

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2017

Public sitting

held on Monday, 13 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*): Good
2 morning, ladies and gentlemen. The Special Chamber is meeting today to resume its
3 work. We are going to begin the second round of oral pleadings and today will be
4 entirely devoted to Ghana, to its pleadings in the dispute concerning the delimitation
5 of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean.
6

7 So I was saying that this morning and this afternoon will be given over to Ghana.
8 This morning we will have a break at 11.30, as usual for the coffee-break and
9 resume at 12 o'clock, to end at 1 o'clock.

10
11 I shall now give the floor immediately to Professor Philippe Sands, who will fire first!
12 Professor Sands, you have the floor.
13

14 **MR SANDS** (*Interpretation from French*): Thank you very much, Mr President.
15

16 (*Continued in English*) Before I start my oral argument, last week Elihu Lauterpacht
17 passed away at the ripe old age of 88. He had of course been involved in the
18 negotiations of the 1982 Convention and appeared before this Tribunal and over
19 50 years before the International Court of Justice. I had the great fortune and
20 privilege to be a pupil of his, and he came to be my mentor and later a friend, and it
21 was from him more than anyone that I learned about advocacy. I therefore wish,
22 through you and your colleagues, to pass on my sincere condolences and those of
23 all in this room who knew him – Sir Michael, Professor Pellet and I am sure many of
24 you – to his widow Cathy, his children, his family and his friends. I thank you very
25 much for that, Sir.
26

27 (*Interpretation from French*) Mr President, distinguished Members of the Special
28 Chamber, the Parties have now presented to you two rounds of written pleadings
29 and one complete round of oral argument over four days, all of this after a phase of
30 proceedings devoted to provisional measures. The facts of the case are well known
31 to you and we do not intend to present them to you once again. Furthermore, you
32 have exceptional expertise in the legal field before us and you certainly do not need
33 the Parties to instruct you in this matter. This Chamber possesses huge experience
34 in terms of maritime delimitation and each of you is fully aware of the relevant case
35 law in this matter.
36

37 As such, our role as counsel during this second round of oral argument will be to
38 assist you as far as is possible. We will try to deal with the points of the case that you
39 still need to answer. What that means in concrete terms is that we are going to look
40 at the core questions, questions which have now very clearly emerged. Our Ivorian
41 friends have just offered you a smokescreen and a few red herrings: bisector lines,
42 regional problems, unequal access to resources, to name but a few. We have noted,
43 as I am quite sure you have, the numerous points on which they said virtually
44 nothing. In particular, they found nothing to say to you with respect to Côte d'Ivoire's
45 compliance with a customary boundary following an equidistance line as from its
46 accession to independence all the way through to 2009. Today we will revisit these
47 silences.
48

49 But, for the time being, the points which truly divide the Parties and are put to you for
50 your resolution are clear and can be identified by three questions.

- 1
2 - First, do we have here an existing maritime boundary?
3
4 - Secondly, if that is not the case, where is the provisional equidistance line?
5
6 - Thirdly, should adjustments be made to this line if necessary?
7

8 My colleagues and I will deal with these questions *seriatim* but, if you will allow me, I
9 will dwell on a few preliminary considerations.

10
11 First, let us look at this angle bisector line. We noted that Professor Pellet dealt only
12 with the legal aspects of this claim, and that in rather abstract fashion. He then
13 passed the poisoned chalice on to his colleague. He said, “Mr Pitron will show why
14 this method is our preferred method”,¹ a task which was obviously too difficult for
15 Professor Pellet to swallow.

16
17 Mr Pitron then merely repeated the contents of Côte d’Ivoire’s written pleadings
18 without taking the trouble to consider the responses made by Ghana at the
19 beginning of last week to the Ivorian Rejoinder. As we have already dealt amply with
20 the angle bisector, it is no longer necessary to revisit all those arguments that we
21 have already set out with respect to the case law and applicable principles.² It is
22 clear that the argument of the angle bisector line has no merit whatsoever in this
23 case. Our opponents assert that the coastlines are straight and that this factor
24 justifies recourse to the bisector. As we have set out, it is not so. Our opponents
25 assert that there are too few base points and that these base points are too close
26 together.³ All you have to do is look at the case law; look at *Cameroon v. Nigeria* to
27 note that this once again is inaccurate.⁴ Our opponents assert that considerations of
28 a regional nature have to dictate the choice for the bisector line, but they do not
29 advance any convincing case law, any precedent, to support this assertion. Mr Pitron
30 sings the praises of the arbitral award in the *Guinea v. Guinea Bissau* case. It seems
31 that he does not know that his colleague Professor Pellet had said just a little earlier
32 in pleadings about this arbitral award that it was not “well grounded” and was not
33 Professor Pellet’s “cup of tea.”⁵

34
35 Maître Pitron will have reminded you that some of Ghana’s counsel, in those cases
36 which opposed Bangladesh against Myanmar and India, had relied on a number of
37 bilateral agreements that Ghana itself adduced to support the bisector line
38 argument.⁶

39
40 However, Mr President, this argument, as you well know, was reduced to nothing in
41 those two cases and, if I can allow myself a minor comment here, quite rightly so.
42 The arbitral tribunal in *Bangladesh v. India* did not mince its words. It observed that
43 the angle bisector method and that of equidistance/relevant circumstances are both

¹ TIDM/PV.17/A23/5, p.17: 36; ITLOS/PV.17/C23/5, p.14:41 (Mr Pellet).

² ITLOS/PV.17/C23/2, pp. 23-26; TIDM/PV.17/A23/2, pp.28-33 (Mr Sands).

³ TIDM/PV.17/A23/5, p. 19; ITLOS/PV.17/C23/5, p.16 (Mr Pitron).

⁴ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, 2002 I.C.J. Reports 2002, p. 303, para. 292.

⁵ TIDM/PV.17/A23/5, p.14; ITLOS/PV.17/C23/5, p.12 (Mr Pellet).

⁶ TIDM/PV.17/A23/5, p.20; ITLOS/PV.17/C23/5, p.12 (Mr Pitron).

1 based on a geometrical approach. After saying that, the Tribunal firmly ruled in
2 favour of the latter, since it offered, in the view of the arbitrators, the advantage of
3 (*Continued in English*) “clearly separate[ing] the steps to be taken and is thus more
4 transparent.” (*Interpretation from French*) The tribunal continued by setting out that,
5 given that it was not based on objective geometrical criteria, (*Continued in English*)
6 “the angle-bisector method involves subjective considerations [and offers] more than
7 one way of depicting the relevant coast with straight lines.”⁷

8
9 (*Interpretation from French*) Maître Pitron demonstrated the extent to which this risk
10 of subjectivity is a real risk in cutting off from Ghana’s coasts substantial parts of its
11 land territory and, in one fell swoop, adding more than 15,000 square kilometres to
12 the land territory of Côte d’Ivoire.

13
14 Our opponents have submitted no new element supporting their argument of the
15 alleged coastal instability. They were incapable of showing the least significant
16 difference between the coast as represented on British charts from the 1840s and
17 that which appears on those charts recently prepared by Côte d’Ivoire with the
18 assistance of Gide-Loyel. Maître Pitron attempted to convince you of the instability of
19 the Aby lagoon, but he carefully omitted to point out that this lagoon is 20-odd
20 kilometres to the west of the Ivorian base point furthest from BP55. Maître Pitron
21 explained to you that this lagoon represented “one of the most striking examples of
22 the coastal instability of Côte d’Ivoire” and asserted to you, pushing the boat out
23 further still, that “the instability of the mouth of this lagoon ... can perfectly well be
24 transposed to the area around BP55”.⁸

25
26 However, he submits no proof of this similarity. If instability of the coasts of
27 Bangladesh and India was insufficient to justify setting aside the method of
28 equidistance/relevant circumstances, we really cannot see – really not – on what
29 basis our opponents with the slightest credibility can argue that there is any
30 instability near one of the base points or parts of the coast used by Ghana or Côte
31 d’Ivoire to identify these base points.

32
33 Mr President, distinguished Members of the Special Chamber, in the case of
34 *Bangladesh v. Myanmar*, four of you underscored (*Continued in English*) “the need
35 to avoid subjective determinations.”⁹ (*Interpretation from French*) That was the
36 reason why you opted for the equidistance/relevant circumstances method in that
37 case. Ghana is convinced that you want to avoid all subjectivity in this case too, and
38 that is why I said last week that “any approach other than equidistance would put the
39 Tribunal for the Law of the Sea in a position as unreasonable as it is unlikely.”¹⁰

40
41 Now, I chose my words with care; and it may be because I said them in French that
42 Sir Michael Wood got it wrong when he paraphrased me, but I am convinced that it
43 was an innocent mistake.¹¹

⁷ *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, UNCLOS Annex VII Tribunal, Award of 7 July 2014, para. 343.

⁸ TIDM/PV.17/A23/5, p.6:35; ITLOS/PV.17/C23/5, p.6:19-20 (Mr Pitron).

⁹ *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal, Judgment of 14 March 2012, ITLOS Reports 2012*, para. 231.

¹⁰ ITLOS/V.17/C23/1, p.10:25-27; TIDM/PV.17/A23/1, p.11:45-47 (Mr Sands).

¹¹ ITLOS/PV.17/C23/4, p.30:40; TIDM/PV.17/A23/4, p.34:18 (Mr Wood).

1
2 Let me come back to my questions. The Parties put to you three lines of
3 equidistance. The first is the customary boundary following an equidistance line.
4 Ghana roundly asserts that this line is well established and has been accepted
5 without the slightest deviations by the Parties over five decades. This is an extant
6 boundary based on an agreement. The second option is Ghana's provisional
7 equidistance line. The third one is that which Côte d'Ivoire has been able to draw
8 with patent ease, confirming in the same breath how ridiculous the bisector approach
9 is. The Chamber could, of course, come up with a fourth option by drawing its own
10 provisional equidistance line. Mr President, the Chamber could also opt for other
11 approaches to equidistance, for example combining the different lines, like the ICJ's
12 judgment did in the *Peru v. Chile* case, about which our opponents have remained
13 remarkable discreet.¹²

14
15 Let us stick to the first three options. We noted that counsel for Côte d'Ivoire have
16 had ample recourse to a specific sketch map or variations thereof. *This* sketch map
17 shows the real questions that confront you, by showing the customary equidistance
18 line close to the Tano West 1 well, drilled in 1999 in a block granted to the Dana
19 Company by Ghana in 1996. Côte d'Ivoire never protested about the award of this
20 concession either with regard to preparatory activities or the drilling of the well. The
21 sketch map shows the customary boundary, which leaves the entirety of the Tano
22 West 1 oilfield on Ghana's side. The two provisional equidistance lines, however,
23 divide this field between Côte d'Ivoire and Ghana.

24
25 However, what this sketch map does not show is the limits of the Ghanaian
26 concessions on the basis of which these wells were drilled in 1999 and 2002 without
27 any protest on the part of Côte d'Ivoire. Let us just look at the limits of this
28 concession granted to Dana Petroleum. You can now see that in green. Let us then
29 add the limits of the block granted by Côte d'Ivoire to the west of the boundary
30 following the same equidistance line. This is the concession that you can now see,
31 granted by Côte d'Ivoire in 2002 to ...? To whom? – To Dana Petroleum, the same
32 company to which a block had been granted on the Ghanaian side of the customary
33 boundary following the same equidistance line.

34
35 Now this sketch map, as you can see, illustrates the key question before you: does
36 the mutual respect shown by the two States with respect to the customary boundary
37 following the equidistance line and their recognition of it constitute behaviour
38 resulting in legal effects? If the answer to this is "yes", as Ghana argues because of
39 the existence of a tacit agreement, we do not need to go any further. Sir Michael
40 Wood reminded you repeatedly that the customary boundary following the
41 equidistance line was to the subject of a mutual application up to a point 87 M from
42 the coasts.¹³ That is the limit of the converging practice of the Parties with respect to
43 oil concessions, exploration activities, seismic surveys and drilling of wells, and, as
44 the case may be, oil extraction. I will say more about this later.

45
46 Mr President, maybe this is the right time to revisit the question posed by your
47 Chamber with respect to fishing arrangements between Côte d'Ivoire and Ghana.

¹² *Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014*, p. 3.

¹³ ITLOS/PV.17/C23/4, p.18:42, TIDM/PV.17/A23/4 p.21:37; ITLOS/PV.17/C23/6, p.12:4, TIDM/PV.17/A23/6 p.17:18 (Mr Wood).

1 Both Parties agree that there are none, given that the agreement of 1988, mentioned
2 last week by Côte d'Ivoire, is not in force. On Tuesday last, Mr Tsikata pointed out
3 the existence of an arrangement with a private company and, as Côte d'Ivoire
4 produced new evidence in response to your question and as Mr Wood pointed out
5 that Mr Tsikata had not produced any document,¹⁴ now is the time to do it. Ghana is
6 bound by an agreement with a private company – CLS – for the monitoring of fishing
7 activities, and the same applies to Côte d'Ivoire; it is the same company. This
8 company has an internet site to which both Ghana and Côte d'Ivoire have access.

