations Secretary-General.[468] They were also sent to the International Hydrographic Organization,[469] the SHOM[470] and the UKHO.[471] The 1:100,000-scale chart is in conformity with United Nations recommendations concerning the technical aspects of delimitation:

> "8. The scale to be chosen for such special baseline charts will depend on the scales of the land maps available and the complexity of the low-water line. It is recommended that in general the scale should be within the range 1:50,000 to 1:200,000".[472]

7.17 In contrast, it should be recalled that Admiralty Chart n°1383, which Ghana said it used for calculating its "provisional" equidistance line,[473] is based on information dating from the first half of the 19th century[474] and reproduced on charts on a scale of 1:350,000, which thus does not comply with the United Nations recommendations.

7.18 The table showing the sources on Ivorian chart 001 AEM, published in 2016, illustrates the progress made with respect to chart INT 2806 (**Sketch map 7.3** below). As the table of sources shows *[within the red circle]*, "[t]he low-water line

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[466] Côte d'Ivoire, chart 002 entitled *"De Mohamé (Côte d'Ivoire) à Half Assini (Ghana)"*, 2016, published on a scale of 1:100,000, CMCI, vol. II, Annex C7.

[467] Côte d'Ivoire, chart 001 entitled *"De Nanakrou (Liberia) à Dix Cove (Ghana)",* 2016, published on a scale of: 1: 1,000,000 CMCI, vol. II, Annex C6.

[468] Letter from the Permanent Mission of the Republic of Côte d'Ivoire to the United Nations Secretary-General, 28 December 2015, CMCI, vol. V, Annex 170.

[469] Letter from the President of the National Commission for Maritime Boundaries to the President of the International Hydrographic Organization, 31 December 2015, CMCI, vol. V, Annex 173.

[470] Letter from the President of the National Commission for Maritime Boundaries to the Director of the SHOM, 31 December 2015, CMCI, vol. V, Annex 171.

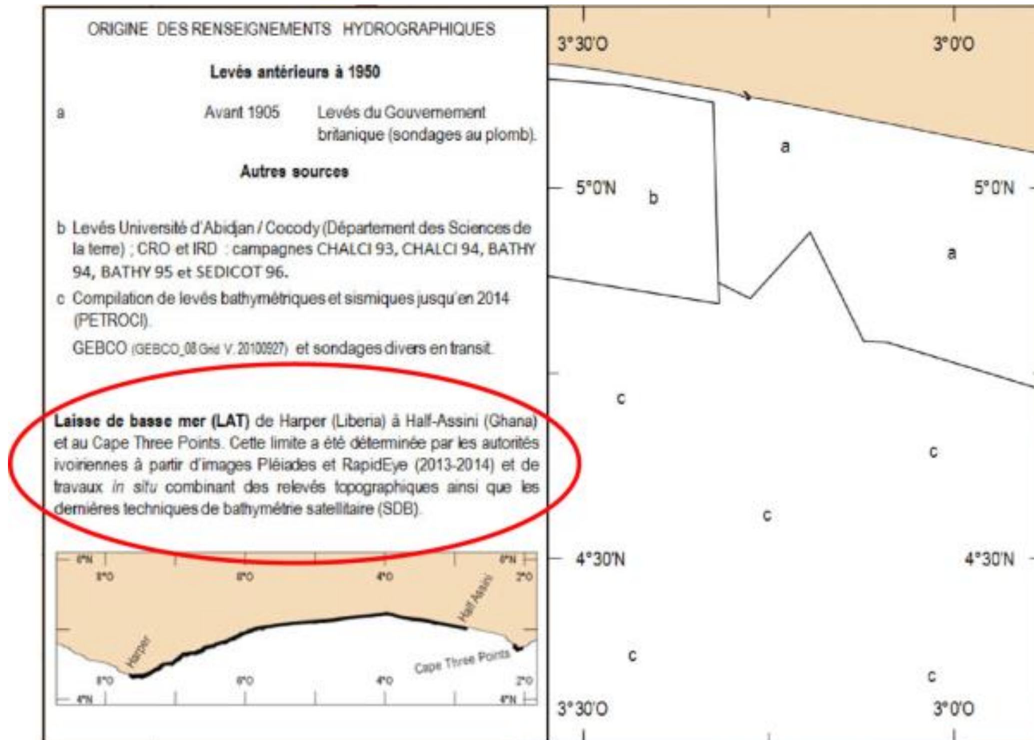
[471] Letter from the President of the National Commission for Maritime Boundaries to the UKHO, 31 December 2015, CMCI, vol. V, Annex 172.

[472] United Nations, Division for Ocean Affairs and the Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea.* E.88.V.5. (1989), p. 5, para. 8. See also *ibid*., para. 15 and also United Nations, Division for Ocean Affairs and the Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries,* New York, 2001, p. 4, point 17.

[473] See MG, vol. I, p. 145, para. 5.87 and MG, vol. II, Annex M 61. It should be recalled that "the provisional equidistance line*"* calculated by Ghana differs from its *"customary equidistance line"*. See *supra,* paras 3.16-3.17; see also MG, vol. I, p. 145, para. 5.89 and MG, Figure 5.10).

[474] See *supra*, paras 7.10-7.12.

was determined by the Ivorian authorities from Pléiades and RapidEye images (2013-2014) and studies carried out *in situ* combining topographical surveys and the latest satellite bathymetric techniques". The relative accuracy of the base points thus determined is 0.5 metres and the absolute accuracy greater than 5 metres.



Sketch map 7.3: Table showing sources of chart 002 entitled *"De Mohamé (Côte d'Ivoire) à Half Assini (Ghana)"*, scale: 1:100,000

7.19 These charts, which serve as a basis for establishing the low-water line for the purposes of identifying the base points from which the equidistance line is determined, are shown in Annexes C7 and C8 of the present Counter-Memorial. Additional technical information, such as orthorectified satellite images or observatory records produced during topographical surveys, are at the disposal of the Chamber and the Ghanaian Party.

2. Identification of the base points on the low-water line in the present case

7.20 According to the Convention, base points are "the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured" (UNCLOS, article 15). Jurisprudence has gradually defined additional criteria enabling the base points involved in the establishment of the provisional equidistance line to be identified. In the *Maritime Delimitation in the Black Sea,* the ICJ considered that they were the projecting points closest to the area to be delimited, selected so as to reflect the general direction of the coast:

> "117. Equidistance and median lines are to be constructed from the most appropriate points on the coasts of the two States concerned, with particular attention being paid to those *protuberant coastal points situated nearest to the area to the delimited*".[475]

> "127. In this stage of the delimitation exercise, the Court will identify *the appropriate points* on the Parties' relevant coast or coasts *which mark a significant change in the direction of the coast, in such a way that the geometrical figure formed by the line connecting all these points reflects the general direction of the coastlines*".[476]

7.21 In the present case, application of these jurisprudential criteria is not without difficulty, insofar as the Ivorian coasts, like those of Ghana, despite the concavity, on the one hand, and convexity, on the other, have no easily identifiable protuberant points (with the exception of Cape Three Points on the Ghanaian coast; however, this point affects the equidistance line only beyond 200 nautical miles).[477] Consequently, identification of the protuberant points is a matter of data-processing, since merely studying charts does not provide the slightest hint of the base points which might together establish the provisional equidistance line.[478] Hence, cartographic accuracy is all the more essential.

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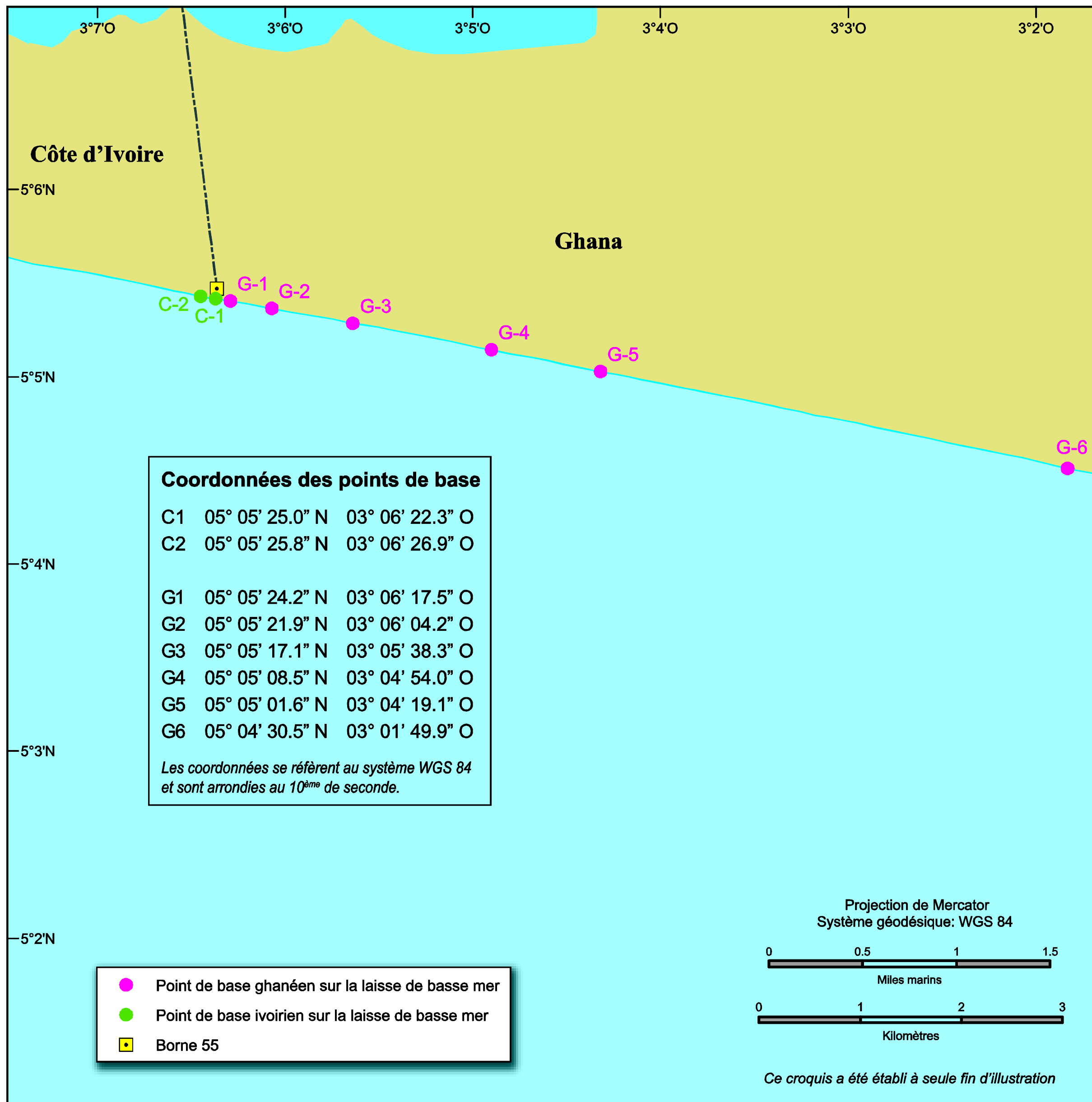
[475] *Maritime delimitation in the Black Sea (Romania* v. *Ukraine*), *Judgment*, *I.C.J. Reports 2009,* p. 101, para. 117 – italics added.

[476] *Ibid.*, p. 105, para. 127 – italics added.

[477] See *infra,* para. 8.37 and Sketch map 8.5 below.

[478] This consideration is one of the reasons for which Côte d'Ivoire opines that, in the present case, the bisector is more appropriate than a "conventional" equidistance line - see *supra*, paras 6.18-6.21.

7.22 The base points involved in the establishment of the equidistance line up to the limit of 200 nautical miles,[479] identified by Côte d'Ivoire, were selected automatically by the Caris Lots software, on the basis of the digitization of the coastline identified by Côte d'Ivoire and transcribed into the charts published in 2016. They are shown in **Sketch map 7.4** below.



Sketch map 7.4: The base points identified by Côte d'Ivoire

[479] See *infra*, para. 7.24.

7.23 The base points on the two coasts are both few in number and situated on a small coastal portion. Thus, as concerns Côte d'Ivoire, Caris Lots has identified two base points (C1 and C2), which are located in the immediate vicinity of the endpoint of the land boundary. These Ivorian base points are located 171 metres west-north-west of point Ω. Point Ω marks the projection onto the low-water line of the endpoint of the land boundary (boundary post 55).[480] As concerns Ghana, Caris Lots has identified six base points which are slightly more spread out along the low-water line. The endpoint (G-6) is located 8.5 kilometres east-south-east of point Ω (see **Sketch map 7.4**).

7.24 It has to be noted that the provisional equidistance line is determined, up to 220 nautical miles,[481] by a total of eight base points, located on a portion of the coast of less than 9 kilometres. It is thus difficult to consider that "the geometrical figure formed by the line connecting all these points reflects the general direction of the coastlines".[482] This is one of the reasons as to why Côte d'Ivoire considers that the bisector method would be better suited in the present case than the three-stage method, even if they lead to the same result.

7.25 A number of observations can be made if the base points identified by Côte d'Ivoire are compared with those provided by Ghana in its Memorial[483] (see **Sketch map 7.5**). The first is that they are not identical. This difference is explained by the lack of precision of the cartographic data used by Ghana. Second, Ghana has identified twice as many base points on the Ivorian coast as Côte d'Ivoire. Finally, the nine base points identified by Ghana on the basis of outdated cartographic data are all located seawards, several hundred metres from the coast. Thus, points GH-4 and GH-5 are situated some 250 metres beyond the low-water line.

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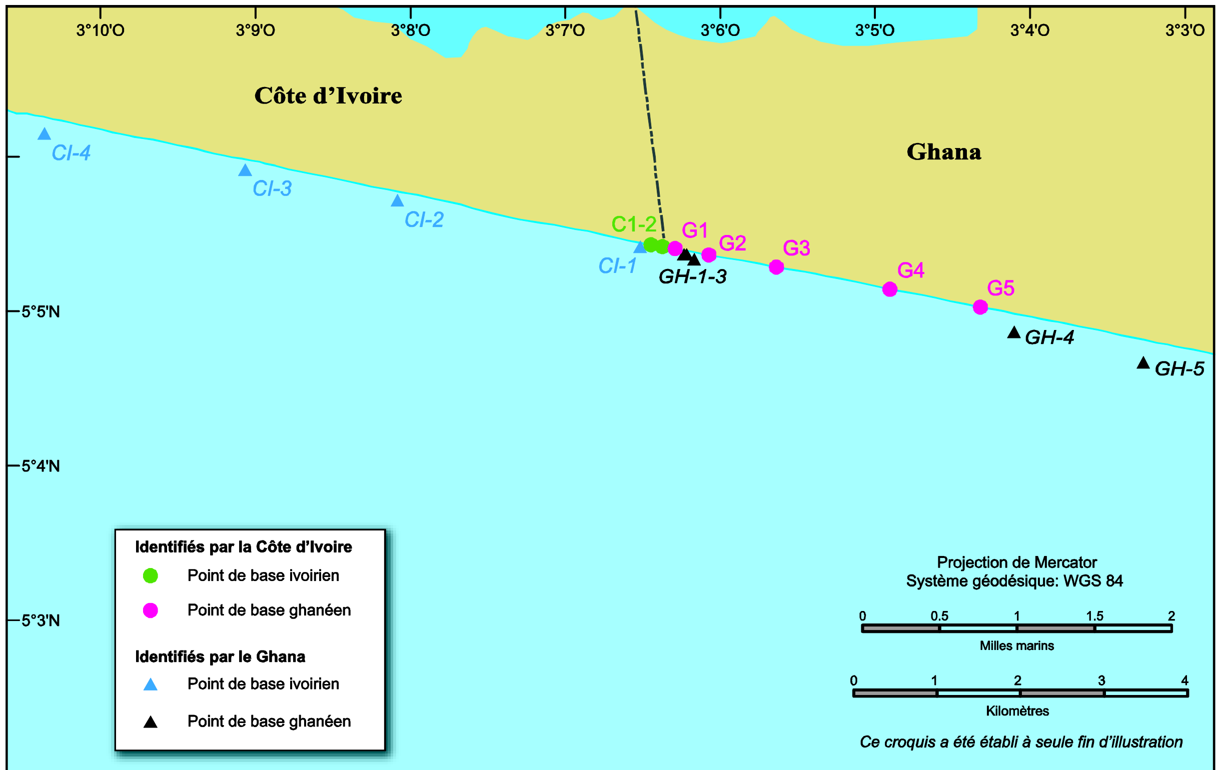
[480] For the use of point Ω for establishing the provisional equidistance line, see *infra,* paras 7.27-7.29.

[481] For the course of the provisional equidistance line beyond 200 nautical miles, see *infra*, paras. 8.37-0.

[482] *Maritime delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 105, para. 127.

[483] See MG, Figure 5.8.



Sketch map 7.5: Comparison of the base points identified by Ghana in its Memorial and those identified by Côte d'Ivoire

7.26 This comparison between the base points identified by Ghana and Côte d'Ivoire is particularly appropriate in that, owing to the small number of base points and their concentration on a very small portion of the coasts of the two States, the slightest variation in coordinates leads to divergences in the provisional equidistance line which become increasingly larger, the greater the distance from the coast.[484]

B. The course of the provisional equidistance line

7.27 The provisional equidistance line within 200 nautical miles is thus determined by eight base points.[485] It starts from point Ω, of which the coordinates are found in Table no. 1 below, passes through a series of points of inflexion, also shown in the same table,[486] and then continues along a geodetic azimuth of 191.2° to the outer limit of

[484] See *infra*, para. 7.29 and Sketch map 7.6 – Comparison between the provisional equidistance lines of Côte d'Ivoire and Ghana.

[485] See *supra*, para. 7.24 and Sketch map 7.4.

[486] The coordinates refer to the WGS84 system and are rounded to the nearest 10th of a second.

the continental shelf. The provisional equidistance line is shown in **Sketch map 7.6** below.

1 (Ω)	05° 05’ 24.9” N	03° 06’ 21.4” O
2	05° 01’ 51.3” N	03° 06’ 58.0” O
3	05° 01’ 00.8” N	03° 07’ 06.6” O
4	04° 59’ 15.1” N	03° 07’ 23.5” O
5	04° 45’ 17.4” N	03° 09’ 42.3” O
6	04° 24’ 28.7” N	03° 13’ 16.0” O
7	04° 15’ 51.2” N	03° 14’ 47.4” O
8	03° 46’ 44.6” N	03° 20’ 08.8” O
9	02° 54’ 39.8” N	03° 29’ 55.0” O

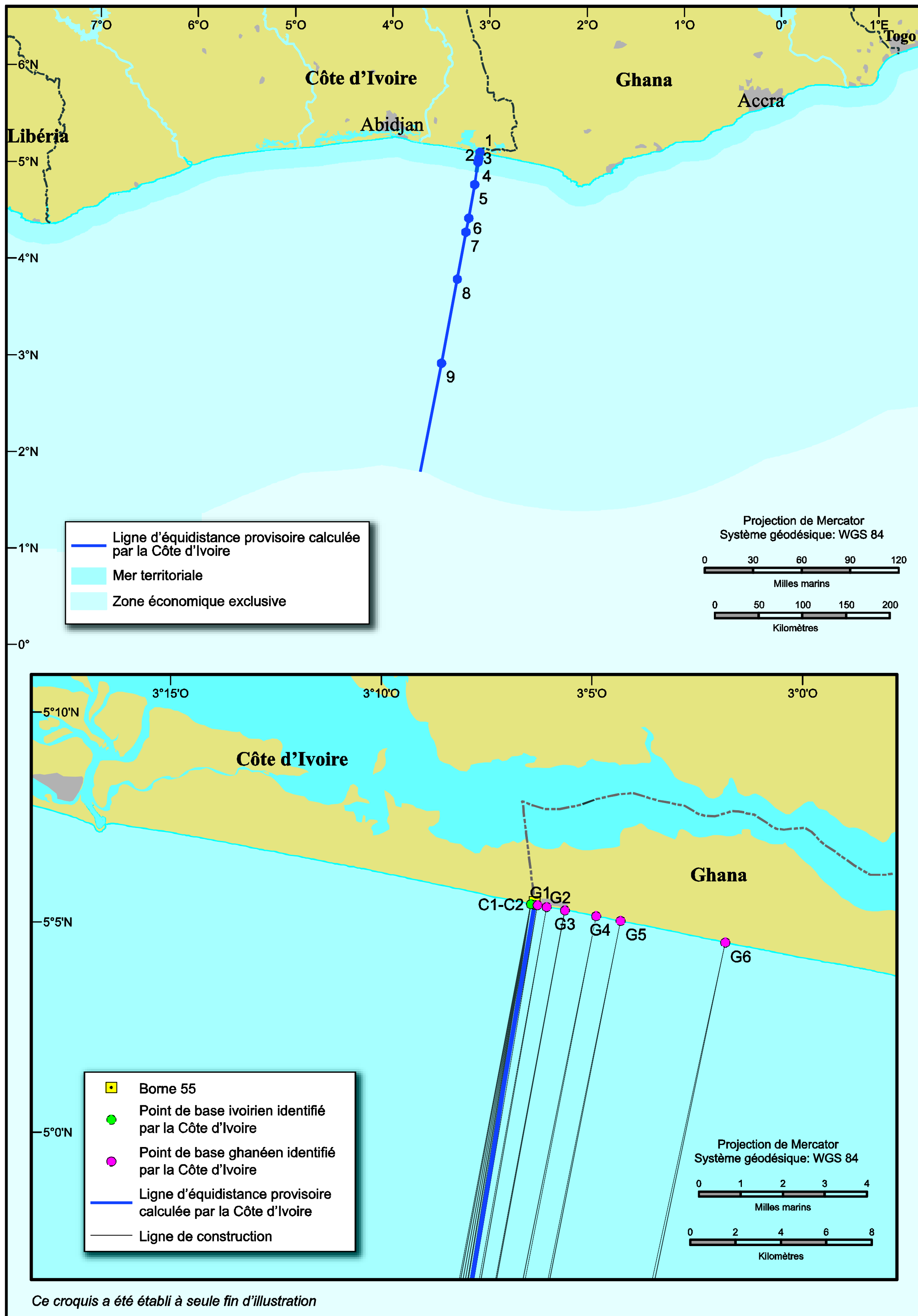
7.28 As Ghana observes in its Memorial,[487] during the negotiation process, the two Parties reached express agreement both on the fact that the maritime boundary should start from boundary post 55, which is the last boundary post of the land boundary,[488] and on the coordinates of this boundary post, which were measured jointly by the two States.[489] These coordinates are the following: 05° 05’ 28.4’’ latitude north and 03° 06’ 21.8’’ longitude west.[490]

[487] MG, vol. I, pp. 93-94, paras 4.13-4.17.

[488] Minutes of the negotiation meeting on the delimitation of the maritime boundary between Côte d’Ivoire and Ghana [sixth meeting], 12-13 November 2013, CMCI, vol. III, Annex 41; and minutes of the seventh meeting of the Côte d’Ivoire-Ghana Joint commission on delimitation of the maritime boundary between Côte d’Ivoire and Ghana, 5-6 December 2013, CMCI, vol. III, Annex 43.

