

WRITTEN STATEMENT OF GHANA

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
SPECIAL CHAMBER

CASE. No. 23

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

REQUEST FOR THE PRESCRIPTION OF PROVISIONAL MEASURES SUBMITTED
BY
THE REPUBLIC OF CÔTE D'IVOIRE IN ACCORDANCE WITH
ARTICLE 290, PARAGRAPH 1, OF THE UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA



WRITTEN STATEMENT OF GHANA

23 MARCH 2015

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Introduction

1. On 22 September 2014 Ghana instituted proceedings against Côte d'Ivoire pursuant to Part XV of the United Nations Convention on the Law of the Sea ("the Convention", or "UNCLOS"). On the basis of the Parties' declarations under the Convention, Ghana expected the case to be heard by an Arbitral Tribunal established under Annex VII of the Convention. However, on 3 December 2014, the Parties entered into a Special Agreement to submit the dispute to a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS), in accordance with Article 15(2) of the Statute of the Tribunal. By its Order dated 12 January 2015, ITLOS established the Special Chamber in accordance with the agreement of the Parties.

2. On 27 February 2015, Côte d'Ivoire filed a Request for the prescription of provisional measures to the Special Chamber in accordance with Article 290(1) of UNCLOS. With its far-reaching and unprecedented request, Côte d'Ivoire seeks to prevent Ghana from any oil exploration, development or production activities throughout the newly disputed area, until the Special Chamber gives its judgment on the merits. What Côte d'Ivoire seeks in effect is an order from the Special Chamber to close down large parts of Ghana's well-established offshore oil and gas industry. Côte d'Ivoire attempts to abandon decades of its own well-established practice and to formulate a new maritime claim that would enjoin its neighbour from continuing to do that which Côte d'Ivoire has known about and accepted for decades.

3. At the heart of the Request presented by Côte d'Ivoire is a newly claimed maritime boundary that is based on a bisector approach and the abandonment of a long-agreed boundary line that was based on equidistance. As the history summarised below demonstrates, Côte d'Ivoire's new approach is the culmination of a series of radical and unprincipled departures from an equidistance approach which both Parties had applied for decades, in reliance on which Ghana has granted concessions, entered into contracts, acquired rights, and undertaken extensive contractual obligations with international oil companies. Having allowed those steps to be taken, with full knowledge and acceptance, Côte d'Ivoire now seeks to bring operations on the Ghana side of the long-recognized border to an abrupt halt. Nowhere in its Request does Côte d'Ivoire acknowledge its own practice over decades, or the immense and irreparable harm which the measures it seeks would cause to Ghana.

4. Côte d'Ivoire's Request is premised on a number of unsupported and injurious factual allegations. They consist in particular of accusations of lack of transparency and incompetence of Ghana's regulation and supervision of petroleum operations, as well as the alleged incompetence and disdain for the marine environment of Ghana's leading oil concessionaire (which is also a leading oil concessionaire of Côte d'Ivoire, a fact that Côte d'Ivoire omits to tell the Special Chamber). It makes these allegations for the first time, never having raised them during the lengthy history of bilateral contact on the subject, or during its many communications with the common concessionaire (Tullow).

5. Ghana files this Written Statement in response to the timetable fixed by the Special Chamber, following consultations with the Parties.¹

The Facts

6. In the submissions set out below, Ghana deals first with the facts (Section I), addressing the facts as set out by Côte d'Ivoire, including the truncated, partial history on which Côte d'Ivoire relies and the many omissions and misrepresentations in its account. The factual submissions are structured as follows:

- A. The maritime boundary mutually recognized by both Parties, based on equidistance;
- B. Côte d'Ivoire's acceptance of and non-objection to Ghana's concessions and oil and gas related activities, on Ghana's side of that mutually recognized boundary;
- C. Ghana's reliance on Côte d'Ivoire's statements and actions;
- D. The severe effect and irreparable harm that would be caused to Ghana by acceding to Côte d'Ivoire's Request;
- E. Côte d'Ivoire's manipulation of the equidistance line;
- F. Côte d'Ivoire's attacks on the integrity and competence of Ghana and third persons;
- and
- G. Protection of the Marine Environment.

¹ The Written statement is made without prejudice to matters of fact and law that will be elaborated more fully in the pleadings that are to be filed on the merits of this case.

7. Ghana's factual submissions are supported by the annexed materials, including four witness statements. Three of these statements are prepared by the relevant Ghanaian Officials, relating to (a) the socio-economic impacts of a moratorium on Ghana's Petroleum Fields and the resultant harm that would ensue to Ghana; (b) Ghana's long-standing track record of transparently and successfully managing its petroleum operations; and (c) Ghana's robust environmental protection regime with regard to the oil and gas industry. A fourth statement has been prepared by Paul McDade, Chief Operating Officer of Tullow Oil plc, an important operator licensed by Ghana in its waters (and also licensed by Côte d'Ivoire on its side of the equidistance line). Mr McDade deals with a range of matters including the history of Tullow's operations in Côte d'Ivoire and Ghana, the high environmental standards which it applies in its operations, the very substantial investment which it has made in the disputed area (over US\$ 3 billion to date), and the consequences of an abrupt halt to its activities.

The Law

8. In Section II, Ghana addresses the requirements of Article 290 of the Convention, having regard to the practise of ITLOS and other international courts and tribunals. None of the requirements are met, with the exception of the *prima facie* jurisdiction of the Special Chamber. Ghana submits that Côte d'Ivoire has failed to demonstrate (or even claim) that there is any urgency in the matter. The lack of urgency is underlined by its failure to pursue the complaints it now makes over many years when it could easily have done so. Further, Côte d'Ivoire has failed to demonstrate that the rights, that it newly claims, are subject to any risk of irreparable harm. On the evidence, the harms which it alleges are wholly speculative, not only unfounded in, but also contradicted by, the evidence. This is not a case in which one party wishes to keep a disputed area pristine while the other party wishes to develop it. To the contrary, Côte d'Ivoire seeks to do exactly what Ghana is currently doing, namely to carry out petroleum operations in the area over which Ghana has long been active, with the knowledge and acceptance of Côte d'Ivoire. One "harm" to which it points is the possibility that, if it succeeded in any part of its claim, Ghana would have extracted oil in which Côte d'Ivoire now claims to have an interest. In Ghana's submission, such an eventuality is remote, given the evidence of an agreed boundary and the very strong presumption of equidistance to which the coastal geography gives rise, and the equity of maintaining that approach, buttressed by the lengthy and consistent conduct of the Parties. But in any event, such 'harm' is a paradigm case where damages would provide a complete remedy. It cannot

possibly be considered 'irreparable' so as to justify the radical measures which Côte d'Ivoire seeks.

Structure

9. Ghana's Written Statement is set out in four volumes. Volume I contains the main text of Ghana's written submission, inviting the Special Chamber to reject all the measures sought by Côte d'Ivoire.

10. Volume II contains a set of figures and maps, some of which are also presented in the main text. The Figures are organized in the order they are referenced in the main text. Bearing in mind that the Special Chamber is not here required to engage on the merits, all the figures and maps prepared by Ghana should be treated as illustrative, and Ghana reserves the right to produce its definitive maps in the merits phase.

11. Volume III contains the four Statements referred to above, with their supporting documents.

12. Volume IV contains all other documents supporting Ghana's Written Statement.

Section I. The Facts

13. Côte d'Ivoire has presented its facts in a manner that is selective and truncated. The Special Chamber will note that, on Côte d'Ivoire's approach, the history of this matter began in 2009, when it made a private statement to Ghana. On Côte d'Ivoire's account, prior to then, the area now in issue was free of governmental or commercial activity, and was not subject to any prior agreement or practice by Côte d'Ivoire. The true facts are rather different. In 2009, Côte d'Ivoire took a first step towards abandoning the support it had given to an equidistance line that it respected for more than forty years, support made by consistent public representations on which Ghana and relevant commercial operators relied.

14. Côte d'Ivoire has chosen to omit from its Request for Provisional Measures a number of significant facts, including that:

- there has been a maritime boundary based on an equidistance line accepted and respected by both States for more than 40 years;
- both States have formally and publicly recognized that boundary, and have done so to each other, to the oil and gas industry (including their respective concession-holders), and to the public at large;
- the agreed line has long been shown as the maritime boundary between Ghana and Côte d'Ivoire on official maps published by both States;
- Ghana and Côte d'Ivoire have, for more than 40 years, consistently and fully respected that line as their maritime boundary in actual practice, in relation to oil and gas concessions and other matters;
- all the activities carried out by or under a license from Ghana that Côte d'Ivoire now seeks to enjoin, and all of the relevant oil fields, are in areas that fall on the Ghanaian side of the boundary line, which Côte d'Ivoire has respected for more than 40 years;
- during that entire period Côte d'Ivoire had notice of the concessions awarded by Ghana, and made no objection when they were publicized or when exploration and exploitation activities commenced;
- Ghana and its concession-holders have relied on Côte d'Ivoire's acceptance of the boundary, including its non-objection to the concessions and related activities, which has resulted in substantial economic investments being made in these maritime areas;
- more than US\$ 4.5 billion has been invested in reliance on Côte d'Ivoire's acceptance of the boundary and non-objection to these activities;

- Ghana and its concession-holders would suffer enormous and irreparable loss if, at this late date, these activities were enjoined; and
- to give effect to Côte d'Ivoire's application would mean that any coastal State could simply announce a change to a maritime boundary mutually recognized over a long period, and then seek to enjoin ongoing activity authorized by a neighbouring State on its side of the boundary line.

15. Instead of bringing these (and other) facts to the attention of the Special Chamber, Côte d'Ivoire has chosen to: (1) ignore its own laws and practice; (2) ignore the existence of a mutually accepted and respected boundary; (3) construct a manifestly flawed and deceptive "new" equidistance line so that Ghana's concessions and oil fields would appear to fall partially on Côte d'Ivoire's side; (4) engage in a disparaging and unjustified attack on the transparency of Ghana's oil and gas practices and the technological competency of Ghana and one of its concession-holders (which is also one of Côte d'Ivoire's concession-holders); and (5) seek to frighten the Special Chamber with wholly unsubstantiated allegations of possible harm to the marine environment.

16. In this Written Statement Ghana sets the factual record straight.

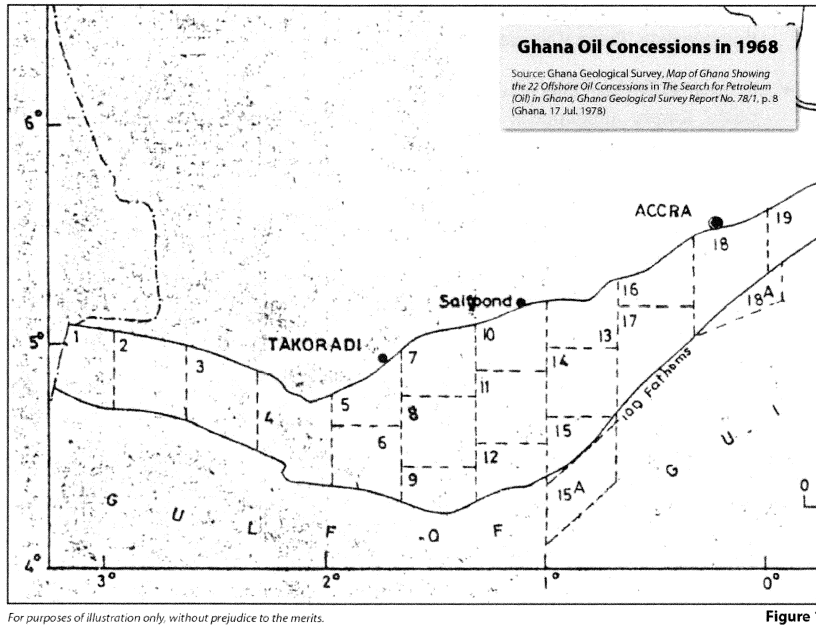
A. THE MARITIME BOUNDARY

17. Since the 1960s Ghana and Côte d'Ivoire have both accepted and respected a specific maritime boundary.² That boundary follows a line that both Parties regarded as an equidistance line. **Figure 1**³, below, is a 1968 map in which Ghana divided the maritime territory along the full length of its coast into 22 concession blocks for lease to petroleum companies.⁴ The map, which has always been available to Côte d'Ivoire, shows that the outer limit of Ghana's westernmost concession block was an equidistance boundary with Côte d'Ivoire.

² The earliest concession map found to date is a 1959 map depicting Côte d'Ivoire's extension of its onshore concessions several miles offshore. FINAREP, *Carte Pétrolière de l'Afrique* (France, 1959). Ghana PM, Vol. II, Annex M1.

³ Ghana Geological Survey, *Map of Ghana Showing the 22 Offshore Oil Concessions [in 1968] in The Search for Petroleum (Oil) in Ghana*, Ghana Geological Survey Report No. 78/1, p. 8 (Ghana, 17 Jul. 1978). Ghana PM, Vol. II, Annex M2.

⁴ G. O. Kesse, Ghana Geological Survey (Report No. 78/1) (17 July 1978), pp. 7-9. Ghana PM, Vol. IV, Annex 1.



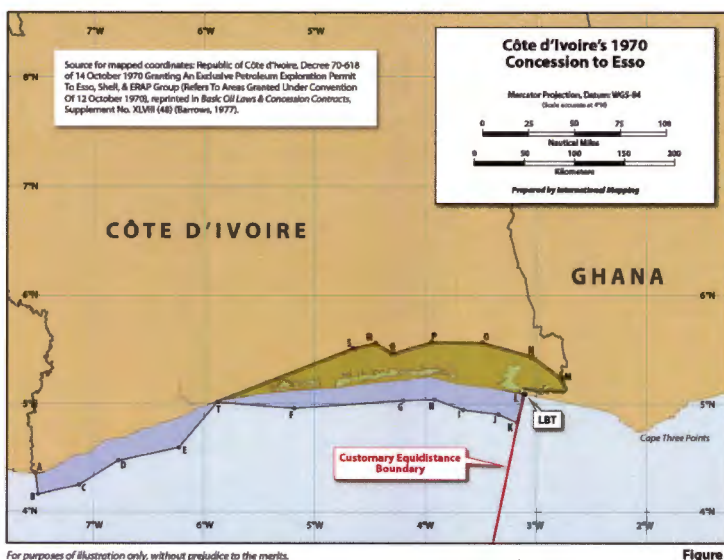
18. Côte d'Ivoire did not protest the line. To the contrary, it accepted it and proceeded to demarcate its own concession blocks using the same equidistance-based boundary. On 12 October 1970, for example, Côte d'Ivoire signed a concession agreement with a consortium led by Esso, whose easternmost limit was the equidistance line that represented the border with Ghana.⁵ The agreement provided that the concession was limited in the east by a line extending between points K and L, the coordinates of which, as specified in the agreement, are provided in footnote below.⁶ That line is the equidistance line, as shown in **Figure 2**, following paragraph 19.⁷

⁵ Republic of Côte d'Ivoire, Convention dated 12 October 1970 For Exploration and Development, Between The Government & Esso, Shell, & ERAP Group, *reprinted in Basic Oil Laws & Concession Contracts*, Supplement No. XLVIII (48) (Barrows, 1977), Ghana PM, Vol. IV, Annex LA-1.

⁶ Republic of Côte d'Ivoire, Convention dated 12 October 1970 For Exploration and Development, Between The Government, & Esso, Shell, & ERAP Group, *reprinted in Basic Oil Laws & Concession Contracts*, Supplement No. XLVIII (48) (Barrows, 1977), p. 49-50. Ghana PM, Vol. IV, Annex LA-1.

⁷ Côte d'Ivoire's 1970 Concession to Esso. Ghana PM, Vol. II, Annex M3.