9
10 You can see on your screens a shot of this site, taken, not 20 years ago but two
11 days ago, on Saturday, 11 February 2017 at 18h30; you can see the exact details at
12 the top right. You can see the coasts of Ghana and Côte d'Ivoire with a
13 representation of different vessels that are being monitored by the system, and you
14 can also see a boundary dividing the maritime areas of the two States. This
15 boundary corresponds to the boundary based on an equidistance line defended by
16 Ghana. It seems perfectly acceptable to both the Ghanaian and Ivorian authorities
17 with respect to their relations with CLS. The same goes for the boundary line
18 appearing on the map reproduced in the report concerning the application of the
19 fishing agreement between Côte d'Ivoire and the European Union, which Mr Tsikata
20 told you about last week. Mr Wood criticized this document, pointing out that it came
21 from a private source and that it mentioned that the boundary was not the subject of
22 a formal agreement. Those two points are correct, but the most important finding
23 with respect to this document, which you can see on the screen now, is surely that it
24 confirms that it is indeed this limit, following the customary equidistance line, that the
25 fishing vessels of the European Union and CLS consider as marking the eastern
26 maritime boundary of Côte d'Ivoire, without Côte d'Ivoire apparently being over-
27 troubled by this. Once again, our opponents have difficulty in distinguishing the
28 essential from the merely accessory.

29
30 Mr President, distinguished Members of the Special Chamber, it is the converging
31 and perfectly consistent application and recognition of a shared boundary that makes
32 this case so unique. There are no blank spaces here, or even concessions left
33 fallow. This case is one of the rare cases where an international court has been
34 called upon to settle a dispute over an area characterized by such intense activities
35 conducted over such a long time – an area with respect to which a judicial decision
36 could have such meaningful and possibly disruptive consequences. Ghana is
37 therefore persuaded that, as was the case in your Order prescribing provisional
38 measures, the Special Chamber will be especially careful to proceed with the
39 greatest possible prudence before calling into question the multiple extant
40 arrangements. Mr Alexander will revisit this point in a little while.

41
42 Regarding the Tano West 1 field and all the other concessions and wells, it would
43 only be if the Chamber were to decide that there was no tacit agreement or
44 customary boundary following an equidistance line that the Chamber would then
45 need to take another way, namely that of a provisional equidistance line. It would
46 only be if you were to feel it necessary to do this that you would have to consider
47 possibly adjusting that line. Mr Reichler will revisit this question as well this
48 afternoon. However, let me dwell briefly on this question of adjustment, since Côte

¹⁴ ITLOS/PV.17/C23/4, p.18:21; TIDM/PV.17/A23/4, p.21:37 (Mr Wood).

1 d'Ivoire has asserted that the need to come to an equitable solution under article 83
2 of the Montego Bay Convention requires the line to be shifted eastwards.

3
4 What are the factors that need to be taken into account to come to an equitable
5 solution? To reply to this question, let me start by expressing my real gratitude to my
6 close friend Professor Pellet for reminding us of the passage from the arbitral award
7 between *Barbados v. Trinidad and Tobago*, which he quoted with enthusiasm, an
8 enthusiasm shared by Ghana. For me, Professor Pellet has for many years been
9 Mr Liberty, Equality and Fraternity; but, as of this day, he will also be for me
10 Mr Equity, Stability and Certainty. In the case of *Barbados v. Trinidad and Tobago*,
11 the tribunal asked how it should (*Continued in English*) "exercise judicial discretion in
12 order to achieve an equitable result." (*Interpretation from French*) The tribunal
13 concluded that it could do that by opting for a line

14
15 (*Continued in English*)

16 that is, in its view, both equitable and as practically satisfactory as possible,
17 while at the same time in keeping with the requirements of achieving a
18 stable legal outcome. Certainty, equity and stability are thus integral parts
19 of the process of delimitation.¹⁵

20
21 (*Interpretation from French*) Does Côte d'Ivoire seek to apply these principles? Alas
22 no. Quite the contrary, Côte d'Ivoire promotes a solution which very clearly leads to
23 uncertainty, instability and inequity. Côte d'Ivoire is inviting the Chamber to take into
24 consideration what Professor Pellet calls "an exceptional concentration of
25 hydrocarbons",¹⁶ abundant wealth and riches, which, he tells us, would only be
26 accessible to Ghana if the customary boundary following an equidistance line was
27 enshrined. I have to say that when you hear that, it brings tears to the eyes of the
28 most hardened counsel. The manifest injustice of geography makes us weep, does it
29 not?

30
31 The answer, of course, is that it does not, not in this particular case in any event.
32 You have all the written pleadings and have seen all the annexes, so you are
33 perfectly informed of the geological reality in the area and of the real distribution of
34 resources in hydrocarbons, far removed from the description that our opponents
35 have made. The reality is that recent oil discoveries in Ghanaian waters were found
36 in the eastern extremity of an extended geological basin that is often called the Tano
37 Ivorian basin, and it is very often just referred to as the "Ivorian basin" or even the
38 "basin of Côte d'Ivoire". This basin, which was formed a very long time ago, has a
39 breadth of several hundred kilometres and covers approximately 126,000 square
40 kilometres. It extends from Liberia in the west to Ghana in the east, and the major
41 part of this basin extends from the Ivorian side of the existing maritime boundary. So
42 why did Professor Pellet not tell you all of that?

43
44 (*Continued in English*) Let us look at a picture of the basin. Let us look at the picture
45 provided by Côte d'Ivoire back in 2005,¹⁷ superimposing what Professor Pellet
46 actually showed you. It is entitled – this little picture; sorry, the large picture is

¹⁵ ITLOS/PV.17/C23/5, p.9; TIDM/PV.17/A23/5, p.11 (Mr Pellet).

¹⁶ TIDM/PV.17/A23/5, p.8:32-33; ITLOS/PV.17/C23/5, p. 8:8-9 (Mr Pitron).

¹⁷ Société Nationale d'Operations Pétrolières de la Côte d'Ivoire (PETROCI), *Deepwater Opportunities in Côte d'Ivoire* (May 2005). Ghana PM, Vol. IV, Annex 8.

1 entitled – “Deepwater Opportunities in Côte d’Ivoire” and, as you can see, we have,
2 for convenience, superimposed the existing boundaries with Ghana and Liberia and
3 the boundary that they are claiming in this case. As you can see, almost the entirety
4 of the Tano-Ivorian basin lies directly south of Côte d’Ivoire’s mainland, in Ivorian
5 waters. For reasons unknown, Professor Pellet focused only on the Tano end of the
6 basin; he forgot entirely about the Ivorian side.¹⁸ Maybe he forgot too about his own
7 annex, in particular Annex 191, submitted with Côte d’Ivoire’s Reply. We commend
8 you to read the academic article there. It states, “most of the countries along the Gulf
9 of Guinea stretch are producers of hydrocarbons”, and then I emphasize, “Most of
10 these hydrocarbons are produced from the deep Ivorian basin of which the Tano
11 basin is considered to be its eastern extension”.¹⁹

12
13 It is Côte d’Ivoire that has most of the hydrocarbons, but it seems that for Côte
14 d’Ivoire that is not enough, and now they want to have more.

15
16 Having been selective in the matter of geology – (*Interpretation from French*)
17 “geomorphological circumstances which are quite exceptional”, (*Continued in*
18 *English*) as Professor Pellet said of the so-called Tano basin²⁰ – he went even
19 further on the ghastly consequences for Côte d’Ivoire of this terribly unfair geology.
20 Giving effect to Ghana’s case, Professor Pellet told you, (*Interpretation from French*)
21 “would mean that one of the Parties is deprived completely ... [of] any access to the
22 natural resources off those coasts.”²¹

23
24 (*Continued in English*) I must confess that we were pretty surprised when we heard
25 those words spoken, so I took very great care to read them in the transcript. Côte
26 d’Ivoire and Professor Pellet told you that there was a total deprivation of natural
27 resources found off its coast: a total deprivation would be the consequence of this
28 Special Chamber giving effect to the existing boundary or an unadjusted other
29 equidistance line, and that would be seriously unfair, would it not? Perhaps it would,
30 but not as a matter of the law of the sea. However, the bigger point is that what he
31 said is totally untrue.

32
33 Côte d’Ivoire summarized the reality of the situation – its own oil activity – in 2005, as
34 follows: “more than 178 wells, for exploration and development, have been drilled in
35 Côte d’Ivoire’s sedimentary basin leading to a cumulative production of 90 million
36 barrels of oil and 400 [m]illion cubic feet of gas.”²² That was back in 2005. There has
37 been a lot more since then, as we will see. 90 million is a lot more than Ghana has
38 ever had access to.

39
40 Let us look at the scale of oil production in Côte d’Ivoire over the years before this
41 dispute arose. As you can see from this graph on the left, oil production in Côte
42 d’Ivoire was around 20,000 barrels a day in 1996. It rose to about 60,000 barrels a
43 day in 2006, and reached a peak of 70,000 barrels a day in 2009. To reach that level

¹⁸ See RCI, paras 2.86-2.91.

¹⁹ Tetteh, The Cretaceous Play of Tano Basin, Ghana, *International Journal of Applied Science and Technology*, Vol. 6, No 1 (February 2016), p. 1. RCI, Vol. III, Annex 191.

²⁰ ITLOS/PV/C23./6, p.9, lines 29-30; ITLOS/PV.17/C23/6 p.8:27-28 (Mr Pellet).

²¹ TIDM/PV/A23./6, p.10:27-30; ITLOS/PV.17/C23/6, p.8:28-31 (Mr Pellet).

²² Société Nationale d’Operations Pétrolières de la Côte d’Ivoire (PETROCI), *Deepwater Opportunities in Côte d’Ivoire* (May 2005), p. 7. Ghana PM, Vol. IV, Annex 8.

1 of production, Côte d'Ivoire brought in foreign investors, and they came, amongst
2 other reasons, because Côte d'Ivoire was able to offer and rely on a stable, agreed
3 boundary, one it knew was fully respected by Ghana. It is worth adding,
4 Mr President, that the Prime Minister of Côte d'Ivoire, and Mr Toungara himself,
5 have recently said that they planned to step up production to 200,000 barrels per
6 day.
7

8 I pause here for a moment to remind you, as you digest a chart which shows
9 impressive activity, that this is the same period during which Maître Kamara told you
10 that Côte d'Ivoire was in such a state of *crise profonde* that it could not address
11 matters of delimitation, and could not be expected to protest any of the activities of
12 Ghana in granting concessions, authorizing exploration and authorizing drilling.²³
13 The claim is totally not credible, and it is also unsupported by a shred of evidence
14 before you.
15

16 Let us now compare what was happening on the Côte d'Ivoire side with what was
17 going on on Ghana's side of the maritime boundary in the same period. As you can
18 see, from 1995 until the period when the dispute began, in early 2009, Ghanaian
19 production was minimal, certainly less than 10,000 barrels a day and probably only
20 about 1000 barrels a day. In the decade before 2009, relying on the benefit of an
21 agreed boundary, Côte d'Ivoire was producing up to 70 times as much oil every day
22 as Ghana: every day, 365 days a year, for more than ten years. Did Ghana make a
23 fuss about the agreed boundary? It did not. Ghana respected the geography, the
24 geology and the boundary. Yet now Côte d'Ivoire seeks to present itself to this
25 Special Chamber as, somehow, a poor relation to Ghana, a resource-deprived
26 country for which equity requires that it, Côte d'Ivoire, should now have access to
27 petroleum resources located on Ghana's side of the existing boundary. Côte
28 d'Ivoire's lawyers come before you with a legal begging-bowl. They ask you to make
29 a massive change to the existing boundary so that they can add to what they already
30 have in the Tano-Ivorian basin. We listened with incredulity to what you were being
31 told. If anyone has a "fairness" claim in this room to claim new quantities of
32 hydrocarbons – if such a thing were recognizable in law, which it is not – it is surely
33 Ghana.
34

35 Mr President, the principles identified by the *Barbados/Trinidad and Tobago* tribunal
36 are fully applicable to this case, but they operate entirely in favour of maintaining the
37 *status quo*, in support of the existing boundary, not against it. If the Special Chamber
38 departs from the existing maritime boundary, the consequences will be very
39 significant indeed. The concessions that have been granted by Ghana will be
40 undermined, and issues may arise under the contracts that underpin them and which
41 have been entered into in consequence of them. How would that add to certainty and
42 stability? How could it be an equitable solution for Côte d'Ivoire, having known about,
43 accepted and never once protested Ghanaian concessions and activities based on
44 an agreed maritime boundary to now turn around and say to this Court that it no
45 longer recognizes the boundary? How could it be equitable where Côte d'Ivoire has
46 relied on the same boundary to develop its own oil industry? Those questions
47 answer themselves.

²³ ITLOS/PV.17/C23/4, pp.9:45-10:37, 12:48-13:9; TIDM/PV.17/A23/4, pp.11:16-12:18, p.15:15-27 (Mr Kamara), ITLOS/PV.17/C23/4, p.33 (Ms Miron); TIDM/PV.17/A23/4 p.37-38 (Ms Miron).

