

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2017

Public sitting

held on Tuesday, 7 February 2017, at 10 a.m.,

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

President of the Special Chamber, Judge Boualem Bouguetaia, presiding

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

(Ghana/Côte d'Ivoire)

Verbatim Record

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

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

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as Advisers.

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

2 Ladies and gentlemen, the hearing of the Special Chamber resumes this morning.
3 Today we will hear the continuation of Ghana's oral arguments. This morning's
4 session will last until 1 o'clock with, as is customary, a break of 30 minutes at
5 11.30 a.m., which we call the "coffee break".
6

7 You will recall that yesterday we stopped at the conclusion of Mr Fui Tsikata's
8 statement. I would like to apologize for having interrupted him, but those are the
9 requirements of the proceedings. I now give him the floor so that he can complete
10 his statement. You have the floor, Mr Tsikata.
11

12 **MR TSIKATA:** Mr President, Members of the Special Chamber, good morning.
13 When we concluded yesterday, I had had begun to explain that, between 1992 and
14 2009, Côte d'Ivoire engaged in numerous, regular, consistent, positive acts of
15 reaffirmation of an existing equidistance-based maritime boundary. One class of acts
16 relates to the conduct of seismic surveys.
17

18 *This* slide reproduces a letter dated 28 November 1997, also found tab 28, from
19 Rear-Admiral Lamine Fadika, then Ivorian Minister for Petroleum Resources,
20 conveying to Ghana's Minister for Mines and Energy approval for the request by
21 Ghana's GNPC for the conduct of seismic activity "dans les eaux territoriales
22 proches de la frontière maritime entre le Ghana et la Côte d'Ivoire".¹ Not only does
23 the Minister grant permission, he recognizes the existence of the boundary and
24 expresses the hope that GNPC and PETROCI will exchange results of such surveys
25 to help the two countries better know the geology of the sub-region.
26

27 The letter relates the area in respect of which the request was made as being in the
28 immediate vicinity of the IVCO-26 IBEX well in Côte d'Ivoire.
29

30 *This* map indicates the location of the IVCO-26 IBEX well in relation to the customary
31 equidistance boundary. This is also at tab 29.
32

33 *Here* is a request by PETROCI addressed to GNPC for a vessel conducting seismic
34 surveys on behalf of a licensee of Côte d'Ivoire.² It is asking for permission for
35 Ghana to "allow the seismic vessel to turn around in Ghanaian waters". This
36 document can be found at tab 30.
37

38 *Here* is the response from GNPC, dated 22 March, 2007, indicating that it has
39 advised Ghana's Minister for Energy and that PETROCI should expect to receive
40 formal approval from the Minister.³ You can also find this at tab 31. It says that if

¹ Letter from M. Lamine Fadika, Minister of Petroleum Resources, Republic of Côte d'Ivoire, to F. Ohene-Kena, Minister of Mines and Energy, Republic of Ghana, No. 0907 MIRMP/CAB/dh (28 November 1997) ("the maritime boundary between Ghana and Côte d'Ivoire"). MG, Vol. VI, Annex 68.

² Fax from Kassoum Fadika, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC), re Authorization for seismic vessel to turn around in Ghanaian waters (9 Mar. 2007). RG, Vol. IV, Annex 137.

³ Fax from Thomas Manu, Ghana National Petroleum Corporation (GNPC) to Boblai V. Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI) (22 Mar. 2007). RG, Vol. IV, Annex 140.

1 “certain portions of the data happen to fall in the Ghana side, ... we will require that
2 those portions that fall in Ghana’s side be made available to us”.

3
4 *This* is the map accompanying the request by PETROCI, also found at tab 32. As
5 you can see, the customary equidistance boundary is clearly indicated, with the word
6 “Ghana” on the east side of the boundary line.

7
8 *Here* is a 2008 letter from Ghana’s Minister of Energy asking for permission for a
9 vessel working for a licensee of Ghana to turn around in Ivorian waters in the course
10 of conducting seismic surveys.⁴ It is also at tab 33. He assures the Minister on the
11 Ivorian side that “data will not be acquired in blocks in la Côte d’Ivoire”.

12
13 The coordinates of the proposed survey area are shown on this sketch
14 accompanying the request and are also in tab 34. I apologize that we do not have a
15 more legible copy. However, we have plotted the survey area using those
16 coordinates. As you can see, the western limits of the area follow the customary
17 equidistance boundary.

18
19 *Here* is the executed copy of the response in its French original on behalf of the
20 Ivorian Minister by his Director of Cabinet by which Côte d’Ivoire authorizes the
21 vessel to “*naviguer dans les eaux ivoiriennes*”.⁵ This is in tab 35.

22
23 Côte d’Ivoire remarks that these are only a few instances. But why would PETROCI,
24 on even a single occasion, ask permission from Ghana for a Côte d’Ivoire-authorized
25 vessel to turn around in waters that were not regarded by it or its Government as
26 Ghanaian waters? Côte d’Ivoire does not suggest that it has, on even a single
27 occasion over the decades, made any protest about vessels authorized by Ghana
28 working in the area that it now disputes as being Ghana’s. Most significantly, it does
29 not address the fact that its Minister accepted Ghana’s assertion as to where the
30 maritime boundary lay in approving Ghana’s request for a vessel to cross that
31 border.

32
33 Mr President, yesterday we received a question submitted on behalf of this
34 Chamber, namely “[c]ould the Parties provide information on any arrangements
35 which could exist between them on fisheries matters or with respect to other uses of
36 the maritime area concerned?”.

37
38 Within the time available to us, we are able to provide the following summary
39 response: there are no arrangements between Ghana and Côte d’Ivoire with respect
40 to fisheries.

41
42 Mr President, in preparing our answer to your question, we are aware that Ghana –
43 and possibly also Côte d’Ivoire – has an arrangement with Collecte Localisation
44 Satellites (or CLS), a private company, that monitors the movement of licensed

⁴ Letter from F.K. Owusu-Adjapong (MP), Minister, Ministry of Energy, Republic of Ghana, to the Minister, Ministry of Mines & Petroleum Resources, Republic of Côte d’Ivoire (3 November 2008) and Letter from F. Kadio Morokro, Director of Cabinet for the Minister of Mines and Energy, Republic of Côte d’Ivoire, to the Minister, Ministry of Energy, Republic of Ghana (11 December 2008), pp. 1-2. MG, Vol. VI, Annex 69.

⁵ *Ibid.*, p. 4.

1 fishing vessels that move between our waters. I am informed that the map on which
2 CLS relies in its arrangement with Ghana shows an equidistance boundary with Côte
3 d'Ivoire. However, as it is not in the public domain, we are not able, without your
4 permission, to put that material before you. If you think it might be useful to have
5 sight of this material, we can take steps to obtain it.

6
7 Mr President, we are bound to inform you that Ghana has no fisheries agreement
8 with the European Union. However, it is a matter of public record that Côte d'Ivoire
9 concluded a Fisheries Partnership Agreement (FPA) with the European Union for the
10 2007-2013 period, and that it has been extended to 2018. This allows EU vessels to
11 fish in Ivorian waters.⁶ The FPA provides that the parties would subsequently agree
12 to "the coordinates of Côte d'Ivoire's fishing zone", which were not defined in the
13 Agreement.⁷ We understand that the European Commission subsequently funded an
14 expert report evaluating the implementation of the FPA in Ivorian waters.⁸ The report
15 is publicly available on the web; Annex 7 of the report indicates that among those
16 consulted were Côte d'Ivoire's Ministry of Animal Production and Fisheries
17 Resources and the Abidjan port authority. The report cites the 1977 Ivorian law
18 upholding the principle of equidistance and it states that European vessels rely on
19 the equidistance limits provided by the VLIZ Maritime Boundaries Geodatabase in
20 the absence of "exact coordinates of the EEZ limits."⁹

21
22 The report includes a map entitled (*Interpretation from French*) "Limits of the EEZ of
23 Côte d'Ivoire as defined by Community shipowners."¹⁰ (*Continued in English*) This is

⁶ 2008/151/EC: Council Decision of 12 February 2008 concerning the conclusion of the Agreement in the form of an Exchange of Letters on the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire on fishing in Côte d'Ivoire's fishing zones for the period from 1 July 2007 to 30 June 2013 (*available at* <http://extwprlegs1.fao.org/docs/pdf/bi-87076.pdf>); Agreement in the form of an Exchange of Letters on the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire on fishing in Côte d'Ivoire's fishing zones for the period from 1 July 2007 to 30 June 2013 (*available at* http://eur-lex.europa.eu/resource.html?uri=cellar:b108a1f3-0934-4bd6-b2a9-6b64357713b9.0006.01/DOC_2&format=PDF); Fisheries Partnership Agreement between the Republic of Côte d'Ivoire and the European Community, Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire for the period from 1 July 2007 to 30 June 2013 (*available at* http://eur-lex.europa.eu/resource.html?uri=cellar:b108a1f3-0934-4bd6-b2a9-6b64357713b9.0006.01/DOC_3&format=PDF).

⁷ Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire for the period from 1 July 2007 to 30 June 2013, Appendix 3 (*available at* http://eur-lex.europa.eu/resource.html?uri=cellar:b108a1f3-0934-4bd6-b2a9-6b64357713b9.0006.01/DOC_4&format=PDF).

⁸ Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59 (*available at* http://ec.europa.eu/fisheries/documentation/studies/cote_ivoire_2012_en).

⁹ Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59 (*available at* http://ec.europa.eu/fisheries/documentation/studies/cote_ivoire_2012_en). See map of Côte d'Ivoire's EEZ in VLIZ Maritime Boundaries Geodatabase at <http://www.marineregions.org/eezdetails.php?mrgid=8473>.

¹⁰ Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59.

1 now at tab 37¹¹ of your folder. Accordingly, in applying the Fisheries Partnership
2 Agreement, Ghana understands that European vessels are using an equidistance
3 boundary and are doing so with the full knowledge of both Côte d'Ivoire and the
4 European Union.

5
6 Relatedly, having regard to the question you have asked, we are aware that the UN
7 Food and Agriculture Organization (FAO) has also published material that shows
8 Côte d'Ivoire's eastern limit with Ghana as being an equidistance line. This is shown
9 on *this* map posted on the FAO's website,¹² which shows that the eastern limit of
10 Côte d'Ivoire's fishing zone follows an equidistance boundary. We assume that, as a
11 member of the FAO, Côte d'Ivoire is aware of this map.

12
13 I now return to the suggestion by Côte d'Ivoire that the initiation of maritime
14 boundary delimitation talks in 2008 is evidence that the Parties thought that there
15 was no existing agreement. This is contradicted by the record of what actually took
16 place at that meeting.

17
18 The opening statement of Ghana at that first meeting in Abidjan in July 2008, also at
19 tab 36, expressly "proposes that the international boundary in existence, which is
20 used by International Petroleum Companies, with PETROCI and GNPC as partners,
21 on behalf of Côte d'Ivoire and Ghana respectively ... be formalized and signed as our
22 common maritime boundary."¹³ Among the reasons it gives for the proposal is that
23 this existing boundary "has been used by our two countries for a long time".¹⁴

24
25 The minutes show that what drove the convening of the meeting was not a sense
26 that there was no existing maritime boundary, but rather a concern that submissions
27 to the UN Commission on the Limits of the Continental Shelf would be assisted by
28 parties concluding a treaty formalizing their existing maritime boundary, and doing so
29 by May 2009.¹⁵

30
31 Mr President, distinguished Members of this Special Chamber, I have taken you
32 through some examples of the extensive evidence that is in the written pleadings
33 which shows that:

- 34
35 (1) an equidistance boundary existed between Côte d'Ivoire and Ghana, and
36 separated their respective maritime areas for over 50 years;
37

¹¹ *Limites de la ZEE de la Côte d'Ivoire telle que définie par les armateurs communitaires* in COFREPECHE, POSEIDON, MRAG & NFDS, 2012. *Évaluation ex-post du protocole de l'accord de partenariat dans le domaine de la pêche entre l'Union européenne et la Côte-d'Ivoire*, Contrat cadre MARE/2011/01 – Lot 3, contrat spécifique n° 2, Bruxelles, (available at https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/cote_ivoire_2012_fr.pdf).

¹² Available at <http://firms.fao.org/firms/fishery/658/fr>.

¹³ Government of Ghana, *Maiden Meeting Between Ghana and Côte d'Ivoire on the Delineation of the Ghana/Côte D'Ivoire International Maritime Boundary: Opening Statement by the Ghana National Continental Shelf Delineation Project* (17-18 July 2008), p. 2. MG, Vol. V, Annex 46.

¹⁴ See *ibid.*

¹⁵ Government of Ghana and Government of Côte d'Ivoire, *Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries* (16-17 July 2008). MG, Vol. V, Annex 45.