[489] Minutes of the visit to boundary post 55 by the Côte d’Ivoire-Ghana Joint Technical Commission, 26 November 2013, CMCI, vol. III, Annex 42.

[490] The coordinates refer to the WGS84 system and are rounded to the nearest 10th of a second.



Sketch map 7.6: Provisional equidistance line identified by Côte d'Ivoire

Sketch map 7.6 *bis*: The lines for establishing provisional equidistance

7.29 That being said, it should be noted that boundary post 55 is not located on the low-water line. The Parties could not agree on a method of connecting boundary post 55 to the low-water line, which is relevant only for establishing the provisional equidistance line. Point 1 of the provisional equidistance line (point Ω) is located at the intersection between the land boundary line passing through boundary post 55 and the low-water line.

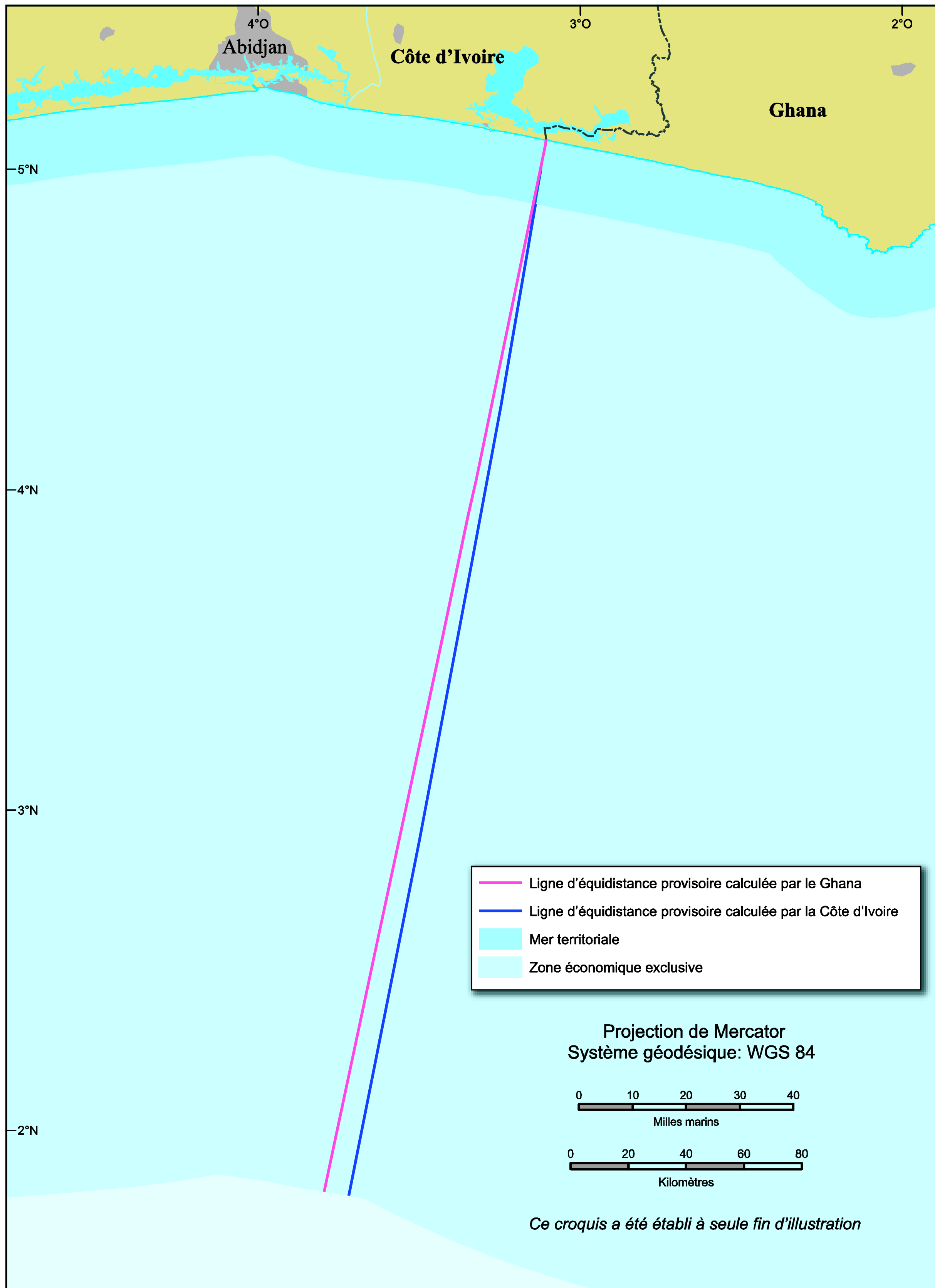
7.30 The differences in the base points identified by Côte d'Ivoire and Ghana[491] engender differences in the course of the provisional equidistance line. As can be seen from **Sketch map 7.7** below, the provisional equidistance line determined by Côte d'Ivoire differs noticeably from the provisional equidistance line proposed by Ghana in its Memorial:[492] thus, at the 12 nautical mile line, Ghana's line is nearly 800 metres (0.4 nautical miles) to the west of the true equidistance line. This discrepancy is even more pronounced, the further seaward one advances, until, at 200 nautical miles, it is 8.6 km (4.7 nautical miles).[493]

7.31 The provisional equidistance line calculated by Ghana is extremely disadvantageous for Côte d'Ivoire, cutting off 2.4 nm^2 of territorial sea, and 548 nm^2 of the exclusive economic zone and continental shelf up to the 200 nautical mile limit.

[491] See *supra,* paras 7.22-7.26.

[492] MG, vol. I, pp. 145-146, paras 5.89-5.91 and MG, Figure 5.8.

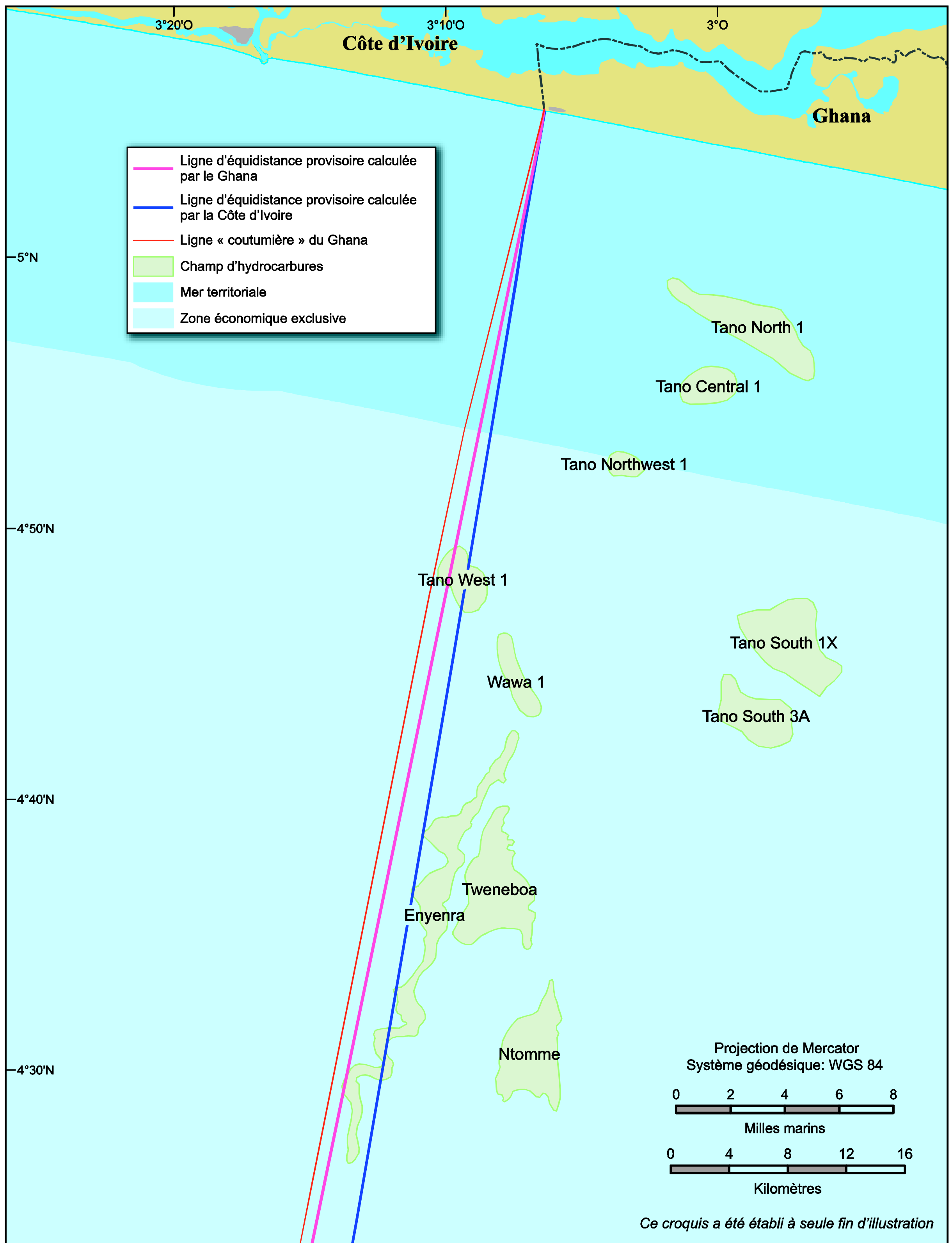
[493] For the space beyond 200 nautical miles, see *infra*, paras 8.52-8.53.



Sketch map 7.7: Comparison between the provisional equidistance lines of Côte d'Ivoire and Ghana

7.32 The line claimed by Ghana further has considerable consequences as regards the situation of the oil fields with respect to the provisional equidistance line. It is noted that the alleged "customary equidistance boundary" claimed by Ghana passes very close to the Tano West and Enyenra fields, which is disconcerting, to say the least (**Sketch map 7.8** below). The configuration of the gas and oil deposits is known from the data made public by Ghana and the oil companies which it authorized to operate in the area. However, there is nothing to guarantee the accuracy of this configuration or its definitive nature, nor whether it is likely to be modified as a result of ongoing explorations.

7.33 At all events, the fields, as they are known today, overlap the provisional equidistance line when it is calculated in the appropriate manner. Moreover, these fields even encroach upon the provisional equidistance line determined by Ghana in its Memorial, a noteworthy fact which Ghana, however, is careful not to mention.



Sketch map 7.8: The relationship between the provisional equidistance lines and the oil fields

II. Adjustment of the provisional equidistance line

7.34 Once the provisional equidistance line has been correctly drawn, it is necessary to move "to the second stage of the process, which consists of determining whether there are any relevant circumstances requiring adjustment of the provisional equidistance line; if so, […] an adjustment that produces an equitable result [will be made]".[494]

7.35 This stage is inseparable from the first, since "[t]he varied geographic situations addressed […] confirmed that, even if the pendulum had swung too far away from the objective precision of equidistance, the use of equidistance alone could not ensure an equitable solution in each and every case. A method of delimitation suitable for general use would need to combine its constraints on subjectivity with the flexibility necessary to accommodate circumstances in a particular case that are relevant to maritime delimitation".[495] It is thus at this stage that the judges and arbitrators make good any iniquity in provisional equidistance. The International Court of Justice has also underlined this in a very clear way:

> "[The] function [of the relevant factors] is to verify that the provisional equidistance line, drawn by the geometrical method from the determined base points on the coasts of the Parties is not, in light of the particular circumstances of the case, perceived as inequitable. If such would be the case, the Court should adjust the line in order to achieve the 'equitable solution' as required by Articles 74, paragraph 1, and 83, paragraph 1, of UNCLOS".[496]

7.36 The stage in which the relevant circumstances are taken into consideration provides the element of flexibility enabling the rigidity of equidistance to be amended and an equitable result to be attained. For this same reason, an exhaustive list of circumstances which the judicial body could take into account does not exist. As the Arbitral Tribunal in the *Maritime Delimitation between Guyana and Suriname* emphasized:

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[494] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 240.

[495] *Ibid.*, para 228.

[496] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 112, para. 155; see also, amongst the established and abundant jurisprudence: *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014*, para. 341; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 696, para. 192.

> "302. International courts and tribunals are not constrained by a finite list of special circumstances. The arbitral tribunal in the UK-French Continental Shelf arbitration took the approach that the notion of special circumstances generally refers to equitable considerations rather than a notion of defined or limited categories of circumstances:
>
> > 'The role of the "special circumstances" condition in Article 6 is to ensure an equitable delimitation; and the combined "equidistance-special circumstances rule", in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles. In addition, Article 6 neither defines "special circumstances" nor lays down the criterion by which it is to be assessed whether any given circumstances justify a boundary line other than the equidistance line'".[497] [498]

7.37 If – though it is scarcely conceivable – the present Chamber were to throw out the bisector method, even though it is both the most appropriate in the particular geographical circumstances and the most equitable, adjusting the provisional equidistance line according to the relevant circumstances would nevertheless provide it with the necessary freedom of movement to arrive at an equitable solution.

7.38 In this particular instance, these circumstances are of both a geographical and a geopolitical nature.

A. The relevant circumstances

1. The cut-off effect of the provisional equidistance line in the context of concavity

7.39 In accordance with consistent and well-established jurisprudence, "the objective is a line that allows the relevant coasts of the Parties 'to produce their effects, in terms of

[497] Note 344 in the original: "*UK-French Continental Shelf*", 54 I.L.R. p. 5 (1979), para. 70".

[498] *Maritime Delimitation between Guyana and Suriname, Award of 17 September 2007, RIAA*, *vol. XXX*, pp. 83-84, para. 302.,

maritime entitlements, in a reasonable and mutually balanced way'".[499] For that reason, when a provisional equidistance line cuts off the coastal projections of one of the Parties in an unreasonable fashion to the benefit of the other, it has to be adjusted.[500]

7.40 In the present case, the reason for the cut-off is the respective concavity and convexity of the Ivorian and Ghanaian coasts, already remarked upon in Chapter 1 of this Counter-Memorial.[501] It is not the concavity *per* se which constitutes a relevant circumstance but the effect of the cut-off which it creates:

> "292. The Tribunal notes that in the delimitation of the exclusive economic zone and the continental shelf, concavity per se is not necessarily a relevant circumstance. However, when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States, as a result of the concavity of the coast, then an adjustment of that line may be necessary in order to reach an equitable result".[502]

7.41 So it is with the delimitation between Côte d'Ivoire and Ghana. The provisional equidistance line cuts off the seaward projection of a good part of the Ivorian coast, in particular the part located between Abidjan (or the 4°W meridian) and boundary post 55 (**Sketch map 7.9**). Thus the maritime projections of the section of the Ivorian coast between boundary post 55 and the intersection of the 4°W meridian, which is 100 km,

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499 *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 326, citing *Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 61, at p. 127, para. 201.

500 See: *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009,* pp. 126-127, paras 199, 201; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, pp. 703-704, paras 215-216 and pp. 716-717, para. 244; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* paras 291-293, 325; *Guinea/Guinea-Bissau*, paras 102, 103; *Peru/Chile*, para. 191; *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India,, Award of 7 July 2014,* paras 272; 403-405; and 413-417; *Arbitration between Barbados and the Republic of Trinidad and Tobago concerning delimitation of the exclusive economic zone and the continental shelf between these two countries, RIAA, vol. XXVII*, p. 243, para. 375.

501 See *supra*, paras 1.16-1.17 and 1.30-1.34.

502 *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 292. In the same vein: "The Tribunal is aware that an equidistance line for the delimitation of marine areas in a geographic situation marked by concavity will often result in a cut-off of the maritime entitlements of one or more of the States concerned. Whether any such cut-off requires adjustment of the provisional equidistance line is a different issue and will be dealt with separately" (*Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 405); see also: *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, RIAA*, *vol. XXVII*, p. 243, para. 375; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303, para. 272.

dwindle to such an extent that they have practically no further effect beyond 200 nautical miles; whilst the projection of the relevant coast of Ghana, including that of the 43 kilometre strip of land separating the lagoon from the sea, is increased by that same amount.

7.42 As the judges and arbitrators have noted in several maritime delimitation cases, the cut-off effect in cases of concavity is increasingly pronounced, the greater the distance from the coast. This is a purely mathematical and objective phenomenon. In this respect, adopting the ICJ's observations in the *North Sea Continental Shelf* cases, ITLOS underlined the fact that:

> "'in the case of a concave or recessing coast […], the effect of the use of the equidistance method is to pull the line of the boundary inwards, in the direction of the concavity', causing the area enclosed by the equidistance lines 'to take the form approximately of a triangle with its apex to seaward and, as it was put on behalf of the Federal Republic, "cutting off" the coastal State from the further areas of the continental shelf outside of and beyond this triangle'".[503]

7.43 This triangular effect also occurs in the present case and can be seen on **Sketch map 7.9** below. In the light of this cut-off effect, the provisional equidistance line cannot be considered to allow "the relevant coasts of the Parties to produce their effects, in terms of maritime entitlements, in a reasonable and mutually balanced way".[504]

7.44 The cut-off effect is all the more noteworthy in that a boundary line such as the one claimed by Ghana would have an impact on access to the port of Abidjan.[505] Shipping in the area has already been made more difficult by the measures adopted unilaterally by Ghana, which aim to create exclusion zones around its oil platforms. These statutory measures, which initially applied to Jubilee, have very recently been

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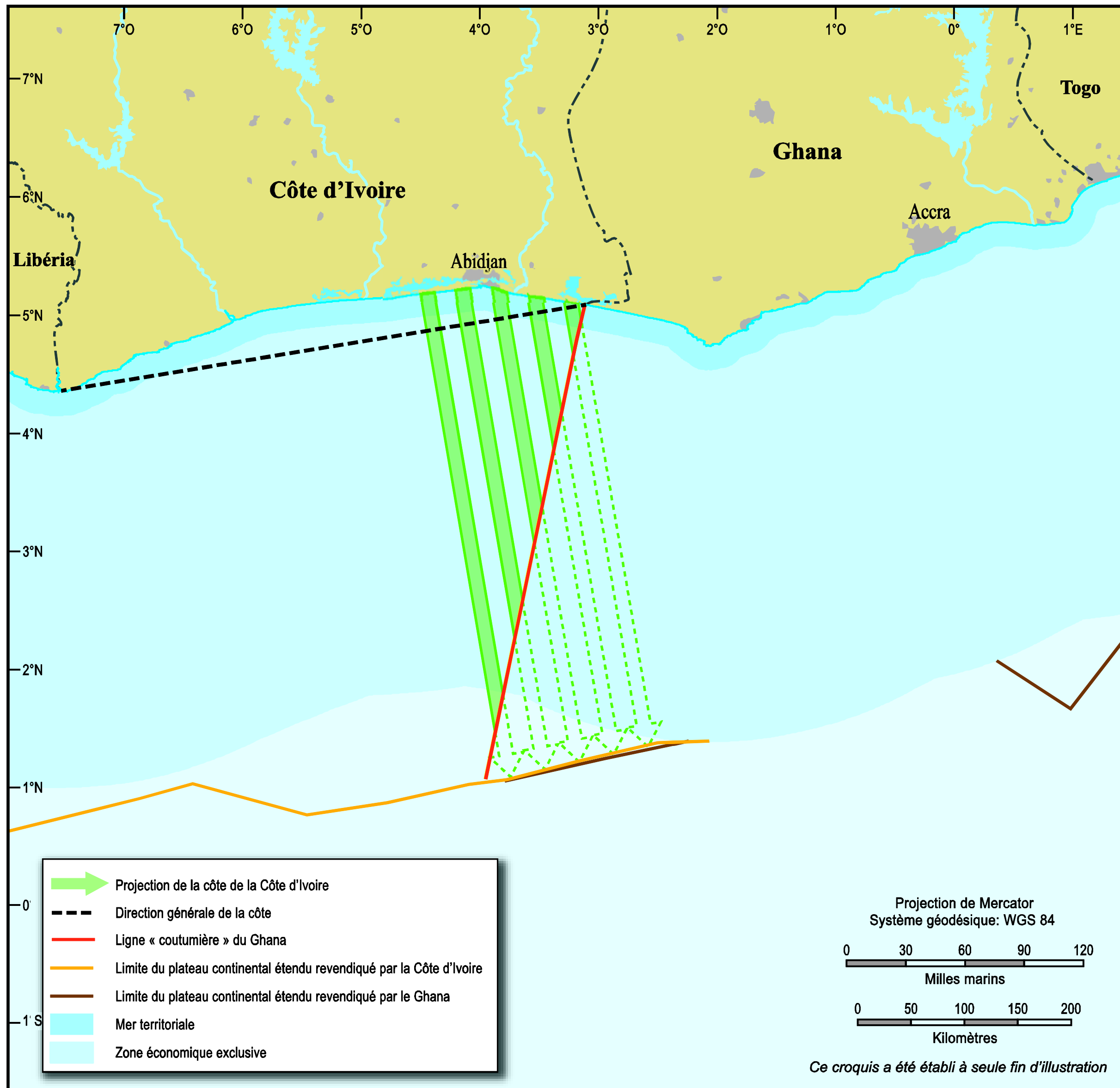
[503] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 295, citing *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 17, para. 8. See also: *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, *Award of 7 July 2014,* paras 407 and 416.

[504] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 703, para. 215. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports* 2009, p. 127, para. 201.

[505] On the economic importance of the port of Abidjan, see *supra,* para. 1.4.

extended to the platforms installed on TEN, without any prior agreement with Côte d'Ivoire.[506]



Sketch map 7.9: The cut-off effect of the provisional equidistance line

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[506] International Maritime Organization, Sub-Committee on Navigation, Communications and Search and Rescue, *Measures for organizing maritime traffic and compulsory reporting systems for ships. Amendment to the existing area be avoided off the coast of Ghana in the Atlantic Ocean,* document submitted by Ghana, NCSR 3/3/6, 24 November 2015, CMCI, vol. VI, Annex 169.

2. The disproportionate effect of the strip of land

7.45 Côte d'Ivoire has already had occasion to point out one of the special geographical features of the relevant coastal areas:[507] this is the strip of Ghanaian land, approximately 40 km long and from 4 km wide in its western part to 10 km in its eastern part, separating the Ivorian land mass from the sea.

7.46 Its effect on the establishment of the equidistance line is doubly disproportionate: first, as has just been observed, all the Ghanaian base points are concentrated on a small portion of the strip of land located in the immediate vicinity of the endpoint of the land boundary.[508] Côte d'Ivoire is in no way contesting the fact that the strip of land forms part of Ghana's territory and that it is thus acceptable to locate the base points on this portion of the Ghanaian coast.[509] Nevertheless, this strip of land is offset relative to the respective land masses of Ghana and Côte d'Ivoire and it has the effect of cutting off access to the sea of a large portion of the Ivorian land mass. From this point of view, these effects are similar to those produced by an island situated on the wrong side of an equidistance line. Its disproportionate effect is shown in **Sketch map 7.10**.

