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INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
SPECIAL CHAMBER

CASE NO. 23

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

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

27 FEBRUARY 2015

1. By a letter delivered by hand to the Embassy of the Republic of Côte d'Ivoire ("Côte d'Ivoire") in Accra on 19 September 2014, the Republic of Ghana ("Ghana") gave notification of a request to submit the delimitation of the maritime boundary between those two countries to an arbitral tribunal pursuant to Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). Three days later, on 22 September 2014,[1] Ghana withdrew its Declaration dated 15 December 2009 by which it had declared, in accordance with article 298 of UNCLOS, that it did not accept any of the dispute settlement procedures provided for in UNCLOS with respect to delimitation of maritime boundaries.[2]

2. On 3 December 2014, the Parties concluded an agreement transferring the dispute to a special chamber of the International Tribunal for the Law of the Sea (ITLOS) pursuant to article 15, paragraph 2, of the Statute of the Tribunal. By Order of 12 January 2015, ITLOS formed the special chamber ("the Special Chamber") in accordance with the agreement between the Parties. Within the framework of these proceedings, Côte d'Ivoire is submitting to the Special Chamber the present request for the prescription of provisional measures under article 290, paragraph 1, of UNCLOS.

3. The procedural timetable established at the meeting on 18 February 2015 is such that the decision on the merits cannot be reached before the second half of 2017, more than two years from now. For the reasons set out in the present Request, that timetable makes provisional measures indispensable both to protect the rights of Côte d'Ivoire in controversy and to prevent serious harm to the marine environment pending the decision on the merits.

[1] Ghana, Declaration relating to Article 298 of UNCLOS, published in Depositary Notification C.N.568.2014.TREATIES-XXI.6 of 22 September 2014, available on line at: https://treaties.un.org/doc/Publication/CN/2014/CN.568.2014-Eng.pdf (last visited: 22 February 2015).
[2] Ghana, Declaration relating to Article 298 of UNCLOS, published in Depositary Notification C.N.890.2009.TREATIES-XXI.16 of 16 December 2009, available on line at: https://treaties.un.org/doc/Publication/CN/2009/CN.890.2009-Eng.pdf (last visited: 22 February 2015).

4. The present request for the prescription of provisional measures is structured as follows:

I. The maritime boundary dispute

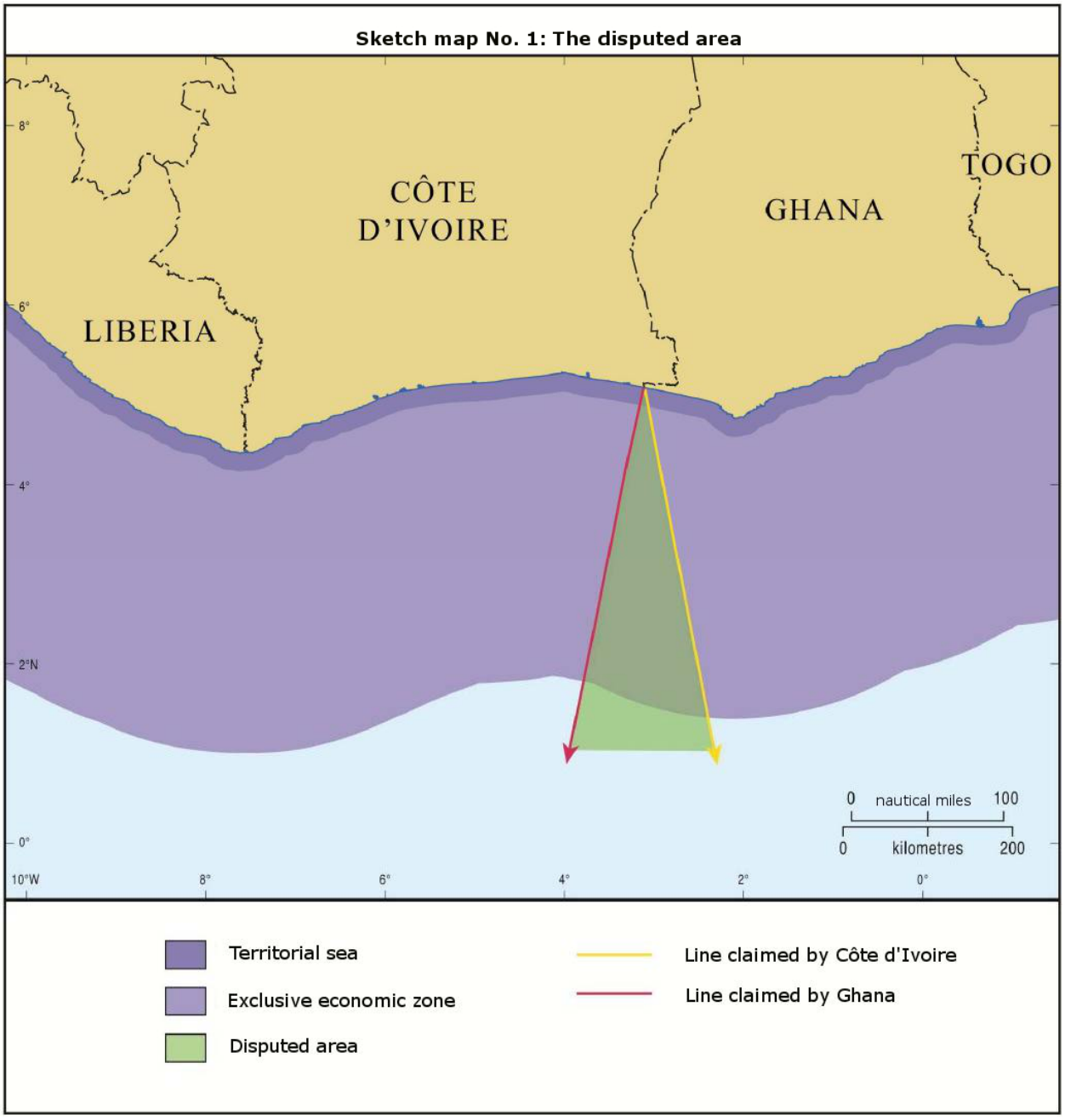
5. Côte d'Ivoire and Ghana have adjacent coasts in the Gulf of Guinea. The question of maritime delimitation was formally raised by Côte d'Ivoire with the Ghanaian authorities for the first time in July 1988 at the 15th ordinary session of the Joint Commission on Land Boundary Redemarcation held in Abidjan.