- 1 (2) it makes clear that both Parties proceeded on the basis of an “existing” maritime
2 boundary; and
3
4 (3) that that boundary was agreed upon. This is reflected in numerous documents
5 emanating from Côte d’Ivoire, Ghana and from third parties, which we have
6 made available to you.
7

8 By contrast, what has Côte d’Ivoire offered as evidence of its freshly developed
9 claims? It has not produced a single map showing a maritime boundary between our
10 two countries other than one following an equidistance line. It has not produced a
11 single legislative, administrative, contractual or other document referring to a
12 boundary other than one that follows an equidistance line. Its attempt to suggest a
13 protest against the agreed line in 1988 and 1992 is not supported by credible or
14 convincing evidence. Such material as it has introduced is, in any case, contradicted
15 by its consistent acts till at least 2009. The overwhelming weight of evidence, in our
16 respectful view, inexorably leads to the conclusion that there has been a tacitly
17 agreed equidistance-based boundary between our two countries for many decades.
18 The evidence also shows that both Parties rightfully placed reliance upon that
19 existing maritime boundary, and did so openly for many decades, without protest of
20 any kind from either side.
21

22 I thank you, Mr President and distinguished Members of this Special Chamber, for
23 your attention and patience. Mr President. May I ask that you invite my colleague
24 Professor Pierre Klein to the bar?
25

26 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I
27 thank Mr Tsikata for his statement and now give the floor to Mr Pierre Klein to
28 present his oral argument.
29

30 **MR KLEIN** (*Interpretation from French*): Mr President, Members of the Special
31 Chamber, it is an honour for me to come before you today to plead on behalf of the
32 Republic of Ghana. My colleague Fui Tsikata recalled yesterday and this morning
33 that the existence of an agreement between Côte D’Ivoire and Ghana on the course
34 of their maritime boundary is factually beyond dispute. I shall focus on confirming
35 that this agreement exists, not only in fact but also in law, and that it can therefore
36 form the basis for determining the course of the maritime boundary that separates
37 the two Parties.
38

39 I shall therefore focus on the two key points that still separate the Parties at this
40 stage of proceedings. First, I shall briefly recall that the behaviours which may be
41 taken into consideration to establish the existence of this agreement all emanate
42 from the official authorities of Côte d’Ivoire and indubitably reflect the position of that
43 State. I shall then show that, contrary to what our opponents say, the tacit agreement
44 that has emerged over the course of time between the two States does indeed
45 correspond to the requirements laid down by international jurisprudence.
46

47 We need to dwell for a moment on the first of these points because at several points
48 in the Counter-Memorial as well as in the Rejoinder Côte d’Ivoire states that some of
49 the evidence invoked by Ghana to assert the existence of a tacit agreement has no
50 standing because, they say, it does not come from authorities qualified to delimit the

1 boundaries of the Ivorian State. This argument is then insistently repeated by our
2 opponents, in particular when it comes to the national Ivorian oil company PETROCI.
3 According to our opponents, “[n]othing in the laws establishing PETROCI grants the
4 company any public authority enabling it to delimit Côte d'Ivoire's maritime
5 boundaries.”¹ The representations of the maritime boundary on maps published by
6 PETROCI would therefore have no relevance, and the reference by that very same
7 company to the equidistance line as the limit beyond which vessels carrying out
8 seismic surveys for the State would enter "Ghanaian waters" is also of no relevance
9 because there is nothing in Ivorian legislation which confers upon PETROCI “the
10 power to engage Côte d'Ivoire in the matter of establishing maritime boundaries.”²
11

12 In fact, by presenting this debate on the relevance of the role of an entity like
13 PETROCI in terms of powers to delimit national boundaries, Côte d'Ivoire is
14 inevitably distorting the whole discussion. The point here is not to determine whether
15 the national Ivorian oil company enjoys such powers - which it does not – and indeed
16 Ghana has never alleged that. What we have to determine is whether PETROCI's
17 behaviour reveals the Ivorian authorities' perception of the existence and position of
18 a maritime boundary that follows an equidistance line – which is indeed the case
19 here. Allow me to draw a parallel with the various *effectivités* in territorial disputes.
20 Nobody has ever claimed that the conduct of police forces, administrative bodies,
21 agents and institutions responsible for the administration of justice should be taken
22 into consideration within the context of a territorial dispute because these officers or
23 bodies had "public authority enabling [them] to delimit the boundaries" of their State
24 (to use the words of our opponents).³ If these actions, or lack of them, are taken into
25 account as *effectivités*, it is simply because they reflect, in a very concrete way, the
26 manner in which the State in question - from which they indisputably emanate -
27 represents the limits of its national jurisdiction.⁴ We are in the same situation here:
28 PETROCI is, without any doubt, an emanation of the Ivorian State, identified in a
29 number of oil contracts as "rights-holder of all rights for exploration and exploitation
30 of hydrocarbons on all available areas of Côte d'Ivoire".⁵ When PETROCI publishes
31 maps showing to the whole world which areas may be the subject of future oil
32 concessions on the land and maritime territory of Côte d'Ivoire, there is no doubt at
33 all that it is indeed on behalf of the Ivorian State that PETROCI is acting. When these
34 maps systematically show, to the east, a maritime boundary with Ghana following an
35 equidistance line, there is no doubt that this is because this is the perception of that
36 particular boundary by the Ivorian authorities.
37

38 By acting in this way, PETROCI is merely repeating, and indeed confirming, the
39 position adopted since 1970 at the highest level of the Ivorian State, and in the most
40 explicit way when it comes to the maritime boundary with Ghana. As my colleagues
41 have already recalled, from the very first decrees granting oil concessions in the
42 border zone, the President of the Republic of Côte d'Ivoire stated that the region

¹ DCI, para. 4.60, referring to the Counter-Memorial of the Republic of Côte d'Ivoire (4 April 2016) (hereinafter "CMCI", para. 4.104.

² DCI, para. 4.61.

³ *Ibid.*

⁴ See the different examples given in Luis Ignacio Sánchez Rodríguez, "L'uti possidetis et les effectivités dans les contentieux territoriaux et frontaliers", *R.C.A.D.I.*, 1997, Vol. 263, pp. 322-323.

⁵ Republic of Côte d'Ivoire, *Contrat de Partage de Production d'Hydrocarbures avec Vanco Côte d'Ivoire Ltd. et PETROCI HOLDING, Bloc CI-401 [Hydrocarbon Production Sharing Agreement with Vanco Côte d'Ivoire Ltd. and PETROCI HOLDING, Block CI-401]* (30 September 2005), MG, Vol. V, Annex 40.

1 which is covered is defined, seaward, "by the border line separating the Ivory Coast
2 from Ghana",⁶ a boundary which already follows an equidistance line. Mr President,
3 Members of the Special Chamber, nobody would have any doubt that the President
4 of the Republic was indeed speaking, in 1970, on behalf of the Ivorian State.

5
6 The tacit agreement that has emerged between Côte d'Ivoire and Ghana on their
7 maritime boundary was indeed the result, on the Ivorian side, of repeated and
8 constant statements from authorities qualified to speak on behalf of the State, and to
9 act for that State, even if they did not all have the public authority to delimit state
10 boundaries. Therefore, we can indeed talk of an agreement which, even though it
11 has remained tacit, is a valid agreement that is likely to have an effect in international
12 law. We need now to confirm whether this agreement meets the requirements laid
13 down by international jurisprudence, to see whether we have a basis here for the
14 course of a maritime boundary.

15
16 According to Côte d'Ivoire, the probative threshold required in international
17 jurisprudence for establishing the existence of such an agreement is not reached in
18 the instant case.⁷ They say that the position defended by Ghana is contradicted by
19 all relevant precedents, both before the International Tribunal for the Law of the Sea
20 as well as before the International Court of Justice. If you allow, I would like to recall
21 – or at least mention – each of these precedents to demonstrate that the arguments
22 relied upon by Côte d'Ivoire are in fact flawed.

23
24 First, Côte d'Ivoire claims in its Rejoinder that "the behaviour of which Ghana is
25 seeking to take advantage to defend its contention that a tacit agreement exists is
26 similar to that invoked by Bangladesh before ITLOS and thrown out by the Tribunal
27 in the Bangladesh/Myanmar case."⁸

28
29 Côte d'Ivoire identifies three categories of evidence presented by Bangladesh to
30 support its argument that a tacit agreement existed: what it calls "shipping permits
31 requested and granted between the Parties"; sworn declarations by fishermen; and,
32 finally, maps representing the alleged boundary. The Tribunal indeed considered that
33 the evidence relied upon did not prove "the existence of a tacit agreement or *de facto*
34 agreement on the boundary".⁹ In fact, the parallel drawn by Côte d'Ivoire between
35 the conduct invoked by Ghana and the conduct invoked by Bangladesh is erroneous.
36 On the one hand, the evidence presented by Ghana does not correspond to the
37 three aforementioned categories and it is not in any case limited to these three
38 categories.

39
40 The first – and main – category of proof relied upon by Bangladesh consisted of
41 eight sworn declarations. Their evidential value was indeed highly relative because
42 some of these declarations were made by fishermen, private individuals and not

⁶ Republic of Côte d'Ivoire, *décret no. 70-618 accordant un permis de recherches pétrolières aux sociétés ESSO, SHELL et ERAP* (Decree 70-618 Granting An Exclusive Petroleum Exploration Permit To Esso, Shell, & ERAP Group) (14 October 1970), CMCI, Vol. IV, Annex 59.

⁷ DCI, paras 5.12-5.18.

⁸ *Ibid.*, para. 5.0.

⁹ *Ibid.*, para. 5.10 – with a reference to *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012* (hereinafter "*Bangladesh/Myanmar, Judgment*"), para. 118.

1 officers of the State; and they were not contemporaneous with the actual situation
2 but had been prepared specifically for the case. In particular, they expressed
3 opinions instead of indicating the existence of any objective factual elements. The
4 Tribunal therefore refused to afford any evidential value to these sworn
5 declarations.¹⁰ The same went for declarations made by officers of the State, which
6 the Tribunal felt may well be biased.¹¹ For that matter, Ghana does not rely on any
7 sworn declarations made by individuals – or anybody else – to assert the existence
8 of the customary border based on an equidistance line.¹² The three affidavits
9 presented by Ghana concern other aspects related to the dispute, namely the
10 economic impact on Ghana of a possible moratorium on oil activity;¹³ the type of
11 activities developed by Tullow in the border zone;¹⁴ and the non-violation by Ghana
12 of the order prescribing provisional measures.¹⁵ The parallel drawn between the two
13 cases is thus totally invalid on this first point.

14
15 Côte d'Ivoire then alleges that, like Bangladesh, Ghana bases the existence of a tacit
16 agreement on “shipping permits requested and granted between the Parties”.¹⁶ This
17 is quite simply inaccurate. Bangladesh never submitted shipping permits, “requested
18 and granted” between the Parties, to the Tribunal. It merely relied on a note verbale
19 from 2008 through which Myanmar notified its “intention to carry out survey work on
20 both sides of the boundary”.¹⁷ Furthermore, the Tribunal points out that this particular
21 document expressly recalls that the two States had not as yet delimited their
22 maritime boundaries and that the cooperation of Bangladesh was requested “in a
23 neighbourly spirit”.¹⁸

24
25 This is quite different from the seismic survey documents presented by Ghana.¹⁹
26 They represent genuine exchanges between the Parties, with one Party requesting
27 of the other authorization to enter a given maritime area, explicitly recognizing that it
28 falls within the sovereignty of the State to which that request is submitted. As we
29 have seen, these requests were accompanied by maps or sketch maps covering the
30 zone in question, clearly showing the customary border, which follows an

¹⁰ *Bangladesh/Myanmar*, Judgment, paras 113-115.

¹¹ *Ibid.*, para. 114.

¹² Memorial of the Republic of Ghana (4 September 2015) (hereinafter “MG”), para. 4.64.

¹³ Statement of Dr Joseph Kwadwo Asenso (20 March 2015), MG, Vol. VI, Annex 63.

¹⁴ Second statement of Paul McDade on behalf of Tullow Oil plc (11 July 2016), RG, Vol. IV, Annex 166.

¹⁵ Statement of Thomas Manu, Ghana National Petroleum Corporation (GNPC) (19 July 2016), RG, Vol. IV, Annex 168.

¹⁶ DCI, para. 5.10.

¹⁷ *Bangladesh/Myanmar*, Judgment, para. 106.

¹⁸ *Ibid.*, para. 116.

¹⁹ Letter from N.B. Asafu-Adjaye, Exploration Manager, Ghana National Petroleum Corporation (GNPC), to the President, UMIC Côte d'Ivoire (31 October 1997), accompanied by a map with the seismic programme proposed by DANA, MG, Vol. VI, Annex 67; Letter from F. Kadio Morokro, Director of Cabinet for the Minister of Mines and Energy, Republic of Côte d'Ivoire, to the Minister of Energy of the Republic of Ghana (11 December 2008), MG, Vol. VI, Annex 69; Fax from Kassoum Fadika, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC), re authorization for seismic vessel to turn around in Ghanaian waters (9 March 2007), RG, Vol. IV, Annex 137; Email from Boblai Victor Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC) (13 March 2007), RG, Vol. IV, Annex 138.

1 equidistance line.²⁰ Here again, we are tempted to say that the parallel does not hold
2 water.

3
4 Finally, Côte d'Ivoire attempts to argue that, like Bangladesh, Ghana is presenting
5 maps to assert the existence of a tacit agreement on the course of the maritime
6 boundary; but the only maps presented by Bangladesh were those used by its own
7 navy.²¹ There is a big difference between the maps presented by Bangladesh and
8 those presented by Ghana in terms of number, origin and content. Twenty-two of the
9 62 maps presented by Ghana for the instant proceedings reflect not only the limits of
10 the oil concessions but also the maritime boundary between the two Parties, which
11 follows the customary equidistance line.²² Twenty-four of these 62 maps accompany
12 an official document, and therefore have particular evidential value.²³ Finally, do I
13 need to insist at this stage on the fact that a considerable number of these maps do
14 not come from Ghana but from various official sources in Côte d'Ivoire? Therefore,
15 they cannot be deemed to be "self-serving evidence", which is what the Tribunal
16 could legitimately fear in the *Bangladesh/Myanmar* case. Again, no valid parallel can
17 be drawn here.

18
19 It needs to be said that the exercise was all the more doomed to failure since, not
20 content with forcing similarity between the evidence presented by Ghana in the
21 present case, and that rejected by the Tribunal in the *Bangladesh/Myanmar* case,
22 our opponents also made no mention of the prime evidence put forward by Ghana in
23 support of its argument. There was no question in *Bangladesh/Myanmar* of national
24 legislation highlighting the fact that the Parties explicitly recognized the maritime
25 border. There was no question either of a consistent and convergent practice
26 between the two States as regards exploration and exploitation of oil in the area
27 concerned.²⁴ Those elements are indeed present in the case before you, as has
28 been amply demonstrated. The reasons why the International Tribunal for the Law of
29 the Sea rejected Bangladesh's argument, according to which there was a tacit
30 agreement between the Parties, have in fact very little to do with the circumstances
31 that characterize the present case.

32
33 In the same way as it did for the *Bangladesh/Myanmar* case, Côte d'Ivoire tries to
34 present the "conventional" jurisprudence of the ICJ as contrary to Ghana's claims.

35
36 I will briefly mention, first, the precedent invoked by Côte d'Ivoire that is the least
37 relevant to our case, to wit the *Gulf of Maine* case. The Court concluded the non-
38 existence of an agreement between the Parties as to the delimitation of their
39 maritime areas. The granting, both by Canada and the United States, of oil
40 exploration concessions and permits in areas that did not always coincide with the
41 median line claimed as the boundary was a major factor in the decision by the Court
42 on this point.²⁵ According to our opponents, the situation is identical in the present

²⁰ Fax from Kassoum Fadika, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC), re authorization for seismic vessel to turn around in Ghanaian waters (9 March 2007), RG, Vol. IV, Annex 137.

²¹ *Bangladesh/Myanmar*, Reply of Bangladesh, para. 2.48.

²² Reply of Ghana (25 July 2016) (hereinafter "RG"), para. 2.90 – see footnotes 134 and 135.

²³ RG, para. 2.89 – see footnote 132 with the list of maps.

²⁴ RG, para. 2.84.

²⁵ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 246, paras 131 and 136.