7.47 In consideration of its disproportionate effect, this strip of land should, within the context of the maritime delimitation process, be treated in the same way as other geographical or historical irregularities: that is, as a relevant circumstance, substantiating the adjustment of the provisional equidistance line in favour of Côte d'Ivoire. It is precisely the type of minor geographical irregularity which calls for

> "[partial correction of] any effect of applying the basic criterion that would result in cutting off one coastline, or part of it, from its appropriate projection across the maritime expanses to be divided, or then again the criterion - it too being of an auxiliary nature - involving the necessity of granting some effect, however limited, to the presence of a geographical feature such as an island or

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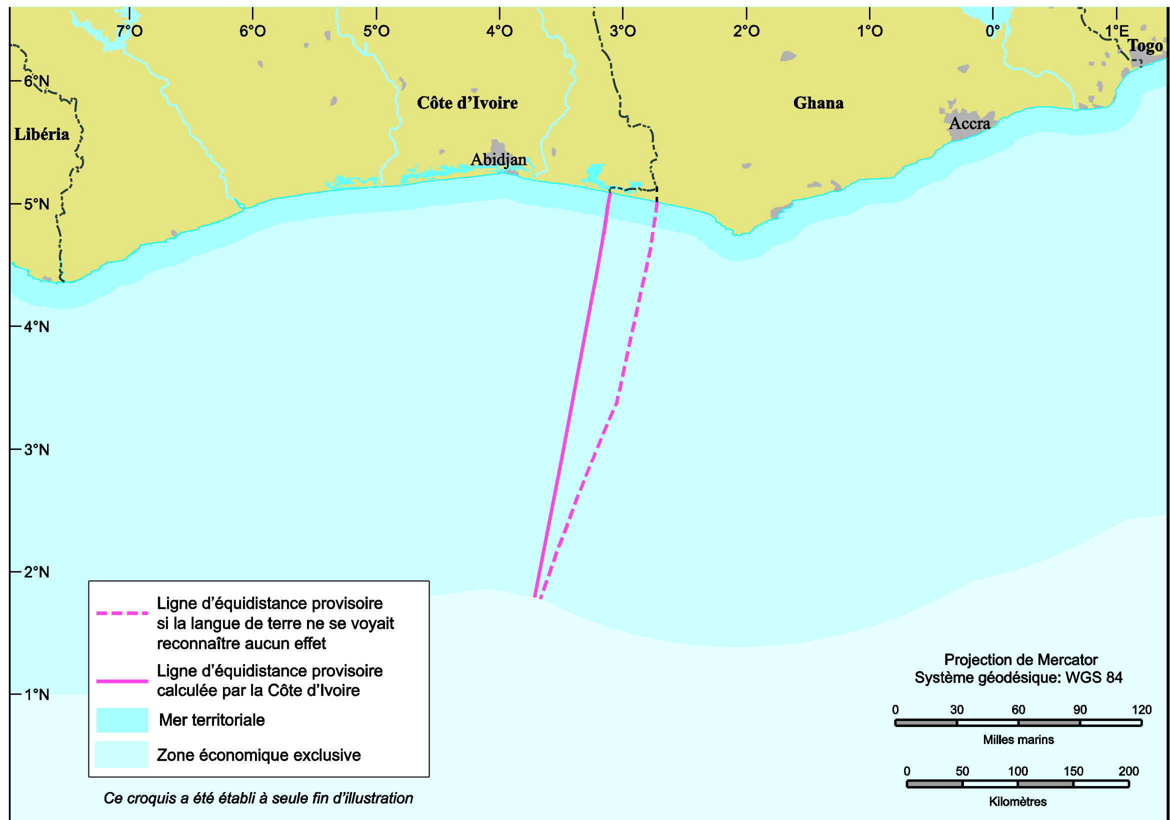
[507] See *supra*, paras. 1.28-1.29.

[508] See *supra*, paras 7.21-7.24.

[509] See, *mutatis mutandis*, as concerns promontories: *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009,* pp. 105-106, paras 129-130; *Eritrea-Yemen Arbitration (Award, Phase II: Maritime Delimitation))*, *Award of 17 December 1999, RIAA*, *vol. XXII,* p. 369, par. 150.

group of small islands lying off a coast, when strict application of the basic criterion might entail giving them full effect or, alternatively, no effect”.[510]



Sketch map 7.10: The disproportionate effect of the strip of land

[510] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 328, para. 198. As concerns the attenuation of the effect of islands, see *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports* 2009, p. 122, para. 185; see also: *Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 48, para. 64; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, I.C.J. Reports 2001*, p. 104, para. 219; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua c. Honduras), Judgment, I.C.J. Reports 2007 (II),* p. 751, para. 302 *et seq.*; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 317.

7.48 Traditionally, islands are typical geographical irregularities which call for the equidistance line to be adjusted:

> "As the jurisprudence has indicated, the Court may on occasion decide not to take account of very small islands or decide not to give them their full potential entitlement to maritime zones, should such an approach have a disproportionate effect on the delimitation line under consideration".[511]

7.49 The same is true of certain geographical irregularities incorporated in the land mass. Thus, the Arbitral Tribunal in the *Delimitation of the continental shelf between the United Kingdom and France*, considered that:

> "The projection of the Cornish peninsula and the Isles of Scilly, further seawards into the Atlantic than the Brittany peninsula and the island of Ushant, is a geographical fact, a fact of nature; and, as was observed in the North Sea Continental Shelf cases, there is no question of equity 'completely refashioning nature' or 'totally refashioning geography' (*ICJ, Judgment,* paragraph 91). It may also be urged that the very fact of the projection of the United Kingdom land mass further into the Atlantic region has the natural consequences of rendering greater areas of continental shelf appurtenant to it. Nevertheless, when account is taken of the fact that in other respects the two States abut on the same continental shelf with coasts not markedly different in extent and broadly similar in their relation to that shelf, a question arises as to whether giving full effect to the Scilly Isles in delimiting an equidistance boundary out to the 1,000-metre isobath may not distort the boundary and have disproportionate effects as between the two States, In the view of the Court, the further projection westwards of the Scilly Isles, when superadded to the greater projection of the Cornish mainland westwards beyond Finistère, is of much the same nature for present purposes, and has much the same tendency to distortion of the equidistance line, as the projection of an exceptionally long promontory, which is generally recognized to be one of the potential forms of 'special circumstance'. In the present instance, the Court considers that the additional projection of the Scilly Isles into the Atlantic region does constitute an element of distortion which is material enough to justify the delimitation of

[511] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 122, para. 185; see also: *Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985,* p. 48, para. 64; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, I.C.J. Reports 2001,* p. 104, para. 219; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II),* p. 751, paras 302 *et seq.*

> a boundary other than the strict median line envisaged in Article 6, paragraph 1, of the Convention [on the continental shelf of 1958]".[512]

7.50 The same considerations are relevant in the present instance, it being understood that the degree of adjustment which this type of situation calls for

> "depends on the geographic realities and the circumstances of the specific case. There is no general rule in this respect. Each case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable".[513]

3. The particular geographic location of the oil resources

7.51 The judges and arbitrators have shown a certain degree of prudence when considering economic resources as a relevant circumstance in maritime delimitation. To return to the analysis of the Arbitral Tribunal in the *Barbados* v. *Trinidad and Tobago* case which the International Court of Justice adopted:

> "[r]esource-related criteria have been treated more cautiously by the decisions of international courts and tribunals, which have not generally applied this factor as a relevant circumstance".[514]

7.52 This being the case, jurisprudence allows that if "issues of access to natural resources [are] so exceptional […] treating them as a relevant consideration [may be warranted]".[515]

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[512] *Case concerning the delimitation of the continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic, Decision of 30 June 1977 - Decision of 14 March 1978, RIAA*, *vol. XVIII*, pp. 113-114, para. 244.

[513] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 317.

[514] *Award of 11 April 2006*, *RIAA*, *vol. XXVII*, p. 214, para. 241; *ILR*, vol. 139, p. 523) *[translation by the I.C.J. Registry],* cited in *Maritime Delimitation in the Black Sea, Judgment, I.C.J. Reports* 2009, p. 125, para. 198, and *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports* 2012 (II), p. 706, para. 223.

[515] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports* 2012 *(II)*, p. 706, para. 223. *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 342, para. 237.

7.53 Thus, the International Court of Justice recognized on several occasions the need to adjust the provisional equidistance line in order to ensure that both coastal States had equitable access to the resources. In the *Gulf of Maine* case, the ICJ Chamber considered in a general fashion that:

> "[w]hat the Chamber would regard as a legitimate scruple lies rather in concern lest the overall result, even though achieved through the application of equitable criteria and the use of appropriate methods for giving them concrete effect, should unexpectedly be revealed as radically inequitable, that is to say, as likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned".[516]

7.54 In a similar vein, in the *Jan Mayen* case, the Court considered that:

> "the median line is too far to the west for Denmark to be assured of an equitable access to the capelin stock, since it would attribute to Norway the whole of the area of overlapping claims. For this reason also the median line thus requires to be adjusted or shifted eastwards".[517]

7.55 Similarly, in the present case, access to the oil resources is sufficiently exceptional to constitute a relevant circumstance for delimitation purposes. As the introductory geographical chapter of this Counter-Memorial briefly recalls, the geological structure of the continental shelf in the relevant area of the Gulf of Guinea displays an unusual special feature: the continental margin there has a strike-skip known as the 'Côte d'Ivoire – Ghana ridge', which extends the Romanche fracture zone in the Atlantic Ocean as far as seaward of Cape Three Points in Ghana. The continental margin is a location enjoying sedimentary transfer between the continent and the ocean and, as a result, it is the principal area where source rocks and oil reserves accumulate.

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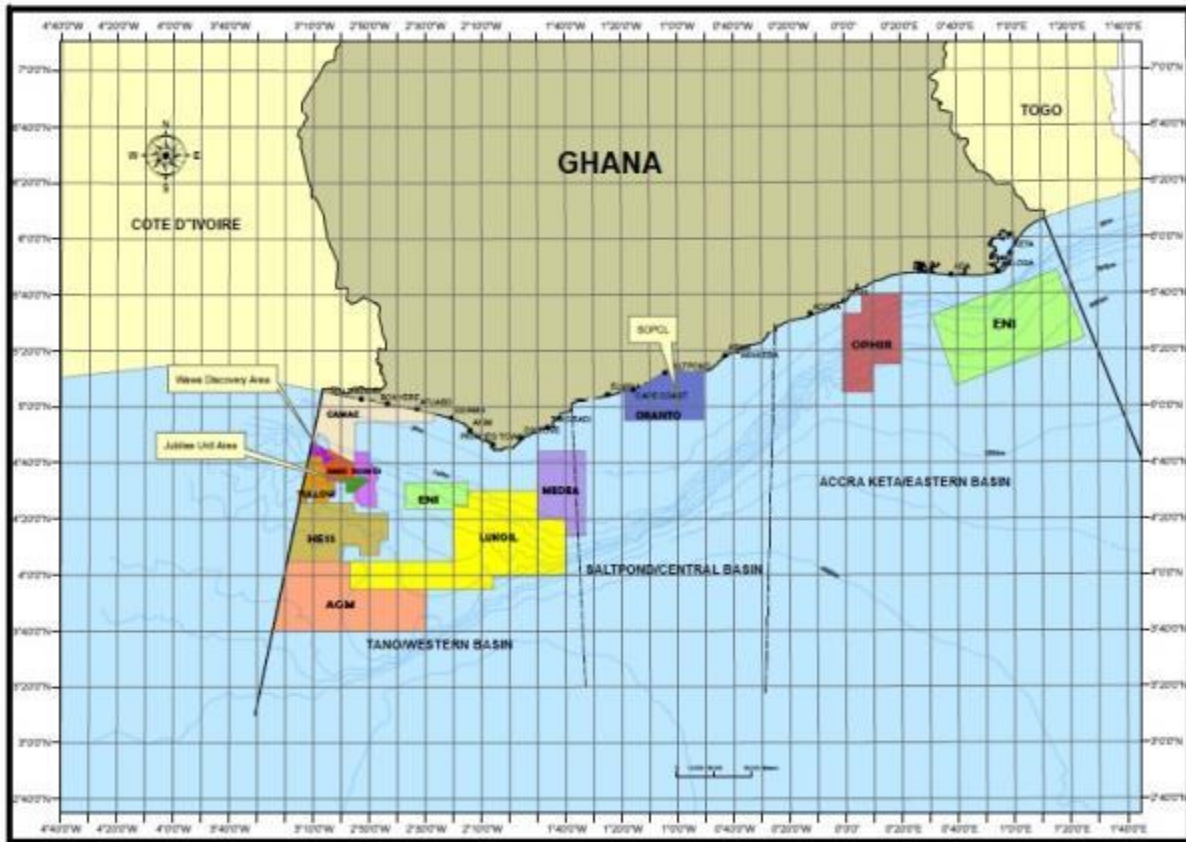
[516] *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 342, para 237.

[517] *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993,* p. 72, para. 76; see also *ibid.*, p. 79, paras 91-92.

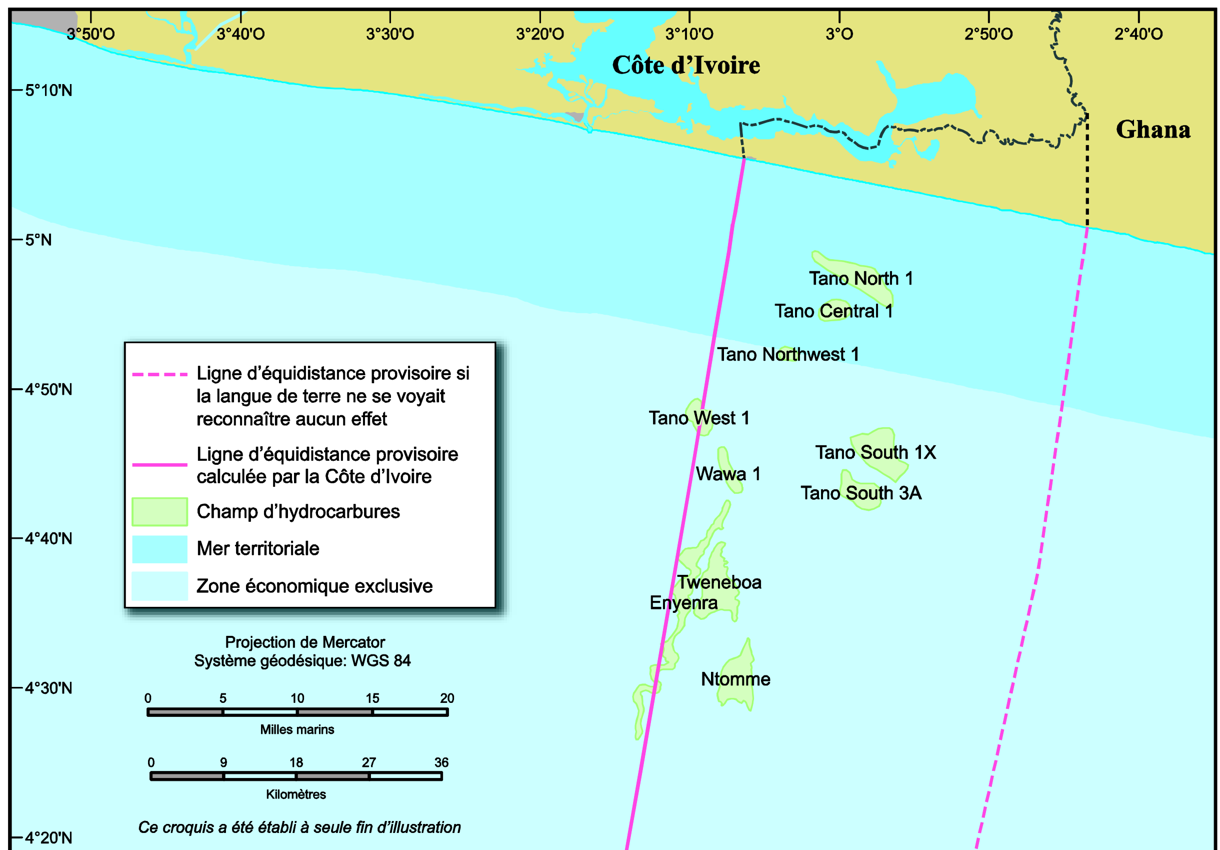
7.56 It is further noted that almost half the surface area of the oil concessions granted by Ghana are located in the sedimentary basin of the disputed area, in the immediate vicinity of the Côte d'Ivoire-Ghana Ridge (**Sketch map 7.11**).



Sketch map 7.11: Concentration of Ghanaian oil concessions in the disputed area[518]

7.57 Furthermore, Ghana is able to lay claim to the majority of the oil fields discovered merely owing to the fact that it has sovereignty over the strip of land which has been shown as having to be considered a relevant circumstance in respect of its effects (see **Sketch map 7.12** below).

[518] Source: Ghana Petroleum National Company, *Offshore activity map,* undated, available on line: http://www.gnpcghana.com/SiteAssets/Content%20Images/OffshoreActivityMap.jpg [accessed on 25 March 2016].



Sketch map 7.12: Location of the oil fields in relation to the strip of land

7.58 Another important aspect which should be underlined as concerns oil resources is due to the fact that the true equidistance line passes through some of the fields identified by Ghana (as does the bisector), as does the provisional equidistance line proposed by Ghana itself (**Sketch map 7.8**). Moreover, there is nothing to indicate that the configuration of the oil fields (of which the only source comes from information published by Ghana during its exploration campaigns) is accurate and that it corresponds to the reality on the ground. The modelling of the fields and their actual structure might be different from those currently presented by Ghana.

7.59 As concerns the geographical situation of the oil resources in the area to be delimited, it is more than highly likely that the delimitation line overlaps some of the oil fields. This hypothesis, moreover, has been specifically envisaged by jurisprudence. Thus, in the *Bangladesh/Myanmar* case, the Tribunal warned that

> "[a]ny delimitation may give rise to complex legal and practical problems, such as those involving transboundary resources. It is not unusual in such

> cases for States to enter into agreements or cooperative arrangements to deal with problems resulting from the delimitation".[519]

4. The conduct of the Parties does not constitute a relevant circumstance

7.60 Contrary to the circumstances mentioned above, which are relevant in the sense of the standard "equidistance/relevant circumstance" jurisprudential method and which the Chamber should take into consideration for adjusting the provisional equidistance line, the oil concessions, to which Ghana attributes exclusive importance, cannot be considered relevant circumstances.

7.61 Aside from its main argument, that oil concession practice is equivalent to tacit agreement on matters of delimitation, Ghana attributes one final virtue to it: that of a relevant circumstance which would substantiate adjustment of the provisional equidistance line.[520] This argument carries no more weight than it does in other similar cases. International courts and tribunals have underlined on many an occasion that oil practice does not constitute a relevant circumstance. Thus in *Cameroon* v. *Nigeria,* following an in-depth analysis of the jurisprudence, the International Court of Justice concluded that:

> "oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account".[521]

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[519] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 472. See also: *North Sea Continental Shelf Case (Federal Republic of Germany/Netherlands), case related to the North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 52, para. 99; *Arbitral award of the Arbitral Tribunal issued at the end of the second stage of the proceedings between Eritrea and Yemen (Award, Phase II: Maritime Delimitation)* 17 December 1999, *RIAA*, *vol. XXII*, pp. 355-356, paras 84-86.

[520] MG, vol. I, pp. 146-147, par. 5.93.

[521] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, pp. 447-448, para. 304. In this paragraph, the Court cites by way of example other converging decisions: *Tunisia/Libyan Arab Jamahiriya, I.C.J. Reports 1982,* p. 18; *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984,* pp. 310-311, paras. 149-152; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 28-29, paras. 24-25; *Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre et Miquelon), RIAA, vol. XXI*, pp. 295-296, paras 89-91. See also: *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 125-126, paras 193-198; *Delimitation of the Maritime Boundary between Guyana and Suriname, Award of 17 September 2007, RIAA, vol. XXX*, pp. 107-108, paras 389-390.

7.62 Unless it can prove that the oil concessions are the expression of a tacit agreement, Ghana would not be able to attain the same result by calling upon an alleged circumstance of which the relevance has frequently been denied by jurisprudence – and for good reason. Insofar as oil concessions are activities carried out unilaterally by States, recognizing them as circumstances justifying the adjustment of the equidistance line would risk opening the way to a policy of *fait accompli*. Taking the examples listed by the ICJ in *Cameroon* v. *Nigeria*, *Guinea/Guinea-Bissau*, *Libyan Arab Jamahiriya/Malta*, *Gulf of Maine*, *Saint-Pierre-et-Miquelon*, *Barbados/Trinidad and Tobago* and *Guyana* v. *Suriname*, there is, in the present case, no reason to consider that the oil concessions should be taken into account as relevant circumstances.

B. Equitable adjustment

7.63 Just as there is no definitive list of relevant circumstances, there is no generally accepted method of adjustment. Under this procedure, in accordance with the provisions of articles 74 and 83 of UNCLOS, international arbitrators and judges are guided by the objective of attaining a reasonable and balanced equitable result for each of the parties. Such is the sense of the comments made by ITLOS in the *Bangladesh* v. *Myanmar Delimitation* case:

> "327. The Tribunal notes that there are various adjustments that could be made within the relevant legal constraints to produce an equitable result. As the Arbitral Tribunal observed in the *Arbitration between Barbados and Trinidad and Tobago*, '[t]here are no magic formulas' in this respect (*Decision of 11 April 2006, RIAA, Vol. XXVII*, p. 147, at p. 243, para. 373).
>
> 328. In the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* the position of the line but not its direction was adjusted, in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen* the position and direction of the line were adjusted, and in the *Arbitration between Barbados and the Republic of Trinidad and Tobago*, the line was deflected at the point suggested by the relevant circumstances, and its direction was determined in light of those circumstances. The approach taken

> in this arbitration would appear to be suited to the geographic circumstances of the present case, which entails a lateral delimitation line extending seaward from the coasts of the Parties".[522]

7.64 In the absence of any patented technique for adjusting the provisional equidistance line, the only guide available to international arbitrators and judges is that of obtaining an equitable result. The boundary line resulting from the bisector proposed by Côte d'Ivoire allows such a solution to be attained (see **Sketch map 6.8**). This line reduces the cut-off effect arising from the concavity of the Ivorian coast and the protuberance which is Cape Three Points, and the disproportionate effect of the strip of land. Further, it enables the oil resources to be distributed more equitably.

7.65 In addition, this line indubitably passes the disproportionality test, which is the third stage in the "equidistance/relevant circumstance" method. Since "the relevant area encompasses all of the areas, within and beyond 200 nm in which the seaward projections of the Parties' relevant coasts overlap",[523] it appears appropriate that this test should be performed only once the limit of the continental shelf beyond 200 nautical miles has been determined.[524]

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[522] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* paras 327-328.

[523] *Arbitration between Bangladesh and India concerning Delimitation of the Maritime Boundary of the Bay of Bengal between Bangladesh and India*, *Award of 7 July 2014*, para. 490.

[524] See *infra*, paras 8.41-8.53.

CHAPTER 8

DELIMITATION OF THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILES

8.1 There are several points on which the Parties agree as regards the delimitation of their maritime boundary beyond 200 nautical miles.