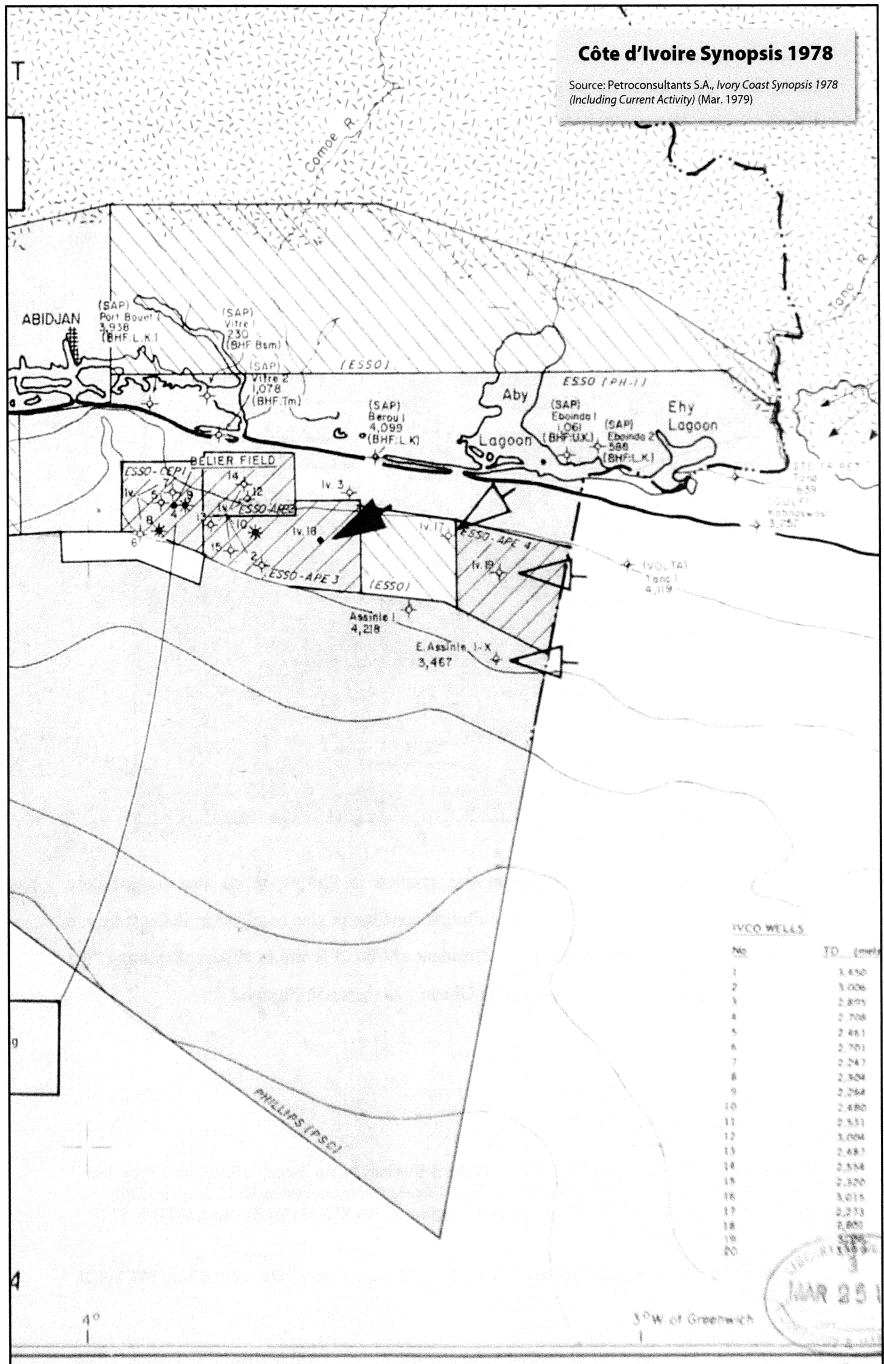
19. Two days later, on 14 October 1970, President Felix Houphouët-Boigny of Côte d'Ivoire issued Decree 70-618 authorizing the concession to Esso and its partners. The decree, signed by the President, states that the boundary of the concession in the east is “the border line separating the Ivory Coast from Ghana between points K and L.”⁸ This constitutes explicit recognition by the Head of State of Côte d'Ivoire of a maritime boundary between Ghana and Côte d'Ivoire that follows an equidistance line.



20. Later in the 1970s a concession was granted to Philips, in an area immediately seaward of the area granted to Esso. The Philips concession was bounded in the east by the same equidistance line recognised by the President of Côte d'Ivoire in 1970, constituting “the border line separating the Ivory Coast from Ghana”, as shown in **Figure 3**.⁹

⁸ Republic of Côte d'Ivoire, Decree 70-618 of 14 October 1970 Granting An Exclusive Petroleum Exploration Permit To Esso, Shell, & ERAP Group (Refers To Areas Granted Under Convention Of 12 October 1970), reprinted in *Basic Oil Laws & Concession Contracts*, Supplement No. XLVIII (48) (Barrows, 1977), p. 87. Ghana PM, Vol. IV, Annex LA-2.

⁹ Petroconsultants S.A., *Ivory Coast Synopsis 1978 (Including Current Activity)* (Mar. 1979). Ghana PM, Vol. II, Annex M4.



For purposes of illustration only, without prejudice to the merits.

Figure 3

21. The equidistance boundary was further recognized by Côte d'Ivoire in its 1977 law "Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of the Ivory Coast." Article 2 of the law established a 200 mile exclusive economic zone. Article 8 provided: "With respect to adjoining coastal States, the territorial sea and the zone referred to in Article 2 of this law shall be delimited by agreement in conformity with equitable principles and using, if necessary, the median line or the equidistance line, taking all pertinent factors into account."¹⁰ The 1977 Law, which was deposited with the UN's Division for Ocean Affairs and the Law of the Sea, has not been amended, and is referred to in other national legislation, including with respect to fishing and navigation¹¹ and petroleum.¹²

22. For the next 34 years after 1977, all the oil concessions granted by Côte d'Ivoire were limited on the east by the boundary it recognized with Ghana, all of Côte d'Ivoire's seismic surveys and other exploratory activities were conducted to the west of that boundary line, and all of Côte d'Ivoire's drilling was done west of that line. Likewise, without a single protest from Côte d'Ivoire, for more than three decades all of Ghana's oil concessions extended to the boundary with Côte d'Ivoire, and all of Ghana's oil exploration and exploitation activities were carried out to the east of that boundary line.¹³

23. The existence of a recognized boundary is reflected in the uniform practice of both States throughout that period. Between 1980 and 1985, Côte d'Ivoire drilled at least 27 wells,

¹⁰ Côte d'Ivoire, *Law No. 77-926 Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of Ivory Coast* (17 Nov. 1977) (available at http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CIV_1977_Law.pdf (accessed 19 Mar. 2015)).

¹¹ See, e.g., Order No. 13 MINMAAR/CAB/SAMARPO of 27 November 1986 on the powers and organization of the Autonomous Service of the Marine and Lagoon Environments (SAMARPOL), which refers to the 1977 Law as enabling legislation. Ministry of the Marine of the Republic of Côte d'Ivoire, Order No. 13 MINMAAR/CAB/SAMARPO of 27 November 1986, *Journal Officiel de la République de Côte d'Ivoire* (22 Jan. 1987). Ghana PM, Vol. IV, Annex LA-4; see also Law No. 86-478 of 1 July 1986 related to fishing, *Journal Officiel de la République de Côte d'Ivoire* (14 July 1986). Ghana PM, Vol. IV, Annex LA-3.

¹² See Republic of Côte d'Ivoire, *Petroleum Code* (Law No. 96-669) of 29 August 1996, reprinted in *South & Central Africa, Basic Oil Laws & Concession Contracts*, Supplement No. 133 (Barrows, 1998), Art. 3 establishing a Petroleum Code. Ghana PM, Vol. IV, Annex LA-7.

¹³ See IHS Energy Group, *Ghana Coastal Zone* (Dec. 2014). Ghana PM, Vol. II, Annex M21.

which resulted in 14 discoveries on its side of the agreed boundary line.¹⁴ This is reflected in a 1983 map of its oil-related activities, shown in **Figure 4**.¹⁵

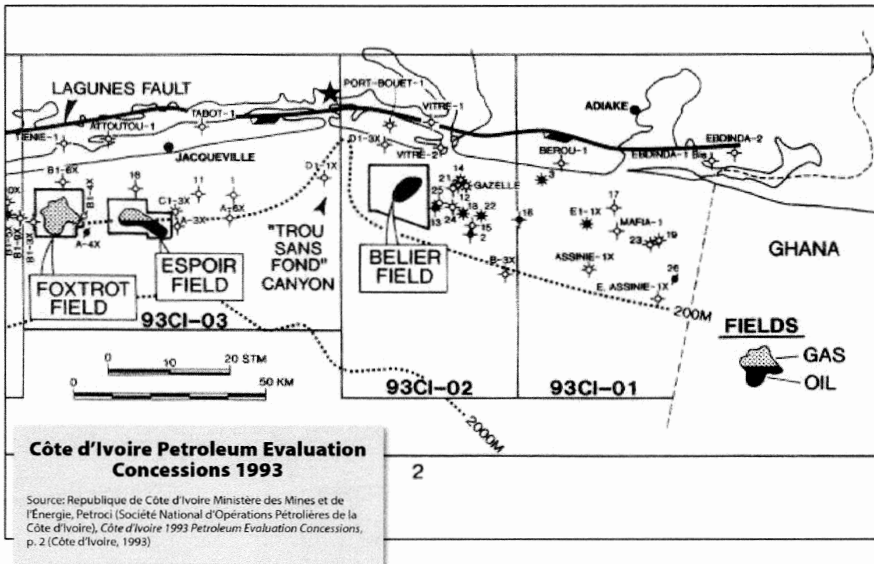
24. Throughout the 1980s and 1990s, Côte d'Ivoire continuously depicted its maritime boundary with Ghana as following the same equidistance line as shown in the above figures. Côte d'Ivoire's promotion and marketing materials directed to international oil companies, for example, showed the existence of a maritime boundary with Ghana along the equidistance line. A 1993 map from Côte d'Ivoire's "Petroleum Evaluation Concessions" report, shown in **Figure 5**,¹⁶ uses the same boundary line and identifies the maritime area to the east of the line as "Ghana."¹⁷

¹⁴ IHS Report, Basin Monitor: Republic of Côte d'Ivoire, Republic of Liberia, and Republic of Ghana (Mar. 2011), p. 5. Ghana PM, Vol. IV, Annex 14.

¹⁵ Petroconsultants S.A., *Ivory Coast Synopsis 1983 (Including Current Activity)* (Feb. 1984). Ghana PM, Vol. II, Annex M5.

¹⁶ République de Côte d'Ivoire Ministère des Mines et de l'Énergie, Petroci (Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire), *Côte d'Ivoire 1993 Petroleum Evaluation Concessions*, p. 2 (Côte d'Ivoire, 1993). Ghana PM, Vol. II, Annex M6.

¹⁷ Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Côte d'Ivoire Petroleum Evaluation Concessions* (1993). Ghana PM, Vol. IV, Annex 2; "Numerous seismic prospects dot concessions off Côte d'Ivoire", *Oil & Gas Journal* (4 Apr. 1994). Ghana PM, Vol. IV, Annex 3. *See also, e.g.*, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Exploration Opportunities in Côte d'IvoireThe Next Deep Water Producer in the Gulf of Guinea* (2002). Ghana PM, Vol. IV, Annex 6; Republic of Côte d'Ivoire, *Roadshow: Exploration Opportunities* (Dec. 2003). Ghana PM, Vol. IV, Annex 7; Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Deepwater Opportunities in Côte d'Ivoire* (May 2005). Ghana PM, Vol. IV, Annex 8; Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Deepwater Côte d'Ivoire Potential* (Nov. 2009). Ghana PM, Vol. IV, Annex 13. *See also* Statement of Paul McDade on behalf of Tullow Oil plc. (18 Mar. 2015) (hereinafter "Statement of Tullow") (Ghana PM, Vol. III, Annex S-TOL), para. 20, Appendix 2.



For purposes of illustration only, without prejudice to the merits.

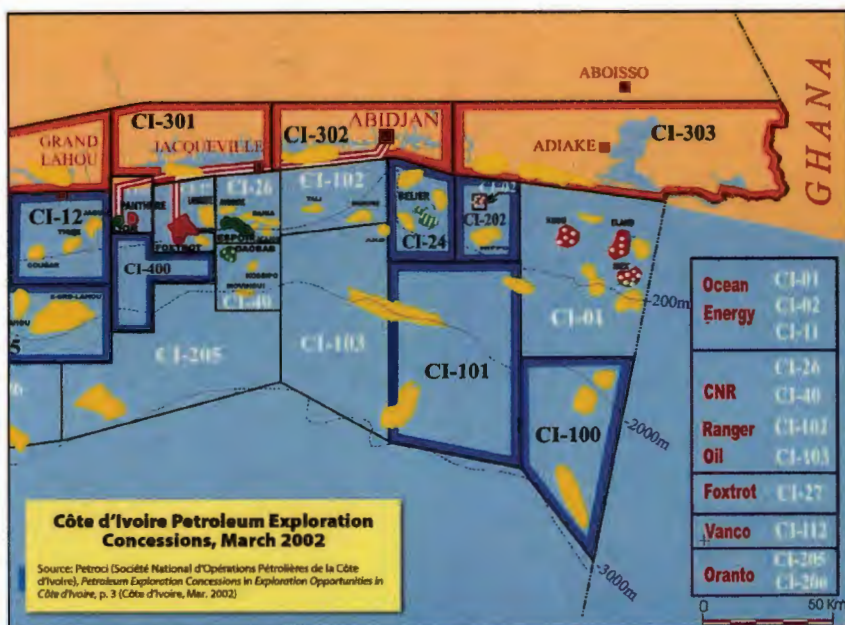
Figure 5

25. In the late 1990s, Côte d'Ivoire reconfigured its concession blocks, extending them seaward to encompass deeper waters.¹⁸ As depicted in a 2002 concession map (Figure 6) published by PETROCI,¹⁹ Côte d'Ivoire's state oil company, a new block CI-100 extended seaward, but was still limited in the east by the same boundary line with Ghana that marked the eastern limit of Côte d'Ivoire's block CI-01, and that had marked the eastern limit of the earlier concessions to Esso and Philips.²⁰

¹⁸ Petroconsultants S.A., *Côte d'Ivoire Current Status & Synopsis 1996* (1997). Ghana PM, Vol. II, Annex M8.

¹⁹ Petroci (Société National d'Opérations Pétrolières de la Côte d'Ivoire), *Petroleum Exploration Concessions in Exploration Opportunities in Côte d'Ivoire*, p. 3 (Côte d'Ivoire, Mar. 2002). Ghana PM, Vol. II, Annex M7.

²⁰ Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Exploration Opportunities in Côte d'Ivoire....The Next Deep Water Producer in the Gulf of Guinea* (2002). Ghana PM, Vol. IV, Annex 6.

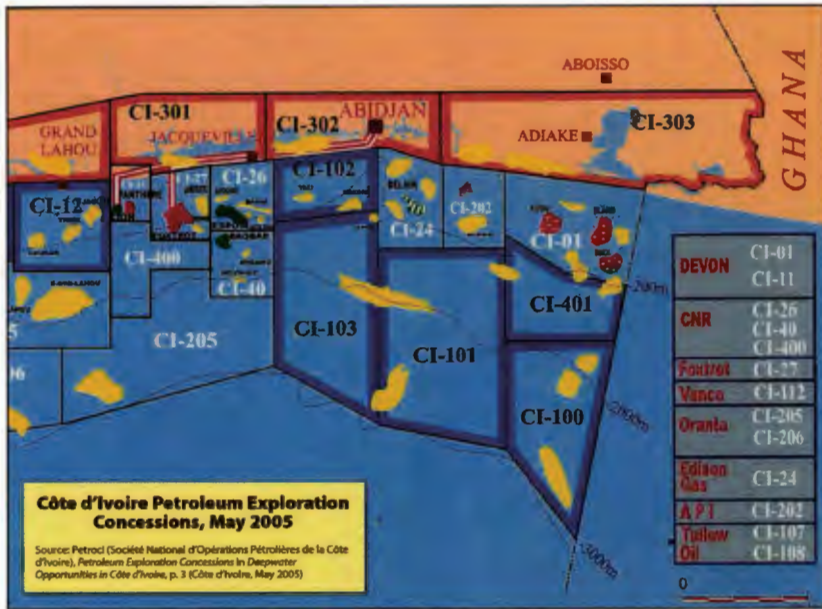


For purposes of illustration only, without prejudice to the merits.

Figure 6

26. Throughout this period, all of Côte d'Ivoire's easternmost concessions extended to, but not beyond, the recognized boundary with Ghana. In 2005, when Côte d'Ivoire subdivided its block CI-01 (closer to shore than CI-100) into block CI-401 and a new (smaller) block CI-01, it continued to depict the boundary with Ghana as the eastern limit of its concession blocks, as shown in **Figure 7**.²¹

²¹ Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Deepwater Opportunities in Côte d'Ivoire* (May 2005). Ghana PM, Vol. IV, Annex 8. Petroci (Société National d'Opérations Pétrolières de la Côte d'Ivoire), *Petroleum Exploration Concessions in Deepwater Opportunities in Côte d'Ivoire*, p. 3 (Côte d'Ivoire, May 2005). Ghana PM, Vol. II, Annex M9.



For purposes of illustration only, without prejudice to the merits.

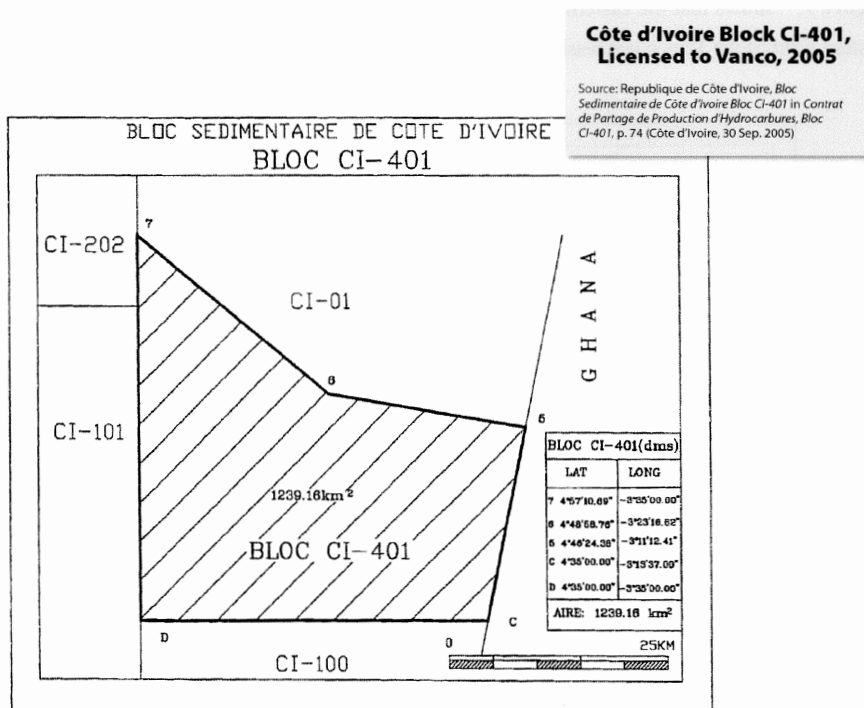
Figure 7

27. In the same year (2005), Côte d'Ivoire licensed block CI-401 to Vanco. The concession agreement, signed by Côte d'Ivoire's Minister of Mines and Energy as well as its Minister of Economy and Finance, specifies the coordinates of the eastern limit of the concession area, which track perfectly with the same equidistance-based boundary line dividing Côte d'Ivoire's maritime spaces from those of Ghana, as Côte d'Ivoire and PETROCI had consistently used previously.²² The map that forms part of the agreement with Vanco, shown in Figure 8,²³ depicts the eastern limit of the concession block, and spells out the name "GHANA" just to the east of that boundary line.²⁴

²² Republic of Côte d'Ivoire, *Contrat de Partage de Production d'Hydrocarbures, Bloc CI-401* (30 Sept. 2005) (extract). Ghana PM, Vol. IV, Annex 9.