1 dispute, where we find “overlapping claims” between Côte d’Ivoire and Ghana that
2 date back to 1992.²⁶

3
4 However, in support of this assertion, the opposing Party produces nothing,
5 absolutely nothing – not the slightest tangible element – in support of it. It must be
6 said that it would be hard pushed to do so; not a single one of the many concessions
7 granted in the area in question over the years, be it by Côte d’Ivoire or Ghana, is
8 delimited in a way that would lead to the slightest overlap. Not a single one of the
9 dozens of maps that have been published since the end of the 1950s, be it on the
10 Ivorian or the Ghanaian side, whether they come from public or private sources,
11 represent the maritime boundary between the two States along a line other than the
12 equidistance line. Here again, there is no trace, not the slightest shadow of an
13 overlap. All the oil concessions granted by the two Parties since they acceded to
14 independence followed the customary boundary based on an equidistance line.²⁷ All
15 drilling undertaken by the two Parties respected it in the same way. These activities
16 were conducted together, without the slightest overlap and with no exception for over
17 five decades.²⁸ It is only in 2009, following the change of position by Côte d’Ivoire,
18 that such overlaps appeared for the very first time. We are therefore very far
19 removed from the situation noted by the Court in the *Gulf of Maine* case.

20
21 Our opponents also seek to use the *Tunisia/Libya* case as an argument. Indeed, it is
22 a twofold argument. As they see it, the Court defined this agreement, or more
23 precisely a *modus vivendi* between the two Parties, as “an important factor in the
24 selection of the delimitation method only by taking account of the protracted practice
25 going back many years to the colonial period, pre-dating the time when the Parties
26 gained independence.”²⁹

27
28 This would contrast with “the oil activities which Ghana is taking as a basis ... within
29 a far shorter period.”³⁰

30
31 The opposing side also observes that the *modus vivendi*, whose existence was
32 noted in *Tunisia v. Libya*, only came about as a result of the silence maintained in
33 this respect by the French authorities responsible for Tunisia’s foreign policy. Here
34 again, the contrast would be striking, since Côte d’Ivoire “has never accepted the
35 western limit of the Ghanaian oil concessions which its neighbour was attempting to
36 impose on it by way of a *fait accompli*.”³¹

37
38 Let us return to these two arguments. The first – the temporal argument – is
39 somewhat surprising. To Ghana’s knowledge, no requirement for a specific time-limit
40 which would allow us to conclude that a tacit agreement on a maritime boundary
41 exists between two States was ever formulated. In any event there is the question of
42 several decades of functioning on the basis of a *modus vivendi* between the Parties
43 in *Tunisia v. Libya*, just as, here, there is the question of the several decades of fully

²⁶ DCI, para. 5.13.

²⁷ Côte d’Ivoire and Ghana Concession Blocks, 2009, RG, Vol. II, Figure R.2.21; Côte d’Ivoire and Ghana Drilled Wells, up to 2009, RG, Vol. II, Figure R.2.22.

²⁸ RG, paras 2.15-2.27 and 2.60-2.80.

²⁹ DCI, para. 5.12.

³⁰ *Ibid.*

³¹ *Ibid.*

1 convergent practice of Côte d'Ivoire and Ghana concerning the definition of the
2 maritime areas that form part of their respective jurisdictions, and regarding the use
3 of these areas. This latter practice is in fact similar to that noted by the Court in its
4 judgment of 1982 – or going back even further – and it shows here too an agreement
5 between the Parties in the long term. This practice and the agreement that it
6 highlights are in no way disqualified by the reasoning of the Court in *Tunisia v. Libya*.

7
8 As to the argument regarding the lack of consent and the imposition, to quote the
9 term used by our opponents, of a maritime limit “by way of a *fait accompli*”, should
10 we really dwell on it? Is it really Ghana, Mr President, Members of the Special
11 Chamber, that “imposed by way of a *fait accompli*” on the President of Côte d'Ivoire
12 the obligation to define the limits of oil concessions that he granted back in 1970 as
13 following “the boundary line separating Côte d'Ivoire from Ghana”, a boundary line
14 that in the present case is formed by an equidistance line? Was it Ghana that
15 “imposed by way of a *fait accompli*” on the Ivorian authorities the obligation to grant
16 concessions which systematically stopped at the equidistance line? Was it Ghana
17 that “imposed by way of a *fait accompli*” on the national oil company of Côte d'Ivoire,
18 PETROCI, the obligation to publish year after year – up until 2011, Mr President –
19 geographic maps representing the eastern limit of the concessions granted by Côte
20 d'Ivoire as well as the maritime boundary between the two countries, according to an
21 equidistance line? I could continue this exercise but I doubt that it is necessary. The
22 Chamber will have understood that there was in the relations between the Parties to
23 the present case no “imposition by way of *fait accompli*” of the equidistance line as a
24 joint maritime boundary and that the consent of Côte d'Ivoire to this line has proven
25 to be very real and, above all, freely given.

26
27 All this amply confirms that a parallel can indeed be drawn between the present case
28 and the conclusions reached by the Court in the *Tunisia/Libya* case and that the
29 practice in question in our case must carry the same decisive weight as that
30 recognized by the Court in 1982. Allow me to quote the key passage of the 1982
31 Judgment. In this respect:

32
33 the Court could not fail to note the existence of a *de facto* line ... which was
34 the result of the manner in which both Parties initially granted concessions
35 for offshore exploration and exploitation of oil and gas. This line of adjoining
36 concessions, which was tacitly respected for a number of years, and which
37 approximately corresponds furthermore to the line perpendicular to the
38 Coast at the frontier point which had in the past been observed as a *de*
39 *facto* maritime limit, does appear to the Court to constitute a circumstance
40 of great relevance for the delimitation.³²

41
42 In the case of the present dispute also, the line that separates the oil concessions of
43 Ghana and Côte d'Ivoire, also observed “tacitly for years”, similarly has considerable
44 relevance for determining the course of the maritime boundary common to both
45 States, all the more so since the Parties to this case expressly recognized it as
46 maritime border between Côte d'Ivoire and Ghana.

47
48 The facts are there but do they suffice to allow us to conclude that a tacit agreement
49 exists? In this respect, Côte d'Ivoire makes much of the fact that in the one

³² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, p. 18, para. 96.*

1 precedent where the ICJ recognized as such a tacit agreement as a basis for
2 maritime delimitation, the *Peru v. Chile* case, it only did so after this agreement was
3 confirmed in writing. Our opponents considered that, even if there is not a *sine qua*
4 *non* condition to recognize the existence of such an agreement, this position
5 confirms that the necessary threshold of proof providing evidence of its existence is
6 particularly high and would not be reached in our case.³³ But, once again, the *de*
7 *facto* situations that characterize that case and our own differ significantly.

8
9 If the Court placed such emphasis on the 1954 agreement as confirming a pre-
10 existing tacit agreement in *Peru v. Chile*, it is quite simply because it was not in a
11 position to identify tangible elements that formalized this prior agreement. The
12 Parties to the case in fact made little mention of them and the way the Court speaks
13 on this point is particularly eloquent:

14
15 The 1954 Special Maritime Frontier Zone Agreement does not indicate
16 when and by what means that boundary was agreed upon. The Parties'
17 express acknowledgment of its existence can only reflect a tacit agreement
18 which they had reached earlier.³⁴

19
20 But the Court makes no mention of this prior tacit agreement, owing to a lack of more
21 specific elements on this point. On the contrary, in the present case there is
22 abundant evidence of a constant practice, which is entirely sufficient to establish the
23 existence of a pre-existing tacit agreement that thus required no written confirmation.
24 Here again, the parallel made by our opponents between the *Peru v. Chile* case and
25 the current case is quite meaningless.

26
27 In reality, there is no divergence between the Parties to the present case as to the
28 interpretation of the various decisions that I have just referred to. The differences
29 rest exclusively on the parallels or the distinctions that Côte d'Ivoire attempts to
30 make between each of them and the facts of the present case. But each of the
31 representations of our opponents in this respect has proven problematic owing to the
32 distortions in relation to the present case. However, these facts – and their
33 significance – are crucial. Need one recall in this respect that the ICJ indicated in the
34 *Serpents Island* case that the establishment of the existence of a tacit agreement
35 was “a point of fact”?³⁵

36
37 Facts, as we know, are stubborn and what they show in the present case is the
38 duration and the permanence of an agreement between the Parties in respect of
39 which we would be hard-pushed to see the slightest trace of an imposition “by
40 means of a *fait accompli*”. Mr President, Members of the Chamber, it is the existence
41 of this agreement by virtue of which the customary maritime border between the
42 Parties to the present case follows an equidistance line of which Ghana kindly asks
43 you to take note.

44

³³ DCI, para. 5.14.

³⁴ *Maritime Dispute (Peru v. Chile)*, Judgment, I.C.J. Reports 2014, p. 3. para. 91.

³⁵ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 61, para. 68.

1 Thank you, Mr President, Members of the Special Chamber, for your kind attention
2 and I would ask you, Mr President, to kindly hand the floor to my colleague,
3 Clara Brillembourg.

4
5 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

6 Thank you, Professor Klein, for your statement, and I now give the floor to Ms Clara
7 Brillembourg.

8
9 **MS BRILLEMBOURG:** Mr President, Members of the Special Chamber, good
10 morning. It is my great honour to appear before you today, and it is a particular
11 privilege to do so on behalf of the Republic of Ghana.

12
13 I will address two issues: first, the land boundary terminus from which the maritime
14 boundary begins, and second, the nautical charts establishing the States' respective
15 coastlines. The Parties reached agreement on these two points during their bilateral
16 negotiations, well before this litigation began, and that agreement is one which
17 should be given effect by this Chamber. One might therefore have thought that my
18 submission would not be needed. However, since Côte d'Ivoire now questions these
19 agreements, there is a need for some clarification and elaboration on both subjects.

20
21 I will address each of these two points, beginning with the land boundary terminus.

22
23 It is not in dispute that the Parties have agreed that the last boundary post of the
24 land boundary is the land boundary terminus.¹ Côte d'Ivoire confirmed in its Counter-
25 Memorial that

26
27 during the negotiation process, the two Parties reached express agreement
28 both on the fact that the maritime boundary should start from boundary
29 post 55 ... and on the coordinates of this boundary post, which were
30 measured jointly by the two States.²

31
32 The agreed coordinates determined by the Parties' joint survey³ are shown on the
33 figure before you, as well as a photograph of the boundary post itself, referred to as
34 BP 55. This and the subsequent slides are available in tab 1 of your Judges' folder.

35
36 Because the Parties have agreed on specific coordinates for BP 55, the small issue
37 arises as to how to connect to this point on the maritime boundary.

38
39 In regards to the customary equidistance boundary, Ghana has provided a solution
40 connecting it to BP 55's agreed coordinates. This solution is needed because
41 previously, during the half-century that the customary equidistance boundary was
42 recognized and respected by both Parties, they used less precise coordinates for
43 BP 55, which placed it a short distance to the west of the point where the Parties
44 located it in their 2013 agreement, using modern equipment.

¹ Memorial of Ghana (4 Sept. 215) (hereinafter "MG"), para. 2.2; Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter "CMCI"), para. 2.29; Reply of Ghana (25 July 2016) (hereinafter "RG"), para. 3.70.

² CMCI, para. 7.28.

³ Government of Ghana and Government of Côte d'Ivoire, *Minutes of the Seventh Meeting: Côte d'Ivoire/Ghana Maritime Boundary Negotiation* (5-6 December 2013), pp. 1-2. MG, Vol. V, Annex 57.

1
2 Ghana has addressed this issue by effecting a modest shift in the course of the
3 customary equidistance boundary in the territorial sea, to connect it with the more
4 recently agreed coordinates of the land boundary terminus.⁴ It did this by running a
5 geodetic line from BP 55 to where the customary equidistance boundary intersects
6 with the territorial sea limit.⁵ As shown in this figure, the dashed red line is the
7 historically-agreed customary boundary line to the 12-nautical-mile limit. The solid
8 red line shows the modest adjustment to the customary boundary required by the
9 Parties' 2013 agreement on the coordinates of the LBT. As you can see, the
10 adjusted boundary favours Côte d'Ivoire in relation to the customary boundary line.
11 Nevertheless, Ghana accepts the adjustment as a consequence of the Parties'
12 agreement on the coordinates of the land boundary terminus.

13
14 Ghana respectfully submits that the Chamber should adopt this solution when it
15 adjudges that the Parties' maritime boundary is the customary equidistance
16 boundary applied by the Parties for the last 50 years.

17
18 However, in the alternative, *quod non*, that the Chamber were to fix the maritime
19 boundary by means of the traditional three-step method, I will address the different
20 solutions offered by the Parties to connect BP 55 with the provisional equidistance
21 line.

22
23 The boundary post is located some 150 metres from the low water line on the coast.
24 Thus BP 55 must be connected to the provisional equidistance line through a point
25 on the low water line. Despite its stated agreement that BP 55 is the starting point for
26 the maritime boundary, Côte d'Ivoire has sought to do this by in effect treating BP 54
27 as the starting point, and extending the bearing of the land boundary connecting
28 BP 54 with BP 55 to a new point on the coast it calls "Omega", as shown on this
29 figure.⁶

30
31 I should note that this is not the first time that Côte d'Ivoire has attempted to replace
32 its agreed land boundary terminus with a new point. During the provisional measures
33 phase, Côte d'Ivoire provided a different starting point, shown here alongside
34 BP 55.⁷

35
36 By contrast, Ghana has fully respected the express agreement to start the maritime
37 boundary from BP 55. Thus, it has consistently begun the provisional equidistance

⁴ RG, para. 3.96.

⁵ *Ibid.* A similar solution was adopted by the tribunal in *Bangladesh v. India*, where the tribunal found that, because "the delimitation of the territorial sea begins from [the] equidistance line between the Parties" and "using the land boundary terminus in th[at] case would not begin the delimitation on the 'median line'" due to the fact that the "land boundary terminus ... is not at a point equidistant from the base points[.]" it "decide[d] that the boundary should take the form of a 12 nm long geodetic line continuing from the land boundary terminus in a generally southerly direction to meet the median line" at 12 M. *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, paras 273, 276.

⁶ CMCI, para. 7.29.

⁷ The coordinates of this point were 5° 05' 23" N 3° 06' 23" W. *Letter* from Ibrahima Diaby, General Director of Hydrocarbons and Co-Agent, Ministry of Petroleum and Energy, Republic of Côte d'Ivoire, to Philippe Gautier, Registrar, International Tribunal for the Law of the Sea (8 April 2015), MG, Vol. VI, Annex 64.