8.2 Côte d'Ivoire and Ghana both consider that the Special Chamber has jurisdiction to delimit their common maritime boundary up to the outer limit of the continental shelf. Côte d'Ivoire shares Ghana's position whereby "the Special Chamber has jurisdiction to delimit the continental shelf beyond 200 M".[525] Since the Parties' agreement to confer on the Chamber jurisdiction for delimiting their common boundary beyond 200 nautical miles has been established, it is neither necessary nor useful to linger thereon any longer.

8.3 Moreover, the Parties share the same position as regards the respective roles of the Commission on the Limits of the Continental Shelf (CLCS) and the Special Chamber: it is the duty of the first to draft recommendations concerning the delineation of the continental shelf, and of the second to deal with the delimitation between the two States.[526]

8.4 Côte d'Ivoire notes that it is entirely in agreement with this position, which reflects that of ITLOS in its pioneering decision in the matter of delimitation of the continental shelf in the *Bangladesh/Myanmar* case,[527] and that of the Arbitral Tribunal which delivered its judgment on the maritime delimitation between Bangladesh and India.[528]

8.5 Finally, the two Parties recognize that each of them enjoys an entitlement to an extended continental shelf. As Ghana specifically notes "[t]he entitlement of Côte

[525] MG, vol. I, paras 6.14-6.28.

[526] See MG, vol. I, para. 6.21.

[527] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* paras 376 and 379.

[528] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014,* para. 456.

d'Ivoire to the continental shelf beyond 200M is not disputed by either Ghana or any other State".[529] For its part, Côte d'Ivoire allows that Ghana has an entitlement which enables it to claim sovereign rights over a part of the continental shelf extending beyond 200 nautical miles from its baselines. Ghana's entitlement is particularly incontestable in that the CLCS has already adopted recommendations in this regard.[530]

8.6 Such being the case, Côte d'Ivoire does not fully share Ghana's approach when it comes to evaluating the scope of the respective entitlements of the two Parties (I). Further and fundamentally, Côte d'Ivoire disagrees with Ghana as concerns the delimitation of the continental shelf beyond 200 nautical miles (II).

I. The scope of the respective entitlements of the Parties to a continental shelf beyond 200 nautical miles

A. Ghana's entitlement

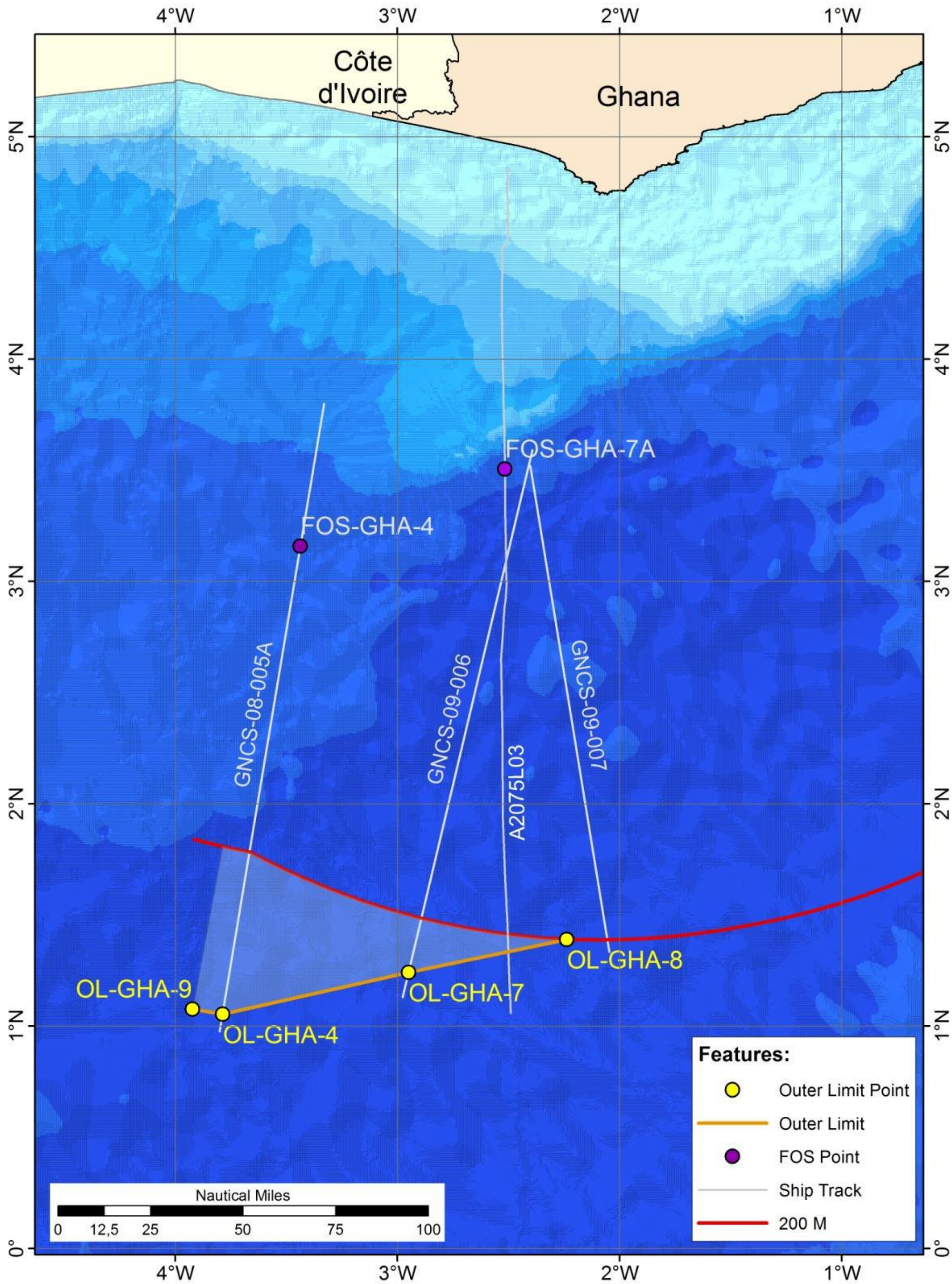
8.7 On 28 April 2009,[531] Ghana submitted a request for the extension of the continental shelf to the CLCS. During the preliminary examination of its submission by a subcommission established for that purpose by the CLCS, Ghana amended its initial request.[532] The western areas claimed by Ghana, shown on **Sketch map 8.1** below, are relevant to the present case.

[529] MG, vol. I, p. 158, para. 6.25.

[530] See *infra*, para. 8.8.

[531] *Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Ghana on 28 April 2009*, 5 September 2014, p. 1, para. 1, MG Annex 79.

[532] *Revised Executive Summary of the Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana*, Accra, 21 August 2013, MG Annex 78. See also *Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Ghana on 28 April 2009*, 5 September 2014, pp. 3-4, paras 23-24, MG Annex 79.



Sketch map 8.1: The entitlement claimed by Ghana before the CLCS[533]

[533] *Revised Executive Summary of the Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana, Accra*, 21 August 2013, MG Annex 78. See also MG, vol. I, p. 151, Figure 6.1.

8.8 On 5 September 2014, the CLCS adopted its recommendations concerning the request for the extension of Ghana's continental shelf. It considered that it satisfied the conditions laid down by article 76 of UNCLOS:

> "both in the Eastern and the Western Regions[[534]] of the continental shelf of Ghana, the FOS points listed in Table 1 of Annex I to these recommendations fulfil the requirements of article 76 and Chapter 5 of the Guidelines […] based on the consideration of the scientific documentation presented in the Submission, the addendum, and the additional data and information provided notably in the documents referred to above. The Commission recommends that these FOS points form the basis for the establishment of the outer edge of the continental margin of Ghana.
>
> […]
>
> In both the Eastern and the Western Regions, the outer edge of the continental margin beyond 200 M is based on the sediment thickness formula points […] The Commission recommends that these points are used as the basis for delineating the outer limits of the continental shelf in these regions in accordance with article 76, paragraph 7, of the Convention".[535]

8.9 Ghana noted that it "has already accepted the outer limits of its outer continental shelf based on the Commission's recommendations"[536] and appears to consider that the recommendations of the CLCS create an entitlement which is enforceable against Côte d'Ivoire without, however, stating this expressly:

> "Côte d'Ivoire's angle bisector would cut off Ghana from virtually the entirety of its continental shelf in the west beyond 200 M. That line would reduce Ghana's shelf beyond 200 M from 6,842 km2 (in conformity with the recommendations of the CLCS, which have been adopted by Ghana) to a mere 29 km2".[537]

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[534] Only this region is relevant in the present case since the eastern region is adjacent to the maritime boundary between Ghana and Togo.

[535] *Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Ghana on 28 April 2009*, 5 September 2014, p. 9, para. 45 and p. 12, para. 52, MG Annex 79. See also Figure 8. The outer limits of the continental margin of Ghana in the Western Region, *ibid.*, p. 15.

[536] MG, vol. I, p. 158, para. 6.26.

[537] MG, vol. I, p. 143, para. 5.82.

8.10 Ghana here is confusing the CLCS's recognition of the validity of its entitlement and the lateral delimitation with Côte d'Ivoire. As the two Parties agree,[538] the delineation by the CLCS is in the form of a recommendation, without prejudice to the (lateral) delimitation between the States with adjacent or opposite coasts.

8.11 Moreover, the refusal of the CLCS to interfere in matters of delimitation is revealed in the present case by its refusal to adopt recommendations as concerns the last fixed point put forward by Ghana in its submission, which had not been defined according to a geographical criterion but according to an equidistance line:[539]

> "In the absence of an international continental shelf boundary agreement between Ghana and Côte d'Ivoire, the Subcommission does not make recommendations with respect to the outer limit fixed point OL-GHA-9 as originally submitted by Ghana on 25 August 2009".[540]

8.12 Thus, in conformity with the principle whereby the procedure of delineation is separate from delimitation, the CLCS has insisted in its recommendations on Ghana's submission:

> "The Recommendations of the Commission are based on the scientific and technical data and other material provided by Ghana in relation to the implementation of Article 76. The Recommendations of the Commission only deal with issues related to Article 76 and Annex II of the Convention and *shall not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts*, or application of the other parts of the Convention or any other treaties".[541]

8.13 As a result, the effect of the CLCS's recommendations concerning Ghana's submission does not establish an entitlement enforceable against Côte d'Ivoire. They

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[538] See *supra*, paras 8.3-8.4.

[539] According to the *Addendum to the submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana*, 25 August 2009, MG Annex 76, "[Point OL-GHA-9] is a point where the extended continental shelf joins the equidistance line between Cote d'Ivoire and Ghana". See also *Revised Executive Summary of the Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana*, Accra, 21 August 2013, MG Annex 78.

[540] *Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Ghana on 28 April 2009,* MG Annex 79.

[541] *Ibid*.

in no way invalidate the right of Côte d’Ivoire to claim a continental shelf in the area to which these recommendations relate.

B. Côte d'Ivoire's entitlement

8.14 Côte d'Ivoire's entitlement to an extended continental shelf is supported by its requests for an extension of the continental shelf. The first request was submitted on 8 May 2009.[542] At that time, Côte d'Ivoire made only a brief initial presentation to the Commission, during which it announced that it "reserved the right to make future submissions concerning other sections of its continental margin".[543]

8.15 On 24 March 2016, Côte d'Ivoire submitted an amended request, in application of article 76, paragraph 8, of UNCLOS, taking as a basis information not used during its initial submission, which was now substituted with this new submission.

8.16 The outer limit of the Ivorian continental shelf defined in the amended Ivorian submission is shown in **Sketch map 8.2** below. It is based on 131 fixed points,[544] of which six (CD_2, CD_3, CD_4, CD_5, CD_6 and CD_7) are defined according to the sediment thickness formula (as provided for by article 76, paragraph 4 (a)(i) of UNCLOS), 123 (CD_8 to CD_130) are defined according to the distance formula (as provided for by article 76, paragraph 4 (a)(ii) of UNCLOS), and two (CD_1 and CD_131) are fixed at 200 nautical miles from the baselines located on the respective coasts of Ghana and Liberia.

8.17 The most easterly point is located at the intersection of the line connecting fixed point 2, determined according to the geological criteria mentioned in paragraph 4(a)(i) of article 76 of UNCLOS, and the line 200 nautical miles from the coast.

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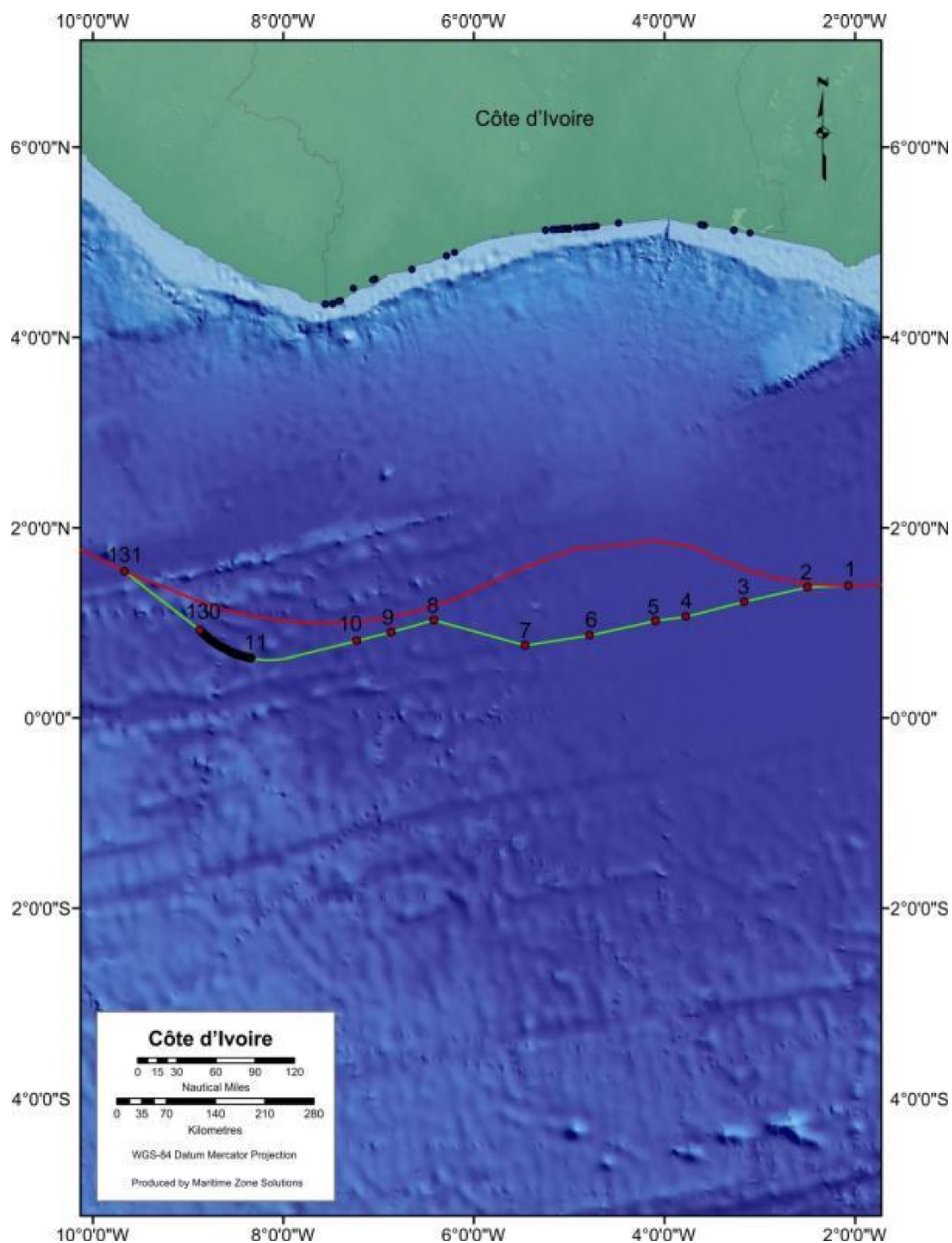
[542] *Submission by the Government of Côte d'Ivoire for the Establishment of the Outer limits of the Continental shelf of Côte d'Ivoire pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea, Executive summary*, 8 May 2009, para. 4.1, CMCI, vol. VI, Annex 175.

[543] Declaration by the Chairman on the progress in the work of the Commission, document CLCS/64, 1 October 2009, p. 25, para. 118, CMCI, vol. VI, Annex 178.

[544] See *Amended Submission of the Republic of Côte d'Ivoire regarding its continental shelf beyond 200 nautical miles*, 24 March 2016, para. 6.1, FR/EN, CMCI, vol. VI, Annex 179.



Sketch map 8.2: Configuration of the outer limit of the continental shelf of Côte d'Ivoire (green line)[545]

[545] The fixed points are indicated by red dots connected by lines not exceeding 60 nautical miles. The relevant base points for determining the breadth of the territorial sea are indicated by blue dots. The red line defines the 200 nautical mile limit of Côte d'Ivoire and its neighbours (source: *Amended Submission of the Republic of Côte d'Ivoire regarding its continental shelf beyond 200 nautical miles*, 24 March 2016, CMCI, vol. VI, Annex 179).

8.18 In principle, such amendments do not encounter any objections. In the *Bangladesh* v. *India* case, the maritime boundary claimed by India went beyond the outer limits of its continental shelf claimed before the CLCS. Bangladesh urged against this circumstance in its Reply[546] and during the hearings.[547] In its Award, the Tribunal recalled this argument put forward by Bangladesh[548] but refrained from adopting a definite position on the matter, which tends to indicate that such amendments are not problematic. Moreover, Ghana itself has amended its initial submissions.[549]

8.19 It is indeed well established that a coastal State may at any time file an amendment to its initial request, provided the Commission has not issued its recommendations.[550] Although it is not expressly prescribed in the CLCS Rules, this possibility is admissible. As the Legal Counsel of the United Nations noted:

> "there is nothing in the Convention that could preclude a coastal State from informing the Commission in the course of its examination of the submission of that State that further analysis of the scientific and technical data originally presented to the Commission in support of particulars of the limits of its continental shelf or substantial part thereof has brought this State to a conclusion that some of these particulars were not correct and therefore the outer limits of the continental shelf need to be adjusted. Likewise, it appears that there is nothing in the Convention that prevents a coastal State from submitting to the Commission, in the course of the examination by the Commission of its original information, new particulars of the limits of its continental shelf or substantial part thereof if in the view of the coastal State concerned it is justified by additional scientific and technical data obtained by it. The coastal State concerned will be expected in both cases to explain to the Commission why it believes that some of the limits of the continental shelf originally presented by it to the Commission need to be adjusted or modified

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[546] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India in the Bay of Bengal*, Reply by Bangladesh, 31 January 2013, pp. 128-129, para. 5.5 (available on line: http://www.wx4all.net/pca/bd-in/Bangladesh's%20Reply%20Vol%20I.pdf); India's response in its Rejoinder, 31 July 2013, pp. 183.-184, paras 7.25-7.27 (http://www.wx4all.net/pca/bd-in/India's%20Rejoinder%20Vol%20I.pdf).

[547] *Ibid*., Hearing on the Merits, 10 December 2013, p. 198, para. 15 (M. Crawford).

[548] See *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014,* paras 82, 442 and 452, and the diagram following para. 443.

[549] See *supra*, para. 8.7.

[550] For the time being, no subcommission has been established to examine Côte d'Ivoire's request.

> and to provide the necessary scientific and technical data supporting this conclusion".[551]

8.20 Côte d'Ivoire's amendment of its initial submission fully satisfies these requirements.

II. The disagreement on the delimitation of the continental shelf beyond 200 nautical miles

A. The delimitation is not necessarily the result of a simple extension of the line within 200 nautical miles

8.21 Ghana believes that the alleged initial coincidence of the submissions to the CLCS by the Parties confirms that there is agreement on the extension of the so-called "customary equidistance line".[552] As has been adequately demonstrated in Chapter 4 of the present Counter-Memorial,[553] this claim of Ghana's is entirely unfounded.

8.22 Notwithstanding the weakness of its argument concerning an alleged tacit agreement between the Parties, Ghana affirms that the maritime boundary beyond 200 nautical miles would be the result of a simple extension of the boundary between the maritime areas within 200 nautical miles. This view is based on the notion of the oneness of the continental shelf. In that respect, Ghana invokes the (identical) positions of ITLOS and the Arbitral Tribunal in the *Bay of Bengal* cases,[554] according to which:

> "Article 76 of the Convention embodies the concept of a single continental shelf. In accordance with article 77, paragraphs 1 and 2, of the Convention, the

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[551] Opinion of the Legal Counsel of the United Nations during examination of the submissions to the CLCS, CLCS/46, 25 August 2005, p. 6, CMCI, vol. VI, Annex 174.

[552] See MG, vol. I, para. 6.35.

[553] See *supra*, paras 4.111-4.127.

[554] "In both cases [*Bangladesh/Myanmar* and *Bangladesh* v. *India*] the continental shelf beyond 200 M was delimited by extending the continental shelf boundary that had been established within 200 M along the same azimuth. […] The same approach is to be adopted in the present case. If Ghana is correct that the boundary within 200 M follows the line tacitly agreed by the Parties, which they based on equidistance and respected in practice for more than 50 years, then following the reasoning of the two Bay of Bengal cases, the Special Chamber should continue the same line beyond 200 M, without change of direction, until it reaches the outer limit of national jurisdiction, as determined by the CLCS". (MG, vol. I, pp. 159-160, paras 6.33-6.34).

> coastal State exercises exclusive sovereign rights over the continental shelf in its entirety without any distinction being made between the shelf within 200 nm and the shelf beyond that limit. Article 83 of the Convention, concerning the delimitation of the continental shelf between States with opposite or adjacent coasts, likewise does not make any such distinction".[555]

8.23 Although Côte d'Ivoire adheres unreservedly to this principled approach,[556] it has to be noted that Ghana's application of it is erroneous. Contrary to the assumption of the Ghanaian Party,[557] the consequence of the oneness of the continental shelf is not to extend an (in this case alleged) tacit seaward boundary, over the entire area of the continental shelf. If such a boundary is established only in part, the judicial body has to determine its remainder by applying one of the objective delimitation methods.[558] Ghana could not apply the principle of oneness of the continental shelf in order to bypass the applicable legal rules for establishing the existence of a tacit agreement. After all, if Ghana cannot establish the existence of an agreement between the Parties to the present case, such a solution cannot be applied to it.

