International tribunals — Special Chamber of the International Tribunal for the Law of the Sea — United Nations Convention on the Law of the Sea, 1982 — Constitution of the Special Chamber — Transfer of proceedings from an Annex VII arbitral tribunal to the Special Chamber

International tribunals — Provisional measures — Preservation of rights of Parties — Protection of marine environment — Protection of confidentiality of information relating to exploration and exploitation of natural resources of continental shelf — *Prima facie* jurisdiction — Agreement that Special Chamber having *prima facie* jurisdiction — Plausibility of rights — Côte d'Ivoire's claimed rights being plausibly based on United Nations Convention on the Law of the Sea, 1982 — Whether Ghana's activities in disputed area could cause irreparable prejudice to rights of Côte d'Ivoire — Problems of prescribing suspension of all oil exploration and exploitation — Possibility for compensation of financially assessable damage — Report on compliance with provisional measures — Power of President of Special Chamber to request further information concerning compliance

International tribunals — Jurisdiction — Special agreement — Admissibility of request for delimitation of continental shelf beyond 200 nautical miles — Commission on the Limits of the Continental Shelf — *Forum prorogatum* — International responsibility — Whether ITLOS having jurisdiction to decide on international responsibility of a State in accordance with UNCLOS

Treaties — Tacit agreement — Oil practice — Maps — Seismic surveys — Drilling activities — National legislation — Representations to international organizations — Bilateral exchanges and negotiations — Standard of proof — Whether Côte d'Ivoire estopped from objecting to customary equidistance boundary claimed by Ghana

Sea — Maritime boundary delimitation — Single maritime boundary — Territorial sea — Exclusive Economic Zone — Continental shelf — Continental shelf beyond 200 nautical miles — United Nations Convention on the Law of the Sea, 1982 — Article 15 — Articles 74 and 83 — Equidistance/relevant circumstances — Angle bisector — Whether location of base points justified using a methodology other than equidistance/relevant circumstances — Whether coastal

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instability justified using a methodology other than equidistance/relevant circumstances — Whether same methodology applied to delimitation of all maritime zones — Relevant coast — Relevant area — Provisional equidistance line — Appropriate base points — Relevant circumstances — Concavity of coast — Cut-off effect — Location of natural resources — Conduct — Methodology for delimiting the continental shelf beyond 200 nautical miles — Entitlement to a continental shelf beyond 200 nautical miles — Disproportionality test

State responsibility — Alleged responsibility for violation of sovereign rights — Alleged responsibility for violation of Article 83(1) of United Nations Convention on the Law of the Sea, 1982 — Whether Ghana's oil activities violating its obligations under Article 83(3) — Alleged responsibility for violating order on provisional measures of 25 April 2015

General principles of international law — Estoppel — Whether part of international law — Conditions — Clear and unequivocal statement — Reliance to detriment — Maritime boundaries — Whether capable of being established by estoppel

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean

(Ghana/Côte d'Ivoire)[1]

[1] The Republic of Ghana was represented by HE Ms Gloria Afua Akuffo, Attorney General and Minister for Justice, as Agent; Ms Helen Ziwu, Solicitor-General, as Co-Agent; Mr Daniel Alexander QC, Ms Marietta Brew Appiah-Opong, Ms Clara E. Brillembourg, Mr Pierre Klein, Ms Alison Macdonald, Mr Paul S. Reichler, Mr Philippe Sands QC, Ms Anjolie Singh and Mr Fui S. Tsikata as Counsel and Advocates; Ms Jane Aheto, Ms Pearl Akiwumi-Siriboe, Mr Anthony Akoto-Ampaw, Mr Godwin Djokoto, Ms Vivienne Gadzekpo, Mr H. Kwasi Prempeh, Mr Nicholas M. Renzler and Ms Alejandra Torres Camprubí as Counsel; Mr Kwame Mfodwo, Ms Azara Prempeh and Ms Adwoa Wiafe as Legal Advisers; Ms Peninnah Asah Danquah, Mr Samuel Adotey Anum, Mr Michael Nyaaba Assibi and Mr K. K. Sarpong as Advisers; Mr Nii Adzei-Akpor, Mr Theo Ahwireng, Mr Lawrence Apaalse, Mr Ayaa Armah, Mr Michael Aryeetey, Mr Nana Boakye Asafu-Adjaye, Mr Joseph Asenso, Mr Robin Cleverly, Mr Scott Edmonds, Ms Vicky Taylor, Mr Knut Hartmann, Mr Daniel Koranteng, Mr Thomas Manu, Mr Kwame Ntow-Amoa, Mr Nana Poku and Mr Sam Topen as Technical Advisers; Ms Elizabeth Glusman, Ms Nonyeleze Irukwu, Ms Nancy Lopez, Ms Lea Main-Klingst and Ms Lara Schiffrin-Sands as Assistants.

The Republic of Côte d'Ivoire was represented by HE Mr Adama Toungara, Minister, as Agent; Mr Ibrahima Diaby, Director-General of PETROCI, as Co-Agent; Mr Thierry Tanoh, Mr Adama Kamara, Mr Michel Pitron, Mr Alain Pellet, Sir Michael Wood and Ms Alina Miron as Counsel and Advocates; Ms Isabelle Rouche, Mr Jean-Sébastien Bazille, Ms Lucie Bustreau, Mr Jean-Baptiste

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

Order on the Request for Provisional Measures. 25 *April* 2015

Judgment. 23 *September* 2017

(Bouguetaia, *Vice-President*, President of the Special Chamber; Wolfrum and Paik, *Judges*; Mensah and Abraham, *Judges ad hoc*)

SUMMARY:[2] *The facts*:—The Republic of Ghana ("Ghana") and the Republic of Côte d'Ivoire ("Côte d'Ivoire") were States with adjacent coastlines abutting the Atlantic Ocean. Their coasts were relatively smooth, faced south and were aligned in an east–west direction. On 19 November 2014, Ghana instituted proceedings against Côte d'Ivoire under Annex VII to the United Nations Convention on the Law of the Sea, 1982 ("UNCLOS") in a dispute concerning the delimitation of the maritime boundary between the two States in the territorial sea, exclusive economic zone ("EEZ") and continental shelf, both within and beyond 200 nautical miles ("nm"). In consultations held with the President of the International Tribunal for the Law of the Sea ("ITLOS"), on 3 December 2014 Ghana and Côte d'Ivoire concluded a special agreement to submit their dispute to a Special Chamber of ITLOS pursuant to Article 15 of the ITLOS Statute.

Order on the Request for Provisional Measures (25 April 2015)

On 27 February 2015, Côte d'Ivoire submitted a request for the prescription of provisional measures under Article 290(1) of UNCLOS. Ghana and Côte d'Ivoire agreed that the Special Chamber had *prima facie* jurisdiction to prescribe provisional measures. Côte d'Ivoire argued that Ghana's legislation was inconsistent with international standards concerning the exploration and exploitation of marine natural resources in disputed areas. Ghana replied that Côte d'Ivoire was claiming rights that it had never claimed before, as the Parties had, for decades, shared a mutually recognized maritime boundary running along an equidistance line.

Côte d'Ivoire claimed that Ghana's activities in the disputed area, which included the collection of information and exploratory drilling, would irremediably deprive Côte d'Ivoire of its sovereign rights, including the right to decide how and under what conditions the exploitation of natural resources would take place. Ghana responded that its own rights would be severely harmed if the Special Chamber prescribed the provisional measures requested

Merlin and Ms Tessa Barsac as Counsel; Mr Léon Houadja Kacou Adom, Mr Lucien Kouacou and Ms Nanssi Félicité Tezai as Advisers.

[2] Prepared by Dr M. Lando.

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by Côte d'Ivoire, in part because to stop the activities with which Côte d'Ivoire took issue would have been financially ruinous. Ghana added that Côte d'Ivoire had failed to adduce any evidence that it would suffer irreparable prejudice as a result of Ghana's activities in the disputed area. According to Ghana, all that Côte d'Ivoire might suffer was financial loss, which could be remedied by an award of damages.

Côte d'Ivoire also requested the Special Chamber to prescribe provisional measures to prevent serious harm to the marine environment. Côte d'Ivoire contended that Ghana's activities had already given rise to pollution incidents owing to lack of due diligence evidenced by the failure to monitor oil activities effectively. Ghana denied that any pollution incident had taken place in the relevant area and that its environmental protection legislation was among the most robust in the region.

Held (unanimously):—Provisional measures were indicated.

(1) The Special Chamber was not called upon definitively to determine whether the rights that the Parties wished to see protected existed. It was enough that the rights claimed by the Parties were plausible. By instituting proceedings against Côte d'Ivoire, Ghana had recognized that a dispute existed concerning the competing claims of the Parties in the disputed area. The rights invoked by Côte d'Ivoire were plausible and there was a link between those rights and the provisional measures requested (paras. 57-63).

(2) Côte d'Ivoire had not adduced sufficient evidence to show that the activities carried out by Ghana could cause serious harm to the marine environment, but the risk of harm to the marine environment was of concern to the Special Chamber. The Parties had to act with prudence and caution to prevent serious harm to the marine environment. The Parties also had to co-operate to prevent pollution (paras. 67-73).

(3) The ongoing exploration by Ghana of natural resources could result in a modification of the physical characteristics of the continental shelf, thus affecting the rights of Côte d'Ivoire in an irreversible manner. There was a risk of irreparable prejudice where the modification of such physical characteristics could not be fully compensated by a monetary award. In any case, monetary compensation could not restore the *status quo ante*. As to Côte d'Ivoire's claimed right to exclusive access to confidential information about the natural resources of the continental shelf, the Special Chamber placed on record Ghana's assurances that it would provide that information to Côte d'Ivoire should it be ordered to do so in due course. However, the acquisition and use of information about the resources of the continental shelf could cause irreparable prejudice to the rights of Côte d'Ivoire should the Special Chamber finally rule in its favour (paras. 88-96).

(4) The suspension of all exploration and exploitation activities could cause Ghana considerable financial loss, as well as causing serious harm to the marine environment resulting from the deterioration of equipment. Therefore, a suspension of such activities would place an undue burden on

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Ghana and cause harm to the marine environment. Ghana had to submit a report on compliance with the provisional measures prescribed, in relation to which the President of the Special Chamber could request additional information (paras. 97-107).

(5) The following provisional measure were prescribed:

(a) Ghana had to take all necessary steps to ensure that no drilling would take place in the disputed area (para. 108(1)).

(b) Ghana had to take all necessary steps to prevent any information not already in the public domain from being used to Côte d'Ivoire's detriment (para. 108(1)).

(c) Ghana had to monitor all activities in the disputed area to prevent serious harm to the marine environment (para. 108(1)).

(d) Both Parties had to take all necessary steps to prevent serious harm to the marine environment and co-operate to that end (para. 108(1)).

(e) Both Parties had to co-operate and refrain from unilateral action that might have led to aggravating the dispute (para. 108(1)).

(f) Ghana and Côte d'Ivoire had each to submit an initial report on the implementation of the provisional measures by 25 May 2015, and the President of the Special Chamber could request further information thereafter (para. 108(2)).

(g) Each Party had to bear its own costs (para. 108(3)).

Separate Opinion of Judge ad hoc Mensah: Côte d'Ivoire's claim to the maritime areas in dispute did not have a serious prospect of success on the merits, although that claim was plausible. However, Côte d'Ivoire's request that Ghana suspend all ongoing exploration and exploitation in the disputed area was inappropriate. Provisional measures under Article 290(1) of UNCLOS had, as their object, the preservation of the rights of both Parties. If confronted with the Parties' competing rights, a judicial organ acting under Article 290(1) had to weigh those rights against one another. The Special Chamber's order that Ghana had to refrain from conducting new exploration or exploitation in the disputed area took account of the interests of both Parties (paras. 1-14).

Judgment (23 September 2017)

Ghana argued that both Parties had accepted the principle of equidistance as the equitable approach to delimitation, and respected a boundary following an equidistance line between 1957 and 2009 ("the customary equidistance boundary"). According to Ghana, the Parties' conduct reflected a tacit agreement as to the existence of a maritime boundary. Ghana contended that the tacit agreement could be established based on evidence such as, *inter alia*, concession agreements, seismic surveys, drilling activities, maps, legislation,

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official statements and representations to international institutions such as the Commission on the Limits of the Continental Shelf ("CLCS"). Ghana added that neither Party had ever objected to any oil-related activities of the other. Ghana also maintained that the bilateral negotiations between the Parties showed the existence of a tacit agreement on the customary equidistance boundary.

Côte d'Ivoire maintained that there was no tacit agreement as to the maritime boundary, which therefore still remained to be delimited. Côte d'Ivoire argued that it had systematically refused to recognize the western limit of Ghana's oil concessions as the maritime boundary. Côte d'Ivoire argued that the evidence produced by Ghana in support of the tacit agreement actually showed the existence of a disagreement between the Parties. Côte d'Ivoire also contended that the evidence provided by Ghana, insofar as it related to oil concessions, could only concern a purported tacit agreement on the boundary in the continental shelf, while it could not be evidence of a purported tacit agreement on the delimitation of the superjacent waters. Côte d'Ivoire further maintained that the fact that the Parties held numerous rounds of bilateral negotiations to establish their maritime boundary showed the lack of agreement on the existence of such a boundary.

Ghana argued that Côte d'Ivoire was estopped from objecting to a boundary based on equidistance. According to Ghana, Côte d'Ivoire had clearly and consistently failed to object to a boundary based on equidistance over many decades. Therefore, the conditions of estoppel were met, based on the evidence relating to oil concessions granted by Ghana and to the absence of objection on the part of Côte d'Ivoire. Côte d'Ivoire contended that estoppel was a contested notion and a rarely applied doctrine under public international law. According to Côte d'Ivoire, there was no concept of delimitation by estoppel under international law. Côte d'Ivoire stated that the cumulative conditions for estoppel were not met, since Côte d'Ivoire had never acquiesced in the boundary proposed by Ghana. Côte d'Ivoire also contended that Ghana had not relied in good faith upon the conduct of Côte d'Ivoire and had suffered no prejudice through reliance on that conduct.

Ghana argued that, under Article 15 of UNCLOS, boundaries in the territorial sea were to be delimited by agreement. According to Ghana, by their conduct the Parties had agreed on their boundary in the territorial sea as an equidistance line. Given the absence of historic title or other special circumstances, Ghana contended that there was no reason to depart from the equidistance boundary in the territorial sea. Côte d'Ivoire argued that special circumstances existed justifying a boundary other than the equidistance line. According to Côte d'Ivoire, the existence of particular geographical and geomorphological characteristics of the delimitation area warranted the establishment of a boundary drawn as an angle bisector.

Ghana maintained that the boundary in the EEZ and in the continental shelf had to be delimited based on the equidistance/relevant circumstances methodology. Ghana rejected Côte d'Ivoire's request for an angle bisector line. Ghana contended that the base points it had suggested reflected the coastal

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geography, and that the concavity of Côte d'Ivoire's coast did not affect the construction of the equidistance line. Ghana added that not to place any base points on the Jomoro Peninsula would amount to disregarding the existing land boundary between the Parties, which was based on the principle of *uti possidetis juris*. According to Ghana, the coastline of the Parties was not unstable, which allowed the selection of reliable base points. Ghana argued that third States would not have been prejudiced by the Special Chamber's choice of methodology for drawing the boundary between the Parties. Ghana contended that the equidistance/relevant circumstances methodology should have been used to delimit the continental shelf beyond 200 nm.

Côte d'Ivoire contended that the equidistance/relevant circumstances methodology was not obligatory, and that the angle bisector methodology was more appropriate in the circumstances of the case. Côte d'Ivoire stated that this methodology also applied to the delimitation of the continental shelf beyond 200 nm. According to Côte d'Ivoire, the angle bisector allowed the avoidance of the disproportionate effect of coastal irregularities. Côte d'Ivoire argued that the base points suggested by Ghana did not reflect the coastal geography, and that no base point should be placed on the Jomoro Peninsula. Côte d'Ivoire contended that the instability of the coastline between Assinie and New Town justified the use of a methodology other than equidistance/relevant circumstances. Côte d'Ivoire also stated that third States would have been prejudiced if the Special Chamber had decided to draw the boundary based on the equidistance/relevant circumstances methodology. Côte d'Ivoire stated that, in the alternative, the Special Chamber might have arrived at an equitable solution by applying the equidistance/relevant circumstances methodology.

The Parties agreed that the land boundary terminus between them was Point BP 55, with co-ordinates 05° 05′ 28.4″ N, 03° 06′ 21.8″ W. However, while Ghana argued that Point BP 55 was to be connected to the sea by choosing a point at the low-water line which was nearest to Point BP 55, Côte d'Ivoire contended that it was more appropriate to extend the direction of the land boundary between Point BP 54 via Point BP 55 until it reached the low-water line.

Ghana contended that its relevant coast stretched from the land boundary terminus with Côte d'Ivoire to Cape Three Points (121 kilometres), while the relevant coast of Côte d'Ivoire ran from the land boundary terminus with Ghana to a point in the vicinity of Sassandra (308 kilometres). Côte d'Ivoire argued that its entire coast was relevant for delimiting the maritime boundary (510 kilometres), while Ghana's relevant coast ran from the land boundary terminus with Côte d'Ivoire to Cape Three Points (121 kilometres).

Ghana argued that the long-standing oil practice of the Parties was a relevant circumstance which justified the adjustment of the provisional equidistance line in order for it to conform to the customary equidistance boundary. This adjustment also applied to the delimitation of the continental shelf beyond 200 nm. Ghana stated that the cut-off of Côte d'Ivoire's coast took place from 160 nm onwards, and that such cut-off could be remedied by

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deflecting the provisional equidistance line to follow the customary equidistance boundary. Ghana maintained that the Jomoro Peninsula was part of Ghana's mainland territory, and that it could not be disregarded in delimiting the boundary with Côte d'Ivoire. Ghana also argued that the evidence of the Parties' conduct indicated that the provisional equidistance line should have been adjusted.

According to Côte d'Ivoire, the convexity of Ghana's coast was a relevant circumstance which generated cut-off to the detriment of Côte d'Ivoire. Côte d'Ivoire contended that the cut-off created by the provisional equidistance line warranted the adjustment of that line in order to obtain a line starting with an azimuth of 168.7°. Côte d'Ivoire stated that such a line also constituted the boundary in the continental shelf beyond 200 nm. Côte d'Ivoire argued that the Jomoro Peninsula was a relevant circumstance having consequences similar to those of an island located on the wrong side of an equidistance line. Côte d'Ivoire also stated that the Parties' conduct with respect to oil practice could not be a relevant circumstance.

Côte d'Ivoire contended that, by its conduct, Ghana had violated international law, UNCLOS and the Order on provisional measures of 25 April 2015. Côte d'Ivoire argued that Ghana had violated international law by engaging in economic activities in the maritime area disputed between the Parties pending the proceedings before the Special Chamber. Moreover, Côte d'Ivoire stated that Ghana had violated both the obligation to negotiate in good faith under Article 83(1) of UNCLOS, and the obligation of concluding provisional arrangements pending a delimitation dispute under Article 83(3) of UNCLOS.[3] Moreover, according to Côte d'Ivoire, Ghana had breached the Order on provisional measures of 25 April 2015 by performing new drilling and by disregarding the obligation to co-operate with Côte d'Ivoire. Côte d'Ivoire requested restitution and compensation for Ghana to make good the injury caused.

Ghana rejected Côte d'Ivoire's contention that its conduct violated international law, UNCLOS and the Order on provisional measures of 25 April 2015. According to Ghana, the disputed maritime area was not *terra nullius* until the Special Chamber had decided on the location of the maritime boundary between the Parties. Ghana rejected Côte d'Ivoire's contention that Ghana had violated the obligations under Article 83(1) and (3) of UNCLOS. Ghana also rejected the contention that it had breached the Order on provisional measures of 25 April 2015, and claimed that it had fully complied with that Order. Ghana argued that Côte d'Ivoire's claims for restitution and compensation lacked legal basis.

Held (unanimously):—(1) The Special Chamber had jurisdiction to delimit the maritime boundary between the Parties in the territorial sea, in the EEZ and in the continental shelf, both within and beyond 200 nm.

[3] For the text of Article 83, see para. 597 of the judgment.

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(a) Both Ghana and Côte d'Ivoire were Parties to UNCLOS, and the dispute concerned the interpretation and the application of Articles 15, 74, 76 and 83 of UNCLOS (paras. 83-90).

(b) Although the Parties agreed that the Special Chamber had jurisdiction to delimit the boundary in the continental shelf beyond 200 nm, the Special Chamber had to decide *proprio motu* whether the request for delimitation beyond 200 nm was admissible. There was only one continental shelf under international law, and there was no doubt as to existence of continental shelf entitlements in the circumstances of the case. The existence of a submission pending with the CLCS for the establishment of the outer limits of Côte d'Ivoire's continental shelf was not a bar to the admissibility of the request to delimit the continental shelf beyond 200 nm. Therefore, the Special Chamber had jurisdiction to delimit the maritime boundary beyond 200 nm (paras. 489-95).

(2) There was no tacit agreement between the Parties to delimit their territorial sea, the EEZ and the continental shelf both within and beyond 200 nm, and Côte d'Ivoire was not estopped from objecting to the customary equidistance boundary.

(a)(i) The Special Chamber recalled that the International Court of Justice had held that evidence of a tacit legal agreement had to be compelling and a matter of grave importance which was not easily to be presumed (para. 212).[4]

(ii) The oil activities of each Party were limited to that Party's side of the equidistance line. However, Côte d'Ivoire had objected on several occasions to the development of Ghana's activities in the disputed area. Therefore, the Parties' oil practice did not indicate the existence of a tacit delimitation agreement between them. The maps submitted by Ghana could not endorse the claim that there was a tacit agreement between the Parties. Moreover, oil practice was not sufficient to establish a maritime boundary in the EEZ, since oil activities did not concern the sovereign rights of a State over the water column (paras. 146-9).

(iii) National legislation, as a unilateral act under international law, was of limited relevance to proving the existence of an agreed maritime boundary. Since the Parties' submissions to the CLCS indicated that they had been made without prejudice to the delimitation of lateral maritime boundaries, such submissions could not be evidence of an agreed boundary. The rounds of bilateral negotiation between the Parties were not intended to formalize an already existing maritime boundary, and two joint statements of 2009 and 2015 indicated that both Parties regarded their maritime boundary not to have been established (paras. 163-92).

(iv) There were no arrangements between the Parties concerning fisheries or other maritime matters, and, therefore, there was no evidence that the

[4] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, 144 ILR 1 at 84 (see para. 253).

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Parties recognized the equidistance line as the maritime boundary for such purposes (paras. 197 and 226-7).

(b) The Special Chamber recalled ITLOS's statement in *Bay of Bengal (Bangladesh/Myanmar)*,[5] according to which estoppel existed if a State created, by its conduct, the appearance of a situation and another State relied on such conduct in good faith by acting or omitting to act to its detriment. Côte d'Ivoire had not demonstrated that, by its conduct, it had agreed to a maritime boundary based on the equidistance line, since such conduct could not be seen to be clear, sustained and consistent as required for the recognition of estoppel. Since the first condition of estoppel was not met, there was no need to discuss the other two (paras. 242-5).

(3) The single maritime boundary for the territorial sea, the EEZ and the continental shelf within and beyond 200 nm started at BP 55+ with the co-ordinates 05° 05′ 23.2″ N, 03° 06′ 21.2″ W in WGS 84 datum and was defined by connecting turning points A (05° 01′ 03.7″ N, 03° 07′ 18.3″ W), B (04° 57′ 58.9″ N, 03° 08′ 01.4″ W), C (04° 26′ 41.6″ N, 03° 14′ 56.9″ W), D (03° 12′ 13.4″ N, 03° 29′ 54.3″ W), E (02° 59′ 04.8″ N, 03° 32′ 40.2″ W), F (02° 40′ 36.4″ N, 03° 36′ 36.4″ W) with geodetic lines. From turning point F, the maritime boundary continued as a geodetic line starting at an azimuth of 191° 38′ 06.7″ until it reached the outer limits of the continental shelf (para. 660(3)).

(a) Different rules ordinarily applied under UNCLOS for delimiting the territorial sea on one hand, and the EEZ and continental shelf on the other hand. Nevertheless, the Parties had not made comprehensive arguments on the delimitation of the territorial sea on the basis of Article 15 of UNCLOS, and by requesting the delimitation of a single maritime boundary they had implicitly requested that the same methodology be used to delimit all maritime zones. Therefore, the same methodology had to be used to draw the maritime boundary in its entirety (paras. 258-63).

(b)(i) If the Parties could not agree on the appropriate delimitation methodology, such a methodology must have been determined in the light of the circumstances of each case, and in order to achieve an equitable solution. Lacking compelling reasons making it impossible or inappropriate to use the equidistance/relevant circumstances methodology, that methodology should be used to delimit maritime boundaries under UNCLOS. Therefore, the jurisprudence favoured the use of the equidistance/relevant circumstances methodology (paras. 281-9).

(ii) The fact that there were only a few base points located in the vicinity of the land boundary terminus did not mean that it was impossible or inappropriate to draw a provisional equidistance line. Jomoro had to be treated as part of Ghana's mainland territory, and the fact that the base points on Jomoro lay very close to each other did not make them inappropriate for drawing a

[5] *Dispute Concerning the Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, 166 ILR 1 at 502 (see para. 124).

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provisional equidistance line. The relevant coast of the Parties was not unstable. The appropriate methodology for delimitation was the equidistance/relevant circumstances methodology (paras. 302-24).

(c) The different starting points of the maritime boundary indicated by the Parties did not entail any substantial difference in the orientation of a provisional equidistance line. The starting point of the maritime boundary was Point BP 55+, at which the continuation of the line passing through Points BP 54 and BP 55 of the land boundary intersected the low-water line on the Parties' coast (paras. 353-6).

(d) Since there was only one continental shelf under international law, there was no reason to distinguish between the effect of coastal projections within and beyond 200 nm. The coast of Ghana was relevant from the land boundary terminus with Côte d'Ivoire to Cape Three Points (121 kilometres), as such a coast faced directly onto the delimitation area. Since only the projections of Côte d'Ivoire's coast from the land boundary terminus to Sassandra overlapped with the coastal projections of Ghana, Côte d'Ivoire's coast was relevant only between the land boundary terminus and Sassandra (352 kilometres). The relevant area was bordered in the east by a line due south starting from Cape Three Points, in the west by a line due south starting from Sassandra, and in the south by the outer limit of the continental shelf of Ghana and by the outer limit of the continental shelf claimed by Côte d'Ivoire before the CLCS (paras. 373-86).

(e) The Special Chamber was under no obligation to accept the base points identified by the Parties. The base points suggested by Ghana fell seaward of the coast, while those suggested by Côte d'Ivoire fell landward of the coast. It was therefore appropriate to rely upon base points distinct from those suggested by either Party (paras. 393-9).

(f) The coast of Côte d'Ivoire was concave. However, since the cut-off created by this concavity only affected the coastal projections of Côte d'Ivoire from a point 163 nm from Point BP 55+, there was no reason to adjust the provisional equidistance line. The placing of base points on Jomoro did not call for an adjustment of the provisional equidistance line. Access to natural resources did not call for the adjustment of the provisional equidistance line, since there was no evidence that the provisional equidistance line would have caused catastrophic repercussions on the well-being of the population of Côte d'Ivoire. Ghana's argument that the conduct of the Parties relating to oil practice was a relevant circumstance constituted an attempt to revive the tacit agreement argument and circumvent the high bar for the establishment of the existence of a tacitly agreed boundary, and, accordingly, conduct relating to oil practice did not call for an adjustment of the provisional equidistance line (paras. 424-78).

(g) The equidistance line also constituted the boundary in the continental shelf beyond 200 nm (para. 527).

(h) Since there was no disproportionality between the ratio of the relevant coasts (1:2.53 in favour of Côte d'Ivoire) and the ratio of the areas found to appertain to each Party (1:2.02 in favour of Côte d'Ivoire), the unadjusted equidistance line achieved an equitable solution (paras. 535-8).

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(4) The Special Chamber had jurisdiction to decide on the claim of Côte d'Ivoire on the alleged international responsibility of Ghana. Although Ghana did not challenge the Special Chamber's jurisdiction to deal with Côte d'Ivoire's claims relating to Ghana's international responsibility, the Special Chamber had to satisfy itself of its jurisdiction *proprio motu*. The Special Chamber had inherent jurisdiction to decide on the claims concerning the breach of the Order on provisional measures of 25 April 2015. The Special Agreement between the Parties did not cover Côte d'Ivoire's claims relating to international responsibility. However, the lack of objection by Ghana showed that it had consented to the Special Chamber's jurisdiction on the issues of responsibility raised by Côte d'Ivoire, and, accordingly, the Special Chamber had jurisdiction based on *forum prorogatum* (paras. 545-54 and 660(4)).

(5) Ghana had not violated the sovereign rights of Côte d'Ivoire. Judicial decisions on maritime delimitation were constitutive and not declaratory. Therefore, maritime activities undertaken by a State in an area of the continental shelf which had been attributed to another State by an international judgment could not be considered to be in violation of the sovereign rights of the latter if those activities were carried out before the judgment was delivered and if the area concerned was the subject of claims made in good faith by both States. Ghana's activities in the areas found to appertain to Côte d'Ivoire did not engage Ghana's international responsibility, which accordingly did not violate Côte d'Ivoire's sovereign rights (paras. 591-4 and 660(5)).

(6) Ghana did not violate Article 83(1) and (3) of UNCLOS.

(a) The obligation to negotiate under Article 83(1) of UNCLOS was an obligation of conduct and not of result. Since negotiations had taken place between the Parties concerning their maritime boundary, Ghana had not violated its obligation under Article 83(1) of UNCLOS (paras. 604-5).

(b) The obligation to negotiate to reach provisional arrangements pending the delimitation dispute under Article 83(3) of UNCLOS did not entail that provisional arrangements must have been reached between the Parties. Since Côte d'Ivoire had not requested Ghana to negotiate to enter into provisional arrangements pending their delimitation dispute, it was barred from invoking Ghana's international responsibility under Article 83(3) of UNCLOS. Moreover, none of the activities of Ghana jeopardized or hampered the reaching of the final agreement under Article 83(3) of UNCLOS (paras. 627-33).

(7) Ghana had not violated the provisional measures prescribed by the Special Chamber in its Order of 25 April 2015.

(a) Ghana's activities subsequent to the Order on provisional measures of 25 April 2015 were only the continuation of activities already undertaken before that Order. Therefore, no new drilling had been undertaken by Ghana after the Order on provisional measures of 25 April 2015 (paras. 565-2).

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(b) Ghana had not violated the provisional measures prescribing co-operation with Côte d'Ivoire pending the settlement of the dispute, since it had provided Côte d'Ivoire with information on the activities carried out in the disputed area (paras. 653-7 and 660(7)).

Separate Opinion of Judge Paik: The activities undertaken by Ghana, which according to Côte d'Ivoire engaged Ghana's international responsibility, had not been carried out in a maritime area appertaining to Côte d'Ivoire, but in one appertaining to Ghana. Nevertheless, there was a serious reservation concerning the lawfulness of Ghana's activities under Article 83(3) of UNCLOS. Such a provision imposed two obligations on States Parties to UNCLOS: (i) to make every effort to enter into provisional arrangements of a practical nature and (ii) not to jeopardize or hamper the reaching of the final agreement. The obligation not to jeopardize or hamper the reaching of the final agreement did not preclude all activities in the disputed maritime area. Since the kind of activities capable of jeopardizing or hampering the reaching of the final agreement depended on the circumstances of each case, it would not have been productive to identify such activities in the abstract. There was no necessary correspondence between the activities precluded by the Order on provisional measures of 25 April 2015 and the activities which could jeopardize or hamper the reaching of the final agreement. In assessing whether certain activities could jeopardize or hamper the reaching of the final agreement, considerations of type, nature, location and time of such activities were relevant. By starting, or even stepping up, its hydrocarbon-related activities in the dispute area, Ghana had violated its obligation under Article 83(3) of UNCLOS not to jeopardize or hamper the reaching of the final agreement. The fact that Ghana had suspended many such activities after the Order on provisional measures of 25 April 2015 did not exonerate it from responsibility. To condone Ghana's activities in the disputed area could send the wrong signal to other States (paras. 1-19).

Separate Opinion of Judge ad hoc Mensah: Ghana had not provided sufficient evidence to prove the existence of a tacitly agreed boundary with Côte d'Ivoire. Côte d'Ivoire was not estopped from objecting to the customary equidistance boundary invoked by Ghana. International jurisprudence consistently held that the bar to prove the existence of a tacit agreement was high, and Ghana had failed to cross that bar. The line used by Ghana as a boundary for oil concessions was nothing more than a line used for mere convenience. Although based on oil practice, a tacit agreement on a boundary had to be capable of being proved independently of such oil practice. Côte d'Ivoire did not give sufficient reasons to delimit the maritime boundary using a methodology other than the equidistance/relevant circumstances. The Special Chamber was correct in finding that Ghana had not violated any of the international obligations relied upon by Côte d'Ivoire (paras. 1-14).

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The text of the order, judgment and opinions are set out as follows:

The text of the judgment of the Special Chamber commences at p. 408.[6] The following is the text of the Order of the Special Chamber:[7]

ORDER ON THE REQUEST FOR PROVISIONAL MEASURES (25 APRIL 2015)

1. *Whereas*, on 27 February 2015, Côte d'Ivoire filed with the Special Chamber a Request for the prescription of provisional measures (hereinafter "the Request") under article 290, paragraph 1, of the Convention, in the above-mentioned dispute;

2. *Whereas*, on the same date, the Registrar transmitted a certified copy of the Request to the Agent of Ghana;

3. *Whereas*, in the Minutes of Consultations agreed between Ghana and Côte d'Ivoire on 3 December 2014 and attached to the Special Agreement, the Parties recorded their agreement that

> the special chamber to be formed pursuant to article 15, paragraph 2, of the Statute shall be composed of five members, two of whom will be judges ad hoc chosen by the parties in accordance with article 17 of the Statute of the Tribunal. The composition of the special chamber will be determined by the Tribunal with the approval of the parties. In this respect, the parties have agreed on the following names:
>
> Judge Bouguetaia
> Judge Paik
> Judge Wolfrum;

4. *Whereas*, in the said Special Agreement, Ghana notified the Tribunal of its choice of Mr Thomas Mensah to sit as judge ad hoc in the Special Chamber, and Côte d'Ivoire notified the Tribunal of its choice of Mr Ronny Abraham to sit as judge ad hoc in the Special Chamber;

[6] The text of the judgment is also available at DOI: 10.1163/9789004369474_002.
[7] The text of the Order is also available at DOI: 10.1163/9789004324633_006.