1 line directly from this point. As shown on this figure, Ghana made this possible by
2 connecting BP 55 to the coastline by means of the shortest distance. By using this
3 technique, BP 55 remains the true starting point of the maritime boundary.
4

5 The slight difference resulting from the Parties' alternative starting points for the
6 provisional equidistance line is shown on this figure, provided in Côte d'Ivoire's
7 Rejoinder, which depicts a sliver of maritime area covering 0.03 square nautical
8 miles.
9

10 Thus, the consequence of choosing one Party's point on the low water line over the
11 other is minimal. Nevertheless, because Ghana's application of BP 55 as the true
12 starting point for both the customary equidistance boundary, or alternatively for the
13 provisional equidistance line, is faithful to the agreement reached by the Parties,
14 Ghana submits that its solution should be the one applied.
15

16 This brings me to the second issue: the choice of charts to represent the Parties'
17 coastlines. The dispute between the Parties on this point is more substantial.
18

19 As with the land boundary terminus, Ghana has honoured the agreement reached by
20 the Parties to use agreed international hydrographical charts. Ghana has plotted its
21 base points, and drawn the resulting provisional equidistance line, on British
22 Admiralty Chart 1383.⁸ Côte d'Ivoire, on the other hand, has abandoned the use of
23 agreed international charts and has crafted a new nautical chart during the course of
24 this litigation, on which it seeks to rely. This approach is unjustified: Côte d'Ivoire is
25 not entitled to discard its earlier agreement or to create a new chart for these
26 proceedings.
27

28 Despite the text of the agreement memorialized in the Minutes of the Parties' Ninth
29 Meeting in April 2014, Côte d'Ivoire now argues that no agreement was reached.⁹ It
30 does so by paraphrasing the Minutes to state merely that the States' future work
31 would be facilitated by using a common cartographic base.¹⁰ But there is no need to
32 paraphrase; the words are express and they are clear.
33

34 Allow me to draw your attention to the text of the Minutes:
35

36 During the 9th session, the two parties presented their international
37 hydrographical charts and noted that they had been using the *same series*
38 *of international hydrographical charts*, for example:
39

- 40 - INT 2805 on a scale of 1:350 000 covering Sassandra to Aby Lagoon
41 for the Ivorian side.
42
- 43 - Detailed map, reference no 3113 on a scale of 1:150 000, from the
44 Cape Three Points region to Cape Coast for the Ghanaian side.¹¹

⁸ See MG, para. 5.87; RG, paras 3.53-3.54; United Kingdom Hydrographic Office, *Ivory Coast and Ghana, Lagune Aby to Tema, Chart No. 1383*, 1:350,000 (14 May 2009, United Kingdom), MG, Vol. II, Annex M61.

⁹ See RCI, paras 2.116-2.121.

¹⁰ *Ibid.*, para. 2.119.

¹¹ *Minutes of the Ninth Meeting of the Ghana-Côte d'Ivoire Maritime Boundary Negotiations*, p. 4 (emphasis added), MG, Vol. V, Annex 60.

1
2 Here are the key words:

3
4 The two parties *agreed, from now on*, to use the same international
5 hydrographical charts on a scale of 1:150,000, where they exist, or on a
6 scale of 1:350,000 or other scale appropriate for delimitation of maritime
7 boundary or relevant remote sensing data.¹²
8

9 The text expressly states that the two States “agreed” that “from now on” they would
10 continue to use the “same international hydrographical charts.”
11

12 This is precisely what they did, until Côte d’Ivoire changed its position, yet again, in
13 the course of this litigation.
14

15 At the next bilateral meeting, in May 2014, the Minutes refer to this agreement in a
16 section entitled “International hydrographic nautical charts used by two sides”. The
17 Minutes record that both Côte d’Ivoire and Ghana used charts from the same series
18 of international nautical charts: Ghana used British Admiralty Charts 3100 and 1383
19 and Côte d’Ivoire used INT Charts 2804, 2805, 2806, and 2807.¹³ This figure shows
20 how these charts relate to one another. As seen, the Gulf of Guinea was charted on
21 a series of international nautical charts produced by the *Service hydrographique et*
22 *océanographique de la marine* (SHOM) in collaboration with the United Kingdom
23 Hydrographic Office (UKHO). The rectangle to the west is of the area covered by
24 INT 2805, which is based on the UKHO or British Admiralty Chart 3100 and the
25 SHOM Chart 7385. To the east is Chart INT 2806, which is based on BA Chart 1383
26 and SHOM Chart 7786.
27

28 Côte d’Ivoire attempts to make something of the fact that at the tenth meeting Ghana
29 presented BA Charts 3100 and 1383 instead of the BA Chart 3113 it had previously
30 provided in the ninth meeting.¹⁴ This argument is a red herring. Ghana used these
31 two charts – as it was entitled to do under the agreement – because they covered
32 the area necessary to plot the Parties’ base points: Chart 3113 covered an area of
33 coast too far to the east, as shown on the image before you. The agreement did not
34 call for the Parties to use the same charts presented in the ninth session. The States
35 agreed to use charts from now on from the same series of international hydrographic
36 charts. Both States understood this, as shown by the charts they presented at the
37 following tenth session. Ghana continues to adhere to this understanding.
38

39 Côte d’Ivoire now seeks to abandon the agreed approach. Instead it has engaged in
40 new work to plot the coastline, presumably on the basis that it might yield a more
41 favourable provisional equidistance line. Côte d’Ivoire claims that it decided not to
42 rely on the agreed charts because the topographical surveys of the area in question

¹² *Ibid.* (emphasis added).

¹³ *Minutes of the Tenth Meeting of the Côte d’Ivoire/Ghana Joint Commission on the Côte d’Ivoire/Ghana Maritime Boundary Delimitation*, p. 3. MG, Vol. V, Annex 62. See also, Government of Ghana, *Presentation of Ghana to the 10th Ghana-Côte d’Ivoire Meeting* (May 2014), §1c. MG, Vol. V, Annex 62A. Section title “The International Hydrographic maps *to be used* by both parties”, where it states “The following nautical charts have been sourced for the purpose of the delimitation: 1. Chart 3100 – Sasandra to Lagune Aby (1:350000); 2. Chart 1383 – Lagune Aby to Tema (1:350000).”

¹⁴ See RCI, para. 2.120.

1 were conducted in the 19th century and because of their scale (1:350,000).¹⁵ What
2 was good enough for Côte d'Ivoire in 2014, they say, is not good enough today.
3 Ghana submits that Côte d'Ivoire is not entitled to abandon the 2014 agreement, any
4 more than it is entitled to abandon its recognition of the customary equidistance
5 boundary for over five decades.

6
7 The British Admiralty Chart remains the largest-scale and most current international
8 chart covering the relevant area officially recognized by both States.

9
10 Unlike the charts recently produced by Côte d'Ivoire during the course of this
11 litigation, the agreed international charts are more reliable. Courts and tribunals have
12 applied the principle set forth in the *Beagle Channel Arbitration*, namely that “maps
13 produced before any controversy ... has arisen will tend to be more reliable than
14 those coming afterwards.”¹⁶

15
16 The reliability of the official charts recognized by both Parties is also confirmed by
17 both sets of contemporaneous official charts, as well as the coastline analysis by
18 EOMAP.¹⁷

19
20 Côte d'Ivoire attempts to support its claims that Chart 1383 is unreliable because it
21 has a “very different coastline” from UKHO Chart 3100. It demonstrates this
22 supposed difference in Figure 2.7 in its Rejoinder, shown *here*. What is clear,
23 however, is the granular scale that Côte d'Ivoire had to adopt to paint a picture
24 supporting its narrative. Indeed, Côte d'Ivoire admits that it had to cut off four of its
25 nine base points to create this view.¹⁸ If you present a comparison at a less
26 microscopic scale, depicting all nine base points, you can see that Chart 3100
27 confirms the reasonableness of using the Parties' agreed official charts.

28
29 The agreed international charts' reliability is further confirmed by recent analysis of
30 the coast. Ghana requested EOMAP, a leading provider of satellite-derived coastal
31 information, to identify the coast's low water line using the most recent satellite
32 imagery available. Given the straight nature of the coastline and the intense wave
33 activity, EOMAP applied the data to determine the coastline, minimizing the
34 short-term effects of wave patterns and localized beach features. To create the most
35 consistent coastline, EOMAP acquired 15 satellite images from November 2015 to
36 May 2016, and then created a composite of the most seaward portion of the lowest
37 low water lines across the images to create a single regression line.¹⁹ The result is a
38 mathematically and objectively depicted coast that minimizes ephemeral changes on
39 the coastline.

40
41 This line is shown in the figure before you. This figure also compares EOMAP's
42 coastline derived from satellite data with the coastline derived from the Parties'

¹⁵ See RCI, para. 2.104; CMCI, paras 7.10-7.19.

¹⁶ *Dispute between Argentina and Chile concerning the Beagle Channel*, Report and Decision of the Court of Arbitration of 18 February 1977, reprinted in 21 RIAA 53 (1977) (hereinafter “*Argentina v. Chile (Beagle Channel)*”, Decision”), para. 142(3).

¹⁷ RG, paras 3.57-3.60; EOMAP GmbH & Co. (EOMAP), *Ghana-Côte d'Ivoire Coastline Analysis* (19 July 2016). RG, Vol. IV, Annex 167.

¹⁸ RCI, footnote 182: “In view of the large scale of Sketch map D 2.7, only 5 of the 9 base points have been shown on the sketch map.”

¹⁹ RG, paras 3.58; EOMAP, *Ghana-Côte d'Ivoire Coastline Analysis*, §3. RG, Vol. IV, Annex 167.

1 agreed official charts. You can see how similar they are. It is clear that the coastline
2 has remained nearly the same despite the passage of time. The resulting provisional
3 equidistance lines are also remarkably similar, as seen *here*. EOMAP's analysis thus
4 confirms, and justifies the use of, the Parties' official charts to determine the
5 coastline, find appropriate base points along it, and construct a provisional
6 equidistance line, if one is needed.

7
8 Côte d'Ivoire represents in its Rejoinder that Ghana has argued that Côte d'Ivoire's
9 new nautical charts are inadmissible.²⁰ This is not Ghana's position. The documents
10 are certainly admissible, as evidence produced and presented by a Party during
11 litigation. What Ghana explained in its pleadings is that Côte d'Ivoire's new material
12 "needs to be treated with caution" for three separate and independent reasons: first,
13 it was developed for and during this litigation; second, because of its technical
14 inadequacies;²¹ and, third, because of Côte d'Ivoire's breach of its agreement with
15 Ghana to rely on the international hydrographic charts. As I will show, Côte d'Ivoire's
16 defence of these materials is wrong factually, legally and technically.

17
18 First, Côte d'Ivoire cannot escape the fact that it prepared these charts for and
19 during this litigation. Côte d'Ivoire cites to the March 2014 work proposal by its
20 expert, Argans, as evidence that it decided to produce new charts five months before
21 this litigation began.²² However, by March 2014, Côte d'Ivoire had already
22 threatened Ghana's concessionaires to leave the disputed waters.²³ It was well
23 aware that there was a dispute.²⁴ Indeed, the March proposal bears the logo of
24 Argans accompanied by the logo of the law firm Gide, Côte d'Ivoire's legal counsel in
25 this litigation.²⁵ The fact also remains that the material used to create Côte d'Ivoire's
26 coastline was selected, processed, and analyzed in the course of this litigation.
27 Within days of the Parties' agreement to proceed before this Chamber in December
28 2014, Argans was on site collecting survey data of Côte d'Ivoire's coast.²⁶

29
30 As for the law, Côte d'Ivoire argues that the jurisprudence shows that tribunals are
31 inclined to give preference to the most recent surveys in resolving maritime
32 disputes.²⁷ Of course, it bears reason that, where there is no prior agreement
33 between the States about the applicable charts, and where multiple charts of equal
34 evidentiary weight have been presented, tribunals might show a preference for the
35 most recent surveys – all things being equal – but all things are not equal here. In
36 only one of the cited cases, namely *Guyana v. Suriname*, did a tribunal accept the
37 use of a nautical chart prepared by one of the disputing State parties during the
38 proceeding. However, in that case the chart was created by the Netherlands
39 Hydrographic Office, with the assistance of Suriname.²⁸ It applied to only one base
40 point and, most significantly, Guyana admitted that its use had no impact on the

²⁰ RCI, para. 2.108.

²¹ RG, para. 1.15.

²² RCI, para. 2.110 (citing Presentation given by Argans to the Ivorian delegation (March 2014). CMCI, Vol. III, Annex 45).

²³ See Letter from Côte d'Ivoire Ministry of Mines, Petroleum, and Energy to General Directors and Representatives of Oil and Gas Companies (26 September 2011), MG, Vol. VI, Annex 71.

²⁴ See, e.g., MG, para. 3.105 and RG, paras 2.10-2.12.

²⁵ Presentation given by Argans to the Ivorian delegation, March 2014, CMCI, Vol. III, Annex 45.

²⁶ RCI, footnote 150.

²⁷ *Ibid.*, paras 2.111-2.114.

²⁸ *Ibid.*, para. 2.114.

1 provisional equidistance line.²⁹ In fact, tribunals have taken pains to avoid relying on
2 evidence created by a party during litigation, instead turning to evidence pre-dating
3 the dispute, such as the parties' agreed international charts.³⁰

4
5 Côte d'Ivoire's nautical charts are also technically questionable, as I will explain. The
6 low water line derived from the data collected during this dispute is subjective and
7 vulnerable to short-term, sporadic changes in the coast. It is also vulnerable to
8 technical deficiencies and manipulation.

9
10 It remains unclear, for example, how Côte d'Ivoire derived the low water line
11 presented on its charts. Côte d'Ivoire claims that the line is based on satellite-derived
12 bathymetry combined with ground surveys of beach profiles. However, the data does
13 not align with their results. We have tried our best to replicate what Argans said it did
14 and, despite repeated attempts, the results do not yield the same coastline. In
15 addition, Côte d'Ivoire used two different methods to chart the coast on either side of
16 the land boundary terminus, by applying ground survey data only for Côte d'Ivoire's
17 coast.

18
19 Even if one were to overlook these fundamental issues and accept that Côte
20 d'Ivoire's low water line was based on satellite-derived bathymetry (SDB), this
21 technique is an inappropriate means of constructing a low water line in cases, like
22 this one, where the waters display very high turbidity and breaking waves.³¹ Indeed,
23 Argans readily admits that its analysis required expertise of SDB modelling "under
24 difficult circumstances."³²

25
26 Let me explain why. SDB is based on sunlight reflecting off the seabed to identify the
27 water's depth, using satellite images, but particles suspended in the water column
28 also reflect the light. The more intense the waves, the more particles will float in the
29 water, tending to interfere with the light's reflection from the sea floor.³³ A clear way
30 to check if the use of SDB is accurate for a determined area is to take multiple
31 satellite images of that area captured at different times. If the pattern of the reflection
32 is consistent, then it indicates that the reflection is most likely from the sea floor. If
33 not, you are simply seeing the changing reflection from moving particles stirred up by
34 waves. As you can see from *this* slide, showing three satellite images of the same
35 area of the relevant coast on different dates, two of which were used by Côte d'Ivoire

²⁹ *Guyana v. Suriname*, UNCLOS Annex VII Tribunal, Guyana's Reply of 1 April 2006, para. 1.10.