B. Application of the objective delimitation methods

1. In principle: the bisector method should be applied

8.24 The area of concurrent claims is determined on the basis of the respective submissions by Côte d'Ivoire and Ghana to the CLCS.[559] As **Sketch map 8.3** below shows, the area in which the claims overlap not only extends beyond 200 nautical miles from the baselines of Côte d'Ivoire and Ghana, but it also covers part of the maritime area which Ghana is claiming to be part of its exclusive economic zone. It

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[555] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 361; see also *ibid.* paras 455 *et seq.*; in the same vein: *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India in the Bay of Bengal*, *Award of 7 July 2014,* para. 77 and paras 465 *et seq.*

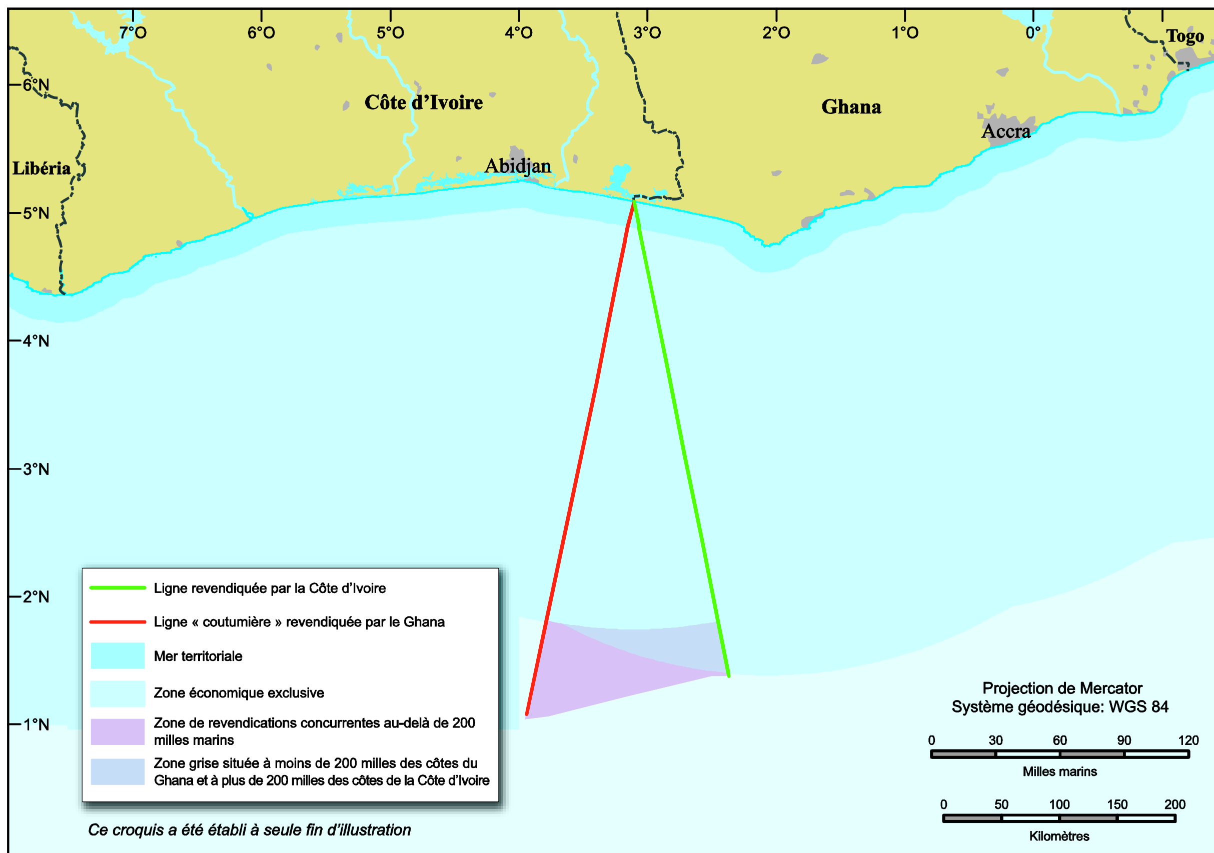
[556] See *infra*, paras 8.24-8.26.

[557] MG, vol. I, para. 6.34.

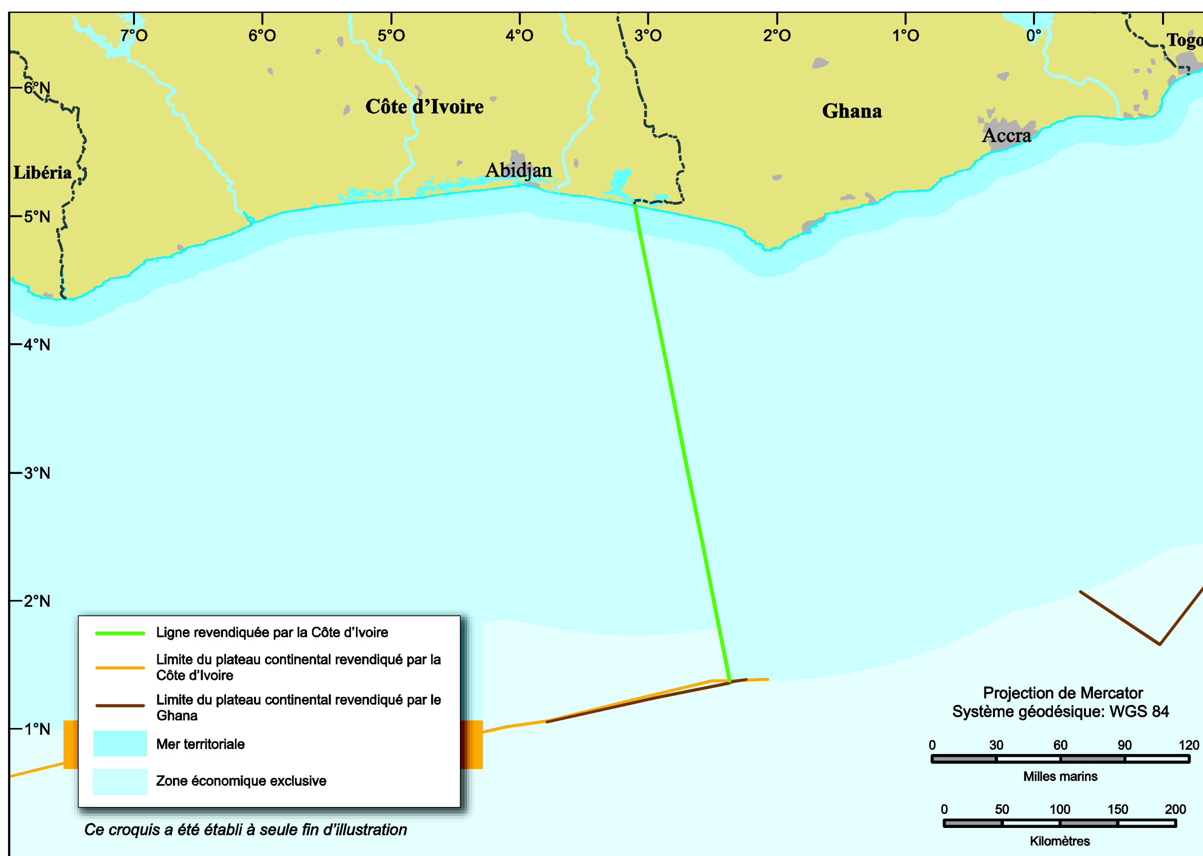
[558] See also *supra*, paras. 3.26-3.33.

[559] See *supra*, paras 8.7-8.17.

is for the Special Chamber to define the limit between the parts of this area of overlap which are due to each of the Parties.



Sketch map 8.3: Area of concurrent claims



Sketch map 8.4: Boundary claimed by Côte d'Ivoire

8.25 In the present case, no particular circumstance justifies recourse being made to different objective delimitation methods within and beyond 200 nautical miles.

8.26 Therefore, as for the delimitation of the remainder of the boundary, the bisector method should be applied here: the same circumstances justifying the application of this method within 200 nautical miles prescribe its application beyond this limit. The course of the maritime boundary between the Parties beyond 200 nautical miles follows the 168.7° azimuth line which forms the maritime boundary within 200 nautical miles, up to the outer limit of the continental shelf, which is to be determined by the CLCS when it drafts its recommendations on Côte d'Ivoire's submission (see **Sketch map 8.4** above).

8.27 Ghana raises two objections to this delimitation line. First, "Côte d'Ivoire's angle bisector would cut off Ghana from virtually the entirety of its continental shelf in the west beyond 200 M. That line would reduce Ghana's shelf beyond 200 M from 6,842

km^2 (in conformity with the recommendations of the CLCS, which have been adopted by Ghana) to a mere 29 km^2".[560]

8.28 This statement invites several observations.

8.29 Once again, Ghana is basing itself on the erroneous principle[561] that the CLCS's recommendations concerning the delineation conferred on it rights to a specific part of the continental shelf beyond 200 nautical miles and that these rights are enforceable against Côte d'Ivoire. The CLCS's recommendations attest to the fact that the continental shelf claimed by Ghana satisfies the technical conditions prescribed by the Convention. Their function is not to prevent Côte d'Ivoire from claiming a continental shelf in the same maritime area. On the contrary, the claims of the two States may overlap if they both meet the technical conditions prescribed by UNCLOS. In this instance, this is indeed the case. The outcome of the delimitation will be to determine the areas due respectively and exclusively to each of the Parties.

8.30 To the east, the extended continental shelf claimed by Ghana in the relevant area starts at a point OL-GHA-8 located on the 200 nautical mile line and then broadens out gradually as it approaches the maritime area claimed by Côte d'Ivoire.

8.31 Finally, it should be noted that Ghana here is referring solely to its claims on the western side and does not mention that it is also claiming a continental shelf beyond 200 nautical miles in the eastern area, and that this claim covers 13,361.6 km^2.[562]

8.32 Moreover, Ghana makes the criticism that the 168.7°azimuth line would create a "grey area" over which both Côte d'Ivoire and Ghana would have rights, albeit of differing nature: "the continental shelf would belong to Côte d'Ivoire while the superjacent waters would be part of Ghana's EEZ".[563] What Ghana refers to as an "anomaly"[564] is in fact "a consequence of the delimitation"[565] and constitutes a

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[560] MG, vol. I, p. 143, para. 5.82.

[561] See *supra* paras 8.17-8.13.

[562] *Revised Executive Summary of the Submission by the Government of the Republic of Ghana for the Establishment of the Outer Limits of the Continental Shelf of Ghana*, Accra, 21 August 2013, MG Annex 78; and *Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the submission made by Ghana on 28 April 2009*, 5 September 2014, MG Annex 79.

[563] MG, vol. I, para. 5.82.

[564] *Ibid*.

phenomenon which is well-known and documented and is frequently designated a "grey area".

8.33 The question was raised before ITLOS in *Bangladesh/Myanmar* and the solution adopted at the time is also appropriate in the case *sub judice*: the 168.7° azimuth line will constitute "a boundary delimiting the continental shelves of the Parties, since in this area only their continental shelves overlap. There is no question of delimiting the exclusive economic zones of the Parties as there is no overlap of those zones".[566]

8.34 Consequently,

> "in the area beyond [Côte d'Ivoire's] exclusive economic zone that is within the limits of [Ghana's] exclusive economic zone, the maritime boundary delimits the Parties' rights with respect to the seabed and subsoil of the continental shelf but does not otherwise limit [Ghana's] rights with respect to the exclusive economic zone, notably those with respect to the superjacent waters".[567]

2. Application of the equidistance/relevant circumstance method as a subsidiary measure

a. The course of the provisional equidistance line

8.35 Ghana's Memorial does not set out clearly its position with respect to the application of the equidistance/relevant circumstance method. It appears that Ghana affords it only subsidiary consideration in its arguments relating to the delimitation within 200 nautical miles:[568] it does not expand on it at all in Chapter 6 concerning this question; however, it does make reference to it in its Submissions:

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[565] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para 472. The same observation appears in the decision of the Arbitral Tribunal in the *Bangladesh* v. *India* case: "The Tribunal's delimitation of the Parties' exclusive economic zones and of the continental shelf within and beyond 200 nm gives rise to an area that lies beyond 200 nm from the coast of Bangladesh and within 200 nm from the coast of India, and yet lies to the east of the Tribunal's delimitation line. The resulting 'grey area' is a practical consequence of the delimitation process. Such an area will arise whenever the entitlements of two States to the continental shelf extend beyond 200 nm and relevant circumstances call for a boundary at other than the equidistance line at or beyond the 200 nm limit in order to provide an equitable delimitation" (*Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India in the Bay of Bengal, Award of 7 July 2014*, para. 498).

[566] *Ibid*., para. 471.

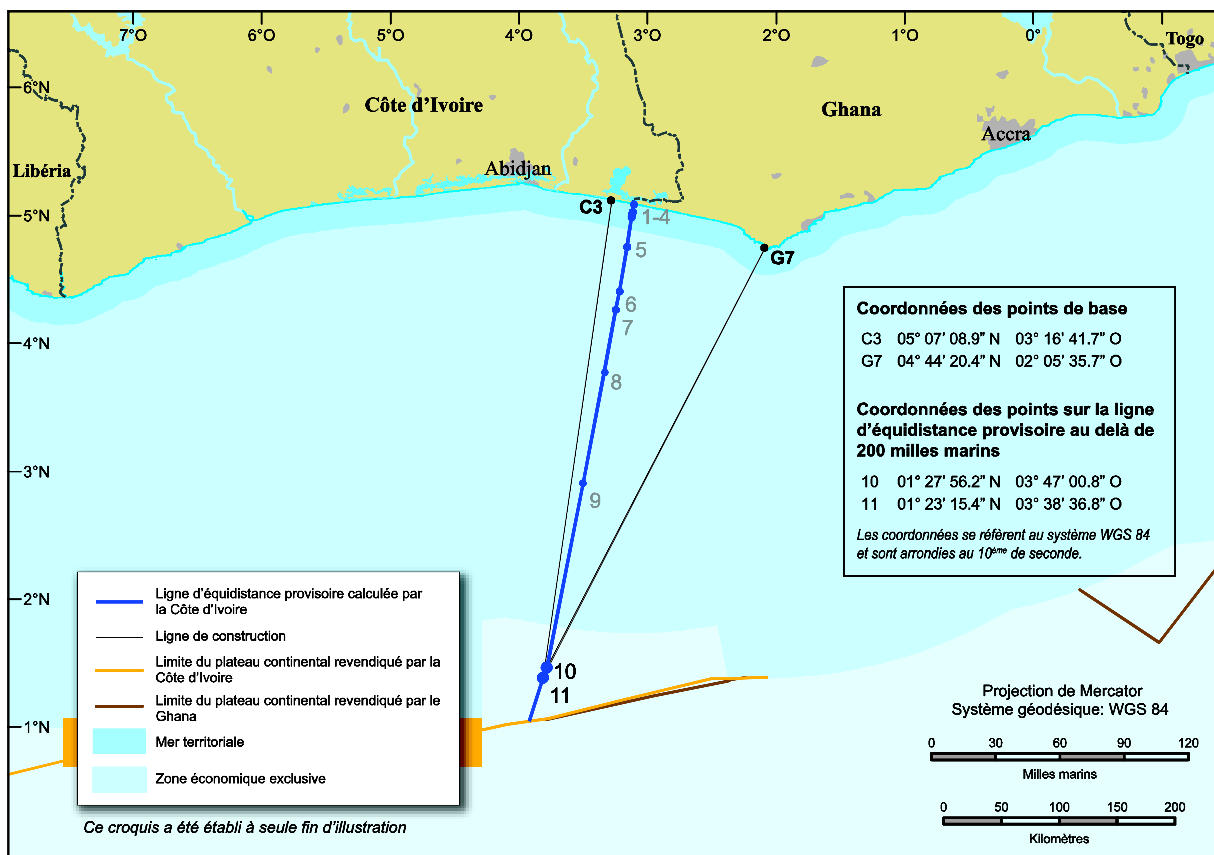
[567] *Ibid*., para. 474. See also, *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India in the Bay of Bengal*, *Award of 7 July 2014,* paras. 503-508.

[568] MG, vol. I, p. 144, para. 5.85.

> "The maritime boundary in the continental shelf beyond 200 M follows an extended equidistance boundary along the same azimuth as the boundary within 200 M, to the limit of national jurisdiction".[569]

It is difficult to draw definite conclusions from such an obscure premise.[570]

8.36 For its part, and in line with the position adopted for the delimitation of the continental shelf within 200 nautical miles,[571] Côte d'Ivoire considers that, in view of the geographical and geological circumstances in the present case, the equidistance/relevant circumstance method should be applied only as a subsidiary measure, if the Special Chamber were to dismiss the bisector method – despite the certain merits of this method, both in terms of an equitable result and simplicity.



Sketch map 8.5: Establishment of the provisional equidistance line beyond 200 nautical miles

[569] MG, vol. I, p. 163, submission n° 2.

[570] See also *supra*, paras 3.8-3.10.

[571] See *supra*, paras 7.1-7.1.

8.37 Assuming that the equidistance/relevant circumstance method would be applied, two additional base points (C-3 and G-7) would be involved in the establishment of the provisional equidistance line beyond 220 nautical miles (see **Sketch map 8.5**). Point C-3 is located 19.4 km from point Ω, and point G-7 is located on a small rock 118.8 km as the crow flies from point Ω, near Cape Three Points.

8.38 The same relevant circumstances which were described in respect of the delimitation within 200 nautical miles[572] involve the adjustment of the provisional equidistance line, as far as the 168.7° azimuth line, which coincides with the bisector.

8.39 Once the adjustments rendered necessary by the relevant circumstances peculiar to this case have been made to the provisional equidistance line, the 168.7° azimuth line crosses the outer limit of Côte d'Ivoire's continental shelf at coordinates 1° 22' 45.7''N and 2° 22'00.8''W and the outer limit of Ghana's continental shelf at the point 1°21' 46.3'' N and 2° 21'49.0''W.

8.40 The course of the maritime boundary between the two States, as results from the arguments submitted in the present Counter-Memorial, is shown in **Sketch map 8.4** above.

b. Verification of the absence of significant disproportion

8.41 The final stage in the application of the equidistance/relevant circumstance method consists in examining whether the provisional equidistance line, adjusted according to the relevant circumstances, "produces a result which is significantly disproportionate in terms of the lengths of the relevant coasts and the division of the relevant area. The purpose is to assess the equitable nature of the result".[573] As the International Court of Justice underlined,

[572] See *supra*, paras 7.39-7.59.

[573] *Maritime Dispute (Peru* v. *Chile)*, *Judgment, I.C.J. Reports 2014,* p. 69, para. 192. See also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 129, para. 210.

> "The purpose of delimitation is not to apportion equal shares of the area, nor indeed proportional shares. The test of disproportionality is not in itself a method of delimitation. It is rather a means of checking whether the delimitation line arrived at by other means needs adjustment because of a significant disproportionality in the ratios between the maritime areas which would fall to one party or other by virtue of the delimitation line arrived at by other means, and the lengths of their respective coasts".[574]

8.42 This latter stage may be implemented here in two ways. First, it is possible to follow the micro-geographical method recommended by Ghana,[575] which first of all consists in identifying the relevant coasts and the relevant area and then in checking the proportion between their respective ratios. Contrary to what Ghana is claiming, and assuming that it has identified the relevant coasts correctly, it may be observed that the 168.7° azimuth line claimed by Côte d'Ivoire does not result in any obvious disproportionality. According to Ghana, the *ratio* between the relevant coasts is 2.55:1 in Côte d'Ivoire's favour whilst the division of the relevant area would be 6.62:1 in Côte d'Ivoire's favour.[576] Contrary to Ghana's claim,[577] this ratio, of approximately 2.5:1 between the relevant coasts and relevant area, does not give rise to obvious disproportion engendering an inequitable result.

8.43 It should be noted that, in several cases, ratios of the same order or greater have not caused the International Court of Justice to correct the equidistance line adjusted according to relevant circumstances. Thus, in *Nicaragua* v. *Colombia*, having noted that:

> "[a]pplication of the adjusted line […] has the effect of dividing the relevant area between the Parties in a ratio of approximately 1:3.44 in Nicaragua's favour. The ratio of relevant coasts is approximately 1:8.2",[578]

the Court nevertheless concluded that:

> "taking account of all the circumstances of the present case, the result achieved by the application of the line provisionally adopted in the previous section of

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[574] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009,* pp. 99-100, para. 110. See also *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 499.

[575] See MG, vol. I, pp. 142-143, paras 5.80-5.81.

[576] See MG, vol. I, p. 143, para. 5.82.

[577] *Ibid*.

[578] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 716, para. 243.

> the Judgment does not entail such a disproportionality as to create an inequitable result".[579]

8.44 When the ICJ encountered difficulties in "defining with sufficient precision which coasts and which areas were to be treated as relevant",[580] "it made no precise calculation of them […]. In such cases, the Court engages in a broad assessment of disproportionality".[581]

8.45 In its Judgment in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, the Court underlined that it did not appear

> "that an endeavour to achieve a predetermined arithmetical ratio in the relationship between the relevant coasts and the continental shelf areas generated by them would be in harmony with the principles governing the delimitation operation. The relationship between the lengths of the relevant coasts of the Parties has of course already been taken into account in the determination of the delimitation line; if the Court turns its attention to the extent of the areas of shelf lying on each side of the line, it is possible for it to make a broad assessment of the equitableness of the result, without seeking to define the equities in arithmetical terms. The conclusion to which the Court comes in this respect is that there is certainly no evident disproportion in the areas of shelf attributed to each of the Parties respectively such that it could be said that the requirements of the test of proportionality as an aspect of equity were not satisfied".[582]

8.46 Similarly, in *Cameroon* v. *Nigeria*[583] or *Peru* v. *Chile,*[584] the Court considered that the particular circumstances in each case prevented it from making an arithmetical calculation of the proportionality test. It should be noted that, in both cases, the States' disputed coasts were partially or totally adjacent.

8.47 Determining relevant coasts may prove particularly problematic when the coasts of the States in question are adjacent. Thus, in the *Guyana* v. *Suriname* arbitration, the Tribunal had considered that:

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[579] *Ibid*., p. 717, para. 247.

[580] *Maritime Dispute (Peru* v. *Chile)*, *Judgment, I.C.J. Reports 2014*, p. 69, para. 193.

[581] *Ibid*.

[582] *Continental Shelf (Libyan Arab/Malta), Judgment, I.C.J. Reports 1985*, p. 55, para. 75.

[583] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening) Judgment, I.C.J. Reports 2002*, p. 433‑448, paras 272-307.

[584] *Maritime Dispute (Peru* v. *Chile)*, *Judgment, I.C.J. Reports 2014*, p. 69, para. 194.

> "As the Tribunal proposes to begin this delimitation process with a provisional equidistance line, it seems logical and appropriate to treat as relevant the coasts of the Parties which generate 'the complete course' of the provisional equidistance line".[585]

8.48 The present case is one of those in which identification of the relevant coasts and the relevant area is difficult or arbitrary. The solution applied by the Arbitral Tribunal in *Guyana* v. *Suriname*, which establishes equivalence between competing coasts in determination of the provisional equidistance line and the relevant coasts, cannot be employed, without reducing the relevant Ivorian coast to the 171 metres of coast used as a basis for establishing the equidistance line,[586] a result which is manifestly unreasonable and not representative of the general geographical context of the case.

8.49 Ghana has used the frontal projection method. As concerns the Côte d'Ivoire coast, Ghana stops arbitrarily at a point "to the west until the vicinity of Sassandra". According to Ghana, "[a]fter that point, where Côte d'Ivoire's coast turns to the southwest, *[sic]* it is too far removed from the area in dispute to be taken into account".[587] However, in order to determine the relevant coasts, jurisprudence bases itself on the overlap between the coastal projections,[588] not on the distance. Moreover, none of Ghana's sketch-maps shows the overlap between the relevant coastal projections.[589] It is thus more likely that Ghana has chosen this point near Sassandra because it enables it to demonstrate an ideal ratio of 1:1.[590]

8.50 Hence, rather than endeavouring to make an arithmetical calculation between the relevant coasts and the relevant area, it should be verified whether an obvious disproportion exists between the maritime areas attributed to each of the Parties.