5. *Whereas*, in the Order dated 12 January 2015, the Tribunal determined, with the approval of the Parties, the composition of the Special Chamber as follows:

President	Bouguetaia
Judges	Wolfrum, Paik
Judges ad hoc	Mensah, Abraham;

6. *Whereas* no objection to the choices of judge ad hoc was raised by either Party, and no objection appeared to the Tribunal itself;

7. *Whereas*, at a public sitting held on 28 March 2015, Mr Thomas Mensah and Mr Ronny Abraham made the solemn declaration required under articles 11 and 17, paragraph 6, of the Statute of the Tribunal;

8. *Whereas* the Special Agreement stated that the Government of Ghana had appointed Ms Marietta Brew Appiah-Opong, Attorney General and Minister of Justice, as Agent for Ghana, and the Government of Côte d'Ivoire had appointed Mr Adama Toungara, Minister of Petroleum and Energy, and Mr Ibrahima Diaby, Director General of Hydrocarbons, Ministry of Petroleum and Energy, as Agent and Co-Agent, respectively, for Côte d'Ivoire;

9. *Whereas*, by letter dated 23 March 2015, the Agent of Ghana notified the Registrar of the appointment of Ms Akua Sena Dansua, Ambassador of Ghana to the Federal Republic of Germany, as Co-Agent of Ghana, pursuant to article 56, paragraph 2, of the Rules;

10. *Whereas*, on 3 March 2015, the President of the Special Chamber held a telephone conference with the Agents and Counsel of Côte d'Ivoire and Ghana in order to ascertain the views of the Parties regarding the procedure for the hearing in accordance with article 73 of the Rules;

11. *Whereas*, by letter dated 5 March 2015, the Registrar requested the Agent of Côte d'Ivoire to supplement the documentation in accordance with article 63, paragraphs 1 and 2, of the Rules, and Côte d'Ivoire submitted the requested documents on 9 March 2015, and *whereas* on the same day a copy of those documents was transmitted to Ghana;

12. *Whereas*, pursuant to article 90, paragraph 2, of the Rules, the President of the Special Chamber, by Order dated 6 March 2015, fixed 29 March 2015 as the date for the opening of the hearing, notice of which was communicated to the Parties on 6 March 2015;

13. *Whereas*, pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18 December 1997, the Secretary-General of the United Nations was notified of the Request by a letter from the Registrar dated 11 March 2015;

14. *Whereas*, in accordance with article 24, paragraph 3, of the Statute, States Parties to the Convention were notified of the Request by a note verbale from the Registrar dated 12 March 2015;

15. *Whereas*, pursuant to article 90, paragraph 3, of the Rules, Ghana filed its Written Statement with the Special Chamber on 23 March 2015, a certified copy of which was transmitted to the Agent of Côte d'Ivoire on the same date;

16. *Whereas* Côte d'Ivoire submitted electronically an additional document on 27 March 2015, and *whereas* this document was transmitted to Ghana on the same date;

17. *Whereas*, on 28 March 2015, the Parties submitted materials pursuant to paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal;

18. *Whereas*, in accordance with article 68 of the Rules, the Special Chamber held initial deliberations on 28 March 2015 concerning the written pleadings and the conduct of the case;

19. *Whereas*, on 28 and 30 March 2015, in accordance with article 45 of the Rules, the President of the Special Chamber held consultations with the Parties with regard to questions of procedure;

20. *Whereas*, pursuant to article 67, paragraph 2, of the Rules, copies of the Request and documents annexed thereto were made accessible to the public on the date of the opening of the oral proceedings;

21. *Whereas* oral statements were presented at four public sittings held on 29 and 30 March 2015 by the following:

On behalf of Côte d'Ivoire: Mr Adama Toungara, Minister for Petroleum and Energy,
as Agent,

Mr Ibrahima Diaby, Director-General for Hydrocarbons, Ministry of Petroleum and Energy,
as Co-Agent,

Mr Adama Kamara, Lawyer, Member of the Bar of Côte d'Ivoire, Partner, Adka, Côte d'Ivoire,
Mr Alain Pellet, Professor emeritus, Université Paris Ouest Nanterre La Défense, France, former Chairman of the International Law Commission, Member of the Institut de droit international,
Mr Michel Pitron, Lawyer, Member of the Paris Bar, Partner, Gide Loyrette Nouel, France,

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Sir Michael Wood, K.C.M.G., Member of the International Law Commission, Member of the English Bar, United Kingdom,
Ms Alina Miron, Doctor of Law, Centre de droit international de Nanterre, Université Paris Ouest Nanterre La Défense, France,
as Counsel and Advocates;

On behalf of Ghana: Ms Marietta Brew Appiah-Opong, Attorney General and Minister of Justice,
as Agent,

Mr Paul S. Reichler, Partner, Foley Hoag LLP, United States of America,
Ms Clara Brillembourg, Partner, Foley Hoag LLP, United States of America,
Mr Pierre Klein, Professor, Centre of International Law, Université Libre de Bruxelles, Belgium,
Ms Alison Macdonald, Member of the Bar of England and Wales, Matrix Chambers, United Kingdom,
Mr Philippe Sands, Professor of Law, University College London, Matrix Chambers, United Kingdom,
as Counsel and Advocates;

22. *Whereas*, in the course of the oral proceedings, a number of exhibits, including photographs and extracts from documents, were displayed by the Parties on video monitors;

23. *Whereas*, during the oral proceedings, on 30 March 2015, Côte d'Ivoire submitted additional documents to the Special Chamber, consisting of a decree of Côte d'Ivoire relating to research permits awarded to oil companies, a final report of a ministerial meeting of Member States of the Economic Commission of West African States on the outer limits of the continental shelf, and a joint communique of the official visit of the former President of Côte d'Ivoire to Ghana;

24. *Whereas*, by letter dated 30 March 2015 addressed to the Parties, the Registrar confirmed that, further to consultations held on the same day between the President of the Special Chamber and the representatives of the Parties, Ghana was authorized to transmit to the

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Special Chamber its observations on those documents by 31 March 2015, and *whereas* no such observations were submitted by Ghana;

* * *

25. *Whereas*, at the public sitting held on 30 March 2015, the Agent of Côte d'Ivoire made the following final submissions, which reiterate the claims contained in paragraph 54 of the Request:

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;

26. *Whereas*, at the public sitting held on 30 March 2015, the Agent of Ghana made the following final submissions, which reiterate the claim contained in paragraph 126 of its Written Statement:

Ghana requests the Special Chamber to deny all of Côte d'Ivoire's requests for provisional measures;

* * *

27. *Considering* that, at the request of the President of the Special Chamber, the Co-Agent of Côte d'Ivoire communicated by letter dated 8 April 2015 to the Registrar the following information concerning the coordinates of the line drawn in yellow and shown on Sketch map No 1 (entitled "The disputed area") which appears on page 5 of the Request for the prescription of provisional measures of 27 February 2015:

The yellow line shown on that sketch map ... is a straight line passing through two points X and Y whose coordinates, given by reference to WGS84 as geodetic datum, are:

X: 003° 06′ 24″ W and 05° 05′ 23″ N
Y: 002° 22′ 23″ W and 01° 24′ 10″ N;

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28. *Considering* that, in the said letter, the Co-Agent of Côte d'Ivoire stated that the yellow line shown on the above-mentioned Sketch map No 1 was "provided by way of illustration for the purposes of the proceedings for the prescription of provisional measures";

29. *Considering* that, at the request of the President of the Special Chamber, the Agent of Ghana communicated by letter dated 9 April 2015 to the Registrar the following information concerning the coordinates of the line which "Ghana considers to be long recognised by both States as their maritime boundary":

The coordinates are:

GPM-1*	05°05′28.4″N	03°06′21.8″W
GPM-2	04°47′34.9″N	03°10′35.3″W
GPM-3	04°25′54.0″N	03°14′53.0″W
GPM-4	04°04′59.0″N	03°19′02.0″W
GPM-5	03°40′13.0″N	03°23′51.0″W
GPM-6	01°48′45.3″N	03°47′33.6″W
GPM-7	01°04′44.6″N	03°56′39.5″W

* Land boundary terminus

These coordinates are in the WGS-84 geographic coordinate system and are rounded to the nearest one-tenth of one second of latitude and longitude;

30. *Considering* that in the said letter, the Agent of Ghana stated that

[n]oting that the request is made "in the context of the request for the prescription of provisional measures relating to the case", Ghana wishes to reiterate that these coordinates are offered without prejudice to the position adopted by Ghana in the merits phase of these proceedings;

* * *

31. *Considering* that, on 3 December 2014, by notification of the Special Agreement concluded on the same day, the Parties requested the Tribunal to form a special chamber to deal with the dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean;

32. *Considering* that, on 27 February 2015, Côte d'Ivoire submitted to the Special Chamber a Request for provisional measures, pursuant to article 290, paragraph 1, of the Convention;

33. *Considering* that article 290, paragraph 1, of the Convention 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

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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;

34. *Considering* that, before prescribing provisional measures under article 290, paragraph 1, of the Convention, the Special Chamber must satisfy itself that *prima facie* it has jurisdiction over the dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, submitted by the Parties on 3 December 2014;

35. *Considering* that Ghana and Côte d'Ivoire are States Parties to the Convention;

36. *Considering* that article 288, paragraph 1, of the Convention provides that "[a] court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with [Part XV]."

37. *Considering* that both Parties have accepted that *prima facie* the Special Chamber has jurisdiction over the dispute submitted by the Special Agreement;

38. *Considering* that, in light of the above, the Special Chamber finds that *prima facie* it has jurisdiction over the dispute;

39. *Considering* that the power of the Special Chamber to prescribe provisional measures under article 290, paragraph 1, of the Convention has as its object the preservation of the respective rights of the parties to the dispute or the prevention of serious harm to the marine environment pending the final decision;

40. *Considering* that the Chamber must be concerned to safeguard the respective rights which may be adjudged in its Judgment on the merits to belong to either Party;

41. *Considering* that the Special Chamber may not prescribe provisional measures unless it finds that there is "a real and imminent risk that irreparable prejudice may be caused to the rights of the parties in dispute" (*M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at p. 69, para. 72);

42. *Considering*, in this regard, that urgency is required in order to exercise the power to prescribe provisional measures, that is to say the need to avert a real and imminent risk that irreparable prejudice may be caused to rights at issue before the final decision is delivered (see *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica); Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 13 December 2013, ICJ Reports 2013*, p. 398, at p. 405, para. 25);

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43. *Considering* that the decision whether there exists imminent risk of irreparable prejudice can only be taken on a case by case basis in light of all relevant factors;

44. *Considering* that Côte d'Ivoire requests the prescription of provisional measures to preserve three categories of "exclusive sovereign rights that are the subject of this dispute, rights arising under UNCLOS";

45. *Considering* that Côte d'Ivoire argues that the rights which it claims relate to "a triangular disputed area" defined by the competing claims of the Parties, namely that of Côte d'Ivoire to "a boundary starting from the land boundary pillar to the north and running towards the south-east", and that of Ghana to "a boundary starting from the same land boundary pillar" for which it "draws the delimitation line towards the south-west";

46. *Considering* that Côte d'Ivoire claims in the disputed area "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";

47. *Considering* that Côte d'Ivoire also claims "the right to exclusive access to confidential information about its natural resources" in the disputed area, and argues that this is one of the sovereign rights of the coastal State for the purpose of exploring the continental shelf and exploiting its natural resources as provided for in article 77 of the Convention, and that the sovereign rights "include all rights necessary for and connected with the exploration and exploitation of the resources of the shelf";

48. *Considering* that Côte d'Ivoire further claims "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";

49. *Considering* that Côte d'Ivoire invokes article 2, paragraph 2, article 56, paragraph 1, article 77, paragraph 1, article 81 and article 246, paragraph 5, of the Convention in support of its claims;

50. *Considering* that Côte d'Ivoire further alleges that, as regards the conditions for awarding oil contracts, Ghana's legislation "is out of step with international standards" and that the recent exploitation of a field adjacent to the disputed area (Jubilee field) "has already evidenced many technical failings";

51. *Considering* that Ghana contends that Côte d'Ivoire seeks provisional measures "on the basis of wholly theoretical rights", rights which are "newly claimed" by Côte d'Ivoire;

52. *Considering* that Ghana contends further that "Ghana and Côte d'Ivoire share a maritime boundary which has been mutually

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recognized for decades in numerous ways, although not formally delimited", that "[t]his customary boundary is based on international law", that "activities undertaken on the Ghanaian side of the customary boundary based on equidistance . . . have been carried out there for decades" without any objections or protests from Côte d'Ivoire and that "Côte d'Ivoire has respected precisely the same equidistance line as Ghana";

53. *Considering* that Ghana argues that "Côte d'Ivoire has introduced no evidence . . . to show that the activities of which it now complains are new activities, or that it has only recently become aware of them";

54. *Considering* that Ghana, in relation to Côte d'Ivoire's alleged right referred to in paragraph 46, maintains that "[t]here were no objections over a lengthy period of Ghanaian oil operations" in the areas concerned and argues that this was because "there were no rights, . . . and . . . there are no rights today";

55. *Considering* that Ghana submits that Côte d'Ivoire's alleged right referred to in paragraph 47 is not based on any specific provisions of the Convention, that "Côte d'Ivoire has failed to establish a basis for the legal existence of an alleged right to information newly claimed to be harmed", and that "Côte d'Ivoire has cited no legal authority for any such right to information";

56. *Considering* that, in relation to the allegation of Côte d'Ivoire in paragraph 50, Ghana argues that its 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)";

57. *Considering* that a court called upon to rule on a request for provisional measures does not need, at this stage of the proceedings, to settle the parties' claims in respect of the rights and obligations in dispute and is not called upon to determine definitively whether the rights which they each wish to see protected exist (see *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua); Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Provisional Measures, Order of 22 November 2013, ICJ Reports 2013*, p. 354, at p. 360, para. 27);

58. *Considering* that, before prescribing provisional measures, the Special Chamber need not therefore concern itself with the competing claims of the Parties, and that it need only satisfy itself that the rights which Côte d'Ivoire claims on the merits and seeks to protect are at least plausible;

59. *Considering* that the Special Chamber observes that, by instituting arbitral proceedings under Annex VII to the Convention against

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Côte d'Ivoire, Ghana itself recognized the existence of a dispute concerning the maritime boundary between the two States and the existence of opposing claims of the Parties to the disputed area;

60. *Considering* that, for the purpose of the present proceedings and pending the final decision on the merits, the disputed area lies between the coordinates of the line drawn by Côte d'Ivoire, as described in paragraph 27, and the coordinates of the line which according to Ghana would be the maritime boundary between the two countries, as described in paragraph 29;

61. *Considering* that, in the view of the Special Chamber, the rights claimed by Côte d'Ivoire comprise rights of sovereignty over the territorial sea and its subsoil (article 2, paragraph 2, of the Convention) and sovereign rights of exploration and exploitation of the natural resources of the continental shelf (articles 56, paragraph 1, and 77, paragraph 1, of the Convention) and that the sovereign rights include all rights necessary for or connected with the exploration of the continental shelf and the exploitation of its natural resources;

62. *Considering* that, in the circumstances of this case, the Special Chamber finds that Côte d'Ivoire has presented enough material to show that the rights it seeks to protect in the disputed area are plausible;

63. *Considering* that the Special Chamber finds that there is a link between the rights Côte d'Ivoire claims and the provisional measures it seeks (see *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, ICJ Reports 2011*, p. 6, at p. 18, para. 54);

64. *Considering* that Côte d'Ivoire requests the prescription of provisional measures to prevent serious harm to the marine environment;

65. *Considering* that Côte d'Ivoire maintains that "oil-related activities being carried out today on behalf of and in the name of Ghana, whether in or near the disputed area, have already given rise to pollution incidents", and that Ghana's lack of due diligence is highlighted by "its failure to monitor oil activities effectively" and "the shortcomings in its legislative framework";

66. *Considering* that Ghana contends that "[s]ince the start of the Jubilee operations, there has not been an oil pollution incident resulting in an oil slick that has reached the shores of Ghana", that constant monitoring is required by law, and that Ghana's environmental protection legislation is among the most robust in the region;

67. *Considering* that the Special Chamber finds that Côte d'Ivoire has not adduced sufficient evidence to support its allegations that the

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activities conducted by Ghana in the disputed area are such as to create an imminent risk of serious harm to the marine environment;

68. *Considering*, however, that the risk of serious harm to the marine environment is of great concern to the Special Chamber;

69. *Considering* that article 192 of the Convention imposes an obligation on States to protect and preserve the marine environment (see *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at p. 70, para. 76);

70. *Considering* that article 193 of the Convention provides that States have the sovereign right to exploit their natural resources pursuant to their environmental policies and it also states that this right is to be exercised "in accordance with their duty to protect and preserve the marine environment";

71. *Considering* further that:

> [t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996*, p. 226, at pp. 241-2, para. 29);

72. *Considering* that, in the view of the Special Chamber, the Parties should in the circumstances "act with prudence and caution to prevent serious harm to the marine environment" (*M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at p. 70, para. 77; see also *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280, at p. 296, para. 77; *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, at p. 46, para. 132);

73. *Considering* that, as the Tribunal has already stated, "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law and that rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention" (*MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95, at p. 110, para. 82; see also *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Order of 10 September 2003, ITLOS Reports 2003*, p. 10, at p. 25, para. 92; and *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion of 2 April 2015*, para. 140);

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74. *Considering* that, pursuant to article 290, paragraph 1, of the Convention, the Special Chamber may prescribe provisional measures if it finds that there is a real and imminent risk that irreparable prejudice could be caused to the rights of the parties to the dispute pending the final decision by the Special Chamber;

75. *Considering* that Côte d'Ivoire maintains that

> [t]he 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;

76. *Considering* that Côte d'Ivoire further maintains that "[t]o that end, unilateral oil operations in a disputed area must be precluded in order to preserve the rights of the parties";

77. *Considering* that Côte d'Ivoire claims that the continuation of unilateral activities of Ghana in the disputed area would "deprive irremediably . . . Côte d'Ivoire of its sovereign right to decide when, how and under what conditions the exploitation of these resources will take place, and even *whether* it should take place";

78. *Considering* that Côte d'Ivoire asserts that

> [b]y its very nature, drilling is irreversible because once the rock has been crushed it cannot be reconstituted. You can plug a shaft with cement, but its lining remains. You cannot restore the subsoil to its prior state. Therefore, the criterion of permanent and irreversible damage to the seabed and subsoil deriving from the case-law is satisfied in the present case;

79. *Considering* that Côte d'Ivoire argues that "[t]he 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" and that the damage thus sustained is "irreversible insofar as a return to the situation *ex ante* will be impossible owing to the fact that information will have circulated and that, unlike a living resource, bargaining power cannot regenerate on its own";

80. *Considering* that Côte d'Ivoire states that "[t]his does not necessarily mean that all activities in a disputed area are to be excluded, but such activities are lawful only if they do not imperil . . . the judicial . . . decision ultimately established";

81. *Considering* that Côte d'Ivoire further states that it is "not asking for Ghana's offshore oil and gas industry to be 'closed down'" and that it is "solely requesting that *ongoing activities be suspended*";

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82. *Considering* that Ghana maintains that the sovereign rights claimed by it "would be severely harmed if the provisional measures requested by Côte d'Ivoire were ordered";

83. *Considering* that Ghana states that "[w]hat Côte d'Ivoire seeks in effect is an order . . . to close down large parts of Ghana's well-established offshore oil and gas industry";

84. *Considering* that Ghana further states that "[a]n Order to stop all activity in the TEN field" would be "financially ruinous" and "the enormous investment in the Deepwater Tano Concession Block, including the TEN . . . fields, which has taken place over the last nine years (since 2006), would be threatened with irreparable harm";

85. *Considering* that Ghana explains that stopping the project "would have the most impacts on the investments already made in relation to both facilities and equipment for which construction is far advanced" and that "[e]quipment will degrade and Ghana will possibly lose its contractors entirely";

86. *Considering* that Ghana argues that "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";

87. *Considering* that Ghana further states that "the only loss which Côte d'Ivoire would suffer over the lifetime of these proceedings would be the loss of the revenues derived from oil production . . . by Ghana in any area which the Special Chamber ultimately determined to fall within Côte d'Ivoire's territory" and that "[t]his is a pure financial loss, and could be completely addressed through . . . an award of damages in due course";

88. *Considering* that, as regards the sovereign rights claimed by Côte d'Ivoire for the purpose of exploring the continental shelf and exploiting its natural resources, the Special Chamber is of the view that, while the alleged loss of the revenues derived from oil production could be the subject of adequate compensation in the future, the ongoing exploration and exploitation activities conducted by Ghana in the disputed area will result in a modification of the physical characteristics of the continental shelf;

89. *Considering* that there is a risk of irreparable prejudice where, in particular, activities result in significant and permanent modification of the physical character of the area in dispute and where such modification cannot be fully compensated by financial reparations;

90. *Considering* that, whatever its nature, any compensation awarded would never be able to restore the *status quo ante* in respect of the seabed and subsoil;

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91. *Considering* that this situation may affect the rights of Côte d'Ivoire in an irreversible manner if the Special Chamber were to find in its decision on the merits that all or any part of the area in dispute belongs to Côte d'Ivoire;

92. *Considering* that, as regards the right claimed by Côte d'Ivoire to exclusive access to confidential information about the natural resources of the continental shelf, Ghana, in its Written Statement, declares that "information about petroleum recovered is recorded in detail, as part of standard practice in petroleum production and revenue accounting" and that "the information currently being gathered in the disputed area will be duly recorded, and Ghana will be in a position to provide that information to Côte d'Ivoire if ordered to do so at the conclusion of the case";

93. *Considering* that the Special Chamber places on record the assurance and undertaking given by Ghana as mentioned in paragraph 92;

94. *Considering* that the Special Chamber considers that the rights of the coastal State over its continental shelf include all rights necessary for and connected with the exploration and exploitation of the natural resources of the continental shelf and that the exclusive right to access to information about the resources of the continental shelf is plausibly among those rights;

95. *Considering* that the acquisition and use of information about the resources of the disputed area would create a risk of irreversible prejudice to the rights of Côte d'Ivoire should the Special Chamber, in its decision on the merits, find that Côte d'Ivoire has rights in all or any part of the disputed area;

96. *Considering* therefore that the exploration and exploitation activities, as planned by Ghana, may cause irreparable prejudice to the sovereign and exclusive rights invoked by Côte d'Ivoire in the continental shelf and superjacent waters of the disputed area, before a decision on the merits is given by the Special Chamber, and that the risk of such prejudice is imminent;

* * *

97. *Considering* that, in accordance with article 89, paragraph 5, of the Rules, the Special Chamber may prescribe measures different in whole or in part from those requested;

98. *Considering* that the Order must not prejudice any decision on the merits;

99. *Considering* that, in the view of the Special Chamber, the suspension of ongoing activities conducted by Ghana in respect of

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which drilling has already taken place would entail the risk of considerable financial loss to Ghana and its concessionaires and could also pose a serious danger to the marine environment resulting, in particular, from the deterioration of equipment;

100. *Considering* that, in the view of the Special Chamber, an order suspending all exploration or exploitation activities conducted by or on behalf of Ghana in the disputed area, including activities in respect of which drilling has already taken place, would therefore cause prejudice to the rights claimed by Ghana and create an undue burden on it;

101. *Considering* that such an order could also cause harm to the marine environment;

102. *Considering*, on the other hand, that the Special Chamber considers it appropriate, in order to preserve the rights of Côte d'Ivoire, to order Ghana to take all the necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area;

103. *Considering* that any action or abstention by either party in order to avoid aggravation or extension of the dispute should not in any way be construed as a waiver of any of its claims or an admission of the claims of the other party to the dispute (see *M/V "SAIGA" (No 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24, at p. 39, para. 44; *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at p. 70, para. 79; *"Arctic Sunrise" (Kingdom of the Netherlands* v. *Russian Federation), Provisional Measures, Order of 22 November 2013, ITLOS Reports 2013*, p. 230, at p. 251, para. 99);

104. *Considering* that the present Order in no way prejudges the question of the jurisdiction of the Special Chamber to deal with the merits of the case or relating to the merits themselves, and leaves unaffected the rights of Ghana and of Côte d'Ivoire, respectively, to submit arguments in respect of those questions (see *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008-2010*, p. 58, at p. 70, para. 80; *"ARA Libertad" (Argentina* v. *Ghana), Order of 20 November 2012, ITLOS Reports 2012*, p. 326, at p. 350, para. 106; *"Arctic Sunrise" (Kingdom of the Netherlands* v. *Russian Federation), Provisional Measures, Order of 22 November 2013, ITLOS Reports 2013*, p. 230, at p. 251, para. 100);

105. *Considering* that pursuant to article 95, paragraph 1, of the Rules, each Party is required to submit to the Special Chamber a report and information on compliance with any provisional measures prescribed;

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106. *Considering* that it may be necessary for the Special Chamber to request further information from the Parties on the implementation of the provisional measures and that it is appropriate that the President of the Special Chamber be authorized to request such information in accordance with article 95, paragraph 2, of the Rules;

107. *Considering* that, in the present case, the Special Chamber sees no reason to depart from the general rule, as set out in article 34 of its Statute, that each party shall bear its own costs;

108. *For these reasons*,

THE SPECIAL CHAMBER,

(1) Unanimously

Prescribes, pending the final decision, the following provisional measures under article 290, paragraph 1, of the Convention:

(a) Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area as defined in paragraph 60;

(b) Ghana shall take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire;

(c) Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment;

(d) The Parties shall take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its superjacent waters, in the disputed area and shall cooperate to that end;

(e) The Parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute.

(2) Unanimously

Decides that Ghana and Côte d'Ivoire shall each submit to the Special Chamber the initial report referred to in paragraph 105 not later than 25 May 2015, and authorizes the President of the Special Chamber, after that date, to request such information from the Parties as he may consider appropriate.

(3) Unanimously

Decides that each Party shall bear its own costs.

* * *

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Judge ad hoc Mensah appends a separate opinion to the Order of the Special Chamber.

SEPARATE OPINION OF JUDGE AD HOC MENSAH

1. I have some doubts about the claim of Côte d'Ivoire to the maritime areas in dispute. In particular, I do not think that this claim has serious prospects of success on the merits. However, I agree with the finding of the Chamber that the claim is plausible. This is because I accept that the test of "plausibility" is the only test that is applicable at this stage of the proceedings when the Special Chamber is not dealing with the merits of the case. I also agree with the finding that, if the Special Chamber finds that any part of the disputed area pertains to Cote d'Ivoire, the activities being undertaken by Ghana in the area would pose a risk of prejudice to the rights that Côte d'Ivoire claims, and the risk is imminent. Consequently, I agree that the ordering of some provisional measures, to protect the rights which Côte d'Ivoire claims in the area, is appropriate in the circumstances of the case.

2. However, I do not think that the first provisional measure requested by Côte d'Ivoire should be granted. Côte d'Ivoire requests the Chamber to order Ghana "to take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area". I do not consider that such an order would be appropriate in this case.

3. Article 290, paragraph 1, of the Convention gives power to the Special Chamber (and to other competent courts and tribunals) to prescribe provisional measures that "it considers [to be] 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". As has repeatedly been underlined by the International Court of Justice (ICJ), and by other international courts and tribunals which have been called upon to pronounce on the matter, provisional measures have as their object "preservation of the respective rights of *the parties in the case*, pending the final decision on the merits".

4. In its Order of 15 March 1996 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria*, the International Court of Justice explained: "it follows that the Court must be concerned to preserve by such measures "the rights which may subsequently be adjudged" to belong to either party. This means that provisional measures ordered by the Special Chamber should have as their object, preservation of the rights not only of the party which requests the measures, but also the rights of the other party in the dispute. In other words, the measures prescribed by the Chamber

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should be such that they protect the rights that may subsequently be adjudged to "belong either to the Applicant or to the Respondent" (*Land and Maritime Boundary between Cameroon and Nigeria, Provisional Measures, Order of 15 March 1996, ICJ Reports 1996*, p. 13, at p. 21, para. 35).

5. When a court or tribunal considers a request for the prescription of provisional measures, it is necessarily faced with different rights or claimed rights, that is to say, the rights claimed by the opposing parties in the case. In most cases, these rights are in conflict. In such a situation, the court or tribunal is obliged to weigh the different rights of the parties against each other.

6. Ghana has cogently argued that the activities of exploration and exploitation that it has undertaken or authorized in the disputed area "are not new". Its argument is that, in line with a Decree issued by the then President of Côte d'Ivoire, Ghana has for a very long time ("more than four decades") regarded the equidistance line as the border between Ghana and Côte d'Ivoire. Ghana states that it has treated this line as the "international border" in every concession agreement; in every one of the seismic and other exploratory activity; in all the drilling and development activities and in all its communications with Côte d'Ivoire and third parties ever since. Ghana denies that it has acted imprudently or illegitimately in authorizing activities in the disputed area and claims that Côte d'Ivoire had been fully aware of these activities and has in fact facilitated some of them. In any case, Ghana claims that Côte d'Ivoire has not objected to any of these activities until the present case was submitted to arbitration. Hence, according to Ghana, Côte d'Ivoire cannot now be permitted to object to any of these activities.

7. Ghana also submits that the provisional measures requested by Côte d'Ivoire, especially an order to Ghana to "cease all exploration and exploitation activities in the disputed area" would "deliver a crippling blow to Ghana's petroleum industry, cause major dislocations and set back economic development for many years". Ghana maintains that an order to stop all its activities in the disputed area would "have grave consequences for Ghana and for its contractors, subcontractors, community stakeholders and its lending parties". According to Ghana, a "mega-project of this scale and complexity involves bringing together myriad of contractors, sub-contractors, community stakeholders and lending parties in a series of highly complex and interlinked relationships".

8. Ghana submits that "stopping such a project midstream is physically very difficult and not possible without incurring enormous

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adverse financial consequences for all the parties involved". Ghana, therefore, argues that an order to Ghana to suspend activities of exploration and exploitation in the disputed area would have "serious and catastrophic consequences" not just for Ghana but also for the persons engaged in these activities.

9. Ghana also argues that an order to suspend all exploration and exploitation activities in the disputed area would have serious and catastrophic consequences for the marine environment. For example, it claims that there is a real possibility of some of the wells already drilled would become flooded and cause serious damage to the marine environment.

10. Ghana further contends that the only losses that Côte d'Ivoire is likely to sustain from any of Ghana's activities in the disputed area would be monetary in nature, and can, therefore, be compensated through appropriate reparations awarded by the Special Chamber. Accordingly, Ghana maintains that any such losses would not constitute "irreparable damage" and do not, therefore, justify the ordering of provisional measures.

11. In this connection, it is pertinent to note that Ghana has stated, in its Written Statement, that "information about petroleum recovered is recorded in detail as part of standard practice in petroleum production and revenue accounting". As regards the right claimed by Côte d'Ivoire to exclusive access to confidential information about natural resources of the continental shelf, Ghana has stated (again in its Written Statement) that "the information currently being gathered in the disputed area will be duly recorded" and will be made available to Côte d'Ivoire, "if Ghana were ordered to do so at the conclusion of the case". In effect, Ghana has given a written assurance and undertaking that it will provide Côte d'Ivoire with information on oil recovered from the disputed area and any information about natural resources of the continental shelf in the disputed area, if it is ordered to do so at the conclusion of the case, and the Special Chamber has placed this assurance and undertaking on record.

12. In the circumstances I endorse, and fully share, the decision of the Chamber, in effect, to reject the main provisional measures requested by Côte d'Ivoire. These would have ordered Ghana to "suspend all ongoing oil exploration and exploitation operations in the disputed area" and "refrain from granting any new permit for oil exploration and exploitation in the disputed area".

13. I agree with the provisional measures ordered by the Special Chamber. In these measures the Special Chamber orders Ghana to refrain from conducting new exploration or exploitation drilling in the

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disputed area. Such an order takes due account of the interests and rights of both parties. It seeks to protect the respective rights of both the applicant and of the respondent. In my view it recognizes that Ghana's activities in the disputed area are reasonable and takes on board Ghana's contention that these activities are legitimate, and have been carried out over a long period with the full knowledge, and acquiescence, of Côte d'Ivoire.

14. I also observe that, in taking note of the assurance and undertaking of Ghana and placing it on record, the Special Chamber has underlined the fact that Ghana may be required to make appropriate reparations if, at the end of the case, the Special Chamber determines that any part of the disputed area pertains to Côte d'Ivoire and if it concludes that any rights of Côte d'Ivoire have been violated by the activities of Ghana in the area.

[Report: *ITLOS Reports 2015*, p. 146]

[The following is the text of the judgment of the Special Chamber:]

JUDGMENT (23 SEPTEMBER 2017)

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I. PROCEDURAL HISTORY

1. The Attorney General and Minister for Justice of the Republic of Ghana (hereinafter "Ghana"), by letter dated 21 November 2014, transmitted to the President of the International Tribunal for the Law of the Sea (hereinafter "the Tribunal") the Notification and the Statement of the claim and grounds on which it is based (hereinafter "the Notification"), dated 19 September 2014 and addressed by Ghana to the Republic of Côte d'Ivoire (hereinafter "Côte d'Ivoire"), instituting arbitral proceedings under Annex VII to the United Nations Convention on the Law of the Sea (hereinafter "the Convention") in "the dispute concerning the maritime boundary between Ghana and Côte d'Ivoire".

2. In its Notification, Ghana seeks the following relief:

> 35. Ghana requests that the Tribunal delimit, in accordance with the principles and rules set forth in UNCLOS and international law, the complete course of the single maritime boundary dividing all the maritime areas

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appertaining to Ghana and to Côte d'Ivoire in the Atlantic Ocean, including in the continental shelf beyond 200 M.

36. Ghana further asks the Tribunal to determine the precise geographical coordinates of the single maritime boundary in the Atlantic Ocean.

37. Ghana reserves the right to supplement and/or amend its claim and the relief sought as necessary, and to make such other requests from the arbitral tribunal as may be necessary to preserve its rights under UNCLOS.

3. During consultations held by the President of the Tribunal with representatives of Ghana and Côte d'Ivoire in Hamburg on 2 and 3 December 2014, a special agreement was concluded between the two States to submit the dispute concerning the maritime boundary between them in the Atlantic Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute of the Tribunal (hereinafter "the Statute").

4. The Special Agreement and Notification between Ghana and Côte d'Ivoire dated 3 December 2014 (hereinafter "the Special Agreement"), in its relevant part, reads as follows:

Special Agreement and Notification

Pursuant to Article 15, paragraph 2, of the Statute of the Tribunal, the Republic of Ghana and the Republic of Côte d'Ivoire hereby record their agreement to submit to a special chamber of International Tribunal for the Law of the Sea the dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean. The agreement was reached on 3 December 2014, under the conditions reflected in the agreed Minutes of Consultation (3 December 2014), attached hereto.

The Republic of Ghana and the Republic of Côte d'Ivoire further record their agreement that the special chamber shall be comprised of the following five individuals:

Judge Boualem Bouguetaia, as President
Judge Rüdiger Wolfrum
Judge Jin-Hyun Paik
Mr Thomas Mensah, Judge ad hoc (Ghana)
Judge Ronny Abraham, Judge ad hoc (Côte d'Ivoire)

Delivery on today's date of an original of this Agreement and Notification to the Registry of the Tribunal shall constitute the notification contemplated in Article 55 of the Rules of the Tribunal.

. . .

5. The Minutes of Consultations agreed between Ghana and Côte d'Ivoire on 3 December 2014 and attached to the Special Agreement read in their relevant part as follows:

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Minutes of consultations

. . .

3. During the consultations, the parties agreed to transfer the arbitral proceedings instituted by Ghana in the dispute between Ghana and Côte d'Ivoire concerning the delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute, it being understood between the parties that, if any objection to jurisdiction or admissibility were to be raised before the special chamber, it shall be dealt with together with the merits.

4. The proceedings of the special chamber shall be governed by the provisions contained in the Rules of the Tribunal and the agreement referred to in paragraph 3 above.

5. The parties request the special chamber to authorize that the written proceedings shall consist, in the following order, of: a Memorial presented by Ghana and a Counter-memorial presented by Côte d'Ivoire. The special chamber may authorize or direct that there shall be a Reply by Ghana and a Rejoinder by Côte d'Ivoire if it decides, at the request of a party or *proprio motu*, that these pleadings are necessary.

. . .

6. The original of the Special Agreement was delivered to the Registrar on the same date.

7. By Order dated 12 January 2015, the Tribunal decided to accede to the request of Ghana and Côte d'Ivoire to form a special chamber of five judges to deal with the dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean (hereinafter "the Special Chamber") and determined, with the approval of the Parties, the composition of the Special Chamber as follows:

President	Bouguetaia
Judges	Wolfrum
	Paik
Judges ad hoc	Mensah
	Abraham

8. The Registrar transmitted a copy of the Order of 12 January 2015 to the Parties by separate letters dated 12 January 2015.

9. The case was entered in the List of Cases as Case No 23.

10. By letter dated 14 January 2015, the Registrar, pursuant to the Agreement on Cooperation and Relationship between the United

Nations and the International Tribunal for the Law of the Sea of 18 December 1997, notified the Secretary-General of the United Nations of the institution of proceedings. By a note verbale dated 16 January 2015, the Registrar also notified the States Parties to the Convention, in accordance with article 24, paragraph 3, of the Statute, of the institution of proceedings.

11. In accordance with article 45 of the Rules of the Tribunal (hereinafter "the Rules"), consultations were held by the President of the Special Chamber with representatives of the Parties on 18 February 2015 to ascertain their views with regard to questions of procedure in respect of the case. During these consultations, the Parties concurred that 3 December 2014 was to be considered the date of institution of proceedings before the Special Chamber.

12. In accordance with articles 59 and 61 of the Rules, the President of the Special Chamber, having ascertained the views of the Parties, by Order dated 24 February 2015, fixed the following time-limits for the filing of the pleadings in the case: 4 September 2015 for the Memorial of Ghana and 4 April 2016 for the Counter-Memorial of Côte d'Ivoire. The Registrar transmitted a copy of the Order to the Parties by separate letters dated 25 February 2015.

13. As indicated in the Special Agreement of 3 December 2014, the Government of Ghana had appointed Ms Marietta Brew Appiah-Opong, Attorney General and Minister of Justice, as Agent for Ghana, and the Government of Côte d'Ivoire had appointed Mr Adama Toungara, Minister of Petroleum and Energy, and Mr Ibrahima Diaby, Director General of Hydrocarbons, Ministry of Petroleum and Energy, as Agent and Co-Agent, respectively, for Côte d'Ivoire.

14. On 27 February 2015, Côte d'Ivoire submitted to the Special Chamber a request for the prescription of provisional measures (hereinafter "the Request"), pursuant to article 290, paragraph 1, of the Convention.

15. By letter dated 23 March 2015, the Agent for Ghana notified the Registrar of the appointment of Ms Akua Sena Dansua, Ambassador of Ghana to the Federal Republic of Germany, as Co-Agent for Ghana, pursuant to article 56, paragraph 2, of the Rules. Ghana subsequently notified the Registrar of the appointment of Ms Helen Ziwu, Solicitor General, with effect from 13 February 2015, as Co-Agent for Ghana.

16. On 25 April 2015, the Special Chamber delivered its Order on the Request. In paragraph 108 of the said Order, the Special Chamber decided as follows:

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THE SPECIAL CHAMBER,

(1) Unanimously

Prescribes, pending the final decision, the following provisional measures under article 290, paragraph 1, of the Convention:

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

(2) Unanimously

Decides that Ghana and Côte d'Ivoire shall each submit to the Special Chamber the initial report referred to in paragraph 105 not later than 25 May 2015, and authorizes the President of the Special Chamber, after that date, to request such information from the Parties as he may consider appropriate.

(3) Unanimously

Decides that each Party shall bear its own costs.

17. The Registrar transmitted a copy of the Order to each Party on the same date. A copy of the Order was also transmitted to the Secretary-General of the United Nations by letter dated 25 April 2015.

18. On 25 May 2015, pursuant to article 95, paragraph 1, of the Rules, Ghana and Côte d'Ivoire each submitted their initial reports upon the steps taken in order to ensure prompt compliance with the measures prescribed. The Registrar transmitted the initial report submitted by one Party to the other Party by letters dated 26 May 2015.

19. The Memorial of Ghana was duly filed on 4 September 2015, a certified copy of which was transmitted to Côte d'Ivoire by the Registrar by letter dated 10 September 2015.

20. By letter dated 3 November 2015, the Registrar requested the Agent for Ghana to supplement documentation provided in its

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Memorial in accordance with article 63, paragraphs 1 and 2, of the Rules. Ghana submitted the requested documents on 2 December 2015, a copy of which was transmitted to Côte d'Ivoire on 3 December 2015.