³⁰ See, e.g., *Argentina v. Chile (Beagle Channel)*, Decision, para. 142: "maps produced before any controversy ... has arisen will tend to be more reliable than those coming afterwards"; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, para. 61: "The Court will treat with caution evidentiary materials specifically prepared for this case and also material emanating from a single source"; *ibid.*, para. 129: "While a notarized affidavit is entitled to a certain respect, the Court must observe that it is provided by a party in the case and provides at best indirect 'information' that is unverified"; *Territorial and Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659, para. 243: "Affidavits sworn later by a State official for purposes of litigation as to earlier facts will carry less weight than affidavits sworn at the time when the relevant facts occurred".

³¹ EOMAP, *Ghana-Côte d'Ivoire Coastline Analysis*, §§ 2.3.2, 2.4, RG, Vol. IV, Annex 167. ("Satellite Bathymetry is not possible in cases where, as here, the waters display very high turbidity, as well as strong surf and breaking waves.")

³² Report by Argans (9 November 2016), p. 26, RCI, Vol. III, Annex 190.

³³ EOMAP, *Ghana-Côte d'Ivoire Coastline Analysis*, § 2.3.2, RG, Vol. IV, Annex 167.

1 in its analysis, the coastline is dominated by intense wave action – what the experts
2 call dynamic turbidity – which interferes with the light’s reflection.

3
4 In other words, along the relevant coast, SDB cannot provide accurate information
5 on the bathymetry; and any coastline in this area claimed to be derived from SDB
6 would involve a high degree of uncertainty, as is the case with Côte d’Ivoire’s
7 analysis.

8
9 In the end, even if you were to ignore all the factual, legal and technical difficulties
10 inherent in Côte d’Ivoire’s charts and resulting coastline, Côte d’Ivoire’s newly
11 derived charts merely serve to confirm the reasonableness of using the official charts
12 recognized by and agreed to by both Parties. As shown *here*, the coastline preferred
13 by Côte d’Ivoire is not very different from the one shown on the official charts
14 (BA 1383 and SHOM 7786). Their striking similarity confirms, first, the reliability of
15 the official charts and, second, the fact that, even assuming, *quod non*, the accuracy
16 of Côte d’Ivoire’s new data, the coastline has not changed significantly in over 175
17 years. It is a stable coastline, as Mr Reichler has explained.

18
19 In conclusion, the Special Chamber should confirm the customary equidistance
20 boundary from BP 55, the Parties’ agreed land boundary terminus. In the alternative,
21 if it proves necessary, the Chamber should draw a provisional equidistance line from
22 BP 55 on the basis of the charts agreed by the Parties in 2014. This is consistent
23 with the Convention and respects the Parties’ agreements of December 2013
24 regarding the land boundary terminus and of April 2014 regarding their official charts.
25 It also offers a means of avoiding the problems inherent in relying on technical data
26 developed by a Party while litigating its case.

27
28 Mr President, Members of the Special Chamber, thank you for your kind attention.
29 I ask that you call upon Professor Sands.

30
31 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank you, Ms Brillembourg, for
32 your statement, and I now give the floor to Mr Philippe Sands.

33
34 **MR SANDS:** Mr President, it falls to me to begin our presentation on the maritime
35 boundary up to 200 nautical miles.

36
37 As you will now appreciate, Ghana has a strong attachment to the application of the
38 principle of equidistance to confirm the location of its maritime boundary with Côte
39 d’Ivoire. Côte d’Ivoire shared that attachment for over 50 years, until 2009,
40 enshrining the equidistance principle in its own law.¹ That is why Ghana’s primary
41 submission is that there exists a customary maritime boundary up to 200 nautical
42 miles and beyond – one that has been long agreed between the Parties and gives
43 effect to equidistance.

44
45 Côte d’Ivoire suddenly changed position in 2009, apparently prompted by the
46 discovery of oil in significant quantities on Ghana’s side of the existing maritime

¹ Memorial of Ghana (4 Sept. 2015) (hereinafter “MG”), paras 3.29-3.31 and Vol. IV, Annex 24 (Republic of Côte d’Ivoire, Law No. 77-926 on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of the Ivory Coast, adopted on 17 Nov. 1977, reprinted by United Nations DOALOS/OLA – National Legislation), Art. 8.

1 boundary. One can but imagine the discussions that might have taken place in
2 Abidjan at that time. How can we just ditch equidistance, after 50 years? We shall
3 have to come up with something else. Presumably there were conversations as to
4 the alternatives, and it would be surprising if advice was not then received to the
5 effect that if a new boundary had to be delimited, international law directed
6 equidistance methodology – the three-stage approach – as the “standard method”.²
7

8 If such advice was tendered, it was ignored. Instead, somehow a decision was taken
9 to settle on a new approach – the meridian line. We addressed this in March 2015 in
10 this courtroom at the provisional measures hearings, in a map placed in tab 20 of the
11 Judges’ folder on that occasion. Let us go back to that same map, which is now at
12 tab 2.A of today’s Judges’ folder. As you will see, the map depicted four fresh-minted
13 Ivorian claim lines. The first line was born in February 2009; let us call it Meridian 1.
14 It had but a short life, killed off a year later, presumably because it failed to meet the
15 needs of Côte d’Ivoire, and of course it did not even start at BP55, the land boundary
16 terminus. May 2010 then saw the arrival of Meridian 2, soon deemed inadequate for
17 reasons not explained. Perhaps, like its predecessor, it was insufficiently generous to
18 the needs of Côte d’Ivoire.
19

20 In November 2011 Meridian 2 was pensioned off and a new thought emerged:
21 someone in Abidjan – or maybe it was in Paris or even London – came up with the
22 imaginative idea of using an angle bisector, so Angle Bisector 1 was born, as you
23 can see on the screen, but that too was soon killed off, to be replaced in May 2014
24 by Angle Bisector 2. This, of course, had the fantastic merit of further increasing the
25 area to which Côte d’Ivoire would be able to claim sovereign rights.³ In the course of
26 five short years then, we have three different Ivorian methodologies and five different
27 claimed boundaries, offering ever more extensive areas of ocean and seabed for
28 Côte d’Ivoire to exploit. Mr President, if this is a trade, in our trades it would be called
29 an ocean grab, totally unconnected to the law, abandoning decades of practice, and
30 offering a clear and simple lesson in how to damage the stability of international
31 relations, how to upset investors and undermine the rule of law.
32

33 The constant changes are unsettling, and not just for Ghana or third parties. Côte
34 d’Ivoire’s inconsistency persists into its written pleadings. On the one hand, it argues
35 that the bisector method is, as it puts it, “the most appropriate method”,⁴ but then in
36 another part of the very same pleading it argues that the “equidistance/relevant
37 circumstances method” is not only possible but also that it leads to an “equitable
38 result”.⁵
39

40 Having passed across three methodologies and five boundary lines, Côte d’Ivoire
41 seems to have ended up where it began five decades ago: it settles on the classical
42 three-stage approach, first constructing a provisional equidistance line and then
43 adjusting it in light of what it identifies – wrongly in our view – as “relevant
44 circumstances”. Miraculously – miraculously, but no doubt entirely by coincidence –

² *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014* (hereinafter “*Bangladesh v. India, Award*”), Transcript Day 4, Friday, 13 December 2013 (hereinafter “*Bangladesh v. India, Transcript*”), p. 390 (Prof. A. Pellet).

³ MG, pp. 80-86.

⁴ CMCI, paras 26 (“*la méthode dite de la bissectrice est dans le cas d’espèce la plus appropriée...*”).

⁵ *Ibid.*, para. 7.1 (“*résultat équitable ... méthode de l’équidistance*”).

1 the very same factors that Côte d'Ivoire has identified in favour of Angle Bisector 2
2 then just happen to accord, with absolute precision, to the "relevant circumstances"
3 invoked by Côte d'Ivoire to adjust its provisional equidistance line to a location that is,
4 remarkably, exactly along the same line of Angle Bisector 2! Life really is wonderful!
5 The law is wonderful! But, of course, everything comes at a cost: by engaging with
6 the equidistance methodology, Côte d'Ivoire has fatally undermined its own bisector
7 claim, and forces the innocent observer to pose the question: why did you abandon
8 equidistance only to then embrace it again after five years? What was the fuss?
9

10 There is here a fundamental contradiction in Côte d'Ivoire's case. One can but
11 imagine the debates that might have taken place between the Côte d'Ivoire team as
12 it moved from Counter-Memorial to Rejoinder. "Do we stick with bisector, even
13 though it seems to us as reasonable international lawyers to be very obviously
14 hopeless; or do we ditch it? If we ditch it, the Ghanaians will say we've changed
15 position again – change number 5!" So, faced with this situation, Côte d'Ivoire has
16 done perhaps what any litigant would do faced with such an unfortunate difficulty; it
17 has embraced a middle ground, adopting both a half-hearted embrace of bisector,
18 and a half-hearted embrace of its view of equidistance.
19

20 Against this curious background, it is time to leave the realm of fantasy and return to
21 the real world, a place where two reasonable States long ago reached agreement
22 as to the location of their maritime boundary. Only in the event that you were to find
23 that there is no existing boundary, no tacit agreement, no representation and
24 reliance, no estoppel, so that a fresh delimitation might be called for – only then do
25 you need to adopt the standard approach to maritime delimitation. On either
26 approach, there are no grounds for the bisector approach, as Côte d'Ivoire and their
27 Counsel, in their heart of hearts, must surely know.
28

29 Let us turn to the law. Articles 74 and 83 of the 1982 Convention do not specify the
30 method to be followed to achieve an equitable solution; but there is now a well-
31 settled jurisprudence in support of the three-stage equidistance/relevant
32 circumstances method. It is reflected in international jurisprudence, at the ICJ, at
33 ITLOS, and in Annex VII arbitrations. The jurisprudence is *constant*. It confirms that
34 in the absence of any compelling reasons that make it unfeasible to identify
35 appropriate base points and to draw a provisional equidistance line, equidistance is
36 the starting point.
37

38 Côte d'Ivoire says in response that we are somehow "biased" towards equidistance.⁶
39 We are biased, but not in favour of equidistance; we are biased in favour of applying
40 the law as it is, not as Côte d'Ivoire would like it to be. That law is reflected, for
41 example, in the ICJ's leading Judgment, the *Black Sea Judgment* of 2009: "So far as
42 delimitation between adjacent coasts is concerned, an equidistance line will be
43 drawn unless there are compelling reasons that make this unfeasible in the
44 particular case."⁷
45

⁶ Rejoinder of Côte d'Ivoire (14 Nov. 2016) (hereinafter "RCI"), para. 1.5.

⁷ *Maritime Delimitation in the Black Sea (Romania v. Ukraine) Judgment*, I.C.J. Reports 2009, p. 61, para. 116.

1 The same approach is reflected in the ITLOS Judgment of 2012 in *Bangladesh/*
2 *Myanmar*.⁸ The Tribunal in that case ruled that it could draw an equidistance line
3 between Bangladesh and Myanmar, and it rejected Bangladesh’s argument in
4 support of an angle bisector.⁹ That decision has been very widely supported,
5 including by Bangladesh and Myanmar.

6
7 The law imposes upon Côte d’Ivoire the burden of persuading you, this Special
8 Chamber, that there are “compelling” reasons why equidistance is “unfeasible” in this
9 case. With the greatest respect to our friends on the other side of the Bar, Côte
10 d’Ivoire has manifestly failed to do that. Indeed, we say it has disabled itself from
11 making the argument by the very fact that it has, in its written pleadings, easily been
12 able to draw a provisional equidistance line and signalled that it had no difficulty
13 doing so.

14
15 Therefore, there is no real disagreement between the Parties as to the feasibility of
16 drawing an equidistance line; in fact the Parties did exactly that for more than five
17 decades, and they have done it again in these proceedings. With that simple
18 observation, a claim to an angle bisector methodology falls away. It collapses.

19
20 In recent times only one case – just one – has employed the bisector methodology,
21 and it is a case that is easily distinguishable from this one. In *Nicaragua v.*
22 *Honduras*, the ICJ was called upon to delimit a single maritime boundary projecting
23 from the adjacent coasts of the two States. The most salient features of the case
24 seem to have been lost on Côte d’Ivoire. First, the geographical context of that case
25 was highly unusual. Second, in that case neither Party had as its main argument a
26 call for an equidistance-based approach as the most suitable method of
27 delimitation.¹⁰ Against this background, the International Court said that “the
28 equidistance method does not automatically have priority over other methods of
29 delimitation”¹¹ and those words are clutched tightly by Côte d’Ivoire.¹² The Court
30 found in that case that it was not feasible to construct an equidistance line because
31 of the unique configuration of the land boundary terminus at Cape Gracias a Dios –
32 “a sharply convex territorial projection abutting a concave coastline and the highly
33 unstable nature of the mouth of the river Coco at the Cape, exhibiting a very active
34 morpho-dynamism.”¹³

35
36 These factors, said the Court, made it “impossible” to identify reliable basepoints to
37 construct a provisional equidistance line.¹⁴ The difficulty was compounded by a
38 dispute over title to several small islands and sandbanks located at the river
39 mouth.¹⁵ Not one of these factors pertain in the present case. Both Parties have
40 identified base points, and Mr Reichler will have more to say on this in due course.

41

⁸ *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4 (hereinafter “*Bangladesh v. Myanmar, Judgment*”), para. 233.

⁹ *Ibid.*, paras 238-240.

¹⁰ *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659., para. 275.

¹¹ *Ibid.*, para. 272.

¹² See e.g. CMCI, paras 3.49, 6.2; RCI, paras 1.14, 1.16.

¹³ *Nicaragua v. Honduras*, Judgment, paras 277-283.

¹⁴ *Ibid.*, para. 280.

¹⁵ *Ibid.*, para. 279.

1 (Continued in French) Mr President, the time has come to take the coffee break.

2
3 **THE PRESIDENT OF THE SPECIAL CHAMBER** (Interpretation from French):
4 Thank you, Professor Sands. Indeed, it is 11.28, 11.29, so we will break now for
5 30 minutes and reconvene at 12 o'clock. Thank you.

6
7 (Break)

8
9 **THE PRESIDENT OF THE SPECIAL CHAMBER** (Interpretation from French): We
10 will now resume the hearing started this morning and I give the floor to Professor
11 Philippe Sands for him to conclude his presentation.

12
13 **MR SANDS** (Interpretation from French): Thank you, Mr President.