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[585] *Delimitation of the maritime boundary between Guyana and Suriname*, *Award of 17 September 2007, RIAA*, vol. XXX, p. 97, para. 352.

[586] See *supra*, para. 7.24.

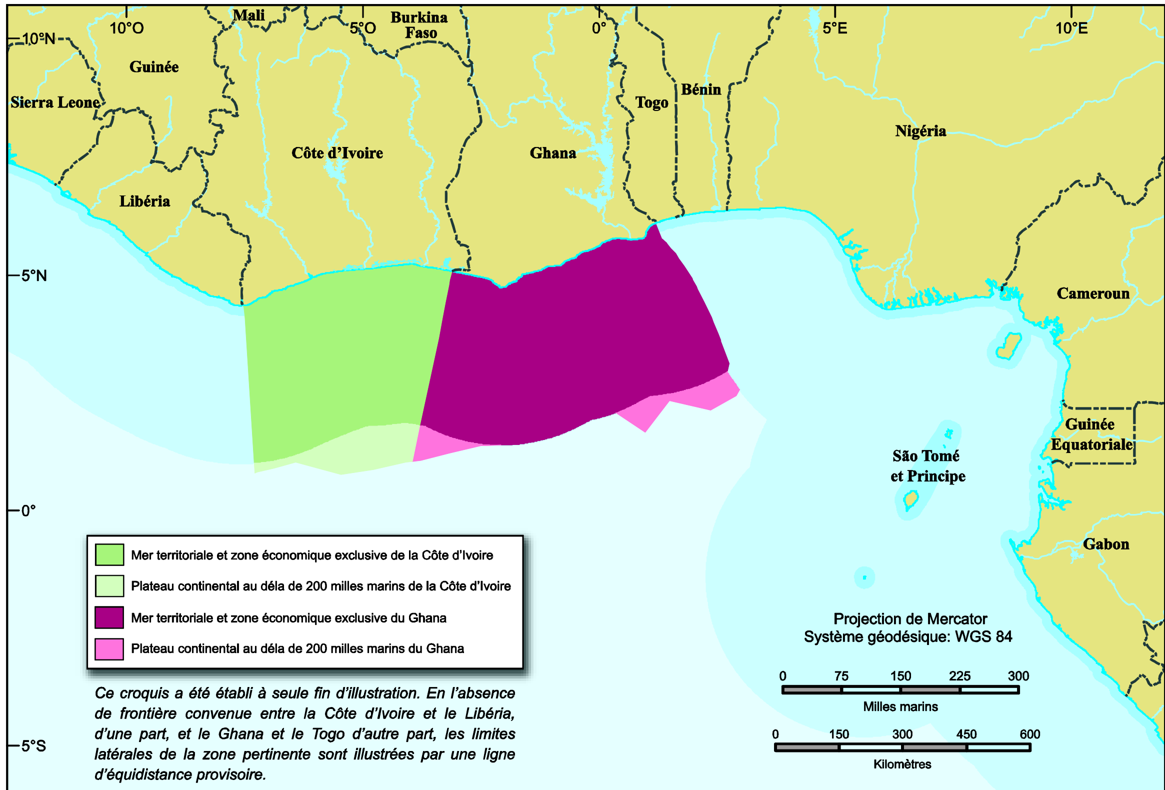
[587] MG, vol. I, p. 143, para. 5.80.

[588] See: *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 198; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 87, para. 99; and *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 279.

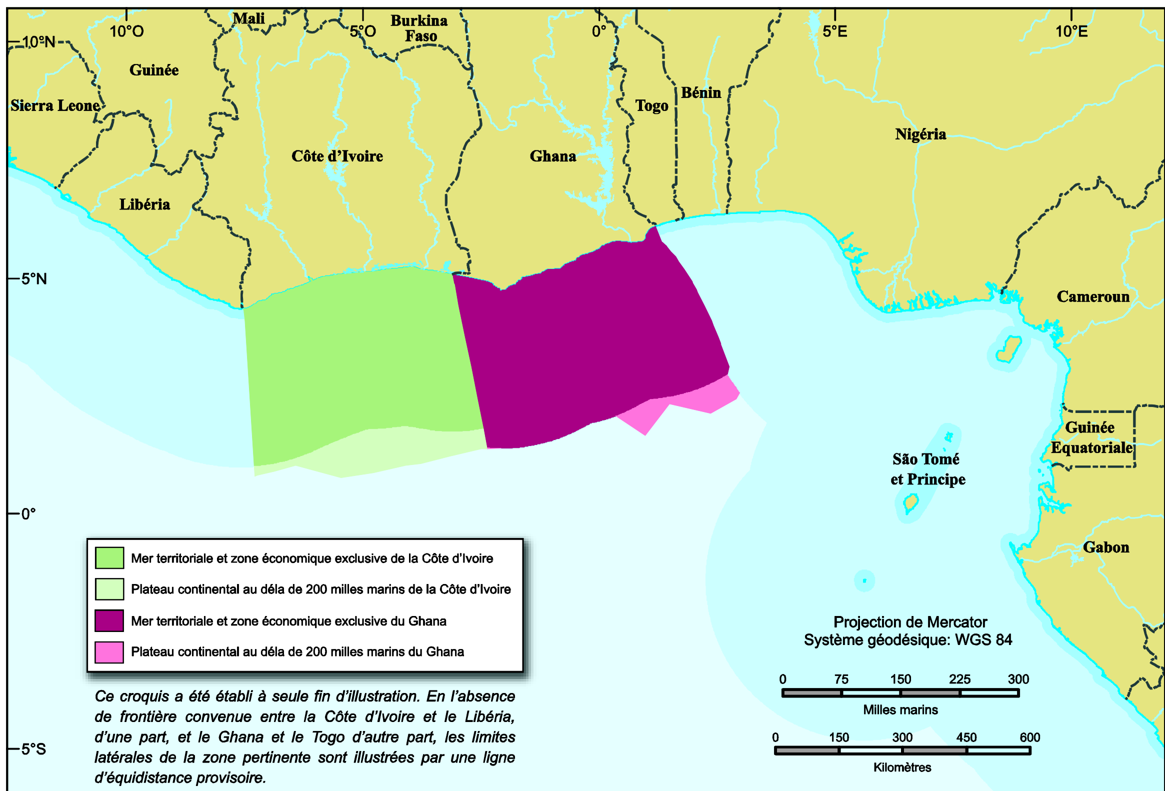
[589] Sketch-map 5.5. on the page following p. 142 of the MG does not show the overlap, but merely the coastal projections.

[590] See MG, vol. I, p. 143, paras 5.80-5.81.

8.51 Côte d'Ivoire has already demonstrated the equitable nature of the 168.7° azimuth line (**Sketch map 6.11**). The equitable nature of the boundary claimed by Côte d'Ivoire can be better illustrated by a comparison of the claims of each of the Parties, taking account of all the circumstances surrounding this particular case (**Sketch maps 8.6** and **8.7**).



Sketch map 8.6: The disproportionate nature of Ghana's claim



Sketch map 8.7: The equitable nature of Côte d'Ivoire's claim

8.52 The coastal fronts of the two States are more or less equal (that of Côte d'Ivoire being 515 km and that of Ghana 539 km). The line claimed by Ghana results in its being attributed 77,271 nm^2, of which 71,487 nm^2 are maritime areas within 200 nautical miles and 5,784 nm^2 continental shelf beyond 200 nautical miles. Côte d'Ivoire would be attributed, *grosso modo*, some 20,000 nm^2 less, that is, a total of 56,557 nm^2, of which 49,407 nm^2 are maritime areas within 200 nautical miles and 7,150 nm^2 continental shelf beyond 200 nautical miles.

8.53 On the other hand, the line claimed by Côte d'Ivoire leads to a clearly more balanced result, since Côte d'Ivoire would benefit from 67,492 nm^2, of which 57,486 nm^2 are maritime areas within 200 nautical miles and 10,006 nm^2 continental shelf beyond 200 nautical miles, whilst Ghana would be attributed 66,424 nm^2, of which 62,546 nm^2 are maritime areas within 200 nautical miles and 3,878 nm^2 continental shelf beyond 200 nautical miles.

PART 5

THE RESPONSIBILITY OF GHANA

CHAPTER 9

THE RESPONSIBILITY OF GHANA FOR INTERNATIONALLY WRONGFUL ACTS

9.1 As the present Counter-Memorial adequately sets forth,[591] Ghana has undertaken unilateral activities in the disputed area, contrary to the rules of international law which protect sovereignty and sovereign rights in maritime areas; contrary also to the repeated protestations by Côte d'Ivoire, and at the risk of failure of the bilateral negotiations on delimitation of the maritime boundary. Before this Chamber, Ghana is endeavouring to profit from these wrongful activities, by requesting that the Chamber sanction its *fait accompli* as a boundary. Not only can Ghana not benefit from its own turpitude; in addition, its wrongful activities result in the engagement of its responsibility at international level.

9.2 Ghana's conduct engages its responsibility on more than one count: first, it constitutes a violation of the sovereign rights which Côte d'Ivoire enjoys by virtue of general international law, as well as of UNCLOS; second, it likewise constitutes a violation of conventional obligations to do its utmost to enter into provisional arrangements of a practical nature and not to jeopardize or hamper the reaching of an agreement (article 83 of UNCLOS). Moreover, and separately, any activity carried out by Ghana in violation of the Order for the prescription of provisional measures of 25 April 2015 engages its responsibility.

[591] See *supra*, paras 2.85-2.95 and 5.26-5.33.

I. The responsibility of Ghana for violating the sovereign rights of Côte d'Ivoire

9.3 Ghana's unilateral activities in the disputed area constitute violations of the sovereign rights of Côte d'Ivoire and, in this respect, engage the responsibility of Ghana (A.) and oblige it to make reparation for the damage suffered by Côte d'Ivoire (B).

A. Violation of the exclusivity of Côte d'Ivoire's sovereign rights

9.4 Exclusivity of the sovereignty and sovereign rights of a State over the spaces under its jurisdiction is a fundamental principle of public international law[592] and is applicable to maritime areas, it being understood that "[i]n accordance with long-established principles of customary international law, a coastal State possesses sovereignty over the sea bed and water column in its territorial sea […]. By contrast, coastal States enjoy specific rights, rather than sovereignty, with respect to the continental shelf and exclusive economic zone".[593]

9.5 Like its sovereignty over the territorial sea, the sovereign rights which a coastal State enjoys over its continental shelf are characterized by their exclusivity. UNCLOS recalls these fundamental principles in several of its provisions. More specifically, article 77 (*Rights of the coastal State over the continental shelf*) states that:

> "1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
>
> 2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
>
> 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation".

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[592] See *Island of Palmas Case (Miangas), Arbitral award of Max Huber, 4 April 1928*, *RIAA, vol. II*, p.838.

[593] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia) Merits, Judgment, I.C.J. Reports 2012*, p. 690, para. 177. See also *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain) Merits, Judgment, I.C.J. Reports 2001*, p. 93, para. 174.

9.6 Article 81 adds that "[t]he coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes". For its part, article 193 recalls that "States have the sovereign right to exploit their natural resources pursuant to their environmental policies".

9.7 In its Order for the prescription of provisional measures, the Special Chamber, moreover, insisted on the nature of the rights at stake in the present case:

> "61. *Considering* that, in the view of the Special Chamber, the rights claimed by Côte d'Ivoire comprise rights of sovereignty over the territorial sea and its subsoil (article 2, paragraph 2, of the Convention) and sovereign rights of exploration and exploitation of the natural resources of the continental shelf (articles 56, paragraph 1, and 77, paragraph 1, of the Convention) and that the sovereign rights include all rights necessary for or connected with the exploration of the continental shelf and the exploitation of its natural resources".[594]

9.8 Exclusivity being an inherent feature, consequent upon sovereignty, delimitation does not create rights but affords certainty in respect of their scope. The judicial process of delimitation has a declarative, non-constitutive value, as is clear, moreover, from the famous *dictum* of the ICJ, according to which:

> "Delimitation is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination *de novo* of such an area".[595]

9.9 Furthermore, and unlike rights relating to the exclusive economic zone, the rights of a State over its continental shelf exist *ipso facto* and are not dependent on a declaration by the coastal State. The principle has been established at least since the 1969 Judgment of the International Court of Justice in the *North Sea Continental Shelf* case:

> "the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of

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[594] *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional measures, Order of 25 April 2015*, *ITLOS Reports 2015,* para. 61.

[595] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 18. See also: *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway), Judgment, I.C.J. Reports 1993,* pp. 66-67, para. 64.

> exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, *it is "exclusive"* in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so *without its express consent*".[596]

9.10 It thus follows that the exclusivity of States' rights – including those of Côte d'Ivoire – over the continental shelf is a feature inherent in the nature of these rights, which does not arise by virtue of the delimitation but has its origin in customary law.[597]

9.11 Côte d'Ivoire is certainly aware that the maritime boundary between the Parties "had not been settled prior to the decision of the Court", in the words of the ICJ in the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia).*[598] Thus, it is only when the judgment to be delivered specifies "in definitive and mandatory terms the […] maritime boundary between the two States" that "all uncertainty [will be] dispelled in this regard"[599] and that each State will benefit in the maritime area due to it from the sovereignty over the territorial sea[600] and "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources".[601]

9.12 In *Guyana* v. *Suriname*, the Arbitral Tribunal was seized of a request for engagement of responsibility owing to a threat of the use of force in a maritime area which was the subject of a dispute. It considered that the uncertain status of the area before delimitation was not an impediment to the receivability of the request:

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596 *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 19, italics added.

597 *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. 17 March 2016,* para. 105.

598 *Territorial and Maritime Dispute (Nicaragua* v. *Colombia) Merits, Judgment, I.C.J. Reports. 2012*, p. 718, para. 250.

599 *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, 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; and *Delimitation of the Maritime Boundary between Guyana and Suriname*, *Award of 17 September 2007*, *RIAA*, *vol. XXX*, p. 128, para. 451.

600 Cf. article 2 of UNCLOS.

601 Articles 56 and 77 of UNCLOS.

> "The Tribunal does not accept Suriname's argument that in a maritime delimitation case, an incident engaging State responsibility in a disputed area renders a claim for reparations for the violation of an obligation provided for by the Convention and international law inadmissible".[602]

9.13 On that occasion, the Tribunal gave its interpretation of the judgment in the *Cameroon* v. *Nigeria* case, considering that there it was a matter of a precedent confirming the principle of engagement of responsibility for wrongful activities in a disputed area:

> "In *Cameroon/Nigeria [sic]*, a case in which the International Court of Justice was called on to delimit a boundary between the two parties, the Court entertained several claims engaging Nigeria and Cameroon's State responsibility for the use of force within the disputed area. The Court found however that *for all but one of these claims, insufficient evidence had been adduced to prove them.* With respect to the *final claim by which Cameroon requested an end to Nigerian presence in a disputed area,* the Court found that the *injury suffered by Cameroon would be sufficiently addressed by Nigeria's subsequent pull-out* as a result of the delimitation decision, rendering it unnecessary to delve into the question of whether Nigeria's State responsibility was engaged. Even so*, the Court clearly considered questions of State responsibility relating to use of force,* and the admissibility of Cameroon or Nigeria's claims was never put into question on the grounds submitted here by Suriname".[603]

9.14 Hence, there is no doubt at all that, at least in certain cases, the activities of a State in a disputed territory (whether land or maritime) before the delimitation is settled are liable to constitute violations of the sovereignty or sovereign rights of the State of which the concurrent claims have been recognized as being valid. This is, moreover, what emerges from the Order for the prescription of provisional measures of this Chamber, which considered that:

> "this situation may affect the rights of Côte d'Ivoire in an irreversible manner if the Special Chamber were to find in its decision on the merits that all or any part of the area in dispute belongs to Côte d'Ivoire".[604]

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[602] *Delimitation of the maritime boundary between Guyana and Suriname, Award of 17 September 2007, RIAA, vol. XXX*, pp. 118, para. 423, footnotes omitted.

[603] *Ibid.,* p. 119, para. 424, footnotes omitted, italics added.

[604] *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire, Provisional measures, Order of 25 April 2015, ITLOS Reports 2015,* para. 91.

9.15 Without having to enter into doctrinal analysis of the various hypotheses in which the responsibility of the State performing these activities might be engaged for that reason, there is no doubt that the present case is entirely emblematic:

- Ghana has carried out the activities in question whilst it was perfectly aware of Côte d'Ivoire's claims and its opposition to any form of unilateral oil exploration before the delimitation dispute was settled;
- these activities potentially affect the sovereignty or sovereign rights of Côte d'Ivoire and run the risk of irreparable harm; and
- the internationally wrongful act on the part of Ghana is established even regardless of the delimitation to be decided: it consists of a violation of the rule prohibiting such acts in a disputed area pending definitive delimitation.

9.16 As Côte d'Ivoire has established above in the present Counter-Memorial, Ghana was fully aware of the existence of a delimitation dispute, well before it commenced its activities in the disputed area:

- as early as 1988, Côte d'Ivoire had proposed a delimitation along the prolongation of the land boundary, which Ghana received without comment, the Ivorian party legitimately taking this silence as acquiescence;[605]
- in 1992, Ghana proposed to Côte d'Ivoire that the discussions on the maritime delimitation be resumed; the Ivorian Party replied positively, making thorough preparations for the negotiations; however, it was not counting on Ghana's inconstancy, which ultimately refused to follow up its own invitation;[606]
- when preliminary talks did resume in 2007, driven by Ghana's appetite for oil and facilitated by the stabilization of the political situation in Côte d'Ivoire, the two Parties again adopted opposing positions;[607]
- the ten meetings held between 2008 and 2014 established that Ghana was not ready to negotiate in good faith.[608]

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[605] See *supra*, paras 2.33-2.37.

[606] See *supra*, paras 2.38-2.45

[607] See *supra,* paras 2.46-2.51.

9.17 Ghana was fully informed of Côte d'Ivoire's opposition to oil exploration activities' being carried out in the disputed area, since Côte d'Ivoire had protested against the first measures taken in that respect by Ghana.[609] And it had emphatically insisted on the wrongfulness of the Ghanaian actions when negotiations were resumed in 2008.[610] It should be noted in that respect that, at the time when these protests were made, Ghana's activities were still on a modest scale, and that Ghana has radically stepped up these activities since 2010, even though the two States were conducting intensive negotiations on the delimitation of their maritime boundary.[611] It is at its own risk and peril that Ghana has deliberately preferred to take unilateral action rather than negotiate in good faith.

9.18 It cannot be contested that these unilateral exploration or, *a fortiori*, exploitation activities are activities which should not be undertaken in a disputed area, since potentially they can harm the sovereign rights of the State having concurrent claims.[612] Moreover, in its Order for the prescription of provisional measures, the Chamber made no distinction between the rights imperilled by unilateral exploration and exploitation:

> "94. *Considering* that the Special Chamber considers that the rights of the coastal State over its continental shelf include all rights necessary for and connected with the exploration and exploitation of the natural resources of the continental shelf and that the exclusive right to access to information about the resources of the continental shelf is plausibly among those rights;
>
> 95. *Considering* that the acquisition and use of information about the resources of the disputed area would create a risk of irreversible prejudice to the rights of Côte d'Ivoire should the Special Chamber, in its decision on the merits, find that Côte d'Ivoire has rights in all or any part of the disputed area".[613]

9.19 The Chamber's jurisprudence accords with that of the International Court of Justice which, in the *Aegean Sea Continental Shelf* case, had considered *prima facie* that:

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[608] See *supra*, paras 2.48–2.82.

[609] See *supra*, paras 2.41–2.43 and 5.13-5.25.

[610] See *supra*, para. 5.20.

[611] See *supra*, paras 5.21-5.24. See also *infra*, para. 9.50.

[612] See *supra*, paras 9.3-9.14.

[613] *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire, Provisional Measures, ITLOS Order of 25 April 2015, ITLOS Reports 2015,* paras 94-95. See also *ibid*., para. 61, cited above (para. 9.7). See also *Aegean Sea Continental Shelf, Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976*, paras 31-32.

> "seismic exploration of the natural resources of the continental shelf without the consent of the coastal state might, no doubt, raise a question of infringement of the latter's exclusive right of exploration; whereas, accordingly, in the event that the Court should uphold Greece's claims on the merits, Turkey's activity in seismic exploration might then be considered as such an infringement and invoked as a possible cause of prejudice to the exclusive rights of Greece in areas then found to appertain to Greece".[614]

9.20 If a distinction has to be made between exploration and exploitation activities, it is not at the level of the violation of the exclusivity of sovereignty/sovereign rights, but in the context of the damage resulting therefrom (and thus the appropriate form of reparation).[615]

9.21 In the present case, Ghana has engaged in extensive unilateral activities, both exploration and exploitation, in the disputed area, some of which Côte d'Ivoire described and documented during consideration of its request for the prescription of provisional measures. As Côte d'Ivoire has set out at length,[616] Ghana has granted numerous oil concessions in this area. It should also be noted that more than half of the offshore oil concessions granted by Ghana are in the disputed area.[617]

9.22 The oil exploration activities conducted by Ghana in the majority of the blocks located entirely or partially in the disputed area consist not only of seismic studies, but also of operations which are physically harmful to the continental shelf. Before Côte d'Ivoire submitted to the Chamber a request for the prescription of provisional measures, Ghana and the oil companies active in the disputed area had made it known that they had carried out 34 exploratory and development drilling operations there.[618]

9.23 The activities in the TEN block are in their exploitation phase. This block is located entirely within the disputed area and, from 2006 to May 2013, was the subject of

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[614] *Aegean Sea Continental Shelf, Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976*, pp. 10-11, para. 31.

[615] See *infra*, paras 9.26-9.39.

[616] See *supra*, para. 2.93 and Sketch maps 2.2 and 2.3.

[617] See also *supra*, paras 7.51-7.57.

[618] For block-by-block details, see also Status of the activities in the oil blocks granted by Ghana in the disputed area, 27 February 2015, CMCI, vol. IV, Annex 83.

exploration operations, including 12 drilling operations.[619] The exploitation was decided by the Ghanaian authorities in May 2013.[620] The installation of submarine infrastructures prior to exploitation is in the process of being terminated.[621] The first deliveries are expected in the middle of 2016.[622]

9.24 The eight other blocks under Ghanaian licence,[623] located entirely or partially within the disputed area, are in the exploratory phase. In that respect, the oil operators are carrying out seismic analyses and studies and drilling in order to identify deposits and determine their commercial viability. Thus, according to the published information, 12 drilling operations have been carried out in the disputed area thus far. Further drilling is planned in the coming two years in four of these blocks.[624]

9.25 Moreover, Ghana does not deny this and is even attempting to gain further advantage therefrom by alleging that these activities were the subject of a tacit delimitation agreement. Far from being proof of an agreement, they establish the violation of Côte d'Ivoire's rights.

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[619] *Ibid*.

[620] Communiqué by Tullow concerning the approval of the TEN development project TEN, 30 May 2013, CMCI, vol. IV, Annex 79.