21. By letter dated 4 November 2015, the Registrar informed Ghana of a request by the Senior Counsel of "Information Handling Services" (hereinafter "IHS"), communicated electronically to the Registry on 30 October 2015, to remove from the Tribunal's website all maps and a report which are the intellectual property of IHS and which were produced by Ghana (and annexed to its written statement) in the provisional measures phase of the case. In his letter, the Registrar sought the views of Ghana in this regard. The Registrar transmitted a copy of the letter to Côte d'Ivoire on the same date.

22. By letter dated 23 November 2015, the Agent for Ghana informed the Registrar that, pending a thorough consideration by the Tribunal and the Parties of the issues raised by IHS, the correct approach would be to remove such material from the Tribunal's website.

23. By letter dated 11 December 2015, the Registrar informed the Agent for Ghana that the President of the Special Chamber had decided to remove the documents concerned from the website of the Tribunal. The Registrar transmitted a copy of his letter to Côte d'Ivoire on the same date.

24. In accordance with article 45 of the Rules, on 16 March 2016, the President of the Special Chamber held telephone consultations with the Parties to ascertain their views with regard to questions of procedure in respect of the case.

25. In accordance with article 60 of the Rules, the Special Chamber, by Order dated 16 March 2016, taking into account the agreement of the Parties reached during consultations held by the President of the Special Chamber with representatives of the Parties on 18 February 2015, authorized the submission of a Reply and Rejoinder. In the same Order, the Special Chamber fixed the following time-limits for the filing of pleadings in the case: 4 July 2016 for the Reply of Ghana and 4 October 2016 for the Rejoinder of Côte d'Ivoire. The Registrar transmitted a copy of the Order to the Parties on the same date.

26. The Counter-Memorial of Côte d'Ivoire was filed on 4 April 2016 and was transmitted to Ghana on the same date.

27. By letter dated 5 April 2016, the Agent for Ghana requested an extension of the time-limit fixed for the submission of the Reply of Ghana from 4 July to 25 July 2016. According to Ghana, this extension was due to the additional time it would require to arrange

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for the translation of the Counter-Memorial of Côte d'Ivoire into English.

28. By letter dated 15 April 2016, the Agent for Côte d'Ivoire informed the Registrar that Côte d'Ivoire did not object to the request for extension submitted by the Agent for Ghana.

29. By Order dated 25 April 2016, the President of the Special Chamber, having ascertained the views of the Parties, extended the time-limits to 25 July 2016 for the submission of the Reply of Ghana, and to 14 November 2016 for the submission of the Rejoinder of Côte d'Ivoire. The Registrar transmitted the Order to the Parties by separate letters dated 29 April 2016.

30. By letter dated 11 April 2016, the Co-Agent for Côte d'Ivoire informed the Registrar that the Government of Côte d'Ivoire wished to replace volume II of the Counter-Memorial with a new version of that volume. In support of its request, the Co-Agent for Côte d'Ivoire stated in a letter of 13 April 2016 that errors in annexes C6 and C7 of volume II had been corrected. By letters dated 13 April 2016, the Registrar transmitted to Ghana a copy of the letters of Côte d'Ivoire of 11 and 13 April 2016 and sought its observations on the matter.

31. By letter dated 25 April 2016, the Agent for Ghana informed the Registrar that "Ghana considers that the filing of the original annexes C6 and C7 is not to be characterised merely as '[t]he correction of a slip or error' within the meaning of Article 65(4) of the Rules of the Tribunal", and that Ghana, "in the spirit of good neighbourliness and cooperation . . . has no objection to the introduction of revised versions of [the said] annexes . . . provided that . . . it remains free to refer to the original versions of [the annexes] . . . if the need arises". In the same letter, the Agent for Ghana requested the production of additional information by Côte d'Ivoire, namely full size, high resolution chart images of the revised annexes C6 and C7.

32. By letter dated 26 April 2016, the Registrar transmitted the letter of the Agent for Ghana of 25 April 2016 to the Agent for Côte d'Ivoire and sought his views on the matter.

33. By letter dated 29 April 2016, the Co-Agent for Côte d'Ivoire indicated that Côte d'Ivoire had no objection to the production of the additional information if the President of the Special Chamber considered it necessary.

34. By separate letters dated 6 May 2016, the Registrar informed the Parties that the correction requested by Côte d'Ivoire on 11 April 2016 had been accepted by leave of the President of the Special Chamber, pursuant to article 65, paragraph 4, of the Rules, without prejudice to Ghana's right to comment on this matter in its Reply and

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that therefore the revised annexes C6 and C7 would replace the documents originally filed on 4 April 2016. The Registrar also informed the Parties that Côte d'Ivoire would be asked to transmit the additional information requested by Ghana in its letter dated 25 April 2016.

35. By letter dated 10 May 2016, the Registrar requested Côte d'Ivoire to transmit the said additional information. By letter dated 27 May 2016, the Co-Agent for Côte d'Ivoire communicated such information. By letter of 1 June 2016, the Registrar transmitted to Ghana the letter of Côte d'Ivoire dated 27 May 2016 and its accompanying documentation.

36. By letter dated 29 April 2016, the Registrar requested the Agent for Côte d'Ivoire to supplement documentation provided in the Counter-Memorial of Côte d'Ivoire in accordance with article 63, paragraphs 1 and 2, of the Rules, and Côte d'Ivoire transmitted the requested documents on 19 May 2016.

37. The Reply of Ghana was duly filed on 25 July 2016, a copy of which was transmitted to Côte d'Ivoire on 26 July 2016.

38. By letter dated 9 August 2016, the Registrar requested the Agent for Ghana to supplement documentation provided in the Reply of Ghana in accordance with article 63, paragraphs 1 and 2, of the Rules. This documentation was submitted by Ghana on 2 September 2016. The Registrar transmitted to Côte d'Ivoire a copy of the letter on the same date.

39. By letter dated 29 August 2016 addressed to the Registrar, a copy of which was transmitted to Ghana on 30 August 2016, the Agent for Côte d'Ivoire requested the President of the Special Chamber to order Ghana to transmit, in application of paragraph 108, subparagraph 2, of the Order dated 25 April 2015, the following documents:

– the file which Ghana specifically requested the oil companies operating under its authority to compile in order to report on the steps they had taken to comply with the Order;

. . .

– a copy of the daily reports on activities carried out in the disputed area since 25 April 2015 prepared by the oil companies concerned, and in particular the reports relating to the activities of the two drilling apparatuses . . .

40. By letter addressed to the Registrar dated 16 September 2016 and received on 19 September 2016, the Agent for Ghana communicated that, in Ghana's view, the Order dated 25 April 2015 "does not require Ghana to produce all documents concerning

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activities in the area, nor are the documents requested by Côte d'Ivoire reasonably necessary to understand the nature of the activities" carried out by Ghana in the disputed area. The Registrar transmitted a copy of the said letter to Côte d'Ivoire on 19 September 2016.

41. By separate letters dated 23 September 2016, the President of the Special Chamber, after consultations with the members of the Special Chamber, informed the Parties of his decision to request Ghana to transmit to the Special Chamber the following documents by 14 October 2016:

– the file which Ghana specifically requested the oil companies operating under its authority to compile in order to report on the steps they have taken to comply with the Order;
– a copy of all reports on activities carried out in the disputed area since 25 April 2015 prepared by the oil companies concerned, relating to the activities of the two drilling rigs "West Leo" and "Stena DrillMAX", referred to in the correspondence from Côte d'Ivoire.

On 14 October 2016, Ghana transmitted those documents to the Registrar, who communicated a copy thereof to Côte d'Ivoire on 17 October 2016.

42. By letter dated 28 September 2016, the Minister of Foreign Affairs and Cooperation of the Republic of Benin requested the Tribunal, pursuant to article 67, paragraph 1, of the Rules, to furnish Benin with copies of the pleadings and documents annexed thereto in the case.

43. The Registrar, by separate letters dated 7 October 2016, transmitted to the Parties the request of Benin and informed them, at the request of the President of the Special Chamber, that a copy of the written pleadings and documents annexed thereto would be communicated to Benin pursuant to article 67, paragraph 1, of the Rules. By letter dated 11 October 2016 addressed to the Minister of Foreign Affairs and Cooperation of the Republic of Benin, the Registrar transmitted the requested copy of the written pleadings and documents annexed thereto.

44. The Rejoinder of Côte d'Ivoire was filed on 14 November 2016.

45. The President of the Special Chamber, having ascertained the views of the Parties, by Order dated 15 December 2016, set 6 February 2017 as the date for the opening of the oral proceedings in the case. The Registrar transmitted a copy of the Order to each party on the same date.

46. By letter dated 13 December 2016, the Minister of Justice and Relations with the Institutions of the Republic of Togo requested the Tribunal, pursuant to article 67, paragraph 1, of the Rules, to furnish Togo with copies of the pleadings and documents annexed thereto in the case.

47. The Registrar, by separate letters dated 28 December 2016, transmitted to the Parties the request of Togo and informed them, at the request of the President of the Special Chamber, that a copy of the written pleadings and documents annexed thereto would be communicated to Togo pursuant to article 67, paragraph 1, of the Rules. By letter dated 29 December 2016 addressed to the Minister of Justice and Relations with the Institutions of the Republic of Togo, the Registrar transmitted the requested copy of the written pleadings and documents annexed thereto.

48. By letter dated 19 January 2017, the Co-Agent for Ghana informed the Registrar of the appointment by the newly elected President of the Republic of Ghana of Ms Gloria Akuffo as the new Agent for Ghana. The Registrar transmitted a copy of this letter to Côte d'Ivoire on 20 January 2017.

49. On 31 January and 2 February 2017 respectively, the Agent for Ghana and the Agent for Côte d'Ivoire submitted materials required under paragraph 14 of the Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal.

50. In accordance with article 68 of the Rules, prior to the opening of the oral proceedings, the Special Chamber held initial deliberations on 2 and 3 February 2017.

51. On 3 February 2017, the Special Chamber decided, pursuant to article 76 of the Rules, to communicate to the Parties the following question which it wished them specially to address: "[c]ould the Parties provide information on any arrangements which could exist between them on fisheries matters or with respect to other uses of the maritime area concerned?"

52. On 6 February 2017, the President of the Special Chamber held consultations with representatives of the Parties to ascertain their views regarding the hearing. During the consultations, the President of the Special Chamber transmitted to them the question referred to above.

53. The Parties replied to this question in the course of the hearing. Côte d'Ivoire and Ghana submitted documents in support of their replies to the question on 9 and 13 February 2017 respectively.

54. During the hearing on 13 February 2017, in accordance with article 76, paragraph 3, of the Rules, Judge Wolfrum put a question to

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the Counsel of Ghana. Counsel of Ghana responded to the question put by Judge Wolfrum forthwith.

55. During the hearing, the Parties displayed a number of slides, including maps, charts and excerpts from documents, and animations on video monitors. Electronic copies of these documents were filed with the Registry by the Parties.

56. The hearing was broadcast on the internet as a webcast.

57. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and documents annexed thereto were made accessible to the public on the opening of the oral proceedings.

58. In accordance with article 86, paragraph 1, of the Rules, the transcript of the verbatim records of each public sitting was prepared by the Registry in the official languages of the Tribunal used during the hearing. In accordance with article 86, paragraph 4, of the Rules, copies of the transcripts of the said records were circulated to the judges sitting in the case, and to the Parties. The transcripts were also made available to the public in electronic form.

59. From 6 to 16 February 2017, the Special Chamber held nine public sittings. At these sittings, the Special Chamber was addressed by the following:

For Ghana:	HE Ms Gloria Afua Akuffo, *as Agent*; Ms Marietta Brew Appiah-Opong, Mr Philippe Sands, Mr Paul Reichler, Mr Fui Tsikata, Mr Pierre Klein, Ms Clara Brillembourg, Ms Angolie Singh, Mr Daniel Alexander, Ms Alison Macdonald, *as Counsel and Advocates*.
For Côte d'Ivoire:	HE Mr Adama Toungara, *as Agent*; Mr Michel Pitron, Mr Adama Kamara, Sir Michael Wood, Ms Alina Miron, Mr Alain Pellet, *as Counsel and Advocates*.

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II. SUBMISSIONS OF THE PARTIES

60. In its Memorial and Reply, Ghana requested the Special Chamber to adjudge and declare that:

(1) Ghana and Côte d'Ivoire have mutually recognised, agreed, and applied an equidistance-based maritime boundary in the territorial sea, EEZ and continental shelf within 200 M.
(2) The maritime boundary in the continental shelf beyond 200 M follows an extended equidistance boundary along the same azimuth as the boundary within 200 M, to the limit of national jurisdiction.
(3) In accordance with international law, by reason of its representations and upon which Ghana has placed reliance, Côte d'Ivoire is estopped from objecting to the agreed maritime boundary.
(4) The land boundary terminus and starting point for the agreed maritime boundary is at Boundary pillar 55 (BP 55).
(5) As per the Parties' agreement in December 2013, the geographic coordinates of BP 55 are 05° 05′ 28.4″ N and 03° 06′ 21.8″ W (in WGS 1984 datum).
(6) Consequently, the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean starts at BP 55, connects to the customary equidistance boundary mutually agreed by the Parties at the outer limit of the territorial sea, and then follows the agreed boundary to a distance of 200 M. Beyond 200 M, the boundary continues along the same azimuth to the limit of national jurisdiction. The boundary line connects the following points, using loxodromes (the geographic coordinates are in WGS 1984 datum):

Point	Latitude	Longitude
CEB-1 (LBT)	05° 05′ 28.4″ N	03° 06′ 21.8″ W
CEB-2	04° 53′ 39″ N	03° 09′ 18″ W
CEB-3	04° 47′ 35″ N	03° 10′ 35″ W
CEB-4	04° 25′ 54″ N	03° 14′ 53″ W
CEB-5	04° 04′ 59″ N	03° 19′ 02″ W
CEB-6	03° 40′ 13″ N	03° 23′ 51″ W
CEB-7 (200 M)	01° 48′ 30″ N	03° 47′ 18″ W
CEB-8 (Limit of National Jurisdiction)	01° 04′ 43″ N	03° 56′ 29″ W

61. In its Counter-Memorial, Côte d'Ivoire requested the Special Chamber "to reject all Ghana's requests and claims", and [translation of the Registry]:

(1) to declare and adjudge that the sole maritime boundary between Ghana and Côte d'Ivoire follows the 168.7° azimuth line, which starts at boundary post 55 and extends to the outer limit of the Ivorian continental shelf;

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(2) to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area, as delimited by this Chamber, constitute a violation of:
  (i) the exclusive sovereign rights of Côte d'Ivoire over its continental shelf;
  (ii) the obligation to negotiate in good faith, pursuant to article 83, paragraph 1, of UNCLOS and customary law;
  (iii) the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3, of UNCLOS; and
  (iv) the provisional measures prescribed by this Chamber by its Order of 25 April 2015;

and consequently:

(a) to declare and adjudge that Ghana is obliged to transmit to Côte d'Ivoire all the documents and data relating to the oil exploration and exploitation activities which it has undertaken, or which have been undertaken with its authorization, in the Ivorian maritime area, including the oil transport and development operations, including those listed in paragraphs 9.29 and 9.31 above;
(b) to declare and adjudge that Ghana is obliged to ensure the non-disclosure, by itself and by its co-contractors, of the information mentioned in paragraph (2)(a) above;
(c) that Côte d'Ivoire is, moreover, entitled to receive compensation for the damages resulting from Ghana's violation of Côte d'Ivoire's exclusive sovereign rights over its continental shelf; and

to invite the Parties to carry out negotiations in order to reach agreement on this point, and

to state that, if they fail to reach an agreement on the amount of this compensation within a period of six (6) months as from the date of the Order to be delivered by the Special Chamber, said Chamber will determine, at the request of either Party, the amount of this compensation on the basis of additional written documents dealing with this subject alone.

62. In its Rejoinder, Côte d'Ivoire requested the Special Chamber to "reject all Ghana's requests and claims", and [translation of the Registry]:

(1) to declare and adjudge that the sole maritime boundary between Ghana and Côte d'Ivoire follows the 168.7° azimuth line, which starts at boundary post 55 and extends to the outer limit of the Ivorian continental shelf;
(2) to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area constitute a violation of:
  (i) the exclusive sovereign rights of Côte d'Ivoire over its continental shelf, as delimited by this Chamber;

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(ii) the obligation to negotiate in good faith, pursuant to article 83, paragraph 1, of UNCLOS and customary law;
(iii) the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3, of UNCLOS; and

(3) to declare and adjudge that Ghana has violated the provisional measures prescribed by this Chamber by its Order of 25 April 2015;
(4) and consequently:
(a) to declare and adjudge that Ghana is obliged to transmit to Côte d'Ivoire all the documents and data relating to the oil exploration and exploitation activities which it has undertaken, or which have been undertaken with its authorization, in the Ivorian maritime area, including the oil transport and development operations, including those listed in paragraphs 9.29 and 9.31 of Côte d'Ivoire's Counter-Memorial;
(b) to declare and adjudge that Ghana is obliged to ensure the non-disclosure, by itself and by its co-contractors, of the information mentioned in paragraph (4) (a) above;
(c) that Côte d'Ivoire is, moreover, entitled to receive compensation for the damages caused to it by Ghana's internationally wrongful acts; and

to invite the Parties to carry out negotiations in order to reach agreement on this point, and

to state that, if they fail to reach an agreement on the amount of this compensation within a period of six (6) months as from the date of the Order to be delivered by the Special Chamber, said Chamber will determine, at the request of either Party, the amount of this compensation on the basis of additional written documents dealing with this subject alone.

63. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the Parties at the end of the oral proceedings:

On behalf of Ghana, at the hearing held on 13 February 2017:

On the basis of the facts and law set forth in its Memorial and Reply, and its oral presentations, Ghana respectfully requests the Special Chamber to adjudge and declare that:

(1) Ghana and Côte d'Ivoire have mutually recognised, agreed, and applied an equidistance-based maritime boundary in the territorial sea, EEZ and continental shelf within 200 M.
(2) The maritime boundary in the continental shelf beyond 200 M follows an extended equidistance boundary along the same azimuth as the boundary within 200 M, to the limit of national jurisdiction.
(3) In accordance with international law, by reason of its representations and upon which Ghana has placed reliance, Côte d'Ivoire is estopped from objecting to the agreed maritime boundary.

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(4) The land boundary terminus and starting point for the agreed maritime boundary is at Boundary pillar 55 (BP 55).
(5) As per the Parties' agreement in December 2013, the geographic coordinates of BP 55 are 05° 05′ 28.4″ N and 03° 06′ 21.8″ W (in WGS 1984 datum).
(6) Consequently, the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean starts at BP 55, connects to the customary equidistance boundary mutually agreed by the Parties at the outer limit of the territorial sea, and then follows the agreed boundary to a distance of 200 M. Beyond 200 M, the boundary continues along the same azimuth to the limit of national jurisdiction. The boundary line connects the following points, using loxodromes (the geographic coordinates are in WGS 1984 datum):

Point	Latitude	Longitude
CEB-1 (LBT)	05° 05′ 28.4″ N	03° 06′ 21.8″ W
CEB-2	04° 53′ 39″ N	03° 09′ 18″ W
CEB-3	04° 47′ 35″ N	03° 10′ 35″ W
CEB-4	04° 25′ 54″ N	03° 14′ 53″ W
CEB-5	04° 04′ 59″ N	03° 19′ 02″ W
CEB-6	03° 40′ 13″ N	03° 23′ 51″ W
CEB-7 (200 M)	01° 48′ 30″ N	03° 47′ 18″ W
CEB-8 (Limit of National Jurisdiction)	01° 04′ 43″ N	03° 56′ 29″ W

(7) Côte d'Ivoire's claim alleging violation of the Special Chamber's Order of 25 April 2015 is rejected.
(8) Côte d'Ivoire's claim alleging violation of Article 83 of UNCLOS and Côte d'Ivoire's sovereign rights is rejected.

On behalf of Côte d'Ivoire, at the hearing held on 16 February 2017 [translation of the Registry]:

On the basis of the facts and law set forth in its written submissions and during the oral pleadings, the Republic of Côte d'Ivoire requests the Special Chamber to reject all Ghana's requests and claims, and:

(1) to declare and adjudge that the sole maritime boundary between Ghana and Côte d'Ivoire follows the 168.7° azimuth line, which starts at boundary post 55 and extends to the outer limit of the Ivorian continental shelf;
(2) to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area constitute a violation of:
    (i) the exclusive sovereign rights of Côte d'Ivoire over its continental shelf, as delimited by this Chamber;
    (ii) the obligation to negotiate in good faith, pursuant to article 83, paragraph 1, of UNCLOS and customary law;

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(iii) the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3, of UNCLOS; and

(3) to declare and adjudge that Ghana has violated the provisional measures prescribed by this Chamber by its Order of 25 April 2015;
(4) and consequently:
(a) to invite the Parties to carry out negotiations in order to reach agreement on the terms of the reparation due to Côte d'Ivoire, and
(b) to state that, if they fail to reach an agreement within a period of 6 months as from the date of the Judgment to be delivered by the Special Chamber, said Chamber will determine those terms of reparation on the basis of additional written documents dealing with this subject alone.

III. GEOGRAPHY

64. The maritime area to be delimited in the present case lies in the Atlantic Ocean. Ghana and Côte d'Ivoire are adjacent States, bordering the Gulf of Guinea in West Africa.

65. Ghana has a land boundary with Togo to the east, Burkina Faso to the north, and Côte d'Ivoire to the west.

66. Côte d'Ivoire shares a land boundary with Liberia and Guinea to the west, Mali and Burkina Faso to the north and Ghana to the east.

67. There are no islands in the area to be delimited.

IV. SUBJECT MATTER OF THE DISPUTE

68. Ghana underlines that

> [t]he dispute with which the proceedings are concerned relates to the establishment of the single maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, to delimit the territorial sea, exclusive economic zone ("EEZ") and continental shelf, including the continental shelf beyond 200 nautical miles.

69. However, Ghana makes it clear that "[p]rimarily, this is not a maritime delimitation case, but rather a request to declare the existence of a boundary". It adds that "[i]t is only in the alternative ... that Ghana requests the Chamber to proceed to the delimitation of the maritime boundary".

70. Côte d'Ivoire declares that "the dispute brought before the Chamber essentially concerns the delimitation of the maritime

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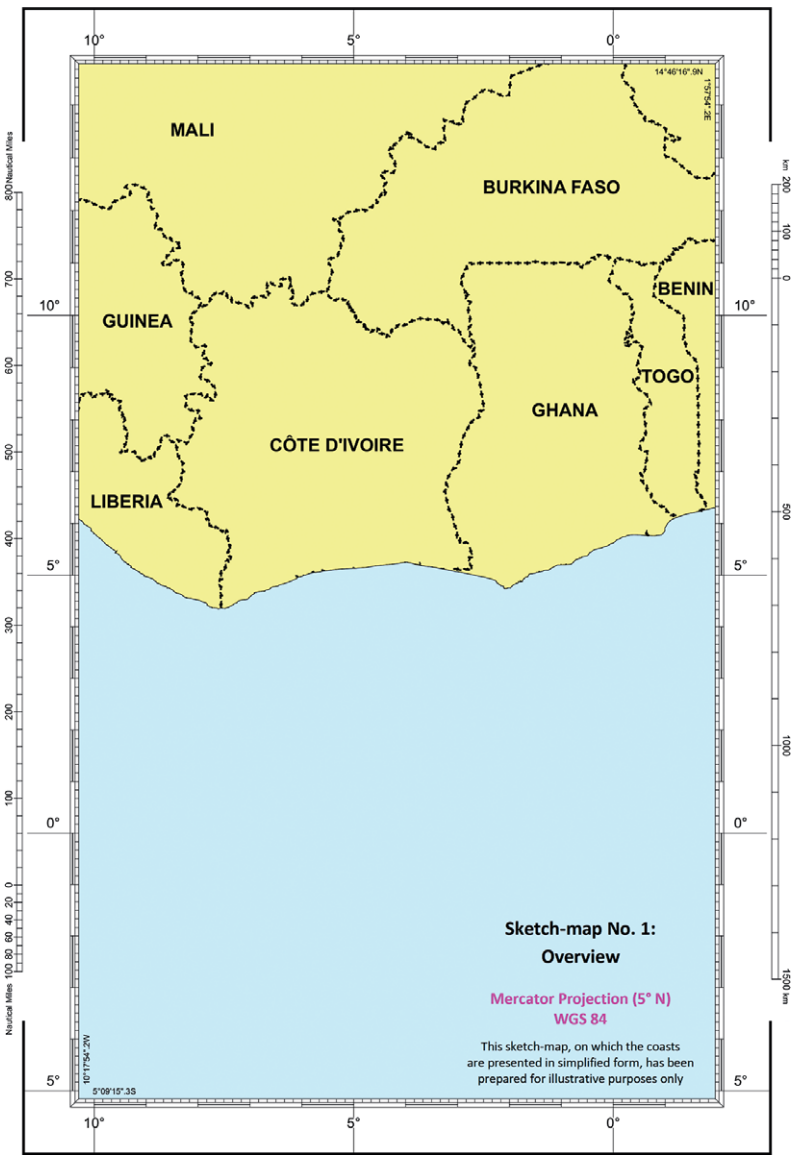
boundary between Côte d'Ivoire and Ghana in the Atlantic Ocean". According to Côte d'Ivoire, "Côte d'Ivoire and Ghana agree that [the Chamber] must determine a single delimitation line".

71. Côte d'Ivoire then observes that, in its Reply, Ghana



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attempts a sudden redefinition [of the dispute] and no longer speaks of the delimitation of the maritime boundary with Côte d'Ivoire, but of the "demarcation" of that boundary, in the hope to persuade the Chamber that the boundary has already been defined by agreement between the Parties.

Côte d'Ivoire explains that "this Chamber must make an actual *delimitation* consisting 'in resolving the overlapping claims by drawing a line of separation of the maritime areas concerned'".

72. Côte d'Ivoire also submits that Ghana's conduct in the disputed part of the continental shelf violated international law, the Convention, and the Order for the prescription of provisional measures of 25 April 2015.

73. In response, Ghana submits that the allegations of Côte d'Ivoire are unfounded, emphasizing that it acted in compliance with international law at all times, and complied faithfully with the Special Chamber's Order of 25 April 2015.

* * *

74. In the light of the Special Agreement concluded between the Parties, the Special Chamber considers that the dispute concerns the delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, with respect to the territorial sea, the exclusive economic zone and the continental shelf.

75. In light of the submissions of the Parties, the Special Chamber also notes that Côte d'Ivoire has claimed that the responsibility of Ghana would be engaged.

V. JURISDICTION OF THE SPECIAL CHAMBER

76. There is no disagreement between the Parties regarding the jurisdiction of the Special Chamber in the present case. Nevertheless, the Special Chamber must satisfy itself that it has jurisdiction to deal with the case as submitted.

77. Ghana maintains that the present dispute "falls squarely within the jurisdiction of the Special Chamber". It explains that the dispute "meets all the procedural requirements of Part XV of UNCLOS" and that the subject matter of the dispute "is exclusively concerned with the interpretation and application of provisions of the Convention".

78. Ghana adds that, as set forth in the Special Agreement of 3 December 2014,

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the Parties agreed to submit "the dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean" to the Special Chamber. In this way, the Parties have empowered the Special Chamber to make a full and final delimitation of the totality of the Parties' dispute as submitted to it.

79. Ghana notes that "the Special Chamber has jurisdiction over Ghana's claims arising under Articles 15, 74, 76 and 83 of UNCLOS, governing the delimitation of the territorial sea, EEZ and continental shelf".

80. Ghana further states that it "withdrew its declaration (dated 15 December 2009), made in accordance with Article 298 paragraph 1 [of the Convention] with immediate effect on 19 September 2014" by means of which it had declared that it did not accept any of the procedures provided for in Section 2 of Part XV of the Convention in matters relating to the maritime delimitation. Ghana observes that the notice of withdrawal had "not [been] accepted by the UN Secretary-General, on the basis that it had not been signed by the Minister of Foreign Affairs, but rather the Deputy Minister", but states that it "filed a second notice of withdrawal on 21 September 2014, with immediate effect".

81. Côte d'Ivoire affirms that the Special Agreement seizing the Special Chamber describes the dispute as concerning "the delimitation of [the] maritime boundary in the Atlantic Ocean" between Ghana and Côte d'Ivoire, which is, moreover, reflected in the title of the case: "*Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*".

82. Côte d'Ivoire recalls that Ghana withdrew its declaration dated 15 December 2009.

* * *

83. The Special Chamber notes that Ghana and Côte d'Ivoire are both States Parties to the Convention. Ghana ratified the Convention on 7 June 1983 and Côte d'Ivoire ratified the Convention on 26 March 1984. The Convention came into force for both States on 16 November 1994.

84. Article 288, paragraph 1, of the Convention provides that "[a] court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with [Part XV]".

85. The Special Chamber observes that the present dispute concerns the interpretation and application of the relevant provisions of the Convention, in particular articles 15, 74, 76 and 83 thereof.

86. As regards Ghana's Declaration of 15 December 2009 under article 298, paragraph 1, of the Convention, the Special Chamber observes that, according to the notification issued by the depositary of the Convention, Ghana withdrew, on 22 September 2014, "its Declaration dated 15 December, 2009 declaring that it did not accept any of the procedures provided for in section 2 of Part XV of the Convention with respect to the categories of disputes referred to in paragraph 1(a) of article 298 of the Convention".

87. The Special Chamber notes that the Parties agree that it has jurisdiction to adjudicate on the dispute submitted by the Special Agreement concerning the delimitation of the territorial sea, the exclusive economic zone and the continental shelf.

88. In view of the above, the Special Chamber concludes that it has jurisdiction to delimit the maritime boundary between the Parties in the territorial sea, in the exclusive economic zone and on the continental shelf, within 200 nautical miles (hereinafter "nm").

89. The Special Chamber will examine whether it has jurisdiction to delimit the maritime boundary between the Parties on the continental shelf beyond 200 nm from which the breadth of the territorial sea is measured (hereinafter "the continental shelf beyond 200 nm") in paragraphs 482-95.

90. The Special Chamber will deal with the question of its jurisdiction to entertain Côte d'Ivoire's request concerning Ghana's alleged responsibility for internationally wrongful acts in paragraphs 545-54.

VI. APPLICABLE LAW

91. In the present case, Ghana maintains that "the Special Chamber has jurisdiction over Ghana's claims arising under Articles 15, 74, 76 and 83 of UNCLOS, governing the delimitation of the territorial sea, EEZ and continental shelf". According to Ghana "[t]here is in law only a single continental shelf, and article 83 of the Convention applies equally to the delimitation of the continental shelf both within and beyond 200 nautical miles".

92. Ghana adds that the Parties "agree that the applicable law for the delimitation" in the present case falls under "the 1982 Convention and other rules of international law not incompatible with it".

93. Côte d'Ivoire submits that the provisions of the Convention concerning delimitation are found to be applicable in the present case. It explains that this concerns "articles 15, 74 and 83 relating to

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delimitation of the territorial sea, the exclusive economic zone and the continental shelf" and that, "as the dispute extends to delimitation of the continental shelf beyond 200 nautical miles, 'article 76 of the Convention is also of particular importance'".

94. Côte d'Ivoire explains that "article 293 of the Convention refers to 'other rules of international law not incompatible' with the Convention" and that "[i]n this regard customary law and jurisprudence can usefully supplement the provisions of UNCLOS".

* * *

95. Article 23 of the Statute provides that "[t]he Tribunal shall decide all disputes and applications in accordance with article 293" of the Convention.

96. Article 293, paragraph 1, of the Convention reads as follows: "A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention".

97. The Special Chamber observes that the Parties agree that the applicable law is the Convention and the other rules of international law which are not incompatible with it.

98. Articles 15, 74 and 83 of the Convention provide for the law applicable to delimitation of the territorial sea, the exclusive economic zone and the continental shelf, respectively. Given that the present dispute concerns delimitation of the continental shelf both within and beyond 200 nm, article 76 of the Convention is also important.

99. The Special Chamber therefore finds that the applicable law is the Convention, in particular articles 15, 74, 76 and 83 thereof, and other rules of international law not incompatible with the Convention.

VII. TACIT AGREEMENT

100. The first question the Special Chamber has to address is whether the Parties have already effected by agreement the course of their maritime boundary in the territorial sea, the exclusive economic zone and the continental shelf both within and beyond 200 nm with the consequence that, as claimed by Ghana, the Special Chamber would only have to declare the existence of a maritime boundary. Alternatively, as claimed by Côte d'Ivoire, the Special Chamber would have to decide on the maritime delimitation in the area concerned, resolving the overlapping claims.

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101. While the Parties concur that they have not formally concluded a delimitation agreement concerning their common maritime boundary, they disagree as to the existence of an agreed maritime boundary between them.

102. Ghana argues that both Parties have accepted the "principle of equidistance" as the equitable approach to the delimitation of their maritime boundary and that they have, over a period of more than five decades (from 1957 to 2009), recognized and respected their boundary as following an equidistance line, commencing from the land boundary terminus at BP 55. Ghana refers to this line as a "customary equidistance boundary". According to Ghana, this line is a reflection of the Parties' "tacit agreement" as to the existence of a maritime boundary. Ghana submits that the central task the Special Chamber faces, therefore, is "quite simple": to affirm the customary equidistance boundary as a maritime boundary between the Parties. Ghana further notes that "[p]rimarily, this is not a maritime delimitation case, but rather a request to declare the existence of a boundary which the Parties have themselves long agreed and delimited in practice and in consequence".

103. Côte d'Ivoire maintains that the maritime boundary between the Parties is still to be delimited, as there is no formal or tacit agreement on delimitation of the boundary. In Côte d'Ivoire's view, the argument put forward by Ghana seeking to establish the existence of a tacit agreement on a common maritime boundary is unfounded, especially in light of the official recognition by the two States of the absence of delimitation of a common maritime boundary and the systematic refusal of Côte d'Ivoire to recognize the western limit of the Ghanaian oil concessions as a boundary. Côte d'Ivoire argues that it has consistently demonstrated its desire to achieve an agreement on the maritime boundary between the Parties by way of negotiation and has regularly objected to the oil practice of Ghana interfering with such agreement.

104. Ghana contends that the existence of a tacit agreement on the customary equidistance boundary can be clearly established by extensive evidence in the form of concession agreements, presidential decrees, legislation, correspondence, maps, public statements, representations to international organizations and oil companies, and the cooperative practice of both States, all detailed in its written and oral pleadings.

105. For its part, Côte d'Ivoire argues that there is a whole series of evidence attesting to the disagreement on a maritime boundary. In particular, Côte d'Ivoire draws the attention of the Special Chamber to two events in 1988 and 1992 and bilateral negotiations held between

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the Parties from 2008 to 2014 which, in its view, clearly show the absence of a tacit agreement.

106. The Parties have differing views as to the relevance, significance and probative value of much of the evidence and materials adduced by each other. They also have conflicting positions as regards the interpretation of the law and its application to the evidence and facts. The Special Chamber now turns to those differing views and conflicting positions of the Parties.

A. Legal bases for Ghana's claims

107. At the outset, the Special Chamber considers it necessary to clarify a few preliminary points related to the legal bases for Ghana's claim of the "customary equidistance boundary".

108. Côte d'Ivoire argues that Ghana's claims suffer from considerable terminological confusion by combining "agreement" and "custom" as in an expression "Parties' Agreement on the Customary Equidistance Boundary" and that this is simply a reflection of Ghana's uncertainties over the legal bases of its claims. According to Côte d'Ivoire, by using the expression "customary equidistance boundary", Ghana appears to seek the application of the theory of bilateral custom, but provides evidence of neither the material element of custom nor its psychological element. In light of this circumstance, Côte d'Ivoire is compelled to assume that it is a tacit agreement that constitutes the main foundation of Ghana's claim. However, Côte d'Ivoire points out that the notion of "customary equidistance boundary" has no basis in international law and that the use of this expression adds nothing to Ghana's tacit agreement argument except confusion.

109. Côte d'Ivoire also points to Ghana's silence over the nature and scope of the alleged tacit agreement. For Côte d'Ivoire, where a State invokes the existence of an agreement, whether "express or tacit", on delimitation, it must prove that such an agreement is established for each of the maritime areas claimed on that basis and to their entire geographical extent. Côte d'Ivoire contends that Ghana likewise must provide proof that the purported agreement is applicable to the maritime areas claimed in their entirety. However, according to Côte d'Ivoire, Ghana fails in this regard because Ghana' argument for a tacit agreement is based solely on the oil concession practice of the Parties, which, even if accepted, cannot extend to the waters superjacent to the seabed. Nor can it extend as far as its boundary claims, as Ghana's oil concessions run at most to an approximate distance of 87 nm from the land boundary terminus, which is less than half of the length of the boundary line

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claimed by Ghana, and its actual petroleum activity runs to even less, at only 54.5 nm from the land boundary terminus. Côte d'Ivoire asserts that in any event Ghana fails to prove that its oil practice constitutes an agreement on delimitation even in respect of the continental shelf.

110. Ghana maintains that its reference to "customary" maritime boundary reflects "the existence of a specific boundary line that both Parties have recognised and respected over the course of more than five decades by their mutual, sustained, and consistent conduct". According to Ghana, it "has never argued that this 'customary equidistance line' reflects a bilateral custom". Ghana explains that this term simply refers to the fact that both Parties have over time mutually followed an equidistance line in their practice. Ghana submits that the customary line is a reflection of the Parties' tacit agreement as to the existence of a maritime boundary following an equidistance line, as distinguished from a formal boundary treaty.