6. Despite numerous meetings and negotiations, in particular within the Côte d'Ivoire-Ghana Joint Commission on the delimitation of the maritime boundary between Côte d'Ivoire and Ghana created in 2008 ("the Joint Commission"), the Parties continue to take opposing positions, which can be summarized as follows:

- Ghana claims a boundary which it characterizes as an equidistance line[3] in order to secure formal recognition of the line which it uses unilaterally for the grant of its oil and gas concessions;[4]
- Côte d'Ivoire claims a line that takes account of the relevant circumstances of the case and allows an equitable solution to be achieved in accordance with the requirements of contemporary international law of the sea.[5]

7. These competing claims have given rise to a disputed area, whose existence is recognized by the Parties, as shown in **Sketch map No. 1** below, extending from the coast to the outer limit of the continental shelf. Within the limit of 200 nautical miles, the disputed area covers approximately 30,000 km^2 (or roughly 9,000 nautical miles^2).

[3] Ghana, Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, 19 September 2014, para. 33.
[4] *Ibid.*, paras 7, 19 and 20.
[5] *Ibid.*, para. 28.



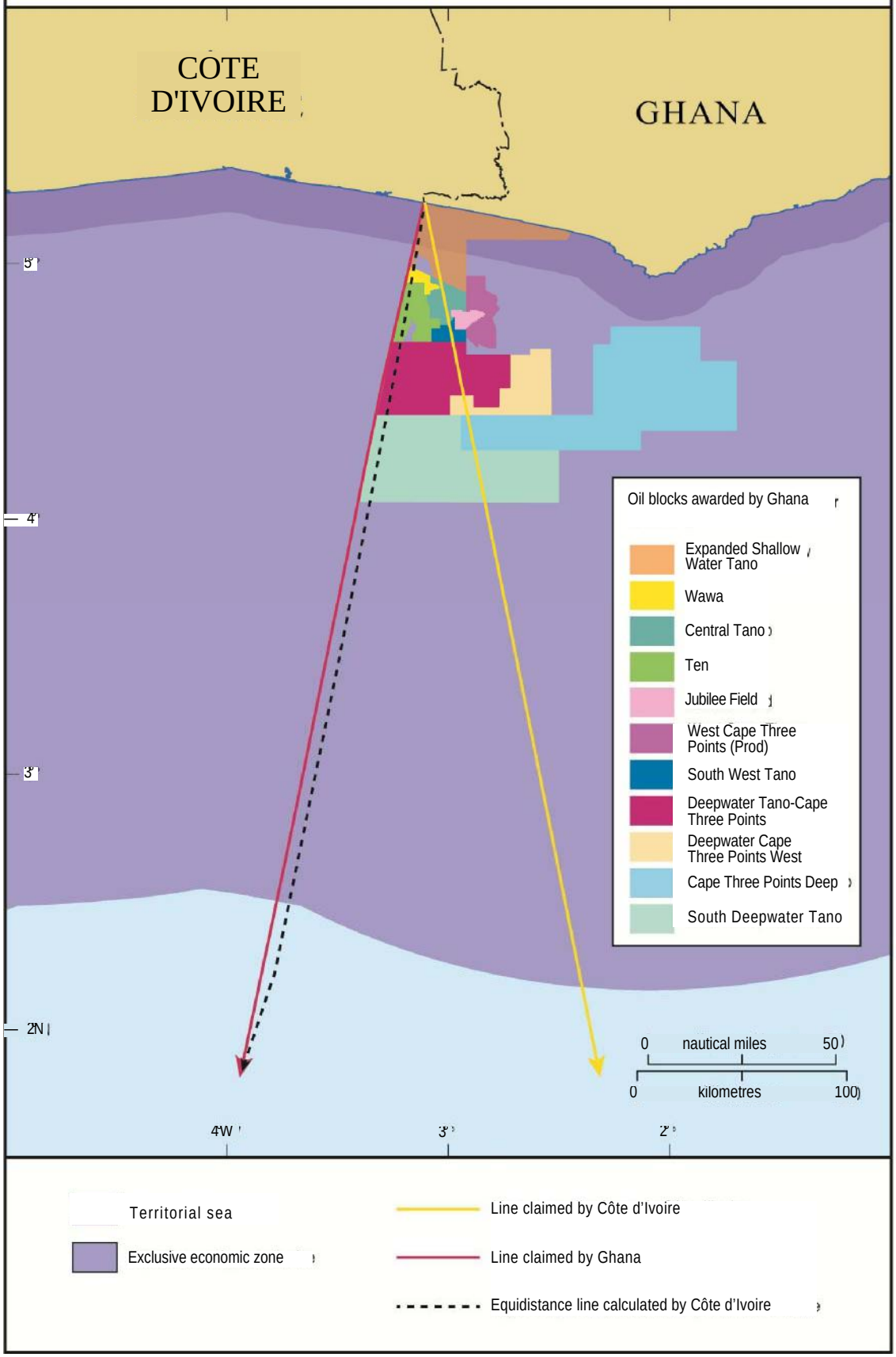
8. However, the western limit of the disputed area is uncertain on account of Ghana's inconsistent position, at least at this stage of the proceedings. That is to say: in so far as Côte d'Ivoire can tell, the line used by Ghana to delimit its oil and gas concessions, which it calls an equidistance line,[6] departs from strict equidistance as established by Côte d'Ivoire on

[6] Ghana, Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, 19 September 2014, paras 4, 7, 19 and 20.

the basis of recent coastal surveys. Although determining a provisional equidistance line is a matter of the merits, as Ghana stated in its notification of arbitration,[7] this significant discrepancy between strict equidistance and the line advocated by Ghana already raises problems at this early stage of the proceedings because of the location of the oil blocks for which Ghana has granted concessions; these straddle the strict equidistance line (as shown in **Sketch map No. 2** below).

[7] *Ibid.*, para 32.

Sketch map No. 2: The disputed area and the oil blocks for which concessions have been granted by Ghana



9. Despite the lack of agreement on the delimitation of the maritime boundary, Ghana has acted as if the disputed area were its own, whilst continuing negotiations with Côte d'Ivoire, apparently without any desire to see them succeed. For example, Ghana has granted a number of oil concessions in that area. Thus far nine oil blocks have been awarded to different companies, as is shown in Sketch map No. 2 above.[8] Those blocks are spread over an area extending southwards from the coast for approximately 160 km (85 nautical miles), overlapping some 5,000 km^2 (1,500 nautical miles^2) of the disputed area. Côte d'Ivoire has repeatedly expressed its opposition to any oil activity in the disputed area, both to Ghana[9] and to oil companies operating there.[10]

10. From 2008 to May 2014, the Parties met on ten occasions to attempt to resolve their dispute within the Joint Commission. Despite its obligation to negotiate in good faith and to refrain from any unilateral activity likely to jeopardize or hamper the reaching of a final agreement on the delimitation of the boundary (articles 74, paragraph 3, and 83, paragraph 3, of UNCLOS), Ghana has stepped up its economic development policy in the disputed area:

- by increasing the number of oil contracts there;

- by granting permission for a number of seismic surveys to be conducted there;

- by granting permission for numerous drilling operations to be carried out there;

- by granting permission for three oil fields to move to the exploitation phase; current development activities for these include the installation of permanent subsea infrastructures.

[8] See also Status of activities in oil blocks awarded by Ghana in the disputed area as of February 2015 (**Annex 1**).