[621] Letter n° 068 MPE/CAB sent by the Agent of Côte d'Ivoire to Ghana, 27 July 2015, CMCI, vol. IV, Annex 54; see also: Gulf Oil and Gas, *FMC delivers ahead of the schedule for Tullow TEN project,* 15 January 2016, CMCI, vol. V, Annex 142; FMC Technologies, *FMC Technologies delivers ahead of schedule for Tullow's TEN Project*, undated, CMCI, vol. V, Annex 153; Ecofin, *Ghana: Tullow Oil announces the first barrels from the TEN project for summer 2016*, 13 January 2016, CMCI, vol. V, Annex 138; Ecofin, *Ghana : FMC Delivers Tullow' subsea Trees for the TEN project ahead of the schedule*, 8 December 2015, CMCI, vol. V, Annex 137; Rigzone, *Tullow: TEN Project Over 80% Complete*, 13 January 2016, CMCI, vol. V, Annex 139; Rigzone, *Perfect TEN for Tullow in Ghana*, 21 October 2015, CMCI, vol. V, Annex 129.

[622] See references cited in footnote 621 above and Tullow presentation, *Overview Presentation November / December 2015,* slides 19 and 23, CMCI, vol. IV, Annex 84; see also Communiqué by Tullow, *TEN field*, 22 February 2016, CMCI, vol. IV, Annex 85, see also *infra*, paras 9.62-9.74.

[623] Blocs Expanded Shallow Water Tano, Central Tano, Deepwater Tano Cape Three Points, Cape Three Points Deep and Wawa, South West Tano, Deepwater Cape Three Points West and South Deepwater Tano, see also Status of the activities in the oil blocks granted by Ghana in the disputed area, 27 February 2015, CMCI, vol. IV, Annex 83.

[624] For the Deepwater Cape Three Points West, South Deepwater Tano, Central Tano and deepwater Tano Cape Three Points blocks; see *ibid* pp. 8, 15, 17 and 21.

B. Reparation of the damage suffered by Côte d'Ivoire

9.26 "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form".[625] This principle was enshrined in article 31 of the articles of the International Law Commission concerning State responsibility for internationally wrongful acts, which provides:

> "Article 31. - Reparation
> 1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
> 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State".[626]

1. Restitutio in integrum

9.27 When the wrongful act consists of the gathering and analysis of exclusive information, *restitutio in integrum* is the most appropriate form of reparation.[627] In the present case, as concerns the information relating to the resources obtained owing to the exploration activities carried out in the disputed area, restitution is possible. However, in order to be complete, it should be accompanied by a non-disclosure order:

> "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".[628]

9.28 The Special Chamber has moreover envisaged that the decision on the merits could turn on the communication to Côte d'Ivoire of the information concerning the resources which Ghana and its co-contractors have collected in the disputed area:

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[625] *Case concerning the Factory at Chorzów, Jurisdiction, Series A, n° 9, PCIJ, Judgment,* 26 July 1927, p. 21.

[626] Resolution A/RES/56/83/ of the United Nations General Assembly, *Annex: Responsibility of States for internationally wrongful acts*, 12 December 2001, CMCI, vol. VI, Annex 157.

[627] See *mutatis mutandis*, *Case concerning the Temple of Preah Vihear (Cambodia* v. *Thailand), Merits, Judgment of 15 June 1962: I.C.J. Reports 1962*, p. 37 (restitution of cultural objects taken from a disputed area).

[628] *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia), Provisional measures, Order of 3 March 2014, I.C.J. Reports 2014*, p. 158, para. 42; see also: *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire. Provisional measures, Order of 25 April 2015, ITLOS Reports 2015,* paras 47 and 92.

> "92. *Considering* that, as regards the right claimed by Côte d'Ivoire to exclusive access to confidential information about the natural resources of the continental shelf, Ghana, in its Written Statement, declares that 'information about petroleum recovered is recorded in detail, as part of standard practice in petroleum production and revenue accounting' and that 'the information currently being gathered in the disputed area will be duly recorded, and 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';
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> 93. *Considering* that the Special Chamber places on record the assurance and undertaking given by Ghana as mentioned in paragraph 92".[629]

9.29 Côte d'Ivoire's request turns first on the information gathered following the exploration and exploitation activities in the area over which Côte d'Ivoire holds sovereign rights. In particular, Côte d'Ivoire requests the Chamber to order Ghana to hand over to Côte d'Ivoire all the samples, data and documents obtained as a result of the oil operations carried out by Ghana or the oil companies granted mining rights by Ghana, from the beginning of the oil operations in the disputed area, in particular:

- all results and reports associated with the geological studies carried out by or on behalf of Ghana – Côte d'Ivoire being unable to be more precise owing to its lack of access to this information, which Ghana has kept secret;
- all seismic data resulting from the (2D and 3D) seismic acquisition campaigns – to which the same comment applies;
- all results of seismic data-interpretation studies obtained in this manner in relation to the disputed area;
- all results and reports associated with the geophysical, geochemical and hydrological studies carried out, in particular all reports prepared on the basis of or containing any information gathered during the exploration, evaluation and production drilling operations;
- all results of the different tests performed on the wells (diagraphy, fluid sampling, fluid studies, petrophysical studies, production tests, pressure measurements, etc.);
- all samples and core samples taken;

[629] *Ibid.*, paras 92-93.

- in general, all information concerning the composition of the subsoil in the disputed area resulting from oil operations.

9.30 As concerns the state of progress of activities in the disputed area, Côte d'Ivoire has sent a number of requests directly to Ghana,[630] but they were met with an objection to admissibility.[631] This refusal is all the more harmful to Côte d'Ivoire in that, without this documentation, it will be difficult to establish the scope of the material damage resulting from the oil activities in the area over which it holds sovereignty. This information is not generally made public, and Ghana's lack of transparency as concerns its oil activities renders the collection of evidence even more onerous.[632]

9.31 Hence, and without prejudice to the right which Côte d'Ivoire reserves to submit to the Special Chamber, at the opportune moment, certain requests aiming to ensure that the provisional measures are properly executed, it now requests the Chamber to order Ghana, in its decision, to hand over to it all the documents relating to the progress of the oil exploration and exploitation operations in the maritime area appertaining to it, including the oil transport and development operations, and in particular:

- annual work programmes;

- reports concerning work already carried out (periodic reports, in particular annual reports which, *inter alia*, include the number of drilling operations already performed, their location and the amounts and quality of oil produced);

- reports concerning certain operations, in particular, especially for each drilling operation performed and the tests carried out on the wells drilled (final reports on projects or operations in particular);

- any development plan sent to Ghana, whether or not it has been approved;

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[630] For details, see *infra*, para. 9.72; letter n° 068 MPE/CAB sent by the Agent of Côte d'Ivoire to Ghana, 27 July 2015, p. 3, CMCI, vol. IV, Annex 54.

[631] Minutes of the meeting between the two Agents of Côte d'Ivoire and Ghana, Accra, 10 September 2015, CMCI, vol. IV, Annex 55.

[632] Ghana Web, *US probes Ghana oil contracts*, 10 June 2015, CMCI, vol. V, Annex 124.

- reports resulting from studies made prior to the projects or operations, in particular reports of economic feasibility studies of development projects, reports relating to the location of the drilling operations to be performed, reports relating to the environment prior to any oil operation;

- sub-contraction programmes and any sub-contraction contracts prepared;

- reports on production levels, records of amounts and quality of oil produced and/or flared, as necessary, and the market prices applied each quarter to the production and removal as declared to Ghana by the operators and as used or amended for determining the fiscal price;

- reports on security and prevention measures; and

- reports on the declaration, follow-up and conclusion of any incident or accident having consequences for the environment, public safety, security and health of the labour force, describing the incident, its development, the measures taken and analysis of the reasons for its occurrence and proposing measures to be taken in order to avoid any recurrence as well as steps taken to remedy the consequences of the incident.

9.32 Furthermore, Côte d'Ivoire requests this Chamber to order Ghana, on the one hand, to keep confidential all information relating to the resources in the maritime area appertaining to it and, on the other, to enjoin the oil companies concerned to do likewise.

2. Reparation by equivalence

9.33 However, *restitutio in integrum* will be very difficult, if not impossible if the rights in dispute are irreversibly infringed. This was, moreover, the assessment of the Special Chamber in its Order for the prescription of provisional measures:

> "89. *Considering* that there is a risk of irreparable prejudice where, in particular, activities result in significant and permanent modification of the physical character of the area in dispute and where such modification cannot be fully compensated by financial reparations;

> 90. *Considering* that, whatever its nature, any compensation awarded would never be able to restore the *status quo ante* in respect of the seabed and subsoil".[633]

9.34 Reparation by equivalence (compensation) should thus be envisaged, since it is the appropriate form of reparation when restitution is impossible or extremely difficult. It is not rare for this form of reparation to be envisaged in cases of delimitation or disputing of sovereign rights, assuming that the damage can be established.[634]

9.35 It should, further, be noted that, during the provisional measures stage, Ghana, in support of its request to continue activities in the TEN area, had itself suggested the possibility of subsequent compensation for damages resulting from exploitation of the resources:

> "87. *Considering* that Ghana further states that 'the only loss which Côte d'Ivoire would suffer over the lifetime of these proceedings would be the loss of the revenues derived from oil production […] by Ghana in any area which the Special Chamber ultimately determined to fall within Côte d'Ivoire's territory' and that '[t]his is a pure financial loss, and could be completely addressed through [...] an award of damages in due course'".[635]

9.36 In its Order, the Chamber considered that:

> "as regards the sovereign rights claimed by Côte d'Ivoire for the purpose of exploring the continental shelf and exploiting its natural resources, the Special Chamber is of the view that, […] the alleged loss of the revenues derived from oil production could be the subject of adequate compensation in the future".[636.]

9.37 However, at this stage, it is difficult to quantify the material damage resulting from the exploitation and exploration by Ghana in the disputed area, for two reasons: first, the damage which might give rise to reparation is that resulting from activities carried out in the area in which the Chamber will recognize as belonging to Côte

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[633] *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015,* paras 89-90.

[634] *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua) Merits, Judgment, I.C.J., 16 December 2015*, proceedings joined with *Construction of a road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica)*, para. 142. See also: *Delimitation of the Maritime Boundary between Guyana and Suriname, Award of 17 September 2007*, *RIIA, vol. XXX*, p. 128, para. 452.

[635] *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015,* para. 87.

[636] *Ibid.*, para. 88.

d'Ivoire. Thus, knowing what the exact extent of this area is is a prerequisite for quantifying the damage. Second, as has just been shown,[637] Côte d'Ivoire does not have the necessary information for assessing the extent of the damage. A phase in which the Parties can negotiate is thus called for. This phase might lead to an agreement on the terms of the reparation.

9.38 Such is the practice followed by international courts and tribunals, moreover, when they are seized of requests for compensation following the engagement of a State's international responsibility. In its recent judgment in the *Costa Rica* v. *Nicaragua* case, the International Court of Justice thus considered that:

> "142. Costa Rica is entitled to receive compensation for the material damage caused by those breaches of obligations by Nicaragua that have been ascertained by the Court. The relevant material damage and the amount of compensation may be assessed by the Court only in separate proceedings. The Court is of the opinion that the Parties should engage in negotiation in order to reach an agreement on these issues. However, if they fail to reach such an agreement within 12 months of the date of the present Judgment, the Court will, at the request of either Party, determine the amount of compensation on the basis of further written pleadings limited to this issue".[638]

9.39 This approach is also proper in the present case: the Chamber may and should make a pronouncement, already at this stage, on the principle of the engagement of responsibility; it could encourage the Parties to initiate a negotiation process focussed on the engagement of responsibility; it may and should specify the guiding principles of such a process, and it may and should place this process *ratione temporis*, by setting a time-limit within which the Parties should reach agreement, failure to do so resulting in the amount of compensation and conditions being fixed by the Chamber.

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[637] See *supra*, paras 9.29-9.30.

[638] *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), Judgment, I.C.J. 2015*, para. 142. See also: *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 281, points 5 and 6 of the document; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 693, points 7 and 8; and *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012*, p. 324.

II. Violations of article 83 of UNCLOS

9.40 Ghana's unilateral activities in the disputed area, its inflexibility in the negotiations, together with the timely closing off of all avenues for settling the dispute judicially are so many violations of the obligation to negotiate in good faith, as prescribed in article 83, paragraph 1, of UNCLOS.

9.41 There can be no doubt that Ghana was aware of the wrongfulness of its attitude, which is incompatible with the obligation to negotiate in good faith resulting from the general principle whereby any dispute between States should be settled peacefully[639] and which, more specifically, is supported by articles 74 and 83 of UNCLOS by virtue of which the delimitation of the exclusive economic zone and of the continental shelf "between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law". In such circumstances, the States parties should behave in such a way that "the negotiations are meaningful"; however, without implying an obligation "to reach an agreement":[640] "the engagement […] [being] not only to enter negotiations, but also to pursue them as far as possible, with a view to concluding agreements".[641] This condition is not satisfied when, for example, one or other party "insists upon its own position without contemplating any modification of it"[642] or hampers the negotiations, for example by interrupting communication, causing unjustified delays, or by failing to follow proper procedures.[643] "Negotiations with a view to reaching an agreement also imply that the parties should pay reasonable regard to the interests of the other".[644]

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[639] See article 2, para. 3, and article 33 of the United Nations Charter.

[640] *Railway traffic between Lithuania and Poland*, Series A/B, nº 42, PCIJ, 15 October 1931, p. 116*;* see also *Pulp mills on the River Uruguay (Argentina* v. *Uruguay)*, *Judgment, I.C.J. Reports* 2010, p. 68, para. 150.

[641] PCIJ, 15 October 1931, *ibid*.

[642] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 47, para. 85; see also *Pulp mills on the River Uruguay (Argentina* v. *Uruguay)*, *Judgment, I.C.J. Reports 2010*, p. 67, para. 146.

[643] *Lac Lanoux case (Spain/France), Award of 16 November 1957, RIAA, vol. XII,* p. 307.

[644] *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece), Judgment of 5 December 2011, I.C.J. Reports 2011*, p. 685, para. 132. See also *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974,* p. 33, para. 78.

9.42 Ghana's unilateral activities in the disputed area also constitute violations of the specific obligations provided for in paragraph 3 of article 83 of UNCLOS:

> "3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation".

9.43 Paragraph 3 of article 83 is an advancement and innovation as concerns the regime established by the Convention: the preparatory studies of the Convention show that delimitation disputes ought not to result in the stoppage of any economic activity in a disputed area, particularly since the negotiations for reaching a delimitation agreement could prove to be very lengthy. At the same time, the negotiators were fully aware that unilateral economic activities might endanger the conclusion of a delimitation agreement, both because they would be certain to create animosity between the Parties and also because they might tend to establish a *fait accompli* of which the State might subsequently attempt to take advantage. This is the reason as to why paragraph 3 provides that States "shall make every effort to enter into provisional arrangements of a practical nature".

9.44 As the *Virginia Commentary* explains, the only activities authorized on the continental shelf of a disputed area are those carried out by virtue of provisional arrangements:

> "Papua New Guinea […] proposed establishing a moratorium on economic activities in the area under dispute. […] [T]o avoid the introduction of a 'moratorium' on economic exploitation pending agreement, a prohibition on 'unilateral actions' might be added. […] The discussions on provisional arrangements in paragraph 3 were conducted on the basis of the proposal contained in the first report at the eighth session by the Chairman of NG7 […]. The discussion focused on the second sentence of the proposal, because some delegations felt it could be considered as introducing a moratorium prohibiting any economic activities in the disputed area. Negotiations within NG7 and in two small consultation groups led to the adoption of a revised text […], which was found to be an acceptable element of the final compromise on the delimitation issue. Following discussion of that revised text, further clarifications were included in a compromise proposal prepared by the Chairman of NG7 and included in his summary report […]. That text read:
>
> > [3.] Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make

every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation".[645]

9.45 It is clear from the analysis of paragraph 3 of article 83 (together with that of the provisions of UNCLOS attesting to the exclusive nature of the rights to explore and exploit the continental shelf)[646] that unilateral economic activities are prohibited in an area under dispute. It is true that the Arbitral Tribunal established in the *Guyana* v. *Suriname* case made a clear distinction between unilateral activities, such as purely seismic exploration, which do not involve any physical modification to the soil and sub-soil of the continental shelf, and those which would cause "a modification of the physical characteristics of the continental shelf".[647]

9.46 However, there is no reason to consider that invasive activities alone are prohibited by paragraph 3 of article 83: practice shows that unilateral seismic exploration activities, carried out without the consent of the other coastal State, are likewise the source of serious tension between States; they also provide valuable information about the status of the resources in a disputed area, which may give the States in possession of this information a considerable advantage during delimitation negotiations. Moreover, it is usual in maritime delimitation disputes for the States concerned to abstain from undertaking unilateral activities in the areas to which concurrent claims apply.[648]

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[645] M. Nordquist *et al.* (eds.), "Article 83", *in United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. II, 1993, pp. 967 and 975, CMCI, vol. V, Annex 107; see also Y. van Logchem, *The Scope for Unilateralism in Disputed Maritime Areas*, Schofield, 2013 in Clive H. Schofield (ed.), *The Limits of Maritime Jurisdiction*, Leiden /Boston: Martinus Nijhoff Publishers, 2014, p. 193, CMCI, vol. V, Annex 111.

[646] See *supra*, paras 9.5-9.6.

[647] *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015,* para. 88.

[648] 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, accessed on 29 March 2016) ;

- dispute between Libya and Malta (Times of Malta, 15 October 2015, "Government refused well drilling licence to Heritage Oil in 2012", http://www.timesofmalta.com/articles/view/20151015/local/government-refused-well-drilling-licence-to-heritage-oil-in-2012.588294, accessed on 29 March 2016) ;

9.47 The delimitation cases submitted to international arbitrators and judges put forward this containment policy. When one of the coastal States has attempted to undertake invasive activities in a disputed area and these activities have met with the opposition of the other, the first party has suspended such activity. Thus in the *Gulf of Maine* case, from the beginning of the 1960s, Canada had granted exploration licences as far as an equidistance line. Since the United States was opposed to these activities, Canada suspended them. Similarly, the United States limited its activities to non-disputed areas.[649]

9.48 Likewise, in the *Saint-Pierre et Miquelon* case, between France and Canada, the Arbitral Tribunal noted that:

> "The two governments delivered concurrently a number of exploration licences but, following protests from both Parties, no drilling was carried out"[650] *[translation provided by the Registry].*

- dispute between Italy and Malta (*Times of Malta*, 4 October 2015, Italy, Malta agree oil drilling moratorium in disputed area, available on line: http://www.timesofmalta.com/articles/view/20151004/local/italy-malta-agree-oil-drilling-moratorium-in-disputed-area.586807, accessed on 29 March 2016) ;

- Norway and Russia, in the Barents Sea, *Dow Jones Newswires*, 22 April 2013, Norway to Open First New Oil, Gas Acreage Since 1994, available on line: http://www.rigzone.com/news/oil_gas/a/125945/Norway_to_Open_First_New_Oil_Gas_Acreage_Since_1994#sthash.whBiBB63.dpuf, accessed on 29 March 2016 ;

- dispute between Malaysia and Indonesia: *Continental Energy*, 30 March 2005, Continental's Bengara-II Block Outside Disputed Area, available on line: http://www.rigzone.com/news/oil_gas/a/21408/Continentals_BengaraII_Block_Outside_Disputed_Area#sthash.Yj35ToN9.dpuf, accessed on 29 March 2016 ;

- dispute between Malaysia and Brunei: *E&P News*, 18 June 2003, Shell Could Halt Operations Offshore Brunei, available on line: http://www.rigzone.com/news/oil_gas/a/7052/Shell_Could_Halt_Operations_Offshore_Brunei, accessed on 29 March 2016 ;

-Bangladesh and Myanmar : http://www.idsa.in/idsastrategiccomments/OilPoliticsintheBayofBengal_AKumar_271108, accessed on 29 March 2016 ;

- Philippines and China : *Jakarta Post*, 3 March 2015, Philippines halts exploration in 'disputed' sea, available on line: http://m.thejakartapost.com/news/2015/03/03/philippines-halts-exploration-disputed-sea-contractor.html, accessed on 29 March 2016 ; 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, accessed on 29 March 2016.

[649] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports* 1984, pp. 279-281, paras 61-65. See also the moratorium on exploration concluded between Libya and Malta during the proceedings before the ICJ: *Continental shelf (Libyan Arab Jamahiriya/Malta)*, Counter-memorial by the Libyan Arab Jamahiriya, 26 October 1983, *Memorial*, vol. II, p. 21, paras 1.23-1.24.

[650] *Delimitation of maritime areas between Canada and France*, *Award of 10 June 1992, RIAA*, *vol. XXI*, pp. 285-286, para. 89. The same applied in *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)*; see *Judgment, 3 February 2009, I.C.J. Reports 2009*, pp. 123-124, paras 191 and 193.

9.49 Ghana's activities fall within the scope of this scenario, which the negotiators preparing the Convention wished to neutralize. Although it admitted the existence of a boundary dispute with all the attendant consequences on the allocation of the resources of the continental shelf, Ghana has always behaved as though the disputed area had been awarded to it.

9.50 Ghana's attitude is all the more incompatible with the letter and spirit of article 83 in that, whilst it was negotiating with Côte d'Ivoire,

- it had manifestly stepped up its activities in the disputed area. Thus, seven of the nine Ghanaian oil blocks located entirely or partially within the disputed area were allocated by Ghana in 2013 and 2014, which testifies to particularly dynamic management of the oil activity.[651] Most of the drilling operations took place over five years - from 2010 to 2014 Ghana carried out no fewer than some thirty drilling operations;[652]

- this behaviour is entirely incompatible with the obligation to negotiate in good faith and has considerably reduced the chances of success of the talks, particularly since Ghana has at the same time proceeded to make a declaration under article 298 of the Convention, so shielding its activities from the scrutiny of a judicial body and preventing any possibility of the dispute's being settled by a third party.[653]

9.51 It should also be noted that, first, Ghana was eager to develop the TEN field, which is the most westerly of the fields discovered by Tullow in the disputed area. Moreover, two of the six oil deposits located entirely or partially in the disputed area (Tano West and Enyenra) overlap the equidistance line.[654] Admittedly – and this is surely not a coincidence – in Ghana's presentation, the "customary equidistance boundary" rightly avoids overlapping these fields. Furthermore, Ghana takes care not to mention that its provisional equidistance line intersects the Tano West and

[651] For block-by-block details, see also *Etat des activités sur les blocs pétroliers attribués par le Ghana dans la zone litigieuse*, 27 February 2015, CMCI, vol. IV, Annex 83.

[652] *Ibid*.

[653] See *supra*, paras 2.60-2.61.

[654] See *supra,* paras 7.32-7.33 and Sketch map 7.8.

Enyenra fields. But today it has been proven that the strict equidistance line overlaps them.