111. Ghana contends that a tacit agreement that has emerged between the Parties on a common maritime boundary was the result of their mutual, consistent recognition and acceptance of such a boundary over many decades. For Ghana, the limits of the Parties' oil concessions are a reflection of, and based on, a "pre-existing" maritime boundary as mutually agreed and recognized by them. Ghana further submits that a tacit agreement on the boundary exists with respect to the entire maritime zone subject to these proceedings, namely the territorial sea, the exclusive economic zone and the continental shelf both within and beyond 200 nm, as is shown by the evidence it presented before the Special Chamber.

* * *

112. In light of the above, the Special Chamber understands that Ghana's claim for the delimitation of the territorial sea, exclusive economic zone and continental shelf within and beyond 200 nm is based on a tacit agreement which has been developed or confirmed as a result of the oil activities of both Parties over years. Having identified the legal basis, nature and scope of Ghana's claim, the Special Chamber must now ascertain whether a tacit agreement exists, as Ghana argues and which Côte d'Ivoire challenges.

B. Oil activities

113. Ghana maintains that the tacit agreement on the location of the customary equidistance boundary is most clearly reflected in the

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consistent "oil practice" of both Parties for more than five decades. According to Ghana, such oil practice includes, *inter alia*, oil concessions, seismic surveys, and exploration and drilling activities. Ghana contends that "the oil and gas activities carried out by, or under licence from Ghana" have been in areas that fall on the Ghanaian side of that boundary, whereas similar Ivorian activities have been confined to the west of that boundary. Ghana further asserts that neither Party has ever protested, or objected to, any of these activities by the other.

114. Côte d'Ivoire contends that oil practice cannot establish a tacit agreement on "an all-purpose international maritime boundary between States". Côte d'Ivoire argues that international courts and tribunals have been reluctant to treat oil practice as proof of the existence of a maritime boundary. For Côte d'Ivoire, oil practice says nothing about any of the other sovereign rights, jurisdiction and duties of the coastal State in the exclusive economic zone and on the continental shelf. Moreover, Côte d'Ivoire argues that the oil practice upon which Ghana relies is not only "equivocal" but is contradicted by the conduct of Côte d'Ivoire, and of Ghana itself.

(1) Oil concessions

115. Ghana claims that from the 1950s to 2009, both Parties offered and awarded concessions respecting an equidistance boundary, and that neither Party objected on any occasion to the offer or award of concessions respecting that boundary as granted by the other Party.

116. Ghana recalls that its first oil concession, which covered both land and water, was awarded in 1956 and that Côte d'Ivoire's first concession covering offshore areas dates back to 1957. According to Ghana, its first concession was bounded to the west by an equidistance line. Ghana points out that the eastern limit of Côte d'Ivoire's concession also applied an equidistance line with Ghana and that the western limit of its first concession thus matched the eastern limit of Côte d'Ivoire's first concession.

117. Since then, according to Ghana, the Parties' concessions were gradually extended further out to sea, along with improving technology, and their concession blocks were re-issued and re-configurated several times. However, Ghana notes that "the western boundary always remained the same, and known to Côte d'Ivoire". Ghana gives the full details of both Parties' oil concessions in its written and oral pleadings. Over a period of 52 years, Ghana claims, not a single concession offered by Côte d'Ivoire crossed over to Ghana's side and not a single one offered by Ghana crossed over onto Côte d'Ivoire's

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side. In Ghana's view, "[i]f this is not the basis of tacit agreement between two States . . ., it is really difficult to see what would be a tacit agreement".

118. In this regard, Ghana notes, the concession granted to Phillips Oil in the late 1970s is particularly telling, as the same company was granted parallel concessions by both Côte d'Ivoire and Ghana. The eastern limit of Phillips' concession in Côte d'Ivoire coincided with the western limit of its concession in Ghana. For Ghana, this is an indication of the Parties' mutual recognition of the customary equidistance boundary.

119. Côte d'Ivoire maintains that the existence of oil concession lines between adjacent States is not in itself sufficient proof of the existence of a maritime boundary between them. Côte d'Ivoire relies on the jurisprudence of the International Court of Justice (hereinafter "ICJ") and arbitral tribunals, which, according to it, have consistently expressed reticence to treat an oil concession line as a maritime boundary. In this regard, Côte d'Ivoire refers to the statement made by the ICJ in *Cameroon* v. *Nigeria* that "[o]nly if [oil concessions and oil wells] are based on express or tacit agreement between the parties may they be taken into account". Consequently, in the view of Côte d'Ivoire, the existence of such an agreement must first be proven for oil concessions to provide effective support for proof of the existence of maritime boundary.

120. Côte d'Ivoire further argues that the Parties have distinguished between oil concessions and the boundary line. According to Côte d'Ivoire, the Parties' understanding of this distinction is clearly reflected, *inter alia*, in the fact that they repeatedly proposed negotiations on the delimitation of an international maritime boundary separating the maritime zones to which each was entitled, and they eventually held such negotiations.

121. In response to Ghana's argument that the alleged customary equidistance line existed before the concessions, as early as 1956 and 1957, Côte d'Ivoire recalled that it established its first offshore petroleum block in 1970 and that it drew this block so as not to overlap with the block established by Ghana in 1968. According to Côte d'Ivoire, this was "an act of prudence and caution, an act of restraint, aimed at avoiding conflict with a neighbour".

122. Côte d'Ivoire argues that an analysis of the documents produced by Ghana relating to the line for oil concessions does not demonstrate the existence of a tacit agreement on a maritime boundary in accordance with the high standard required by jurisprudence. In addition, Côte d'Ivoire notes that it has been consistent by including in

oil concession contracts a caveat that the coordinates for oil blocks are "indicative and cannot under any circumstances be regarded as the limits of the national jurisdiction of Côte d'Ivoire". According to Côte d'Ivoire, such wording would have had no *raison d'être* if there were already a delimited maritime boundary.

123. Côte d'Ivoire also points to the fact that Ghana itself confirmed, in its letter dated 19 October 2011 in response to a request for clarification from Tullow, an oil company under licence from Ghana, that there is no maritime boundary between Côte d'Ivoire and Ghana. In the letter, according to Côte d'Ivoire, Ghana's Minister of Energy confirmed the absence of agreement on the maritime boundary "in the clearest terms" as follows:

> As regards the maritime boundary, . . . it has always been publicly known that the Republic of Ghana and the Republic of Côte d'Ivoire have not yet delimited their maritime boundary. It is also publicly known that in recent years the two Governments have met in an effort to negotiate their maritime boundary in accordance with international law. Those negotiations remain ongoing.

(2) Seismic surveys

124. Ghana notes that both States have carried out numerous seismic surveys treating the customary equidistance line as the maritime boundary. According to Ghana, Côte d'Ivoire has never protested Ghana's surveys east of the line, or sought the data collected in those waters. In this regard, Ghana highlights the Parties' conduct related to seismic survey requests as clear evidence of their recognition and respect of the customary equidistance boundary.

125. Ghana points to the fact that both States have made requests to each other before crossing the boundary line as was necessary to carry out such surveys. Ghana underscores that both States have facilitated each other's seismic surveys by authorizing the crossing of the boundary into their respective waters in order to turn around. Ghana, in particular, points to the request submitted by Côte d'Ivoire in 2007 through PETROCI for an authorization from the Ghanaian Government to cross the customary equidistance boundary while carrying out seismic surveys. Ghana notes that coordinates and a map were appended to the request, showing the customary equidistance line extending along and beyond the limits of Ivorian concessions in the area, with the word "GHANA" on the eastern side of the line. Ghana argues that this confirms the existence of a recognized and agreed maritime boundary following an equidistance line.

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126. Côte d'Ivoire maintains that "this very small number of exchanges" demonstrates the absence of agreement on the alleged customary equidistance boundary rather than its existence. Côte d'Ivoire notes that the words used in the request for seismic surveys and in the response show that there was no agreement on a maritime boundary. According to Côte d'Ivoire, Ghana's request makes no mention of any existing boundary and does not refer to its location. Côte d'Ivoire further notes that the map attached to the letter of request makes no reference to a boundary and does not include a legend indicating the existence of a boundary and that the only indicative information contained refers to Ghana's concessions.

127. Côte d'Ivoire contends that its response to the request is even more revealing in respect of the absence of an accepted maritime boundary. According to Côte d'Ivoire, it simply refers to areas "near the maritime boundary" without mentioning the existence of agreement on a boundary or its precise location. In Côte d'Ivoire's view, such response illustrates that "the theoretical maritime boundary" which lies somewhere within the disputed area has not yet been delimited. Côte d'Ivoire thus claims that these exchanges of letters give no indication other than the "appropriate prudence demonstrated by Côte d'Ivoire vis-à-vis Ghana's territorial claims pending a formal delimitation of their maritime boundary, with a view to maintaining good neighbourly relations".

128. Côte d'Ivoire asserts that occasional requests and authorizations for one Party's seismic surveys reflect "caution in a context of uncertainty relating to an undelimited area rather than to a formal request or authorization to cross a delimited boundary".

129. In response to the argument of Côte d'Ivoire that "[t]he wording of the various requests and authorizations was vague and did not make express mention of a boundary line, with precise coordinates", Ghana draws the Special Chamber's attention to the fact that in 1997 Côte d'Ivoire granted permission for seismic surveys, specifically stating "the territorial waters close to the maritime boundary between Ghana and Côte d'Ivoire". According to Ghana, there is nothing vague about these exchanges, as a maritime boundary was expressly mentioned and coordinates were provided.

(3) Drilling activities and the question of protest

130. Ghana maintains that various activities have been carried out by both Parties for the past few decades based on mutual recognition

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and agreement as to the maritime boundary that divided their respective maritime zones and that neither Party ever protested any of these acts by the other. According to Ghana, Côte d'Ivoire never once objected to any of Ghana's extensive activities on its side of the agreed line. Ghana claims that it has drilled over 20 wells "in the area long recognised by Côte d'Ivoire as being within Ghana's maritime area, and only recently claimed by Côte d'Ivoire", and Côte d'Ivoire never once protested any of these activities. As for the alleged protest Côte d'Ivoire claims to have raised in 1992, Ghana argues that the words used in the document do not amount to protest at all and that it is rather "an expression of hope" and was never followed up.

131. In particular, Ghana draws the Special Chamber's attention to five wells in the area now claimed by Côte d'Ivoire. According to Ghana, those wells were drilled by oil companies under its licence in 1970, 1989, 1999, 2002, and 2008, and the information on drilling was publicized and widely available, but Côte d'Ivoire never protested or objected. Ghana argues that "[i]t was only in 2009, after Ghana had discovered significant oil deposits just east of the agreed boundary, that Côte d'Ivoire abandoned its longstanding position and began to offer any protest".

132. Ghana also points out that Côte d'Ivoire has never drilled or attempted to drill east of the agreed boundary line. Of the at least 212 offshore wells Côte d'Ivoire has drilled, none are in the area it now claims; all are to the west of the agreed line.

133. Côte d'Ivoire contends that the history of oil activities presented by Ghana is misleading because Ghana carried out only four drilling operations in the disputed area before 2009, namely in 1989, 1999, 2002 and 2008 in the Tano West field, and in "fairly dubious circumstances". Côte d'Ivoire asserts that between 1988 and 2009, it objected on several occasions to any development of invasive activities on the part of Ghana in the disputed area. Côte d'Ivoire also notes that during the period from 1992 to 2007, it suffered from internal conflicts following the death of President Houphouët-Boigny in 1993, which deflected its attention from the question of the maritime boundary, and that Ghana was particularly *au fait* with this situation because it played an active role in the resolution of the crisis in Côte d'Ivoire.

134. According to Côte d'Ivoire, Ghana stepped up its oil activities in the disputed area from 2009, following the discovery of oil showings in 2007 in the Jubilee field and then in the TEN field in March 2009. In contrast to only four drilling operations before 2009, no fewer than 34 drillings were carried out between 2009 and 2014. Côte d'Ivoire points out that it did not fail to protest against these developments both

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"within the Ivoiro-Ghanaian Joint Commission, and by writing directly to the oil companies operating under Ghana's control". It adds that "Côte d'Ivoire did not protest against any claim of tacit agreement on the part of Ghana for the very simple and very good reason that Ghana never made such a claim before 2011, when negotiations on delimitation were under way".

135. Côte d'Ivoire maintains that contrary to Ghana's repeated claim, the history of oil activities is not one of intense and continuous activity over five decades conducted with the mutual consent of the Parties. Côte d'Ivoire further argues that its conduct can also be explained by a fundamental principle of modern international law, in particular the law of the sea, namely "the need to exercise restraint so as to maximize the chances of resolving disputes through peaceful means and avoiding conflict", which is reflected in articles 74, paragraph 3, and 83, paragraph 3, of the Convention. According to Côte d'Ivoire, it should not be penalized for its "spirit of understanding and cooperation".

136. Ghana rejects the contention made by Côte d'Ivoire that the internal conflict prevented it from focusing on maritime boundary issues. Ghana argues that this is plainly contradicted by the facts. During this period, Ghana points out, the organs of Côte d'Ivoire were all "functional". According to Ghana, "[i]t granted concessions, amended its petroleum and tax laws and engaged extensively with the international petroleum industry and its neighbour Ghana".

(4) Oil concession maps

137. Ghana notes that since the 1950s, extensive oil exploration activities of both Parties have resulted in a large number of maps and that every one of them showed the customary equidistance line as the international boundary between them until Côte d'Ivoire changed its position and published new concession maps in 2011. According to Ghana, these official maps produced by both States constituted representations to the international community that both Parties mutually recognized and accepted the customary equidistance boundary as their international boundary. Ghana also draws the attention of the Special Chamber to the fact that Côte d'Ivoire's maps repeatedly depict the customary equidistance line using two dots and a dash, the international symbol for an international territorial boundary.

138. For its part, Côte d'Ivoire observes that Ghana relies almost exclusively on oil concession maps to establish the existence of a tacit

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agreement between the Parties. Côte d'Ivoire maintains that the probative value the jurisprudence of international courts and tribunals attaches to maps in the context of maritime boundary delimitation is rather limited. Referring to the jurisprudence of the ICJ and arbitral tribunals, Côte d'Ivoire argues that although they may be useful in certain cases, maps have been considered at best as subsidiary proof. In this regard, Côte d'Ivoire recalls the statement made by the Chamber of the ICJ in *Frontier Dispute (Burkina Faso/Republic of Mali)* that "maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps" and that "[t]he only value they possess is as evidence of an auxiliary or confirmatory kind, and this also means that they cannot be given the character of a rebuttable or *juris tantum* presumption such as to effect a reversal of the onus of proof" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, ICJ Reports 1986*, p. 554, at p. 583, para. 56). Côte d'Ivoire further refers to *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, in which the ICJ stated that the only maps that could be considered relevant by the ICJ were those annexed to the agreement concluded by the Parties.

139. With respect to a long list of maps submitted by Ghana, Côte d'Ivoire notes that none of them makes reference to an international maritime boundary or an agreement on such a boundary. In addition, Côte d'Ivoire indicates that most of them are exclusively concession maps and not official charts representing any maritime boundary. In Côte d'Ivoire's view, various Ivorian maps presented by Ghana simply show the positions of oil blocks and do not either mention or provide any evidence of the existence of a boundary. They have no purpose other than to facilitate oil activities and do not reflect any acceptance of a maritime boundary. Côte d'Ivoire contends that this is equally the case with Ghana's own maps.

140. With respect to maps produced by PETROCI, Côte d'Ivoire claims that PETROCI is a private-law body governed by the laws applicable to private companies in Côte d'Ivoire and cannot as such represent or enter into commitments for Côte d'Ivoire in respect of delimitation of its land and maritime boundaries.

141. In response, Ghana argues that Côte d'Ivoire's assessment of the evidentiary value of the maps submitted by Ghana is "erroneous and misleading". While Ghana recognizes that international courts and tribunals have been reluctant to accord "dispositive authority" to maps as sole evidence of the actual location of international boundary and also that the production of a map may indeed be a unilateral act of State that could be misused for expansionist purposes, Ghana maintains that "that is plainly not the case here" for the following reasons.

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142. Ghana points out that the maps submitted to the Special Chamber do not reflect unilateral practice of either Party but practice developed mutually, on each side of the customary equidistance line. Ghana further points to the fact that Côte d'Ivoire has not been able to adduce a single map published between the date of its independence and 2009 that purports to show a maritime boundary with Ghana which departs from the customary equidistance line.

143. Ghana argues that, although Côte d'Ivoire treats all the maps submitted by Ghana in the same way, they vary widely in their probative value. For example, out of 62 maps submitted by Ghana, 24 maps accompany another document such as a concession agreement, national legislation, a report, or correspondence, and therefore have particular evidentiary value. As such, they constitute "a complementary source of evidence on the Parties' conduct, and a reflection of their recognition, respect, and the use of the customary equidistance line as the international border".

144. Contrary to the Ivorian contention that "none of the maps produced mentions an international maritime boundary or an agreement on [it]" and that Côte d'Ivoire's maps which show petroleum blocks only indicate concession limits but not the international maritime boundary, Ghana notes that 22 out of 62 maps submitted by Ghana depict the maritime boundary represented by a dashed line, extending beyond the seaward limits of the oil concession, with the names of one or both Parties on each side of the boundary line. In Ghana's view, those maps, therefore, reflect not only the limits of the oil concessions but also a recognized maritime boundary between the Parties "separate from and independent of the concession limits".

145. Ghana also rejects Côte d'Ivoire's assertion that the conduct of PETROCI cannot engage the Ivorian government, in particular with regard to the delimitation of its land and maritime boundaries. According to Ghana, PETROCI was created as a State oil company, its activities between 1988 and 2001 were carried out as such, and its fundamental nature was not modified by its transformation in 2001 into a "company with public participation". For Ghana, the point is not whether PETROCI has powers to delimit national boundaries, which Ghana acknowledges it does not, but whether the Ivorian national oil company's behaviour reveals the Ivorian authorities' perception of the existence and location of a maritime boundary. Ghana contends that its actions and positions with regard to these questions are "highly probative" when it comes to identifying the position of Côte d'Ivoire.

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146. The Special Chamber observes that the evidence adduced by Ghana shows that oil concession blocks licensed by the two Parties aligned with a line which Ghana claims as an equidistance line. The Special Chamber further observes that the oil activities carried out by each of the Parties, such as seismic surveys and drilling operations, have been confined to the area lying on the respective Party's side of the line. It is undisputed that neither Party attempted to undertake oil activities on the other side of the line. The Special Chamber even notes that each Party requested and obtained the other Party's permission before crossing this line in order to conduct seismic surveys. It is evident therefrom to the Special Chamber that the line in question was of relevance to both Parties when conducting their oil activities.

147. The Special Chamber cannot fail to note, however, that Côte d'Ivoire had objected on several occasions to any development of Ghana's "invasive activities" in the disputed area. Although the frequency and intensity of such objections are not fully clear, the Special Chamber notes that Ghana did not deny that such objections were made. These objections—for whatever reason they were made—have to be taken into account when the practice linked to the oil activities of the Parties is considered in order to assess whether this practice is indicative of the existence of a tacit agreement or the development of such an agreement. The Special Chamber is not convinced that the practice linked to the oil activities of the Parties is indicative of a common understanding of the Parties that a tacit delimitation agreement existed between them.

148. The Special Chamber also notes that Ghana has referred to several oil concession maps established by both private and public sources. However, the Special Chamber is of the view that none of these maps is able to define authoritatively a maritime boundary in the area concerned. For that reason, the Special Chamber does not consider such maps to convincingly endorse the claim of Ghana that there was a clear understanding of the Parties that a tacit delimitation agreement existed between them.

149. The Special Chamber would further like to point out that it has doubts as to whether the practice linked to the oil activities of the Parties might be sufficient to establish a single maritime boundary for the territorial sea, the exclusive economic zone and the continental shelf within and beyond 200 nm. Offshore oil activities take place on the seabed of the territorial sea and the continental shelf. The legal regime covering such activities does not have recourse to the sovereign rights of the coastal State concerned over, for example, the water column above the continental shelf within 200 nm. Furthermore, the Special

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Chamber notes that the oil activities of the Parties have taken place at a distance much less than 200 nm from the baseline. Therefore, it is doubtful how such activities could have a bearing upon the delimitation of the continental shelf within and beyond 200 nm.

150. The Special Chamber notes that Ghana has adduced other facts which it considers to be of relevance, together with the practice concerning oil activities, for the establishment or confirmation of a tacit agreement on a single maritime boundary. Such facts and arguments will be assessed in the following paragraphs.

C. Legislation of the Parties

151. Ghana maintains that the Parties' recognition of the primacy of equidistance for delimiting a maritime boundary as well as their acceptance of an equidistance-based boundary is explicitly referenced in their legislation.

152. Ghana first refers to the Decree of 29 July 1957 issued on behalf of what was then the colony of Côte d'Ivoire by the President of the Council of Ministers in France. For Ghana, the decree is the first example of legislation which acknowledged the existence of the equidistance-based maritime boundary between the Parties dividing their respective territorial seas.

153. Ghana further refers to Presidential Decree 70–618 of Côte d'Ivoire issued on 14 October 1970. This decree was issued by President Houphouët-Boigny to authorize a concession agreement with a consortium led by Esso. The decree explicitly states that the boundary of the Esso concession in the east is "the border line separating the Ivory Coast from Ghana between points K and L". According to Ghana, points K and L depict an equidistance line. Ghana contends that the issuance of decree 70–618, signed by the President, constitutes "an explicit and unambiguous recognition by Côte d'Ivoire's Head of State of the existence of a maritime border between Ghana and Côte d'Ivoire that follows an equidistance line".

154. Ghana also draws the Special Chamber's attention to article 8 of Law 77–926 on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of the Côte d'Ivoire of 17 November 1977 (hereinafter "the 1977 Law"), which provides that:

> With respect to adjoining coastal States, the territorial sea and the zone referred to in Article 2 of this law [i.e., the exclusive economic zone] shall be delimited by agreement in conformity with equitable principles and using,

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if necessary, the median line or the equidistance line, taking all pertinent factors into account.

155. Ghana claims that article 8 "officially recognized the principle of equidistance as the most appropriate method of delimitation of Côte d'Ivoire's maritime boundaries", which can be "recognized as offering an equitable solution with respect to its maritime boundary with Ghana". Ghana notes that the 1977 Law remains in effect and applicable to this day and that its content has been reaffirmed in other national legislation, including with respect to fishing and navigation, and petroleum.

156. For its own legislation, Ghana notes that article 4 of its Law on Petroleum Exploration and Production of 1 June 1984 (hereinafter "the 1984 Petroleum Law") provides that Ghana's concession maps show the petroleum fields "within the jurisdiction of Ghana". Ghana points out that its official charts and concession maps consistently show Ghana's exclusive economic zone and continental shelf as "being delimited by the customary equidistance boundary". Ghana further points to Section 7 of the Maritime Zones (Delimitation) Law of 2 August 1986, which provides that "[t]he lines of delimitation of the territorial sea, exclusive economic zone and continental shelf as drawn on official charts are conclusive evidence of the limits of the territorial sea, exclusive economic zone and continental shelf".

157. For its part, Côte d'Ivoire submits that "a country's legislation cannot under any circumstances establish the existence of an agreement between two States". According to Côte d'Ivoire, a law may confirm an agreement but it cannot create it.

158. Côte d'Ivoire contends that Ghana's explanation of the origin of the alleged tacit agreement in a 1957 decree issued in Paris by the then French colonial power is "hardly convincing". For Côte d'Ivoire, it cannot seriously be argued that the 1957 decree establishes that the eastern limit of the concession, which was not even mentioned in the decree, followed an equidistance boundary.

159. Côte d'Ivoire notes that Presidential Decree 70–618 of 14 October 1970, to which Ghana attaches considerable significance as evidence of Côte d'Ivoire's recognition of the alleged customary equidistance boundary, does not contain any reference to such a boundary or to any other recognized boundary. According to Côte d'Ivoire, its only purpose is the organization by Côte d'Ivoire of exploration of its oil reserves. Côte d'Ivoire argues that Ghana distorts the wording of the decree by deliberately ignoring the fact that the Decree distinguishes between points whose coordinates are given specifically

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and other points (such as points K and L) whose coordinates are "approximate". According to Côte d'Ivoire, this cautious wording reflects the uncertainty and the lack of agreement over its maritime boundaries. Côte d'Ivoire also notes that article 1 of the decree uses identical terms to describe the eastern limits of Côte d'Ivoire with Ghana and the western limits with Liberia. It states that "[t]o accept Ghana's position seeking to establish a new maritime boundary with Côte d'Ivoire, claiming a long-term agreement, would therefore effectively lead the Special Chamber to establish a new boundary" between Côte d'Ivoire and Liberia. In Côte d'Ivoire's view, such position cannot be legitimately upheld.

160. In this regard, Côte d'Ivoire draws the Special Chamber's attention to decree 75–769 of 29 October 1975, which renewed the hydrocarbon exploration permit granted to the consortium led by Esso in 1970. Article 2 of the decree contained the following reservation: "The coordinates of reference points M, L and K separating Côte d'Ivoire and Ghana are given by way of indication and cannot in any case be considered as being the national jurisdiction boundaries of Côte d'Ivoire". Côte d'Ivoire claims that "article [2] of the Decree makes clear that the limits of the concession certainly do not represent the maritime boundaries of Côte d'Ivoire".

161. As for its 1977 Law, Côte d'Ivoire asserts that Ghana's reading of article 8 is incorrect. According to Côte d'Ivoire, article 8 provides that the maritime boundaries of Côte d'Ivoire must be delimited "by agreement in conformity with equitable principles", using "if necessary", the equidistance/relevant circumstances method. In Côte d'Ivoire's view, it is clear from the wording of article 8 that the use of the equidistance or median line is only relevant "if necessary"—"*le cas échéant*"—meaning that the use of such line will depend on the circumstances of the case. It thus simply reflects the state of the law on maritime delimitation as it stood.

162. Côte d'Ivoire argues that Ghana's "1986 Maritime Zones (Delimitation) Law" offers no assistance as it refers to official charts representing maritime boundaries and these have never been produced. Even if they had been, they would only have represented Ghana's position and not an agreement between the Parties.

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163. The Special Chamber observes that national legislation, as a unilateral act of a State, is of limited relevance to proving the existence of an agreed maritime boundary. In the present case, the legislation of

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both Parties adduced by Ghana does not give a clear enough indication in that respect. The decree of 1957 dealt with a concession on oil activities, not with the establishment of a boundary in the territorial sea. Similarly, decree 70–618 issued by the President of Côte d'Ivoire establishes a boundary for the Esso concession. The reference to the "border line separating the Ivory Coast from Ghana between points K and L" cannot be taken as the acknowledgement of a tacit agreement between the two States that a maritime boundary exists. This interpretation of decree 70–618 is confirmed by Côte d'Ivoire's decree 75–769, which renewed the hydrocarbon exploration permit granted to a consortium led by Esso, where it is explicitly stated that "[t]he coordinates of reference points M, L and K separating Côte d'Ivoire and Ghana . . . cannot . . . be considered as being the national jurisdiction boundaries of Côte d'Ivoire". This decree actually proves exactly the opposite of what Ghana claims. Finally, article 8 of the 1977 Law of Côte d'Ivoire mentions a future delimitation ("shall be delimited by agreement") and therefore, once again, cannot be used to prove that a tacit delimitation agreement already existed.

D. Representation to international institutions

164. Ghana argues that both Parties have accepted the customary equidistance line as an international boundary in their statements to international institutions, in particular the Commission on the Limits of the Continental Shelf (hereinafter "CLCS"). In this regard, Ghana draws the attention of the Special Chamber to the submissions of the two Parties to the CLCS. According to Ghana, Côte d'Ivoire's submission "asserted a claim beyond 200 miles *only to the west* of an equidistance boundary with Ghana" and Ghana's submission likewise "asserted a claim *only to the east* of the equidistance boundary". In Ghana's view, this shows that "both Parties appear to have accepted that the customary equidistance line . . . extends beyond 200 M, to the full extent of their maritime entitlements, including the outer continental shelf".

165. Ghana further points to the revised submission made by Côte d'Ivoire on 24 March 2016, "less than a fortnight prior to filing its Counter-Memorial", which replaced its original submission. Ghana notes that, as a result of this "new and enlarged submission", "the entitlements of Ghana and Côte d'Ivoire in the outer continental shelf are now said to overlap, whereas previously there was no overlap". However, Ghana argues that "such a revised submission, coming

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several years after the commencement of the dispute can be of little probative value for the Special Chamber in assessing the existence of a tacit agreement between the Parties and determining an equitable maritime boundary".

166. Côte d'Ivoire rejects Ghana's argument, stating that its original submission of 8 May 2009 to the CLCS does not constitute acceptance of the alleged customary equidistance line. Côte d'Ivoire recalls that its submission to the CLCS of 8 May 2009 expressly stated that "Côte d'Ivoire has overlapping maritime claims with adjacent States in the region, but has not signed any maritime boundary delimitation agreements with any of its neighbouring States to date". The submission also indicated that the consideration of the Ivorian submission "will not prejudice matters relating to the determination of boundaries between Côte d'Ivoire and any other State(s)". Côte d'Ivoire points out that the same position was stated in Ghana's submission to the CLCS of 28 April 2009. In the view of Côte d'Ivoire, Ghana's argument that Côte d'Ivoire's 2009 submission constitutes an official statement that "show[s] clearly its acceptance of the customary equidistance boundary" is therefore unfounded. On the contrary, it is clear on reading the submissions lodged by both Parties in 2009 that there is no agreement on the maritime boundary between them.

167. As regards its amended submission of 24 March 2016, Côte d'Ivoire explains that its original submission in 2009 did not fully document the entitlement to an extended continental shelf, both to the east and to the west and that in 2016 it became urgent for Côte d'Ivoire to provide the CLCS with all the information required for it to assess the extent of Côte d'Ivoire's entitlement, "as its submission was next in line as queued by the Commission in the order received". Côte d'Ivoire also points out that it is not in any way invoking this amended submission in support of its arguments concerning the maritime boundary with Ghana. According to Côte d'Ivoire, it is doing so "solely in order to provide proof of its entitlement to the continental shelf beyond 200 nautical miles and the extent thereof".

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168. The Special Chamber notes that the submissions to the CLCS of both Parties clearly indicate the existence of overlapping maritime claims with neighbouring States and include a disclaimer that their consideration will be without prejudice to the determination of each Party's lateral maritime boundaries. In light of this clear indication, in the Special Chamber's view, the fact that the limits of the continental

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shelf claimed by the two Parties in their initial submissions coincide along the equidistance line can hardly be considered as evidence of a tacit agreement on a maritime boundary. The amended submission of Côte d'Ivoire, which the Special Chamber will later examine to ascertain whether it can be taken into account in these proceedings, does in fact support this finding.

E. Bilateral exchanges and negotiations

169. Côte d'Ivoire maintains that "[t]he most important element of conduct pointing to the absence of a tacit agreement" is that the Parties repeatedly proposed negotiations on the delimitation of a maritime boundary and such negotiations eventually took place. According to Côte d'Ivoire, bilateral exchanges and negotiations between the Parties between 1988 and 2014, and their failure, are the very proof of the fundamental disagreement between the Parties on their maritime boundary.

170. Côte d'Ivoire recalls that, before the 15th ordinary session of the Joint Commission on Redemarcation of the Ghanaian-Ivorian Border ("Commission on Redemarcation"), it requested that the "delimitation of the maritime and lagoon boundary" be included in the agenda and Ghana agreed to it. Côte d'Ivoire further recalls that at the meeting it proposed "a maritime boundary line consisting in extending seaward the terminus segment of the land boundary between posts 54 and 55". According to Côte d'Ivoire, at the meeting Ghana did not respond to the Ivorian proposal not because a maritime boundary had already been delimited but for the reason that it had no mandate to discuss it. Côte d'Ivoire asserts that this exchange shows that from 1988 it has made clear to Ghana that it considered no agreement on delimitation to exist between the Parties, that it wished to conclude such an agreement by way of bilateral negotiations, and that it claimed a maritime boundary distinct from the so-called "customary line".

171. According to Côte d'Ivoire, four years later, in February 1992, Ghana proposed to it that the question of maritime delimitation be dealt with bilaterally. Following considerable preparatory work, Côte d'Ivoire replied in April 1992, accepting its invitation to negotiate. On that occasion, Côte d'Ivoire notes that it made a request to Ghana by a telegram to the effect that "whilst awaiting the meeting of the Joint Border Redemarcation Commission, the two countries shall abstain from all operations or drilling works in the Zone whose status remains

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to be determined". Côte d'Ivoire states that Ghana never responded to the Ivorian request and the meeting did not take place. However, in the view of Côte d'Ivoire, Ghana's proposal to initiate maritime negotiations suggested that it considered that no tacit agreement on delimitation existed between the Parties.

172. Côte d'Ivoire adds that on 2 December 1997 the Parties held a meeting of technical working teams where it was agreed, according to the minutes, to "reactivat[e] the Ivoiro-Ghanaian Commission on the border problems". Given that the demarcation of the land border had been completed by that time, this was clearly a reference to maritime delimitation negotiations.

173. Côte d'Ivoire states that bilateral negotiations on delimitation of the maritime boundary finally began in July 2008 and the ten meetings of the Joint Ivoiro-Ghanaian Commission of the Maritime Border Demarcation between Côte d'Ivoire and Ghana (hereinafter "the Commission on Maritime Border Demarcation") took place, ending in May 2014. During the first meeting on 16 and 17 July 2008, according to Côte d'Ivoire, Ghana made a delimitation proposal for the first time to the effect that "the border currently used by the international oil companies and the national companies . . . should be formalized and recognized within the framework of a bilateral agreement as being the maritime border between the two countries". Côte d'Ivoire argues that this is "a very explicit recognition" by Ghana of the distinction between petroleum concessions and a maritime delimitation. Côte d'Ivoire notes that in its communication of 23 February 2009 to Ghana, Côte d'Ivoire, "reiterating the position it had already set out in 1988 and 1992 to the effect that their maritime boundary could be delimited only by express agreement in accordance with UNCLOS", rejected this proposal, stating that the proposed line which was used by the oil companies to avoid boundary disputes does not constitute an official agreement between the two States. According to Côte d'Ivoire, it instead proposed that "the boundary be delimited using the geographical meridian method".

174. Côte d'Ivoire further notes that on this occasion, it reiterated its request that the Parties should refrain from any activity in the area to be delimited:

> Moreover, important exploration and evaluation works were undertaken in 1980 by Ghana in the maritime border zone between the two countries. These works are still ongoing, in spite of representations made by Côte d'Ivoire in 1988 and 1992 to Ghana requesting the latter country to stop any unilateral activity in the neighbouring maritime border until a determination by consensus of the maritime border between our two coastal States. Any works

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likely to potentially undermine the interests of Côte d'Ivoire must not be undertaken.

175. Côte d'Ivoire states that at the fourth meeting held on 27 and 28 April 2010, Ghana reiterated "its initial proposal based on the equidistance/relevant circumstances method". In response, Côte d'Ivoire notes that it provided more detailed observations on Ghana's position in a communication dated 31 May 2010, in which it explained the "justifications for rejecting the equidistance method", namely "the cut-off effect to the detriment of Côte d'Ivoire" and the "spectacular effects of amputation and enclosure" resulting from this method. Côte d'Ivoire adds that it reiterated its proposal to use the meridian method.

176. According to Côte d'Ivoire, Ghana, in its response dated 31 August 2011, repeated its proposal to adopt "its oil concession line as the maritime boundary on the ground, put forward for the first time, that it was supposedly an equidistance line adjusted to the east in order to follow the limit of its oil blocks, which constituted a relevant circumstance". Côte d'Ivoire argues that Ghana, in this response, also introduced "the notion of tacit agreement into the debate for the first time, without, however, explaining its purpose, its effects or its link with the application of the equidistance method which it had just invoked".

177. Côte d'Ivoire notes that at the fifth meeting held on 2 November 2011, it made "a new proposal for delimitation based on ... the bisector method". Côte d'Ivoire points out that at the meeting it also stated that "oil practice could not under any circumstances be translated to mean the existence of a tacit agreement" and "reiterated its request, which had already been made in 1992 and 2009, that oil activities in the maritime boundary area be suspended pending a bilateral delimitation agreement". According to Côte d'Ivoire, the expression "customary equidistance boundary" seems to have been first used by Ghana during this meeting. Côte d'Ivoire adds that oil practice was no longer raised by Ghana as "constituting a tacit agreement" until the present proceedings, but merely as "a relevant circumstance justifying the modification of the strict equidistance line".

178. Côte d'Ivoire states that at the tenth meeting held on 26 and 27 May 2014 it reiterated its proposal based on a bisector line which it justified on grounds of marine erosion, the concavity of the Ivorian coast and the regional specificities of the Gulf of Guinea but Ghana rejected this argument without even discussing its merits. Côte d'Ivoire further notes that at the end of the meeting the Parties concluded that a "specific method of delimitation has not yet been agreed by both parties". According to Côte d'Ivoire, it was at this point that Ghana "suddenly unilaterally" broke off the bilateral negotiations.

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179. In addition, Côte d'Ivoire draws the Special Chamber's attention to two joint statements issued by the Presidents of the two States, the first in 2009 and the second in 2015, which reaffirmed their determination to find a negotiated settlement of the maritime boundary. The first joint statement dated 4 November 2009 states that

> the land boundary has been delimited whereas discussions aiming at the delimitation of the maritime boundary had been initiated by the two countries. The two leaders called upon the competent authorities of the two countries to proceed further with the discussions in order to reach a quick outcome.

180. The second joint statement of the Heads of State issued on 11 May 2015 also affirmed that "[t]he delimitation of the maritime boundary remains an objective of the Parties". For Côte d'Ivoire, such statements, made at the highest State level, are compelling evidence of the absence of an agreement on delimitation.