1
2 Before concluding, let me say something briefly about the alleged violation of
3 article 83. Côte d'Ivoire's argument on sovereign rights involves another astonishing
4 leap. It starts from the uncontroversial proposition about the exclusive nature of a
5 State's rights over its maritime territory, and the declarative nature of judicial
6 proceedings of this kind. So far, so good. Then comes the unprecedented leap into
7 the void: you, the Special Chamber, should hold Ghana to have violated international
8 law in respect of any these activities which Ghana has carried out in its territory
9 which your judgment will (improbably, we say) assign to Côte d'Ivoire.

10
11 You will have seen in the written pleadings, and in Ms Macdonald's oral argument,
12 that Ghana declines to follow Côte d'Ivoire down this legal path. Professor Miron
13 accuses Ghana of failing to draw proper conclusions from the nature of sovereign
14 rights; but if there is a failure here, it is that of the International Court of Justice and
15 Annex VII arbitral tribunals. It is not Ghana's failure. They have been asked to draw
16 precisely this conclusion in a number of boundary cases, land and maritime, and
17 they have always emphatically refused to do so. The ICJ's decision in *Cameroon v.*
18 *Nigeria*, for example, could hardly be clearer: "the very fact" of the Judgment (and of
19 the evacuation of the Cameroonian territory occupied by Nigeria) sufficiently
20 addressed the situation.²⁴ That approach is surely right: courts and tribunals have
21 consistently declined to punish a State for good-faith use of territory which is
22 ultimately awarded to its neighbour. That is all the more so where, as in this case,
23 Côte d'Ivoire had full knowledge of Ghana's use and activity and never once
24 objected, which is why we say that you never get to this issue at all.

25
26 As regards article 83, I can be even briefer. Côte d'Ivoire has simply failed to point to
27 any conduct whatsoever by Ghana which could be said to conceivably jeopardize or
28 hamper the determination of the boundary, all the more so where the boundary
29 exists. Côte d'Ivoire seems to believe that when, for example, Ghana awarded the
30 Deep Water Tano Concession in 2006, that would lead to the TEN development, it
31 should somehow have been able to anticipate the dramatic turn of events three
32 years later, when Côte d'Ivoire suddenly and unexpectedly changed position – and
33 that Ghana should have left these oil reserves untouched. As we have shown, this is
34 not what the framers of the Convention intended – and we note Côte d'Ivoire's total
35 silence on the Convention's *travaux*.

36
37 A State cannot be expected to put its oil industry on hold for years on end while its
38 neighbour decides to abandon a long-agreed maritime boundary. That is all the more
39 so where, as in this case, as you will recall, in the course of just five years, Côte
40 d'Ivoire hops from meridian 1 to meridian 2, to bisector 1, to bisector 2, and now
41 back to a provisional equidistance line. (On which point, may I say, we had
42 tremendous difficulty understanding Maître Kamara's argument that claims to an
43 ever-expanding maritime area were made in a reflection of a "spirit of
44 compromise".)²⁵ Those are his words. Be that as it may, it is hardly credible to
45 present activities as undermining the *status quo* when they are the very same
46 activities – including drilling – carried out for many years before the dispute arose.
47 Côte d'Ivoire's logic leads in entirely the opposite direction to the opposite

²⁴ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, p.303, para. 319.

²⁵ ITLOS/PV.17/C23/4, p.11:37-38; TIDM/PV.17/A23/4, p.13:33-34 (Mr Kamara).

1 conclusion, namely that it jeopardized the settlement of the boundary when it wrote,
2 out of the blue, to Ghana’s operators abruptly demanding that they cease work.

3
4 Mr President, in the speeches that follow, Mr Tsikata will address a subject that
5 passed in near silence in the course of Côte d’Ivoire’s first round, namely those facts,
6 maps and domestic laws which positively expressed the mutual understanding and
7 recognition of an existing boundary, and that totally undermines Côte d’Ivoire’s case.
8 I will then return to address another area of near silence, the concessions and
9 contracts and all the petroleum activity over the course of fifty years, which Côte
10 d’Ivoire knew all about but never once protested. Professor Klein will address the
11 legal consequences that attach to these matters, including in respect of tacit
12 agreement and estoppel, on which Côte d’Ivoire also had remarkably little to say.
13 Mr Reichler will then address the plotting of the maritime boundary on our alternative
14 argument, and why the maritime boundary must remain where it is if you are to
15 attach yourselves to the stability and certainty that are the hallmarks of an equitable
16 solution. Finally, Mr Alexander will address Côte d’Ivoire’s claim in relation to your
17 Provisional Measures Order, and some of the practical consequences that might flow
18 if you were to move, or be inclined to move, the maritime boundary. To conclude, our
19 distinguished Agent will tie all the threads together.

20
21 You will, in these following submissions, find a common theme in our second round,
22 as we respond to what we heard last week. It may be that you too were struck by
23 Côte d’Ivoire’s apparent unhappiness with the situation as it was in early 2009, from
24 matters of geography to matters of concessions, all of which had been, for fifty years,
25 until then, acceptable to both States. Let us look at how matters stood when 2008
26 became 2009. There is so much that Côte d’Ivoire would like to change.

27
28 First, they would like to drop the existing, long-established customary boundary –
29 “let’s get rid of that”. Then, they would like to get rid of Ghana’s concessions – “let us
30 get rid of those too”. Then they present you with a version of geology that delights in
31 removing the entirety of the Ivorian-Tano Basin off Côte d’Ivoire’s coast – “that too
32 can be gone”. They do not like the “Jomoro Peninsula”, which you can see in red –
33 “so let us just remove that; and while we are at it, let us get rid of large parts of
34 Ghana’s territory and create the straight coastline that they believe to exist; and
35 having done that, why not creatively do a little bit of landfill to straighten out poor
36 Côte d’Ivoire’s forlorn coast?” This is the world of alternative facts, this is the world of
37 fantasy.

38
39 All that remains for you, Mr President and Members of the Special Chamber, in the
40 words of Côte d’Ivoire, is to add a new angle-bisector. Then you can step back and
41 admire your handiwork. That is what they are inviting you to do. You can now
42 compare the two situations: the fantasy world according to Côte d’Ivoire, the one that
43 exists and the real world that they would like. Mr President, that concludes my
44 presentation and I ask you to give the floor to Mr Tsikata.

45
46 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Philippe Sands, for
47 your statement. I now give the floor to Mr Fui Tsikata.

48
49 **MR TSIKATA:** Mr President, distinguished Members of this Special Chamber, my
50 task is to address you once again on the evidence the Parties have put before you to

1 assist you in determining whether or not there is a tacitly agreed maritime boundary
2 between our two countries.

3
4 As I listened to our brothers and friends on the other side, I was led to wonder
5 whether, somehow, they had been unable to access the material that we have put
6 before you; and that they had been compelled to make their arguments without
7 having heard us or seen our material, including that submitted with our Reply, as
8 long ago as 25 July 2016.

9
10 In our view, we assist you in the task the Parties have placed on you by
11 (a) acknowledging the material that one or the other side has put before you and
12 (b) joining issue as to their meaning and significance, on the interpretation and
13 application of the law to the evidence and facts before you. If we simply pretend that
14 our opponents' material does not exist, if we merely talk past each other, as it were,
15 and only repeat the same assertions, we would not have fulfilled our responsibilities
16 to you; nor, of course, would we have done so if we misrepresented the content of
17 the mass of material we have submitted to you.

18
19 Mr President, Distinguished Members of the Special Chamber, there are,
20 unfortunately, more instances than I would have wished to cite where our brothers
21 and friends on the other side have simply ignored or even misrepresented evidence
22 we have put before you and contented themselves with asserting alternative facts,
23 with no evidence to support them.

24
25 It was a matter of some surprise to hear Sir Michael Wood say on Thursday of last
26 week that "it was only in August 2011, a mere three years before it commenced the
27 present proceedings that Ghana first came up with the notion that the Parties had
28 somehow entered into a tacit agreement."¹

29
30 Côte d'Ivoire had, of course, made that assertion in its Counter-Memorial. On
31 Tuesday, last week, in this room, I drew your attention to the record of the talks held
32 in Abidjan in July 2008, where the Ghanaian delegation clearly refers to the existing
33 international boundary in use between the parties.² Not to engage with that material,
34 but simply to repeat the pleadings of Côte d'Ivoire does not, with respect, assist the
35 Special Chamber. It would, of course, not be significant if all that were being said
36 was that the words "tacit agreement" were not used before 2011. But if the
37 substantive point being made is that Ghana had not previously invoked the existence
38 of a boundary used and agreed by the Parties, that is clearly erroneous.

39
40 With regard to the official correspondence between the two States relating to the use
41 of vessels for seismic surveys, which we have submitted, Sir Michael Wood says
42 that "the wording of the various requests and authorizations was vague and did not
43 make express mention of a boundary line, with precise coordinates".³ That is simply

¹ ITLOS/PV.17/C23/4, p. 16:30-23 (Mr Wood); TIDM/PV.17/A23/4, p. 19:23-25 (Mr Wood).

² See also: 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). Counter-Memorial of Côte d'Ivoire (hereinafter "CMCI"), Vol. III, Annex 29.

³ ITLOS/PV.17/C23/4, p.25:10-12; TIDM/PV.17/A23/4, p.28:16-18 (Mr Wood).

1 wrong. As I showed you last week Tuesday⁴ and as Professor Sands has just
2 reminded you, as long ago as 1997 Côte d'Ivoire granted permission for the conduct
3 of seismic activity (*Interpretation from French*) "in the territorial waters close to the
4 maritime boundary between Ghana and Côte d'Ivoire".

5
6 (*Continued in English*) They even had a map before them showing the customary
7 equidistance boundary.⁵ There is nothing vague about that; it did make express
8 mention of a boundary line; and co-ordinates were provided. The Ivorian Minister
9 who signed the letter of authorization, Rear Admiral Lamine Fadika, surely knew
10 what he was talking about when he referred to the (*Interpretation from French*)
11 "maritime boundary between Ghana and Côte d'Ivoire."

12
13 (*Continued in English*) In any event, as you recall, last week on Tuesday, I
14 specifically drew the Special Chamber's attention to the precise co-ordinates
15 indicated on *this* sketch map accompanying a 2008 letter from Ghana's Minister of
16 Energy to his Ivorian counterpart and to the map plotted on the basis of those
17 co-ordinates.⁶ In none of the instances we supplied can it accurately be said that
18 they were "vague", did not make mention of a boundary line, or did not provide
19 co-ordinates.⁷

20
21 Sir Michael also said, "[t]he maps put forward by Ghana were prepared and used
22 either by private companies or by public bodies with a limited technical mandate."⁸ Of
23 the 15 maps that I showed you on Monday last week, seven were produced by, or at
24 least involved, an Ivorian Government Ministry: the Ministry of Economy and
25 Finance; the Secretariat in charge of Mines & Hydrocarbons; the Ministry of Mines;
26 the Ministry of Industry, Mines & Energy; and the Ministry of Mines & Energy. None
27 of these has (as yet) been privatized. It is not clear what is intended by describing
28 certain bodies as having a "limited technical mandate". In any case, no explanation is
29 offered as to why it should not be presumed that maps provided by such bodies
30 reflect the extent of their national jurisdiction. If they do not know where the limits of
31 offshore jurisdiction are, who does? On what basis can it be said that their
32 documents do not reflect where they and their Government understood the boundary
33 lay?

34
35 We have provided many maps, such as this one, which explicitly show that Ivorian
36 governmental authorities acknowledged the existence of a maritime boundary
37 between our two States. Of this, and of so many other similar maps, Côte d'Ivoire
38 has nothing to say, beyond dismissing them all in cursory terms. My colleague Pierre
39 Klein will return to this issue later this morning to show you that, from a strictly legal
40 perspective as well, Côte d'Ivoire's arguments on the lack of relevance of maps in
41 this dispute are devoid of foundation.

42
43 On Thursday, 9 February 2017, we heard our brother Maître Adama Kamara say
44 that Ghana had, in a note verbale dated 20 August 2007, inviting Côte d'Ivoire for

⁴ ITLOS/PV.17/C23/2, p. 4:12-22 (Mr Tsikata); TIDM/PV.17/A23/2, p. 5:6-13 (Mr Tsikata).

⁵ *Letter* from N. B. Asafu-Adjaye, Exploration Manager, Ghana National Petroleum Corporation (GNPC), to The President, UMIC Côte d'Ivoire (31 October 1997), MG, Annex 67.

⁶ ITLOS/PV.17/C23/2, p. 2:7-16 (Mr Tsikata); TIDM/PV.17/A23/2, p. 2:21-32 (Mr Tsikata).

⁷ ITLOS/PV.17/C23/4, p. 25:4-6 (Mr Wood); TIDM/PV.17/A23/4, p. 28:16-18 (Mr Wood).

⁸ ITLOS/PV.17/C23/4, p. 28:17-18 (Mr Wood); TIDM/PV.17/A23/4, p. 31:23-33 (Mr Wood).