[9] See Communication from Côte d'Ivoire, 23 February 2009, para. 15 (**Annex 2**) and the minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation, 2 November 2011, p. 7 (**Annex 3**). See also the letter of formal notice sent by Côte d'Ivoire to Ghana on 31 October 2014 pursuant to Article 290, para. 5, of UNCLOS (**Annex 4**).

[10] Formal notices sent by Côte d'Ivoire to oil companies, 26 September 2011 (**Annex 5**) and 30 July 2014 (**Annex 6**).

11. Alongside the intensification of oil activities in the disputed area, Ghana has suddenly broken off negotiations with Côte d'Ivoire within the Joint Commission. As had been agreed at the end of the tenth meeting of the Joint Commission held on 26 and 27 May 2014, on 15 September 2014 Ghana sent Côte d'Ivoire a proposed agenda for the 11th meeting scheduled to take place in Accra from 30 September to 3 October 2014.[11] Four days later, on 19 September 2014, Ghana informed Côte d'Ivoire that "*due to unforeseen circumstances the proposed meeting in Accra will not take place*".[12] Ghana has never offered any explanation of those "unforeseen circumstances", but a few hours later it delivered to Côte d'Ivoire the notification of the submission to an arbitral tribunal of the dispute concerning delimitation of the maritime boundary.[13]

12. It might have been thought that Ghana thus intended to submit the delimitation dispute to a third-party adjudicator and to defer to its decision. Through its President, John Dramani Mahama, Ghana claimed that the initiation of arbitration proceedings was the best way to respond to the "*pressing need for certainty in regard to the location of the maritime boundary so as to allow economic and other activities to continue unimpeded*".[14] However, it quickly became apparent that Ghana was doing its best to impair the effectiveness of the future arbitral decision as it had no intention of awaiting the outcome of the proceedings before carrying on with its oil activities in the disputed area. Thus, four days later Ghana announced, through its Agent, Marietta Brew Appiah-Oppong, the Minister for Justice, that "*oil companies could continue to operate during the arbitration process, which could take up to three years*".[15]

[11] Ghana, Note sent by the Embassy of the Republic of Ghana in Côte d'Ivoire to the Minister for Foreign Affairs of Côte d'Ivoire, 15 September 2014 (**Annex 7**).
[12] Ghana, Note sent by the Embassy of the Republic of Ghana in Côte d'Ivoire to the Minister for Foreign Affairs of Côte d'Ivoire, 19 September 2014 (**Annex 8**).
[13] Ghana, Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, 19 September 2014.
[14] Letter sent by H. E. J. D. Mahama to the President of the Republic of Côte d'Ivoire, H. E. Alassane Ouattara, 19 September 2014 (**Annex 9**).
[15] Statement by Marietta Brew Appiah-Oppong, Minister for Justice and Agent for Ghana, reported by Reuters on 23 September 2014 (**Annex 10**).

II. The legal conditions are met for the prescription of provisional measures

13. Article 290, paragraph 1, of UNCLOS provides:

> "If 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".

1. The *prima facie* jurisdiction of the Special Chamber is established

14. Côte d'Ivoire and Ghana are both parties to UNCLOS. Neither of the Parties has made a declaration under article 298 of the Convention that is currently in force. By Special Agreement concluded on 3 December 2014, the dispute concerning delimitation of the maritime boundary between those two countries in the Atlantic Ocean was submitted to the Special Chamber, after having initially been submitted by Ghana to arbitration proceedings under Annex VII of UNCLOS.[16] Pursuant to the consent of the Parties thus expressed, the Chamber therefore has *prima facie* jurisdiction to hear the dispute on the merits as well as the present request for the prescription of provisional measures.

2. The objective pursued by Côte d'Ivoire of preserving its rights and the marine environment

15. Côte d'Ivoire claims sovereignty and sovereign rights over the disputed area. Ghana is aware of that claim, as it served notice of a request for the maritime boundary between the two States to be delimited by an arbitral tribunal. Article 2, paragraph 2, of UNCLOS provides that the sovereignty of the coastal State extends to the "bed and subsoil" of the territorial sea. Furthermore, under articles 56, paragraph 1, and 77, paragraph 1, of UNCLOS, the coastal State has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil. Those rights are exclusive in the sense that no other State may without the coastal State's express consent undertake activities relating to exploration or exploitation of natural resources on the continental shelf of the area in question (article 77, paragraph 2, of UNCLOS) or even conduct a marine scientific research project which is "of

[16] See Special Agreement and Notification, 3 December 2014. See also paragraphs 1 and 2 above.

direct significance for the exploration and exploitation of natural resources" (article 246, paragraph 5, of UNCLOS). In addition, article 81 of UNCLOS provides that "the coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes".

16. The Special Chamber must preserve Côte d'Ivoire's sovereign rights by prescribing provisional measures such as to ensure that it will be able to exercise those rights fully once the Special Chamber has handed down its final decision on the course of the maritime boundary, thereby preventing that decision from being deprived of effectiveness. To that end, unilateral oil operations in a disputed area must be precluded in order to preserve the rights of the parties.

17. The rights and obligations of coastal States in respect of protecting and preserving the marine environment are regulated by Part XII of UNCLOS, and in particular by article 193, which provides that "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment", and articles 208 and 214, which deal with pollution from seabed activities. As President Vladimir Golitsyn pointed out in his statement of 9 December 2014 to the United Nations General Assembly, it has been ruled in a number of cases that States were under a duty to cooperate, which had to be regarded as a "fundamental principle in the prevention of pollution of the marine environment under ... the Convention and in general international law".[17] The President of ITLOS also stated that "the Tribunal consistently highlighted the obligation for States to act with 'prudence and caution' in situations in which the protection of the marine environment is at stake, which in fact is equivalent to acting by applying a precautionary approach".[18]

3. The circumstances justify the prescription of provisional measures

18. Ghana's attitude during the negotiations and since the initiation of proceedings has borne witness to a desire to create a fait accompli which will largely render the future

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[17] President Vladimir Golitsyn, Statement on agenda item 74(a) "Oceans and the law of the sea" at the plenary of the sixty-ninth session of the United Nations General Assembly, New York, 9 December 2014, para. 22, available online: https://www.itlos.org/index.php?id=49&L=2. The President cited the Order of 3 December 2001 in *MOX Plant (Ireland v. United Kingdom), Provisional Measures, ITLOS Reports 2001*, p. 95, at p. 110, para. 82; and the Order of 8 October 2003 in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, ITLOS Reports 2003*, p. 10, at p. 25, para. 92).

[18] *Ibid.*

delimitation ineffective. A steady acceleration of unilateral Ghanaian actions in the disputed area can also be observed. For example, seven of the nine Ghanaian oil blocks located entirely or partly within the disputed area were awarded by Ghana in 2013 and 2014, which is evidence of especially dynamic oil activity management.[19] Three fields located wholly within the disputed area will be entering the commercial exploitation phase from 2016.[20]

19. Thus, within the meaning of article 290, paragraph 1, of UNCLOS, serious infringements of the disputed rights of Côte d'Ivoire are occurring (3.1) and serious harm is being caused to the marine environment (3.2).