181. Côte d'Ivoire contends that the minutes of the negotiations, the related documents and the joint statements issued on the occasion of the meetings of the two Heads of State, taken together, show, *inter alia*, that there was no tacit agreement on the maritime boundary between the Parties and that during the negotiations Côte d'Ivoire reiterated its request that Ghana stop its oil activities in the disputed area.

182. Ghana does not dispute that the issue of formalizing the maritime boundary was included in the agenda of the 1988 meeting of the Commission on Redemarcation, or that Côte d'Ivoire proposed an alternative method of delimitation to the principle of equidistance. Ghana acknowledges that the minutes of the proceedings reflect that this point was part of the agenda of the meeting and that Côte d'Ivoire made a presentation on this matter.

183. Ghana nonetheless notes that the report of the meeting on this matter is limited to a single paragraph and that Côte d'Ivoire offers no evidence as to the presentation it delivered in 1988. According to Ghana, if a presentation on an alternative method of delimitation had been important, it would have been reflected in the minutes of the proceedings or at least added to them later, but Côte d'Ivoire offers no such evidence in support of its claim. Ghana indicates that the fact that no further communication on the "Ivorian proposal" took place following the 1988 meeting is revealing. Ghana contends that, judging by these circumstances, Côte d'Ivoire's raising of the issue of delimitation before the Commission on Redemarcation in 1988 was "a minor, isolated event". Moreover, Ghana draws the Special Chamber's attention to the fact that the minutes of the 1988 meeting

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state its objective as being to study the possibility of delimiting the maritime boundary "existing between the two countries". For Ghana, this wording contradicts Côte d'Ivoire's claim that there was no existing maritime boundary.

184. With respect to its 1992 invitation to address the issue of maritime delimitation through bilateral negotiation, Ghana rejects Côte d'Ivoire's argument that such an invitation shows that "there was no delimitation agreement existing between the Parties at that time". According to Ghana, the purpose of its invitation was to "formally and precisely establish what they had already accepted in practice and principle". Ghana therefore argues that its proposal to address the question of the formal delimitation of the maritime boundary through bilateral negotiations is fully consistent with the existence of a tacit agreement on the customary equidistance line.

185. With respect to the 1992 telegram suggesting that, pending a planned meeting of the two States' boundary experts, they should refrain from further activity in the border area, Ghana contends that it is an internal communication and that there is no evidence that it was ever conveyed to Ghana. Ghana further argues that "[i]f it was proposed at all, it was done tentatively and in the mildest of terms, simply expressing the hope that both States might suspend such activities", and was far from a protest.

186. Ghana further maintains that in any event Côte d'Ivoire's subsequent practice clearly contradicts the narrative it gives. Ghana points out that, with respect to its 1992 invitation, Côte d'Ivoire's Government did not follow it up after the initial date proposed by Ghana had been refused by the authorities of Côte d'Ivoire and that as a result the Commission on Redemarcation never met again. In Ghana's view, it is difficult to see why Côte d'Ivoire never attempted to revive Ghana's invitation and set a new date for the meeting of the Commission on Redemarcation if there truly was a disagreement between the two States as to the course of their maritime boundary.

187. Ghana asserts that Côte d'Ivoire's subsequent practice also contradicts its alleged request that both States suspend all activities in the relevant areas. According to Ghana, "for fifteen years from 1992 to 2007 Côte d'Ivoire actively participated in mutual State practice with Ghana, while being perfectly informed of Ghana's activities". In parallel, Ghana points out, Côte d'Ivoire developed its own activities exclusively in what have always been considered as its waters to the west of the customary equidistance boundary. Thus Ghana claims that the exchanges in 1988 and 1992 are "minor outliers, at most, in the five decades of consistent mutual practice between the Parties".

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188. With respect to the bilateral negotiations on the delimitation of a maritime boundary from 2008 to 2014, Ghana points to its opening statement at the first meeting in July 2008, which expressly "proposes that the international boundary in existence, which is used by international Petroleum Companies, with PETROCI and GNPC as partners, on behalf of Côte d'Ivoire and Ghana respectively . . . be formalized and signed as our common maritime boundary". According to Ghana, the minutes of the meeting show that "what drove the convening of the meeting was not a sense that there was no existing maritime boundary", but rather a concern that submissions to the CLCS "would be assisted by parties concluding a treaty formalizing their existing maritime boundary, and doing so by May 2009". Ghana thus rejects Côte d'Ivoire's argument that the initiation of the negotiation on delimitation in 2008 is evidence of the absence of an agreed maritime boundary.

189. Ghana further states that the dispute between the Parties started on 23 February 2009 during the second meeting, when Côte d'Ivoire abruptly changed course, "unexpectedly repudiating the customary equidistance line" and presenting "a new line on which it had never previously relied—the so-called 'geographic meridian approach'". According to Ghana, this approach ignored half a century of agreement on the customary equidistance line. Ghana asserts that Côte d'Ivoire did so "only after the discovery of oil on Ghana's side of the equidistance line". Ghana adds that Côte d'Ivoire has since repeatedly changed its position on the method of delimitation.

190. Ghana notes that at the second meeting, Côte d'Ivoire requested that "ongoing exploration and evaluation works undertaken by Ghana west of that meridian [claimed by Côte d'Ivoire] be stopped" and "suddenly claimed that it had made earlier requests, in 1988 and 1992". Ghana claims that it "sought information on those purported 'requests', but none came" until six years later, at the provisional measures hearing, when it finally saw the claimed 1992 "request". However, according to Ghana, it offers no support for Côte d'Ivoire's position (see para. 187).

* * *

191. The Special Chamber observes that the Parties disagree on the significance of the bilateral exchanges in 1988 and 1992 as well as the bilateral negotiations from 1988 to 2014. With respect to the exchanges in 1988 and 1992, the Special Chamber considers that while the evidence relating to them is limited and their exact content is less

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than clear, the fact that they took place, which is uncontested between the Parties, is of relevance to the Special Chamber's task of determining whether a tacit maritime boundary exists. As regards the bilateral negotiations between 2008 and 2014, the Special Chamber has enough information, including the minutes of the meetings of the Commission on Maritime Border Demarcation, to determine what they are about. The Special Chamber notes in this regard that at those meetings the Parties engaged in substantive discussion as to what should be the appropriate method to delimit their maritime zones. The Special Chamber also notes that only in 2011 did Ghana introduce its argument regarding a tacit agreement for the first time. The Special Chamber is therefore not convinced by Ghana's argument that the purpose of the bilateral negotiations was simply to formalize a maritime boundary tacitly agreed upon between the Parties.

192. The Special Chamber also takes note of the two joint statements of 4 November 2009 and 11 May 2015 made by the Presidents of Ghana and Côte d'Ivoire. In these statements, the Presidents refer to an agreement on the maritime boundary to be reached in the future. The fact that substantially identical statements were made indicates that no such agreement had been reached between the two States on the delimitation of their maritime boundary in the territorial sea, the exclusive economic zone and the continental shelf within and beyond 200 nm.

F. Other maritime activities

193. Prior to the hearing, the Special Chamber posed a question to both Parties: "[c]ould the Parties provide information on any arrangements which could exist between them on fisheries matters or with respect to other uses of the maritime areas concerned?"

194. According to Ghana, there are no arrangements between the Parties with respect to fisheries. However, it has an arrangement with a private company that monitors the movement of licensed fishing vessels. Ghana states that the map on which this company relies in its arrangement with Ghana shows an equidistance boundary with Côte d'Ivoire. Ghana also refers to the Fisheries Partnership Agreement (FPA) concluded between Côte d'Ivoire and the European Union (EU), which allows EU vessels to fish in Ivorian waters. According to Ghana, the expert report evaluating the implementation of the FPA in the waters of Côte d'Ivoire states that European vessels rely on the equidistance limits in the absence of "exact coordinates of the EEZ

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limits". It is therefore the understanding of Ghana that EU fishing vessels are using an equidistance boundary and are doing so with the full knowledge of both Côte d'Ivoire and the EU. Ghana adds that the United Nations Food and Agriculture Organization (FAO) has published material that shows Côte d'Ivoire's fishing limit with Ghana as being an equidistance line. Ghana contends that these maps and the report confirm that it is this limit, following the customary equidistance line, that the EU fishing vessels and the private company consider as the eastern maritime boundary of Côte d'Ivoire.

195. For its part, Côte d'Ivoire states that the Parties signed an agreement on fishing and oceanographic research on 23 July 1988, under which they authorize fishing boats and oceanographic vessels to operate in each other's territorial sea and exclusive economic zones. Côte d'Ivoire points to article 12, which provides that: "[t]his Agreement shall not affect the rights, claims or views of either Contracting Party with regard to the limits of its territorial waters or its fisheries jurisdiction".

196. For Côte d'Ivoire, it is clear from this provision that in 1988 the negotiating States contemplated that "there could be differing rights, claims and views on limits and jurisdiction over fisheries". On the other hand, Côte d'Ivoire argues that the maps and the report referred to by Ghana in its response have "no probative value" because they are prepared by private experts or contain the usual disclaimers.

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197. The Special Chamber considers that the Parties' answers to the question it posed indicate that there are no specific arrangements between them on fisheries or other maritime matters. Although it appears that the Parties follow an equidistance line in their fishing activities, there is no evidence to suggest that the Parties recognize such line as their fishery or maritime boundary. In the view of the Special Chamber, the other maritime activities of the Parties fall short of proving the existence of any agreed maritime boundary between them.

G. Standard of proof

198. The Special Chamber now turns to what the standard of proof required to show the existence of a tacit agreement should be.

199. Ghana acknowledges that the evidence establishing the existence of a tacit agreement must be "compelling", as was observed by the

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ICJ in *Territorial and Maritime Dispute in the Caribbean Sea (Nicaragua* v. *Honduras)*. However, Ghana argues that "this is not, and should not be, an unattainable standard". In particular, Ghana contends that the "compelling" standard "does not imply that only [those] tacit agreements that have been subsequently confirmed by a written document", as was the case in *Maritime Dispute (Peru* v. *Chile)*, can be recognized. In Ghana's view, the ICJ did not require such confirmation in the form of a written agreement as a condition for recognition of a tacit agreement in its Judgment in *Maritime Dispute (Peru* v. *Chile)* and there is no reason as to why the Special Chamber should be more demanding in this respect.

200. Ghana argues that "the history of both States' conduct in the present case is compelling, and leaves no room for doubt as to the existence of a mutual agreement between them on the location of their common border along the equidistance line".

201. Ghana points to the "special value of mutual oil practice as evidence of a tacit agreement on a common border". Ghana refers to the ICJ's statement in *Land and Maritime Boundary (Cameroon* v. *Nigeria: Equatorial Guinea intervening)* that "the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled". Ghana also refers to *Continental Shelf* (*Tunisia/Libyan Arab Jamahiriya*), in which the ICJ emphasized that the line "of adjoining concessions, which was tacitly respected for a number of years . . . does appear to the Court to constitute a circumstance of great relevance for the delimitation". According to Ghana, this is indeed the case here, in light of the much longer period over which the Parties' mutual practice regarding oil exploration and exploitation in the border area was consistently carried out without any conflict.

202. Ghana rejects Côte d'Ivoire's contention that in this case Ghana "merely invokes a simple practice, which is limited . . . to the oil sector". For Ghana, nothing could be further from the truth. In Ghana's view, the case-file before the Special Chamber demonstrates clearly that the two Parties have recognized "a maritime boundary whose existence is autonomous of the limits of their oil concessions". It is this boundary that serves as "the basis, the point of reference, for drawing the limits of the maritime concessions and for the activities conducted in the maritime areas in question".

203. Ghana argues that Côte d'Ivoire's abandonment of the long-agreed boundary in February 2009 marks "the critical date when the dispute between the two States crystallized". In this regard, Ghana

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refers to the statement made by the ICJ in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*:

> it cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them.
>
> (*Judgment, ICJ Reports 2002*, p. 625, at p. 682, para. 135)

According to Ghana, "[a]ny and all self-serving activities undertaken by Côte d'Ivoire with respect to the maritime boundary after this date lack legal relevance for purposes of determining where the boundary lies". Ghana notes that such activities of Côte d'Ivoire include "its alterations of maps and its designation of new concession blocks to the east of the historical equidistance line".

204. Côte d'Ivoire maintains that the burden of proof for a tacit agreement lies with the State which claims it—Ghana in this case—and that the conditions for recognition of a tacit agreement on maritime delimitation are "particularly strict". According to Côte d'Ivoire, this explains why the argument of tacit agreement has generally been rejected by judicial bodies.

205. In this regard, Côte d'Ivoire refers to *Maritime Dispute (Peru v. Chile)*, the only case in which the existence of a tacit agreement concerning a maritime boundary was recognized. In Côte d'Ivoire's view, the crucial factor in recognition of a tacit agreement in that case was the existence of a treaty between the Parties which expressly referred to that tacit agreement. However, Côte d'Ivoire notes that in the present case Ghana does not claim that any express confirmation exists. According to Côte d'Ivoire, although the jurisprudence does not always require the existence of a treaty, the absence of a written instrument makes proof of a tacit agreement particularly difficult for the State claiming its existence.

206. Côte d'Ivoire maintains that Ghana has failed to meet the high standard of proof required for recognition of a tacit agreement on maritime delimitation. Côte d'Ivoire notes that "Ghana's argument that there is a 'customary equidistance line' between the Parties is based almost exclusively on their oil activities", in particular relative alignment of concessions and seismic cooperation. Côte d'Ivoire indicates, however, that international courts and tribunals are "extremely reluctant, and even refuse, to take into consideration oil practice, however intensive, for the purposes of delimiting the maritime boundary". In Côte d'Ivoire's view, "[o]il practice can follow an agreement, be it express or tacit, reflect or support it, but it cannot constitute an agreement". Consequently, the

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party that invokes the agreement must first prove it before referring to concessions as "confirmatory *effectivités*".

207. Côte d'Ivoire also argues that petroleum conduct says nothing about any of the other sovereign rights, jurisdiction and duties of the coastal State in the exclusive economic zone or over the continental shelf. Accordingly, in Côte d'Ivoire's view, Ghana's attempt to "extrapolate from this limited petroleum conduct an all-purpose maritime boundary dividing the seabed and the water column of the exclusive economic zones and the continental shelf" is not tenable. Moreover, Côte d'Ivoire asserts that even the petroleum conduct itself is not as clear as Ghana claims and has been contested by Côte d'Ivoire.

208. In response to Ghana's argument regarding the critical date, Côte d'Ivoire notes that it did not see the critical date "as a matter that could assist the Chamber". For Côte d'Ivoire, "it is hard to say when a dispute arises in the case of an undelimited international maritime boundary". Côte d'Ivoire observes that although Ghana puts the date as February 2009, which "they no doubt consider to be the most favourable date for them", the date selected could well have been 1988, as Côte d'Ivoire suggested in the Rejoinder, 1992, 2011, or 2014, when the case was submitted to arbitration. Côte d'Ivoire thus contends that the critical date test is hardly helpful in a case such as this one and that the Special Chamber does not need to determine the critical date.

* * *

209. The Special Chamber notes that the Parties disagree as to whether the standard of proof for the existence of a tacit agreement has been met in the present case. It will give its conclusions on that in the following paragraphs.

210. The Special Chamber further notes the different positions of the Parties about the critical date. However, it is of the view that the activities of both Parties in the maritime area under consideration have not changed over the years. For that reason, the Special Chamber does not consider that the notion of critical date is relevant in the present case.

H. Conclusions of the Special Chamber on the existence of a tacit agreement

211. The Special Chamber has already indicated that Ghana claims in this case that there is a tacit agreement between the Parties with

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respect to a maritime boundary delimiting the territorial sea, exclusive economic zone and continental shelf both within and beyond 200 nm and that the boundary follows an equidistance line. The Special Chamber must therefore determine whether there is a tacit agreement between the Parties on a maritime boundary.

212. At the outset, the Special Chamber recalls the observation made by the ICJ in *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*: "Evidence of a tacit legal agreement must be compelling. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed" (*Judgment, ICJ Reports 2007* (*II*), p. 659, at p. 735, para. 253).

213. The Special Chamber notes that the evidence adduced by Ghana shows that the Parties' oil activities, such as the granting of oil concessions, seismic surveys, and drilling operations, have been carried out along the line which Ghana refers to as the "customary equidistance boundary". The Special Chamber further notes that the oil concession maps submitted to it attest to the above facts. The Special Chamber acknowledges that the practice has been consistent and mutual over a long period of time, although it is not free of controversy or doubt.

214. In this regard, the Special Chamber takes note of the claim made by Côte d'Ivoire that it requested on several occasions, including first in 1992 and then in 2009 and 2011, that the Parties should refrain from any unilateral activity in the area to be delimited. In the view of the Special Chamber, Côte d'Ivoire's requests cast doubt on Ghana's claim that the Parties' oil practice has been unequivocal over more than five decades. In any event, as far as the Parties' oil practice is concerned, whether or not its character is unequivocal is not the main consideration of the Special Chamber.

215. The Special Chamber considers that the oil practice, no matter how consistent it may be, cannot in itself establish the existence of a tacit agreement on a maritime boundary. Mutual, consistent and long-standing oil practice and the adjoining oil concession limits might reflect the existence of a maritime boundary, or might be explained by other reasons. As the ICJ stated in *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*:

> A *de facto* line might in certain circumstances correspond to the existence of an agreed legal boundary or might be more in the nature of a provisional line or of a line for a specific, limited purpose, such as sharing a scarce resource. Even if there had been a provisional line found convenient for a period of time, this is to be distinguished from an international boundary.
>
> (*Judgment, ICJ Reports 2007* (*II*), p. 659, at p. 735, para. 253)

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As the ICJ also stated with respect to oil concession limits in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*: "[t]hese limits may have been simply the manifestation of the caution exercised by the Parties in granting their concessions" (*Judgment, ICJ Reports 2002*, p. 625, at p. 664, para. 79). Thus the proof of the existence of a maritime boundary requires more than the demonstration of longstanding oil practice or adjoining oil concession limits.

216. The Special Chamber observes that Ghana indeed argues that the oil practice of the Parties shows not only the limits of their oil concessions but also the existence of their maritime boundary by referring, *inter alia*, to the particular way a boundary line is depicted on oil concession maps, the Parties' correspondence concerning seismic surveys in the vicinity of the alleged boundary, and the words employed in the Parties' legislation.

217. As far as oil concession maps are concerned, the Special Chamber is not convinced that these maps show not only the limits of oil concessions but also maritime boundaries as Ghana claims. The Special Chamber notes that a number of oil concession maps proffered by Ghana depict a broken line, starting from the land boundary terminus and extending beyond the seaward limits of the oil concession, with the names of one or both Parties on each side of the line. In the absence of a clear reference to an international maritime boundary on the maps, it is difficult to accept such depiction of a line as an indication of an international maritime boundary.

218. The Special Chamber recalls that Côte d'Ivoire, in authorizing Ghanaian licensees to enter into its maritime area in order to conduct seismic surveys, specifically refers to the Ivorian territorial waters near the "maritime boundary between Ghana and Côte d'Ivoire". Ghana considers this to be Côte d'Ivoire's explicit recognition of a maritime boundary between the two States. However, the Special Chamber cannot accept Ghana's argument, as the mere use of the term "maritime boundary" cannot prove the existence of an "agreed" maritime boundary any more than a map depicting a line in a particular way does.

219. As regards the decree of 29 July 1957, the Special Chamber cannot accept, for the reasons set out above, Ghana's argument that it is the first example of legislation recognizing the existence of the maritime boundary between the Parties. With respect to Presidential Decree 70–618, the Special Chamber finds it difficult to accept, for the reasons set out above, that it constitutes compelling evidence establishing a tacit agreement on a maritime boundary. Nor can the Special

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Chamber accept that the 1977 Law of Côte d'Ivoire recognizes the "principle of equidistance" as the most appropriate method of delimitation of Côte d'Ivoire's maritime boundary with Ghana. Article 8 of the 1977 Law expressly provides that the equidistance line is to be used, "if necessary", and there is no indication in the Act that the use of such a line is necessary in the delimitation of a maritime boundary between Côte d'Ivoire and Ghana.

220. The Special Chamber considers that the Parties have been aware of the distinction between oil concession limits and the maritime boundary. The awareness that oil concession limits and the maritime boundary are distinct is clearly reflected in the Parties' attempts to delimit their maritime boundary by negotiation, first in 1988, then in 1992, and eventually from 2008 to 2014. It is also reflected in the Parties' submissions to the CLCS. In the Special Chamber's view, Côte d'Ivoire has been particularly cautious in making sure that the limits of its oil concession blocks are distinct from those of its maritime jurisdiction, as the provision in its oil concession contracts states. Nor was Ghana unaware of such a distinction, as its letter to Tullow in 2011 testifies.

221. As regards the bilateral exchanges in 1988 and 1992, the Special Chamber notes that the Parties agree that they took place but differ as to their exact content and significance to the present dispute. In the Special Chamber's view, the fact that these bilateral exchanges took place at all is relevant, because it shows that the Parties recognized the need to delimit a maritime boundary between them.

222. The subsequent bilateral negotiations at the Commission on Maritime Border Demarcation from 2008 to 2014 confirm the Parties' recognition of the absence of a maritime boundary between them. In this regard, the Special Chamber recalls the argument advanced by Ghana that the purpose of the bilateral exchanges and negotiations was simply to "formalize" what the Parties had already agreed "in practice and principle". In the Special Chamber's view, even if it may have been the intention of Ghana, there is no evidence to indicate that it was also Côte d'Ivoire's intention. On the contrary, Côte d'Ivoire has made a distinction between oil concession limits and a maritime boundary.

223. Moreover, a close examination of the minutes of the meetings of the Commission on Maritime Border Demarcation shows that the purpose of the meeting was more than simply formalizing what had already been agreed. At those meetings, the Parties engaged in substantive discussion on various aspects of delimitation, in particular on the delimitation method to be applied.

224. The Special Chamber considers that the Parties' submissions to the CLCS are another indication of the absence of any agreement between them on a maritime boundary. The submissions, including the amended submission of Côte d'Ivoire, clearly stated, in identical terms, that Ghana or Côte d'Ivoire has overlapping maritime claims with adjacent States and has not signed any delimitation agreements with any of its neighbouring States to date. They also include a provision that the submission of information to the CLCS is without prejudice to delimitation of the maritime boundary with neighbouring States. Ghana's submission specifically refers to the "Republic of Côte d'Ivoire" as one of the neighbouring States, and Côte d'Ivoire's submission likewise refers to the "Republic of Ghana".

225. The Special Chamber observes that States often offer and award oil concessions in an area yet to be delimited. It is not unusual for States to align their concession blocks with those of their neighbouring States so that no areas of overlap arise. They obviously do so for different reasons, but not least out of caution and prudence to avoid any conflict and to maintain friendly relations with their neighbours. To equate oil concession limits with a maritime boundary would be equivalent to penalizing a State for exercising such caution and prudence. It would be contrary to article 74, paragraph 3, and article 83, paragraph 3, of the Convention, which require States, pending agreement on delimitation, in a spirit of understanding and cooperation, not to jeopardize or hamper the reaching of the final agreement. It would also entail negative implications for the conduct of States in the area to be delimited elsewhere.

226. The Special Chamber has another reason not to accept Ghana's argument for the existence of a tacit agreement on a maritime boundary. The boundary the Special Chamber has to delimit is a single maritime boundary delimiting the territorial sea, exclusive economic zone and the continental shelf. In the Special Chamber's view, evidence relating solely to the specific purpose of oil activities in the seabed and subsoil is of limited value in proving the existence of an all-purpose boundary which delimits not only the seabed and subsoil but also superjacent water columns. As the ICJ stated in *Maritime Dispute (Peru* v. *Chile)*, "the all-purpose nature of the maritime boundary . . . means that evidence concerning fisheries activity, in itself, cannot be determinative of the extent of that boundary" (*Judgment, ICJ Reports 2014*, p. 3, at p. 45, para. 111).

227. The Special Chamber recalls in this regard that the Parties did not provide a clear answer to the question it posed with respect to fisheries and other maritime activities. The conduct of the Parties with

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respect to matters other than oil concessions and operations seems to confirm the uncertainty as to the maritime boundary, and add little, if anything, to the proof of the existence of a tacit agreement.

228. In light of the foregoing, the Special Chamber concludes that there is no tacit agreement between the Parties to delimit their territorial sea, exclusive economic zone and continental shelf both within and beyond 200 nm.

VIII. ESTOPPEL

229. The Special Chamber now turns to the question of whether estoppel which Ghana has invoked as a subsidiary argument is applicable in the present case.

230. Ghana maintains that "by its acts, Côte d'Ivoire is estopped from objecting to a boundary based on equidistance, and on the customary equidistance line as the maritime boundary". According to Ghana, estoppel is recognized as "a general principle of law, stemming from the fundamental requirement that States must act in good faith in their mutual relations". Ghana submits that three elements are required for a situation of estoppel to exist: first, "conduct by one State creating the appearance of a particular situation"; second, "good faith reliance by the other State on such conduct"; and third, "a resulting detriment to the latter State". Ghana claims that each requirement is satisfied in the present case.

231. Referring to what the ICJ stated in the *Gulf of Maine* case that estoppel would apply if there were "clear, sustained and consistent" conduct, Ghana argues that this "is precisely what occurred here, as evidenced by Côte d'Ivoire's repeated recognition of the customary equidistance boundary in its laws, official correspondence with Ghana, and reports to the international community, as well as its representation of the customary equidistance line as an international boundary in its official maps". In addition, Ghana points out that "Côte d'Ivoire's failure over many decades to object to Ghana's consistent recognition of and respect for the boundary line estops it from now objecting to that line".

232. Ghana further contends that it acted "in good faith in relying upon the conduct and representations of Côte d'Ivoire in regard to the existence and location of an agreed international boundary". According to Ghana, its reliance on Côte d'Ivoire's statements and actions recognizing the boundary may be illustrated by reference to the Deepwater Tano Block, in which, by 2011, when Tullow and its partners, under

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licence from Ghana, were informed by Côte d'Ivoire of its objection to the equidistance boundary, they had invested US$ 630 million in the TEN fields alone, and had numerous on-going contractual commitments.

233. In Ghana's view, "[i]f Côte d'Ivoire were permitted to now abandon the customary equidistance boundary after these many decades, the economic consequences for Ghana would be very severe". Specifically, "a substantial portion of the enormous investment Ghana and its licensees have made would be lost, in particular in the Deepwater Tano Block that contains the TEN . . . fields".

234. Ghana thus maintains that the conditions for an estoppel are met and that "Côte d'Ivoire is also estopped from revoking its longstanding recognition and acceptance of equidistance and the customary equidistance boundary because of the benefits it has enjoyed as a result".

235. Côte d'Ivoire maintains that estoppel is "a contested notion which is very rarely applied in public international law". In particular, Côte d'Ivoire states that "international law does not include the concept of delimitation by estoppel". Côte d'Ivoire asserts that Ghana's argument of estoppel "appears as a substitute for tacit agreement", the existence of which it is unable to establish. However, in Côte d'Ivoire's view, "Ghana cannot avoid establishing proof of a tacit agreement by invoking estoppel in the vain hope of bypassing the well-established jurisprudence regarding tacit agreements".

236. Côte d'Ivoire further maintains that "even if it were recognized that estoppel is accepted in international law and may be invoked by Ghana in the present case, the *cumulative* conditions necessary for its recognition . . . are evidently not met".

237. Côte d'Ivoire contends that "[n]ot only has Côte d'Ivoire never acquiesced to a boundary based on oil concessions but, in addition, it has proposed a different boundary since 1988 and has regularly objected to the activities conducted by Ghana in the disputed area". Côte d'Ivoire therefore claims that the very first condition necessary for the existence of an estoppel is not met.

238. Côte d'Ivoire notes that, although there is no need to analyse two other conditions for estoppel since the first is not met, it "wishes to show, *ex abundante cautela*, that they too are not met".

239. According to Côte d'Ivoire, the second condition for the presence of estoppel is not met either because Ghana fails to prove that it relied in good faith on the conduct of Côte d'Ivoire. Côte d'Ivoire argues that despite its protests that Ghana should not proceed with invasive activities in the disputed area, Ghana ignored them and stepped up these activities significantly since 2008, when the Parties began negotiations

on the delimitation of a maritime boundary. For Côte d'Ivoire, "[t]hat attitude is manifestly incompatible with the obligation to negotiate in good faith and 'not to jeopardize or hamper the reaching of the final agreement' (article 83, paragraph 3, of UNCLOS)". Côte d'Ivoire also points out that as Ghana was aware that its activities were in breach of its international obligations, it "endeavoured to evade any legal proceedings" by excluding maritime boundary disputes from compulsory procedures under the Convention. In those circumstances, Côte d'Ivoire contends, Ghana cannot seriously claim that it had relied in good faith on the conduct of Côte d'Ivoire.

240. Côte d'Ivoire maintains that the third condition necessary for recognition of estoppel is also not met in the present case. With regard to prejudice allegedly suffered by Ghana, Côte d'Ivoire argues that "Ghana cannot claim legal protection against the prejudice to its investments made in a disputed maritime area as that prejudice did not result from the violation of one of Ghana's rights, but solely from its interests, which are, moreover, illegitimate". With respect to damage allegedly suffered by oil companies licensed by Ghana, Côte d'Ivoire notes that Tullow and the other licensees are not parties to these proceedings. In addition, Côte d'Ivoire claims that Tullow made these investments despite Côte d'Ivoire's cautions. According to Côte d'Ivoire, when it warned the company directly in 2011, "its investments amounted to USD 630 million, so the 4 billion about the potential loss of which Tullow complains were spent only after 2001".

* * *

241. The Special Chamber notes at the outset that although Côte d'Ivoire raised some doubts about the notion of estoppel, especially in the context of maritime boundary delimitation, it proceeded to refute Ghana's contention that estoppel is applicable in the present case.

242. In this regard, the Special Chamber recalls the observation made by the Tribunal in the dispute concerning *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)* that

> in 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 recognize, a certain situation.

(*Judgment, ITLOS Reports 2012*, p. 4, at p. 42, para. 124)

243. The Special Chamber observes that Ghana's argument of estoppel is essentially based on the same facts put forward by it to establish the

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existence of a tacit agreement. The Special Chamber has already stated (in paras. 211-28) that various statements, conduct or silence of the Parties over the past five decades fall short of proving the existence of a tacit agreement between them on the maritime boundary. In particular, the fact that the bilateral exchanges and negotiations on the delimitation of a maritime boundary took place between the Parties indicates the absence, rather than the existence, of a maritime boundary.

244. In the Special Chamber's view, Côte d'Ivoire has not demonstrated, by its words, conduct or silence, that it agreed to the maritime boundary based on equidistance. It is true that Côte d'Ivoire's oil concession blocks align with those of Ghana along the equidistance line and that Côte d'Ivoire's oil activities did not cross over into the Ghanaian side of the equidistance line. However, Côte d'Ivoire has taken care to indicate that the limits of its oil concession blocks are distinct from those of its maritime jurisdiction. It also has expressed its concern to Ghana about the continuation of oil activities in the area yet to be delimited. Therefore, the conduct of Côte d'Ivoire cannot be considered to amount to the "clear, sustained and consistent" representation required for the recognition of estoppel.

245. As the first condition for estoppel is not met, the Special Chamber does not find it necessary to determine whether Ghana acted in good faith in relying upon the conduct and representation of Côte d'Ivoire in regard to the maritime boundary, or whether Ghana suffers a prejudice resulting from a change in conduct of Côte d'Ivoire.

246. The Special Chamber, therefore, rejects Ghana's claim that Côte d'Ivoire is estopped from objecting to the "customary equidistance boundary".

IX. DELIMITATION OF THE MARITIME BOUNDARY

247. Having found that no tacit agreement on the maritime boundary between the Parties exists and that the requirements of estoppel have not been met, the Special Chamber will now proceed to the delimitation of the territorial sea, the exclusive economic zone and the continental shelf.

A. Delimitation of the territorial sea

248. The Parties disagree on the delimitation of their territorial seas.

249. Ghana argues that article 15 of the Convention "stipulates the primacy of agreement, and failing that the application of the principle

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of equidistance". It explains that "[d]eparture from the equidistance principle is possible only where necessary by reason of historic title or other 'special circumstances'".

250. Ghana further argues that, "[a]lthough not formalized in a maritime delimitation treaty, since the late 1950s Ghana and Côte d'Ivoire have mutually recognised and agreed and given effect to a boundary in the territorial sea (and beyond) based on equidistance that commences at BP 55". It is of the view that "[t]he compelling evidence before the Special Chamber, coupled with the settled practice, reflects a binding commitment within the meaning of Article 15 of the 1982 Convention".

251. Ghana contends that "[i]n the absence of any historic title or other special circumstance—and none exist here—there is no ground for departing from this historically-agreed line, as reflected in the consistent conduct of Ghana and Côte d'Ivoire for over 50 years". It adds that "[t]here are . . . no geographic or geologic features that call for a departure from an equidistance-based boundary".

252. Ghana further contends that "there is no basis in fact or law for a territorial sea boundary based on either of the two methods of delimitation advanced by Côte d'Ivoire". It emphasizes that "[t]he bisector method has only been used in very limited and unusual circumstances, where the conventional approach is manifestly inappropriate or impossible to apply".

253. Côte d'Ivoire submits that article 15 of the Convention "advocates using the equidistance line or the median line for delimitation of the territorial sea, but the basic rule may be subject to exceptions if special circumstances exist".

254. Côte d'Ivoire further submits "that special circumstances exist and they make it necessary for the Chamber to delimit the territorial sea using a method other than the equidistance line". It is of the view that "[t]he 'bisector method' is the most appropriate method in the present case" and requests the Special Chamber "to delimit the Ivorian-Ghanaian maritime boundary in the territorial sea, the exclusive economic zone and the continental shelf up to 200 nautical miles according to a 168.7° azimuth line from boundary post 55".

255. Côte d'Ivoire argues that it "bases its position on the existence of particular geographic and geomorphological characteristics which warrant the application of the bisector method". It further argues that "the same geographic and geomorphological circumstances are applicable to delimitation of the territorial sea and of the maritime areas beyond the territorial sea".

256. Côte d'Ivoire submits, "on a subsidiary basis, that if the Chamber were to opt for the equidistance/relevant circumstances

method, . . . [objective] circumstances do exist in the present case and necessitate the adjustment of the provisional equidistance line in order to achieve an equitable result".

* * *

257. The Special Chamber summarizes the submissions of the Parties in respect of the delimitation of their territorial seas as follows. Both Parties, in their final submissions, ask the Special Chamber to draw a single maritime boundary delimiting their territorial seas, exclusive economic zones and continental shelves both within and beyond 200 nm. Ghana bases its request for the delimitation of the territorial seas on the application of the equidistance methodology while referring to article 15 of the Convention. Côte d'Ivoire, in turn invoking special circumstances, argues in favour of the application of the angle bisector methodology for the delimitation of the territorial sea as it does for the exclusive economic zones and the continental shelves. The Special Chamber notes that the same disagreement over the appropriate delimitation methodology exists between the Parties in respect of the delimitation of the exclusive economic zones and the continental shelves within and beyond 200 nm.

258. The Special Chamber notes that the Parties have not put forward comprehensive arguments concerning the delimitation of the territorial sea on the basis of article 15 of the Convention. Ghana merely stated that neither historic titles nor special circumstances exist and that there is therefore no ground for departing from the "historically-agreed line". It also stated that there are no geographic or geological features that call for a departure from an equidistance boundary. In respect of the delimitation of the exclusive economic zone and the continental shelf within and beyond 200 nm, Ghana equally advocated the "historically-agreed line" or the equidistance line. Côte d'Ivoire in turn argued that "special circumstances exist" which make it appropriate to use for the delimitation of the territorial sea the bisector methodology which it also advocated for the exclusive economic zone and the continental shelf within and beyond 200 nm. The Special Chamber notes that the "special circumstances" referred to by Côte d'Ivoire were exemplified only in the context of the delimitation of the exclusive economic zone and the continental shelf within and beyond 200 nm.

259. The Special Chamber interprets the submissions of both Parties to the effect that it should use the same delimitation methodology for the whole delimitation process, namely the methodology developed for the delimitation of exclusive economic zones and continental shelves.

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260. It is for that reason that the Special Chamber will address the question of the appropriate delimitation methodology when it deals with the delimitation of the exclusive economic zones and continental shelves of the Parties. Nevertheless, the Special Chamber emphasizes that under the Convention different rules apply to the delimitation of territorial seas and the delimitation of exclusive economic zones and continental shelves.

261. The Special Chamber notes that the delimitation of the territorial sea is governed by article 15 of the Convention, which reads:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baseline from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

262. The Special Chamber considers it important to note that in delimiting the territorial sea it has to be borne in mind that the rights of the coastal States concerned are not functional but territorial since they entail sovereignty over the seabed, the superjacent waters and the air column above. This has been emphasized by the ICJ in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)* (*Merits, Judgment, ICJ Reports 2001*, p. 40, at p. 93, paras. 173-4). However, neither Ghana nor Côte d'Ivoire raised sovereignty-related considerations in respect of the delimitation of the territorial sea between them. The Special Chamber notes that the Parties, in requesting the Special Chamber to delimit a single maritime boundary for their territorial seas, exclusive economic zones and continental shelves, have implicitly agreed that the same delimitation methodology be used for these maritime spaces.

263. On this basis, the Special Chamber considers it appropriate to use the same methodology for the delimitation of the Parties' territorial seas, exclusive economic zones and continental shelves within and beyond 200 nm.

B. Delimitation of the territorial sea, the exclusive economic zone and the continental shelf within 200 nm

(1) Appropriate methodology for the delimitation

264. The Special Chamber will now proceed to the question of the appropriate methodology for the delimitation of maritime zones, on which the Parties disagree.

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265. Ghana contends that, while "[a]rticles 74 and 83 of the 1982 Convention do not specify the method to be followed to achieve an equitable solution", the equidistance/relevant circumstances method is the "now-standard method".