²³ République de Côte d'Ivoire, *Bloc Sédimentaire de Côte d'Ivoire Bloc CI-401 in Contrat de Partage de Production d'Hydrocarbures, Bloc CI-401*, p. 74 (Côte d'Ivoire, 30 Sep. 2005). Ghana PM, Vol. II, Annex M10.

²⁴ Republic of Côte d'Ivoire, *Contrat de Partage de Production d'Hydrocarbures, Bloc CI-401* (30 Sept. 2005) (extract). Ghana PM, Vol. IV, Annex 9. See also Statement of Tullow, para. 21 (Ghana PM, Vol. III, Annex S-TOL).



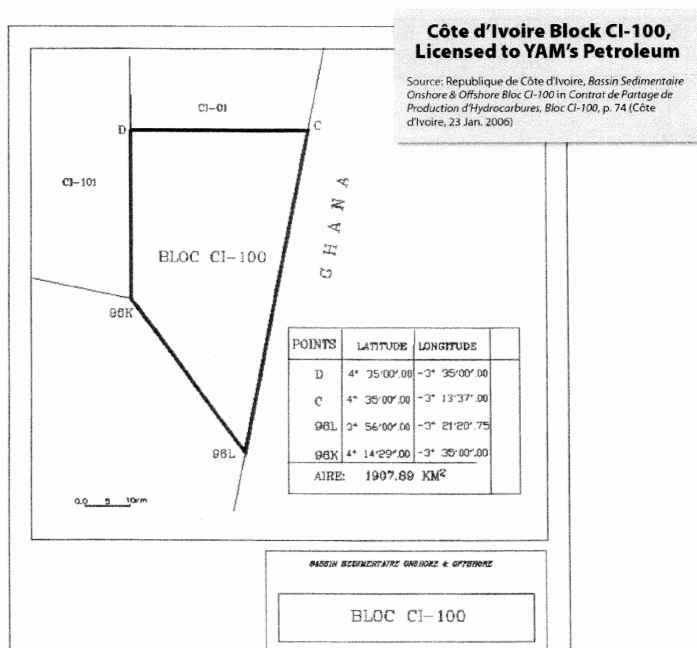
For purposes of illustration only, without prejudice to the merits.

Figure 8

28. Côte d'Ivoire then licensed the CI-100 block, immediately to the south of block CI-401, to YAM's Petroleum. The CI-100 block can be seen at the bottom of the map shown above in **Figure 8**. The contract for this block was also by Côte d'Ivoire's Minister of Mines and Energy and its Deputy Minister of Economy and Finance, and provided the precise coordinates for the eastern limit of the concession area, which also aligned with the recognized border with Ghana.²⁵ The map included in the concession agreement seen in

²⁵ Republic of Côte d'Ivoire, *Contrat de Partage de Production d'Hydrocarbures, Bloc CI-100* (23 Jan. 2006) (extract), p. 73. Ghana PM, Vol. IV, Annex 10.

Figure 9,²⁶ shows that the eastern limit of the area granted to YAM’s is the same line as the eastern limit of the Vanco concession.²⁷



For purposes of illustration only, without prejudice to the merits.

Figure 9

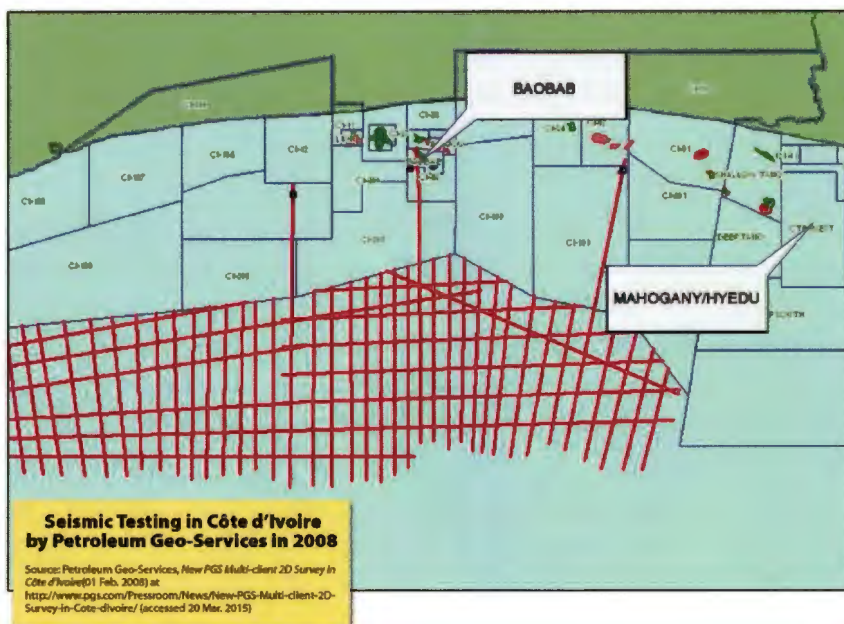
29. A February 2008 press release issued by Petroleum Geo-Services in cooperation with PETROCI, in Figure 10,²⁸ shows that the areas where Côte d'Ivoire carried out seismic surveys were all west of the recognized border line, which is depicted as separating Côte d'Ivoire’s concession blocks from those granted by Ghana.²⁹

²⁶ Republique de Côte d'Ivoire, *Bassin Sedimentaire Onshore & Offshore Bloc CI-100 in Contrat de Partage de Production d'Hydrocarbures, Bloc CI-100*, p. 74 (Côte d'Ivoire, 23 Jan. 2006). Ghana PM, Vol. II, Annex M11.

²⁷ Republic of Côte d'Ivoire, *Contrat de Partage de Production d'Hydrocarbures, Bloc CI-100* (23 Jan. 2006) (extract), p. 74. Ghana PM, Vol. IV, Annex 10. See also Statement of Tullow, para. 21 (Ghana PM, Vol. III, Annex S-TOL).

²⁸ Seismic Testing in Côte d'Ivoire by Petroleum Geo-Services in 2008, Ghana PM, Vol. II, Annex M12.

²⁹ "New PGS Multi-client 2D Survey in Côte d'Ivoire" *Petroleum Geo-Services* (1 Feb. 2008) (available at <http://www.pgs.com/Pressroom/News/New-PGS-Multi-client-2D-Survey-in-Cote-d'Ivoire/> (accessed 19 Mar. 2015)).



For purposes of illustration only, without prejudice to the merits.

Figure 10

30. For more than 40 years, Côte d'Ivoire proceeded on the basis of a mutually accepted boundary between the two States, one that followed the equidistance line. In 2009 it abruptly changed course, but it only did so privately. In February 2009, in the course of bilateral talks, Côte d'Ivoire unexpectedly informed Ghana for the first time that it would no longer accept the line long accepted and respected by both Parties, or any other line based on equidistance, as the maritime boundary between the two States.³⁰

31. In its Provisional Measures Request, Côte d'Ivoire reported *only* that it made this February 2009 statement to Ghana. What it failed to disclose to the Special Chamber is that this was the *first time* it had adopted such a position and informed Ghana. The Request also failed to disclose that Côte d'Ivoire did not inform any of its own concession holders of the change. Côte d'Ivoire's Request fails to mention that it had held a different position for more

³⁰ See Republic of Ghana and Republic of Côte d'Ivoire, *Second Meeting of the Joint Ivoirian-Ghana Commission on the Demarcation of the Maritime Border between Côte d'Ivoire and Ghana: Presentation by the Ivorian Side* (23 Feb. 2009). Côte d'Ivoire's Request for Provisional Measures (27 Feb. 2015) (hereinafter "Côte d'Ivoire PM"), Annex 2.

than 40 years, during which time, as shown above, it continuously acknowledged and accepted the same equidistance-based line as the boundary as had Ghana. Nor did Côte d'Ivoire disclose to the Special Chamber that all of its oil and gas practices respected the agreed boundary.

32. Côte d'Ivoire did not advise its own concession holders, that it had changed its longstanding position on the boundary, despite the fact that some were active in the waters of Ghana. Nor did it modify its 1977 law indicating that the boundary was appropriately based on equidistance. In fact, despite the private notification to Ghana, subsequent to February 2009, Côte d'Ivoire continued to act, in all outward respects, as though it regarded the same border line that both States had always respected, as the boundary with Ghana.

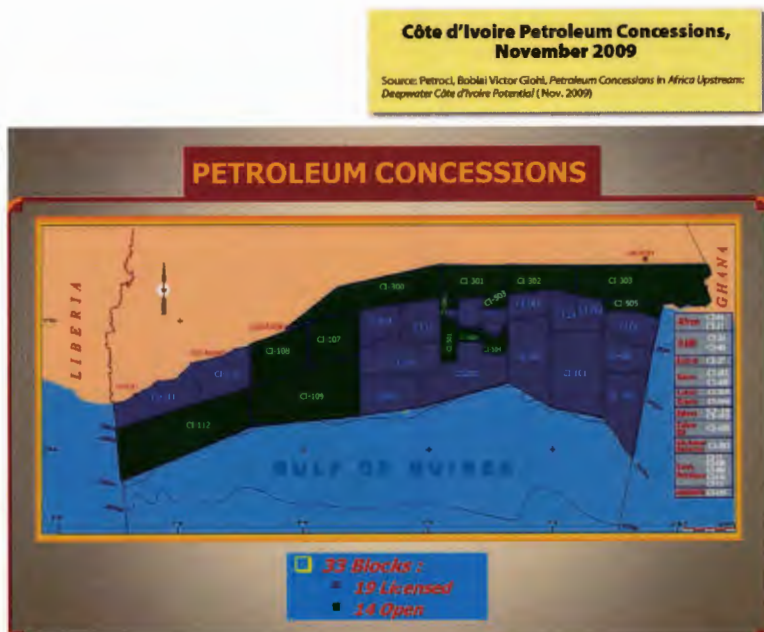
33. Thus, in May 2009 – three months after the bilateral talks with Ghana – Côte d'Ivoire made a submission to the UN Commission on the Limits of the Continental Shelf (CLCS) which asserted a claim beyond 200 miles *only to the west* of an equidistance boundary with Ghana, as shown in **Figure 11**.³¹ This followed Ghana's April 2009 submission to the CLCS, which consistent with Côte d'Ivoire's approach, asserted a claim *only to the east* of the equidistance boundary.³²

34. Thereafter, in November 2009, PETROCI introduced a map during a promotional presentation to international oil companies that depicted the same long recognized line as the boundary with Ghana.³³ It is shown below in **Figure 12**.³⁴

³¹ Republic of Côte d'Ivoire, *Submission for the Establishment of the Outer Limits of the Continental Shelf of Côte d'Ivoire pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary* (8 May 2009) (available at http://www.un.org/depts/los/clcs_new/submissions_files/cvi42_09/civ2009executivesummary.pdf (accessed 19 Mar. 2015)). New Sketch Map: *CLCS Submissions by Côte d'Ivoire and Ghana in 2009*. Ghana PM, Vol. II, Annex M13.

³² Republic of Ghana, *Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary* (28 Apr. 2009) (available at http://www.un.org/depts/los/clcs_new/submissions_files/gha26_09/gha_2009execsummary.pdf (accessed 19 Mar. 2015)).

³³ Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Deepwater Côte d'Ivoire Potential* (Nov. 2009). Ghana PM, Vol. IV, Annex 13.



For purposes of illustration only, without prejudice to the merits.

Figure 12

35. In 2012, Côte d'Ivoire was still presenting the same line as its boundary with Ghana. It did so in official communications with the World Bank, international donors and foreign investors, all of whom placed reliance on that line. That year, for example, with the support of the World Bank, Côte d'Ivoire published and promoted a Strategic Development Plan for 2011-2030, to secure funding at a Donor Conference held in December 2012. Côte d'Ivoire's Strategic Development Plan described block CI-01 (shown above), which is bounded in the east by the same line the Parties have always recognized as the boundary, as being located "right next to the Ghanaian border".³⁵ Even in 2012, a PETROCI promotional publication announcing recent drilling activities in the CI-401 block, just south of CI-01, similarly

³⁴ Petroci, Boblai Victor Glohi, *Petroleum Concessions in Africa Upstream: Deepwater Côte d'Ivoire Potential* (Nov. 2009). Ghana PM, Vol. II, Annex M14.

³⁵ Ministry of Mines, Petroleum and Energy of the Republic of Côte d'Ivoire, *Strategic Development Plan 2011-2030: Project Sheets* (Dec. 2012), p. 14. Ghana PM, Vol. IV, Annex 15.

explained that a well located just west of the same boundary line “was drilled next to the border with Ghana”.³⁶

36. Whatever Côte d’Ivoire may have said to Ghana in February 2009, its public stance and practice remained unchanged. It continued for several years thereafter to treat the same long-recognized line as the boundary between the two States in actual practice, and in communications with the third Parties. At the same time, it adopted a series of inconsistent positions in its private discussions with Ghana. In particular:

- in the February 2009 talks, Côte d’Ivoire proposed to Ghana that the boundary should henceforth follow a line along a meridian (Meridian 1);
- in May 2010 talks, Côte d’Ivoire abandoned Meridian 1 in favour of a new meridian line (Meridian 2), taking up roughly half of the territory previously claimed;
- in November 2011, Côte d’Ivoire abandoned Meridian 2 in favour of an entirely new approach, namely an angle bisector line (Bisector 1).³⁷

None of these approaches have any proper basis in the established principles of public international law but appear to have been devised in response to petroleum discoveries made by Ghana on the east side of the long agreed border.

37. Thus, as shown above, the history relating to the maritime area that Côte d’Ivoire only newly claims, and the activities that it wishes to stop within that area, did not begin in 2009. The history and the activities began more than four decades earlier, and reflect Côte d’Ivoire’s and Ghana’s repeated and continuous acceptance of and respect for a specific, equidistance-based maritime boundary.

³⁶ “Retour aux sources...Homecoming...”, *Bulletin Interne de la Société Nationale d’Operations Pétrolières de la Côte d’Ivoire*, No. 24 (2012), p. 17 (available at http://www.petroci.ci/Fichier/Pci_Inf2012_1.pdf (accessed 18 Mar. 2015)).

³⁷ See *inter alia* Republic of Ghana and Republic of Côte d’Ivoire, *Second Meeting of the Joint Ivoir-Ghana Commission on the Demarcation of the Maritime Border between Côte d’Ivoire and Ghana: Presentation by the Ivorian Side* (23 Feb. 2009). Côte d’Ivoire PM, Annex 2; Republic of Ghana and Republic of Côte d’Ivoire, *Minutes of the Côte d’Ivoire/Ghana Maritime Boundary Negotiation of 2 November 2011* (3 Nov. 2011). Côte d’Ivoire PM, Annex 3. See also New Sketch Map: Côte d’Ivoire’s Different Claim Lines, 2009–2011. Ghana PM, Vol. II, Annex M15.

B. CÔTE D'IVOIRE'S ACCEPTANCE OF AND NON-OBJECTION TO GHANA'S CONCESSIONS AND OIL AND GAS RELATED ACTIVITIES

38. For its part, like Côte d'Ivoire, Ghana has been consistent since at least the 1960s in respecting the same line as the maritime boundary between the two States. Every one of the many concessions granted by Ghana in its westernmost maritime area has reflected this boundary with Côte d'Ivoire, and all of them were made publicly available and known to Côte d'Ivoire. Plates depicting the location and limits of Ghana's concessions are attached as Annexes M16-M24 of Volume II.

39. Côte d'Ivoire has failed to provide any evidence that it protested or otherwise expressed objection to any of these Ghanaian concessions at the time they were offered, or when they were granted, or when contracts were signed, at any time prior to February 2009. Côte d'Ivoire was silent in the face of these well-publicized concession agreements. Over a period of some 40 years it did not protest any of the many seismic surveys or development activities undertaken by Ghana's licensees under these concession agreements. Its practice reflects a clear acceptance of the line used by both States to divide the limits of their respective oil concessions. This line was, as President Houphouët-Boigny decreed in 1970, "the border line separating the Ivory Coast from Ghana".

40. In conducting seismic testing right up to the border line, it was necessary for Ghana's licensees to cross it in order to turn around and return to Ghanaian waters. Similarly, when Côte d'Ivoire's licensees carried out their seismic tests to the eastern limit of their concessions, they needed to cross the recognized boundary before turning around. When the boundary was crossed, one State invariably sought the permission of the other to enter its waters. Significantly, Ghana sought and obtained permission from Côte d'Ivoire whenever its licensees' vessels crossed the recognized boundary; no permission was sought (or protest made by Côte d'Ivoire) when the Ghanaian licensees operated anywhere east of the line. Nor did Côte d'Ivoire ever request that Ghana or its licensees provide any seismic data obtained by them east of the line, in Ghanaian waters.