3.1 Infringements of the disputed rights of Côte d'Ivoire resulting from the oil activities undertaken by Ghana

a) Harm to the seabed and its subsoil is manifold and well-established

20. Oil operations comprise an exploration phase[21] and an exploitation phase, which is itself divided into a development phase[22] and a production phase.[23] Implementation of each of these phases necessitates physical operations which are, by their nature, seriously detrimental to the rights claimed by Côte d'Ivoire, on which the Special Chamber will have to rule on the merits.

21. In this specific case, characteristic of the oil activities undertaken by Ghana in most of the blocks located entirely or partly within the disputed area are operations which cause physical harm to the continental shelf. Up to now, 34 exploration and development drilling operations have been carried out in the disputed area and many new ones are planned for the next few months.[24] Subsea infrastructures required before production can begin are currently being installed in and on the continental shelf of the disputed area.

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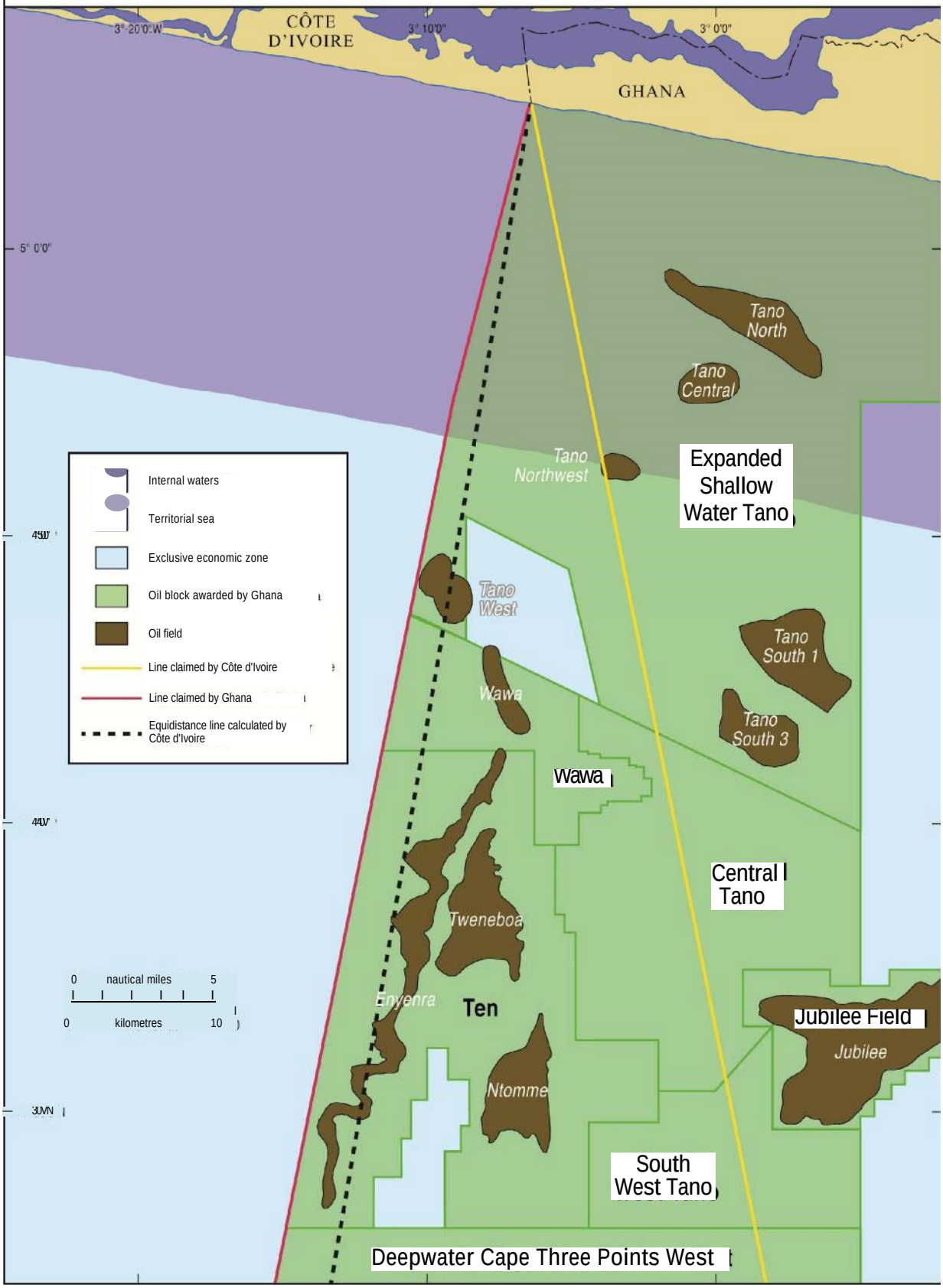
[19] For details of each block, see Status of activities in oil blocks awarded by Ghana in the disputed area as of February 2015 **(Annex 1)**.
[20] See paragraphs 24-28 below.
[21] In the exploration phase, geological studies are conducted by means of seismic surveys and subsoil drilling in order to locate hydrocarbons, to identify their characteristics and to evaluate their commercial potential.
[22] In the development phase, the infrastructure required for hydrocarbon production, including drilling wells, is created and connected to the production facility, and hydrocarbon processing and transportation equipment of various sorts is installed.
[23] This phase covers extraction of hydrocarbons from the sub-soil and their processing.
[24] For details of each block, see Status of activities in oil blocks awarded by Ghana in the disputed area as of February 2015 **(Annex 1)**.

22. It can be seen that two of the six hydrocarbon deposits located entirely or partly within the disputed area, Tano West and Enyenra, overlap the objectively determined equidistance line[25] (see **Sketch map No. 3** below). Consequently, inasmuch as Ghana considers that the maritime boundary should follow the strict equidistance line,[26] some of those deposits would in any event lie outside the scope of its claims. Ghana is nevertheless conducting intensive oil activities there, thereby violating the undisputed sovereign rights of Côte d'Ivoire.

[25] See paragraph 8 above.
[26] See Ghana, Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, 19 September 2014, para. 33.