266. Ghana argues that, if the Special Chamber does not accept a tacit agreement on delimitation as advocated by Ghana, the first step in the procedure on maritime delimitation would be the construction of a provisional equidistance line. It adds that "the Ghana/Côte d'Ivoire coastline would be a textbook case for the maritime boundary between the two States to follow an equidistance line" as "[a] nearly perfectly straight coastline with no offshore features would seem to offer the ideal circumstances for a boundary based on equidistance".

267. With regard to Côte d'Ivoire's suggestion to apply the angle bisector methodology, Ghana further argues that "there is no basis in international law for the adoption of an angle bisector as the boundary in the circumstances of this case". It points out that "[t]he first consideration, in a case of two States with adjacent coasts, is whether equidistance is feasible" and that "[i]f it is, then there is no need to consider an angle bisector or any other alternative delimitation methodology".

268. In Ghana's view, Côte d'Ivoire "fails to identify any 'compelling reasons that make [equidistance] unfeasible in this particular case'". Ghana maintains that Côte d'Ivoire's approach "is internally contradictory" as "it argues for a bisector, on the basis that any other approach is unfeasible or inequitable" while "it acknowledges at length that an equidistance line is both possible and capable of being equitable in its result".

269. Ghana also maintains that the case law referred to by Côte d'Ivoire in support of its claim that the angle bisector method should be applied is "limited" and "none . . . is on point or remotely analogous" to the present case. Regarding the use of this method by States in delimitation treaties cited by Côte d'Ivoire, Ghana states that "such agreements are to be treated with care" as they "are far from being representative of the evolution of the law of the sea" and "extra-legal considerations . . . might come into play to determine a negotiated outcome".

270. Côte d'Ivoire contends that "[t]he equitable solution required by articles 74 and 83 of the . . . Convention . . . constitutes the very foundation of the law of delimitation" and that "[o]ne of the consequences of this basic principle is that there cannot be one single method of delimitation". It emphasizes that "[t]he equidistance/relevant circumstance method is [in] no way obligatory, nor is it the most suitable method in this particular case". It further contends that, "contrary to the claim made by Ghana, equidistance/relevant circumstances has not become the default method of delimitation".

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271. In Côte d'Ivoire's view, "because of its largely geometrical character, the equidistance/relevant circumstances method may have a practical advantage" but "this is not enough to impose it as the mandatory or even preferred method in all situations".

272. Côte d'Ivoire further contends that

> [t]he "bisector method" is the most appropriate method in the present case in view of the macro-geography and the coastal micro-geography and the small number of relevant base points, which are, moreover, located on a tiny portion of the two States' coastlines, and which are unstable in nature insofar as the eastern part of Côte d'Ivoire's coast is concerned.

273. Côte d'Ivoire is of the view that selecting the angle bisector method is "not based on subjective factors, nor on a subjective idea of equity" but that "[o]n the contrary, it is dictated by the coastal geography" and "allows any disproportionate effect of coastal irregularities on the line to be avoided".

274. Côte d'Ivoire argues that "the bisector method can be used even if it is possible to draw a boundary line using the equidistance/relevant circumstances method". Relying on the decision of the ICJ in *Territorial and Maritime Dispute in the Caribbean Sea (Nicaragua* v. *Honduras)*, it adds that "the bisector method . . . is considered 'a viable substitute method in certain circumstances where equidistance is not possible or appropriate'".

275. Côte d'Ivoire further argues that "[j]urisprudence has long shown the reasons as to why delimitation can be carried out . . . by applying the bisector method". In this connection, it refers to *Gulf of Maine*, *Delimitation of the Maritime Boundary between Guinea and Guinea–Bissau*, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* and *Territorial and Maritime Dispute in the Caribbean Sea (Nicaragua* v. *Honduras).*

276. Côte d'Ivoire contends that, "[i]f the present Chamber were to consider the bisector method inapplicable to this particular case, it might arrive at an equitable result by delimiting the Parties' maritime areas according to the equidistance/relevant circumstance method". It emphasizes that

> there is nothing to prevent Côte d'Ivoire proposing, as a principal claim, the application of the bisector method and, in the alternative, the application of equidistance/relevant circumstances, since the two methods, which have similar characteristics, are neither in a hierarchical relationship nor mutually exclusive.

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277. The Special Chamber notes that the Parties agree that article 74, paragraph 1, and article 83, paragraph 1, of the Convention govern the delimitation of the exclusive economic zone and the continental shelf. These articles provide, in identical terms, that the delimitation "shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution".

278. The Special Chamber recalls that the Parties agreed that the same methodology be used in respect of the delimitation of the exclusive economic zone and the continental shelf within and beyond 200 nm as for the delimitation of the territorial sea (see para. 259).

279. The Special Chamber observes that the Parties disagree, however, on several issues relating to the delimitation of the territorial sea, the exclusive economic zone and the continental shelf. In the view of the Special Chamber, these disagreements may be grouped as follows. First, the Parties disagree as to whether the equidistance/relevant circumstances methodology is to be considered the preponderant, and thus preferable, methodology for the delimitation of the exclusive economic zones and continental shelves or whether the angle bisector methodology is, in principle, equally applicable. Second, they disagree as to whether the circumstances prevailing in this case call for the application of the angle bisector methodology. In respect of these issues the Parties draw different conclusions from the relevant international jurisprudence and from delimitation agreements.

280. The Special Chamber will address the two issues in turn. In so doing, it is conscious of the fact that the issues on which the Parties disagree are interrelated and that some of the arguments advanced to justify a delimitation methodology other than the equidistance/relevant circumstances methodology may also be of relevance in the context of dealing with relevant circumstances (see paras. 402-55).

281. As far as the choice of an appropriate methodology for the delimitation of the exclusive economic zone and the continental shelf is concerned, the Special Chamber notes that no particular methodology is specified by articles 74, paragraph 1, and 83, paragraph 1, of the Convention. The appropriate delimitation methodology—if the States concerned cannot agree—is left to be determined through the dispute-settlement mechanism and should achieve an equitable solution, in the light of the circumstances of each case. This was emphasized by the Tribunal in its Judgment on the *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, where it stated: "The goal of achieving an equitable result must be the paramount consideration guiding the action of the Tribunal in this connection." (*Judgment,*

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ITLOS Reports 2012, p. 4, at p. 67, para. 235). In this connection, the Special Chamber wishes to emphasize additionally that transparency and predictability of the delimitation process as a whole are also objectives to be taken into account in this process (see *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award of 7 July 2014, para. 339).

282. To support its view that the equidistance/relevant circumstances methodology is not the internationally preferred methodology for maritime delimitation, Côte d'Ivoire argued that the angle bisector methodology is a "geometrical approach". The Special Chamber observes, however, that Côte d'Ivoire further acknowledged that the equidistance/relevant circumstances method also has a geometrical character. The establishment of the bisector and the establishment of the provisional equidistance line in fact both have a geometrical basis. Furthermore, the Special Chamber does not agree with Côte d'Ivoire that—unlike the equidistance/relevant circumstances methodology—the angle bisector methodology is free from subjective factors.

283. The Special Chamber would now like to address the argument of Côte d'Ivoire in favour of applying the angle bisector methodology, namely that this methodology would make it possible to take into account "the macro-geography" of the area concerned. The Special Chamber is bound to point out that such consideration is alien to the application of articles 74 and 83 of the Convention. It is the mandate of the Special Chamber to decide on the maritime delimitation between Ghana and Côte d'Ivoire. Such delimitation has to be equitable in result for the two Parties concerned. Note also has to be taken that interests of neighbouring States or of the region would have to be voiced by the other States. Such States are not parties to the proceedings before the Special Chamber. The interests of neighbouring States which relate to the delimitation of maritime spaces between Ghana and Côte d'Ivoire are addressed in paragraphs 319-25.

284. To the extent that Côte d'Ivoire invokes international jurisprudence as justification for applying the angle bisector methodology, the Special Chamber disagrees with the assessment of such jurisprudence. First, it would like to emphasize that the majority of delimitation cases, in particular the ones decided in recent years, have used the equidistance/relevant circumstances methodology. As stated by the Tribunal in *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*:

The Tribunal notes that jurisprudence has developed in favour of the equidistance/relevant circumstances method. This is the method adopted by

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international courts and tribunals in the majority of the delimitation cases that have come before them.

(*Judgment, ITLOS Reports 2012*, p. 4, at p. 67, para. 238)

Second, the Special Chamber takes the view that, if international courts and tribunals have made recourse to the angle bisector methodology in certain cases, this was due to particular circumstances in those cases.

285. Further, in the view of the Special Chamber, Côte d'Ivoire cannot rely on the *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)* (*Judgment, ICJ Reports 2007* (*II*), p. 659, at p. 742, paras. 275 et seq.), in which the ICJ held that it was not feasible to construct an equidistance line because of the configuration of the land boundary terminus at Cape Gracias a Dios, the highly unstable nature of the mouth of the river Coco and the dispute over title to several small islands and sandbanks located at the river mouth. Owing to these circumstances, the ICJ had recourse to the angle bisector methodology. The Special Chamber is convinced that none of these factors, or at least comparable ones, pertain to the present case. In addition, recourse to the angle bisector methodology concerning the second segment of the delimitation line in the case concerning the *Continental Shelf* (*Tunisia/Libyan Arab Jamahiriya)* (*Judgment, ICJ Reports 1982*, p. 18, at p. 89, para. 129) was motivated by geographical considerations which were examined by the ICJ and which, in the view of the Special Chamber, do not exist in the present case. That Judgment was motivated by the decision of the ICJ only to give half effect to the Kerkennah Islands. The Special Chamber takes the view that, owing to the particularity of that case, it cannot convincingly be invoked to support the applicability of the angle bisector method in the case before it. For the same reasons, the Judgment of the Chamber of the ICJ in the case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)* cannot be referred to as a sustainable precedent.

286. The Special Chamber acknowledges that, in the *Case concerning Delimitation of the Maritime Boundary between Guinea and Guinea–Bissau* (Decision of 14 February 1985, *ILR, vol. 77*, p. 635), doubts were expressed concerning the suitability of the equidistance methodology for the delimitation of maritime spaces. The Arbitral Tribunal states at paragraph 102 that "[t]he Tribunal itself considers that the equidistance method is just one among many and that there is no obligation to use it or give it priority" (*ILR, vol. 77*, p. 681). Instead, the Arbitral Tribunal considered it important to take into account the

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configuration of the coast in this area and refers in paragraph 110 to "the advantage of giving more weight to the general direction of the coastline" (*ILR, vol. 77*, p. 684).

287. The Special Chamber is not convinced that Côte d'Ivoire can rely on the jurisprudence of this Arbitral Award to sustain its reasoning in favour of the applicability of the angle bisector method for the delimitation of the maritime zones between Ghana and Côte d'Ivoire. It has to be taken into account that the maritime area off the coasts of Guinea and Guinea–Bissau is geographically complex, whereas the coasts of Ghana and Côte d'Ivoire are straight rather than indented; and they lack the islands and low-tide elevations which, in the *Case concerning Delimitation of the Maritime Boundary between Guinea and Guinea–Bissau*, rendered the applicability of the equidistance methodology difficult. Moreover, the Special Chamber would like to point out that the approach taken by that Award was not followed by subsequent international jurisprudence. In view of these two factors, that Award cannot convincingly be used to offset international jurisprudence concerning the methodology on maritime delimitation.

288. Côte d'Ivoire has further invoked several delimitation treaties between States to support its argument in favour of adopting the angle bisector methodology. The Special Chamber, without assessing whether—and if so, for what reason—these delimitation treaties used the angle bisector methodology in delimiting the maritime spaces of the States concerned, is not convinced of their relevance for deciding on the method to be applied in respect of the delimitation of the maritime spaces of Ghana and Côte d'Ivoire. The delimitation provided for in such treaties may have been guided by particular geographic circumstances which do not exist in respect of Ghana and Côte d'Ivoire and they may have been influenced by extra-legal considerations which may not have been disclosed.

289. To conclude, the Special Chamber finds that the international jurisprudence concerning the delimitation of maritime spaces in principle favours the equidistance/relevant circumstances methodology. It further finds that the international decisions which adopted the angle bisector methodology were due to particular circumstances in each of the cases concerned. This international jurisprudence confirms that, in the absence of any compelling reasons that make it impossible or inappropriate to draw a provisional equidistance line, the equidistance/relevant circumstances methodology should be chosen for maritime delimitation. As the Tribunal stated in *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*: "Each case is unique and requires specific treatment, the ultimate goal being

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to reach a solution that is equitable" (*Judgment, ITLOS Reports* 2012, p. 4, at p. 86, para. 317). The Special Chamber would consider it to be in contradiction of the principle of transparency and predictability invoked above (para. 281) to deviate, in this case, from a delimitation methodology which has been practised overwhelmingly by international courts and tribunals in recent decades.

290. The Special Chamber will now turn to the issue of whether there exist in this case particular reasons invoked by Côte d'Ivoire which require an alternative method to be chosen for the delimitation of the maritime spaces between Ghana and Côte d'Ivoire.

291. Côte d'Ivoire invokes several arguments concerning the circumstances prevailing in this case which call for the application of the angle bisector methodology for delimitation. Côte d'Ivoire relies on geographical considerations (location of base points, location of base points on Jomoro, instability of the coastline) as well as the interests of neighbouring States.

(a) Location of base points

292. Côte d'Ivoire contends that "the base points identified both by Côte d'Ivoire and by Ghana on the basis of which the equidistance line would be drawn do not reflect the coastal geography, in that they are situated on a very straight portion of the coastline, near the endpoint of the land boundary and, further, disregard the two-fold convexity and concavity of Côte d'Ivoire and Ghana". It is Côte d'Ivoire's view that "[i]n this particular case, this dual insufficiency argues in favour of the application of the bisector method".

293. Côte d'Ivoire submits that a "[d]elimitation of a maritime boundary founded on the [base points suggested by the Parties] would thus take account of a portion of less than one percent of the entire coasts of the two Parties". It adds that it would be "that tiny portion that directs the course of the provisional equidistance line entirely".

294. Côte d'Ivoire further submits that "the portions of coast in question . . . are perfectly straight and hence reflect neither the concavity of the Côte d'Ivoire coast nor the convexity of the Ghanaian coast, in particular the influence exerted by Cape Three Points". Côte d'Ivoire also argues that the base points selected by the Parties are situated on segments of the coast which do not follow the general direction of the coast.

295. In Côte d'Ivoire's view,

> [t]his exceptional situation has never arisen in a contentious case and justifies the rejection of a micro-geographical approach in favour of a broader approach

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which takes account of the actual geography of the States and not a tiny portion of that geography.

296. Ghana contends that "neither the number of, nor the distance between, base points—whether those identified by Ghana or by Côte d'Ivoire—constitute a basis for rejecting equidistance methodology". It emphasizes that "the number of base points is higher than in other cases in which equidistance methodology has been employed".

297. Ghana maintains that "the coast is almost perfectly straight . . . for a significant distance on either side of the land boundary terminus" and that "[t]he closer the coast is to perfectly straight, the fewer base points will be needed to construct the equidistance line, and the closer they will be to the LBT".

298. Ghana further maintains that "Côte d'Ivoire's 'concavity' [does not affect] the equidistance line" and that, while "the shape of Ghana's coast at Cape Three Points is, indeed, convex . . ., there are no Ghanaian base points along the coast at Cape Three Points that affect the equidistance line".

299. Ghana objects to Côte d'Ivoire's argument based on "a so-called 'general direction' of the Ivorian and Ghanaian coasts". Ghana contends that "[t]he actual coasts cannot be rendered accurately as single straight lines without utterly distorting their direction".

300. Ghana submits that the equidistance line "is not constructed only from the coastal segment where the base points lie" but "from the relevant coasts of both Parties, in their entirety". It adds that "[t]he entire length of relevant coast . . . is digitized and fed into a computer with the Caris software" and "[t]he software reviews the entire coast and identifies the turning points on the coast".

* * *

301. In dealing with the arguments of Côte d'Ivoire and the counter-arguments of Ghana based upon geographical considerations, the Special Chamber will address the question as to whether it is feasible to identify appropriate base points on the coasts in question.

302. The coasts of Ghana and Côte d'Ivoire are straight, without any maritime features or indentations, and accordingly the Special Chamber finds that it is possible to identify base points. The fact that base points will be established only on small parts of the coasts and that they are few in number does not mean, in the view of the Special Chamber, that it is impossible or inappropriate to draw an equidistance line. The Special Chamber will deal with the location of base points on Jomoro in the following paragraphs.

(b) Location of base points on Jomoro

303. Côte d'Ivoire contends that a further geographical circumstance requiring the adoption of the angle bisector method in this case is the "Jomoro Peninsula . . . located at the extreme south-west of Ghana". It emphasizes that "[a]ll the base points located in Ghana—whether chosen by Côte d'Ivoire or by Ghana—are located on [this] strip of land" and that "this peninsula defines the entire course of the provisional equidistance line up to 220 nautical miles".

304. Côte d'Ivoire states that this "thin strip of land separates the Ivorian land territory from the Atlantic Ocean and thus blocks the seaward projection of the Ivorian territory". It is of the view that this strip of land "constitutes an excrescence of Ghanaian territory at the south-eastern end of Côte d'Ivoire's territory" and "an historical irregularity of which the geographical consequences could be exploited only to the detriment of one or other of the Parties".

305. Côte d'Ivoire further emphasizes that "the principle of *uti possidetis juris* [is] not in any way disputed by Côte d'Ivoire".

306. Ghana contends that "the misnamed 'Jomoro Peninsula' is a part of Ghana's sovereign land territory whose coastline can neither be ignored nor discounted". It emphasizes that "this territory . . . is not a peninsula" and that the land boundary between the Parties "is not an 'accident of history' [but] the result of a deliberate decision by the colonial powers to establish the boundary between their respective possessions".

307. Ghana further contends that, "however this area of land is characterized, it is unquestionably Ghanaian and it unquestionably constitutes Ghana's coast". In Ghana's view, this part of its coastline is not "capable of being ignored without doing violence to well-established legal principles like *uti possidetis juris* or engaging in the refashioning of geography".

308. With regard to Côte d'Ivoire's argument that this area of land "blocks the seaward projection of the Ivorian territory", Ghana states that, in the view of Côte d'Ivoire, "[i]n other words, a landlocked part of Côte d'Ivoire, that has no coast, should be taken into account in the determination of the boundary in this case, because, if Ghana's coast in this area did not exist, the landlocked area would be the coast".

* * *

309. The Special Chamber is not convinced by the arguments advanced by Côte d'Ivoire concerning Jomoro, which are meant to reduce the impact of Jomoro on the scope of the territorial sea, the

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exclusive economic zone and the continental shelf of Ghana. The Special Chamber would like to emphasize that Jomoro is undeniably part of the territory of Ghana and it does not constitute a peninsula. In the process of delimiting the territorial sea, the exclusive economic zone and the continental shelf between Ghana and Côte d'Ivoire, it cannot accordingly be treated like an island or a protruding peninsula which distorts the general direction of the coast or its seaward projection. The different treatment that Côte d'Ivoire attributes to Jomoro compared with the rest of Ghana's territory has, in the view of the Special Chamber, no basis in the factual geographical situation of Jomoro.

310. As far as the placing of base points on Jomoro is concerned, the Special Chamber is equally not convinced by the relevant arguments advanced by Côte d'Ivoire as indicated in paragraph 293. It is factually correct that only a limited number of base points may be established on Jomoro and that they lie close to each other. However, this does not mean, in the view of the Special Chamber, that these base points are not appropriate.

(c) Instability of the coastline

311. Côte d'Ivoire contends that "the coast between Assinie and New Town is subject to a high degree of instability" and that "[t]hese circumstances ... justify the use of an alternative method to that of equidistance".

312. Côte d'Ivoire argues that "[t]he instability of the coastline presents serious risks to the reliability of a maritime boundary established according to base points which are located on these shifting coasts and which, hence, are also variable".

313. Côte d'Ivoire further contends that "the Gulf of Guinea as a whole is subject to significant erosion" and that "[t]he instability of the estuaries and lagoon systems in West Africa is a known, documented phenomenon common to all the countries bordering the Gulf of Guinea". Côte d'Ivoire adds that "one of the most striking examples of the instability of the Ivorian coasts is the mouth of the Aby Lagoon".

314. Ghana in turn maintains that "there is no basis for arguing that the relevant coasts of Ghana and Côte d'Ivoire are unstable, or that the alleged but disproven coastal instability justifies resort to a delimitation methodology other than equidistance".

315. Ghana further maintains that "the relevant coasts in this case ... are remarkably stable" and that "Côte d'Ivoire itself had no difficulty fixing base points along the relevant coasts to construct a new provisional equidistance line".

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316. Ghana contends that "Côte d'Ivoire has submitted no evidence that the coast in the vicinity of the land boundary terminus, where all of the base points have been fixed by both Parties, is or has ever been unstable". With regard to the alleged instability of the coastline in the area of the Aby Lagoon, Ghana states that this lagoon "is 20-odd kilometres to the west of the Ivorian base point furthest from BP 55".

317. Ghana also points to a new chart of the relevant coast produced by Côte d'Ivoire, "based on . . . data gathered in 2014, where the coastline is very similar to the coastline in British Admiralty Chart 1383 . . . whose underlying data were collected as long ago as the 1840s". According to Ghana, "[t]here could be no stronger demonstration of coastal stability than the presentation of two charts, relying on data drawn 165 years apart, which depict no significant changes in the configuration of the coast over that very lengthy period of time".

* * *

318. The Special Chamber is not convinced by the argument advanced by Côte d'Ivoire that the relevant coasts of Ghana and Côte d'Ivoire are unstable, such that it is difficult or impossible to identify appropriate base points. In fact, a comparison of British Admiralty chart 1383 of the United Kingdom Hydrographic Office (hereinafter "chart BA 1383") with the data collected by Côte d'Ivoire in 2014 on its own coast indicates stability of the relevant coasts.

(d) Interests of neighbouring States

319. Côte d'Ivoire points out that "[t]he Ivorian-Ghanaian maritime boundary will . . . be the first to be delimited in this region". It is of the view that the "precedent" established by the decision of the Special Chamber "will serve as reference for the delimitation of the boundaries of the States in the sub-region" and that such precedent "will have a follow-on effect on the region".

320. Côte d'Ivoire submits that "[w]ithin the context of delimitation of a maritime boundary, judicial bodies take the existence and respect of the rights and interests of neighbouring States into consideration when delimiting a maritime boundary between two States". It expresses the view that a bisector line "enables the interests of States neighbouring the Parties to be respected, by avoiding the establishment of a precedent which would be prejudicial to their interests and by eliminating any unfairness resulting from the equidistance method", while "[t]he effect of a strict application of the equidistance method

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would be to cut off their access to maritime areas in a highly significant manner".

321. Ghana contends that "Côte d'Ivoire's suggestion that neighbouring States might be prejudiced if the Special Chamber were to employ a delimitation methodology other than angle bisector makes no sense".

322. Ghana argues that "[w]hether the Special Chamber determines that there is an agreed boundary, or delimits the boundary by means of equidistance, there can be no prejudice to any other State in the region". It adds that "[e]ach of the boundaries in the region must be delimited based on the geographic circumstances that are particular to that boundary".

* * *

323. The Special Chamber is not convinced by the argument of Côte d'Ivoire that the angle bisector methodology should be adopted in this case for the reason that using this methodology would result in a delimitation respecting the interests of neighbouring States of the region, whereas adopting a delimitation line on the basis of the equidistance/relevant circumstances method would be prejudicial to their interests. The Special Chamber has already dealt with this argument in the general context of comparing the potential merits of the angle bisector methodology and the equidistance/relevant circumstances methodology (para. 283). As far as the States neighbouring Ghana in the east are concerned—whose interests were mentioned by Côte d'Ivoire—the Special Chamber would like to point out that its Judgment is binding only upon Ghana and Côte d'Ivoire. The Judgment is without prejudice to the rights and interests of third parties. It is, in the view of the Special Chamber, also worth mentioning that, with the equidistance/relevant circumstances methodology, the adjudicating court or tribunal has not only the possibility but also the obligation to take into account the relevant circumstances of the case before it with a view to adjusting the provisional equidistance line as necessary in order to achieve an equitable solution.

324. On the basis of the foregoing, the Special Chamber sees no convincing reason to deviate in this case from the equidistance/relevant circumstances methodology for the delimitation of the territorial sea, the exclusive economic zone and the continental shelf.

325. The Special Chamber took note that the Parties also argued as to whether the angle bisector methodology was applied correctly by Côte d'Ivoire. Considering the finding in paragraph 324, the Special Chamber does not consider it appropriate to deal with these arguments.

(2) Construction of the provisional equidistance line

326. Before establishing the provisional equidistance line, the Special Chamber first has to consider two issues relating to the construction of the line, namely which nautical charts it will use and the location of the starting point of the maritime boundary. The Parties disagree on both issues.

(a) Charts

327. Ghana submits that "for purposes of maritime delimitation under the 1982 Convention, the relevant low water line is that depicted on the official charts recognized by both Parties".

328. In Ghana's view, chart BA 1383 "remains the largest scale and most current chart officially recognized by either State". Ghana also states that "the official chart recognized by Côte d'Ivoire—*Service hydrographique de la marine française* (SHOM) Chart 7786 [(hereinafter "chart SHOM 7786")]—is virtually identical to BA 1383 in its depiction of the coastline on either side of the land boundary terminus".

329. Ghana maintains that it "has relied upon BA 1383 as its official chart since well before the commencement of the present dispute". It adds that, in 2014, during the ninth meeting of the Joint Commission, "the two States 'agreed' that 'from now on' they would continue to use the 'same international hydrographical charts'".

330. With regard to newly developed charts submitted by Côte d'Ivoire, Ghana contends that Côte d'Ivoire "fails to fully disclose the data underlying its . . . analysis, which makes verification of the purported results impossible". Ghana also contends that these charts are "technically questionable" and that "the agreed international charts are more reliable".

331. Ghana argues that "Côte d'Ivoire used two different methods to chart the coast on either side of the land boundary terminus, by applying ground survey data only for Côte d'Ivoire's coast". Insofar as Côte d'Ivoire states that it also used satellite-derived bathymetry, Ghana argues that "satellite-derived bathymetry . . . is an inappropriate means of constructing a low water line in cases, like this one, where the waters display very high turbidity and breaking waves".

332. Ghana adds that the "the low water line proffered by Côte d'Ivoire is not very different from the one shown on the official charts (BA 1383 and SHOM 7786)". It also emphasizes that "the new analysis was developed subsequent to the commencement of, and entirely for the purposes of, this case". Furthermore, Ghana would prefer to use

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EOMAP's analysis, in the event that the Special Chamber does not accept the use of charts BA 1383/SHOM 7786. It contends that "the low water line developed by EOMAP is very similar to that on both official charts".

333. Côte d'Ivoire contends that "it is not a valid alternative solution to use the coastline drawn by EOMAP, a company commissioned by Ghana". It maintains that

> [t]he work carried out by EOMAP is unsatisfactory on several grounds: no *in situ* survey was conducted; the satellite images cover a very short period and were chosen arbitrarily by that company; and the scale of those images is not precise enough to produce reliable results on such a small segment of coastline.

334. Côte d'Ivoire argues that the use of chart BA 1383 "is highly questionable". It argues that this chart "has the two-fold disadvantage of, on the one hand, lacking precision owing to its small scale and, on the other, of being obsolete owing to the age of the readings on the basis of which it was drawn up". It emphasizes that chart BA 1383 "is based on information dating from the first half of the 19th century and reproduced on charts on a scale of 1:350,000, which thus does not comply with the United Nations recommendations".

335. Côte d'Ivoire emphasizes that "[t]he Parties did not reach any agreement on the exclusive use of the charts relevant for the base points and did not rule out the possibility of relying on other charts in future". It states that Ghana "bases the existence of that agreement on an extract from the minutes of the ninth meeting of the Côte d'Ivoire–Ghana Joint Commission" but, in the view of Côte d'Ivoire, "Ghana gives this extract … much greater meaning than it actually has and ignores the context in which that ninth meeting took place".

336. Côte d'Ivoire maintains that "[i]n order to … ensure that the base points are accurate and able to reflect the coastal geography of the States, Côte d'Ivoire has published new, highly accurate, charts prepared on the basis of topographical surveys of the entire Côte d'Ivoire coast at the end of 2014 and of recent high-resolution satellite images". Those charts are entitled 001AEM and 002AEM.

337. Côte d'Ivoire also maintains that "those charts are official charts of the Republic of Côte d'Ivoire" and "charts were produced according to the proper rules". It emphasizes that "chart 001AEM is on a scale of 1:1,000,000 and chart 002AEM on a scale of 1:100,000" and adds that "[t]he 1:100,000-scale chart is in conformity with United Nations recommendations concerning the technical aspects of delimitation".

338. Côte d'Ivoire is of the view that the Special Chamber "must … take as a basis the most recent data available to it". It adds that its new

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charts "were not prepared for the purposes of the present litigation" but that "the process of producing these charts began in March 2014".

* * *

339. The Special Chamber takes note of the fact that charts BA 1383/SHOM 7786 are—apart from the language used—identical. The Special Chamber further notes, however, that using chart 001AEM of 2016, as proposed by Côte d'Ivoire, would lead to different results in the delimitation. Therefore it is necessary for the Special Chamber to decide which chart or charts it will use in its considerations as well as for its final decision.

340. The Special Chamber notes that the objections raised against charts BA 1383/SHOM 7786 by Côte d'Ivoire are in the main of a factual nature, as are Ghana's objections to chart 001AEM of 2016.

341. The Special Chamber acknowledges that chart 001AEM is of more recent origin than chart BA 1383. However, the Special Chamber is not convinced by the arguments advanced by Côte d'Ivoire in favour of chart 001AEM. It does not question that this chart was prepared "on the basis of topographical surveys of the entire Côte d'Ivoire coast at the end of 2014" and that, therefore, it may reflect the most recent data concerning that coast. But it is evident from the facts advanced by Côte d'Ivoire that no such topographical survey had been undertaken on the coast of Ghana. Instead, chart 001AEM relied, as far as the coast of Ghana is concerned, on recent high-resolution satellite images whose reliability is questioned by Ghana. It is not for the Special Chamber to decide whether the satellite-derived bathymetry method used in respect of the coast of Ghana was appropriate and leads to reliable results. Instead, it is of relevance for the Special Chamber that different methods were employed for the survey of the Ivorian and Ghanaian coasts. The Special Chamber agrees with Côte d'Ivoire that a more recently prepared chart is preferable in principle but takes the view that it is essential that the same methodology be used for the two coasts in question.

342. Finally, it is of relevance, in the view of the Special Chamber, that charts BA 1383 and SHOM 7786 were used by both Parties until at least 2014. This common use of the charts may not have amounted to an agreement that those charts alone had to be used, as is claimed by Ghana. However, this practice is indicative of the Parties' common confidence in the reliability of these charts, a factor which the Special Chamber cannot ignore.

343. On the basis of the foregoing, the Special Chamber will use charts BA 1383/SHOM 7786 as a basis for its considerations and for its

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decision concerning the delimitation of the territorial seas, the exclusive economic zones and the continental shelves (within and beyond 200 nm) of the two Parties.

(b) The starting point of the maritime boundary

344. The Special Chamber notes that, although the Parties agree on the position of the land boundary terminus, they disagree on the starting point for their maritime boundary.

345. Ghana states that "there is longstanding agreement between the Parties that BP 55 is the land boundary terminus and the starting point for the maritime delimitation of the territorial sea". According to Ghana, the coordinates of BP 55 are 05° 05′ 28.4″ N and 03° 06′ 21.8″ W.

346. Ghana further states that BP 55 "is located some 150 metres from the low water line on the coast" and that it "must be connected to the provisional equidistance line through a point on the low water line". Ghana suggests that this can be achieved "by connecting BP 55 to the coastline by means of the shortest distance".

347. In Ghana's view, "[b]y using this technique, BP 55 remains the true starting point of the maritime boundary". Ghana also argues that its "route . . . is shorter and more direct, and is faithful to the agreement recognizing BP 55 . . . as the [land boundary terminus]".

348. Côte d'Ivoire states that "the two Parties reached express agreement both on the fact that the maritime boundary should start from boundary post 55, which is the last boundary post of the land boundary, and on the coordinates of this boundary post". According to Côte d'Ivoire, these coordinates are: 05° 05′ 28.4″ N and 03° 06′ 21.8″ W.

349. In its final submissions, with regard to delimitation using the angle bisector method, Côte d'Ivoire requests the Special Chamber to "declare and adjudge that the sole maritime boundary between Ghana and Côte d'Ivoire follows the 168.7° azimuth line, which starts at boundary post 55 and extends to the outer limit of the Ivorian continental shelf". In its pleadings, with regard to delimitation using the equidistance/relevant circumstances, Côte d'Ivoire also states that "boundary post 55 is not on the low water line" and that "to construct a provisional equidistance line according to the proper rules, a method must be found to connect the two". Côte d'Ivoire emphasizes that the "method of connecting boundary post 55 to the low-water line . . . is relevant only for establishing the provisional equidistance line". It suggests that "several solutions are possible" and its solution "has been to extend the general direction of the land boundary".

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350. Côte d'Ivoire argues that the choice between the methods proposed by the Parties has very minor consequences for the construction of the provisional equidistance line.

* * *

351. The Special Chamber notes that the Parties agree on the last land boundary post (land boundary terminus) (BP 55) being situated at 05° 05′ 28.42″ N, 03° 06′ 21.8″ W.

352. The Special Chamber notes, however, that the Parties disagree as to how to connect that land boundary terminus to a point at the low-water line which would constitute the beginning of the maritime boundary between the two Parties. Whereas Ghana proposes to choose a point at the low-water line which is nearest to BP 55, Côte d'Ivoire suggests extending the direction of the land boundary between BP 54 via BP 55 until it reaches the low-water line at point Ω. The positions for the points suggested by Ghana and by Côte d'Ivoire respectively are approximately 42 metres apart. The Special Chamber notes that, according to chart BA 1383 (on the selection of charts see para. 343 above), point Ω is not situated at the low-water line.

353. The Special Chamber has examined the relevant Boundary Treaty between the United Kingdom and France of 1905 (*Accord franco-anglais relatif à la frontière de la Côte d'Ivoire et de la Gold Coast entre la mer et le 11e degré de latitude*); however, that Treaty does not give a clear indication as to how the starting point of the maritime boundary at the low-water line should be defined. The examination of the two starting points for the maritime boundary as suggested by the Parties leads to the conclusion that their impact on the orientation of any equidistance line is minimal within 12 nm of the coast and non-existent as far as the delimitation of the exclusive economic zone and of the continental shelf is concerned.

354. The Special Chamber is not convinced by the argument advanced by Ghana that it would be logical to choose a line from BP 55 to the nearest point at the low-water line. In the view of the Special Chamber, a more accurate reflection of the intentions of the Parties to the above Treaty would be to follow the course of the land boundary over BP 55 until it reaches the low-water line. By comparison, following the suggestion of Ghana would mean creating a new turning point in the boundary at BP 55, which would have no basis in the 1905 Boundary Treaty between the United Kingdom and France.

355. When referring to the low-water line in this context, the Special Chamber has to indicate that on chart BA 1383 the low-water line of the

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coast of Ghana and Côte d'Ivoire can be seen only in some places since it is too close to the coastline. Therefore, where required to use the low-water line, the Special Chamber was guided by the coastline.

356. On the basis of the above considerations, the Special Chamber decides in favour of extending the direction of the land boundary from BP 54 to BP 55 until it reaches the low-water line. The Special Chamber will accordingly use this point as the starting point for the maritime boundary. It is situated at 05° 05′ 23.2″ N and 03° 06′ 21.2″ W.

357. This point will be referred to as "BP 55+".

(c) The provisional equidistance line

358. Ghana submits that

> Ghana and Côte d'Ivoire agree that equidistance is a three-step process, by which (1) a provisional equidistance boundary line is constructed, (2) the line is adjusted, if merited, to account for relevant circumstances, and (3) the line is reviewed to confirm that it does not result in a gross disproportionality between the Parties' relevant coasts and maritime areas.

359. Côte d'Ivoire submits that

> [a]ccording to well-established jurisprudence, [the equidistance/relevant circumstance] method consists in drawing, first, a provisional equidistance line, which then has to be adjusted in a second stage, if necessary, depending on the relevant circumstances, before, finally, ensuring that the result attained does not engender a marked disproportion between the lengths of the relevant coastlines and maritime areas attributed to each of the Parties.

* * *

360. The Special Chamber notes that the two Parties agree, in principle, on the three-stage approach as developed in international jurisprudence (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, ICJ Reports 2009*, p. 61, at p. 101, paras. 116 and 120, at p. 103, para. 122; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, at p. 67, para. 240) in applying the equidistance/relevant circumstances methodology in this case. The Special Chamber will follow this internationally established approach.

Relevant coasts

361. The first step in the construction of the provisional equidistance line is to identify the Parties' coasts of which the seaward

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projection overlaps (see *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, ICJ Reports 2009*, p. 61, at pp. 96-7, para. 99), to which the Special Chamber will now proceed.

362. Ghana contends that "[t]he relevant coasts are those portions of the Parties' coasts that face onto the area to be delimited, including the area beyond 200 M". It emphasizes that "[p]ortions of a party's coast that do not generate entitlements that overlap with those of the other party are simply not relevant to the delimitation".

363. As regards its own relevant coast, Ghana is of the view that it is "the portion that extends from the land boundary terminus in a southeasterly direction to Cape Three Points, where the coast turns abruptly to the northeast and begins to face away from the area to be delimited".

364. As regards the relevant coast of Côte d'Ivoire, Ghana contends that it "extends from the land boundary terminus . . . until the vicinity of Sassandra".