1 negotiations, stated the purpose of the talks as being "to seek to agree on the
2 non-existent boundary."⁹

3
4 We looked for a copy of the note verbale in the Judges' folder supplied by Côte
5 d'Ivoire. It is at tab 3 of that folder.¹⁰ We could not find the quoted words there. There
6 were certain words highlighted in that tab. These were as follows: "to deliberate on
7 the delimitation of our international maritime boundaries to enable Ghana to make its
8 claims to the UN Commission on the Limits of the Continental Shelf."¹¹ There is no
9 reference to a "non-existent boundary". We still have no idea of the source of Maître
10 Kamara's quotation.

11
12 I have already referred to Ghana's opening statement at the ensuing discussions in
13 which it clearly stated that there was an existing boundary in use between the two
14 countries. There is no evidence whatsoever to suggest that Ghana has ever used
15 the words that Maître Kamara appears to have sought to attribute to it.

16
17 I also see that in the copies of the Judges' folder supplied to us, there are two maps
18 bearing reference AK R1-101 entitled (*Interpretation from French*) "Proposal for the
19 Ivorian delimitation of 1988."¹² (*Continued in English*) There is no legend. We can
20 find no reference to them in the transcripts of proceedings, whether in Maître
21 Kamara's speeches or elsewhere. Both have the note: (*Interpretation from French*)
22 "This sketch map is solely for illustration." (*Continued in English*) We are in the dark
23 as to what they are meant to illustrate.

24
25 The point is simple: there is no evidence before you to support the submission that in
26 1988 any such proposition was made by Côte d'Ivoire to Ghana; nor is there any
27 evidence that such a proposition was made or referred to in 1992. The latter
28 document, the 1992 document, is an internal document. I have drawn the attention of
29 the Special Chamber to the fact that there is no record of the "proposal" that Côte
30 d'Ivoire claims to have submitted to Ghana in 1988. I have pointed out that there is
31 no description in the minutes of the 1988 Ivorian internal meeting of the content of an
32 Ivorian proposal. I have shown that even those who were told in 1992 that there had
33 been a proposal in 1988 were not shown a copy of it. I have observed that up to
34 today, no single individual has been identified as being the source of information
35 about such a proposal.

36
37 In the circumstances, it is extraordinary that maps purporting to depict a 1988 Ivorian
38 delimitation would be sprung on us and the Chamber in this fashion. In any case,
39 those maps clearly prove nothing in issue in these proceedings and illustrate
40 nothing.

41
42 Besides, as I showed you last week on Monday, the minutes of the 1988 Joint
43 Commission meeting between the parties refers to (*Interpretation from French*): "the

⁹ ITLOS/PV.17/C23/4, p. 10, line 5 (M. Kamara).

¹⁰ Note verbale No. LE/TL/2 from the Ghana Ministry of Foreign Affairs to the Embassy of Côte d'Ivoire in Accra, 20 August 2007. CMCI, Vol. III, Annex 25.

¹¹ Judges' folder for the Republic of Côte d'Ivoire, tab 3.

¹² Judges' folder for the Republic of Côte d'Ivoire, tab 1.

1 maritime and lagoon boundary existing between the two countries.¹³ (*Continued in*
2 *English*) Any proposals from Côte d'Ivoire would thus have been in the context of an
3 acknowledgment of an existing boundary in the sea and in the lagoon.
4

5 The matters on which, in our opinion, the Parties have joined issue with regard to the
6 facts on which we rely for tacit agreement are the following: (a) do the documents on
7 which Ghana relies show that the Parties have agreed and represented to each
8 other and to third parties that there is a maritime boundary between them; (b) do
9 certain words on the documents on which Ghana relies deprive those documents of
10 significance as evidence of tacit agreement; (c) is there any confusion or
11 inconsistency in Ghana's description of the customary equidistance boundary; and
12 (d) has Côte d'Ivoire made protests which negate the possibility of the existence of a
13 tacitly agreed boundary?
14

15 In the time available, I shall address these matters. Professor Pierre Klein will again
16 apply the law to our facts and remind you of the basis in law, on which we ask you to
17 hold that there is a tacitly agreed maritime boundary between Ghana and Côte
18 d'Ivoire.
19

20 Côte d'Ivoire has not been able to offer in these proceedings what it regards as the
21 meaning of words such as "*frontière*" or (*Interpretation from French*) "line separating
22 Côte d'Ivoire from Ghana", (*Continued in English*) in laws, decrees and other
23 documents issued by its governmental authorities. Nor has it been able to say what it
24 means when maps issued by its officials draw a line and put "Côte d'Ivoire" on one
25 side and/or "Ghana" on the other. We say that these words mean what they say and
26 indicate Côte d'Ivoire's view that there is a boundary between the two countries,
27 even if the co-ordinates of its location may require greater precision.
28

29 Côte d'Ivoire relies on words such as that certain co-ordinates are given
30 (*Interpretation from French*) "as an indication", (*Continued in English*) or "cannot be
31 considered as being the limits of jurisdiction".¹⁴
32

33 The *Dictionnaire Larousse* defines (*Interpretation from French*) "as an indication"
34 (*Continued in English*) as follows: (*Interpretation from French*) "To provide general
35 information, information for reference purposes".¹⁵ (*Continued in English*) "*Servir de*
36 *repère*" implies that the "*renseignement*", the information in question, may be used
37 as a reference, even if it is not absolutely precise. But evidently, when you compare
38 the equidistance boundary which results from the plotting of the co-ordinates
39 indicated on the Ivorian Decrees of 1970 and 1975 (as shown in yellow on this map)
40 with the bisector line claimed by Côte d'Ivoire (as represented in red), the latter does
41 not correspond whatsoever to the (*Interpretation from French*) "general information
42 to serve as a reference" (*Continued in English*) provided by the co-ordinates.

¹³ Republic of Ghana and Republic of Côte d'Ivoire, Minutes of the 15th Ordinary Session of the Joint Commission to Redemarcate the Ivorian-Ghanaian Border, (18-20 July 1988), para. 2. CMCI, Vol. III, Annex 12.

¹⁴ TIDM/PV.17/A23/4, pp. 15:1, 15:9 (Mr Kamara), 35:22, 35:28 (Ms Miron); ITLOS/PV.17/C23/4, pp. 12:35, 12:42 (Mr Kamara), 31:34, 31:40 (Ms Miron).

¹⁵ Dictionnaire Larousse, "*à titre indicatif*", can be consulted at:
<http://www.larousse.fr/dictionnaires/francais/indicatif/42577/locution?q=titre+indicatif#156699>.
(consulted 16 February 2017).

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Whatever the qualifying words mean, they can surely not negate the substance of the words they qualify, namely the recognition of the existence of a “*frontière*” or (*Interpretation from French*) “line separating Côte d’Ivoire from Ghana”. (*Continued in English*) We have offered an interpretation which gives meaning to both sets of words. Côte d’Ivoire on the other hand wishes to deny meaning to the words “*frontière*” or the “*ligne séparant*” the two countries. Whether in French or English, that cannot be an acceptable approach to interpretation.

In a context in which the Parties were making their borders (including the land ones) more precise, to say that their current renditions are not to be regarded as setting out the limits of national jurisdiction is more consistent with the expression of a caveat about the project of greater precision on which they had embarked than a repudiation of existing boundaries. Surely, Côte d’Ivoire is not saying that, because of those words, there were no land boundaries between the two countries until the re-demarcation exercise was completed.

As for the argument that maps of Côte d’Ivoire which show petroleum blocks only indicate concession limits but not the international maritime boundary with Ghana, in the first place, that is not in fact what the maps show. This map, which depicts the location of block CI-06, shows that its boundaries are nowhere close to the international maritime boundary between Côte d’Ivoire and Ghana, which is also shown – at a considerable distance away from that block. What does this line indicate if not the land and maritime boundary?

Besides, Côte d’Ivoire has also not offered a response to the observation in paragraph 5.25 of Ghana’s Memorial that

Côte d’Ivoire’s maps depict a boundary line with Ghana that begins on land and continues into the sea. Offshore, the boundary extends to the southwest along the customary equidistance line beyond the limits of the parties’ most southerly oil concessions.

Côte d’Ivoire has preferred to ignore the 22 maps which show a territorial boundary separate from and independent of the concession limits. This 1990 map, published by Côte d’Ivoire’s Ministry of Mines, is one of these many maps. It can be found at tab 11 in the Judges’ Folder.

In addition, Côte d’Ivoire cannot wish away the mutual understanding of and respect for the boundary that was repeatedly demonstrated over a span of 50 years by the claim of their concession limit with ours – each States’ name clearly indicates it on its territory.

The submissions of our colleagues who spoke on behalf of Côte d’Ivoire last week are full of assertions that there were acts which, according to them, show that Côte d’Ivoire never agreed to the customary equidistance boundary. Whether it was from Maître Kamara or Maître Pitron, whether it was from Professor Alina Miron or Sir Michael Wood, we heard of allegations of resistance, of regular protests, regular objections, firm and repeated or reiterated opposition, etc. What is striking is that

1 most of these assertions are kept at a level of generality, unsupported by specific
2 evidence of any significance.

3
4 Last week Monday, Professor Sands posed the question, “[w]here is the evidence of
5 [the] ... ‘constant opposition’” alleged by Côte d’Ivoire? We still await an answer.

6
7 Nothing in the material before you supports the contention of Côte d’Ivoire that it
8 protested to Ghana on even a single occasion against the use of the customary
9 equidistance boundary between 1956 and 2009. The only instances which they
10 regard as examples are occasions in 1988 and 1992. Neither the minutes of the
11 1988 Joint Commission meeting or the records of the internal discussions among the
12 officials of Côte d’Ivoire can plausibly be read as an expression of protest. In relation
13 to the discussions about a meeting between the Parties in 1992, last Monday I drew
14 attention to the fact that no indication was conveyed by Côte d’Ivoire to Ghana of an
15 area in respect of which they hoped that the two Parties would suspend petroleum
16 operations. Professor Miron argued that Côte d’Ivoire was expressing a protest in
17 diplomatic language. A protest that activity should not be conducted in what area? It
18 is impossible to interpret the particular document, Mr President, distinguished
19 Members of the Special Chamber, as a protest.

20
21 Rather than facing Ghana’s substantive arguments or the mountain of evidence it
22 has presented to this Chamber, Côte d’Ivoire’s counsel claim to find confusion in the
23 use by Ghana of the expression “customary equidistance boundary”. The problem
24 for them appears to be with the word “customary”. We dare to say that nobody
25 familiar with the society and legal system of Côte d’Ivoire or Ghana, or practically
26 any African country for that matter, would have difficulty with the use of “customary”.
27 This captures the idea of an accepted practice, evolved over time and with normative
28 implications. That Côte d’Ivoire and Ghana have, over time, acted on the basis of an
29 agreed maritime boundary, that they have recognized each other’s rights on their
30 respective sides of that boundary, and that that boundary is based on equidistance
31 makes “customary equidistance boundary” a readily recognizable term in discourse
32 between them. Ghana never claimed that this was a term used by public
33 international lawyers, but merely that this was the best way to identify the boundary
34 which has been in existence between our two States for more than five decades.

35
36 As for the contention that Côte d’Ivoire was in such a state of crisis from the death of
37 President Houphouët-Boigny, in 1993, until 2007, that they were unable in fact to
38 focus on maritime boundary issues, that is plainly contradicted by the facts. It is clear
39 that during this period, the organs of Côte d’Ivoire – official, state, administrative,
40 diplomatic – were all functional. It granted concessions, amended its petroleum and
41 tax laws and engaged extensively with the international petroleum industry and its
42 neighbour Ghana.¹⁶ Professor Sands has offered more evidence on this point.

43
44 The reference to the drafting of laws reminds us of the contention that “in the case of
45 the Ivorian decrees, it must be questioned how far mere legislative action, not
46 accompanied by actual implementation of the national law, may be held against the
47 State.”¹⁷

¹⁶ CMCI, paras 2.8-2.20; RCI (14 November 2016) paras 4.16-4.19; ITLOS/PV.17/C23/4, p. 10:4-8 (Mr Kamara); TIDM/PV.17/A23/4, p. 11:25-30 (Mr Kamara).

¹⁷ ITLOS/PV.17/C23/4, p.25:30-32; TIDM/PV.17/A23/4, p. 29:10-13 (Mr Wood).

1
2 In the first place, in this case, the legislative action was accompanied by actual
3 implementation in the form of the granting of rights to third parties who subsequently
4 exercised these. Besides, it is puzzling to hear the discounting of “mere legislative
5 action” as an expression of State practice. It is well accepted that legislative activities
6 are taken into account as expressions of State practice, on the same footing as acts
7 from the executive or judiciary.

8
9 Mr President, distinguished Members of this Special Chamber, in our respectful
10 opinion, what counts in these proceedings is the relative drudgery involved in the
11 accumulation and evaluation of hard evidence according to tried and tested
12 procedures. There is no alternative but to roll up our sleeves and get involved in the
13 minutiae, what might be called the muck of evidence. These may not be as much fun
14 as one can have from immersion in the imaginative and wonderful world of Alice’s
15 Wonderland, which, perhaps regrettably, is worlds away from the serene
16 surroundings of this impressive and aesthetically pleasing courtroom.¹⁸

17
18 Mr President, distinguished Members of this Special Chamber, it has been an
19 honour for me to appear before you. I thank you for your attention and patience. May
20 I ask you to invite Professor Philippe Sands to address you once again on behalf of
21 Ghana.