Sketch map No. 3: Hydrocarbon deposits identified in and near the disputed area



23. Thus, the oil activities undertaken by Ghana in the disputed area go well beyond simple seismic exploration activities in so far as they involve drilling together with "the establishment of installations on or above the seabed of the continental shelf"[27] which, as the International Court of Justice pointed out in its Order of 11 September 1976 in the *Aegean Sea Continental Shelf Case*, raise "a question of infringement of the … exclusive right of exploration"[28] of the other State in the dispute and are likely "to justify recourse to its exceptional power … to indicate interim measures of protection".[29] Similarly, in the case between Guyana and Suriname, the Arbitral Tribunal constituted in accordance with Annex VII of UNCLOS held that "*unilateral acts that cause a physical change to the marine environment (...) could be perceived to, or may genuinely, prejudice the position of the other party in the delimitation dispute, thereby both hampering and jeopardizing the reaching of a final agreement*".[30]

24. The situation is of particular concern with regard to the "TEN" block. This block is located entirely within the disputed area and, from 2006 to May 2013, saw exploration operations, including 12 drilling wells, which made it possible to identify and delimit three fields known as Tweneboa, Enyenra and Ntomme[31] whose development was approved by the Ghanaian authorities in May 2013.[32]

25. Under the development plan drawn up by the oil field operator, Tullow Ghana Ltd,[33] various operations to manufacture and install subsea infrastructure are currently underway in and on the subsoil of this disputed area,[34] as is shown by the satellite images of the area taken just a few weeks ago, which confirm the presence of ships and drilling platforms:[35]

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[27] ICJ, Order, 11 September 1976, *Aegean Sea Continental Shelf (Greece v. Turkey), Interim Protection, I.C.J. Reports 1976*, p. 10, para. 30.
[28] *Ibid*., p. 11, para. 31.
[29] *Ibid*., p. 11, para. 32.
[30] Award of 17 September 2007, *Delimitation of the maritime boundary between Guyana and Suriname*, *R.I.A.A.*, vol. XXX, p. 137, para. 480.
[31] See Status of activities in oil blocks awarded by Ghana in the disputed area as of February 2015, pp. 9 and 10 (**Annex 1**).
[32] News release by Tullow on the approval of the development plan for the TEN Project, 30 May 2013 (**Annex 11**).
[33] See Status of activities in oil blocks awarded by Ghana in the disputed area as of February 2015, pp. 9 and 10 (**Annex 1**).
[34] Tullow Oil Plc, *Overview Presentation*, December 2014, Slide 31 **(Annex 12)**.
[35] Satellite images showing oil activity in and near the disputed area (2014-2015) (**Annex 22**), Figures 1 and 2.

- drilling in the subsoil of 24 development wells (in addition to the exploration wells completed before May 2013),[36] 10 of which have now been drilled;[37]

- engineering, manufacture and installation on the subsoil of pipes and pipelines more than 150 km in length;[38]

- installation of subsea systems, including subsea well heads, in the subsoil.[39]

26. These operations are now over 50% complete and the first barrels of oil are set to be delivered in mid-2016.[40]

27. The other eight blocks licensed by Ghana[41] and located entirely or partly within the disputed area are in the exploration phase (see **Sketch map No. 2** above), which means that oil operators are conducting seismic surveys and studies and drilling operations to identify deposits and to determine their commercial viability. Twelve drilling wells have already been completed in these blocks in the disputed area. The drilling of additional wells is already planned for the next two years in four of these blocks,[42] including some as soon as May 2015.[43]

28. Thanks to the drilling operations in the Expanded Shallow Water Tano and Wawa blocks, it is already possible to identify three hydrocarbon deposits located entirely or partly within the disputed area which are likely to go into development (**see Sketch map No. 3** above).

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[36] Tullow Oil Plc, *Overview Presentation*, December 2014, Slide 30 **(Annex 12)**.
[37] Tullow Oil Plc, *2014 Full Year Results*, p. 3 (**Annex 13).**
[38] See Technip press release, 31 October 2013 (**Annex 14**) and Vallourec press release, 26 May 2014 (**Annex 15**).
[39] FMC Technologies press release, 15 October 2013 (**Annex 16)**.
[40] Tullow Oil Plc, *2014 Full Year Results*, p. 3 (**Annex 13**).
[41] Expanded Shallow Water Tano, Central Tano, Deepwater Tano Cape Three Points, Cape Three Points Deep and Wawa, South West Tano, Deepwater Cape Three Points West and South Deepwater Tano blocks, see Status of activities in oil blocks awarded by Ghana in the disputed area as of February 2015 (**Annex 1**).
[42] With regard to the Deepwater Cape Three Points West, South Deepwater Tano, Central Tano and Deepwater Tano Cape Three Points blocks, see *ibid.*, pp. 8, 15, 17 and 21 (**Annex 1**).
[43] With regard to the South Deepwater Tano block, see *ibid.*, pp. 20 and 21 (**Annex 1**).

29. For these reasons, the unilateral activities undertaken by Ghana, or with its permission, in the disputed area constitute a serious infringement of the disputed rights of Côte d'Ivoire relating to the seabed, its subsoil, and their resources.

(b) Harm resulting from the acquisition by Ghana of information relating to the resources

30. The sovereign rights of the coastal State relating to the exploration of the continental shelf and the exploitation of the natural resources thereof include not only the right of that State to regulate access to them but also its right to possess and control all information relating to them. This encompasses information relating to the availability of the resources, the nature, extent and location of reserves, or indeed the economic viability of extracting those resources. This information is of capital importance to the coastal State because the State's ability to formulate and implement its national energy policy is a function of it.

31. The exclusive nature of these rights is reflected in the different treatment accorded in UNCLOS to purely scientific marine research, on the one hand, and research conducted for commercial purposes on the continental shelf and in the exclusive economic zone, on the other. Thus, article 246, paragraph 3, directs coastal States to grant their consent for marine scientific research projects when they are intended "to increase scientific knowledge of the marine environment for the benefit of all mankind". Conversely, article 246, paragraph 5, allows the coastal State to oppose the conduct of a research project if it "is of direct significance for the exploration and exploitation of natural resources, whether living or non-living" (subparagraph a), or if it "involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment" (subparagraph b). Such control is critical for the coastal State possessing such resources and enables it to ensure that it will be able to determine when and how it wishes to exploit those resources in the interest of its citizens and ultimately to reap the benefits thereof.

32. Ghana has awarded licences to oil companies for exploration and exploitation of the petroleum resources of the disputed area. Eight of nine oil blocks established by Ghana that are situated partly or wholly in the disputed area (see **Sketch map No. 2** above) are currently in the exploration phase. Under the licences awarded, the oil companies have begun and

continue to collect and to analyse data relating to the geophysical characteristics of the continental shelf, by carrying out seismic studies and exploratory drilling.[44]

33. Seismic studies and analysis and drilling are yielding information on the oil and gas resources in the disputed area, such as the outer configuration of the reservoir, its internal structure and its size, as well as accessibility and quality of its resources. The information obtained is essential for an evaluation of the potential value of the oil and gas resources. Exclusive control of such information is an indispensable corollary of the coastal State's exclusive rights over its resources, including in its economic relations with private oil companies and the negotiation of oil contracts.

34. Once exclusive control of such information is lost owing to disclosure to oil companies, the economic balance of power between the State and the companies shifts dramatically and the State's negotiating power diminishes as that of the companies increases. Thus, whereas the coastal State might have hoped to see a large number of candidates interested in investing in exploration activities, with the promise of substantial job creation, the number of potential investors may be reduced to none, or almost none.