365. Ghana states that "west of that point, the Ivorian coastline is almost entirely beyond 200 M from the maritime entitlements claimed by Ghana". In Ghana's view, "there is no overlap with any Ghanaian entitlement with any projections emanating from the western segment of the Ivorian coast, and therefore that western part of Côte d'Ivoire's coast cannot be relevant to the delimitation".

366. According to Ghana, "[t]he length of Ghana's relevant coast is 121 km" and "[t]he length of Côte d'Ivoire's relevant coast . . . is 308 km". It adds that "[t]he ratio of the Parties' relevant coasts is thus 2.55 to 1, in favour of Côte d'Ivoire".

367. Côte d'Ivoire contends that "[d]etermining relevant coasts may prove particularly problematic when the coasts of the States in question are adjacent" and "[t]he present case is one of those in which identification of the relevant coasts and the relevant area is difficult or arbitrary".

368. As regards its own relevant coast, Côte d'Ivoire is of the view that "the entire Ivorian coast, from boundary post 55 to the boundary with Liberia, generates projections in the maritime area to be delimited which overlap projections of the Ghanaian coast".

369. Côte d'Ivoire argues that "there is . . . no reason to exclude from the relevant coasts the portion of the Ivorian coastline between Sassandra and the land boundary terminus with Liberia". Relying on the arbitral award in the *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India* (Award of 7 July 2014, para. 299), Côte d'Ivoire adds that

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[e]ven if the projections of the Ivorian coast located between Sassandra and the boundary with Liberia, on the one hand, and those of the coast of Ghana, on the other, overlap beyond 200 nautical miles, "[there is] no basis for distinguishing between projections within 200 nm and those beyond that point".

370. As regards Ghana's relevant coast, Côte d'Ivoire is of the view that "only the section of coast between boundary post 55 and Cape Three Points projects into the maritime area to be delimited such as to overlap the projections from the Ivorian coast".

371. According to Côte d'Ivoire, "the length of the properly identified relevant coasts is . . . 510 km for Côte d'Ivoire and 121 km for Ghana and the ratio between the lengths of the respective coasts of Côte d'Ivoire and Ghana is thus approximately 1:4.2".

* * *

372. To establish the projection generated by the coast of a State, the Special Chamber follows international jurisprudence in this respect. For a coast to be considered relevant in maritime delimitation it must generate projections which overlap with those of the coast of another party (*Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, at p. 58, para. 198).

373. The Special Chamber takes the view that, since there is only one continental shelf, it does not see a basis for distinguishing between projections within 200 nm and those beyond. Accordingly, the coasts of the two Parties are relevant, irrespective of whether an overlap occurs within 200 nm of both coasts, beyond 200 nm of both coasts, or within 200 nm of one and beyond 200 nm of another coast.

374. The Parties differ as to which part of their respective coasts is relevant.

375. The Special Chamber notes that there is no disagreement that the relevant Ghanaian coast extends from the land boundary terminus (BP 55) in a south-easterly direction to Cape Three Points. However, there is disagreement as to whether the whole coast of Côte d'Ivoire up to the border with Liberia is to be considered relevant.

376. The Special Chamber further notes in respect of the coast of Ghana that between BP 55+ and Cape Three Points, where the coast turns abruptly to the north-east, the coast of Ghana faces directly towards the disputed area. Accordingly, this area is relevant. The coast further eastward faces away from the area to be delimited and is not, therefore, relevant.

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377. The Special Chamber will now turn to the relevant coast of Côte d'Ivoire. The Côte d'Ivoire coast from BP 55+ to the north-west until it reaches a bend in the coast near Abidjan and then to the west until Sassandra generates, in the view of the Special Chamber, projections into the maritime area to be delimited. The projections of this part of the coast of Côte d'Ivoire overlap with projections of the Ghanaian coast and accordingly this part of the Ivorian coast is relevant.

378. As far as the coast between Sassandra and the boundary with Liberia is concerned, the Special Chamber is of the view that this part of the coast of Côte d'Ivoire does not have a projection to the sea in a way that overlaps with the disputed area. Côte d'Ivoire's demonstrations attempting to prove the contrary do not convince the Special Chamber. Sketch map 7.9, submitted by Côte d'Ivoire in its Counter-Memorial, is based upon a simplified configuration of the coast and does not reflect its geographic reality. In the view of the Special Chamber, what the relevant coast is—or, in other words, which seaward projection of the coast creates an overlap—is determined by the geographic reality of that coast.

379. The Special Chamber concludes that the relevant coasts are, on Ghana's side, from BP 55+ to Cape Three Points and, on Côte d'Ivoire's side, from BP 55+ to Sassandra. The length of the relevant Ghanaian coast is approximately 139 kilometres and that of Côte d'Ivoire 352 kilometres.

380. The Special Chamber notes that the length of the coastline of Ghana and that of the coastline of Côte d'Ivoire differ from those calculated by the Parties. This is due to the technique used in the calculation. The lengths of the relevant coastlines were computed by taking the World Vector Shoreline data and removing those indentations that would normally be closed by straight baselines. The width of the mouth of each indentation was included, however; i.e., the relevant coastline was drawn in such a way as to span each of those indentations.

Relevant area

381. The Special Chamber will now turn to the identification of the relevant area, namely the area in which the projections of the coasts of the two Parties overlap, extending to the outer limits of the area to be delimited.

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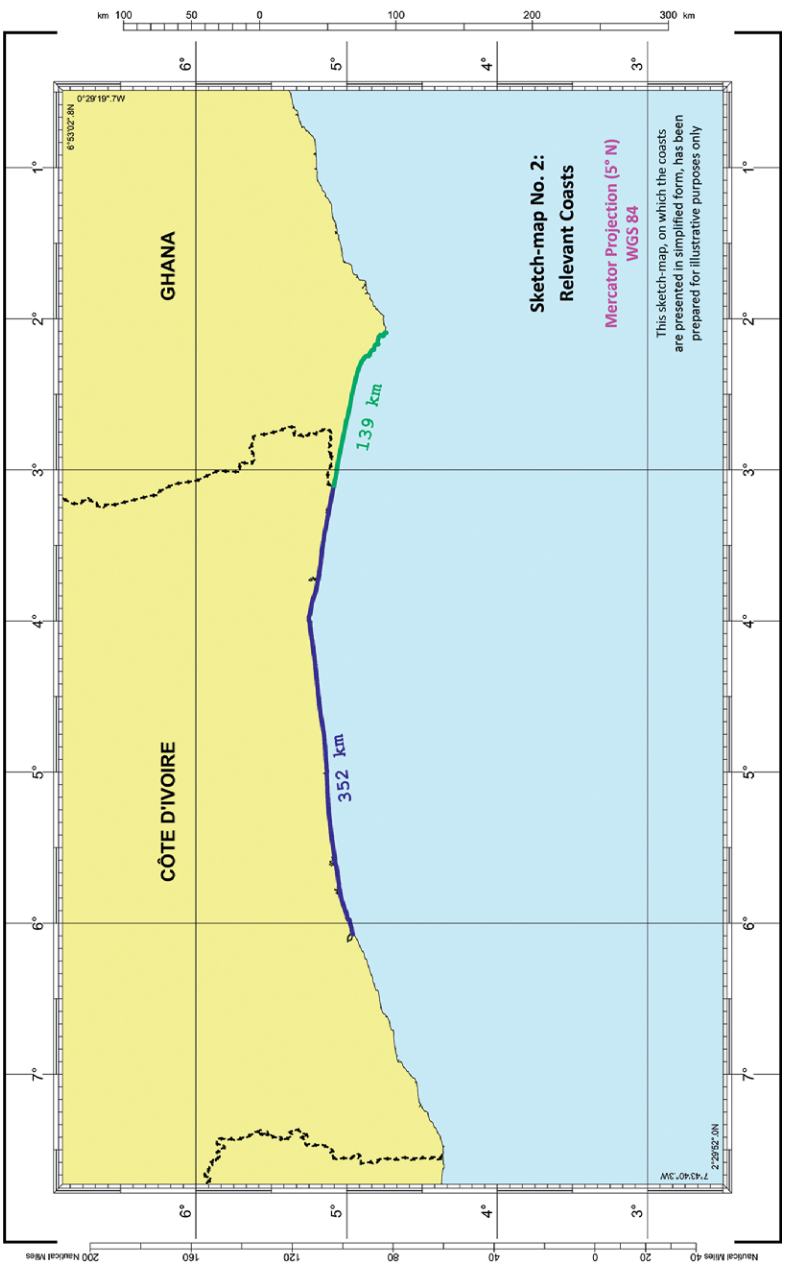

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382. The Parties' differing views on the extent of the relevant area have their basis in the differing views concerning the relevant coasts. Having already decided which the relevant coasts are, the Special Chamber only has to establish the limits of the relevant area in the east, the south and the west. In so doing, the Special Chamber will take into account that the outer limits of the continental shelves of the two Parties have not been determined definitively.

383. In the east, the relevant area is, in the view of the Special Chamber, delimited by a line running due south starting from Cape Three Points until it reaches the outer limits of the continental shelf of Ghana.

384. The Special Chamber takes the view that, in the west, the relevant area is delimited by a line running due south starting from Sassandra until it reaches the outer limits of the continental shelf as claimed by Côte d'Ivoire in its submission to the CLCS.

385. In the south, the relevant area is delimited by the outer limits of the continental shelf of Ghana and those of the continental shelf claimed by Côte d'Ivoire.

386. Delimited as set out in paragraphs 383-5 above, in the view of the Special Chamber, the relevant area covers approximately 198,723 square kilometres. The Special Chamber is bound to emphasize that it is only possible to give an approximation of the size of the relevant area since, as set out above (para. 382), the outer limits of the continental shelf beyond 200 nm have not yet been established.

Base points

387. The next step for the Special Chamber is to select base points for establishing the provisional equidistance line.

388. Ghana, relying on the Judgment of the ICJ in *Maritime Delimitation in the Black Sea*, submits that "the '[most] appropriate [base] points' are those 'which mark a significant change in the direction of the coast, in such a way that the geometrical figure formed by the line connecting all these points reflects the general direction of the coastlines'". Ghana adds that "the relevant coasts of Ghana and Côte d'Ivoire are unremarkable" and that "[a]s a result, there are few turning points".

389. Ghana states that "[i]dentifying [those points] is done by application of appropriate software" and it "has used CARIS LOTS software to generate the base points". The coordinates of the base points selected by Ghana are as follows:

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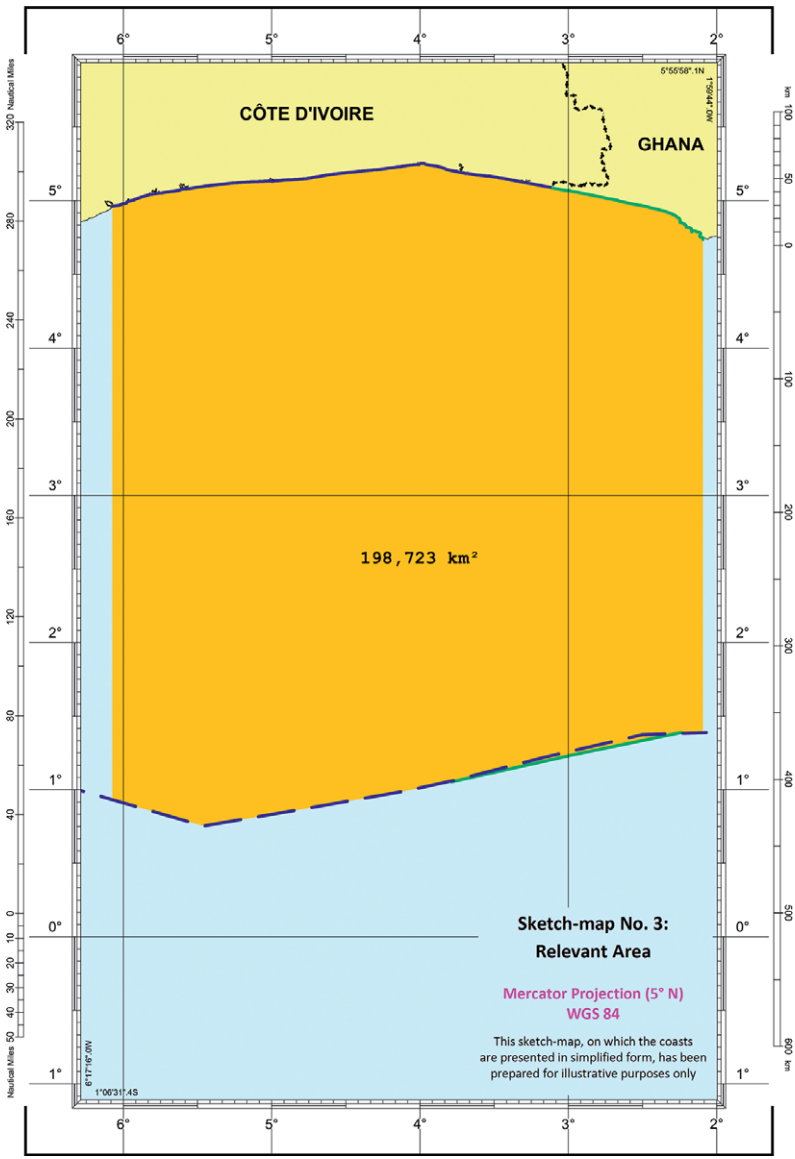

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Cote d'Ivoire's base points:		
ID	**Latitude (dms)**	**Longitude (dms)**
CI1	5° 05′ 25″ N	3° 06′ 31″ W
CI2	5° 05′ 43″ N	3° 08′ 05″ W
CI3	5° 05′ 55″ N	3° 09′ 04″ W
CI4	5° 06′ 09″ N	3° 10′ 22″ W
Ghana's base points:		
ID	**Latitude (dms)**	**Longitude (dms)**
GH1	5° 05′ 22″ N	3° 06′ 14″ W
GH2	5° 05′ 22″ N	3° 06′ 13″ W
GH3	5° 05′ 20″ N	3° 06′ 10″ W
GH4	5° 04′ 52″ N	3° 04′ 06″ W
GH5	5° 04′ 40″ N	3° 03′ 16″ W

390. Côte d'Ivoire, also relying on the Judgment of the ICJ in *Maritime Delimitation in the Black Sea*, submits that base points are "the projecting points closest to the area to be delimited, selected so as to reflect the general direction of the coast". Côte d'Ivoire adds that "the Ivorian coasts, like those of Ghana, despite the concavity, on the one hand, and convexity, on the other, have no easily identifiable protuberant points".

391. Côte d'Ivoire contends—in discussing the appropriateness of charts—that "the base points determined both by Ghana and by Côte d'Ivoire did not reflect the coastal reality". It further contends that "[t]he base points provided by Ghana are located several hundreds of metres seaward, whilst '[the] majority of the base points supplied by Côte d'Ivoire fall landward of the coastline'". Côte d'Ivoire adds that "[t]he consequences of this inadequacy of the base points are even more significant for the equidistance line in that very few points have been used for establishing it".

392. Côte d'Ivoire states that "[d]etermining base points for the purposes of delimitation is a question of fact, entirely dependent on the coastal geography" and "a matter of data-processing". It adds that the base points it identified "were selected automatically by the Caris Lots software, on the basis of the digitization of the coastline identified by Côte d'Ivoire and transcribed into the charts published in 2016". The coordinates of the base points selected by Côte d'Ivoire are as follows:

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C1	05° 05′ 25.0″ N	03° 06′ 22.3″ W
C2	05° 05′ 25.8″ N	03° 06′ 26.9″ W
G1	05° 05′ 24.2″ N	03° 06′ 17.5″ W
G2	05° 05′ 21.9″ N	03° 06′ 04.2″ W
G3	05° 05′ 17.1″ N	03° 05′ 38.3″ W
G4	05° 05′ 08.5″ N	03° 04′ 54.0″ W
G5	05° 05′ 01.6″ N	03° 04′ 19.1″ W
G6	05° 04′ 30.5″ N	03° 01′ 49.9″ W

* * *

393. In the view of the Special Chamber, the disagreement between the Parties concerning the appropriate base points stems in part from disagreements as to which chart is appropriate, as to where to place base points, and as to the fact that only a few base points can be identified on Jomoro. The Special Chamber observes that, while coastal States are entitled to determine base points for the purpose of delimitation, it is under no obligation to accept base points identified by either of them. It may select its own base points on the basis of the geographic particularities of the coast under consideration (*Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, at p. 72, para. 264, quoting the Judgment of the ICJ in *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), ICJ Reports 2009*, p. 61, at p. 108, para. 137).

394. The Special Chamber reiterates that it decided to use chart BA 1383 (see para. 343). Having assessed the base points advanced by the Parties on the basis of this chart, the Special Chamber concludes that for various reasons the base points suggested by the Parties are not appropriate.

395. The base points suggested by Ghana are located several hundred metres seaward off the coast. Therefore it is doubtful whether these base points properly reflect the geographic configuration of the coast. The base points suggested by Côte d'Ivoire, in turn, fall landward of the coastline, according to chart BA 1383. It is equally doubtful whether they properly reflect the geographic configuration of the coast.

396. The Special Chamber considers it mandatory and in line with jurisprudence existing hitherto (*Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award of 7 July 2014, para. 223) that the base points used for the construction of a provisional equidistance line be situated at the low-water line. The Special Chamber recalls the *Award of the Arbitral Tribunal in the second stage of the proceedings between Eritrea and Yemen* (*Maritime Delimitation*), which stated that

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the use of the low-water line is laid down by a general international rule in the Convention's article 5, and that both Parties have agreed that the Tribunal is to take into account the provisions of the Convention in deciding the present case.

(Decision of 17 December 1999, *RIAA, vol. XXII*, p. 335, at p. 366, para. 135)

397. The Special Chamber has already expressed its view on using either technique proposed by the Parties to identify the low-water line of the relevant coasts (see paras. 327-43). It further reiterates that the low-water line is not identifiable on chart BA 1383 since it is too close to the coastline. Accordingly, the Special Chamber decides to use the coastline (see para. 355) as depicted on chart BA 1383 as the basis for the identification of base points.

398. In light of the circumstances of the case and the disagreement between the Parties, the Special Chamber has selected base points for the construction of the provisional equidistance line.

399. The Special Chamber identified base points from chart BA 1383 by re-digitizing the coastline in the relevant location and then using the digitized coastline from both States to compute the equidistance line, identifying the relevant base points along each coastline. The method applied produced a high number of base points, some of which were close to each other. Therefore, the number of base points on each side of the land boundary terminus was reduced by using, for each Party, only the base points furthest from and nearest to the land boundary terminus and the ones in the middle. These base points are:

On the side of Cote d'Ivoire	
05° 05′ 23.2″ N	03° 06′ 21.2″ W
05° 05′ 23.7″ N	03° 06′ 25.6″ W
05° 05′ 25.7″ N	03° 06′ 35.3″ W
05° 05′ 43.3″ N	03° 08′ 04.9″ W
05° 06′ 09.7″ N	03° 10′ 23.3″ W

On the side of Ghana	
05° 05′ 23.2″ N	03° 06′ 21.2″ W
05° 05′ 21.6″ N	03° 06′ 16.3″ W
05° 05′ 20.2″ N	03° 06′ 10.7″ W
05° 04′ 51.7″ N	03° 04′ 01.9″ W
05° 04′ 42.3″ N	03° 03′ 21.6″ W

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400. Having assessed the base points set out above, the Special Chamber finds that they are sufficient to establish the provisional equidistance line until it reaches the outer limits of the continental shelf beyond 200 nm. On the basis of these points, a simplified provisional equidistance line was established.

401. Such line starts from BP 55+ with coordinates 05° 05′ 23.2″ N, 03° 06′ 21.2″ W and is defined by the following turning points at which the direction of the line changes and which are connected by geodetic lines:

A: 05° 01′ 03.7″ N	03° 07′ 18.3″ W
B: 04° 57′ 58.9″ N	03° 08′ 01.4″ W
C: 04° 26′ 41.6″ N	03° 14′ 56.9″ W
D: 03° 12′ 13.4″ N	03° 29′ 54.3″ W
E: 02° 59′ 04.8″ N	03° 32′ 40.2″ W
F: 02° 40′ 36.4″ N	03° 36′ 36.4″ W

From turning point F, such simplified provisional equidistance line continues as a geodetic line starting at an azimuth of 191° 38′ 06.7″ until it reaches the outer limits of the continental shelf beyond 200 nm.

(3) Relevant circumstances

(a) In general

402. The Special Chamber will now turn, in the second stage of the established three-stage approach recognized by international jurisprudence on maritime delimitation and agreed upon in principle by the two Parties, to the question as to whether relevant circumstances requiring an adjustment of the provisional equidistance line established above (para. 401) exist. Both Parties have invoked the existence of relevant circumstances while arguing against the relevant circumstances invoked by the other side.

403. Ghana submits that "[t]he Parties agree that the second step of the three-step methodology is to determine if there are relevant circumstances that merit shifting the provisional equidistance line". It adds that "[t]hey disagree, however, on what circumstances are relevant and how the line should be shifted".

404. In Ghana's view, "[t]he long-standing bilateral practice of the Parties, aligning the limits of their oil and gas concessions along what they both regarded as an equidistance line . . . is a relevant circumstance requiring adjustment of the provisional equidistance line". It contends

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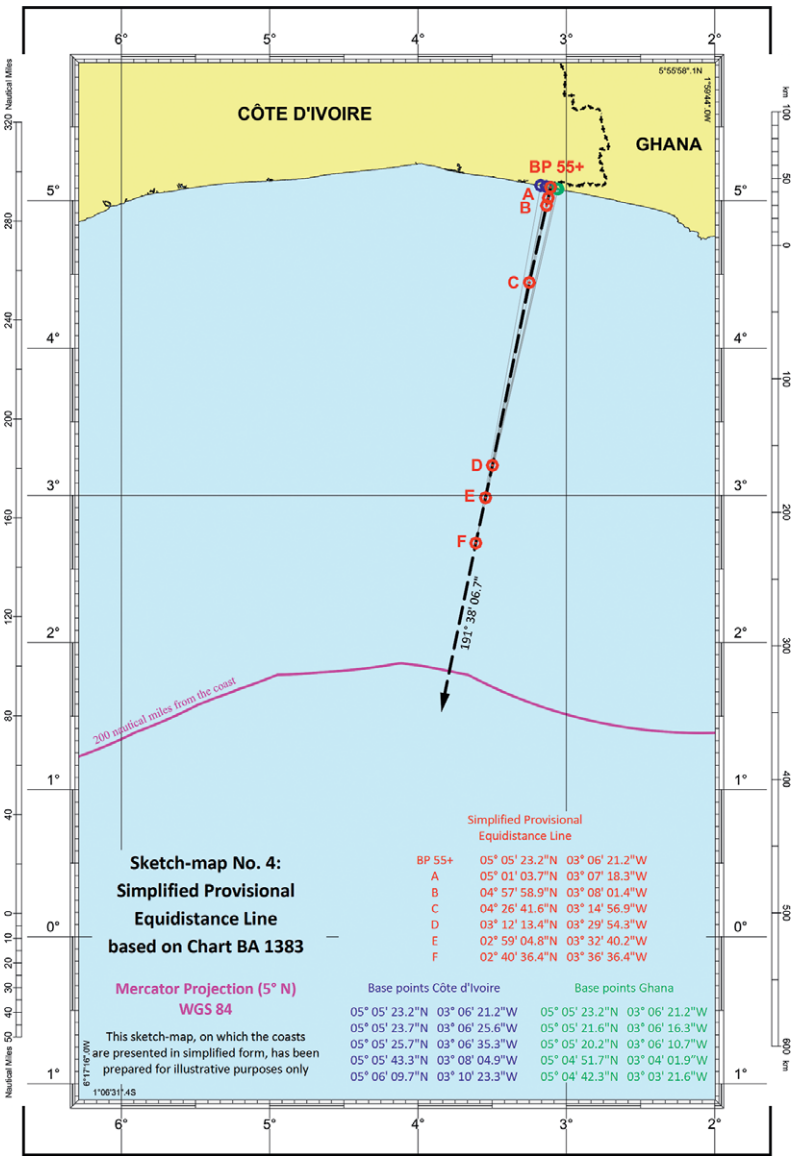

that "the provisional equidistance line should be adjusted to conform to the *de facto* boundary".

405. Côte d'Ivoire, referring to the Tribunal's Judgment in the *Bay of Bengal* case (*Bangladesh/Myanmar*), submits that "[o]nce the provisional equidistance line has been correctly drawn, it is necessary to

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move 'to the second stage of the process, which consists of determining whether there are any relevant circumstances requiring adjustment of the provisional equidistance line'".

406. Côte d'Ivoire submits that the Special Chamber "could . . . come to an equitable solution . . . by applying the equidistance and relevant circumstances method, adjusting the line in light of the geographic circumstances of the specific case". With regard to those geographical circumstances, Côte d'Ivoire refers to "the cut-off resulting from the general configuration of the coasts", to "the Jomoro Peninsula and the blocking of the Ivorian land mass to which it gives rise", as well as to "the exceptional presence of hydrocarbons in the disputed area and to the east of it".

407. In Côte d'Ivoire's view,

> the application of the three-stage method should . . . lead to a line which is identical to that resulting from the use of the bisector method, since the same geographical circumstances which led Côte d'Ivoire to propose the bisector method substantiate the adjustment of the provisional equidistance line.

It submits that "the single azimuth line of 168.7 degrees . . . divides the maritime areas between the two States equitably, whatever method is chosen".

* * *

408. The Special Chamber notes that the two Parties argue that the provisional equidistance line should be adjusted on account of the prevailing relevant circumstances. It takes note of the international jurisprudence which has dealt with and identified relevant circumstances. Before the Special Chamber turns to the arguments advanced, however, some general remarks on relevant circumstances are called for, in view of the particularities of this case.

409. The overarching objective of maritime delimitation—as set out in articles 74 and 83 of the Convention—is to achieve an equitable solution. The Special Chamber is aware of the international jurisprudence which has been developed as to which circumstances may be considered relevant. This international jurisprudence has also established the purpose and limits of the adjustment of a provisional equidistance line. The Tribunal stated in *Delimitation of the maritime boundary in the Bay of Bengal* (*Bangladesh/Myanmar*):

> The Tribunal . . .takes the position that, while an adjustment must be made to its provisional equidistance line to abate the cut-off effect of the line on Bangladesh's concave coast, an equitable solution requires, in the light of the coastal geography of the Parties, that this be done in a balanced way so as

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to avoid drawing a line having a converse distorting effect on the seaward projection of Myanmar's coastal façade.

(*Judgment, ITLOS Reports 2012*, p. 4, at p. 87, para. 325)

Further to and following the jurisprudence of the ICJ in the *North Sea Continental Shelf* cases, and repeated by subsequent international jurisprudence, such as the ICJ Judgment of 3 June 1985 in *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (*Judgment, ICJ Reports 1985*, p. 13, at pp. 39-40, para. 46) and the arbitral award in the *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India* (Award of 7 July 2014, para. 397), the Special Chamber emphasizes—while being aware that any delimitation may result in some refashioning of nature—that delimitation must not completely refashion geography or compensate for the inequalities of nature. The ICJ stated in *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*:

> Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of the State with an extensive coastline similar to that of a State with a restricted coastline . . . . It is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result.

(*Judgment, ICJ Reports 1969*, p. 3, at pp. 49-50, para. 91)

410. Taking this international jurisprudence into account, the Special Chamber will now address the various arguments advanced by the Parties with respect to the existence of relevant circumstances, starting with those based upon geographic considerations.

(b) Concavity/convexity

411. Côte d'Ivoire invokes the concavity of the Ivorian coast and the convexity of the coast of Ghana as a relevant circumstance, and the Special Chamber notes that extensive international jurisprudence exists concerning the conditions under which a geographical situation of this nature may be considered to constitute a relevant circumstance. Côte d'Ivoire argues that the convexity of the Ghanaian coast increases the effect of concavity.

412. Côte d'Ivoire submits that "[t]he provisional equidistance line cuts off the seaward projection of a good part of the Ivorian coast, in

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particular the part located between Abidjan (or the 4°W meridian) and boundary post 55". It explains that "from the land boundary terminus the maritime boundary claimed by Ghana has a north-east/south-west orientation and represents a clear encroachment on Côte d'Ivoire's entitlement to maritime areas off its coasts". Côte d'Ivoire adds that it is "not sufficient that the continental shelf can extend beyond 200 nautical miles for there to be no cut-off effect".

413. Côte d'Ivoire further submits that "[t]he cut-off effect is all the more noteworthy in that a boundary line such as the one claimed by Ghana would have an impact on access to the port of Abidjan".

414. Côte d'Ivoire argues that, "when a provisional equidistance line cuts off the coastal projections of one of the Parties in an unreasonable fashion to the benefit of the other, it has to be adjusted". Referring to the Tribunal's Judgment in the *Bay of Bengal* case (*Bangladesh/Myanmar*), Côte d'Ivoire argues that "[i]t is not the concavity *per se* which constitutes a relevant circumstance but the effect of the cut-off which it creates".

415. Côte d'Ivoire maintains that "[i]n the present case, the reason for the cut-off is the respective concavity and convexity of the Ivorian and Ghanaian coasts" and that it is "the combination of these two configurations that has caused the marked cut-off effect produced by the equidistance line to the detriment of Côte d'Ivoire".

416. Ghana contends that

> the alleged concavity along the Ivorian coast cannot constitute a relevant circumstance in the delimitation of the boundary between Côte d'Ivoire and Ghana . . . because the putative concavity exerts no influence whatsoever on the equidistance line.

417. Ghana submits that "the customary equidistance boundary allows Côte d'Ivoire's relevant coast (to an even greater extent than Ghana's) to project seaward without impediment, providing unconstrained access to the outer continental shelf and beyond". It adds that it "see[s] a cutoff of Côte d'Ivoire's coastal projection, but not until the equidistance line is a full 160 nautical miles from the LBT". It emphasizes, however, that "this is not a true cutoff" and "certainly not a cutoff that requires abatement". Ghana equally points out that such a "cutoff . . . could be completely eliminated by deflecting the customary equidistance boundary at that point".

418. Ghana also submits that "the seaward projection of the Abidjan coast reaches 181 nm before it hits the customary equidistance line".

419. Ghana argues that "[a] concave coast, without more, is not a relevant circumstance". It adds that "[i]nternational courts and

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tribunals have recognized the cut-off effect (due to the concavity of the coast) and the presence of islands in the relevant area as potentially relevant factors in considering whether to make any adjustment to the provisional equidistance line" and emphasizes that "[i]n the present case there is no cut-off effect and there are no islands".

420. Ghana also argues that "[i]n regard to adjacent States, the equidistance line will almost always produce a cutoff". It emphasizes that "[t]he question is thus not whether there is a cutoff but whether the cutoff produces its effects in a shared and mutually balanced way".

* * *

421. The Special Chamber will now consider whether the concavity of the coast of Côte d'Ivoire constitutes a relevant circumstance warranting an adjustment of the provisional equidistance line in favour of Côte d'Ivoire. It notes that the configuration of coasts, in particular concavity, has been invoked frequently as a relevant circumstance. The Special Chamber further notes the common view in international jurisprudence that concavity as such does not necessarily constitute a relevant circumstance requiring adjustment of a provisional equidistance line. In this respect, the Special Chamber recalls the Judgment of the Tribunal in *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, which stated:

> The Tribunal notes that in the delimitation of the exclusive economic zone and the continental shelf, concavity *per se* is not necessarily a relevant circumstance. However, when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States, as a result of the concavity of the coast, then an adjustment of that line may be necessary in order to reach an equitable result.
>
> (*Judgment, ITLOS Reports 2012*, p. 4, at p. 81, para. 292)

422. The Special Chamber notes that the award of the arbitral tribunal in the *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India* (Award of 7 July 2014, para. 417) determined that, in order to warrant an adjustment of a provisional equidistance line, such cut-off effect must, first, prevent the State from extending its maritime boundary as far as international law permits and, second, prevent an equitable solution from being reached.

423. In the view of the Special Chamber, one of the decisive questions on which the Parties differ is what is to be considered a cut-off effect requiring the adjustment of a provisional equidistance line. The Special Chamber considers that the existence of a cut-off effect should be established on an objective basis and that the decision

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as to the existence of a cut-off effect must take into account the relevant area in which competing claims have been made.

424. The Special Chamber accepts that the coast of Côte d'Ivoire is concave, although such concavity is not as pronounced as in, for example, the case of the Bay of Bengal. The Special Chamber also acknowledges that the coast of Ghana is convex, which enhances the effect of the concavity of the coast of Côte d'Ivoire. Owing to this concavity combined with the convexity of the coast of Ghana, some cut-off effect exists to the detriment of Côte d'Ivoire. Such cut-off effect affects only the projection of Côte d'Ivoire's coast east of Abidjan and this cut-off only comes into being 163 nm from BP 55+. The seaward projection of the relevant coast of Côte d'Ivoire from Abidjan to Sassandra, however, extends beyond 200 nm, as claimed by Côte d'Ivoire.

425. The Special Chamber would like to point out that adjusting the provisional equidistance line for the benefit of Côte d'Ivoire and to the detriment of Ghana would in fact cut off the seaward projection of the coast of Ghana. The Special Chamber, while bearing in mind that the cut-off effect to the detriment of Côte d'Ivoire is in itself not so significant as to require adjustment of the provisional equidistance line, will now ascertain whether other reasons might require an adjustment to be made, as sought by Côte d'Ivoire.

426. The Special Chamber does not consider convincing Côte d'Ivoire's argument that access to the port of Abidjan would be cut off if the provisional equidistance line were not adjusted. As already established above (para. 424), the cut-off effect only comes into being at a distance of approximately 163 nm from BP 55+ along the provisional equidistance line. The Special Chamber would like to point out that freedom of navigation is guaranteed in the exclusive economic zone by article 58, paragraph 1, of the Convention. Taking this into account, in the view of the Special Chamber, Côte d'Ivoire has not substantiated its concern that ships heading for the port of Abidjan would face restrictions when passing through the exclusive economic zone of Ghana. Substantiating an adjustment of the provisional equidistance line would have needed greater justification than merely raising a concern in general terms.

(c) The geography of Jomoro

427. The Special Chamber has already dealt with the particularity of Jomoro in a different context (paras. 303-10) but notes that Côte d'Ivoire has also invoked Jomoro as a relevant circumstance.

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428. Côte d'Ivoire contends that "[t]he Jomoro peninsula, which represents 0.1% of Ghana's land territory, constitutes a relevant circumstance in the delimitation process".

429. Côte d'Ivoire emphasizes that it "is in no way contesting the fact that the strip of land forms part of Ghana's territory and that it is thus acceptable to locate the base points on this portion of the Ghanaian coast". It submits, however, that "[n]evertheless, this strip of land is offset relative to the respective land masses of Ghana and Côte d'Ivoire and it has the effect of cutting off access to the sea of a large portion of the Ivorian land mass".

430. Côte d'Ivoire argues that "these effects are similar to those produced by an island situated on the wrong side of an equidistance line". It explains that

> [i]n consideration of its disproportionate effect, this strip of land should, within the context of the maritime delimitation process, be treated in the same way as other geographical or historical irregularities: that is, as a relevant circumstance, substantiating the adjustment of the provisional equidistance line in favour of Côte d'Ivoire.

431. Ghana contends that "[n]either history nor geography—nor case law—provide any basis whatsoever for regarding the land boundary, and its distribution of land territory between the two States, as a relevant circumstance warranting an adjustment of the provisional maritime boundary".

432. Ghana explains that "[t]his land does not protrude into the sea" and that "[t]his territory is the unbroken continuation of Ghana's coastline that is perfectly aligned with that coastline, and perfectly aligned with Côte d'Ivoire's coastline on the other side of the LBT". Ghana adds that "the Jomoro district in Ghana is not surrounded by water and does not project out into a body of water; it is not a peninsula" and that it is "a substantial portion of Ghana's mainland (comprising 253 km², and home to approximately 80,000 inhabitants)".

433. Ghana argues that its "mainland territory is not an island, let alone situated on the wrong side of an equidistance line". It emphasizes that "[t]he coastline of this indisputably Ghanaian territory unquestionably forms part of Ghana" and "cannot be ignored simply because Côte d'Ivoire considers it disadvantageous".