22
23 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Tsikata, for your
24 statement. I give the floor again to Mr Philippe Sands. You have 16 minutes before
25 the coffee break.

26
27 **MR SANDS:** Thank you, Mr President.

28
29 Mr President, Members of the Special Chamber, last week Côte d’Ivoire sought to
30 paint a picture that portrayed Ghana as having acted to impose a *fait accompli*, as
31 though somehow Ghana forged ahead with oil-related activities in Côte d’Ivoire’s
32 territory against Côte d’Ivoire’s protests.¹ None of this is correct, and none of this is
33 supported by the wealth of evidence before you.

34
35 You will have noted that Côte d’Ivoire simply avoided much of the evidence that was
36 before you, evidence that relates to the Parties’ extensive practice in authorizing
37 activities on their respective sides of the customary equidistance boundary. This
38 includes but is not limited to the offering and granting of concessions, the carrying
39 out of seismic and other exploratory activities, and the drilling of wells. From 1957 to
40 2009 this activity was carried out on a large scale on Ghana’s side of the customary
41 equidistance boundary without a single note of protest being registered by Côte
42 d’Ivoire. For 52 years Côte d’Ivoire knew about the activity, and actively supported
43 some of it. Côte d’Ivoire’s conduct in this period was premised on support of and

¹⁸ Lewis Carroll, *Alice’s Adventures in Wonderland* (1865): “[A]s she listened, or seemed to listen, the whole place around became alive with the strange creatures of her little sister’s dream.... [S]he sat on, with closed eyes, and half believed herself in Wonderland, though she knew she had but to open them again and all would change to dull reality.”

¹ TIDM/PV.17/A23/4, p. 15:35 (Mr Kamara); TIDM/PV.17/A23/6, p. 31:27 (Ms Miron); TIDM/PV.17/A23/6, p. 33:33-34 (Ms Miron); TIDM/PV.17/A23/6, p. 36:37 (Ms Miron).

1 agreement for the equidistance customary boundary. This is also confirmed and
2 reflected in Côte d'Ivoire's conduct on its side of the boundary.

3
4 I want to take you now to the evidence which Côte d'Ivoire would rather you avert
5 your eyes from. I am going to take it in three stages. First, I will address the
6 concessions granted by each Party on its respective side of the boundary: first
7 Ghana, then Côte d'Ivoire, from the late 1950s onwards. Second, I will show you the
8 wells drilled, first by Ghana, then by Côte d'Ivoire. In a third stage I want to go a little
9 deeper, and take you to five wells located in the area now or previously claimed by
10 Côte d'Ivoire to enhance your familiarity with the detail. I will show you that for each
11 of these wells, as was the case for countless others, there was knowledge,
12 acquiescence, acceptance, and a total absence of any protest by Côte d'Ivoire. In
13 the absence of such protest over five decades, the evidence in support of the
14 conclusion that there was a tacit agreement by 2009, and indeed well before 2009,
15 is, we submit, overwhelming.

16
17 The Parties developed their oil industries in mutual, constant reliance on the
18 customary boundary. Their practice was consistent, and reliance was placed on it. It
19 was in both cases carried out in full knowledge of the other Party and fully
20 transparently. In several instances there was active Ivorian co-operation, with Ghana
21 receiving Côte d'Ivoire's prior written permission to use Ivorian waters, for example,
22 to conduct seismic surveys in respect of concessions granted by Ghana on its side
23 of the agreed boundary.² Côte d'Ivoire never objected, never protested, and these
24 activities were carried out openly and in very close co-operation with PETROCI. We
25 note that Côte d'Ivoire's Co-Agent in this case is Monsieur Ibrahima Diaby, the
26 Director General of PETROCI.

27
28 The evidence to which I will take you is in the written pleadings. It includes legislation
29 and decrees, diplomatic correspondence, public statements, and representations
30 made by Côte d'Ivoire to third States and international organizations.³ The evidence
31 goes back even to the period pre-dating independence.

32
33 To demonstrate the evidence, I want to take you through a number of maps, and I
34 apologize for their quantity. As my colleague and friend Mr Tsikata said, there is
35 simply no avoiding rolling up our sleeves and looking at the factual reality. For the
36 purposes of this presentation we have taken the original map and illustrated it on
37 modern charts.

38
39 You can see on the screen now, in green, Ghana's very first concession. It was
40 awarded to the Gold Coast Gulf Oil Company in February 1956. It covered, as you
41 can see, both land and water in the extreme south-west of the country. It was
42 bounded to the west by an equidistance line.

² See for example MG Vol. VI Annex 67, *Letter* from N.B. Asafu-Adjaye, Exploration Manager, Ghana National Petroleum Corporation (GNPC), to the President, U;IC Côte d'Ivoire (3 October 1997) and Annex 68, *Letter* from M. Lamine Fadka, Minister of Petroleum Resources, Republic of Côte d'Ivoire, to F. Ohene-Kena, Minister of Mines and Energy, Republic of Ghana, No. 0907 MIRMP/CAB/dh (28 November 1997).

³ MG, Chapters 3, 4(III), 5 (I) and RG, Chapter 2.

1 In 1968, Ghana divided its offshore area into 22 blocks. We are now moving forward
2 12 years. We add Block 1, which was bounded in the west by the same equidistance
3 line.

4
5 Activity in the Tano Basin began in the 1960s. In December 1968, Ghana awarded
6 Blocks 1 and 2, which you can see here, to Mayflower Volta Petroleum, which we
7 now identify. Volta Petroleum commenced exploration in 1969.

8
9 We now go forward six years, to 1975, when Phillips acquired six offshore
10 concession blocks in Ghanaian waters after Mayflower Volta's exit from the Tano
11 Basin. Two of its blocks, 1S and 1P, are bounded to the west by the customary
12 equidistance boundary. There was no protest by Côte d'Ivoire. We are now 15 years
13 after Côte d'Ivoire's independence. All of this has gone on without a single protest.

14
15 These early concession blocks were subsequently reconfigured in the 1980s, but the
16 western boundary always remained the same, and known to Côte d'Ivoire, always
17 aligned with the equidistance boundary. GNPC was established in this period, in
18 1983. It began an active campaign to promote its offshore areas to international oil
19 companies. Events were held in London, Houston and Calgary as part of Ghana's
20 petroleum promotion tour in 1984.⁴ These were very widely publicized. Again, there
21 was no protest from Côte d'Ivoire.

22
23 We move forward to 1988, 13 years later. Ghana awarded Arco a concession in the
24 Tano Basin. Once again, its western limit followed the customary equidistance
25 boundary and once again there was no protest. We are now 28 years after Côte
26 d'Ivoire's independence.

27
28 Nine years later, in 1997, Ghana awarded two concessions – the Western Tano and
29 the South Cape Three Points blocks – to Dana Petroleum, of which I spoke earlier,
30 and the Ghana Hunt Oil Company respectively. As you can see, concessions are
31 now going further out to sea, and they are bounded to the west by the very same
32 customary equidistance boundary. Thirty-seven years after Ivorian independence;
33 not a single protest.

34
35 In 2002, the Cape Three Points Deepwater block was awarded to Vanco Ghana Ltd.
36 This block, as you can now see, was also bounded further out to sea to the west by
37 the customary equidistance boundary. Forty-two years after Ivorian independence;
38 not a single protest, and no protest on any of the exploration activities undertaken in
39 Ghana, which by then were pretty extensive.

40
41 In 2006, as you can now see, the same equidistance boundary was used for the
42 western border of the Deepwater Tano contract area granted to the Tullow/Sabre
43 Oil/Kosmos consortium, bringing us into the time in which the issues would change
44 with Côte d'Ivoire's sudden practice. We are now 46 years after Ivorian
45 independence; full knowledge, full acceptance, no protest.

46
47 This is a composite of the totality of the concessions. We are not hiding anything
48 from you. We are not being selective. You are looking at the actual situation as it

⁴ MG, para. 3.48.

1 was at the end of 2008 and the beginning of 2009 by reference to the accumulation
2 of all of the concessions, all publicly announced, all known to Côte d'Ivoire. How
3 many protests? Not a single protest in relation to any of this activity.

4
5 (*Interpretation from French*) Mr President, this might be an appropriate time to take
6 the coffee break because I start on the other side of the line.

7
8 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):
9 Thank you, Mr Sands. Yes, indeed, we will now have a 30-minute coffee break.

10
11 (Break)

12
13 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):
14 Proceedings have resumed and I shall give the floor back to Professor Philippe
15 Sands.

16
17 **MR SANDS:** Mr President when I spoke earlier in my first presentation this morning
18 about the Aby lagoon and the distance of 20 kilometres to the west of Côte d'Ivoire's
19 last base point, I was referring, in case it was not made clear, to the mouth of the
20 Aby lagoon – *l'embouchure*.

21
22 I return to the matter of concession practice. We ended with *this* plate up, which
23 showed you the cumulative situation as at the beginning of 2009 practice over
24 50-plus years.

25
26 I turn now to what happened on the other side of the line. We go back to the
27 customary equidistance boundary and we are back in 1956. Counsel for Côte
28 d'Ivoire had very little to say about what happened on their side of the line, as you
29 will recall.

30
31 **JUDGE WOLFRUM:** Mr Sands, may I briefly interrupt you, please? Could you go
32 back to the previous slide?

33
34 **MR SANDS:** I ask my colleagues to put the previous slide up.

35
36 **JUDGE WOLFRUM:** Your colleagues may do that. Just for curiosity, what is the
37 distance between the land-based terminus and the outer edge of the end of the
38 green? What is that distance?

39
40 **MR SANDS:** Thank you very much for that question. I speak under advisement of
41 my colleagues but I think that is the point that Sir Michael referred to last week when
42 he referred to 87 M. I stand to be corrected but I believe that is the point. I have a
43 recollection that our cartographic colleagues told me that actually it is 86.9 M, but I
44 believe that it is about 87 M from the land boundary terminus.

45
46 **JUDGE WOLFRUM:** Thank you very much.

47
48 **MR SANDS:** We are now back with a clean slate. It is 1957 and independence is on
49 the horizon for both countries. Last week we heard that the activities that followed on
50 Côte d'Ivoire's side of the line to the west were limited. As Mr Kamara put it, "until

1 just recently [they] only played a minor role in the economic development of the
2 country.” You will recall that I showed you the production of oil going back to 1996. In
3 fact, it dates back earlier.

4
5 I am not sure if 1957 counts as “recently”. If it does, I suppose it could be said that
6 I was very recently born, which is probably not true, but, as we mentioned last week,
7 that year, 1957, which will come on to the screen now, was when the first offshore oil
8 concession was granted in the territory of the country that is now Côte d’Ivoire, up to
9 the limit of its territorial sea – three nautical miles at the time – to *Société Africaine*
10 *des Pétroles*. As you can see – and I do not think it is really disputed – this
11 concession was bounded to the east by the equidistance boundary with Ghana and it
12 matched the western limit precisely of the Gold Coast Gulf Oil Company’s
13 concession, on the other side, from Ghana.⁵ On Thursday Sir Michael Wood
14 asserted that Ghana’s representation of the concession was, as he put it,
15 “self-serving and speculative” and that it could have been calculated differently.⁶
16 However, we took note of the fact that he did not offer an alternative calculation, and
17 of course, if he now does so, we have no opportunity to say anything about it.

18
19 The 1970s – apparently also “just recently” – was a key period in the development of
20 Ivorian offshore oil industry. In this phase all concessions and drilling activities were
21 based on and respected the equidistance boundary. On the screen now you can see
22 added Côte d’Ivoire’s 1970 concession with a consortium led by a very large group,
23 Esso/Shell, which of course you will know; and we heard a lot about this last week.
24 This concession was renewed “just recently” in 1975, and these two concessions
25 clearly and unambiguously reflect a mutual understanding of the equidistance
26 boundary. Over 20 wells were drilled on Côte d’Ivoire’s side in the 1970s,⁷ a
27 concession based on a stable boundary.

28
29 PETROCI was also founded very recently, in 1975.

30
31 The following year, in 1976, as you can now see on the screen, Côte d’Ivoire
32 extended its concessions further out to sea, further from the coast into its maritime
33 area. It granted a consortium operated by Phillips Petroleum a concession south of
34 Esso’s block. The Phillips concession was bounded in the east by the same
35 equidistance line recognized in the 1970 Ivorian Presidential Decree as the border
36 with Ghana.

37
38 It was around this time, in 1977, as Côte d’Ivoire approached its 17th birthday, that it
39 enacted its 1977 maritime legislation intended to clarify the legal framework
40 applicable to its offshore activities. So this earlier activity is helpful in providing some
41 context to the interpretation of that 1977 law.

42
43 The acquisition of seismic data by Phillips resulted in discoveries in its Block B
44 which, by 1983, was bounded to the east by the customary equidistance boundary.⁸
45 In 1990, approaching Côte d’Ivoire’s 30th birthday, the Ivorian Ministry of Mines

⁵ See MG, paras 3.9 and 4.21.