35. The past and ongoing collection of information relating to the natural resources of the disputed area by Ghana and by private oil companies is a serious infringement of the disputed rights of Côte d'Ivoire. The damage thus sustained increases with the passage of time, as the seismic exploration operations and exploratory drilling by Ghana in the disputed area continue apace. This damage is moreover irreversible insofar as a return to the situation ex ante will be impossible owing to the fact that information will have circulated[45] and that, unlike a living resource, bargaining power cannot regenerate on its own.

36. It should be noted that the Order of the International Court of Justice handed down on 11 September 1976 in the *Aegean Sea Continental Shelf Case*[46] is not determinative as

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[44] See para. 27 above, Status of activities in oil blocks awarded by Ghana in the disputed area as of February 2015 (**Annex 1**).

[45] The situation in the present case differs from that before the International Court of Justice in the case concerning *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), in which the Court based its decision not to indicate provisional measures on the possibility of dismantling the mills in the event of an unfavourable decision on the merits (Order of 13 July 2006), p. 133, para. 77.

[46] ICJ, Order 11 September 1976, *Aegean Sea Continental Shelf (Greece v. Turkey), Interim Protection, I.C.J. Reports 1976*, p. 3.

regards the evaluation of injury resulting from the acquisition of information concerning the natural resources of the continental shelf. In that case, the Court did of course find that:

> "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; and whereas it follows that the Court is unable to find in that alleged breach of Greece's rights such a risk of irreparable prejudice to rights in issue before the Court as might require the exercise of its power under Article 41 of the Statute to indicate interim measures for their preservation".[47]

37. This determination by the ICJ, dating back more than 40 years, does not in any way preclude the prescription of provisional measures within the meaning of article 290 of UNCLOS in the present case. Above and beyond the fact that there is no doctrine of *stare decisis* in international law, there are many reasons to conclude that this rationale in the ICJ order is not dispositive of the present case:

(i) One such reason is that the Court's conclusion to the effect that the acquisition of information in violation of the right claimed by Greece to gather information on the natural resources of areas of continental shelf "*might* be capable of reparation by appropriate means"[48] was conditional ["might"].

(ii) The facts of the present case differ from those in the *Aegean Sea Continental Shelf Case*. At that time the only acts taken had been seismic activities on the part of Turkey, which was the sole party involved, as no private oil companies had participated in them. The fundamental problem of loss of power in unequal negotiations did not exist, since Greece was unlikely to negotiate petroleum contracts with Turkey, but would have conducted its own studies before entering into negotiations with oil companies, which would have had no information on the geophysical characteristics of the continental shelf.

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[47] Ibid. p. 11, para. 33.
[48] Ibid. p. 11, para. 33 (italics added).

(iii) The *Aegean Sea* case belongs to the pre-UNCLOS era, when the economic and commercial arrangements of offshore oil companies and the offshore oil industry were much less developed. Thus, as indicated above, one clearly cannot maintain today that the disclosure of such information to private companies can give rise to "reparation by appropriate means".

38. In short, Ghana's activities in the disputed area constitute an unlawful appropriation of information that will belong to Côte d'Ivoire if a favourable decision is reached on the merits. The prejudice resulting from these activities is serious and irreversible, and is likely to deprive Côte d'Ivoire of its right to formulate and implement its national energy policy. It is therefore fitting that this Chamber should, on the basis of article 290 of UNCLOS, prescribe provisional measures preventing Ghana from utilizing or continuing to collect such information in the disputed area, pending the delimitation decision on the merits.

(c) Harm resulting from the conditions in which oil operations are being conducted by Ghana in the disputed area

39. The conditions surrounding the award by Ghana of oil rights provide no safeguards with respect to the technical capabilities of the oil companies conducting activities in the disputed area. Moreover, the exploitation of the Jubilee field, adjacent to the disputed area (see **Sketch map No. 3** above), points up the technical shortcomings with their harmful consequences for hydrocarbon reserves, which shortcomings are now being manifested once again in the TEN field, which lies entirely within the disputed area.

(i) The conditions for awarding Ghanaian oil contracts are unsatisfactory

40. Ghana's oil legislation is very sketchy as regards the conditions for awarding oil contracts; no technical or financial criteria are established to govern the choice of contractor under an oil contract. In this respect, Ghanaian legislation [49] constitutes an exception

[49] Petroleum Exploration and Production Law (PNDCL.84) (1984), available online at http://www.reportingoilandgas.org/wp-content/uploads/Petroleum-Exploration-and-Production-Law-1983-PNDC-L-84.pdf (last visited on 25 February 2015), Ghana National Petroleum Corporation Act (PNDCL.64) (1983) available online at http://laws.ghanalegal.com/acts/id/516/ghana-national-petroleum-corporation-act (last visited on 25 February 2015), and Petroleum Commission Act (Act 821) (2011), available online at

inasmuch as the majority of oil States, including Côte d'Ivoire,[50] have incorporated such criteria into their legislation. In the absence of a public tender procedure, Ghana's legislation leaves it to the discretion of the Ministry of Petroleum to select the companies to which oil rights are to be awarded and provides no safeguards that the companies selected possess the requisite technical and financial capabilities. In general terms, Ghana's legislation is characterized by a total lack of transparency and is out of step with international standards.[51]

41. Thus, it can be observed that several of the companies to which Ghana has awarded oil rights do not have the necessary capability to conduct complex offshore oil operations. Among these companies are even several lacking any experience or specific capability in the area of oil exploration and exploitation. Others, while having recognized experience in oil exploration, have no experience in the domain of hydrocarbon deposit development and production.[52] Lastly, some executives of these oil companies have been directly implicated in criminal proceedings.[53]

(ii) Technical shortcomings manifested in the recent exploitation of a field adjacent to the disputed area

42. The exploitation of the Jubilee field by the same companies that hold the concession for the TEN block has already evidenced many technical failings, to wit:

- a disregard for international good practices and even Ghanaian legislation by commencing development operations on site before the Development Plan was approved and before the environmental impact study was vetted by the competent authorities;[54]

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http://www.reportingoilandgas.org/wp-content/uploads/Petroleum-Commission-Act-2011-Act-821.pdf (last visited on 25 February 2015).

[50] Article 8 of the Côte d'Ivoire Oil Code, available online at http://news.abidjan.net/documents/docs/code_petrolier.pdf (last visited on 25 February 2015).

[51] Press statement, Africa Centre for Energy Policy, 18 December 2014 (**Annex 17**).

[52] This is particularly the case with the operating company Tullow.

[53] See final report of the Group of Experts on the Democratic Republic of the Congo pursuant to paragraph 5 of resolution 1952 (2010), dated 2 December 2011, United Nations document S/2011/738, annexes 165 and 166, pp. 371-372.