41. There are many examples of such practice extending over many years.³⁸ One bilateral exchange that occurred in October/November 1997 is illustrative. On 31 October 1997, Ghana communicated a request to Côte d'Ivoire's Director of Petroleum to obtain permission for a vessel collecting seismic data in Ghana's West Tano block to cross the boundary in order to shoot seismic tie lines to one of Côte d'Ivoire's wells (IVCO-26 Ibex).³⁹ The request came with a map, shown below in **Figure 13**,⁴⁰ of the proposed activity which depicted the mutually recognized border line, with labels indicating Ghana's territory to the east and Côte d'Ivoire's to the west.⁴¹

³⁸ Another example: In November 2008, *after* delimitation talks had commenced between the Parties, Ghana sought and received Côte d'Ivoire's co-operation to shoot seismic line tails and turn a vessel in Ivorian waters in connection with a seismic data acquisition programme over the Deep Water Tano-Cape Three Points area. Ghana provided Côte d'Ivoire's with an outline and co-ordinates of the proposed survey. Côte d'Ivoire's gave its consent. *Letter* from Ministry of Energy of the Republic of Ghana to Ministry of Mines & Petroleum Resources of the Republic of Côte d'Ivoire (3 Nov. 2008) and *Letter* from Minister of Mines and Energy of the Republic of Côte d'Ivoire to the Minister of Energy of the Republic of Ghana (11 Dec. 2008). Ghana PM, Vol. IV, Annex 12. *See also, e.g.*, Statement of Tullow, paras. 25-26, and Appendices 9 and 10 (Ghana PM, Vol. III, Annex S-TOL).

³⁹ *Letter* from Ghana National Petroleum Corporation to UMIC Côte d'Ivoire (31 Oct. 1997). Ghana PM, Vol. IV, Annex 4.

⁴⁰ Dana Petroleum plc, *Offshore Ghana, Tano Basin, 1997 Proposed Seismic Programme* (Ghana, 1997). Ghana PM, Vol. II, Annex M22.

⁴¹ *Letter* from Ghana National Petroleum Corporation to UMIC Côte d'Ivoire (31 Oct. 1997). Ghana PM, Vol. IV, Annex 4.



For purposes of illustration only, without prejudice to the merits.

Figure 13

42. The following month, Côte d'Ivoire's Minister of Petroleum Resources responded by granting Ghana's request, recognizing that Ghana:

"sought the approval of the authorities of the Republic of Côte d'Ivoire to conduct seismic recordings in Ivorian territorial waters near the maritime boundary between Ghana and Côte d'Ivoire in the zone covering an area of five (5) kilometers in length in the immediate vicinity of the IVCO26 IBEX wells in Côte d'Ivoire".⁴²

C. GHANA'S RELIANCE ON CÔTE D'IVOIRE'S STATEMENTS AND ACTIONS

⁴² Letter from Minister of Petroleum Resources of the Republic of Côte d'Ivoire to Minister of Mines and Energy of the Republic of Ghana (28 Nov. 1997). Ghana PM, Vol. IV, Annex 5 ("a sollicité l'accord des autorités de la République de Côte d'Ivoire en vue d'effectuer des enregistrements sismiques dans les eaux territoriales ivoiriennes proches de la frontière maritime entre le Ghana et la Côte d'Ivoire dans la zone couvrant une portion de cinq (5) kilomètres de longueur dans les environs immédiats du puits IVCO26 IBEX en Côte d'Ivoire.") (translation by Ghana).

43. Based on their common understanding on the location of the maritime boundary, reflected in their respective maps, laws, statements and actions over several decades, Ghana and Côte d'Ivoire have granted a large number of concessions. They have entered into contracts, acquired rights, and undertaken extensive contractual obligations with international oil companies that are premised on the existence of a long-recognized boundary dividing their respective maritime competences. In Ghana's case, pursuant to these contracts, significant sums had already been invested by February 2009 when Côte d'Ivoire first privately signalled to Ghana an intention to change its position on the location of the boundary. Further investments were made between 2009 and 2011 as Côte d'Ivoire publicly advised the Commission on the Limits of the Continental Shelf, the World Bank, donor States and the international investment community that its maritime boundary with Ghana followed the long accepted equidistance line.

44. In reliance on Côte d'Ivoire's maps, laws, statements and consistent conduct, Ghana entered into a series of oil and gas contracts beginning in the 1960s and extending to the present. In particular, the current operations within the area in dispute, which Côte d'Ivoire seeks to enjoin, have their origin in contracts Ghana entered between 2002 and 2006 involving the five concessions bounded on the west by the equidistance-based line,⁴³ and between 2006 and 2009, for the four concessions whose western portions are partially included within the area Côte d'Ivoire now claims, but which do not extend as far west as the boundary line.⁴⁴

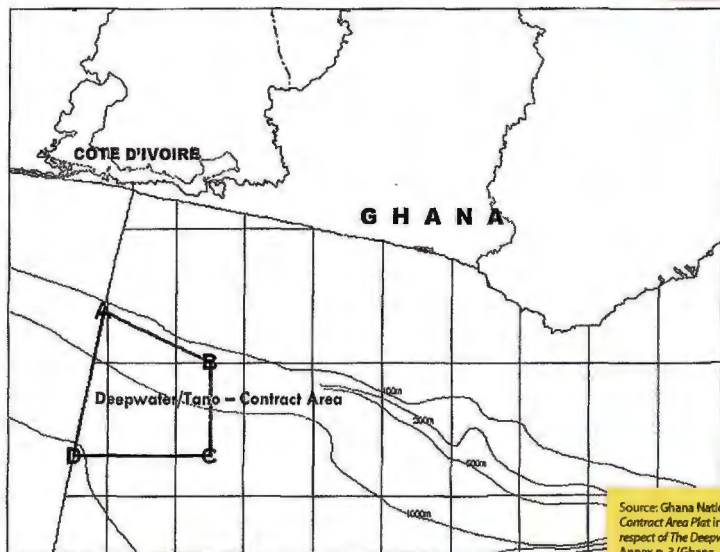
45. Ghana's reliance on the conduct of Côte d'Ivoire may be illustrated by reference to the Deepwater Tano Block. The largest and most productive investments thus far have been made in Ghana's Deepwater Tano Block, which is bounded on the west by "the border line separating the Ivory Coast from Ghana". Shown in **Figure 14**,⁴⁵ the block contains the

⁴³ Expanded Shallow Water Tano, Wawa, TEN, Deepwater Tano/Cape Three Points, and South Deepwater Tano.

⁴⁴ Central Tano, South West Tano, Deepwater Cape Three Points West, and Cape Three Points Deep.

⁴⁵ Ghana National Petroleum Corporation, *Contract Area Plat in Petroleum Agreement... in respect of The Deepwater Tano Contract Area*, Annex p. 3 (Ghana, 10 Mar. 2006). Ghana PM, Vol. II, Annex M23; Tullow Oil plc, *Ghana - Overview* (Oct. 2013) at <http://www.tullowoil.com/index.asp?pageid=50> (accessed 19 Mar. 2015). Ghana PM, Vol. II, Annex M24.

Ghana's Deepwater Tano Block



Source: Ghana National Petroleum Corporation, Contract Area Plot in Petroleum Agreement... in respect of The Deepwater Tano Contract Area, Annex p. 3 (Ghana, 10 March 2006)



Source: Tullow Oil plc, Ghana - Overview (Oct. 2013) at <http://www.tulloil.com/index.asp?pageid=50> (accessed 19 Mar. 2015)

For purposes of illustration only, without prejudice to the merits.

Figure 14

Jubilee and TEN fields.⁴⁶ The concession agreement was signed on 19 July 2006 with Tullow, as lead partner, and two other companies, Sabre and Kosmos.⁴⁷ The agreement was ratified by Ghana's Parliament in a public session and was widely and internationally reported. Côte d'Ivoire made no objection. Nor did Côte d'Ivoire object to any of Tullow's subsequent activities in the area pursuant to the concession agreement. Following Tullow's announcement of a major discovery of oil in June 2007, plans were made for the further development of the block, including the purchase of supplies and equipment and the hiring of subcontractors.⁴⁸ None of these development activities were protested by Côte d'Ivoire.⁴⁹

46. Côte d'Ivoire did not advise Tullow or other Ghanaian concession holders operating in the area adjacent to the boundary line that it had changed its position on the location of the line, or that it objected to their activities, until September 2011.⁵⁰ It is not like Côte d'Ivoire needed an introduction to Tullow, having awarded several concession blocks in Côte d'Ivoire to the company in 2004 and 2007.⁵¹ Yet it made no effort to advise Tullow that it objected to any of Tullow's activities on the Ghana side of the recognized boundary line before then.⁵² By that time, Tullow and its partners had invested US\$ 630 million in the TEN field alone, involving numerous on-going contractual commitments.⁵³ By November 2012, Tullow's investment in TEN had risen to approximately US\$ 1 billion.⁵⁴

⁴⁶ *Petroleum Agreement* between the Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Tullow Ghana Limited, Sabre Oil and Gas Limited and Kosmos Energy Ghana HC for The Deepwater Tano Contract Area (10 Mar. 2006), Annex 1, p. 3. Ghana PM, Vol. IV, Annex 11. *See also* Statement of Tullow, Appendix 4 (Ghana PM, Vol. III, Annex S-TOL).

⁴⁷ *See* Statement of Tullow, para. 17 (Ghana PM, Vol. III, Annex S-TOL).

⁴⁸ IHS Report, Basin Monitor: Republic of Côte d'Ivoire, Republic of Liberia, and Republic of Ghana (Mar. 2011). Ghana PM, Vol. IV, Annex 14. *See also* Statement of Tullow, paras. 27, 31, 44-49, Appendix 8 (Ghana PM, Vol. III, Annex S-TOL).

⁴⁹ *See* Statement of Tullow, paras. 27, 31, 95 (Ghana PM, Vol. III, Annex S-TOL).

⁵⁰ *See* Statement of Tullow, paras. 27, 31, 95 (Ghana PM, Vol. III, Annex S-TOL).

⁵¹ Statement of Tullow, paras. 6-13 (Ghana PM, Vol. III, Annex S-TOL).

⁵² Letter from Côte d'Ivoire to Oil Companies (26 Sept. 2011). Côte d'Ivoire PM, Annex 5; Statement of Tullow, para. 27, 31, 95 (Ghana PM, Vol. III, Annex S-TOL).

⁵³ Statement of Tullow, para. 31 (Ghana PM, Vol. III, Annex S-TOL).

⁵⁴ Statement of Tullow, para. 33 (Ghana PM, Vol. III, Annex S-TOL).

47. As described below, by the time Côte d'Ivoire objected to the exploration and production plans and activities developed by Tullow and other Ghanaian concession holders – in reliance on the two States' historic acceptance of and respect for the equidistance-based boundary line – it was too late for them to turn back the clock. A great number of contractual commitments had been entered into, the finances were raised, and obligations entered into that could not be undone or halted without significant contractual and financial consequences.

D. THE REQUESTED MEASURES WOULD CAUSE SERIOUS AND IRREPARABLE HARM TO GHANA

48. The provisional measures sought by Côte d'Ivoire would deliver a crippling blow to Ghana's petroleum industry, cause major dislocations throughout Ghana's economy, and set back its economic development for many years. The harm would be significant and irreparable, to Ghana's rights under UNCLOS and to its economic development.

49. First, the enormous investment in the Deepwater Tano Concession Block, including the TEN (Tweneboah-Enyenra-Ntomme) fields, which has taken place over the last nine years (since 2006), would be threatened with irreparable harm.

50. As elaborated in Tullow's Statement (annexed to this Submission), the cost of exploration and appraisal work in the TEN field from January 2006 to November 2012 was approximately US\$ 1 billion.⁵⁵ The planned development of the field for production required "the investment of approximately a further US\$ 4 billion (not including very substantial leasing costs for the long term contracted FPSO) by Tullow and its co-venturers before first oil, scheduled in mid-2016. The majority of the US\$ 4 billion has already been committed through a series of lump sum contracts with world-class major contractors based across the globe, with around US\$ 2 billion having already been expended".⁵⁶ One of the many long-term contractual commitments, for example, is for the semi-submersible drilling unit that

⁵⁵ Statement of Tullow, para. 33 (Ghana PM, Vol. III, Annex S-TOL).

⁵⁶ Statement of Tullow, para. 34 (Ghana PM, Vol. III, Annex S-TOL).

drills and completes the wells, at a cost of over US\$ 1.25 million a day (for the rig and associated service contracts).⁵⁷

51. An Order to stop all activity in the TEN field would have consequences beyond the billions of dollars already spent and committed to the project. In addition to being financially ruinous,⁵⁸ the ramifications of such an Order would be complex, widespread, and potentially irreversible. As Tullow explains:⁵⁹

The TEN project is recognised to be one of the most significant offshore oil developments underway anywhere in Africa and the world at the moment. A mega-project of this scale and complexity involves bringing together myriad contractors, subcontractors, community stakeholders and lending parties in a series of highly complex and interlinked relationships. Stopping such a project midstream is physically very difficult and not possible without incurring enormous adverse financial consequences for all of the parties involved. Tullow estimates the additional cost that would result from a suspension of operations in the disputed area to be in the order of US\$1-2bn, before account is taken of the significant financing implications such a decision could have on Tullow, its coventurers and the contractor companies involved in the project. Many thousands of individuals are working on this project globally within Tullow, its co-venturers and its contractor companies. Stopping such a project midstream is physically very difficult and not possible without incurring enormous adverse financial consequences for all of the parties involved. It would require these individuals to be reassigned to other projects or, in the worst case, having to terminate their services. In any event, it is likely that some of the individuals with the knowledge and experience of the TEN project would be unavailable to continue working on it after resumption of activities and this will result in further delay and costs.

⁵⁷ Statement of Tullow, para. 34 (Ghana PM, Vol. III, Annex S-TOL). Other commitments include: The conversion of the tanker that will become the Floating Production Storage and Operation (FPSO) vessel at the heart of the TEN development, which is due to be completed by the end of 2015 and the manufacture of various subsea production systems that will gather the oil and gas produced from the wells, which is nearing completion with installation due to start in July 2015. *See also* Economic Impact Statement, Appendix 3.

⁵⁸ For example, just the announcement that Côte d'Ivoire was seeking provisional measures caused Tullow's share price to drop, in a single day, by over 6% (or \$308 million). *See* "Tullow falls on worries legal dispute could delay Ghana project", *Reuters* (2 Mar. 2015) (available at <http://af.reuters.com/article/investingNews/idAFKBN0LY1K720150302> (accessed 19 Mar. 2015)). In contrast, when the arbitration was commenced, there was no impact on the share price reflecting an appreciation by investors that Ghana's interest in confirming its boundaries was unlikely to have any material impact on the ability of Tullow or others to continue development and production.

⁵⁹ Statement of Tullow, para. 35 (Ghana PM, Vol. III, Annex S-TOL).

52. In short, if the requested provisional measures were ordered, the result would not just be a delay in execution of the development project, but potentially its collapse. The concession holders may decide to focus their activities elsewhere, and the partially completed infrastructure would be seriously degraded, if not rendered unusable.⁶⁰ Ghana might then have to start all over, seeking new partners in the international oil industry, entering new contracts at less favourable terms, and spending huge sums of money and several years, simply to get back to where it is now.

53. The harm to Ghana's economy would be enormous. Ghana's economic development would be stunted. Its plans to build infrastructure, generate employment, and reduce poverty, which are dependent on increased revenue from oil production, would be harmed. Ghana is a lower-middle income developing country,⁶¹ with a population of 27 million and a per capita GDP of US\$ 1,427.⁶² According to World Bank estimates, the national poverty rate was 24.2% in 2012, down from 31.9% only six years earlier.⁶³ The downward trend in poverty coincides with the growth of Ghana's oil industry. Oil production has become vital to the economy.⁶⁴ In 2014, oil accounted for 9.3% of overall GDP, and 13.5% of domestic revenue.⁶⁵

54. Ghana has used this revenue for key fiscal and development purposes, including agriculture modernization and infrastructure projects (such as the construction of roads and bridges, hospitals, and educational facilities).⁶⁶ A large number of infrastructure projects in

⁶⁰ See also Statement of GNCP, para. 33 (Ghana PM, Vol. III, Annex S-GNCP).

⁶¹ World Bank, *Ghana Overview* (10 Oct. 2014) (available at <http://www.worldbank.org/en/country/ghana/overview> (accessed 15 Mar. 2015)).

⁶² Republic of Ghana, Statistical Services, *Revised Domestic Product 2014* (Jan. 2015), from which relevant basic economic data referred to in this section is derived (available at http://www.statsghana.gov.gh/docfiles/GDP/GDP2015/Revised_Annual_GDP2014_Jan2015.pdf (accessed 19 Mar. 2015)).

⁶³ World Bank, *Data: Ghana* (undated) (available at <http://data.worldbank.org/country/ghana> (accessed 18 Mar. 2015)).

⁶⁴ Statement of Dr. Joseph Kwadwo Asenso (20 March 2015) (hereinafter "Statement of MOF"), para. 6 (Ghana PM, Vol. III, Annex S-MOF).

⁶⁵ Statement of MOF, paras. 8-9 (Ghana PM, Vol. III, Annex S-MOF).

⁶⁶ Statement of MOF, para. 19 (Ghana PM, Vol. III, Annex S-MOF).