⁶ ITLOS/PV.17/C23/4, p.16:18-26 (Mr Wood).

⁷ RG, paras 2.19-2.20.

⁸ RG, para. 2.20.

1 published a report entitled *Côte d'Ivoire Petroleum Evaluation*.⁹ The main purpose of
2 that report, which you will find in our Memorial, was to announce publicly that the
3 Ministry was offering open acreage for international bidding and oil companies were
4 invited to bid for eleven new blocks. Eleven blocks were included in the report and
5 those blocks, the offshore concessions, were bounded in the east by the customary
6 equidistance boundary with Ghana. This is, of course, a governmental report
7 prepared by Côte d'Ivoire's Ministry of Mines to publicize its offshore oil industry.
8

9 We now reach the point – about 1993 – that Mr Kamara described as being the
10 moment when the *crise profonde* for Côte d'Ivoire opened, a situation that he said
11 lasted until 2007.¹⁰ He made the point, of course, to justify, explain or somehow
12 come to terms with the total absence of protest for now 33 years. I offer three
13 reactions to what he said. First, on his own account – and it is a major concession by
14 Côte d'Ivoire – his country was not in a situation of *crise profonde* before 1993, and
15 they have offered no explanation at all for the failure of protest before that period of
16 the extensive Ghanaian concessions and the related activity. How does he explain, if
17 there was no *crise profonde*, why they knew about what Ghana was doing but did
18 nothing about it and indeed, as you have seen, accepted and participated in it? My
19 second response to his comments is that, already, at the beginning of the period of
20 the *crise profonde*, Côte d'Ivoire was producing, as you saw from that chart, about
21 20,000 barrels of oil a day, but somehow by the end of the *crise profonde* production
22 had tripled to over 60,000 barrels a day. That, we say, is instructive as to what Côte
23 d'Ivoire was able to achieve off the back of concessions granted. My third comment
24 is that in this same period, when we are told that Côte d'Ivoire could not attend to
25 matters international, that Côte d'Ivoire somehow managed to sign or ratify a
26 significant number of treaties – for example, bilateral investment treaties with the
27 United Kingdom and Tunisia in 1995; with Ghana in 1997; with Belgium-Luxembourg
28 in 1999 and with China in 2002,¹¹ and they managed to sign a raft of multilateral
29 treaties, including, for example, the Straddling Fish Stocks Agreement, which is
30 related to UNCLOS, in 1996, the Deep Sea Mining Agreement, which they signed in
31 1994 and ratified in 1995, and the Kyoto Protocol in 2007.¹² So, whatever the nature
32 of the *crise*, it was not, we submit, the cause of any inattention to matters
33 international or to what was going on in the offshore areas. One of the reasons you
34 sign bilateral investment treaties is to encourage investment from those countries,
35 and those were countries, the United Kingdom and China, which make important
36 investments in Africa. So the *crise*, we think, cannot explain the absence of protest.
37 Indeed, during this period petroleum activities continued unabated in Côte d'Ivoire,
38 with a reconfiguring of existing concessions, new concessions being offered and new
39 wells being drilled,¹³ all of which respected the customary boundary.
40

41 In 1993, for example, as you can see on the screen, Block CI-01 was offered, with
42 an eastern limit that coincides with the customary equidistance boundary. This was

⁹ Ministry of Mines of the Republic of Côte d'Ivoire, *Côte d'Ivoire: Petroleum Evaluation* (1990, Côte d'Ivoire). MG, Vol. V, Annex 36.

¹⁰ ITLOS/PV.17/C23/4, pp. 9:45-10:37, 12:48-13:9 (Mr Kamara); TIDM/PV.17/A23/4, pp. 11:16- 12:18, 15:15-27.

¹¹ See <http://investmentpolicyhub.unctad.org/IIA/CountryBits/50> (accessed 12 February 2017).

¹² See

<http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=3760&countryName=C%C3%B4te%20d%27Ivoire&countryFlag=treaties> (accessed 12 February 2017).

¹³ RG, para 2.56 *et seq.*

1 one of the new concession blocks offered by PETROCI.¹⁴ Just to be clear, we have
2 put in the footnotes to the speech all the citations where you can find all this material.

3
4 Soon after, in 1998, Côte d'Ivoire offered for lease block CI-100, located seaward of
5 CI-01, and, as you can see for yourselves, this too is bounded by the same
6 equidistance line with Ghana on the east. This block was later granted to Dana
7 Petroleum in 2000,¹⁵ and that, as you will see, is significant.

8
9 Several important new concessions were granted by Côte d'Ivoire between 2003 and
10 2007, whilst it was supposedly in a situation of full *crise*, and all of these used and
11 respected the customary equidistance line as the boundary in the east. In
12 2005/2006, Block CI-01 was divided into blocks CI-401 and CI-01. PETROCI's 2006
13 map of Côte d'Ivoire's Petroleum Exploration Concessions depicts blocks CI-01 and
14 CI-401 as bounded to the east by the customary boundary.

15
16 In 2006 Côte d'Ivoire and PETROCI signed a production-sharing contract with YAM's
17 Petroleum for blocks CI-401 and CI-100. You can see the limits too of CI-100 – in
18 fact, all the limits – coincide precisely with the customary equidistance boundary. So
19 we are now up to 2006 and we can go forward to the situation at the end of 2008 and
20 early 2009 and look at the totality of the concessions; and again I have not been
21 selective but have given you everything that exists. I do not think that these matters
22 are in dispute between the Parties.

23
24 You can see here the concessions that date from 1957 to 2009, a period of 52 years,
25 Mr President. Not a single concession offered by Côte d'Ivoire crosses over to
26 Ghana's side and, of course, as you can now see, not a single one offered by Ghana
27 crosses over on to Côte d'Ivoire's side. There is not a single protest in either
28 direction.

29
30 Lest it be said by Mr Kamara that, after all, all we are talking about here are
31 concessions, let us now look at the activity in some of those concessions. Let us, for
32 example, look at the wells that were drilled on both sides of the boundary, which of
33 course would also have come with seismic research. We can start on the Ghanaian
34 side. *These* are the wells, depicted in green, which cover the period from 1956 to
35 2009 proximate to the customary equidistance boundary in areas now or previously
36 claimed by Côte d'Ivoire. In the evidence before you, you will find not a single
37 example of a protest about any of these wells, not a single example of Ghana drilling
38 on the other side of the boundary.

39
40 Now let us look on the other side of the boundary. We see again a perfect match on
41 Côte d'Ivoire's side of the customary equidistance boundary (in purple). These wells
42 were drilled in the period from 1973 to 2009, namely 36 years, and they would have
43 come with related seismic activity; and you will see that not one of them crosses the
44 line.

45
46 If we now take a composite of everything that I have shown you – and everything in
47 this plate is based on material that is before you and is not disputed between the

¹⁴ "Côte d'Ivoire offers large tracts", *Oil and Gas Journal* (22 Nov. 1993). RG, Vol. IV, Annex 154.

¹⁵ RG, para 2.64.

1 Parties – you can see all the concessions cumulatively and all the wells in the area
2 cumulatively. I should say that there are a lot more wells on both sides that are not
3 proximate to the boundary. As you can see, every single concession and every
4 single well authorized by both Parties, or in the area that became the territory or
5 sovereign right areas of both Parties, from 1956 to 2009 completely respects the
6 customary equidistance boundary.
7

8 A picture tells a thousand words, Mr President. This picture shows extensive activity
9 over time and area: concessions and wells; two countries, two national oil companies
10 (GNPC and PETROCI), five decades, hundreds of authorizations, an even larger
11 number of contracts, tens of thousands of square kilometres, and there is no
12 evidence before you to attest to a single act of protest in respect of all this activity.
13 There is literally nothing that I can try to explain away to you; nothing exists. If this is
14 not the basis of tacit agreement between two States, with great respect to our
15 friends, it is really difficult to see what would be a tacit agreement.
16

17 In some cases, the same foreign oil companies acquired blocks from each State on
18 either side of the customary boundary. For example, in 1975 Phillips acquired a
19 concession on the Ghanaian side, bounded to the west by the customary
20 equidistance boundary, and then in 1976 it acquired the Ivorian concession on the
21 other side of the boundary, which had previously been granted to Esso, bounded to
22 the east by the very same boundary. Frankly, it is very difficult to imagine that a large
23 international company like Phillips would have acquired such concessions if it was
24 not satisfied about the absence of a boundary dispute. Would Dana have made its
25 investments a quarter of a century later on either side of the line if it had not first
26 checked about the nature of the settled boundary? Many of us in this room have
27 extensive experience in advising oil companies, and we know that the very first thing
28 they do before authorizing investments of this kind is to ask the question: is there a
29 boundary dispute? The evidence before you shows that there was no boundary
30 dispute¹⁶ when any of these investments were made. The investments were
31 premised on a settled, agreed customary equidistance boundary.
32

33 Mr President, in this third and final part of my submission I will refer to some specific
34 examples of individual wells so that we can explore the robust drilling activities that
35 took place in a little more detail. Côte d'Ivoire's line of argument suggests that
36 nothing much happened in the area they have put into dispute after 2009, but I hope
37 that by now you will have seen that this is not what the evidence shows. Moreover,
38 what they have said to you suggests – and I say this with respect – that their counsel
39 are unfamiliar with how the oil industry works. Lead times are very long in that sector
40 and preparatory activities are very extensive. For investments in this sector to take
41 place, because of the sums of money involved, there has to be a very high degree of
42 certainty and security required, including, where the activity takes place near an
43 international boundary, a belief that there is a settled boundary, a belief that there is
44 an absence of a boundary dispute. Everyone in this room, no doubt, has experience
45 of the freezing effect on activity of a boundary dispute on oil exploration and
46 exploitation.
47

¹⁶ RG, Figure 2.5.

1 We also know that the activities that we are describing here are very closely
2 interconnected. Once an investor has a concession, geophysical and other
3 exploration activity, including seismic surveys, takes place. The process is linear:
4 one step leads to the next, and the lead times for these steps can be very long – not
5 days but years. The steps are clear: concession, geological and geophysical activity,
6 seismic surveys, the drilling of wells, then development and exploitation.
7

8 Against that background, let us look at various activities in relation to five wells, in
9 areas newly claimed by Côte d'Ivoire only after 2009. As with the general picture, the
10 more detailed account I now provide offers no evidence – nothing – of even a single
11 act of protest by Côte d'Ivoire. These examples are but a snapshot of the total
12 picture: in the evidence before you there is much on Ivorian knowledge,
13 acquiescence and support, but, as I have said, not a single example of protest.
14

15 Let us start in 1968, when Ghana granted a concession in the area that is now
16 considered to be under dispute by Côte d'Ivoire.¹⁷ There was no objection to the
17 concession by Côte d'Ivoire that was granted in 1970. In 1970, the concessionaire,
18 Volta Petroleum, became interested in an area known as Shallow Water Tano and
19 began drilling at the western limit of the concession near the customary equidistance
20 boundary. As set out in the Memorial, licences were granted for that drilling on the
21 condition that at least one well would be drilled by the licensee.¹⁸ Côte d'Ivoire did
22 not protest the grant of the licence in 1968, or the drilling under the licence,¹⁹ which
23 began in 1970.
24

25 In the following decade, the 1980s, several wells were drilled as part of a concession
26 granted to ARCO. One of these was known as TP-1. It is very close to the boundary.
27 This was drilled in 1989, adjacent to the western boundary of the concession, right
28 by the customary equidistance boundary. In its Counter-Memorial, Côte d'Ivoire
29 argues that Ghanaian authorities did not inform Ivorian authorities on the work that
30 was taking place in 1989, and so Côte d'Ivoire was somehow uncertain as to the
31 process of the activities in the alleged area under dispute;²⁰ yet this information was
32 publicized and widely available.
33

34 In the following decade, the Western Tano block was awarded to Dana Petroleum in
35 August 1996. Mr Tsikata has already taken you to this letter of November 1997.
36 Ghana had requested the right to shoot seismic lines in Ivorian waters, on its side of
37 the boundary, and Côte d'Ivoire granted permission (*Interpretation from French*) "To
38 carry out seismic surveys in the Ivorian territorial waters near the maritime boundary
39 between Ghana and Côte d'Ivoire."²¹ (*Continued in English*) I will repeat those words
40 in English for the avoidance of any doubt or mischaracterization: "in the Ivorian
41 territorial waters near the maritime boundary between Ghana and Côte d'Ivoire."
42

43 Please look carefully at who the author of that letter is. It is Côte d'Ivoire's Minister of
44 Petroleum Resources, Rear Admiral Mr Lamine Fadika. Is this a protest by the good
45 Rear Admiral? It is not. Is it the opposite of a protest? Indeed it is: it is explicit

¹⁷ MG, para. 3.16.

¹⁸ MG, Vol. VIII, Annex 95.

¹⁹ MG, para. 4.38.

²⁰ CMCI, para. 5.14.

²¹ MG, Annex 68.