9.52 Nevertheless, even accepting, for the sake of argument, that the two Parties had agreed on their maritime boundary, this configuration of the oil fields should have alerted Ghana to the strong probability of the resources' being shared with Côte d'Ivoire. Even aside from the fact that international law prohibits unilateral activities in a disputed area, it would be expected in such an hypothesis that a State would adopt a more reserved attitude and seek to conclude the provisional arrangements provided for in paragraph 3 of article 83.

9.53 International law provides a particular obligation concerning diligence and information in the case of shared resources:

> "An issue that seems to me to be of growing importance in the context of the exploitation of the natural resources of the continental shelf is the management of transboundary resources shared by adjacent or opposite States. With an increasing number of exploration and exploitation activities taking place on the ocean floor, it is only a matter of time before an ever-increasing number of oil and gas fields straddling maritime boundaries will be discovered. […] In respect of how to treat transboundary resources, there is considerable State practice to be found in bilateral treaties. Practice is not uniform, of course, and I will not venture into an in-depth analysis of it here. What emerges from several such treaties is the idea of unitization, i.e. the joint development of transboundary deposits as a unit.[655] More generally, treaties regularly stress the importance of cooperation between the States concerned, including information-sharing. Another recurrent element of such agreements is the laying down of procedures for the parties to follow in case transboundary deposits are discovered*"*.[656] [657]

[655] Note 16 in the original: "*Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean* (2010), Annex II; *Treaty between the Republic of Trinidad and Tobago and Grenada on Delimitation of Marine and Submarine Areas* (2010), Article VII; *Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the delimitation of the exclusive economic zone* (2010), Article 2; *Unitization Agreement for the exploitation and development of hydrocarbon reservoirs of the Loran-Manatee field that extends across the delimitation line between the Republic of Trinidad and Tobago and the Bolivarian Republic of Venezuela* (2010)".

[656] Note 17 in the original: "Such clauses may, more generally, provide for the parties to engage in further negotiations *(Treaty between the Republic of Trinidad and Tobago and Grenada on Delimitation of Marine and Submarine Areas* (2010*), Article VII*) or may establish more detailed procedures to be followed *(Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean* (2010), Annex II)".

[657] President V. Golitsyn, "Keynote Speech", *Conference on Natural Resources and Law of the Sea*, Co-hosted by the International Law Institute (ILI), Georgetown University Law Center and Foley Hoag LLP, 7 December 2015, document not published.

9.54 Ghana did not inform Côte d'Ivoire of its activities or propose practical exploitation arrangements. On the contrary, when the negotiations resumed, after Côte d'Ivoire had repeated its request for the unilateral activities to be suspended and for discussions about the oil activities to be held, Ghana replied with a brusque objection to admissibility. To cite here only one of these examples attesting to Ghana's uncooperative attitude, at the fifth negotiation meeting:

> "In conclusion, he [the Côte d'Ivoire representative] invited the Ghanaian side to base negotiations on the foregoing in delimiting the Ghana-Côte d'Ivoire maritime boundary. He went on to ask Ghana to suspend all economic activities in the areas concerned until the boundary issue was resolved".[658]

9.55 Ghana's response to this request did not demonstrate great open-mindedness:

> "On the issue of the request by Côte d'Ivoire for Ghana to cease all economic activities in the customary boundary area, the Ghana side recalled that the area in question is within Ghana's area of the customary boundary line which has been observed by the two countries since the 1970s".[659]

9.56 Ghana's behaviour shows that it cares little for the delicate balance on which article 83 of UNCLOS is based:

- it is contrary to paragraph 1, which provides that delimitation is determined by way of agreement (and not by way of a *fait accompli*);
- it is contrary to paragraph 2, which provides that States should seek a peaceful means of settling their dispute (and not unilateral action):

  > "If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV";

- it is doubly contrary to paragraph 3 which provides that States should make every effort to enter into provisional arrangements of a practical nature in a spirit of understanding and cooperation in order to carry out economic activities (and thus explicitly excludes unilateral activities); the behaviour of Ghana is thus contrary to this provision since unilateral activities, *a fortiori*

[658] Minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation [fifth meeting], 2 November 2011, CMCI, vol. III, Annex 40.

[659] *Ibid*., p. 8.

those carried out on such a large scale, hinder the conclusion of a definitive agreement.

9.57 Consequently, Côte d'Ivoire requests the Chamber to establish that Ghana has violated article 83 of the Convention, and the general obligation to negotiate in good faith.

III. Violation of the provisional measures

9.58 In its Order of 25 April 2015, the Special Chamber unanimously:

> "*Prescribe[d],* pending the final decision, the following provisional measures under article 290, paragraph 1, of the Convention:
>
> (a) Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area as defined in paragraph 60;
>
> (b) Ghana shall take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire;
>
> (c) Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment;
>
> (d) The Parties shall take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its superjacent waters, in the disputed area and shall cooperate to that end;
>
> (e) The Parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute".[660]

9.59 Since the provisional measures prescribed by the Tribunal are compulsory by virtue of article 290 of UNCLOS, it follows that their violation engages the responsibility of the State:

> "The failure of a State to comply with provisional measures prescribed by ITLOS is an internationally wrongful act. According to the Commentary to the

[660] *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015,* para. 108.

> Articles on State Responsibility, where a binding judgment of an international court or tribunal imposes obligations on one State party to the litigation for the benefit of another State party, that other State party is entitled, as an injured State, to invoke the responsibility of the first State".[661] [662]

9.60 It has today been established that "[t]he judgment on the merits is the appropriate place for the Court to assess compliance with the provisional measures".[663] Moreover, violation of provisional measures is a matter of responsibility independent of the violation of the primary obligations applicable between States; further to that it may follow that:

> "129. The Court thus concludes that Nicaragua acted in breach of its obligations under the 2011 Order by excavating the second and third *caños* and by establishing a military presence in the disputed territory. The Court observes that this finding is independent of the conclusion set out above […] that the same conduct also constitutes a violation of the territorial sovereignty of Costa Rica".[664]

9.61 In the present case, Ghana's exploration and exploitation activities also constitute violations of the sovereign rights of Côte d'Ivoire,[665] owing to the principle whereby States should refrain from any unilateral economic activity in a disputed area pending a definitive delimitation and the Order for the prescription of provisional measures of the Chamber. As concerns this latter charge of responsibility, Ghana has violated points (a), (c) and (e) of the provision.

9.62 Generally speaking, Ghana appears to have interpreted the Order for the prescription of provisional measures as a green light to freely continue its activities in the area, as evidenced by the official declaration made by Ghana's representatives on the very day when the Order was delivered and widely reported in the press:

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[661] Footnote on page 316 in the original: J. Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge University Press, 2002, p. 258, para. 7.

[662] *Arctic Sunrise (Netherlands* v. *Russian Federation), Merits*, *Award of 14 August 2015*, para. 337.

[663] *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)*, *Judgment of 16 December 2015, I.C.J.,* para. 126.

[664] *Ibid*., para. 129.

[665] See *supra*, paras 9.3-9.39.

> "Ghana will be able to continue to engage in offshore exploration and, if it wishes grant new concessions. More significantly, Ghana will be able to continue to exploit all wells that have been drilled. This means that exploitation of the TEN field will be able to proceed in accordance with the schedule. This should also provide ample reassurance to all Ghana's investors that their rights and interests have been fully protected".[666]

9.63 As this declaration clearly shows, concerning its exploration and exploitation activities, Ghana has interpreted its obligations in a more than minimalistic manner. As concerns all the measures relating to the implementation of the Order, it sent its concessionnaires a letter, inviting them solely to read the Order,[667] without giving them the slightest instruction.

9.64 Following this highly restrictive interpretation, Tullow's chief executive officer announced a short while after the reading of the Order:

> "[W]ith the rejection of Cote d'Ivoire's request that Ghana be ordered to suspend all exploration and exploitation in the disputed area by the Special Chamber of the International Tribunal of the Law of the Sea (ITLOS), the TEN project would now continue unencumbered".[668]

9.65 In fact, Ghana has not demonstrated any restraint in the pursuit of its unilateral activities. On the contrary, in the TEN block, these activities have been stepped up in order to ensure that the financial returns are obtained as quickly as possible,[669]

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[666] Cited for example by Graphic Online, *Tribunal gives Ghana the nod to continue oil production : TEN project to go on*, 25 April 2015, CMCI, vol. V, Annex 121; CasNews Africa, *Ghana: Govt Lauds Decision on Dispute With Ivory Coast*, 27 April 2015, CMCI, vol. V, Annex 122.

[667] Report by Ghana following the application of provisional measures, 25 May 2015, p. 2 and Annex A, CMCI, vol. IV, Annex 53.

[668] Ghanaian Times, *TEN project is 55% complete…10 wells ready to produce oil*, 22 May 2015, CMCI, vol. V, Annex 123.

[669] B&FT Online, *Ten Project Set To Take Off In July-Aug* , 27 January 2016, CMCI, vol. V, Annex 146; Ecofin, *Tullow's new huge deepwater production vessel expected in Ghana by weekend*, 21 January 2016, CMCI, vol. V, Annex 145; Gulf Oil and Gas, *FMC Delivers Ahead of Schedule for Tullow TEN Project,* 15 January 2016, CMCI, vol. V, Annex 142; Ecofin, *Ghana: Tullow Oil annonce les premiers barils du projet TEN pour l'été 2016*, 13 January 2016, CMCI, vol. V, Annex 138; Reuters, *Tullow confident has cash to weather oil shock*, 13 January 2016, CMCI, vol. V, Annex 140; Reuters, *Despite oil glut, Tullow launches huge new deepwater production vessel,* 21 January 2016, CMCI, vol. V, Annex 144; Offshore Energy Today, *Tullow: TEN FPSO set to leave Singapore for Ghana*, 13 January 2016, CMCI, vol. V, Annex 141; Irish Examiner, *Tullow Oil on Schedule with Tweneboa Enyenral Ntomme project in Africa*, 12 November 2015, CMCI, vol. V, Annex 135; Ghana Live, *TEN project remains on way – Tullow*, 28 October 2015, CMCI, vol. V, Annex 132; Emmanuel Quist (Pulse.com), *Tullow Ten Project perfectly on schedule –Tullow*, 25 October 2015, CMCI, vol. V, Annex 130; ClassFMonline, *TEN Project 75% done; First Oil expected mid-2016*, 12 November 2015,

which are all the more important since the Chamber's decision might deprive Ghana (and its concessionnaires) of this source of income. Ghana has authorized wells to be drilled there, evidence of this being the warning given to fishermen by the Ghana Maritime Authority:

> "The Ghana Maritime Authority has warned seafaring community and the general public that Tullow Ghana Limited (TGL) proposes to locate and operate a Floating Production storage and Offloading Vessel (FPSO) offshore at the TEN Field Deep Water Port (DWP) in the Atlantic Ocean. This was contained in a statement issued by the Director-General of Ghana Maritime Authority, Dr. Peter Azuma in Accra today. It stated: 'The Operator (TGL) is engaged in well drilling and installation of subsea infrastructure. *The Installation and drilling work involves the use of heavy equipment that pose danger to mariners.* Additional risks include the collisions and the danger posed by the use of open fires by mariners in close proximity to the oil and gas installation'".[670]

9.66 In the same vein, Ghana has requested the International Maritime Organization[671] to restrict maritime traffic around the TEN field. In this request, which was made without any consultation with Côte d'Ivoire, Ghana claimed that:

> "The proposal aims to amend the existing Jubilee Oil Field IMO adopted ATBA Off the coast of Ghana to include the extended offshore activities in the vicinity of the Jubilee Oil Field. The extended new development area known as the Tweneboa, Enyenra, and Ntomme (TEN) Oil Field lies to the west of the Jubilee Oil Field […]. The proposed amendment and the existing ATBA *lie entirely within the limits of Ghana's Exclusive Economic Zone (EEZ)*".[672]

9.67 Moreover, the drilling activities have been continued in the TEN field. Whilst, before the request for the prescription of provisional measures was submitted, Tullow announced that "Development drilling commenced in 2014 and to date all *ten of the wells* expected to be on stream at the start-up have now been drilled with

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CMCI, vol. V, Annex 134; My Joy online, *First oil from TEN project in August*, 5 October 2015, CMCI, vol. V, Annex 128; Un-dated interview with Joe Mensah, Chief Executive Officer of Kosmos Ghana, CMCI, vol. IV, Annex 87.

[670] Ghana Business & Finance, *Ten Oil Project: Ghana Maritime Authority Warns Fishermen*, 28 January 2016, CMCI, vol. V, Annex 147; see also B&FT Online, *Seafarers warned as TEN Project picks steam,* 5 February 2016, CMCI, vol. V, Annex 148.

[671] See International Maritime Organization, Sub-committee on Navigation, Communications and Search and Rescue, *Routeing Measures and Mandatory Ship Reporting systems, Amendment to the existing Area to Be Avoided Off the Coast of Ghana in the Atlantic Ocean*, Document submitted by Ghana, NCSR 3/3/6, 24 November 2015, CMCI, vol. VI, Annex 169.

[672] *Ibid.*, p. 2, paras 7-8.

completion operations to commence in Q1 2015",[673] the company today indicates that eleven wells have been drilled:

> "Eleven production wells have been drilled which will be connected through subsea infrastructure to an FPSO vessel, moored in approximately 1,500 metres of water".[674]

9.68 Before the Chamber had delivered its Order for the prescription of provisional measures, 50% of the TEN project had been completed;[675] today, Tullow and Ghana are boasting about the extraordinary progress they have made since 25 April 2015, since more than 85% of the work has now been completed:

> "Very good news for Ghana as the Tullow operated TEN field nears 85% completion with first oil targeted for early Q3 2016. Currently, 11 pre-drilled wells are being completed and final commissioning and testing of the integrated facilities will start during 2Q 2017, with production ramping up toward plateau later in 2017. Tullow estimates overall capex costs for TEN at around $5 billion, excluding the FPSO lease costs. Total capex to first oil will likely be around $4 billion, with the remainder thereafter largely directed at drilling and completion of an additional 13 wells".[676]

9.69 Moreover, the oil companies and Ghana itself have signed new contracts[677] and others are in the process of being prepared for TEN.[678] However, in the discussions with Côte d'Ivoire, Ghana claimed that these contracts dated from 2013 and 2014 (without providing any proof).[679]

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[673] Tullow report, *2014 - Full Year Results*, 11 February 2015, CMCI, vol. IV, Annex 82, italics added.

[674] Presentation by Tullow, *Company Profile March 2016*, p. 3, CMCI, vol. IV, Annex 86; see also News Ghana, *Tullow gives assurance on TEN project progress*, 13 February 2016, CMCI, vol. V, Annex 150. See also Business Day*, TEN project costs Tullow US $5bn … Expects First Oil in July or August*, 15 February 2016, CMCI, vol. V, Annex 151.

[675] Tullow, *TEN Project Special Report*, 17 September 2015, p. 6, CMCI, vol. IV, Annex 81. See also Tullow report, *2014 - Full Year Results*, 11 February 2015, CMCI, vol. IV, Annex 82.

[676] Thoughts of a New African, *Ghana's TEN Field Approaches First Oil but Maritime Border Dispute Issues Linger*, 11 February 2016, CMCI, vol. V, Annex 149.

[677] Offshore Energy Today, *Deepocean Working on Tullow's Ten project, offshore Ghana*, 15 January 2016, CMCI, vol. V, Annex 143; Ghanaian Times, *Construction vessel chartered to work on TEN dev't project*, 29 September 2015, CMCI, vol. V, Annex 127; Ecofin, *Ghana: Expro décroche un contrat de 100 millions $ chez Tullow oil*, 24 June 2015, CMCI, vol. V, Annex 125.

[678] Africaintelligence, *Ghana Elenilto in strong push to debut in offshore*, 27 October 2015, CMCI, vol. V, Annex 131.

[679] Minutes of the meeting of the two Agents of Côte d'Ivoire and Ghana, Accra, 10 September 2015, CMCI, vol. IV, Annex 55.

9.70 As for the other blocks in the disputed area, Ghana has signed new concessions[680] and encouraged exploration activities in the Expanded Shallow Water Tano block to continue.[681]

9.71 Worried by these developments, on 27 July 2015, the Agent of Côte d'Ivoire sent a first letter to Ghana's Agent, with a view to obtaining more ample information about the status of activities in the disputed area. In particular, Côte d'Ivoire's requests concerned:

> "- the report requested from the oil companies by Ghana in its letter of 4 May 2015;
> - an inventory of the wells and drilling operations carried out as at 25 April 2015 in the disputed area and a copy of the subsequent daily activity reports prepared by the oil companies, in particular those relating to the West Leo platform;
> - the list of companies which had access to the confidential information arising from Ghana's exploration activities in the disputed area".[682]

9.72 Just as Ghana never saw fit to inform Côte d'Ivoire in advance of the activities which it was undertaking in the disputed area, it took care not to answer these questions:

> "The Ivorian side reiterated its request for disclosure of documents (daily reports) requested in the correspondence from the Agent of Côte d'Ivoire to the Agent of Ghana on 27 July 2015, particularly with regards to petroleum operations in the disputed area.
>
> The Ghanaian side did not believe this was required and suggested that this issued be referred to the Agents".[683]

9.73 Côte d'Ivoire is experiencing the greatest difficulty in discovering the exact status of activities in the area, and hence whether the provisional measures are being respected, owing to the fact that Ghana is refusing to communicate any

[680] Ecofin, *Ghana : la filiale d'Eco Atlantic obtient le quitus pour entamer ses opérations sur Tano*, 1 December 2015, CMCI, vol. V, Annex 136.

[681] Ecofin, *Erin Energy rapporte des avancées significatives dans ses actifs pétro-gaziers*, 12 August 2015, CMCI, vol. V, Annex 126.

[682] Letter n° 068 MPE/CAB sent by the Agent of Côte d'Ivoire to Ghana, 27 July 2015, CMCI, vol. IV, Annex 54.

[683] Minutes of the meeting of the two Agents of Côte d'Ivoire and Ghana, Accra, 10 September 2015, p. 4, CMCI, vol. IV, Annex 55.

documentation enabling Côte d'Ivoire to assess whether new drilling operations have been performed.

9.74 Ghana is also refusing any form of joint inspection:

> "On the request by the Ivorian Party for a joint site visits to the installations and sampling for environmental monitoring, the Ghanaian party explained that the request was beyond its mandate and requested that the matter be referred to the Agents for decision".[684]

Conclusion

9.75 It ensues from the foregoing that Ghana has engaged its responsibility with respect to Côte d'Ivoire for:

- having carried out economic activities in the disputed area, despite Côte d'Ivoire's opposition; in so doing, Ghana has infringed the sovereign rights of Côte d'Ivoire and violated the rule whereby such activities are prohibited pending definitive delimitation;

- having failed in its obligation to negotiate in good faith, as required by article 83, paragraph 1, of the Convention;

- having, by its unilateral behaviour, rendered impossible both the conclusion of provisional arrangements and the conclusion of a definitive delimitation agreement, in application of article 83, paragraph 3, of UNCLOS;

  and for

- having failed to respect the provisional measures prescribed by the Order of the Special Chamber of 25 April 2015.

9.76 Ghana should make reparation for the damaging consequences of these violations in the form of a *restitutio in integrum* whenever possible and, when not, by appropriate compensation. If the Parties cannot agree on the amount of this compensation within

[684] Minutes of the first meeting of the Côte d'Ivoire - Ghana Joint Committee of experts on the protection of the marine environment concerning the maritime border dispute between Côte d'Ivoire and Ghana, Abidjan, 5-6 October 2015, p. 4, CMCI, vol. IV, Annex 56.

the six months following the judgment of the Special Chamber, said amount shall be fixed by the Special Chamber.

9.77 Côte d'Ivoire, further, reserves the right to pursue all legal means available to ensure that the provisional measures are properly executed.

SUBMISSIONS

On the basis of the facts and law set forth in this Counter-Memorial, the Republic of Côte d'Ivoire requests the Special Chamber to reject all Ghana's requests and claims, and to **declare and adjudge** that:

(1) the sole maritime boundary between Ghana and Côte d'Ivoire follows the 168.7° azimuth line, which starts at boundary post 55 and extends to the outer limit of the Ivorian continental shelf;

(2) the activities undertaken unilaterally by Ghana in the Ivorian maritime area, as delimited by this Chamber, constitute a violation of:

(i) the exclusive sovereign rights of Côte d'Ivoire over its continental shelf;

(ii) the obligation to negotiate in good faith, pursuant to article 83, paragraph 1, of UNCLOS and customary law;

(iii) the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3, of UNCLOS; and

(iv) the provisional measures prescribed by this Chamber by its Order of 25 April 2015;

and consequently **to declare and adjudge** that:

(a) **Ghana is obliged** to transmit to Côte d'Ivoire all the documents and data relating to the oil exploration and exploitation activities which it has undertaken, or which have been undertaken with its authorization, in the Ivorian maritime area, including the oil transport and development operations, including those listed in paragraphs 9.29 and 9.31 above;

(b) Ghana is obliged to ensure the non-disclosure, by itself and by its co-contractors, of the information mentioned in paragraph (2) (a) above;

(c) Côte d'Ivoire is, moreover, entitled to receive compensation for the damages resulting from Ghana's violation of Côte d'Ivoire's exclusive sovereign rights over its continental shelf; and to

invite the Parties to carry out negotiations in order to reach agreement on this point, and

to **state** that, if they fail to reach an agreement on the amount of this compensation within a period of six (6) months as from the date of the Order to be delivered by the Special Chamber, said Chamber will determine, at the request of either Party, the amount of this compensation on the basis of additional written documents dealing with this subject alone.

[Signature]

Adama Toungara, Minister of Oil and Energy of the

Republic of Côte d'Ivoire,

Agent of the Republic of Côte d'Ivoire

4 April 2016

CERTIFICATION

I, the undersigned, Agent of Côte d'Ivoire in the case of the *Dispute concerning the Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean,* in application of article 65, paragraph 1, of the Rules of the Tribunal, certify that the documents annexed to the Counter-Memorial submitted on 4 April 2016 by the Republic of Côte d'Ivoire are copies in conformity with the originals.

[Signature]

Adama Toungara, Minister of Oil and Energy of the

Republic of Côte d'Ivoire,

Agent of the Republic of Côte d'Ivoire

4 April 2016

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LIST OF ABBREVIATIONS

BNEDT	National Office of Technical Studies and Development
CCT	Cartography and Remote Sensing department
CLCS	Commission on the Limits of the Continental Shelf
CMCI	Counter-Memorial of the Republic of Côte d'Ivoire of 4 April 2016
ECOWAS	Economic Community of West African States
FPSO	Floating Production, Storage and Offloading
GNPC	Ghana National Petroleum Corporation
ICJ	International Court of Justice
IEC	Independent Electoral Commission
IHO	International Hydrographic Organization
ITLOS	International Tribunal for the Law of the Sea
MG	Memorial of the Republic of Ghana of 4 September 2015
MINUCI	United Nations Mission in Côte d'Ivoire
OECD	Organisation for Economic Co-operation and Development
PETROCI	Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire
SHOM	Service hydrographique de la marine française
TEN	Tweneboa, Enyenra and N'tomme fields
UEMOA	West African Economic and Monetary Union
UKHO	United Kingdom Hydrographic Office
UN	United Nations Organization
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNOCI	United Nations Operation in Côte d'Ivoire