Ghana since 2012 have been supported by petroleum revenues.⁶⁷ Priorities set in the 2015 budget include the development of thermal energy resources, the completion of water supply systems, and the training of teachers.⁶⁸ All are dependent for their execution on oil-generated revenues. Ghana also depends on these revenues for repayment of debt. Some of the projected inflows have already been earmarked for the repayment of the US\$ 500 million balance on the 2017 Eurobond, the entire 2023 and 2024 Eurobonds (of US\$ 1 billion each), and subsequent Eurobond issuances.⁶⁹

55. The petroleum industry is also an important source of employment in Ghana, both directly and indirectly. If granted, Côte d'Ivoire's request for provisional measures will have a harsh impact on employment and training opportunities. Thousands of Ghanaians, including owners of small businesses, owe their livelihoods to the activities of Tullow and other concession holders in the area that would be affected by the requested provisional measures.

56. Under Ghanaian law⁷⁰ and concession agreements,⁷¹ Tullow and other operators must comply with extensive local content requirements. This covers not only employment but also training and technology transfers to Ghanaians. By way of example, Tullow started the construction of the second floating production storage and offloading (FPSO) vessel for the TEN project last year.⁷² The fabrication of specific FPSO components in Ghana was done in

⁶⁷ Statement of MOF, para. 10 (Ghana PM, Vol. III, Annex S-MOF).

⁶⁸ Republic of Ghana, *The Budget Highlights of the Budget Statement and Economic Policy of the Government of Ghana for the 2015 Financial Year* (19 Nov. 2014) (available at <http://www.mofep.gov.gh/sites/default/files/highlights/Budget-Highlights-2015.pdf> (accessed 19 Mar. 2015)).

⁶⁹ Statement of MOF, para. 22 (Ghana PM, Vol. III, Annex S-MOF).

⁷⁰ Republic of Ghana, *Petroleum Commission Act (Act 821)* (15 July 2011) (available at <http://www.reportingoilandgas.org/wp-content/uploads/Petroleum-Commission-Act-2011-Act-821.pdf> (accessed 19 Mar. 2015)); Republic of Ghana, *Petroleum (Local Content and Local Participation) Regulations* (2013) (available at <http://www.reportingoilandgas.org/wp-content/uploads/PETROLEUMLOCAL-CONTENT-AND-LOCAL-PARTICIPATION-REGULATIONS2013.pdf> (accessed 19 Mar. 2015)); and Republic of Ghana, *Local Content and Local Participation in Petroleum Activities Policy Framework* (2011) (available at http://ghanaoilwatch.org/images/laws/local_content_policy.pdf (accessed 19 Mar. 2015)).

⁷¹ See, e.g., *Petroleum Agreement* between the Government of the Republic of Ghana, Ghana National Petroleum Corporation, and Tullow Ghana Limited, Sabre Oil and Gas Limited and Kosmos Energy Ghana HC for The Deepwater Tano Contract Area (10 Mar. 2006), Art. 21. Ghana PM, Vol. IV, Annex 11.

⁷² "Tullow Ghana starts construction of second FPSO", *Ghana Business News* (18 Dec. 2014), available at <https://www.ghanabusinessnews.com/2014/12/18/tullow-ghana-starts-construction-of-second-fps/> (accessed 19 Mar. 2015).

compliance with the company's local content commitments, and generated a new fabrication capacity that enables more technical work to be done in Ghana. Were the provisional measures to be granted, these opportunities would stop, reducing both employment and capacity building.

57. Ghana's future economic development depends on increased petroleum production and revenues from the fields in the now disputed area. Its inability to rapidly exploit the Deepwater Tano Block and the TEN fields, and to continue its advanced exploration, appraisal and pre-development work elsewhere in the region⁷³ would require it to scale down significantly its development projects, with inevitable economic and social ramifications. Put in context, the TEN project's projected contribution to Ghana in 2017 is US\$ 2.2 billion.⁷⁴ That is equivalent to 116% of Ghana's 2015 budget for educational programs⁷⁵ and 254% of its annual spending on health services.⁷⁶ Enduring such a near-term loss in Ghana's economy, with limited time to plan or prepare to cover the loss, would have grave consequences for the country's development, and severely limit its ability to provide for its citizens' well-being.

E. CÔTE D'IVOIRE'S MANIPULATION OF THE EQUIDISTANCE LINE

58. In its Request for Provisional Measures Côte d'Ivoire has offered another new line, for the first time and now referred to as an "Equidistance line calculated by Côte d'Ivoire". It is presented on Drawing No. 2 and Drawing No. 3 in the Request. It creates the appearance that: (i) Ghana's concessions extend across an "equidistance" line into Ivorian waters; and (ii)

⁷³ A number of important discoveries other than TEN have been made in the region which are currently in appraisal. For a summary of these prospects *see* Republic of Ghana, *Annual Report on the Petroleum Funds* (2014) (available at <http://www.mofep.gov.gh/sites/default/files/news/2014%20Annual%20Report%20on%20the%20Petroleum%20Funds.pdf> (accessed 20 Mar. 2015)).

⁷⁴ Statement of MOF, para. 23 (Ghana PM, Vol. III, Annex S-MOF).

⁷⁵ Ghana's 2015 Education Budget is US\$ 1.89 billion. Republic of Ghana, *Appropriation Bill, Summary of Expenditure by Sub-Programme, Economic Item and Funding, Ministry of Education* (9 Feb. 2015) (available at <http://www.mofep.gov.gh/sites/default/files/budget/2015/MDAs/Budget-Exp-by-Programme-023-MOE.pdf> (accessed 21 Mar. 2015)).

⁷⁶ Ghana's 2015 Health Budget is US\$ 864.29 million. Republic of Ghana, *Appropriation Bill, Summary of Expenditure by Sub-Programme, Economic Item and Funding, Ministry of Health* (9 Feb. 2015) (available at <http://www.mofep.gov.gh/sites/default/files/budget/2015/MDAs/Budget-Exp-by-Programme-029-MoH.pdf> (accessed 21 Mar. 2015)).

some of the oil fields in the TEN area straddle the boundary such that, if Ghana were to exploit them even from its own waters it would inevitably extract oil from the Ivorian side.

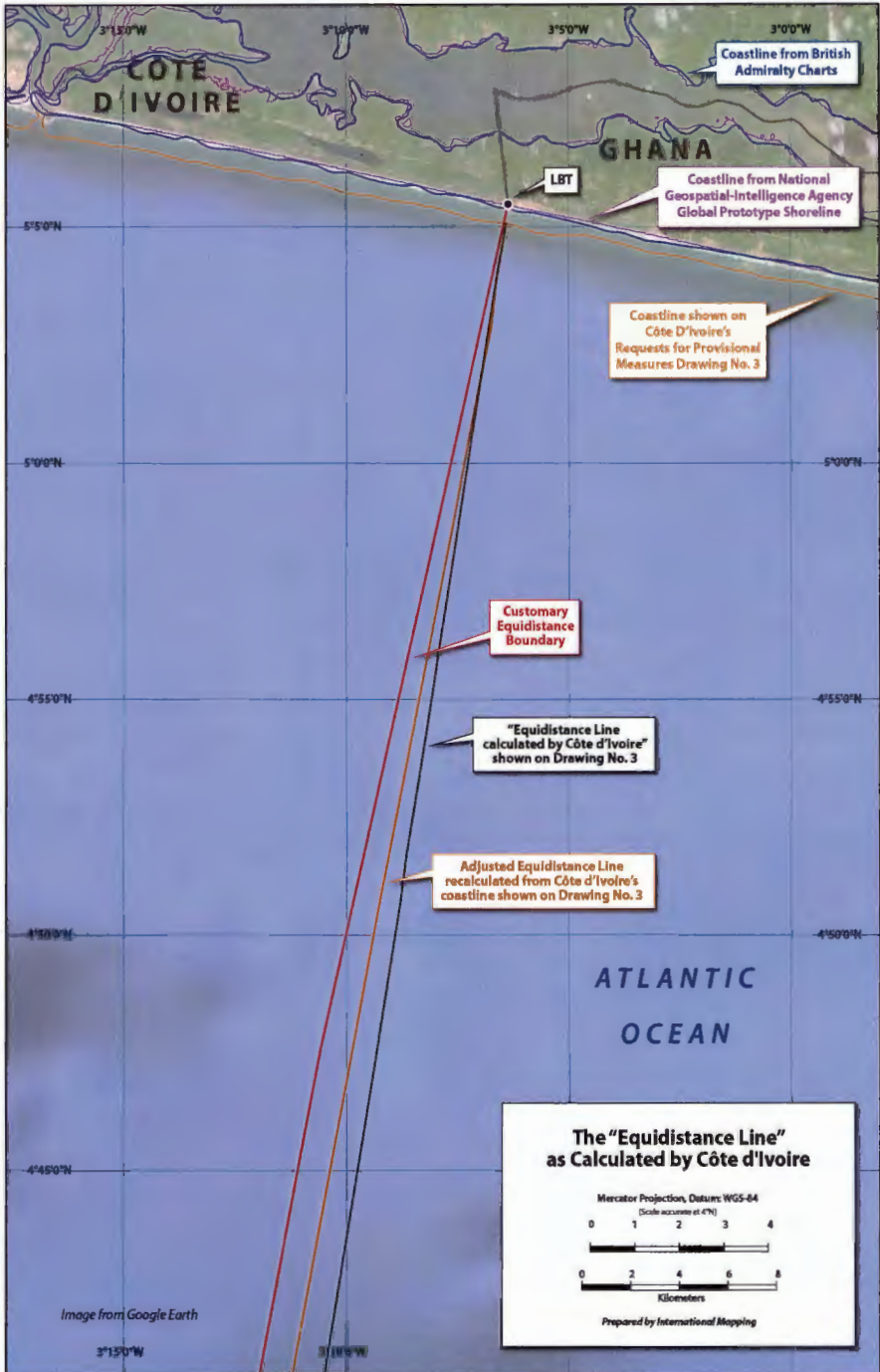
59. The problem with Côte d'Ivoire's approach is that it is misleading.

60. The "Equidistance line calculated by Côte d'Ivoire" departs from the equidistance line respected by Côte d'Ivoire for more than four decades, and is not a true equidistance line at all (or even close to one, based on an accurate representation of the Ivorian and Ghanaian coasts). The crucial words in the label offered by Côte d'Ivoire are "calculated by Côte d'Ivoire". They raise a significant question: by what means did Côte d'Ivoire construct its supposed new "equidistance line", one that is substantially to the east (that is, on the Ghanaian side) of the long-recognised equidistance line, or any correctly drawn equidistance line that would appear if the starting point were the agreed land boundary terminus and the coastlines were derived from reliable and more recent nautical charts.

61. For present purposes it is sufficient to note that Côte d'Ivoire does not provide any of the base points or the coastline it used to derive its equidistance line. Indeed, the coastline depicted on Drawing Nos. 2 and 3 is not the coastline used to derive the equidistance line. An equidistance line generated from the depicted coastline lies to the west of the shown "equidistance line". The basis for Côte d'Ivoire's newly concocted "equidistance line", which is unexplained, is in any event a matter for the merits and not for the provisional measures phase of a proceeding such as this. The point is that the line newly prepared by Côte d'Ivoire – its fourth new line – emerges from out of the blue.

62. The confusion in the maps provided by Côte d'Ivoire is not limited to the "equidistance line". Côte d'Ivoire has conjured up new coastlines for the purposes of this Request. As shown in **Figure 15**,⁷⁷ the coastline near the land boundary terminus depicted on the maps provided by Côte d'Ivoire lies between 500 m and 800 m to the south of coastlines derived from properly georeferenced nautical charts. It is a similar distance to the south of a coastline derived from satellite images (NGA prototype global coastline from Landsat-8 Landsat images from 2014 and early 2015). The happy consequence of Côte d'Ivoire's

⁷⁷ New Sketch Map: The "Equidistance Line" as Calculated by Côte d'Ivoire. Ghana PM, Vol. II, Annex M25.



For purposes of illustration only, without prejudice to the merits.

Figure 15

inaccurate presentation of actual geography is that it appears to rotate the “equidistance line” towards the east, to the manifest disadvantage of Ghana.

63. Whether the “Equidistance line calculated by Côte d’Ivoire” is a product of deliberate manipulation, or mere hasty preparation, makes no difference. Either way, it is wrong, and it cannot offer any reliable assistance to the Special Chamber, and certainly not in the provisional measures phase of these proceedings.

F. CÔTE D’IVOIRE’S ATTACKS ON GHANA’S INTEGRITY AND COMPETENCE

64. Ghana regrets that Côte d’Ivoire has chosen to depict Ghana, in the management of its petroleum concessions and resources, as corrupt and incompetent.⁷⁸ As a neighbour with which Ghana has – and will continue to have – excellent relations, a less aggressive approach might have been hoped for. Ghana hopes that Côte d’Ivoire’s excesses reflect the pressures of litigation, and the absence of more compelling arguments in support of its Request for Provisional Measures. Without any such arguments, Côte d’Ivoire dwells on alleged harms that it will endure as a result of the inability of Ghana and its concessionaires to properly award, operate, and manage the concessions in the border area. None of these criticisms has previously been levelled by Côte d’Ivoire at Ghana or its concessionaires, despite years of petroleum operations in the area by both States. The allegations are new, unsupported and wholly unjustified.

65. There is no basis for challenging the operational and management skills of Ghana or its concession holders, including their ability to develop the Deepwater Tano Block or the TEN fields without causing harm to, or diminishing the worth of, these valuable assets. Ghana’s track record of transparently and successfully managing its petroleum concessions is set forth in the Statement of Thomas Manu of Ghana’s National Petroleum Corporation, attached as Annex S-GNPC in Volume III. Ghana’s record does not give cause to Côte d’Ivoire to question Ghana’s capacity to operate or manage the fields in question.

⁷⁸ Côte d’Ivoire PM, pp. 21-24.

66. As detailed in the Statement of Mr Manu, Ghana has a well-established, rigorous and comprehensive legal and regulatory framework governing the conduct of petroleum operations.⁷⁹ Some of its key features are:

- An application process which is detailed, rigorous and requires a potential contractor to clearly demonstrate technical competence and financial capability.⁸⁰
- A well-established selection and award process that is transparent, predictable and grounded in legislation.⁸¹
- Evaluation criteria that conform to international best practices, in which technical competence and financial capability are key.⁸²

⁷⁹ See Statement of GNPC, para. 9. Petroleum operations are governed by a comprehensive set of laws, including:

- The Ghana National Petroleum Corporation Law (PNDC 64) (1983), which established the Ghana National Petroleum Corporation (GNPC), mandated it to undertake the exploration, development, production and disposal of petroleum (*available at* <http://laws.ghanalegal.com/acts/id/516/ghana-national-petroleum-corporation-act#> (accessed 19 Mar. 2015)).
- The Petroleum Exploration and Production Law (PNDC 84) (1984), which repealed the provisions of the Minerals Act (Act 126) (1962) that applied to petroleum and governs exploration and production activities (*available at* <http://laws.ghanalegal.com/acts/id/543/petroleum-exploration-and-production-law#> (accessed 19 Mar. 2015)).
- The Ghana National Petroleum Corporation, Petroleum Income Tax Law (PNDC 188) (1987) establishes a system of taxation on petroleum production (*available at* <http://laws.ghanalegal.com/acts/id/544#> (accessed 19 Mar. 2015)).
- The Petroleum Revenue Management Act (Act 815) (2011), which provides a framework for the collection, allocation and management of petroleum revenue in a responsible, transparent accountable and sustainable manner for the benefit of Ghanaians (*available at* http://www.mofep.gov.gh/sites/default/files/reports/Petroleum_Revenue_Management_Act_%202011.PDF (accessed 19 Mar. 2015)).
- The Petroleum Commission Act (Act 821) (15 July 2011), which established the Petroleum Commission, charged with regulating and managing the utilisation of Ghana's petroleum resources as required by Ghana's Constitution (*available at* <http://www.reportingoilandgas.org/wp-content/uploads/Petroleum-Commission-Act-2011-Act-821.pdf> (accessed 19 Mar. 2015)).
- The Petroleum (Local Content and Local Participation) Regulations (2013) aimed at securing Ghanaian participation in all aspects of the petroleum industry, and thereby build local capacity in the oil and gas sector (*available at* <http://www.reportingoilandgas.org/wp-content/uploads/PETROLEUMLOCAL-CONTENT-AND-LOCAL-PARTICIPATION-REGULATIONS2013.pdf> (accessed 19 Mar. 2015)).

⁸⁰ Statement of GNPC, para. 15 (Ghana PM, Vol. III, Annex S-GNPC).

⁸¹ Statement of GNPC, paras. 13-26 (Ghana PM, Vol. III, Annex S-GNPC).

⁸² Statement of GNPC, paras. 17-18 (Ghana PM, Vol. III, Annex S-GNPC).

- Oversight by several government institutions, as well as the Ghanaian Cabinet and Parliament, from the initial negotiation of a draft agreement through its ratification.⁸³
- Transparency throughout the whole process, where applications are evaluated by the same process and according to the same criteria.⁸⁴

67. As a result, Ghana's concessions, including in the disputed area, have been awarded to outstanding companies, endowed with the technical, financial and managerial capacity to carry out their commitments in conformity with the terms of their contracts and international best practices.

68. Regrettably, Côte d'Ivoire also attacks Tullow. If Tullow were as inept as Côte d'Ivoire newly asserts, why would Côte d'Ivoire have granted it major concessions in 2004, and again in 2007?⁸⁵ Why has Côte d'Ivoire never made criticisms of Tullow's performance on its side of the boundary similar to those it makes in respect of activities on the Ghanaian side?