[54] Development operations in the Jubilee field commenced in March 2008 and the refitting of the FPSO vessel began in the Jurong shipyards in November 2008, whereas the Development Plan authorizing these actions was approved by the Ghanaian authorities in July 2009 (see "A brief timeline", available online on the Tullow website at http://www.tullowoil.com/index.asp?pageid=51 (last visited on 25 February 2015). The

- failings in and inadequacy of studies of the oil field, in particular seismic tests, which are necessary

- the inadequacy of the studies relating to well completion[56] resulted in the need to implement alternative solutions that were extremely costly [57] and is likely to compromise the safe and optimal extraction of the oil and gas;

- the inadequacy of measures adopted for the processing of so-called "associated" gases that inevitably rise to the surface with the oil as it is extracted has led to the burning in the atmosphere of more than 11 billion cubic feet of gas, or the energy equivalent of more than 1.8 million barrels of oil, [58] contrary to industry good practices.[59]

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environmental impact study for phase I of the development of Jubilee is dated 27 November 2009: http://www.tullowoil.com/files/pdf/Jubilee_Field_EIA_FrontCover_and_ToC_27Nov09.pdf (last visited on 25 February 2015).

[55] Tullow noted the inadequacy of the seismic coverage of the Jubilee field, which resulted in inconsistency and uncertainty in the interpretation of data necessary for modeling of the oilfield. Complete seismic coverage of the field was not obtained until December 2007, whereas the decision to develop the Jubilee field was taken only a few weeks later, in early 2008. This haste precluded an adequate study of the additional seismic data collected (see *Jubilee field subsurface overview*, Dave Hanley, Capital Markets Day, October 2008, slides 7 and 8, available online at http://www.tullowoil.com/files/pdf/ghana/Jubilee-field-subsurface-overview.pdf)

[56] Well completion consists of all the operations carried out within a well after drilling to prepare for the safe extraction of oil or gas. It includes fracturing of reservoir rock in order to improve production or injection flow, and the installation of screens to retain rock debris that may be produced by the pumping of oil and may obstruct the production area. The operations involved are complex and require detailed studies upstream, including core samples taken during drilling.

[57] Productivity of the Jubilee field quickly revealed the problem of poor well completion, acknowledged by Tullow, which has announced the measures it has taken to ameliorate the problems (see Press release, *Interim Management Statement*, 16 May 2012, available online at: http://www.tullowoil.com/index.asp?pageid=137&category=&year=2012&month=&tags=,65,&newsid=761 (last visited on 25 February 2015). The additional costs amount to some $1 billion according to ghanabusinessnews: *Tullow, Kosmos to spend nearly $1b to bring Ghana oil production on track* - analysts, Ekow Quandzie – 24 November 2011, available online at https://www.ghanabusinessnews.com/2011/11/24/edited-tullow-kosmos-to-spend-nearly-1b-to-bring-ghana-oil-production-on-track-analysts/ (last visited on 25 February 2015).

[58] Tullow began production before the necessary facilities for reinjecting gas into the oilfield were operational, which led to the burning of 60 million cubic feet of gas per day until April 2011, or 9 billion cubic feet of gas in five months. In order to maintain oil output levels, Tullow burned around 2 billion cubic feet of gas, with Ghana's authorization, between June and October 2014, owing to the absence of land-based gas processing facilities (see Tullow 2014 Half yearly results, page 3, available online at http://www.tullowoil.com/images/files/cms/Tullow_Oil_plc___2014_Half_yearly_results_FINAL_updated.pdf).

[59] See, in particular, the guidelines established by the Global Gas Flaring Initiative launched by the World Bank in partnership with the biggest world oil companies in order to prevent routine flaring (http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/EXTGGFR/0,,menuPK:578075~pagePK :64168427~piPK:64168435~theSitePK:578069,00.html.).

43. Owing to such shortcomings, the projected output has never been attained and extremely high additional production costs have been incurred. What is more, these shortcomings have a negative bearing on the possibility of fully extracting the hydrocarbons in the field and result in the irrevocable loss of these hydrocarbons. These technical errors and failings have been officially recognized by the Government of Ghana, which has stated:

> "…we fast-tracked the Jubilee."… "Those technical errors accounted for the country's inability in 2010 to achieve the production target of 120,000 barrels per day".[60]

44. That this haste and the resulting shortcomings have been repeated in the development of the TEN field, situated entirely within the disputed area (see **Sketch map No. 3** above), has already been brought to light by the Government of Ghana itself, which has demanded that additional exploratory drilling be carried out in order to have a better idea of the deposit before the Development Plan is approved so as to "avoid the technical errors committed in the past [relating to Jubilee] by the companies involved in oil exploration in Ghana".[61] Nevertheless, the Development Plan was approved by the Ghanaian authorities on 29 May 2013 and development activities commenced without the studies in question having been carried out and, moreover, without the environmental impact study required by international good practice and Ghanaian legislation being approved.[62]

45. It would appear therefore that oil operations carried out by and on behalf of Ghana in the disputed area are seriously infringing rights claimed by Côte d'Ivoire,[63] causing harm aggravated in the specific case of the TEN block by the technical errors committed in the

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[60] Article published on the Ecofin website, *Ghana: désaccord gouvernement/sociétés pétrolières autour du champ TEN*, 31 May 2013 (**Annex 18**) [Translation by the Registry].
[61] *Ibid* (**Annex 18**) [Translation by the Registry].
[62] Approval of the Development Plan and initiation of the latter for the TEN project preceded the preparation and approval of the environmental impact statement for the project. In point of fact, the final report on Tullow's environmental impact statement for the TEN project is dated 5 September 2014, (see Tweneboa, Enyenra, Ntomme (TEN) Project, Ghana, Final Environmental Impact Statement, 5 September 2014, available online at http://epaoilandgas.org/downloads/ten-project-eis-executive-summary).
[63] See paras 20-29 above.

course of ongoing operations that impact the possibility of fully recovering the resources in the deposits.

3.2 Serious harm to the marine environment resulting from oil activities conducted by Ghana

46. Article 290, paragraph 1, provides that provisional measures may be prescribed not only to preserve the respective rights of the parties to a dispute but also "to prevent serious harm to the marine environment, pending the final decision." This exceptional provision demonstrates the importance which the drafters of UNCLOS attached to the protection and preservation of the marine environment. This is an important and ground-breaking provision whose import has been highlighted by ITLOS on several previous occasions.[64]

47. In this specific case, satellite images of the disputed area reveal endemic pollution linked to the oil exploitation in the Jubilee field.[65] This is happening once again in the TEN field, exploited by the same company using the same methods. The analysis of satellite images reveals traces of pollution in the TEN area associated with the dumping of drilling mud (as in Jubilee) or degassing or hydrocarbon spills from ships and platforms in the area.[66]

48. The occurrence of such pollution should come as no surprise given the loopholes in Ghana's environmental protection legislation in respect of oil operations. Indeed that legislation does not require any third-party environmental audit of oil operations, in contrast with international standards in the matter.[67]

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[64] *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 280; MOX Plant Case (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p.* 95; *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, p. 10; The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010,* p. 58.