1 authorization premised on the existence of agreement between the Parties as to the
2 location of their maritime boundary. That boundary, to avoid doubt, is the customary
3 equidistance boundary. As you can see on the screen, the programme for the
4 seismic data fully respected the line and foresaw precisely that it had to be crossed –
5 and it was crossed.

6
7 After the completion of these seismic studies, well WT-1X was drilled in 1999, also
8 very close to the boundary. Did Côte d'Ivoire protest? It did not. This well led to the
9 first heavy oil discovery, a matter that was widely publicized. Did Côte d'Ivoire
10 protest when oil was discovered? It did not. Successive wells drilled, including
11 WT-2X in 2002, (an appraisal well), the news of which was very widely publicized in
12 oil and gas publications, as you can see on the screen, might, you would have
13 thought, prompted a protest. It did not; there was no protest and no objection.

14
15 Finally, we arrive at the 21st century, and even more recent activity on Ghana's side
16 of the customary equidistance boundary. Exploration rights to the Shallow Water and
17 Deepwater Tano blocks were awarded to Tullow in July 2006. This was very widely
18 publicized.²² The western limit of this concession falls right alongside the customary
19 equidistance boundary. Did Côte d'Ivoire protest this? No, it did not. The following
20 year, in April 2007, Côte d'Ivoire granted concessions to Tullow, further to the west
21 of the boundary. That same year, the concessions on Ghana's side of the boundary
22 led to the first significant oil discovery. Did Côte d'Ivoire protest the drilling activity
23 that led to the discovery? No, it did not.

24
25 Additional activities included the drilling of the Ebony-1 well in October 2008, and the
26 resulting hydrocarbon discovery was very widely publicized in both local and
27 international media, including the BBC.²³ Did Côte d'Ivoire protest any of the
28 activities that led to these discoveries? It did not. No objection to this activity arose
29 until the following year, after Côte d'Ivoire first changed its position during closed
30 negotiations. Let us be clear, its apparent change of position was not made public. It
31 was only on 26 September 2011 that Côte d'Ivoire wrote directly to Tullow, to
32 express its objection. It is important to appreciate that at this time, in early 2009,
33 Tullow was also a concessionaire on the Ivorian side of the boundary, yet somehow
34 Côte d'Ivoire did not even feel the need to tell one of its own investors that it was
35 now challenging the boundary.

36
37 Mr President, this evidence is clear, and it concludes my submissions on the
38 evidence that Côte d'Ivoire would prefer you ignore altogether. I do apologize for
39 taking you to this level of detail, but we know that you understand the importance of
40 the facts in a case such as this. Contrary to what you have been told, the evidence
41 on the Parties' practice shows it to have been extensive and intense over five
42 decades. These are not a few isolated acts. This is not activity that could by any
43 stretch be described as vague. It is not evidence that is vague. Côte d'Ivoire had full
44 knowledge of all of these facts and of the relationship of the activity that took place to

²² MG, para. 3.67.

²³ KOSMOS Energy, KOSMOS Energy Signs Agreement for Second Block Offshore Ghana (13 Dec. 2006), available at: http://www.kosmosenergy.com/press/kosmos_PR_121306.pdf; UK's Tullow uncovers oil in Ghana (18 June 2007), available at: <http://news.bbc.co.uk/2/hi/business/6764549.stm>; Ghana will be an African tiger (19 June 2007), available at: <http://news.bbc.co.uk/2/hi/africa/6766527.stm>.

1 the customary boundary. Côte d'Ivoire's failure to protest any of this, over five
2 decades, was not mere inadvertence: it was choice, and it was a choice that was
3 freely exercised and voluntarily expressed, a choice that offered support and
4 agreement to the customary equidistance boundary. That exercise of choice was an
5 exercise of sovereign will, and it allowed Côte d'Ivoire to encourage investors on its
6 side of the boundary, investors who would not have come if they had believed there
7 was a boundary dispute. There was no dispute until 2009, and by then, in our
8 submission, Côte d'Ivoire's conduct reflected an express acceptance of the
9 customary equidistance boundary.

10
11 The evidence here before you is not just preponderant; it is totally overwhelming and
12 it is entirely in one direction.

13
14 That concludes my presentation. I would like to take the opportunity to thank
15 Ms Singh, Ms Main-Klingst and Ms Macdonald for their assistance over the
16 weekend, and I thank you once again for your kind attention. I would ask that you
17 invite Professor Klein to the Bar.

18
19 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

20 Thank you, Professor Sands, for this presentation. I now give the floor to Professor
21 Pierre Klein. Professor Klein, you have the floor.

22
23 **MR KLEIN** (*Interpretation from French*): Mr President, Members of the Special
24 Chamber, we already knew that our esteemed opponents were uncomfortable with
25 the facts of the present case. My colleagues Fui Tsikata and Philippe Sands have
26 just reminded you, as Ghana had already done extensively in its written pleadings,
27 how the version of history presented by the other Party, punctuated by alleged
28 "longstanding protests" or the imposition of so-called "faits accompli", is far removed
29 from the real facts, as is highlighted by documents contemporary to those facts. I will
30 not therefore dwell on this any further. However, the first round of oral pleadings of
31 Côte d'Ivoire also showed us that our opponents' relationship with the law was not
32 the most comfortable. Certain key legal issues have been carefully ignored by the
33 other Party, such as the crucial issue of the critical date. Other issues have been
34 addressed in a cursory manner, to say the least, such as the question of the status
35 of PETROCI and the value of the maps in this dispute. On other points, our
36 opponents have simply chosen to dodge the issue by refusing to engage in any
37 discussion of the relevant case law. This oral statement will be devoted to these
38 silences or shortcuts on the part of the other Party on points of law that nevertheless
39 lie at the very heart of this case, regarding the notions of tacit agreement and
40 estoppel.

41
42 Before getting into the substance of the matter, however, I would quickly like to
43 return to Côte d'Ivoire's argument that Ghana is "confusing" tacit agreement, *modus*
44 *vivendi* and estoppel as the foundation for its claim.¹ I fear that this "confusion" exists
45 only in the minds of our opponents. However, just in case, I will repeat here that the
46 central foundation of Ghana's argument is indeed tacit agreement, as regards both
47 the method of delimitation and the line of the limit. Furthermore, Ghana claims the

¹ Rejoinder of Côte d'Ivoire (hereinafter "DCI"), paras 5.2 and 5.3; ITLOS/PV.17/C23/6, p. 9 (Mr Pellet).

1 existence of a *modus vivendi* and estoppel, but in different contexts and for different
2 reasons. On the one hand, the existence of a *modus vivendi* resulting from the joint
3 practice of the Parties in relation to oil exploration and exploitation should be taken
4 into account as a circumstance justifying the adjustment of the provisional
5 equidistance line, if you were to consider that no tacit agreement existed in this case.
6 On the other hand, this consistent practice also produces another legal effect
7 because it establishes an obligation of non-contradiction for Côte d'Ivoire, which
8 means that it cannot, to the detriment of Ghana, suddenly change the position that it
9 has maintained for five decades regarding the course of the common maritime
10 boundary – and this is, of course, the question of estoppel. Whatever our opponents
11 might seem to think, there is, in truth, nothing surprising about the fact that the same
12 conduct can be examined through the prism of different legal concepts, which can
13 each be applied in the same factual context.

14
15 Having made this clarification, we can now turn to the first of the debates avoided by
16 Côte d'Ivoire, which relates to the critical date to be identified in order to determine
17 when the present dispute arose. Counsel for Côte d'Ivoire said nothing about this
18 during the first round of oral pleadings, so we need to go back to the Ivorian
19 Rejoinder to find that the other Party seems to have set this date at 1988. Our
20 opponents write that “[t]he difference in the Parties' positions as concerns the
21 delimitation of their maritime boundary dates back to the first exchanges on the
22 matter, that is, therefore, to 1988.”²

23
24 The entire question is, of course, whether this "difference in positions" alleged by
25 Côte d'Ivoire constitutes a dispute within the meaning of international law.

26
27 Ghana does not think so, and it made that very clear in its Reply. It stated that the
28 critical date that should be used for the purposes of this dispute was February 2009.³
29 That date was not set as a result of some arbitrary choice by Ghana, as our
30 opponents might perhaps be tempted to have you believe. It is, far more simply, the
31 result of applying to the facts in the case the very concept of dispute, which is long
32 established in international case law and to which Côte d'Ivoire has not made the
33 least reference. Obviously, then, going back to the "classics" is not a pointless
34 exercise. A dispute, the Permanent Court of International Justice explained in the
35 *Mavrommatis* case, is “a disagreement on a point of law or fact, a conflict of legal
36 views or of interests between two persons.”⁴

37
38 As the ICJ has very recently recalled, referring to the *South West Africa* case, for a
39 dispute to exist, “[i]t must be shown that the claim of one party is positively opposed
40 by the other.”⁵

41

² DCI, para. 4.9.

³ RG, paras 2.10-2.12.

⁴ *Mavrommatis Palestine Concessions (Greece v. United Kingdom)*, PCIJ, Series A, no. 2, p. 11.

⁵ *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, *Preliminary Objections, Judgment of 21 December 1962: I.C.J. Report; 1962*, p. 319, at p. 328, cited in the Judgment of 5 October 2016 concerning the *Obligations concerning negotiations relating to cessation of the nuclear arms race and to nuclear disarmament (Marshall Islands v. United Kingdom)*, *I.C.J. Reports 2016*, para. 37).

1 It was in February 2009, and only in February 2009, that such conflicting claims were
2 expressed for the first time by the two Parties to the present proceedings. It was only
3 then that the Parties acknowledged their disagreement on the question of their
4 maritime boundary. It was only then that the claim of one Party was "positively
5 opposed by the other", to use the words of the Court. That was in 2009 – not in 1988
6 and not in 1992.

7
8 If I draw your attention specifically to this definition, Mr President, Members of the
9 Special Chamber, it is not – or not only – because of my natural bent as a lawyer to
10 characterize, define and label everything that I see or touch; it is because identifying
11 the critical date has very specific consequences for a dispute like this.

12
13 Before then, there was quite simply no dispute between the Parties. There was no
14 dispute, and certainly no disputed area in which such and such an obligation to show
15 restraint or to refrain from conducting activities, particularly in respect of the
16 exploitation of the natural resources of the area, was incumbent upon either of the
17 Parties. This absence of dispute is easily verified. Professor Sands has just shown
18 you that none of the activities undertaken by Ghana on its side of the customary
19 boundary following the equidistance line had been the subject of protests on the part
20 of Côte d'Ivoire before 2009. After the critical date, the conduct of the Parties is to
21 some extent neutralized, in so far as it can no longer be taken into consideration to
22 strengthen the legal position of either Party. Protests by one of the Parties, for
23 example, lose all legal significance from that time. The principle is well established in
24 case law,⁶ which does, however, recognize one classic exception, which is where
25 developments after the critical date confirm the situation existing before that date. As
26 the arbitrators stated in the *Boundary Dispute concerning the Taba Area*, such
27 developments may be taken into account, but only (*Continued in English*) "to the
28 extent that such conduct confirms the understanding reached of what the situation
29 was on the critical date."⁷

30
31 (*Interpretation from French*) This is indeed the case in our dispute in respect of, for
32 example, the submission made by Côte d'Ivoire to the Commission on the Limits of
33 the Continental Shelf in May 2009 or the maps published by the authorities of that
34 State until 2011, which continue to show the common maritime boundary following
35 an equidistance line, thereby confirming the situation existing before the critical date.

36
37 These clarifications regarding the concept of the critical date and the start of the
38 present dispute may seem to be elementary, or even otiose. However, they do seem
39 to be useful for the Chamber with a view to understanding, as precisely as possible,
40 the relevance of the conduct of the Parties to the proceedings at the different stages
41 of their mutual relations.

42
43 I would now like to turn to Côte d'Ivoire's cursory treatment of two important
44 questions when it comes to proving the existence of a tacit agreement between the
45 Parties to these proceedings: the question of the status of PETROCI on the one
46 hand and the weight to be attributed to the maps on the other.

⁶ See, for example, *Border arbitration between the Emirates of Dubai and Sharjah, Award of 19 October 1981*, p. 89, reproduced in ILM 1993, pp. 543 *et seq.*

⁷ *Boundary dispute concerning the Taba enclave (Egypt v. Israel)*, ILM 1988, pp. 1469 *et seq.*, para. 111.