14
15 (Continued in English) Having taken no assistance from the case of *Honduras v.*
16 *Nicaragua*, Côte d'Ivoire seeks assistance in a small number of other cases,
17 although it is noticeably reticent about their facts.¹⁶ In *Tunisia v. Libya* the use of the
18 bisector for the second segment of the line, from point 2 on the plate, was simply to
19 give half-effect to the Kerkennah Islands. The Court used the standard method of
20 drawing two lines: one giving full effect to the islands, the other disregarding them.
21 The bisector of the angle formed by these two lines then defined the direction of the
22 second segment giving half effect to the islands.¹⁷ Of course, the case is
23 distinguishable because there are no such small features such as this in our case to
24 distort an equidistance boundary or line.

25
26 The Chamber of the Court in *Gulf of Maine* used a bisector in the first leg of the
27 boundary between points A and B, and it did so to avoid the use of basepoints
28 located, as the Chamber of the Court put it, "on a handful of isolated rocks."¹⁸
29 Again, there are no such features in this case, and no analogous difficulties.

30
31 As for the *Guinea v. Guinea-Bissau* (1985) award, it is sufficient to record what
32 Counsel for India had to say about that award in recent proceedings. He described
33 the award as "absurd",¹⁹ an "eccentric decision" that was "not principled" and with
34 "no legal basis whatsoever".²⁰

35
36 Cases where courts and tribunals have declined to depart from the established
37 three-stage equidistance approach are equally instructive. Bangladesh argued for
38 an angle-bisector method in the *Bay of Bengal* case, and that was unanimously
39 rejected. If there was no reason to apply it in that case, despite a significant
40 concavity, there can be no conceivable grounds for having recourse to it in this
41 case. In *Bangladesh/Myanmar* this Tribunal delimited the Bay of Bengal in
42 conformity with prevailing jurisprudence, by equidistance methodology and the

¹⁶ e.g. CMCI, paras 6.3-6.7, 6.40-6.41.

¹⁷ *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18, para. 129.

¹⁸ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America)*, Judgment, I.C.J. Reports 1984, p. 246, paras 210-211.

¹⁹ *Bangladesh v. India*, Transcript, 13 December 2013, p. 414. (Prof. A. Pellet).

²⁰ *Bangladesh v. India*, Transcript, 18 December 2013, p. 632. (Prof. A. Pellet).

1 three-stage process.²¹ The Annex VII Tribunal in the parallel case with India
2 distinguished Bangladesh's case from *Nicaragua v. Honduras*: both Parties were
3 able to locate basepoints on the coast of the other; both constructed a provisional
4 equidistance line.²²

5
6 In *Peru v. Chile*, the International Court adopted an equidistance-based approach
7 over sections of the boundary that had not been delimited by prior agreement. From
8 point A (80 nautical miles from the starting point) onwards the Court employed the
9 three-stage approach, starting with the construction of a provisional equidistance
10 line.²³ Even in the somewhat unusual circumstances of that case, the Court
11 indicated that an equidistance-based solution was appropriate from point A to
12 point B in the absence of "compelling reasons preventing this."²⁴

13
14 In *Guyana v. Suriname*, Suriname urged the Tribunal to use the bisector method on
15 the basis of the *Tunisia v. Libya, Gulf of Maine* and *St. Pierre and Miquelon*.²⁵ This
16 was rejected. The Arbitral Tribunal distinguished those cases because

17
18 the general configuration of the maritime area to be delimited does not
19 present the type of geographical peculiarities which could lead the Tribunal
20 to adopt a methodology at variance with that which has been practised by
21 international courts and tribunals during the last two decades ...²⁶

22
23 With such limited case law to draw on – and none that is on point or remotely
24 analogous to this one – Côte d'Ivoire has turned to a small number of bilateral
25 agreements where States are said to have used "bisector lines."²⁷ Examples of this
26 State practice are listed but are not analysed by our friends. Even assuming them to
27 be of some relevance, such agreements are to be treated with care, for a number of
28 reasons. First, seven of the eight agreements Côte d'Ivoire invokes pre-date the
29 signing of the 1982 Convention and are far from being representative of the
30 evolution of the Law of the Sea. Second, there will in these cases inevitably be a
31 number of extra-legal considerations – political, historical, economic or other – that
32 might come into play to determine a negotiated outcome. States are not bound to –
33 and do not – simply apply the law in reaching a formal negotiated agreement to
34 delimit a maritime boundary. Third, the agreements on which Côte d'Ivoire places
35 reliance are not actually helpful to its case, as I noted yesterday. We regret that
36 each has not been presented as accurately or correctly as it might have been.

37
38 I will give a number of examples. The first example: Côte d'Ivoire claims that the
39 1980 Costa Rica-Panama Treaty is, as it puts it, "particularly illustrative"²⁸ and offers

²¹ *Bangladesh v. Myanmar*, Judgment, para. 240.

²² *Bangladesh v. India*, Award, paras 345-346.

²³ *Maritime Dispute (Peru v. Chile)*, Judgment, I.C.J. Reports 2014, p. 3, paras 184-186.

²⁴ *Ibid.*, para. 180.

²⁵ *Delimitation of the Maritime Boundary between Guyana and Suriname (Guyana v. Suriname)*, Award of 17 September 2007, 30 UNRIAA I (2007), para. 370.

²⁶ *Ibid.*, para. 372.

²⁷ RCI, para. 1.8 and footnote 25 with associated sketch maps.

²⁸ RCI, paras 2.24, 2.27.

1 a *Croquis* D1.4, which is on your screens; yet this Treaty actually describes the
2 Pacific boundary between the two States as a “median line”.²⁹

3
4 The 1972 Agreement between Brazil and Uruguay (Côte d’Ivoire’s *Croquis* D1.2)
5 establishes a maritime boundary between the two adjacent countries by means of a
6 single line running nearly perpendicular to the general line of the coast. In a joint
7 declaration in 1969, both States recognized as the lateral limit of their respective
8 maritime jurisdictions the line equidistant from the nearest points of the coastlines of
9 both States. This agreement achieved substantially the same result as a true or
10 strict equidistance line.³⁰

11
12 Elsewhere, Côte d’Ivoire appears to have engaged in a degree of artful
13 manipulation, as may be seen in the sketch maps that they rely upon in their
14 Rejoinder.

15
16 Côte d’Ivoire’s *Croquis* D1.6, for example, is said to depict the outcome of the 1976
17 and 1978 Treaties between the United States and Mexico. However, as you can
18 see clearly in this following plate Côte d’Ivoire’s presentation of the coastal façade
19 does not correspond to the actual coast, or indeed the coast that was used to plot
20 the boundary. Of course, these are times in which there are facts and there are
21 facts; but for the purposes of this Tribunal, you have to rely on the facts. The United
22 States and Mexico have reached three agreements delimiting their boundaries in
23 the Gulf of Mexico and the Pacific. Each boundary is some form of an equidistance
24 line.³¹

25
26 Côte d’Ivoire’s *Croquis* D1.7 depicting the 1981 agreement between Brazil and
27 France in respect of French Guiana is, we would suggest, somewhat misleading.
28 Once again, you can see the unsatisfactory coastal fronts drawn by Côte d’Ivoire.
29 They do not follow the actual coast: one is on land, the other at sea. This line
30 actually presents a simplified form of equidistance.³²

31
32 Côte d’Ivoire’s *Croquis* D1.8 is said to depict the 1996 Agreement between Estonia
33 and Latvia. As you can see, this is plainly not relevant in light of the complex
34 geographical configuration of the coasts in that area, as well as the presence of
35 islands. It starts out as a delimitation between adjacent coasts, but then turns into a
36 situation of opposite coasts inside the Gulf of Riga. Outside the gulf the coasts once
37 again become adjacent. The line is described as a “combination of different
38 methods”. Besides equidistance, the historic boundary between Estonia and Latvia
39 established during the 1920s, the theory of restricted maritime zones for islands
40 straddling the median line, and a perpendicular were all used in this agreement.”³³
41

²⁹ See Treaty on the delimitation of maritime areas and maritime cooperation between the Republic of Costa Rica and the Republic of Panama, signed on 2 February 1980 (LIS No. 97 (1982)). See also IMB, Vol. I, Report 2-6, p. 537. Charney has suggested that whilst officially referred to as a median or equidistant line, it might better be classified *strictu sensu* as a modified equidistant line.

³⁰ IMB, Report 3-4; LIS No. 73 (1976).

³¹ Treaties between the United States and Mexico of 24 November 1976 and 4 May 1978, IMB, Volume I, Report 1-5. See also Treaty between the United States and Mexico on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 Nautical Miles, 9 June 2000.

³² IMB, Volume I, Report 3-3.

³³ IMB, Volume IV, Report 10-15, pp. 2996, 3008, 3010.

1 Other agreements invoked by Côte d'Ivoire are similarly irrelevant. For example, it
2 places reliance on two instruments that are not international agreements at all: Côte
3 d'Ivoire's *Croquis* D1.3 and *Croquis* D1.5 depict the delimitation agreement
4 concluded in 1964 between the Sovereigns of Sharjah and Umm al-Qaywayn and
5 the 1968 Boundary Agreement between Abu Dhabi and Dubai. These were
6 elements of a broader package deal brokered by the United Kingdom in relation to
7 two of the constituent elements of what would become the United Arab Emirates in
8 1971. At the time of signature none of the Trucial States, as they were known, were
9 Parties to the 1958 Geneva Convention on the Continental Shelf and a number of
10 non-legal considerations came into play.³⁴ Professor Charney referred to both as
11 reflecting "simplified equidistant lines".³⁵

12
13 I could go on but there is no need to do so. You get the point. None of the examples
14 they provide in their written pleadings can possibly justify the use of a bisector in
15 this case.

16
17 Côte d'Ivoire does not have the law on its side. What about geography? Given that
18 Côte d'Ivoire accepted and applied an equidistance boundary for five decades, and
19 given that it has in its pleadings recognized that drawing equidistance is both
20 feasible and, significantly, capable of yielding an equitable result, not much more
21 needs to be said by this Special Chamber to disregard the angle bisector argument.

22
23 If you feel any need to invoke geography, then Mr Reichler gave you all you need to
24 put the bisector argument out of its misery. There is no concavity. There is no
25 coastal instability. There is no insufficiency of basepoints. There is no "historical
26 accident" at Jomoro. There is no regional dimension. There is no bisector.

27
28 Finally, for the avoidance of any doubt, the angle bisector actually set out in Côte
29 d'Ivoire's pleadings cannot possibly be said to "constitute a fair maritime boundary
30 between the Parties".³⁶ To the contrary, like Meridian 1 and 2, and Bisector 1, its
31 short-lived predecessors, this latest bisector operates to produce a grossly
32 inequitable result. It would, in the words of the International Court of Justice in
33 *Nicaragua v. Honduras*, ignore the important caveat on the use of the bisector,
34 namely, the need that special care must be taken to avoid "completely refashioning
35 nature".³⁷

36
37 Côte d'Ivoire's angle bisector does exactly that, like its late predecessors, and it is
38 the product of an inherently subjective approach. It is based on a use of artificial
39 coastal façades that bear no relation to the actual directions of the Parties' relevant
40 coasts. You can test this with Côte d'Ivoire's *Croquis* 6.7: the relevant coasts are
41 ignored in favour of lines that purportedly represent the entire coast of both Parties,
42 most of the lengths of which do not even face the maritime area in dispute. On Côte

³⁴ See inter alia Boundary Agreement between Abu Dhabi and Dubai of 18 February 1968 (IMB, Volume II, Report Number 7-1) and the Agreement between the Rulers of Sharjah and Umm al Qaywayn, (IMB, Volume I, Report No. 7-10).

³⁵ See the Agreement between the Rulers of Sharjah and Umm al Qaywayn, (IMB, Volume I, Report No. 7-10, p. 1549. It notes that the "British Foreign Office was of the view that, given the particular geographical configuration of the Trucial Coast, the "simplified" equidistant line could be used for a comprehensive delimitation of seabed boundaries between the Trucial States."

³⁶ RCI, para. 7.

³⁷ *Nicaragua v. Honduras*, Judgment, para. 289.

1 d'Ivoire's approach, Ghana's purported "coastal front ..."38 is not drawn along the
2 coast at all, but is entirely on land, and on occasion at a considerable distance from
3 the sea. Côte d'Ivoire's "coastal front" on the other hand is entirely at sea, and a
4 significant distance from the coast. This is artificial thinking, a major refashioning of
5 geography, one based on an imaginative approach that ignores the actual coasts
6 and replaces them with a wholly new concept, the concept of "*les côtes utiles*" – the
7 "useful coasts"39 – useful perhaps to Côte d'Ivoire but not useful, we would submit, to
8 a court of law or to the law itself.

9
10 Mr President, Members of the Special Chamber, there is really no basis for an angle
11 bisector in this case. None. In our submission, it is not even arguable. It is a
12 concoction, intended to expand the area in dispute, to create a larger cake with
13 larger slices. The plausible area in dispute is actually far smaller, as I indicated
14 yesterday and as you can see from the graphic on the screen. This depicts three
15 lines. From west to east, they are, first, the customary equidistance boundary
16 recognized by both Parties for over half a century until 2009; second, the provisional
17 equidistance line drawn by Ghana based on official charts; and third, the provisional
18 equidistance line drawn by Côte d'Ivoire in its Counter-Memorial, based on its own
19 recently prepared charts, although we say you should not use those. We say that the
20 first of these lines, the customary equidistance boundary, is the existing boundary,
21 so there is no need for a fresh delimitation at all. Ghana invites this Special Chamber
22 to confirm the existing boundary and to plot its precise coordinates.

23
24 If there is to be a fresh delimitation, the only real issues in this case would be, firstly,
25 determining whether the second or the third line on this chart is the proper
26 provisional equidistance line; secondly, determining whether there are any relevant
27 circumstances that warrant an adjustment of the provisional boundary line – you
28 choose; and thirdly, determining whether the resulting delimitation line is equitable,
29 by application of the disproportionality test that constitutes the third stage of the
30 process, taking into account relevant circumstances.

31
32 Mr Reichler will now address those issues, and I ask that you invite him to the Bar.

33
34 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I
35 would like to thank Professor Sands for his presentation and I now give the floor to
36 Mr Paul Reichler.

37
38 **MR REICHLER:** Mr President, Members of the Special Chamber, good afternoon.

39
40 The central premise of Ghana's case is that, having regard to the longstanding
41 practice of the Parties, there is an agreed, existing maritime boundary that follows an
42 equidistance line that the Parties recognized as their international border for half a
43 century. You have seen this in our written pleadings and heard it from my very able
44 colleagues at these hearings. There is no need for me to repeat their presentations.
45 Instead, I will focus on Ghana's alternative argument, which is that, in the
46 geographical circumstances present here, if the Special Chamber determines that a
47 fresh delimitation is required, the boundary should be delimited by the equidistance

38 CMCI, para. 6.46 ("*façades côtière ...*").

39 RCI, para. 3.10 *et seq.* ("*...les côtes utiles...*").

1 method, which would place it, in the submission of Ghana, exactly where it has been
2 all along.