[65] See **Annex 22**, Figures Nos. 5 to 9.

[66] See **Annex 22**, Figures 3 and 4.

[67] See, inter alia, the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation, London, 30 November 1990 (Article 3) and the Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, Abidjan, 23 March 1981 (Article 3). Ghana is bound by these conventions, as is Côte d'Ivoire.

49. This pollution is all the more worrisome because Ghana does not have adequate means to combat marine pollution resulting from oil activities[68] and because Ghana shows a certain indifference in this regard, as evidenced by the absence of any reaction to the appearance of an oil slick discovered by fishermen in the vicinity of the Jubilee field. This slick inevitably drifted onto Ghana's coast without any appropriate cleanup effort being undertaken, owing to lack of interest and means on the part of the Ghanaian authorities.[69] In order to bolster its capabilities in this area, Ghana has entered into a partnership with Norway. Norway has, however, stated that it will not provide Ghana with any assistance having to do with blocks or oilfields situated in the disputed area.[70]

50. This inadequate effort to put in place the means to combat marine pollution in the disputed area is all the more disturbing for Côte d'Ivoire since the prevailing winds in the Gulf of Guinea create a westward surface flow in the form of a broad current, which causes slicks of pollutants to drift to the west.[71] There is a risk therefore that the pollution caused by oil activities within and even to the east of the disputed area will affect the shores of Côte d'Ivoire. In addition, the pursuit of oil activities in the disputed area will affect wetlands that are of major ecological importance for Côte d'Ivoire, such as the Ehotilé Islands National Park, situated along the border between Côte d'Ivoire and Ghana, classified by UNESCO as a Ramsar Site (site No. 1584) on 18 October 2005.[72]

51. The hazards caused by uncontrolled oil activities in the disputed area must also be seen in the light of the fragility of the Gulf of Guinea ecosystem. Important wildlife resources – some of which, like tortoises, humpback whales and manatees, are protected by international conventions – habitually inhabit this part of the Gulf of Guinea.[73] It has been

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[68] Global Initiative for West, Central and Southern Africa, *Country Profile - Ghana*, p. 11 (**Annex 19**).
[69] Center for Public Integrity, *West Africa oil boom overlooks tattered environmental safety net: Oil-industry regulation lags behind as Ghana ramps up production* (**Annex 21**).
[70] Article published by the Norwegian authorities on 14 December 2012 on their website relating to their activities in Ghana, *Ghana - Norway partnership on management of the oil and gas sector in Ghana* (**Annex 20**).
[71] See doctoral thesis presented to the University of Western Brittany by Catherine Guiavarc'h, *Modélisation haute-résolution des courants dans le Golfe de Guinée: étude des oscillations bimensuelles*, defended on 12 March 2007, p. 20, available online at http://archimer.ifremer.fr/doc/2007/these-3647.pdf (last visited on 25 February 2015).
[72] UNESCO, Ehotilé Islands National Park, Description, available online at: http://whc.unesco.org/fr/listesindicatives/2099/ (last visited on 22 February 2015).
[73] See Etoga Galax Yves Landry, *La gouvernance de la biodiversité marine et côtière dans le Golfe de Guinée*, Division for Ocean Affairs and the Law of the Sea, United Nations, New York, 2009, pp. 12 and 13, available online at

observed that the intensification of oil activities in or near the disputed area has been accompanied by an increase in the number of whales that have washed up on Ghana's coast (21 since the start of exploitation operations in the Jubilee field), in proximity to the boundary with Côte d'Ivoire, without any reaction to this disturbing development on the part of Ghana's environmental protection agency.[74] Environmental defence organizations have brought to light the correlation between increased offshore activities and these phenomena.[75]

52. Having regard to all the circumstances described above, it is clear that the activities of the oil companies that Ghana has authorized to engage in exploration and exploitation of the non-living resources of the disputed area are causing serious harm to the marine environment. The prescription of provisional measures is therefore also justified on these grounds.

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53. For all the reasons set out above, Ghana's conduct in the disputed area is causing grave and irreversible harm to various of Côte d'Ivoire's exclusive sovereign rights that are the subject of this dispute, rights arising under UNCLOS, including, in particular: the right to explore for and exploit the resources of Côte d'Ivoire's seabed and the subsoil thereof by carrying out seismic studies and drilling, and installing major submarine infrastructures there; the right to exclusive access to confidential information about its natural resources; the right to select the oil companies to conduct exploration and exploitation operations and freely to determine the terms and conditions in its own best interest and in accordance with its own requirements with respect to oil and the environment. Moreover, oil operations as currently conducted by Ghana are seriously threatening the marine environment. The circumstances thus justify the immediate prescription of provisional measures as specified below. Absent

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http://www.un.org/depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/etoga_0809_cameroon.pdf (last visited on 22 February 2015).

[74] Daily Guide, *Dead Whale Found At Atuabo*, 19 August 2014, available online at http://www.dailyguideghana.com/dead-whale-found-at-atuabo/ (last visited on 22 February 2015).

[75] Daily Guide, *Dead Whale Found At Atuabo*, 19 August 2014, available online at http://www.dailyguideghana.com/dead-whale-found-at-atuabo/ (last visited on 22 February 2015).

such action, Côte d'Ivoire will be confronted with a fait accompli in the disputed area which will render ineffective any future decision on the merits.

III. Provisional measures sought

54. On the grounds set forth above, Côte d'Ivoire requests the Special Chamber to **prescribe** provisional measures requiring Ghana to:

- take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area;
- refrain from granting any new permit for oil exploration and exploitation in the disputed area;
- take all steps necessary to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area from being used in any way whatsoever to the detriment of Côte d'Ivoire;
- and, generally, take all necessary steps to preserve the continental shelf, its superjacent waters and its subsoil; and
- desist and refrain from any unilateral action entailing a risk of prejudice to the rights of Côte d'Ivoire and any unilateral action that might lead to aggravating the dispute.

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(Signed)
Adama Toungara, Minister of Petroleum and Energy

Agent of the Republic of Côte d'Ivoire

LIST OF ANNEXES

Annex 18. Article published on the Agence ECOFIN website on 31 May 2013: "*Ghana: Dispute between the Government and oil companies over the TEN oil block"*

Annex 19. Global Initiative for West, Central and Southern Africa, Country Profile - Ghana

Annex 20. Article published on 14 December 2012 by the Norwegian authorities on the website covering their activities in Ghana: "*Ghana - Norway partnership on management of the oil and gas sector in Ghana*"

Annex 21. Article published on 19 January 2012 by the Center for Public Integrity, "*West Africa oil boom overlooks tattered environmental safety net: Oil-industry regulation lags behind as Ghana ramps up production*".

Annex 22. Satellite images showing oil activity in and near the disputed area (2014-2015).