69. Tullow is a leading international oil and gas exploration and production company, whose business is focused on exploration and development operations in deepwater maritime concessions.⁸⁶ It has been carrying out these activities in Africa since 1986.⁸⁷ Ghana has exercised rigorous oversight in respect of all of Tullow's operations and activities in Ghanaian waters, and has held Tullow to its contractual obligations and to international best practices. Ghana is satisfied that Tullow has honoured those commitments, and sees no basis for any of the criticisms launched by Côte d'Ivoire. Further, Tullow has supplied Ghana with a statement responding to the charges levelled by Côte d'Ivoire in the Request for Provisional

⁸³ Statement of GNCP, paras. 19-26 (Ghana PM, Vol. III, Annex S-GNPC). *See therein*, Appendix 1 which sets out the process for acquiring a block.

⁸⁴ Statement of GNCP, paras. 13-26 & Appendix 1 (Ghana PM, Vol. III, Annex S-GNPC).

⁸⁵ Statement of Tullow, paras. 6-13 (Ghana PM, Vol. III Annex S-TOL).

⁸⁶ Statement of Tullow, paras. 2-5 (Ghana PM, Vol. III, Annex S-TOL).

⁸⁷ Tullow has operated exploration campaigns with seismic and drilling operations in Africa since 1986 without major incident in onshore or offshore environments, in countries including Côte d'Ivoire, Liberia, Sierra Leone, Kenya, Uganda, Ethiopia, Gabon, Senegal, Mauritania and Madagascar. Several of these have been in environmentally sensitive areas and with significant requirements for community engagement. Statement of Tullow, para. 40 (Ghana PM, Vol. III, Annex S-TOL).

Measures. It is attached as Annex S-TOL in Volume III (see Statement of Paul McDade, Chief Operating Officer and an Executive Director of Tullow Oil plc (“**Tullow**”)).

70. As the Special Chamber will note, Tullow’s Statement responds comprehensively to Côte d’Ivoire’s unfortunate charges against the company. It demonstrates that Ghana’s concessions are being operated in a transparent manner, in full accordance with contractual commitments, best industry practice, and the highest international standards, including the environmental and social standards of the World Bank’s International Finance Corporation (IFC).⁸⁸

G. PROTECTION OF THE MARINE ENVIRONMENT

71. Côte d’Ivoire further disparages Ghana and its concession holders as spoilers of the marine environment. It accuses them of: “lax oversight of oil operations”; adopting processes that are “contrary to international standards”; causing “endemic pollution”; an inability to combat marine pollution; and “uncontrolled oil activities”.⁸⁹ These accusations are false and entirely unfounded. Again, these criticisms have never been made before by Côte d’Ivoire to Ghana. They are not supported by any credible evidence.

72. Contrary to Côte d’Ivoire’s allegations, Ghana’s environmental protection legislation is among the most robust in the region.⁹⁰ Ghana’s Environmental Protection Act created the Environmental Protection Agency (EPA) that ensures compliance with Ghana’s Environmental Impact Assessment (EIA) procedures during the planning and implementation of development projects. EIAs for oil and gas field development are mandatory, and environmental permits are only issued after the EPA and other stakeholders approve an EIA,

⁸⁸ See also Statement of Tullow, (Ghana PM, Vol. III, Annex S-TOL).

⁸⁹ Côte d’Ivoire PM, pp. 25-27 (at para. 47-48, 51) (translation by Ghana; original French text: "l'encadrement lacunaire des opérations pétrolières" "contrairement aux standards internationaux en la matière" "pollution endémique" "activités pétrolières non-contrôlées").

⁹⁰ See Statement of Kojo Agbenor-Efunam, Head of the Petroleum Department of Ghana’s Environmental Protection Agency (20 Mar. 2015) (hereinafter “Statement of EPA”) (Ghana PM, Vol. III, Annex S-EPA). The Statement provides details of Ghana’s environmental protection regime. It also explains that Ghana’s environmental legislation lends itself to the following principles: Precautionary Approach, Preventive Action, Polluter Pays and Participative Approach. *Ibid*, para. 13.

and are satisfied that all issues have been properly addressed. Thus, no oil company has been issued an environmental permit without complying with thorough environmental assessment processes.⁹¹

73. In addition to the EPA's oversight of Ghana's environmental regulations, the Ghana National Petroleum Corporation (GNPC) is statutorily mandated to require sound environmental practices by companies operating within the petroleum industry. Section 2(2)(e) of the GNPC Law⁹² requires GNPC to ensure that petroleum operations are conducted in such a manner as to prevent adverse effects on the environment. Similarly, Section 3 of the Petroleum (Exploration and Production) Law of 1984 requires that petroleum operations conform to international practices in comparable circumstance.⁹³ Ghana's Petroleum Agreements also require that the GNPC and EPA conduct Environmental, Health and Safety Audits of the concessionaires' operations. The Development Plans submitted by concession holders must also spell out how they intend to develop an oil field with minimum negative impact on the environment. This has to be done to the satisfaction of the GNPC, the Ministry of Energy, and the EPA, before Ghana will approve a development plan.⁹⁴

74. Contrary to Côte d'Ivoire's allegation,⁹⁵ Ghana's environmental legislation *does* require environmental audits, which are carried out by the EPA or a third party. For example, the EPA carried out an environmental audit on the Jubilee Field operations with the assistance of Norwegian experts.⁹⁶ In addition to environmental audits, the law also requires continuous environmental monitoring on a monthly basis. Oil companies are required to

⁹¹ Statement of EPA, para. 17 (Ghana PM, Vol. III, Annex S-EPA). The Statement also provides details of Sector Specific Guidelines with respect to oil and gas developments, *id.*, paras. 20-21.

⁹² Republic of Ghana, *The Ghana National Petroleum Corporation Law (PNDCL 64)* (1983) Section 2(2)(e) (available at <http://laws.ghanalegal.com/acts/id/516/ghana-national-petroleum-corporation-act#> (accessed 19 Mar. 2015)).

⁹³ Republic of Ghana, *Petroleum Exploration and Production Law (PNDCL 84)* (1984) (available at <http://laws.ghanalegal.com/acts/id/543/petroleum-exploration-and-production-law#> (accessed 19 Mar. 2015)).

⁹⁴ See, e.g., Statement of TOL, paras. 56-59 (Ghana PM, Vol. III, Annex S-TOL).

⁹⁵ Côte d'Ivoire PM, para. 48.

⁹⁶ Statement of EPA, para. 27 (Ghana PM, Vol. III, Annex S-EPA).

submit monthly monitoring reports to the EPA,⁹⁷ which are then verified through inspections. The law also requires annual reporting, which is also verified by the EPA. Similarly, oil companies must also submit environmental management plans governing their operational phase.⁹⁸

75. Côte d'Ivoire is equally wrong in its allegation that Ghana “does not have sufficient means to combat marine pollution resulting from oil activity”.⁹⁹ In fact, Ghana has well established plans and practices for combating oil pollution within the sub-region, amongst the best in the region.¹⁰⁰ Ghana developed an oil spill contingency plan in 1987, which has been regularly updated to reflect the best technology and practice. It has developed means to combat environmental pollution in accordance with the Oil Pollution Preparedness and Response Convention (OPRC Convention).¹⁰¹

76. Ghana has implemented a dispersant policy, dispersant use guidelines, and oily waste management guidelines to ensure that it can effectively respond to any oil spill incident.¹⁰² It has subscribed to the international oil pollution combat association (Oil Spill Response Limited), so that in the event of an oil spill that exceeds its national resources it can expeditiously receive international assistance, assuring the needed personnel and equipment.¹⁰³

77. The EPA has also ensured that Tullow has its own comprehensive Oil Spill Contingency Plan (OSCP) with sufficient in-country resources to respond to an oil spill, and

⁹⁷ See Statement of EPA, paras. 23, 26, 29 (Ghana PM, Vol. III, Annex S-EPA).

⁹⁸ Statement of EPA, para. 24 (Ghana PM, Vol. III, Annex S-EPA).

⁹⁹ Côte d'Ivoire PM, para. 49 (translation by Ghana; original French text: “ne dispose pas de moyens suffisants de lutte contre la pollution marine issue de l'activité pétrolière”).

¹⁰⁰ Statement of EPA, para. 30 (Ghana PM, Vol. III, Annex S-EPA).

¹⁰¹ Statement of EPA, para. 31 (Ghana PM, Vol. III, Annex S-EPA).

¹⁰² Statement of EPA, para. 33 (Ghana PM, Vol. III, Annex S-EPA).

¹⁰³ Statement of EPA, paras. 31-38 (Ghana PM, Vol. III, Annex S-EPA). Tullow has been a member of OSRL since the start of its operations in Ghana. Statement of Tullow, pp. 54.4 (Ghana PM, Vol. III, Annex S-TOL).

to conduct regular training and exercises.¹⁰⁴ These measures have been taken as precautionary steps so as to put in place the necessary response mechanisms in the event of an environmental incident. No such events have actually occurred.

78. While Ghana has measures in place to respond effectively to potential environmental pollution, Côte d'Ivoire's competence in this regard remains unclear. According to one report, Côte d'Ivoire's national organization in charge of oil pollution preparedness and response – CIAPOL – has been rendered inert. Its “capabilities to deploy [response] equipment has been completely erased following 2010 [the] civil war”.¹⁰⁵ Côte d'Ivoire conducts extensive petroleum activities in the region close to the border and there is reason to believe that Ghana's activities pose much less of a threat to the marine environment (including the marine environment in the disputed area) than Côte d'Ivoire's own activities. The waters in the Gulf of Guinea move in both an easterly and westerly direction, contrary to Côte d'Ivoire's claims.¹⁰⁶ Côte d'Ivoire has not however proposed that it should itself cease all such activities in the region close to the border on the basis that those might damage the environment in the disputed area.

¹⁰⁴ Statement of Tullow, para. 54.2 (Ghana PM, Vol. III, Annex S-TOL); The OSCP include prevention measures, oil spill dispersion modelling and weathering studies, planning of equipment and people response resources and emergency drill exercises to be prepared in the event of a spill of various magnitudes. The Statement goes on to state that:

[...]By the time of Jubilee well drilling and project installation in 2009-2010, Tullow as Unit Operator had deployed two major EHS vessels to the field capable of multipurpose immediate operations, including the local handling of Tier I and II spill responses. These vessels remain in-place to this day and are equipped with heavy duty booms, skimmer/recovery and dispersant spray capabilities for potential offshore incidents. Training is conducted regularly by OSRL representatives of all crew and emergency response teams. A dispersant capability for larger size spills is available also from aircraft in Accra. Near-shore capability is supplied by land based boom deployment systems for estuaries and trailer based clean-up kits. Since 2010-2011, when the Jubilee Field started production, Tullow contracted OSRL to supply 24/7 coverage and to train staff and Government/Port agencies. This has been supplemented by the training of Ghanaian companies such as ZEAL International to be able to respond to any shore clean-up requirements that may ever occur.

Today, Tullow has a comprehensive seven volume Oil Spill Response Action Plan in place. The primary purpose of the OSCP is to set in motion the necessary actions to minimise the spread of hydrocarbons, provide the tools to identify the most appropriate response tactics, protect sensitive areas and to mitigate negative effects.

See also Statement of EPA, paras. 34-35 (Ghana PM, Vol. III, Annex S-EPA).

¹⁰⁵ Global Initiative for West, Central and Southern Africa (GIWACAF), *Country Profile: Côte d'Ivoire* (21 Nov. 2014) p. 11 (available at <http://www.giwacaf.org/index.aspx?id=4&langue=1> (accessed 10 Mar. 2015)).

¹⁰⁶ Statement of EPA, para. 37 (Ghana PM, Vol. III, Annex S-EPA).

79. While Côte d'Ivoire professes its concern for the marine environment, Ghana is the only State bordering the Gulf of Guinea (including Côte d'Ivoire) that has conducted a thorough study of the marine environment before commencing oil and gas activities. Ghana has not only conducted baseline surveys of its marine environment, it has also required its oil operators to do so.¹⁰⁷

80. Ghana's concern for the marine environment of the Gulf is also manifest from the fact that the EPA requires that all drilling activities during petroleum operations be accompanied by the modelling of accidental releases from such operations. Operators must demonstrate their ability to respond in the event of a release that could impact the coasts of Ghana and its neighbours, including Côte d'Ivoire. These modelling reports are submitted together with the management plans before the EPA will grant environmental permits. Modelling reports were submitted for both Jubilee and TEN by Tullow.¹⁰⁸

81. Côte d'Ivoire attempts to pin responsibility on Ghana and its concession holders for a number of dead whales that have washed ashore.¹⁰⁹ There is no evidence to suggest that any activities carried out in Ghana's waters have resulted in the death of whales, and Côte d'Ivoire resorts to vague allegations. In any event, this phenomenon is not peculiar to Ghana. There have been several recent reports of whales being washed ashore even in areas where there has been no oil and gas activity. Scientific studies have failed to show any correlation between oil and gas development and the dead whales.¹¹⁰ Ghanaian law also requires that oil

¹⁰⁷ Statement of EPA, paras. 40-44 (Ghana PM, Vol. III, Annex S-EPA). It is mandatory that all major oil and gas operations are preceded by baseline studies in their area of operations as a basis for comparison in the future. A number of reputable third parties have carried out baseline studies on behalf of oil companies. Ghana has also carried out three environmental surveys with the assistance of the Norwegian Government and FAO.

¹⁰⁸ Statement of EPA, paras. 35, 38 (Ghana PM, Vol. III, Annex S-EPA). See also Statement of Tullow, para. 54.6 (Ghana PM, Vol. III, Annex S-TOL); which states *inter alia* that:

Tullow carried out a major emergency simulation exercise in real-time in late 2014 to test their oil spill emergency response capability. Offshore equipment deployment and aerial response was tested, followed by the subsequent deployment of shoreline response equipment. Ghana's EPA, Petroleum Commission and National Disaster Management Organisation (NADMO) and co-venturers, GNPC were all involved in the exercise.

¹⁰⁹ Côte d'Ivoire PM, para. 51.

¹¹⁰ Statement of EPA, paras. 45-49 (Ghana PM, Vol. III, Annex S-EPA). The Statement refers to a Report that states *inter alia*:

and gas operators ensure that no mammals are harmed during their operations, and requires the companies to monitor and report on activities or sightings of cetaceans within their operational areas.¹¹¹

82. Finally, there is no merit to Côte d'Ivoire's criticism of both Ghana and Tullow for alleged environmental malpractice in relation to the Jubilee Field (which lies outside the disputed area, in waters that Côte d'Ivoire, even now, recognizes as Ghana's). The satellite photos of the disputed area that Côte d'Ivoire uses to allegedly show "endemic pollution related to the oil exploration on Jubilee", provide no such support.¹¹² The EPA confirms that there have been no pollution incidents in this area¹¹³ and Tullow states categorically that, to the extent there is any pollution in the area, it has nothing to do with activities in either the Jubilee or TEN fields.¹¹⁴

83. Ghana's and Tullow's diligent use of international best practices to minimize the risks of harm to the marine environment, and to promptly and effectively respond to a leak incident are set forth in detail in the statements of Mr Kojo Agbenor-Efunam (of Ghana's EPA) and Mr Paul McDade (of Tullow), attached as Annexes S-EPA and S-TOL, respectively. Tullow's Statement specifically sets out the standards and procedures that are in place to

"Most of the cetaceans that beached in Ghana were in highly decomposed state. It is possible that some of the carcasses could have drifted from neighbouring countries into Ghanaian waters. This is because the phenomenon of beaching of dead cetaceans has been reported in other countries in the Gulf of Guinea".

See also Statement of Tullow, para. 92 (Ghana PM, Vol. III, Annex S-TOL).

¹¹¹ Statement of EPA, para. 50 (Ghana PM, Vol. III, Annex S-EPA). See also Statement of Tullow, paras. 91-93 (Ghana PM, Vol. III, Annex S-TOL).

¹¹² Côte d'Ivoire PM, para. 47 (translation by Ghana; original French text: "pollution endémique liée à l'exploitation pétrolière sur Jubilee").

¹¹³ Statement of EPA, para. 36 (Ghana PM, Vol. III, Annex S-EPA).

¹¹⁴ Statement of Tullow, paras.85-87 (Ghana PM, Vol. III, Annex S-TOL).

In addition, the use of satellite imagery to identify oil pollution in water bodies has significant limitations. Statement of Tullow, para. 86 & Appendix 24 (Ghana PM, Vol. III, Annex S-TOL). Indeed, much of the "endemic pollution" identified by Côte d'Ivoire appear to be pollutants spreading into the Gulf of Guinea from Côte d'Ivoire's own river, as can be seen in the upper left-hand corner of the satellite image in Figure 1 of Côte d'Ivoire's report. *Images satellitaires des activités pétrolières dans et à proximité de la zone litigieuse* (2014-2015). Côte d'Ivoire PM, Annex 22.

manage material environmental risks in its operations in the Jubilee and TEN fields, including but not limited to issues such as management of waste and effluents; operations in environmentally sensitive areas; protection of wildlife; and maintaining air and water quality surrounding its operations.¹¹⁵ In short, it manages its operations in compliance with Ghanaian law, the Ghanaian Environmental Protection Agency's regulations, international management system standard ISO 14001, the World Bank's IFC Performance Standards, and the International Convention for the Prevention of Pollution from Ships (MARPOL) requirements.

* * *

84. In conclusion, Côte d'Ivoire's Request for Provisional Measures attempts to both ignore the history leading to the current circumstances and rewrite the present to narrate a vision of future catastrophe. Only by doing both could its Request have any plausibility. As shown above, Côte d'Ivoire's allegations do not withstand a review of the evidence. Nor can they withstand scrutiny under the law, as described in Section II below.

¹¹⁵ Statement of Tullow, paras. 50-59, 82-93 (Ghana PM, Vol. III, Annex S-TOL).