3
4 In particular, if the Chamber opts to perform a fresh delimitation in these geographic
5 circumstances, the case law would require it to follow the well-established three-step
6 process that Professor Sands has just articulated.

7
8 This is the procedure that has been adopted both by ITLOS and the ICJ. Professor
9 Sands read to you from the ITLOS Judgment in 2012 in *Bangladesh/Myanmar*: "...
10 an equidistance line will be drawn unless there are compelling reasons that make
11 this unfeasible in the particular case."¹

12
13 That remains the rule today. The three maritime boundary delimitation cases decided
14 since *Bangladesh/Myanmar* have followed it. The ICJ, in both *Nicaragua v. Colombia*
15 and *Peru v. Chile*, and the Arbitral Tribunal in *Bangladesh v. India*, employed
16 equidistance methodology, and performed the delimitation exercise by first drawing
17 an equidistance line.²

18
19 There is no reason to break precedent here. This is, if anything, an even more
20 compelling case for equidistance than any of those decided previously. In the first
21 place, there are five decades of consistent and mutual practice recognizing and
22 observing the customary equidistance boundary. Beyond this, even Côte d'Ivoire
23 acknowledges the appropriateness of equidistance methodology in this case. In its
24 Counter-Memorial, Côte d'Ivoire admits in the official English translation:

25
26 If the present Chamber were to consider the bisector method inapplicable
27 to this particular case, it might arrive at an equitable result by delimiting the
28 Parties' maritime areas according to the equidistance/relevant
29 circumstances method.³

30
31 This is a significant concession, even though, with respect, our friends on the other
32 side have got the law backwards. The applicability or inapplicability of the angle
33 bisector method is not the first step to be considered. Reliance on the equidistance
34 method does not depend on a prior finding of inapplicability of the angle bisector. The
35 law is the reverse of that. The first consideration, especially in the case of two States
36 with adjacent coasts, is whether equidistance is feasible.⁴ If it is, then there is no
37 need to consider an angle bisector or any other alternative to equidistance in the first
38 step of the delimitation process. If it is feasible to draw an equidistance line, then that
39 is the starting point for the process, and our friends have shown that an equidistance

¹ *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4 (hereinafter "*Bangladesh v. Myanmar, Judgment*"), para. 233 (quoting *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, p. 61, para. 116 (hereinafter "*Romania v. Ukraine (Black Sea), Judgment*"))).

² See *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014* (hereinafter "*Bangladesh v. India, Award*"), paras 341-345; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 624 (hereinafter "*Nicaragua v. Colombia, Judgment*"), paras 190-199; *Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014*, p. 3 (hereinafter "*Peru v. Chile, Judgment*"), paras 180-195.

³ Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter "CMCI"), para. 7.1

⁴ See *Bangladesh v. Myanmar, Judgment*, para. 233 (citing *Romania v. Ukraine (Black Sea), Judgment*, para. 116).

1 line is feasible in the most convincing way: they have drawn one, as I will soon show
2 you.

3
4 Mr President, there are overwhelming reasons, based on the coastal geography, why
5 equidistance is not only appropriate in this case, but is the *only* delimitation
6 methodology that could reasonably be considered appropriate. As you have seen,
7 the coastline in the vicinity of the land boundary terminus is almost perfectly straight.
8 Côte d'Ivoire acknowledges this in the Rejoinder, where it refers to the "fact" that all
9 of the base points used to construct its provisional equidistance line (*Interpretation*
10 *from French*) "... lie on a segment of perfectly straight coast."⁵ (*Continued in English*)
11 All of Côte d'Ivoire's base points, and all of Ghana's, are located on this very straight
12 portion of the coast.

13
14 The straightness of the coast in this area means there are no unusual or anomalous
15 coastal features that exert influence on the provisional equidistance line. There are
16 no coastal projections into the sea; no indentations; no coastal concavities that affect
17 the direction or course of the equidistance line; no offshore islands, cays or rocks to
18 skew the equidistance line in favour of, or in prejudice to, either Party.

19
20 As we have said, this is a textbook case for the application of equidistance
21 methodology. That explains why the Parties mutually observed an equidistance
22 boundary for five decades. If equidistance were not a feasible or appropriate starting
23 point in this case, it is difficult to imagine where else it might be justified.

24
25 Côte d'Ivoire has argued, especially in its Rejoinder, that there are factors – some
26 geographical, some not – that militate in favour of a major adjustment of the
27 equidistance line.⁶ Ghana disagrees, but that is an issue for the second stage of the
28 three-step process: whether to make an adjustment to the provisional line to account
29 for relevant circumstances. It does not affect the feasibility or appropriateness of
30 starting the process, in stage one, with the drawing of a provisional equidistance line.

31
32 The drawing of the line begins at the land boundary terminus. As Ms Brillembourg
33 has demonstrated, the Parties are agreed that the location of the LBT is at BP 55.
34 They have agreed on its precise geographic coordinates.⁷ They also agree that
35 BP 55 is slightly removed from the low water line.⁸ They have chosen different routes
36 from BP 55 to get to the low water line. As you can see here, and at tab 3, Ghana
37 has taken the shortest and most direct route. Côte d'Ivoire has chosen to continue
38 the land boundary between BP 54 and BP 55 along the same azimuth until it reaches
39 the coast, resulting in the placement of the LBT somewhat to the east of where
40 Ghana places it. Despite this difference in approach, their respective starting points
41 for the maritime boundary are so close together that there is very little effect on the
42 provisional equidistance line, as Ms Brillembourg showed you. As shown here, in this

⁵ RCI, para. 2.17.

⁶ See *ibid.*, paras 2.28-2.35 (the alleged cut-off effect), 2.36-2.42 (effect on other States), 2.43-2.48 (allegations of coastal instability), 2.49-2.61 (the so-called "Jomoro Peninsula"), 2.62-2.74 (the "exceptional concentration of hydrocarbon resources"), 3.30-3.32 (disparity in coastal lengths); CMCI, paras 7.39-7.59.

⁷ See Memorial of Ghana (4 Sept. 2015) (hereinafter "MG"), paras 2.2, 3.116, 4.13-4.14; CMCI, paras 2.29, 7.28; Reply of Ghana (25 July 2016) (hereinafter "RG"), para. 3.94; RCI, para. 2.102.

⁸ See CMCI, para. 7.23; RG, paras 3.95-3.97; RCI, para. 2.102.

1 segment the two provisional equidistance lines run in parallel with one another only
2 30 metres apart.

3
4 From the LBT, the direction of the line is determined by reference to specific base
5 points placed along the relevant coasts. This requires an identification of the relevant
6 coasts. The significance of the relevant coasts, in the first stage of the delimitation
7 process, was explained by the ICJ in the *Black Sea* case: “[I]t is necessary to identify
8 the relevant coasts, in order to determine what constitutes, in the specific context of
9 a case, the overlapping claims to these zones.”⁹

10
11 Accordingly, in the first stage of the delimitation process, we are concerned with
12 identifying the coasts, or coastal segments, that give rise to overlapping maritime
13 claims. The relevant coasts, therefore, are not synonymous with the Parties’ entire
14 coasts. This was observed by the ICJ as far back as 1982, in the *Tunisia v. Libya*
15 continental shelf case, and it continues to represent the law on this point:

16
17 it is not the whole of the coast of each Party which can be taken into
18 account; the submarine extension of any part of the coast of one Party,
19 because of its geographic situation, which cannot overlap with the
20 extension of the coast of the other, is to be excluded from further
21 consideration....¹⁰

22
23 The ICJ reiterated this more recently in its 2012 Judgment in *Nicaragua v. Colombia*:
24 “in order for a coast to be regarded as relevant for the purpose of a delimitation, it
25 “must generate projections which overlap with projections from the coast of the other
26 Party ...”.¹¹

27
28 This now appears to be a point of agreement between Ghana and Côte d’Ivoire. In
29 their Rejoinder, Côte d’Ivoire acknowledged that the relevant coasts are those that
30 face, or project onto, the area to be delimited, and that any coastal segments that
31 face away from the area to be delimited are to be treated as irrelevant.¹² We are in
32 agreement with them on that.

33
34 In applying this concept to the coasts at hand, Côte d’Ivoire determines that the only
35 part of Ghana’s coast that is relevant is the segment between the LBT and Cape
36 Three Points, which, they say, faces on to the area to be delimited. Côte d’Ivoire now
37 considers that the rest of Ghana’s coast – the portion that extends east from Cape
38 Three Points to the border with Togo – can be “disregarded”, because, in official
39 English translation:

40
41 The application of the directional projections technique therefore results in
42 the Ghanaian coast located to the east of Cape Three Points being
43 disregarded in so far as its extension could not meet that of the coastline
44 of Côte d’Ivoire¹³

⁹ *Black Sea Case*, para. 78.

¹⁰ *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18 (hereinafter “*Tunisia v. Libya*, Judgment”), para. 75.

¹¹ *Nicaragua v. Colombia*, Judgment, para. 150 (quoting *Romania v. Ukraine (Black Sea)*, Judgment, para. 99).

¹² See RCI, paras 3.17-3.29.

¹³ *Ibid.*, para. 3.26.

1
2 Ghana is in complete agreement with Côte d'Ivoire on this point. Only the portion of
3 its coast west of Cape Three Points, which faces to the south-southwest, is relevant
4 to the delimitation of the boundary in this case.¹⁴ The Parties also agree that the
5 length of Ghana's relevant coast between Cape Three Points and the LBT is
6 121 km.¹⁵ This stretch of coast continues to face south-west for another 100 km west
7 of the LBT, where it forms part of Côte d'Ivoire's relevant coast. The consequence of
8 the Parties' agreement on this point is that any correctly drawn equidistance line,
9 whether the one observed by the Parties for more than five decades as their
10 international boundary or one drawn freshly by Ghana or Côte d'Ivoire or this Special
11 Chamber, must inevitably follow a south-westerly direction. These maps are at tab 4
12 of your folders.

13
14 The Parties do not agree entirely on what constitutes Côte d'Ivoire's relevant coast.
15 In the Rejoinder, Côte d'Ivoire argues that its entire coast is relevant.¹⁶ But it is
16 undisputed that sections of Côte d'Ivoire's coast are too far from the LBT to have any
17 impact on the equidistance line, or to overlap with the seaward projection of Ghana's
18 coast. This means that they cannot be relevant. In its written pleadings Ghana
19 showed that Côte d'Ivoire's relevant coast ends near Sassandra, some 308 km west
20 of the LBT.¹⁷ Côte d'Ivoire measures its relevant coast as 510 km. However, this
21 disagreement on the length of Côte d'Ivoire's relevant coast, to which I will return in a
22 few moments, does not have any effect on the first stage of the delimitation process
23 – the drawing of a provisional equidistance line.

24
25 This is done by the application of CARIS software, the use of which is agreed by the
26 Parties. Both have used it in establishing their base points and constructing their
27 respective provisional equidistance lines. As shown here, and at tab 5, the software
28 identifies different base points for Ghana and Côte d'Ivoire, because they use
29 different charts to represent the low water line. Ms Brillembourg has discussed the
30 differences in the charts on which Ghana and Côte d'Ivoire rely, that is, the
31 differences between BA Chart 1383, the official chart agreed to by the Parties on
32 which Ghana relies, and *Carte marine* 001, which was prepared by Côte d'Ivoire
33 during this arbitration¹⁸ and made its first appearance in the Counter-Memorial. As
34 she explained, we continue to regard BA Chart 1383, which is virtually identical to
35 SHOM 7786,¹⁹ the chart that Côte d'Ivoire regarded as its official chart prior to the
36 submission of its Counter-Memorial, as the most reliable in regard to depiction of the
37 low water line in the vicinity of the land boundary terminus.

38
39 *This* is the provisional equidistance line produced by application of the CARIS
40 software to chart BA 1383 and to SHOM 7786.

41
42 We have now added the provisional equidistance line constructed by Côte d'Ivoire
43 based on its new *Carte marine*. As you can see on your screens and at tab 6, it is
44 not very different from Ghana's provisional equidistance line. *This* map, also at tab 6,

¹⁴ See MG, para. 5.80; RG, para. 3.49; RCI, para. 3.26.

¹⁵ RG, para. 3.49; RCI, para. 3.30.

¹⁶ RCI, paras 3.27-3.28.

¹⁷ MG, para. 5.80; RG, para. 3.49.

¹⁸ See RG, paras 3.11, 3.28, 3.53; RCI, para. 2.110.

¹⁹ RG, para. 3.53.

1 is Côte d'Ivoire's own depiction of the two Parties' provisional equidistance lines, and
2 it again confirms how similar they are. At 12 nautical miles, the two lines are less
3 than one nautical mile apart. At 200 nautical miles, the distance between them is
4 less than 5 nautical miles. Most notably, they both extend seaward to the south-west,
5 along very similar azimuths. Ghana's line follows an azimuth of 191.9 degrees. Côte
6 d'Ivoire says that its line follows an azimuth of 191.2 degrees.²⁰ The striking similarity
7 of these lines further underscores the appropriateness and reliability of an
8 equidistance boundary.

9

10 Notwithstanding this, Côte d'Ivoire belittles its own provisional equidistance line in an
11 attempt to discredit equidistance altogether and provide a justification for replacing it
12 with – what else? – an angle bisector. It does this by attacking the base points on
13 which its equidistance line is constructed. Côte d'Ivoire does not argue that CARIS
14 software has identified the wrong base points or provided inaccurate geographic
15 coordinates; to the contrary, it confirms the accuracy and reliability of the software in
16 that regard.²¹ It argues, instead, that even though these are the correct base points
17 on which to construct the provisional equidistance line, they are too few in number
18 and located too close to one another to produce a reliable equidistance line.²²

19

20 Our response to this argument is that Côte d'Ivoire has turned the virtue of
21 equidistance into a vice. It is the near perfect straightness of the coast in the vicinity
22 of the land boundary terminus – a straightness that extends for nearly 100 km in
23 either direction, and the complete absence of any changes of direction or anomalous
24 coastal features – that makes this such a classic case for equidistance; and it is that
25 same extended straightness and absence of turning points that accounts for the fact
26 that all the base points are in relatively close proximity to the LBT.

27

28 *This* sketch map, which is also at tab 7, was prepared by our technical experts. It
29 illustrates the point. The coastline here is perfectly straight. Because of that perfect
30 straightness, the equidistance line is a perpendicular that emanates from a single
31 point. The point is located precisely at the land boundary terminus. This point alone
32 controls the equidistance line out to 200 nautical miles, and beyond. No one could
33 reasonably argue that equidistance here is unfeasible, or inappropriate, or that it
34 produces an inequitable result because of a small number of base points. As we
35 introduce very slight changes in the coast, so that it is not perfectly straight but
36 almost so, we begin to produce more base points. However, the number and location
37 of the base points will depend on how close the coastline is to being perfectly
38 straight. Equidistance always uses the closest base points on either side of the LBT.
39 The closer the coast is to perfectly straight, the fewer base points will be needed to
40 construct the equidistance line, and the closer they will be to the LBT.