1
2 Throughout the proceedings Côte d'Ivoire has displayed a fierce determination to
3 distance itself from its national oil company PETROCI. Having described it in their
4 written submissions as a “private-law body”,⁸ our opponents have continued to insist
5 throughout the oral proceedings that it was not an emanation of the State.⁹ All
6 PETROCI’s conduct, and all documents published by PETROCI, are therefore in no
7 way binding on the Ivorian State. Mr President, Members of the Special Chamber,
8 there is a name for this syndrome; it is called “denial of reality”. In 2010, PETROCI’s
9 stationary still identified it as a “State company”¹⁰ and still today – at least the day
10 before yesterday; I confess that I have not checked again this morning – the
11 PETROCI website presents it as a “State company” “governed by the Law of
12 4 September 1997 on the definition and organization of State companies”.¹¹
13

14 In all commonly accepted definitions of the term, Mr President, a State company is
15 an emanation of the State. That is the case with PETROCI, which still today is under
16 the supervision of the Ivorian Ministry of Petroleum and Energy, as its website still
17 confirms.¹² These different documents are, of course, included in your Judges’
18 folders. It is this company, PETROCI, which, I will reiterate, is identified in various oil
19 contracts as “the rights-holder of all rights for exploration and exploitation of
20 hydrocarbons on all available areas of Côte d'Ivoire.”¹³
21

22 How could PETROCI be in such a position if it were not an emanation of the Ivorian
23 State? As such, its conduct, its positions and its publications can therefore be
24 attributed to Côte d'Ivoire itself, and do indeed reflect the perception that the Ivorian
25 State had of the maritime boundary formed, in this instance, by the equidistance line
26 reproduced countless times in PETROCI documents. As I explained last week, this
27 statement is fully valid even if it is recognized, as Ghana has always done, that
28 PETROCI has no competence in respect of delimitation of the boundaries of Côte
29 d'Ivoire.
30

31 As to the weight that should be attributed to the maps in the present dispute, our
32 opponents once again contented themselves with a very brief response to the
33 arguments put forward by Ghana on this point. From the point of view of the law,
34 they have clung to the well-known ruling of the ICJ in the Burkina Faso/Mali frontier
35 dispute, stating that maps “cannot in themselves alone be treated as evidence of a
36 frontier”.¹⁴
37

⁸ CMCI, para. 4.104.

⁹ ITLOS/PV.17/C23/4, p. 26 (Mr Wood).

¹⁰ *Letter from F.Kassoum*, General manager of Société Nationale d’Opérations Pétrolières (PETROCI) to N. Boakya Asafu-Adjaye, Director-general of Ghana National Petroleum Corporation (14 April 2010), MG, Vol. VI, Annex 70.

¹¹ PETROCI HOLDING, ‘Legislation’, official website available at: <http://www.petroci.ci/index.php?numlien=21> (accessed 12 February 2017); see for a similar screenshot dated 24 August 2015, RG, Annex 22.

¹² PETROCI HOLDING, ‘Partenaire - Tutelle - Ministère du Pétrole et de l’Énergie’, official website available at: <http://www.petroci.ci/index.php?numlien=91> (accessed 12 February 2017).

¹³ Republic of Côte d'Ivoire, Hydrocarbon sharing contract with Vanco Côte d'Ivoire Ltd and PETROCI Holding, Bloc CI-401 (30 September 2005), MG, Vol. V, Annex 40.

¹⁴ *Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 554, para. 583, cited in ITLOS/PV.17/C23/4, p. 27 (Mr Wood).

1 In doing so, the other Party seeks, first, to treat the 62 maps presented by Ghana as
2 a monolithic whole. Our opponents thus recall, in very general terms, the caution
3 displayed by international courts and tribunals when dealing with maps.¹⁵ But they
4 also fail to mention that international courts and tribunals rely on a number of
5 characteristics permitting them to determine the probative value of cartographic
6 material on a case-by-case basis. In *Burkina Faso/Mali* the Court stated that “the
7 actual weight to be attributed to maps as evidence depends on a range of
8 considerations”, considerations linked in particular to their reliability or their
9 neutrality.¹⁶

10
11 The first distinction to be made in the cartographic material presented by Ghana is
12 the distinction between the stand-alone maps and those accompanying another
13 document, namely national legislation, a concession agreement, a report or inter-
14 ministerial correspondence. Where they appear together with another document, the
15 maps are there to supplement or illustrate the content of the main document. That is
16 the case with 24 of the maps presented by Ghana.¹⁷ Those maps all corroborate the
17 recognition by the two Parties of the equidistance line as the international boundary.
18 My colleague Fui Tsikata presented some of the more striking examples this
19 morning.

20
21 Côte d'Ivoire obstinately refuses to recognize the fact that many of the maps
22 presented by Ghana come from Ivorian sources and cannot therefore be considered
23 to be “self-serving”. By maintaining such a position, the other Party is obviously
24 seeking to evade the application of well-established case law, which accords
25 particular weight to evidence – I am citing the ICJ – “acknowledging facts or conduct
26 unfavourable to the State represented by the person making them.”¹⁸

27
28 More crucially, our opponents have remained silent throughout their oral pleadings
29 on the fact that 22 of the maps presented by Ghana explicitly and unambiguously
30 show a boundary line that clearly continues seaward beyond the limit of the oil
31 concessions of the two Parties.¹⁹ It is therefore impossible to read into this silence
32 anything other than agreement with Ghana’s analysis of those maps, as
33 representations of the reality, as between the two Parties, of a maritime boundary
34 whose existence is manifestly independent of the limits of the oil concessions.
35 Mr President, Members of the Special Chamber, Ghana invites you to take note of
36 this.

37
38 The cartographic material presented by Ghana proves to be as broad as it is
39 consistent. Not a single one of the maps shows the common maritime boundary
40 other than following an equidistance line, and this owes nothing to any form of
41 selectivity that might be displayed by Ghana. The other Party has not been able to
42 show you a single map – not a single map – depicting the maritime boundary any
43 differently before 2011. Our opponents do not have much to say about this either.
44 Yet all these factors – number, consistency, origin – bear considerable weight. It was

¹⁵ Cited in ITLOS/PV.17/C23/4, p.27 (Mr Wood).

¹⁶ *Burkina Faso c. Mali*, para. 55-56.

¹⁷ RG, para. 2.89, see list of maps in footnote no. 132.

¹⁸ *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.

¹⁹ RG, para. 2.90, see complete list of maps in footnote no.134.

1 undoubtedly in the *Beagle Channel* case that the arbitrators best highlighted that
2 weight. The Arbitral Tribunal states:

3
4 *(Continued in English)*

5 [W]here there is a definite preponderance on the one side – particularly if it
6 is a very marked preponderance – and while of course every map must be
7 assessed on its own merits – the cumulative impact of a large number of
8 maps, relevant for the particular case, that tell the same story – especially
9 where some of them emanate from the opposite Party, or from third
10 countries, – cannot but be considerable, either as indications of general or
11 at least widespread repute or belief, or else as confirmatory of conclusions
12 reached, as in the present case, independently of the maps.

13
14 *(Interpretation from French)* No doubt this conclusion is reinforced even further in our
15 case because it is not just a question of preponderance, whether marked or not, but
16 quite simply an absolute unanimity of representations of the maritime boundary on
17 the maps.

18
19 Mr President, as it stated in its Reply, Ghana fully subscribes to the principle that
20 cartographic material must be treated with caution.²⁰ It is clear that the production of
21 maps may, for example, serve the expansionist ambitions of a State. However, for
22 the reasons I have just outlined, this is plainly not the case here. The maps
23 presented by Ghana, in particular the many which come from Ivorian sources, reflect
24 and corroborate the wish of Côte d'Ivoire, and of Ghana, to treat the equidistance
25 line as the maritime boundary of the two States. To recognize this is therefore in no
26 way contrary to the relevant international jurisprudence. Quite the opposite; the
27 consideration of the plentiful and highly consistent cartographic material in the
28 present case would be fully in line with that jurisprudence.

29
30 As you will recall, the bulk of my statements last week was given over to a detailed
31 response to the arguments put forward by Côte d'Ivoire claiming that Ghana's
32 position could find no support in international jurisprudence, whether with regard to
33 the existence of a tacit agreement in the present case or a situation of estoppel.
34 Sir Michael Wood paid me a fine compliment in this respect by stating that my
35 discussion of case law pertaining to tacit agreement was delivered "in a truly
36 common law manner".²¹

37
38 For all that, Sir Michael did not seem willing to engage in any kind of analysis of the
39 relevant case law, whether in a common law manner or in any other. He merely
40 observed in this respect that "[o]f course, the circumstances of each case turn on
41 their own particular facts".²²

42
43 Similarly, Professor Miron told the Chamber that she did not think it necessary to
44 quibble "over the greater or lesser similarities between our case and all the others in
45 which international courts or tribunals rejected estoppel."²³

46

²⁰ RG, para. 2.83.

²¹ ITLOS/PV.17/C23/4, p. 26.

²² ITLOS/PV.17/C23/4, p. 26.

²³ ITLOS/PV.17/C23/4, p. 34.

1 Whether on the question of the tacit agreement or estoppel, we can therefore see
2 Côte d'Ivoire's refusal to engage in a serious appraisal of how Ghana's position
3 meets the criteria set out by international case law for the application of these two
4 legal institutions, tacit agreement and estoppel, in our case. The only possible
5 conclusion is that Côte d'Ivoire has realized the inanity of the criticisms it put forward
6 on this subject in its written pleadings, and I would ask the Chamber, once again, to
7 take note of this.

8
9 There is, however, one point in case law pertaining to tacit agreement – just one –
10 on which I wish to dwell briefly, if I may. International courts and tribunals have set a
11 high threshold for the recognition of the existence of a tacit agreement in matters of
12 maritime delimitation.²⁴ This is a point on which, you will have noted, our esteemed
13 opponents laid considerable emphasis a number of times at the end of last week.²⁵
14 On this point, the Parties are certainly not in any disagreement. They both subscribe
15 to the statement of the ICJ that “[e]vidence of a tacit legal agreement must be
16 compelling.”²⁶

17
18 But why does Ghana consider this to be the case here? How precisely would the
19 evidence in this case be so compelling that it can be set apart from all previous
20 cases where the assertion of the existence of a tacit agreement was rejected? In one
21 respect essentially: their recognition of the existence of a common maritime
22 boundary for the Parties, irrespective of the specific area dealt with by the texts and
23 documents in question and their particular purpose.

24
25 Côte d'Ivoire makes much of the fact that in this case Ghana merely invokes a
26 simple practice, which is limited, moreover, to the oil sector.²⁷ Nothing could be
27 further from the truth. In fact, we are in a situation that is similar in every respect to
28 that which the ICJ faced in *Peru v. Chile*. Dealing with the question of tacit
29 agreement, the Court notes that the operative terms and purpose²⁸ of the 1954
30 written agreement, which confirmed that tacit agreement, were “narrow and specific”.
31 However, it observes that that is not the matter under consideration at this stage in
32 its reasoning and its focus must solely be on “the existence of a maritime
33 boundary.”²⁹ In this respect, notes the Court, “the terms of the 1954 Special Maritime
34 Frontier Zone Agreement ... are clear. They acknowledge in a binding international
35 agreement that a maritime boundary already exists.”³⁰

36
37 Mr President, Members of the Special Chamber, is this not precisely what the Ivorian
38 decrees, the maps published by the Ivorian authorities and the correspondence
39 which they exchanged with their Ghanaian counterparts do? You have seen that
40 these various documents recognize, without a doubt, that “a maritime boundary
41 already exists” between the two States, to use the words of the Court. It is that
42 boundary that serves as the basis, the point of reference, for drawing the limits of the

²⁴ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* (*Nicaragua v. Honduras*), Judgment, I.C.J. Reports 2007, para. 253.

²⁵ See, for example: ITLOS/PV.17/C23/6, p. 9 (Mr Pellet).

²⁶ *Nicaragua v. Honduras*, para. 253.

²⁷ DCI, para. 5.19.

²⁸ *Maritime Dispute (Peru v. Chile)*, Judgment, I.C.J. Reports 2014, para. 90.

²⁹ *Ibid.*

³⁰ *Ibid.*

1 maritime concessions and for the activities conducted in the maritime areas in
2 question. This recognition is equally clear from the conduct of the Ghanaian
3 authorities, as many examples have shown you. The case-file demonstrates very
4 clearly that the two Parties have recognized a maritime boundary whose existence is
5 autonomous of the limits of their oil concessions.
6

7 It is true that here there is no “international binding agreement” similar to the 1954
8 agreement in the *Peru v. Chile* case, that is to say, a written agreement, but it would
9 be manifestly unreasonable systematically to make recognition of the existence of a
10 tacit agreement subject to its subsequent formalization in a written agreement. The
11 Court did not require such confirmation in the form of a written agreement as a
12 condition for recognition of a tacit agreement in its 2014 decision. In the view of
13 Ghana, there is no reason why your Chamber should be more demanding in this
14 respect.
15

16 All the conditions are therefore met for your Special Chamber to recognize the
17 existence of a tacit agreement between the Parties in the present case. A decision
18 by you to that effect, which can be based on an accumulation of absolutely
19 convergent evidence, would above all confirm, in matters of maritime delimitation,
20 the significance of the agreement of the States and the paramount importance for
21 the States of being able to rely on the stability of relations that they have peacefully
22 developed with their neighbours over a long periods of time.
23

24 My presentation brings an end to Ghana’s submissions this morning. Thank you,
25 Mr President, Members of the Special Chamber, for your kind attention.
26

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

28 Thank you, Professor Klein, for your presentation. With it we conclude the morning’s
29 pleadings for Ghana in the second round. We will adjourn the session for a two-hour
30 lunch break and resume at 3 o’clock to continue with the second round of Ghana’s
31 oral pleadings. The session is adjourned.
32

33 *(Lunch break)*