Section II. The Requirements of Article 290 Are Not Met in This Case

85. Côte d'Ivoire's application for provisional measures is brought under Article 290(1) of UNCLOS, which provides that:

[i]f a dispute has been duly submitted to a court or tribunal which considers that *prima facie* it has jurisdiction under this Part or Part XI, section 5, the court or tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment, pending the final decision.

86. The Parties are agreed that, the matter having been brought before it by way of special agreement (Article 280 UNCLOS), the Special Chamber has *prima facie* jurisdiction as required by Article 290(1). Beyond this, however, none of the requirements of Article 290(1) are met. For the reasons summarised below, Côte d'Ivoire has failed to establish any urgency requiring the prescription of such measures (A), or any risk of irreparable harm to its rights (B) or to the environment (C). To the contrary, there is a serious risk of irreparable and unquantifiable harm to Ghana if the Special Chamber were to prescribe the measures requested by Côte d'Ivoire (D).

A. THE LACK OF URGENCY

87. Unlike Article 290(5) UNCLOS, Article 290(1) does not expressly require that urgency be established for the prescription of provisional measures. There is no doubt, however, that urgency is an essential requirement for the prescription of such measures under Article 290(1): see for example the *M/V Louisa* case, where, in the context of another application for provisional measures under Article 290(1), the tribunal held that there was no:

real and imminent risk that irreparable prejudice may be caused to the rights of the parties in dispute before the Tribunal so as to warrant the prescription of the provisional measures requested by Saint Vincent and the Grenadines.¹¹⁶

¹¹⁶ *The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Spain), Provisional Measures, Order of 23 December 2010*, ITLOS Reports 2010, para. 72 (emphasis added) (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_18_prov_meas/18_order_231210_en.pdf (accessed 19 Mar. 2015)).

88. This approach accords with that of the International Court of Justice. Even though Article 41 of the ICJ Statute does not expressly require urgency as a precondition for the indication of provisional measures, the ICJ has consistently emphasized that the power to indicate such measures may only be exercised:

if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision.¹¹⁷

89. In the instant case, Côte d'Ivoire patently fails to establish that there is any urgency that would require the prescription of provisional measures. In this regard, it is particularly telling that in its application of 27 February 2015, Côte d'Ivoire does not once refer to the requirement of urgency — and therefore does not even attempt to show that this requirement is met.

90. Such an attempt would indeed have been difficult. While Côte d'Ivoire could have instituted such proceedings as soon as Ghana filed its request for arbitration in September 2014, it did not. One month later, Côte d'Ivoire expressly referred to Article 290 UNCLOS in a *note verbale* to Ghana, in which it stated an intention to apply for provisional measures if Ghana did not comply within two weeks with the demands set out in the *note verbale*.¹¹⁸ Yet it took nearly four months after that deadline for Côte d'Ivoire to apply for provisional measures. Such a significant delay is hardly consistent with any genuine sense of urgency on

¹¹⁷ *Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order, I.C.J., para. 32 (and the case-law cited) (available at <http://www.icj-cij.org/docket/files/156/18078.pdf> (accessed 19 Mar. 2015)). On the fact that urgency is a requirement for the prescription of provisional measures under Article 290(1), see also Philippe Gautier, "Interim Measures of Protection before the International Tribunal for the Law of the Sea", in CURRENT MARINE ENVIRONMENTAL ISSUES AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (M. H. Nordquist & J. Norton Moore eds., 2001), p. 250. Ghana PM, Vol. IV, Annex LA-9; Tafsir Malick Ndiaye, "Provisional Measures before the International Tribunal for the Law of the Sea", in CURRENT MARINE ENVIRONMENTAL ISSUES AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (M. H. Nordquist & J. Norton Moore eds., 2001), p. 98. Ghana PM, Vol. IV, Annex LA-10; Thomas A. Mensah, "Provisional Measures in the International Tribunal for the Law of the Sea", 62 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2002), pp. 51-52. Ghana PM, Vol. IV, Annex LA-11; Rüdiger Wolfrum, "Provisional Measures of the International Tribunal for the Law of the Sea", *Indian Journal of International Law*, Vol. 37, No. 3 (1997), p. 429. Ghana PM, Vol. IV, Annex LA-8; Francisco Orrego-Vicuña, "The International Tribunal for the Law of the Sea and Provisional Measures: Settled Issues and Pending Problems", *International Journal of Marine and Coastal Law*, Vol. 22, No. 3 (2007), p. 454. Ghana PM, Vol. IV, Annex LA-12.

¹¹⁸ *Note Verbale* No. 114 MPE/CAB from Monsieur Adama Toungara, Agent de la Côte d'Ivoire, to Madame Marietta Brew Appiah Oppong, Agent of the Republic of Ghana, Attorney General and Minister for Justice (31 Oct. 2014). Côte d'Ivoire PM, Annex 4.

the part of Côte d'Ivoire, and is in clear contrast with the practice of States before both ITLOS and the ICJ.

91. More importantly even than Côte d'Ivoire's conduct in the present proceedings, the lack of urgency is underlined by the fact that the activities which give rise to the present application – the oil activities which Ghana is conducting in the now-disputed area – have been on-going for many years. No recent development has taken place that would warrant the prescription of provisional measures — nor is any such development suggested by Côte d'Ivoire.

92. It would have been open to Côte d'Ivoire to invite Ghana to refer the matter to an international court or tribunal, or to challenge the activity in the domestic courts of Ghana, at any point over the many years over which such activities have taken place, but it has never sought to do so.¹¹⁹ Côte d'Ivoire's protests have been limited to the belated, vague assertion of title to the disputed area, following the discovery of oil.¹²⁰ It has never sought to translate those assertions into legal action of any kind. And it is striking that the allegations of environmental damage and failure to share information have not even been raised in that very limited way. Those allegations are raised for the first time in the application for provisional measures. No *note verbale*, for example, was issued in relation to any of these matters until after Ghana commenced this case. Côte d'Ivoire's silence on the alleged environmental issues and the alleged incompetence of Ghana and its concessionaires until the filing of the Request powerfully suggests that those concerns are artificial and have been manufactured. This is underlined by the lack of any credible evidence on the point: see Section G of the factual section above. If there was a genuine concern about environmental damage to the area or about the activities of its concessionaires, one would expect Côte d'Ivoire to have raised such concerns with Ghana at a much earlier stage. If nothing else, the failure to raise those matters on any previous occasion underlines the lack of urgency in the present application for provisional measures.

¹¹⁹ For example, Ghana and Côte d'Ivoire declared open the various blocks for licensing pursuant to laws which would have enabled challenges to those declarations of title – but Côte d'Ivoire has made no such challenge in the Ghanaian courts (or otherwise) over the many years since then. Nor has it made any challenge to any of the activities of the concessionaires in any courts or attempted to prevent them in any other way, despite occasional correspondence.

¹²⁰ See *supra* Section I.A.

93. The lack of urgency is further evidenced by the fact that, for the reasons summarised in the following section, the situation presents no risk of imminent irreparable harm to any alleged rights of Côte d'Ivoire. As one author puts it, there is "a close link between the harm and the urgency: if the irreparable harm is not imminent, there is no urgency".¹²¹ This is precisely such a case.

B. THERE IS NO RISK OF IMMINENT IRREPARABLE HARM TO ANY RIGHTS OF CÔTE D'IVOIRE

94. Article 290(1) UNCLOS does not specify the extent to which the rights of the requesting party must be affected so as to justify the prescription of provisional measures. The case-law of both ITLOS and the ICJ establishes that several conditions must be met in that respect. In essence, provisional measures may be awarded only if the party requesting the measures is at risk of suffering imminent and irreparable harm.¹²² As the ICJ has stated, where the alleged right in question "if it were established, is one that might be capable of reparation by appropriate means", then the Court will be "unable to find in that alleged breach ... such a risk of irreparable prejudice to rights in issue before the Court as might require the exercise of the power under Article 41 of the Statute to indicate interim measures for their preservation".¹²³

95. These conditions are not met in respect of any of the rights which Côte d'Ivoire claims to enjoy in the disputed area. These rights, according to Côte d'Ivoire, in its

¹²¹ Tafsir Malick Ndiaye, "Provisional Measures before the International Tribunal for the Law of the Sea", in CURRENT MARINE ENVIRONMENTAL ISSUES AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (M. H. Nordquist & J. Norton Moore eds., 2001), p. 98. Ghana PM, Vol. IV, Annex LA-10.

¹²² See, e.g., *The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Spain)*, Provisional Measures, Order of 23 December 2010, ITLOS Reports 2010, para. 72 (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_18_prov_meas/18_order_231210_en.pdf (accessed 19 Mar. 2015)); *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, Order of 8 October 2003, ITLOS Reports (2003), para. 72 (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_12/12_order_081003_en.pdf (accessed 19 Mar. 2015)); *Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order, I.C.J., para. 32 (and the case-law there cited) (available at <http://www.icj-cij.org/doCKET/files/156/18078.pdf> (accessed 19 Mar. 2015)). The same approach has been taken, in a different arbitral context, by ICSID Tribunals: as Schreuer notes, "ICSID arbitration practice shows that tribunals will only grant provisional measures if they are found to be necessary, urgent and are required in order to avoid irreparable harm." C. Schreuer et al., *The ICSID Convention: A Commentary* (2nd ed., 2010), p. 776. Ghana PM, Vol. IV, Annex LA-13.

¹²³ *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, Provisional Measures, Order (11 Sept. 1976), I.C.J. Reports (1976), para. 33 (available at <http://www.icj-cij.org/doCKET/files/62/6219.pdf> (accessed 19 Mar. 2015)).

Application are of two kinds: (a) its sovereign rights over the natural resources of the continental shelf and over the continental shelf itself; and (b) its rights of access to and control of all information relating to natural resources in areas over which it claims to enjoy sovereign rights.

96. For the reasons given below, Côte d'Ivoire can show neither that there is, in fact, a risk of harm to its rights, nor that the harms which it posits would, in law, count as 'irreparable', in light of the fact that they could readily be compensated in damages at the end of the case.

1. *The Rights Claimed by Côte d'Ivoire on the Continental Shelf and on its Natural Resources are Not at Risk of Imminent Irreparable Harm*

(a) *No Factual Basis for the Alleged Risk of Harm*

97. According to Côte d'Ivoire, the activities carried out by operators licensed by Ghana in the disputed area affect a number of its rights under UNCLOS, in particular its rights of sovereignty over the territorial sea and its subsoil (Article 2(2)), its sovereign rights of exploration and exploitation of the natural resources of the continental shelf (Articles 56(1) and 77 (1)) and its "exclusive right to authorize and regulate drilling on the continental shelf for all purposes" (Article 81).¹²⁴

98. Côte d'Ivoire argues that breaches of these rights result from drilling activities undertaken in the disputed area by oil companies licensed by the Government of Ghana, the installation of oil rigs and the construction and installation of submarine infrastructures in the area.¹²⁵ It also contends that its rights are affected as a consequence of the conditions under which the exploitation of natural resources (oil in particular) is carried out in the disputed area. It claims that these operations are carried out in a manner that is not compliant with generally accepted international standards, since the regulatory and legal framework applicable to the awarding of licenses in Ghana is unsatisfactory due to a lack of transparency

¹²⁴ Côte d'Ivoire PM, para. 15 (translation by Ghana; original French text: "le droit exclusif d'autoriser et de réglementer les forages sur le plateau continental, quelles qu'en soient les fins").

¹²⁵ *Id.*, paras. 20-29.

and of guarantees as to the operators' technical competencies and abilities.¹²⁶ This, in Côte d'Ivoire's view, is confirmed by the difficulties encountered and malpractices observed in the exploitation of the main oil field exploited so far off Ghana's coast.¹²⁷ These result, Côte d'Ivoire argues, in the impossibility fully to recover the oilfields' resources, thereby prejudicing its sovereign rights over the natural resources in the area.¹²⁸

99. As has been demonstrated above, the factual assertions underlying these claims are manifestly unfounded. Moreover, activities of the kind of which Côte d'Ivoire now complains have been undertaken in the relevant area by or with the authorisation of Ghana since the 1960's:¹²⁹ they have been undertaken openly and transparently, with the full knowledge of Côte d'Ivoire, which made no objections.¹³⁰

100. In the factual section above, Ghana demonstrates that Côte d'Ivoire's attacks on Ghana's integrity and competence are unfounded (Section F). The statements of Thomas Manu of Ghana's National Petroleum Corporation (S-GNPC) and Paul McDade of Tullow (S-TOL) provide a detailed account of the careful and responsible approach that Ghana has taken, and continues to take, to the licensing and supervision of petroleum operations, and the rigorous regulatory framework which it applies.¹³¹ Côte d'Ivoire's allegations about environmental damage are equally unfounded: see Section G of the factual section above, the statement from the Head of the Petroleum Department in Ghana's EPA¹³², and paragraphs 36-37, 50-59 and 82-93 of the statement of Paul McDade of Tullow Oil plc.¹³³

¹²⁶ *Id.*, paras. 40-41.

¹²⁷ *Id.*, paras. 42-45.

¹²⁸ *Id.*, para. 45.

¹²⁹ *See supra* Section I.A-I.B.

¹³⁰ *See supra* Section I.A-I.B, also *see supra* Statement of Tullow, paras. 24, 26 (Ghana PM, Vol. III, Annex S-TOL).

¹³¹ Statement of GNPC (Ghana PM, Vol. III, Annex S-GNPC) and Statement of Tullow (Ghana PM, Vol. III, Annex S-TOL).

¹³² Statement of EPA (Ghana PM, Vol. III, Annex S-EPA).

¹³³ Statement of Tullow (Ghana PM, Vol. III, Annex S-TOL).

101. Accordingly, there is simply no evidential basis for any assertion of a risk of imminent harm to these asserted rights.

(b) *The Harms Alleged by Côte d’Ivoire are Not “Irreparable”*

102. Further, the notion of “irreparable” harm has been interpreted as meaning that “the anticipated or actual breach of the rights to be preserved [should] be one that could not be erased by the payment of reparation or compensation to be ordered in a later judgment on the merits”.¹³⁴

103. For the reasons given above, the evidence does not support the allegations made by Côte d’Ivoire about the risks to its alleged rights posed by the manner in which Ghanaian oil activities are being conducted in the disputed area. (The specific environmental allegations made by Côte d’Ivoire are addressed separately below). This leaves Côte d’Ivoire able to rely only on the bare fact that, should it succeed in its claim on the merits, operators licenced by Ghana will have extracted oil from Ivorian waters from which Côte d’Ivoire claims it might have benefitted had it licensed operators to extract the same oil.

104. In any event, it is clear from Côte d’Ivoire’s request for provisional measures that the case is not one in which the party requesting such measures intends to keep the disputed area pristine, while the other party seeks to develop it.¹³⁵ This undermines the reliance which Côte

¹³⁴ S. Oda, “Provisional Measures: The Practice of the International Court of Justice” in FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE (V. Lowe & M. Fitzmaurice eds., 1996), p. 551. Ghana PM, Vol. IV, Annex LA-6. See also, in the ICSID context, *CEMEX Caracas v. Venezuela*, where the tribunal stated that “the only consequence for them [the applicants] of those seizures would be a financial loss. Such a loss could be readily compensated by a damages award. Thus, the alleged harm is not ‘irreparable’ and there is neither necessity, nor urgency to grant the requested provisional measures”. *CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/08/15), Decision on the Claimants’ Request for Provisional Measures (3 Mar. 2010), para. 58 (available at https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC1430_En&caseId=C420 (accessed 19 Mar. 2015)). See also *Occidental Petroleum Corp. and Occidental Exploration and Production Co. v. The Republic of Ecuador* (ICSID Case No ARB/06/11), Decision on Provisional Measures (17 Aug. 2007), para. 59 (available at https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC661_En&caseId=C80 (accessed 19 Mar. 2015)).

¹³⁵ *Guyana v. Suriname*, PCA, Award of the Arbitral Tribunal (17 Sept. 2007) (available at http://www.pca-cpa.org/showfile.asp?fil_id=664 (accessed 19 Mar. 2015)). This decision can be distinguished on multiple legal and factual grounds and the tribunal was not faced with a situation remotely similar to that here, where one State is in the middle of a hugely costly extensive long-term development programme over a large region which its neighbor has permitted to continue pursuant to their mutual long-standing recognition of a boundary along an equidistance line.

d'Ivoire seeks, to place on the *Guyana v. Suriname* decision.¹³⁶ There, the dispute had lasted for many decades during which there had been no exploration or development activity in the disputed area. This is in clear contrast to the present case, where such activities have proceeded for many years, with the knowledge and acquiescence of Côte d'Ivoire. The same or similar physical changes would take place to the marine environment of that area if it lay within the territory of Côte d'Ivoire: the question is purely that of entitlement to the economic benefits flowing from those activities. The same considerations apply to Côte d'Ivoire's attempts to rely, in the same paragraph of the Application, on the *Aegean Sea Continental Shelf Case*.¹³⁷

105. In the present case, Côte d'Ivoire itself seeks to licence and pursue oil exploration and production in the disputed area. Accordingly, the only loss which Côte d'Ivoire would suffer over the lifetime of these proceedings would be the loss of the revenues derived from oil production (net of costs) by Ghana in any area which the Special Chamber ultimately determined to fall within Côte d'Ivoire's territory. This is a pure financial loss, and could be completely addressed through the provision on appropriate terms of information relating to activities taking place during the course of the proceedings in the area that Côte d'Ivoire newly claims and, in the event that Côte d'Ivoire prevails in its claim, an award of damages in due course. Such an award could be made by a suitable accounting mechanism, as has occurred in other cases (given that information about petroleum recovered is recorded in detail, as part of standard practice in petroleum production and revenue accounting). Côte d'Ivoire does not suggest that it would not be possible for the Special Chamber to order appropriate financial compensation were it held that the line runs in a different course from that applied by Ghana. In such an event, a mechanism to determine appropriate inter-State compensation would be established, almost certainly by agreement between the Parties, in accordance with established and conventional practice in the petroleum industry.