41

42 Mr President, this is science, a field of knowledge that has recently come into dispute
43 in my own home city of Washington, but not in Hamburg.

44

45 Thus, when Côte d'Ivoire complains that the provisional equidistance line is derived
46 from a small number of base points located close together – in this case along an
47 8.7 km section of the coast (or, using Ghana's base points, along a 13.4 km coastal

²⁰ CMCI, para. 7.27.

²¹ RCI, paras 3.19, 3.21.

²² See *ibid.*, paras 3.20-3.23.

1 segment)²³ – what they are actually doing is emphasizing that the coast is almost
2 perfectly straight, that it is so for a significant distance on either side of the land
3 boundary terminus, that there are very few turning points which are very modest in
4 nature, and that this is therefore an especially appropriate case for equidistance.
5 They are also confirming that their own consistent practice between 1957 and 2009,
6 in recognizing an equidistance line as the international boundary, was based on the
7 correct premise.

8
9 In any event, there are more than enough base points to construct a reliable
10 provisional equidistance line. Côte d'Ivoire identifies eight base points along the
11 relevant coast;²⁴ Ghana identifies nine. International courts and arbitral tribunals
12 have employed equidistance methodology to delimit maritime boundaries using
13 fewer base points than these. We identified these cases in our Reply: *Bangladesh v.*
14 *Myanmar*, which used only six base points in total; *Romania v. Ukraine*, where five
15 were used; and the *Anglo-French Continental Shelf* delimitation, where three base
16 points were used to determine the 170-nautical-miles western section of the
17 boundary.²⁵ The ICJ delimited the boundary between Cameroon and Nigeria using
18 only one base point for each State.²⁶

19
20 In this case, the geographical circumstances and the law make the three-step
21 process the *only* appropriate methodology for the maritime boundary. There is no
22 basis for any other delimitation method.

23
24 Mr President, this takes us to the second stage of the process: determining whether
25 there are relevant circumstances that require an adjustment to that line in order to
26 produce an equitable solution.

27
28 Unlike stage one, where the end result for both Ghana and Côte d'Ivoire is an
29 equidistance line extending from the LBT to the south-west along an azimuth
30 between 191-192 degrees,²⁷ in very close proximity to the customary equidistance
31 boundary that they both respected in practice, there are real differences between
32 them at stage two, which bear on the ultimate direction of the line. The Parties
33 disagree over relevant circumstances: whether they exist, and, if so, whether they
34 are significant enough to justify an adjustment of the equidistance line.

35
36 Côte d'Ivoire now argues that there are five different factors that justify either an
37 abandonment of equidistance altogether or a radical adjustment of the line. We say
38 that they are wrong on all five. Professor Sands and I have already demonstrated
39 this in regard to at least two of them. These are: first, the alleged cut-off of Côte
40 d'Ivoire's maritime space by the equidistance line, as a result of coastal concavity;²⁸
41 and, second, the alleged cut-off of Côte d'Ivoire's imaginary projection into the sea,

²³ See CMCI, para. 6.22; RCI, paras 2.11-2.12.

²⁴ CMCI, Figures 7.4 & 8.5.

²⁵ RG, para. 3.33 (citing *Bangladesh v. Myanmar*, Judgment, para. 266; *Romania v. Ukraine (Black Sea)*, Judgment, paras 141, 148; *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (United Kingdom v. France)*, Decision of 30 June 1977, 18 UNRIAA 3 (1978), pp. 128-129 (Annex (The Boundary-Line Chart and the Tracing of the Boundary Line: Technical Report to the Court by H.R. Ermel)).).

²⁶ *Cameroon v. Nigeria*, Judgment, para. 292.

²⁷ See CMCI, para. 7.27; RG, para. 3.56.

²⁸ See RCI, paras 2.28-2.35.

1 caused by the inconvenient presence of Ghanaian territory – the so-called
2 (*Interpretation from French*) “strip of land” – (*Continued in English*) that prevents
3 Côte d’Ivoire from having a coast in that area.²⁹ We submit there is no need for
4 further discussion of either of these non-existent or irrelevant factors.

5
6 None of the other three factors, newly alleged by Côte d’Ivoire to be relevant
7 circumstances, fares any better. The three factors are: the alleged disparity in
8 lengths of the Parties’ relevant coasts; the alleged impacts on third States; and the
9 presence of hydrocarbons in the disputed area. I will address them in turn.

10
11 In regard to the lengths of the Parties’ relevant coasts, Côte d’Ivoire produced *this*
12 map in their Rejoinder, which is also at tab 8 of your folders. According to our
13 friends, the relevant coasts are 510 km for Côte d’Ivoire and 121 km for Ghana - a
14 ratio of 4.2:1.³⁰ We say that they are right in regard to Ghana’s relevant coast, but
15 that they have been far too generous to themselves with their own, because their
16 510 kilometres include extensive sections of coast whose projections do not overlap
17 with Ghana’s coastal projections and are far too removed from the LBT to influence
18 the equidistance line or otherwise be considered relevant.

19
20 In the Memorial, Ghana calculated the relevant coasts as shown *here*, also at tab 8:
21 308 km for Côte d’Ivoire, and 121 km for Ghana- a ratio of 2.55:1.³¹ Côte d’Ivoire
22 exaggerates its relevant coast to manufacture a more favourable ratio in order to
23 artificially create an alleged relevant circumstance.

24
25 However, all of this is to no avail. Regardless of whether the ratio is 2.55:1, as
26 Ghana says, or 4.2:1, as Côte d’Ivoire contends, the difference in coastal lengths is
27 not great enough to constitute a relevant circumstance that justifies adjustment of the
28 equidistance line at the second stage of the process. The most appropriate place for
29 consideration of a disparity in relevant coastal lengths is the third stage. As the ICJ
30 explained in the *Black Sea* case:

31
32 the relevant coasts need to be ascertained in order to check, in the third
33 and final stage of the delimitation process, whether any disproportionality
34 exists in the ratios of the coastal lengths of each State and the maritime
35 areas falling on either side of the delimitation line.³²

36
37 Notwithstanding this very clear statement in the Court’s 2009 judgment of the
38 approach to be followed, there have been cases in which courts or tribunals have
39 apparently jumped the gun and adjusted the equidistance line on the basis of
40 significant coastal length disparity ahead of performing the disproportionality test at
41 the third stage of the process, but those cases can easily be distinguished from this
42 one. The other cases were decided either before the three-stage process was
43 developed or the disparities in coastal lengths were far greater than the one here.

44
45 In particular, both *Libya/Malta*, decided in 1985, and *Gulf of Maine*, decided in 1982,
46 pre-date the acceptance of the three-stage process; so does the *Jan Mayen* case,

²⁹ See *ibid.*, paras 2.49-2.50.

³⁰ RCI, Sketch Map D3.5.

³¹ MG, para. 5.80.

³² *Romania v. Ukraine (Black Sea)*, Judgment, para. 78.

1 decided in 1993. But, more important, in *Libya/Malta* the disparity in coastal lengths
2 was 8:1 and in *Jan Mayen* more than 9:1.³³

3
4 More recently, coastal length disparities of 8.2:1 were considered relevant
5 circumstances by the Arbitral Tribunal in *Barbados v. Trinidad and Tobago*³⁴ and by
6 the ICJ in *Nicaragua/Colombia*.³⁵ As the Court explained in the latter case, where it
7 cited the *Black Sea Judgment*: “[I]t is normally only where the disparities in the
8 lengths of the relevant coasts are substantial that an adjustment or shifting of the
9 provisional line is called for.”³⁶

10
11 In the *Black Sea* case, the ICJ determined that a coastal length disparity of only
12 2.8:1 was *not* substantial enough to warrant adjustment of the provisional
13 equidistance line, and rejected Ukraine’s argument that it was a relevant
14 circumstance.³⁷ This ratio is comparable to the coastal length disparity between
15 Ghana and Côte d’Ivoire.

16
17 The case law thus provides no justification for treating the comparatively modest
18 disparity between Ghana and Côte d’Ivoire as a relevant circumstance, or for
19 adjusting the provisional equidistance line. Instead, the question of coastal length
20 disparity should be addressed in the third stage of the delimitation process, where
21 the ratio of coastal length is compared to the ratio of maritime area allocated by the
22 equidistance line to determine whether the result is grossly disproportionate.
23 Ms Singh will address this in the afternoon session.

24
25 I turn now to Côte d’Ivoire’s next alleged relevant circumstance, the impact on third
26 States. With respect, Côte d’Ivoire has made an entirely implausible argument.
27 However the Special Chamber delimits the boundary between Ghana and Côte
28 d’Ivoire, this will be *res inter alios acta* in regard to neighbouring States, including
29 Togo, Benin and Liberia.³⁸ This well-established rule of international law is reflected
30 in ITLOS’s own Statute in article 33(2). This is virtually identical to article 59 of the

³³ *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, Judgment, I.C.J. Reports 1985, p. 13 (hereinafter “*Libya v. Malta*, Judgment”), para. 68; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Reports 1993, p. 38 (hereinafter “*Denmark v. Norway (Jan Mayen)*, Judgment”), para. 61.

³⁴ *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, decision of 11 April 2006*, 17 RSA, pp. 147-251, paras 326-327.

³⁵ *Nicaragua v. Colombia*, Judgment, para. 211.

³⁶ *Ibid.*, para. 210 (citing *Canada v. United States (Gulf of Maine)*, Judgment, para. 185; *Romania v. Ukraine (Black Sea)*, Judgment, para. 164).

³⁷ *Romania v. Ukraine (Black Sea)*, Judgment, paras 104, 162, 168.

³⁸ See *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011, p. 420, para. 72 (recognizing that maritime delimitation treaties between two States “under the principle *res inter alios acta*, neither confer any rights upon a third State, nor impose any duties on it. Whatever concessions one State party has made to the other shall remain bilateral and bilateral only, and will not affect the entitlements of the third State”); *ibid.*, paras 50, 72-75 (rejecting Honduras’s argument that “without its participation as an intervening State, the decision of the Court may irreversibly affect its legal interests if the Court is eventually to uphold certain claims put forward by Nicaragua” because in light of, *inter alia*, the principle of *res inter alios acta*, “Honduras has failed to satisfy the Court that it has an interest of a legal nature that may be affected by the decision of the Court in the” maritime boundary delimitation between Nicaragua and Colombia, even though a tripoint between the three States’ maritime boundary was within “the perceived rectangle ... under consideration...”).

1 ICJ's Statute.³⁹ The ICJ was called upon to apply that rule in *Nicaragua v. Colombia*,
2 when it rejected the application of Costa Rica to intervene because the judgment in
3 that case could have no impact on Costa Rica's maritime claims. According to the
4 Court, Costa Rica "ha[d] not demonstrated that it ha[d] an interest of a legal nature
5 which may [have been] affected by the decision"⁴⁰ because

6
7 [t]he Court, following its jurisprudence, when drawing a line delimiting the
8 maritime areas between the Parties to the main proceedings, will, if
9 necessary, end the line in question before it reaches an area in which the
10 interests of a legal nature of third States may be involved.⁴¹

11
12 Costa Rica at least had reason to be concerned because the southward extension
13 of the Nicaragua/Colombia boundary could have penetrated, or at least reached,
14 the maritime area it claimed for itself.⁴² The Court's solution, in addition to
15 reaffirming that Costa Rica's legal rights would not be affected by its judgment, was
16 to stop the delimitation line short of the area claimed by Costa Rica.⁴³ Costa Rica's
17 interests were thus protected.

18
19 No such measures are required here. As shown on your screen and at tab 9, the
20 customary equidistance boundary – or any new provisional equidistance line
21 between Ghana and Côte d'Ivoire – does not cut across, or even reach, any
22 maritime area claimed by any other State. The boundary adjudicated here could
23 have no conceivable impact on the rights or claims of any other State.

24
25 Côte d'Ivoire argues that an equidistance boundary in this case would establish a
26 precedent. A precedent for what? For a delimitation between two States that have
27 very different geographical circumstances from those of Ghana and Côte d'Ivoire?
28 That simply cannot be true. As ITLOS observed in *Bangladesh v. Myanmar*:

29
30 [T]he issue of which method should be followed in drawing the maritime
31 delimitation line should be considered in light of the circumstances of each
32 case. ... [It] should be one that, under the prevailing geographic realities
33 and the particular circumstances of each case, can lead to an equitable
34 result.⁴⁴

35
36 Is ITLOS, or the ICJ, or an Annex VII arbitral tribunal, in a future case, likely to
37 confuse the geographical situation presented here with one involving Togo or Benin
38 or Liberia, or to automatically adopt an equidistance line as a maritime boundary for
39 them simply because one has been adopted between Ghana and Côte d'Ivoire? Of
40 course not. One case that is decided on its own particular geographical
41 circumstances does not control what happens in another.

42
43 In the Annex VII arbitration between Guyana and Suriname, Guyana sought to
44 bolster its claim for an equidistance boundary by observing that Suriname had

³⁹ See Statute of the International Court of Justice, Art. 59.

⁴⁰ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Costa Rica for Permission to Intervene, Judgment, I.C.J. Reports 2011, p. 384, para. 90.

⁴¹ *Ibid.*, para. 89.

⁴² *Ibid.*, para. 69.

⁴³ See *Nicaragua v. Colombia*, Judgment, para. 237.

⁴⁴ *Bangladesh v. Myanmar*, Judgment, para. 235.

1 attempted to delimit its other maritime boundary, with French Guiana, based on
2 equidistance. Suriname objected, contending that its delimitation with French Guiana
3 to the east was “totally irrelevant” to its delimitation with Guyana to the west,
4 because it “took place in a different locale and the relevant circumstances are
5 notably different.” The tribunal agreed with Suriname that its delimitation with French
6 Guiana was “not relevant to the present case”.⁴⁵

7
8 Mr President, I can now turn to the last relevant circumstance alleged by Côte
9 d’Ivoire, which is what it calls the “exceptional concentration of hydrocarbons in that
10 area”.⁴⁶ However, it is approaching one o’clock and if you agree, Mr President, this
11 might be an appropriate time for me to pause and then continue to the completion of
12 my presentation after the break.

13
14 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):
15 Thank you, Mr Reichler. It is indeed four minutes to one. We will have a two-hour
16 break and we will continue with Mr Reichler’s statement from three o’clock this
17 afternoon.

18
19 (Lunch break)

⁴⁵ *Guyana v. Suriname*, para. 391.

⁴⁶ RCI, para 2.62.