¹³⁶ Côte d'Ivoire PM, para. 23 (citing *Guyana v. Suriname*, PCA, Award of the Arbitral Tribunal (17 Sept. 2007)).

¹³⁷ Côte d'Ivoire PM, para. 23 (citing *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, Provisional Measures, Order (11 Sept. 1976), I.C.J. Reports (1976)).

(c) *The Rights Claimed by Côte d'Ivoire to Have Access to and Control of Information Relating to Natural Resources are Not at Risk of Imminent Irreparable Harm*

106. As a separate argument, Côte d'Ivoire claims that its rights as a coastal State include access to and control of all information relating to natural resources in areas over which it enjoys sovereign rights.¹³⁸ It argues that, by allowing oil companies to collect such information in the disputed area, Ghana prevents Côte d'Ivoire from accessing and using this information, in particular in its own dealings with oil companies to which it could consider granting licenses for the exploration and exploitation of that area.¹³⁹

107. Côte d'Ivoire does not base these alleged rights on any specific provisions of UNCLOS. At paragraph 31 of the Request, it draws an analogy with Article 246(5), but does not appear to claim that the rights in question are specifically derived from that Article. Ghana submits that Côte d'Ivoire has failed to establish the legal existence of the alleged right to information on which it relies. Côte d'Ivoire has cited no source or legal authority for a right to information, let alone information relating to commercial activities, or for the prescription of provisional measures to preserve such an alleged right.

108. Nor does Côte d'Ivoire explain how those alleged rights would, on the facts, suffer irreparable harm during the lifetime of this case. Information of the kind referred to by Côte d'Ivoire has long been gathered in the area in question with the knowledge of Côte d'Ivoire, and with its acquiescence.¹⁴⁰ Côte d'Ivoire has not sought this information previously, despite having ample opportunity to do so: for example, it could have sought this information when it gave Ghana and its operators permission to turn in Ivorian waters during seismic studies for exploration in areas which it now claims to lie within its territory. It did not.¹⁴¹ As in the past, the information currently being gathered in the disputed area will be duly recorded, and Ghana will be in a position to provide that information to Côte d'Ivoire if ordered to do so at the conclusion of the case.

¹³⁸ Côte d'Ivoire PM, paras. 30-31.

¹³⁹ Côte d'Ivoire PM, paras. 33-35.

¹⁴⁰ See Section B of the factual section above.

¹⁴¹ See e.g., Statement of Tullow, para. 26 (Ghana PM, Vol. III, Annex S-TOL).

109. Never before has ITLOS prescribed provisional measures requesting the provision of information by one party to the other when these were requested for the protection of the alleged rights of the party applying for such measures. Both in the *Land Reclamation* and in the *The MOX Plant* cases, the tribunal specifically declined to do so.¹⁴² In both cases the Tribunal confined itself to prescribing the exchange of information between the Parties when this appeared advisable in view of the possible impact of the project undertaken by one of the Parties on the marine environment. Thus in the *Land Reclamation* case, it held that:

given the possible implications of land reclamation on the marine environment, prudence and caution require that Malaysia and Singapore establish mechanisms for exchanging information and assessing the risks or effects of land reclamation works and devising ways to deal with them in the areas concerned.¹⁴³

110. This is fundamentally different from the type of transfer of information sought by Côte d'Ivoire, which appears to be based solely on commercial motives. And as considered further below, even the exchange of information envisaged by the tribunal in the *Land Reclamation* and *MOX Plant* cases does not appear warranted here, in view of the measures of precaution taken by Ghana to minimise the risk that activities undertaken in the area would adversely affect the marine environment.¹⁴⁴

111. Côte d'Ivoire does not address the case law on this point, or offer any explanation as to why the provision of information to it at the conclusion of the case – which is the first

¹⁴² *The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001*, ITLOS Reports (2001) (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_10/Order.03.12.01.E.pdf (accessed 19 Mar. 2015)); see also *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003*, ITLOS Reports (2003) (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_12/12_order_081003_en.pdf (accessed 19 Mar. 2015)).

¹⁴³ *Case Concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003*, ITLOS Reports (2003), para. 99 (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_12/12_order_081003_en.pdf (accessed 19 Mar. 2015)); see also *The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001*, ITLOS Reports (2001), para. 84 (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_10/Order.03.12.01.E.pdf (accessed 19 Mar. 2015)).

¹⁴⁴ See Statement of EPA (Ghana PM, Vol. III, Annex S-EPA).

stage at which Côte d'Ivoire could, if awarded any of the disputed territory, seek to licence it to contractors – would cause it any harm at all, let alone imminent and irreparable harm.¹⁴⁵

C. THERE IS NO RISK OF SERIOUS HARM TO THE ENVIRONMENT

112. According to Côte d'Ivoire, the activities carried out by operators licensed by Ghana in the disputed area are in breach of Article 193 UNCLOS, which requires coastal States to exploit natural resources “in accordance with their duty to protect and preserve the marine environment”.¹⁴⁶ Côte d'Ivoire thus argues that satellite images have “made it possible to identify traces of pollution in the TEN zone related to drilling mud discharges (as on Jubilee) or offgasings and discharges of hydrocarbons from ships and platforms that occur in the area”.¹⁴⁷ It claims that authorities in Ghana show little concern for such events and adds that “the development of oil activities in the disputed area will affect wetlands of major ecological importance for Côte d'Ivoire, such as the Îles Ehotilés National Park, located on the border between Côte d'Ivoire and Ghana, which was classified as a Ramsar site”.¹⁴⁸ Côte d'Ivoire finally emphasizes the impact of uncontrolled activities relating to the exploitation of oil in the disputed area has on the ecosystem of the Gulf of Guinea.¹⁴⁹ All this, it claims, would therefore warrant the prescription of provisional measures to prevent harm to the marine environment.

¹⁴⁵ For the approach to procedural rights in relation to interim measures, see *The MOX Plant Case (Ireland v. United Kingdom)*, *Provisional Measures, Separate Opinion of Judge Mensah*, ITLOS Reports (2001), final paragraph: the procedural rights (co-operation and consultation) claimed by Ireland were capable of being made good by reparations that the arbitral tribunal may consider appropriate (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_10/sep.op.Mensah.E.orig.pdf (accessed 19 Mar. 2015)). See also *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, *Provisional Measures, Order* (11 Sept. 1976), I.C.J. Reports (1976), para. 33: “the alleged breach by Turkey of the exclusivity of the right claimed by Greece to acquire information concerning the natural resources of areas of continental shelf, if it were established, is one that might be capable of reparation by appropriate means...”. (available at <http://www.icj-cij.org/docket/files/62/6219.pdf> (accessed 19 Mar. 2015)).

¹⁴⁶ Côte d'Ivoire PM, para. 17 (translation by Ghana; original French text: “conformément à leur obligation de protéger et de préserver le milieu marin”).

¹⁴⁷ *Id.*, para. 47.

¹⁴⁸ *Id.*, para. 50. This is a surprising claim since Côte d'Ivoire's own oil fields lie closer to this park than any of Ghana's in the disputed area.

¹⁴⁹ *Id.*, para. 51.

113. Côte d'Ivoire has offered no plausible evidence of environmental harm, and Ghana firmly rejects the account given by Côte d'Ivoire of the impact of Ghana's activities related to oil exploitation on the marine environment in the disputed area and beyond. On the evidence, Ghana submits that this is not even a case where, in the words of Judge Wolfrum in *The MOX Plant Case*, "an applicant argues with some plausibility that its rights may be prejudiced or that there was serious risk to the marine environment."¹⁵⁰ To the contrary, Ghana submits that the evidence summarised at Section G above; together with the Witness Statements from the EPA and Tullow¹⁵¹ powerfully demonstrates that Côte d'Ivoire's belated allegations are wholly unfounded.

D. THERE IS A SERIOUS RISK OF IRREPARABLE AND UNQUANTIFIABLE HARM TO GHANA IF ANY OF THE MEASURES REQUESTED BY CÔTE D'IVOIRE ARE GRANTED

114. Article 290(1) UNCLOS provides for the power to prescribe provisional measures "to preserve *the respective rights of the parties* to the dispute."¹⁵² It is therefore clear that it is not only the — asserted — rights of the party applying for provisional measures that may be preserved pending a final decision on the merits of the case, but also those which may plausibly be claimed by the other party. Thus the ICJ recently emphasized that, when it is requested to indicate provisional measures, it "must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong *to either party*".¹⁵³ When called upon to examine an application for provisional measures, a court or tribunal must therefore ensure that it strikes a balance between the rights of both Parties and that the prescription of such measures does not create an undue burden for one of them.

¹⁵⁰ *The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, Separate Opinion of Judge Wolfrum*, ITLOS Reports (2001), p. 3 (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_10/sep.op.Wolfrum.E.orig.pdf (accessed 19 Mar. 2015)). Judge Wolfrum was concerned to emphasise that even in such a case, the granting of provisional measures could not become "automatic", since "This cannot be the function of provisional measures, in particular since their prescription has to take into consideration the rights of all parties to the dispute". *Id.*

¹⁵¹ Statement of EPA (Ghana PM, Vol. III, Annex S-EPA); Statement of Tullow, paras. 36-37, 50-59 and 82-93, see especially paras. 82-93 (Ghana PM, Vol. III, Annex S-TOL).

¹⁵² (Emphasis added).

¹⁵³ *Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order*, I.C.J., para. 22 (emphasis added) (available at <http://www.icj-cij.org/docket/files/156/18078.pdf> (accessed 19 Mar. 2015)).

115. The Special Chamber will not, of course, enter into a detailed analysis of the merits of the underlying dispute at this preliminary stage, and Ghana does not invite it to do so. However, it will be apparent from the brief summary of the Parties' respective positions over the years that until the discovery of oil in the disputed area, both Parties proceeded over many decades on the basis of the equidistance-based line.¹⁵⁴ As far back as 1970, if not earlier, Côte d'Ivoire used maps with an equidistance-based line, and it has continued to do so through recent years. The position now advanced by Côte d'Ivoire as to the losses which it will suffer during the lifetime of these proceedings is, therefore, a novel and newly constructed approach, adopted against all its previous practice, presumably in the hope of gaining access to natural resources on Ghana's territory.

116. As the tribunal put it in the *Bangladesh v. Myanmar* case:

[I]n international law, a situation of estoppel exists when a State, by its conduct, has created the appearance of a particular situation and another State, relying on such conduct in good faith, has acted or abstained from an action to its detriment. The effect of the notion of estoppel is that a State is precluded, by its conduct, from asserting that it did not agree to, or recognise, a certain situation.¹⁵⁵

117. Above, Ghana has summarised Côte d'Ivoire's lengthy history of acquiescence in, and positive agreement with, the equidistance-based approach. Ghana has relied in good faith on the position consistently adopted by Côte d'Ivoire. In reliance on this position, Ghana has granted a range of concessions on its side of the line which the Parties have consistently observed.¹⁵⁶ Very substantial investment has been undertaken by the concessionaires, and the

¹⁵⁴ See *supra* Section I.A-I.B.

¹⁵⁵ *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar)*, Judgment of 14 March 2012, ITLOS Reports 2012, para. 124 (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/C16_Judgment_14_03_2012_rev.pdf (accessed 19 Mar. 2015)). See also the analysis of estoppel in *The "ARA Libertad" Case (Argentina v. Ghana)*, Provisional Measures, Order of 15 December 2012, Joint Separate Opinion of Judge Wolfrum and Judge Cot, ITLOS Reports 2012, paras. 53-55 (available at https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_20/C20_Ord_15.12.2012_SepOp_Wolfrum-Cot_E_corr.pdf (accessed 19 Mar. 2015)); and the analysis of the ICJ in *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment, I.C.J. Reports 1962, pages 22-25 (Thailand's failure to protest a map putting the disputed temple in Cambodia's territory, coupled with positive acts in relation to the map) (available at <http://www.icj-cij.org/docket/files/45/4871.pdf> (accessed 19 Mar. 2015)).

¹⁵⁶ See Sections B and C of the factual section, above.

projected income from those projects has formed an important part of Ghana's fiscal planning. Côte d'Ivoire has long been aware of these matters, and has done nothing to challenge their lawfulness, until the belated change of course outlined above. Through this application for provisional measures, Côte d'Ivoire now seeks to bring that work to an abrupt halt.

118. In light of Côte d'Ivoire's behaviour and Ghana's substantial – and, if the provisional measures sought were to be granted, extremely detrimental – reliance on that behaviour, Ghana submits that Côte d'Ivoire should not be granted the provisional measures which it seeks.

119. The Parties' previous and settled practice was in no way arbitrary. To the contrary, the geography of the relevant coastline indicates – even on a brief review of the relevant maps¹⁵⁷ – that this is a case where the presumption of equidistance would apply particularly strongly, and would require Côte d'Ivoire to demonstrate compelling exceptional circumstances in order to replace an equidistance-based approach with the approach for which it now contends. No such circumstances have yet been indicated by Côte d'Ivoire.

120. Ghana considers that the *prima facie* merits of the case ought to be borne in mind when determining Côte d'Ivoire's application. Here, a Respondent State with a weak case on the merits, but with considerable commercial interest in the disputed area, is seeking provisional measures based on an entirely theoretical risk of harm. The major aspect of this alleged harm (Ghana's revenue from oil extracted from any area found to lie within the territory of Côte d'Ivoire) could be entirely compensated in damages at the end of the case. The other aspects of the alleged harm (the claims relating to environmental damage and the loss said to flow from lack of access to information) are wholly speculative and unfounded in the evidence.

121. When considering where the balance of convenience lies in determining this application, therefore, Ghana asks the Special Chamber to pay regard to the severe disproportionality of the impact on Ghana of granting the measures sought, when weighed

¹⁵⁷ See, e.g., maps in Volume II.

against (a) the inability of Côte d'Ivoire to articulate any genuine, non-compensable harm which it would suffer if these issues were resolved at the conclusion of the case, and (b) the weakness of Côte d'Ivoire's belated claim to displace the strong presumption of an equidistance-based approach.

122. As Judge Abraham stated in his separate opinion in the *Pulp Mills* case, "When acting on a request for the indication of provisional measures, the Court is necessarily faced with conflicting rights (or alleged rights), those claimed by the two Parties, and it cannot avoid weighing those rights against each other". He went on to observe that:

[the Court] cannot order a State to conduct itself in a certain way simply because another State claims that such conduct is necessary to preserve its own rights, unless the Court has carried out some minimum review to determine whether the rights thus claimed actually exist and whether they are in danger of being violated – and irreparably so – in the absence of the provisional measures the Court has been asked to prescribe: thus, unless the Court has given some thought to the merits of the case.¹⁵⁸

123. For the reasons outlined above, the merits of the case are firmly in favour of Ghana.

124. The status quo is that Ghana has extensive and long-standing existing rights with respect to exploration and natural resource recovery in a region within which it, *prima facie*, is entitled to exercise sovereign rights. The extent of the territory it claims and the rights based on it are consistent with the fundamental principles upon which maritime boundaries have been delimited both before and since, and accord with long-standing mutual recognition of them. Côte d'Ivoire, by contrast, has a mere assertion of a new claim to Ghana's established territory which contradicts its own law and longstanding practice, and the maritime boundary drawn along an equidistance line which it has recognised and given effect for more than four decades.

125. Ghana also notes that Côte d'Ivoire has offered no undertaking to compensate Ghana for the losses which it would incur if provisional measures were granted and were then found to be unjustified at the conclusion of the case. As Lawrence Collins (now Lord Collins) states

¹⁵⁸ *Case concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Provisional Measures, Order, Separate Opinion of Judge Abraham, I.C.J. Reports 2006, pp. 139-140 (available at <http://www.icj-cij.org/docket/files/135/11241.pdf> (accessed 19 Mar. 2015)).

in a comprehensive comparative review of the legal principles applying to interim measures, “there is an obvious justice in requiring an Applicant State to be responsible for damage suffered, and perhaps even to give security, as a condition for the indication of interim measures”.¹⁵⁹ He goes on to observe that “it is inherent in the system of protective measures that the final decision may go against that party; and the party whose freedom of action is inhibited by temporary measures is normally given some recourse if it transpires that the measures were not justified by the merits of the case”.¹⁶⁰ Such cross-undertakings, as he observes, are a routine feature of national legal systems, to the extent that “a principle of compensation for the unjustified grant of an injunction in private litigation is a general principle of law”.¹⁶¹ Such a principle should apply *a fortiori* in a case such as the present, where the party against whom the interim measures are sought is a sovereign State which faces enormous damage – economic and otherwise – if the measures sought were granted.

¹⁵⁹ L. Collins, “Provisional and Protective Measures in International Litigation”, in RECUEIL DES COURS, COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW, Vol. 234 (1992), p. 231. Ghana PM, Vol. IV, Annex LA-5.

¹⁶⁰ *Id.*, p. 234.

¹⁶¹ *Id.*, p. 231.

Section III. Submission

126. For the reasons stated above, Ghana requests the Special Chamber to deny all of Côte d'Ivoire's requests for provisional measures.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Brew Appiah-Opong', written over a horizontal line.

Mrs Marietta Brew Appiah-Opong
Attorney-General and Minister for Justice
Republic of Ghana

AGENT OF THE REPUBLIC OF GHANA

23 March 2015