* * *

434. The Special Chamber does not accept the geography of Jomoro as constituting a relevant circumstance warranting adjustment of the provisional equidistance line. Jomoro is part of the territory

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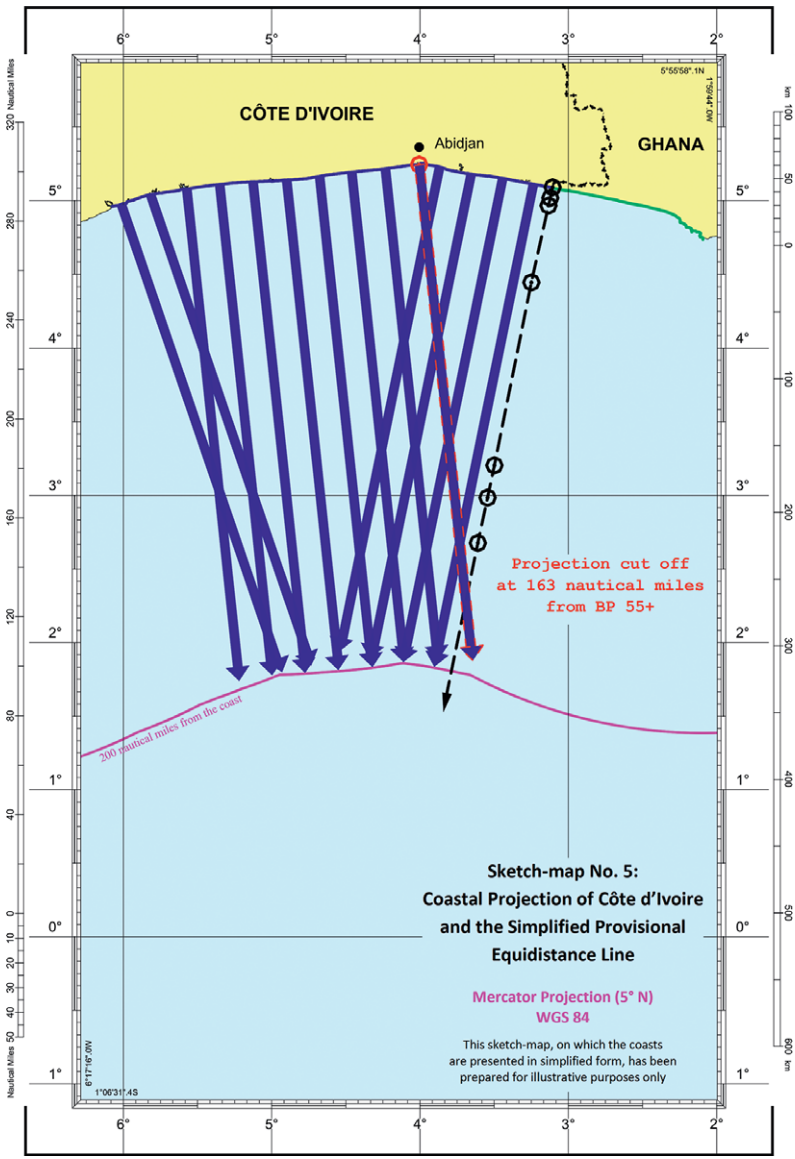

of Ghana, which Côte d'Ivoire does not deny, and cannot be isolated from the land territory of Ghana as a whole. The geographical particularity of Jomoro does not justify treating it as an island on the wrong side of an equidistance line, or as a peninsula protruding into the sea.

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435. Moreover, the Special Chamber notes that part of the relevant coast of Côte d'Ivoire west of BP 55 has the same geographical characteristics as Jomoro, likewise being separated from the mainland by a lagoon. Ultimately, in the view of the Special Chamber, the two areas should be treated alike, namely as part of the land territory of the State concerned.

436. Furthermore, the Special Chamber is not convinced by the argument advanced by Côte d'Ivoire that having base points on Jomoro constitutes a relevant circumstance. As indicated above, Jomoro cannot be isolated from the land territory as a whole. Furthermore, as the Special Chamber established above (at para. 310), identifying base points in the area of Jomoro is sufficient to guide the direction of the provisional equidistance line until it reaches the outer limit of Ghana's continental shelf beyond 200 nm.

(d) Location of resources

437. Côte d'Ivoire invokes the location and distribution of hydrocarbon resources as a relevant circumstance.

438. Côte d'Ivoire contends that "in the present case, access to the oil resources is sufficiently exceptional to constitute a relevant circumstance for delimitation purposes".

439. It further contends that "[i]n the instant case there is an exceptional concentration of hydrocarbon resources in the disputed area, which can be explained by the particular geological history of the Tano sedimentary basin". It adds that "there are geomorphological circumstances which are quite exceptional, which would mean that one of the Parties is deprived completely . . . or almost completely . . . from any access to the natural resources off those coasts".

440. Côte d'Ivoire emphasizes that "Ghana is able to lay claim to the majority of the oil fields discovered merely owing to the fact that it has sovereignty over the strip of land [Jomoro] which has been shown as having to be considered a relevant circumstance in respect of its effects" and that "Côte d'Ivoire's goal is to obtain a fair share".

441. Côte d'Ivoire argues that "[t]he principle of taking into account the presence of hydrocarbons in a disputed area as a relevant circumstance is . . . accepted in jurisprudence". It asserts that potential catastrophic repercussions brought about by the delimitation "have been assessed by the courts and tribunals only in respect of fishing activities", which "have nothing in common with oil activities".

442. Côte d'Ivoire disagrees with Ghana's assessment of the relevant international jurisprudence as to whether in maritime delimitation cases

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the economic effect of such delimitation may be taken into account. Côte d'Ivoire states that such "jurisprudence . . . does not require any economic dependence by the State on the resources of the area in order to be able to claim access to them in the delimitation operation". Côte d'Ivoire also contests the relevance of Ghana's arguments that "Côte d'Ivoire's population has never depended on these waters (or seabed) for the income they generate" and that "[i]t could not, therefore, suffer any catastrophic repercussions to its population from an adjusted equidistance line". It argues that "it is as a result of [Ghana's] . . . hegemonic policy of controlling the disputed area . . . that Côte d'Ivoire is deprived of access to the hydrocarbon resources contained in the area and cannot therefore demonstrate any economic dependence".

443. Ghana disagrees with Côte d'Ivoire on factual grounds, namely as far as the distribution of mineral resources is concerned. It further disagrees with regard to the assessment of the international jurisprudence.

444. Ghana contends that "what [Côte d'Ivoire] considers 'exceptional' is that hydrocarbons are proven to be located in the disputed area" but "[t]hat is not exceptional enough to constitute a relevant circumstance".

445. Ghana contends that Côte d'Ivoire "has most of the hydrocarbons" and that "[i]n the decade before 2009 . . . Côte d'Ivoire was producing up to 70 times as much oil every day as Ghana".

446. Ghana argues that "[n]o court or arbitral tribunal . . . has ever ruled that the presence of hydrocarbons was a relevant circumstance, or has adjusted an equidistance line or any other provisional delimitation line based on the presence of hydrocarbons in the disputed area". It emphasizes that "[t]here is no case in which a line was adjusted in order to allow a State access to resources that it never previously enjoyed".

447. Ghana maintains that,

> [i]n *Gulf of Maine*, the Special Chamber . . . ruled that access to natural resources should be taken into account only in situations where shifting the boundary would be required to avoid "catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned".

Ghana also recalls that "[i]n *Jan Mayen*, the Court determined that this specific requirement was met, because failure to adjust the boundary line would have deprived Denmark of access to fish stocks on which its fishermen were historically dependent".

448. In Ghana's view,

> Côte d'Ivoire struggles to show why access to hydrocarbons should be treated differently than access to fish, and considered a relevant circumstance in the absence of catastrophic repercussions, or where there has been no prior access to these resources and thus no deprivation of them.

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449. Ghana maintains that "Côte d'Ivoire cannot show—indeed, it does not even allege—that it would suffer catastrophic repercussions if the customary equidistance boundary were confirmed. There would, in fact, be no repercussions, since a State cannot be deprived of something it never had access to in the first place". Ghana emphasizes that "Côte d'Ivoire has never conducted any oil-related activities in the disputed area" and that its "population has never depended on these waters (or seabed) for the income they generate". In Ghana's view, Côte d'Ivoire "could not, therefore, suffer any catastrophic repercussions to its population".

* * *

450. The Special Chamber will deal first with the factual arguments advanced by Côte d'Ivoire and contested by Ghana and second with the assessment of the relevant international jurisprudence.

451. The Special Chamber is not sure whether it is factually correct to say that Ghana is able to lay claim to the majority of the oil fields discovered in the relevant area. These doubts are further accentuated by the fact that most of the relevant area belongs to the Ivorian basin, whose potential for the exploitation of hydrocarbon resources is not yet fully clear. In the view of the Special Chamber, this is not a decisive point. If Côte d'Ivoire were correct in its statement that a particular geological history resulted in an exceptional concentration of hydrocarbon resources in the Tano basin, the Special Chamber would be bound to reiterate that the process of delimiting maritime zones is not meant to refashion nature (see above at para. 409).

452. According to international jurisprudence, delimitation of maritime areas is to be decided objectively on the basis of the geographic configuration of the relevant coasts. Maritime delimitation is not a means for distributing justice. In general, the trend—as expressed in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)* and reiterated in *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)* (*Judgment*, *ICJ Reports 1993*, p. 38, at pp. 73-4, paras. 79-80)—was that a maritime delimitation should not be "influenced by the relative economic position of the two States in question, in such a way that the area of continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources". An exception to this is the *Grisbadarna* case *(Norway/Sweden)* (decision of 23 October 1909, *RIAA, vol. XI*, p. 147), where account was taken of the lobster-fishing activities of Swedish fishermen. A more restrictive position was taken in

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Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), where it was stated that resource-related considerations may be taken into account in delimitation only if such delimitation was "likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned" (*Judgment, ICJ Reports 1984*, p. 246, at p. 342, para. 237). That view was confirmed by the Judgment in *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* (*Judgment, ICJ Reports 2012*, p. 624, at p. 706, para. 223), which referred to the arbitral award in *Arbitration between Barbados and the Republic of Trinidad and Tobago relating to the delimitation of the exclusive economic zone and the continental shelf between them* (Decision of 11 April 2006, *RIAA, vol. XXVII*, p. 147, at p. 214, para. 241), to which the ICJ referred again in *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* (*Judgment, ICJ Reports 2009*, p. 61, at pp. 125-6, para. 198).

453. In assessing the international jurisprudence, the Special Chamber wishes to emphasize that such jurisprudence, at least in principle, favours maritime delimitation which is based on geographical considerations. Only in extreme situations—in the words of the Chamber of the ICJ in the *Gulf of Maine* case—if the envisaged delimitation was "likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned" (see above at para. 452), may considerations other than geographical ones become relevant. In the view of the Special Chamber, Côte d'Ivoire has not advanced any arguments which might lead the Special Chamber to deviate from such jurisprudence.

454. Furthermore, the Special Chamber would like to emphasize that Côte d'Ivoire has not claimed that the population of Côte d'Ivoire or parts thereof had been using oil and gas resources eastward of the provisional equidistance line and that a delimitation of the disputed area on the basis of purely geographical considerations would have consequences for the population of Côte d'Ivoire, such as those referred to in the *Gulf of Maine* case.

455. On the basis of the above considerations, the Special Chamber concludes that the location of maritime mineral resources cannot be considered a relevant circumstance in this case.

(e) Conduct of the Parties

456. The Special Chamber now considers whether the Parties' conduct can constitute a relevant circumstance requiring an adjustment of the provisional equidistance line.

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457. Ghana maintains that "[t]he only factor which is relevant is that the Parties recognized and applied the customary equidistance line as their maritime boundary for fifty years, and treated that line as their maritime boundary in all matters relating to oil concessions, exploration and exploitation, without exception". Ghana contends that this common and consistent practice reflects "both a tacit agreement on the location of the maritime boundary and a *modus vivendi* on the basis of such agreement that was uniformly observed by both States". According to Ghana, while the evidence it adduced is sufficient to establish the existence of an agreement between the Parties on the maritime boundary, "even if, *quod non*, the evidence were to be considered as falling short of demonstrating an agreed boundary, the consistent practice of the Parties in respect of the boundary for five decades would constitute a relevant circumstance justifying a modest adjustment of the provisional equidistance line to conform to the customary boundary line, which . . . was also based on equidistance".

458. Ghana refers to the jurisprudence of the ICJ to support its argument. In particular, Ghana recalls the observation made by the ICJ in *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* that a line employed "separately" by each party "delimiting the eastward and westward boundaries of petroleum concessions" was of "great relevance" in defining "the angulation of the initial line from the outer limit of territorial waters". According to Ghana, although it preceded the development of the three-step equidistance/relevant circumstances process, "*Tunisia/Libya* tells us at least two things". First, the longstanding practice of the Parties of respecting a *de facto* line, separately adopted, as the common limit of their oil concessions, "constitute[s] a circumstance of great relevance for the delimitation". Second, the Parties' longstanding practice constitutes "proof of the delimitation line that both Parties considered equitable". Ghana argues that these factors are present in this case and that they entirely support its case that "the 50-year practice of the Parties constitutes, at the very least, a relevant circumstance requiring an adjustment of the provisional equidistance line".

459. Ghana acknowledges that there are no cases other than *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* in which "a *modus vivendi* sufficient to affect the delimitation of the maritime boundary was found to exist". However, in Ghana's view, "that is because of lack of evidence of the existence of a *modus vivendi*, not because the Court, or any arbitral tribunal, ever held that *modus vivendi* could not be a relevant circumstance". Ghana asserts that "what distinguishes the present case, and brings it under the umbrella of *Tunisia* v. *Libya*, is

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the incontrovertible evidence" that both Parties agreed, recognized and respected a customary equidistance line for more than five decades. Ghana contends that "the evidence of both a tacit agreement and a *modus vivendi* based on that agreement is much stronger in this case than in *Tunisia* v. *Libya*".

460. Ghana also underscores that its argument on *modus vivendi* as a basis for adjustment of the provisional equidistance line is made "only in the alternative", should the Special Chamber conclude that the evidence is insufficient to establish an agreement on the boundary in whole or in part. In either case, Ghana claims, "the result should be the same: the boundary should follow the line that both Parties considered an equidistance boundary for half a century".

461. Côte d'Ivoire maintains that "the oil concessions . . . cannot be considered relevant circumstances". According to Côte d'Ivoire, "[i]nternational courts and tribunals have underlined on many an occasion that oil practice does not constitute a relevant circumstance". In this regard, Côte d'Ivoire recalls the finding of the ICJ in its Judgment in *Land and Maritime Boundary (Cameroon* v. *Nigeria: Equatorial Guinea intervening)* that "oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line" and that "[o]nly if [oil concessions and oil wells] are based on express or tacit agreement between the parties may they be taken into account".

462. Côte d'Ivoire contends that "[a]gainst the yardstick of international jurisprudence, . . . the Parties' conduct, including in oil-related matters, is not evidence of a *modus vivendi* or of a *de facto* line likely to constitute a relevant circumstance".

463. Côte d'Ivoire disagrees with Ghana's reading of *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, on which, in its view, "Ghana places all its hopes". According to Côte d'Ivoire, it is true that the ICJ did delimit the first segment of the maritime boundary following the *de facto* line which Tunisia and Libya had respected both for their seismic exploration and for numerous drillings. However, the reason why the ICJ opted for the *de facto* line was because "the *de facto* line confirmed a *modus vivendi* that was crystallized prior to the independence of both States". Côte d'Ivoire points out that "the *modus vivendi* resulted not from the oil concessions themselves, but from a 'delimitation line' between Tripolitania/Libya and Tunisia, a line that Italy had proposed in 1919 . . ., a line which France, far from contesting, respected scrupulously, a line which Tunisia and Libya had themselves adopted as a *de facto* line after their independence".

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464. Côte d'Ivoire notes that *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, the only case in which a *modus vivendi* was acknowledged in the matter of maritime delimitation, required "a very high level of proof". However, in Côte d'Ivoire's view, no such *de facto* line has emerged in the present case for the reasons that have already been explained in the context of the existence of a tacit agreement.

465. Côte d'Ivoire also notes that "the *modus vivendi* line which the Court identified in *Tunisia/Libya* was not identified in the context of the application of the three-stage method". Thus, for Côte d'Ivoire, "Ghana's calling upon this judgment is based on an analysis taken out of context". In addition, Côte d'Ivoire states that, while the ICJ had admitted "the existence of a *modus vivendi* solely insofar as it consisted of the Parties' activities in various fields, such as oil concessions, fishing or police patrols", in the present case Ghana is basing its *modus vivendi* claim "exclusively on the oil concessions and activities". However, Côte d'Ivoire points out that subsequent jurisprudence has confirmed that oil activities, in particular oil concessions, "do not in and of themselves constitute a circumstance relevant to delimitation, unless they establish an agreement".

466. Côte d'Ivoire is of the view that "[i]n accordance with established jurisprudence, the Parties' oil concessions and activities in the present case, therefore, cannot constitute a relevant circumstance for the purpose of delimitation". Furthermore, they could not reflect a *modus vivendi* in view of the prevailing circumstances of the present case.

* * *

467. The Special Chamber notes that Ghana's arguments in respect of a tacit agreement, estoppel and conduct of the Parties as a relevant circumstance essentially rely on the same statements, acts, and omissions of the two Parties over decades.

468. The Special Chamber has already indicated (see paras. 211-28 and 241-6) that the conduct of the Parties falls short of proving that a tacit agreement on the maritime boundary exists between the Parties or that the conditions for estoppel are met. The Special Chamber has to consider whether the conduct of the Parties nonetheless could be considered a relevant circumstance requiring adjustment of the provisional equidistance line.

469. The Special Chamber observes in this regard that the *Continental Shelf* case (*Tunisia/Libyan Arab Jamahiriya*) is particularly relevant to this question. It further observes that each of the Parties

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accordingly made considerable efforts to argue that *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* supports its view.

470. The Special Chamber notes that in *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* the ICJ was requested by article 1 of the special agreement concluded between the parties on 10 June 1977 to determine the "principles and rules of international law [which] may be applied for the delimitation of the area of the continental shelf" and, in so doing, to take account of "equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea" (*Judgment, ICJ Reports 1982*, p. 18, at p. 23, para. 4). On the other hand, the Special Chamber in the present case was asked to delimit an all-purpose maritime boundary delimiting the territorial sea, the exclusive economic zone and the continental shelf. As to which delimitation method to apply, the Special Chamber in this case adopted the three-stage approach (see para. 360), in which relevant circumstances are considered in the second stage with a view to assessing the equitableness of a provisional equidistance line drawn in the first stage. Thus the subject matter of, and the approach to, the delimitation in the *Continental Shelf* case (*Tunisia/Libyan Arab Jamahiriya*) are different from those in the present case.

471. One of the relevant circumstances the ICJ took into account in this regard was:

> the land frontier between the Parties, and their conduct prior to 1974 in the grant of petroleum concessions, resulting in the employment of a line seawards from Ras Ajdir at an angle of approximately 26° east of the meridian, which line corresponds to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit.
>
> (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, ICJ Reports 1982*, p. 18, at p. 93, para. 133 B (4))

Among several lines presented by the parties as being relevant to the delimitation, the ICJ adopted the 26° line north-east as the first segment of the boundary. The reason for the ICJ adopting that line was based on three considerations.

472. The first consideration was that Italy, as a former colonial power of Libya, first proposed a delimitation line between Libyan and Tunisian sponge-banks, drawn perpendicularly to what was considered to be the direction of the coastline at Ras Ajdir, in 1913, after a fishing incident. According to the ICJ, Italy developed this line more formally in 1919, with the issuance of Instructions for Surveillance of Maritime Fishing in the waters of Tripolitania and Cyrenaica. The line became

"a sort of tacit *modus vivendi*", with "the silence and lack of protest on the side of French authorities responsible for the external relations of Tunisia".

473. The second consideration was the existence of a *de facto* line from Ras Ajdir at the same angle east of north, which was the result of the manner in which both parties initially granted concessions for offshore exploration and exploitation of oil and gas, and which was tacitly respected for a number of years.

474. The third consideration was that the line was "perpendicular" to that section of the coast. The ICJ recalled in this regard that, in the context of delimitation of the territorial sea, one of the methods of delimitation examined by the Committee of Experts for the International Law Commission (hereinafter "ILC") in 1953 was the drawing of a line perpendicular to the coast at the point of its intersection with the land frontier.

475. Thus the line of 26° was adopted not merely owing to the presence of the *modus vivendi*, whatever its definition may be, but on account of the concurrence of the above three factors. As the ICJ stated:

> This line of adjoining concessions, which was tacitly respected for a number of years, and which approximately corresponds furthermore to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit, does appear to the Court to constitute a circumstance of great relevance for the delimitation.
>
> (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, ICJ Reports 1982*, p. 18, at p. 71, para. 96)

476. Subsequently, international courts and tribunals have been consistent in their reluctance to consider oil concessions and oil activities as relevant circumstances justifying the adjustment of the provisional delimitation line.

477. The Special Chamber has already pointed out that the oil practice of the Parties in the present case is not free of controversy. However, even if there were a *de facto* line or *modus vivendi* between the areas in which each of the Parties carried out oil activities, the Special Chamber does not consider the present situation comparable to that in the *Continental Shelf* case (*Tunisia/Libyan Arab Jamahiriya*). In the present case, there is no such conflation of colonial *modus vivendi* or *de facto* maritime limit and corresponding subsequent oil practice, as in the *Continental Shelf* case (*Tunisia/Libyan Arab Jamahiriya*). Moreover, in the Special Chamber's view, a *de facto* line or *modus vivendi* related to oil practice cannot *per se* be a relevant circumstance in the delimitation

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of an all-purpose maritime boundary with respect to superjacent water as well as the seabed and subsoil.

478. The Special Chamber recalls that it found (see paras. 211-28) that the conduct of the Parties fell short of proving the existence of a tacit maritime boundary between them along the equidistance line. For the Special Chamber, Ghana's argument that the same conduct constitutes a relevant circumstance requiring the adjustment of the provisional equidistance line to conform to the "customary equidistance boundary" appears to be an attempt to revive a tacit maritime boundary that was rejected by the Special Chamber by circumventing the high standard of proof required for the existence of a tacit agreement. The Special Chamber considers that accepting such argument would, in effect, undermine its earlier finding on the existence of a tacit agreement.

479. The Special Chamber does not therefore accept Ghana's argument that the conduct of the Parties constitutes a relevant circumstance.

(f) Conclusion of the Special Chamber

480. On the basis of the foregoing, the Special Chamber finds that there is no relevant circumstance in the present case which would justify an adjustment of the provisional equidistance line as defined in para. 401.

481. Accordingly, the delimitation line for the territorial sea, the exclusive economic zone and the continental shelf within 200 nm starts at BP 55+ with coordinates 05° 05′ 23.2″ N, 03° 06′ 21.2″ W and is defined by turning points A, B, C, D, E, F with the coordinates set out in paragraph 401 and connected by geodetic lines. From turning point F, the delimitation line continues as a geodetic line starting at an azimuth of 191° 38′ 06.7″ until it reaches a point which is located 200 nm from the baselines from which the breadth of the territorial seas of the Parties is measured.

C. Delimitation of the continental shelf beyond 200 nm

(1) Jurisdiction of the Special Chamber/Admissibility

482. As indicated in paragraph 89, the Special Chamber has to ascertain whether it has jurisdiction to delimit the continental shelf beyond 200 nm between the Parties and whether the relevant submissions are admissible.

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483. Ghana states that "the Parties are in agreement that the Special Chamber has jurisdiction to delimit the continental shelf beyond 200 M". It adds that "[t]he Special Chamber's jurisdiction includes the jurisdiction to delimit the continental shelf beyond 200 M, because it 'entails the interpretation and application of both article 76 and article 83 of the Convention'".

484. Ghana argues that "[t]he authority of this Chamber to delimit the entire continental shelf, including the area beyond 200 M, . . . does not conflict with, and is not constrained by, the role of the CLCS as provided in Article 76(8) of the 1982 Convention". It adds that "[b]oth bodies have different (but complementary) mandates" and that "[t]he Convention draws a clear distinction between the delimitation of the continental shelf under Article 83 and the delineation of its outer limits under Article 76".

485. Ghana maintains that "there is no requirement to wait until such time as the outer limits of the continental shelf have been established by both Parties pursuant to article 76(8) of the Convention, or such time as the CLCS has made recommendations to both Parties on their submission".

486. Côte d'Ivoire states that "Côte d'Ivoire and Ghana both consider that the Special Chamber has jurisdiction to delimit their common maritime boundary up to the outer limit of the continental shelf".

487. Côte d'Ivoire states that

> the Parties share the same position as regards the respective roles of the Commission on the Limits of the Continental Shelf (CLCS) and the Special Chamber: it is the duty of the first to draft recommendations concerning the delineation of the continental shelf, and of the second to deal with the delimitation between the two States.

488. Côte d'Ivoire explains that it "see[s] no reason why the Special Chamber should not draw a boundary beyond 200 nautical miles to the outer limit of the continental shelf".

* * *

489. The Special Chamber notes that the Parties agree that the Special Chamber has jurisdiction to decide on the delimitation of the continental shelf beyond 200 nm between them. Nevertheless the Special Chamber has to decide on its jurisdiction *proprio motu* and whether the submissions of the Parties concerning the continental shelf beyond 200 nm are admissible.

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490. The Special Chamber emphasizes that there is in law only a single continental shelf rather than an inner continental shelf and a separate extended or outer continental shelf (see *Arbitration between Barbados and the Republic of Trinidad and Tobago relating to the delimitation of the exclusive economic zone and the continental shelf between them*, Decision of 11 April 2006, *RIAA, vol. XXVII*, p. 147, at pp. 208-9, para. 213, quoted by the Tribunal in its Judgment in the dispute concerning *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, at pp. 96-7, para. 362).

491. The Special Chamber can delimit the continental shelf beyond 200 nm only if such a continental shelf exists. There is no doubt about this in the case before the Special Chamber. Ghana has already completed the procedure before the CLCS. Côte d'Ivoire has made its submission to the CLCS and, although as yet the latter has not issued any recommendation, the Special Chamber has no doubt that a continental shelf beyond 200 nm exists for Côte d'Ivoire since its geological situation is identical to that of Ghana, for which affirmative recommendations of the CLCS exist.

492. The Special Chamber will now turn to the question as to whether the submissions on the delimitation of the continental shelf are admissible or whether, in reaching a decision, the Special Chamber would interfere with the competence of the CLCS.

493. In the view of the Special Chamber, the fact that Côte d'Ivoire has made its submission to the CLCS but that the latter has not yet made its recommendations in respect of Côte d'Ivoire does not call into question the admissibility of the submission on the delimitation of the continental shelf submitted to the Special Chamber by Côte d'Ivoire. It emphasizes that the functions of the CLCS and of the Special Chamber differ and it would like to refer to the Judgment of the Tribunal in *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*:

> There is a clear distinction between the delimitation of the continental shelf under article 83 and the delineation of its outer limits under article 76. Under the latter article, the Commission is assigned the function of making recommendations to coastal States on matters relating to the establishment of the outer limits of the continental shelf, but it does so without prejudice to the delimitation of maritime boundaries. The function of settling disputes with respect to delimitation of maritime boundaries is entrusted to dispute settlement procedures under article 83 and Part XV of the Convention, which include international courts and tribunals.
>
> (*Judgment, ITLOS Reports 2012*, p. 4, at p. 99, para. 376)

The Special Chamber associates itself with this finding.

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494. In respect of Ghana, the Special Chamber notes that the CLCS already made its recommendations under article 76, paragraph 8, of the Convention. Accordingly there is no risk that the Judgment of the Special Chamber might interfere with the functions of the CLCS.

495. On the basis of the above, the Special Chamber decides that it has jurisdiction to decide on the delimitation of the continental shelf beyond 200 nm between the Parties and that their relevant submissions are admissible.

(2) Entitlements to a continental shelf beyond 200 nm

496. The Special Chamber would like to state again that there is no doubt that a continental shelf beyond 200 nm exists in respect of the two Parties.

497. Côte d'Ivoire made its submission to the CLCS on 8 May 2009 and amended it on 24 March 2016. The only question which remains open for Côte d'Ivoire is the identification of the outer limits of its continental shelf beyond 200 nm.

498. The Special Chamber will now turn to the arguments advanced by the two Parties concerning their entitlements to a continental shelf beyond 200 nm, which includes the question of the relevance to the present proceedings of the procedure before the CLCS. The Special Chamber notes that, although the Parties do not call into question the fact that each of them has an entitlement to the continental shelf beyond 200 nm, they disagree on the scope of such entitlement.

499. Ghana states that "both Parties have already made full submissions to the CLCS, which demonstrate they are each entitled to an outer continental shelf beyond 200 M".

500. Ghana further states that it "made its full submission to the CLCS on 28 April 2009" and that it "has already accepted the outer limits of its outer continental shelf based on the Commission's recommendations". In Ghana's view, "[i]t follows by operation of Article 76(8) of the Convention that the recommended outer limits of Ghana's continental shelf beyond 200 M become final and binding once established by the coastal State".

501. Ghana points out that the present case "is the first maritime boundary case in which a party before an international court or tribunal has already received recommendations on its outer limits from the Commission, prior to the case being decided". It submits that "this

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Special Chamber, and indeed any international court, is bound to respect the decision of the Commission on the delineation of the outer limits of national jurisdiction".

502. Ghana notes that

> any delimitation effected by the Special Chamber beyond 200 M would have to be contingent on the CLCS finding that Côte d'Ivoire does, in fact, have an outer continental shelf entitlement that extends to the established outer continental shelf entitlement of Ghana in the area to be delimited.

503. With regard to Côte d'Ivoire's original submission to the CLCS of 2009, Ghana states that "[t]he entitlement of Côte d'Ivoire to the continental shelf beyond 200M is not disputed by either Ghana or any other State". It adds that the Parties have agreed that that submission "is without prejudice to the delimitation of their maritime boundary in the area of the continental shelf beyond 200 M".

504. With regard to Côte d'Ivoire's revised submission to the CLCS of 2016, Ghana states that "the entitlements of Ghana and Côte d'Ivoire in the outer continental shelf are now said to overlap, whereas previously there was no overlap".

505. Ghana maintains that "[t]his Revised CLCS Submission was made some 18 months after this case commenced", but that "in accordance with normal principles of international litigation, the Revised CLCS Submission can have no effect on the situation as it was at the moment that Ghana commenced the present proceeding".

506. Côte d'Ivoire contends that its "entitlement to an extended continental shelf is supported by its requests for an extension of the continental shelf". It explains that "[t]he first request was submitted on 8 May 2009" and that "[o]n 24 March 2016, Côte d'Ivoire submitted an amended request, in application of article 76, paragraph 8, of UNCLOS".

507. Côte d'Ivoire acknowledges "that Ghana has an entitlement which enables it to claim sovereign rights over a part of the continental shelf extending beyond 200 nautical miles from its baselines".

508. Côte d'Ivoire maintains that it is "well established that a coastal State may at any time file an amendment to its initial request, provided the Commission has not issued its recommendations". It states that "it is . . . not the case that the amended submission was prepared for the purpose of this case" and adds that "[i]t was prepared to meet the timetable of the CLCS".

509. Côte d'Ivoire further maintains that "in the delimitation procedure, submissions to the CLCS are simply a means of evidence regarding the extent of entitlements to the continental shelf enjoyed by

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coastal States who are parties to proceedings" and that "from a procedural point of view, it should be noted that amendments to submissions for the extension of the continental shelf are not considered inadmissible solely because they have been made during litigation".

510. Côte d'Ivoire also states that "Ghana's entitlement is particularly incontestable in that the CLCS has already adopted recommendations in this regard". It emphasizes, however, that "the delineation by the CLCS is in the form of a recommendation, without prejudice to the (lateral) delimitation between the States with adjacent or opposite coasts".

511. Côte d'Ivoire, while emphasizing that the CLCS does not intend to interfere with the issue of delimitation, also refers to the relevant recommendation of the Subcommission of the CLCS which states:

> In the absence of an international continental shelf boundary agreement between Ghana and Côte d'Ivoire, the Subcommission does not make recommendations with respect to the outer limit fixed point OL-GHA-9 as originally submitted by Ghana on 25 August 2009.

512. Côte d'Ivoire finally maintains that "the effect of the CLCS's recommendations concerning Ghana's submission does not establish an entitlement enforceable against Côte d'Ivoire". It argues that those recommendations "in no way invalidate the right of Côte d'Ivoire to claim a continental shelf in the area to which these recommendations relate".

* * *

513. In the view of the Special Chamber, the arguments advanced by the two Parties touch upon several distinct but related issues. The first issue is whether Côte d'Ivoire's amended submission to the CLCS is to be taken into account in these proceedings concerning the delimitation of the maritime areas between Ghana and Côte d'Ivoire. The second issue dividing the Parties is the potential relevance of the recommendations of the CLCS to Ghana concerning the outer limits of the Ghanaian continental shelf beyond 200 nm in the proceedings before the Special Chamber.

514. The Special Chamber will deal with each of these issues in turn.

515. The Special Chamber notes that Côte d'Ivoire revised its original submission to the CLCS on 24 March 2016, that is, after Ghana had filed its Memorial and shortly before Côte d'Ivoire submitted its Counter-Memorial. In view of this fact, the Special Chamber has

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to ascertain whether the invocation of this revised submission to the CLCS is procedurally excluded under "normal principles of international litigation", something which Ghana argues but Côte d'Ivoire contests. The Special Chamber refers in this context to article 71, paragraph 1, of the Rules of the Tribunal, according to which no further documents may be submitted after the closure of the written proceedings unless consent is given by the other party or by the Tribunal. These Rules also apply to proceedings before the Special Chamber. The Special Chamber notes, however, that Côte d'Ivoire invoked this fact before the closure of the written proceedings and thus article 71, paragraph 1, of the Rules does not apply to the situation at issue.

516. The Special Chamber would also like to point out that it is for each State to decide—within the framework set out under article 76, paragraph 8, of the Convention (including the Rules of the CLCS)—when and how to file its submissions to the CLCS.

517. Finally, the Special Chamber reiterates that the functions of the CLCS and those of the Special Chamber differ. Whereas the former deals with the delineation of the continental shelf beyond 200 nm, the latter decides on delimitation with a neighbouring State, that is to say, on the course of the lateral limits. Although those lateral limits have to intersect the outer limit, the Special Chamber would like to point out that its decision is without prejudice to the recommendations of the CLCS and the ensuing legislation as referred to in article 76, paragraph 8, of the Convention.

518. On the basis of the foregoing, the Special Chamber finds that Côte d'Ivoire may invoke its revised submission to the CLCS in the proceedings before the Special Chamber.

519. The Special Chamber does not consider it necessary to deal with the arguments advanced by the Parties concerning the recommendations of the CLCS addressed to Ghana. The recommendations of the CLCS concerning the delineation of the continental shelf beyond 200 nm are without prejudice to the lateral delimitation of the continental shelf between Ghana and Côte d'Ivoire. This is clearly set out in the recommendations of the CLCS to Ghana, which do not address the outer limit fixed point OL-GHA-9 as originally submitted by Ghana.

(3) Delimitation methodology

520. The Special Chamber will now turn to the methodology for delimitation of the continental shelf beyond 200 nm.

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521. The Special Chamber would like to refer to its above findings (at para. 324) on the appropriate methodology for the delimitation of the continental shelf and the exclusive economic zone.

522. Ghana, referring to the decisions in the *Bay of Bengal* case (*Bangladesh/Myanmar*) and in the *Bay of Bengal* arbitration (*Bangladesh* v. *India*), submits that "[b]ecause 'there is only a single continental shelf' under the Convention, it follows that the appropriate method for delimiting the continental shelf remains the same, irrespective of whether the area to be delimited lies within or beyond 200 M".

523. Ghana further submits that

> if the Special Chamber were to conclude there was no tacit agreement between the Parties on the part of the maritime boundary that extends beyond 200 M, . . . [t]he adjusted provisional equidistance line . . ., which conforms to the customary equidistance . . . within 200 M, should be extended beyond 200 M along the same azimuth up to the limits of national jurisdiction.

It emphasizes that "[n]o further adjustments are called for".

524. Côte d'Ivoire maintains that, "[i]n the present case, no particular circumstance justifies recourse being made to different objective delimitation methods within and beyond 200 nautical miles".

525. Côte d'Ivoire further maintains that "[t]he same relevant circumstances which were described in respect of the delimitation within 200 nautical miles involve the adjustment of the provisional equidistance line, as far as the 168.7° azimuth line, which coincides with the bisector".

* * *

526. As far as the methodology for delimiting the continental shelf beyond 200 nm is concerned, the Special Chamber recalls its position that there is only one single continental shelf. Therefore it is considered inappropriate to make a distinction between the continental shelf within and beyond 200 nm as far as the delimitation methodology is concerned.

(4) Course of the line delimiting the continental shelf beyond 200 nm

527. For the reasons set out above, the delimitation line for the territorial sea, the exclusive economic zone and the continental shelf within 200 nm as referred to in paragraph 481 continues in the same direction until it reaches the outer limits of the continental shelf.

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D. Disproportionality test

528. The Special Chamber will now proceed to the third stage of the delimitation procedure, namely the disproportionality test.

529. Ghana, relying on the decision of the ICJ in *Maritime Delimitation in the Black Sea*, states that

> [t]he third and final step of the process is to consider whether the delimitation line developed by application of the first two steps "lead[s] to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue".

It argues that

> [t]he case law prescribes that the disproportionality test consists of comparing the ratio of the Parties' relevant coasts to the ratio of the allocated portions of the relevant maritime area to determine if they are significantly disproportionate.

530. In Ghana's view, "[t]he ratio of the lengths of the Parties' relevant coasts is 2.55 to 1" and "[t]he overlapping projections of these coasts cover a maritime area of 189,547 sq. km".

531. Côte d'Ivoire maintains that "the test of non-disproportionality ... is the third stage of the equidistance/relevant circumstances method". Referring to the decision of the ICJ in *Maritime Dispute (Peru* v. *Chile)*, Côte d'Ivoire further maintains with regard to that test that it has to be seen "whether the equidistance line adjusted according to the relevant circumstances 'produces a result which is significantly disproportionate in terms of the lengths of the relevant coasts and the division of the relevant area'".

532. Côte d'Ivoire submits that "the Ivorian relevant coasts are 4.2 times longer than those of Ghana; so that is 4.2 to 1 in favour of Côte d'Ivoire". Côte d'Ivoire further submits that

> [t]he relevant area measures approximately 75,742 M^2 in total (including the maritime areas within 200 nautical miles and the continental shelf beyond), assuming its lateral limits are equidistance on the Liberian side and a line perpendicular to the coast of Ghana, starting from the promontory of Cape Three Points.

* * *

533. The third stage in applying the equidistance/relevant circumstances methodology requires verification that the delimitation line constructed by application of the first two stages of this methodology does not lead to an inequitable result owing to a marked disproportion

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between the ratio of the respective coastal lengths and the ratio of the relevant maritime area allocated to each Party. In this respect, the Special Chamber follows the approach of the ICJ in *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* (*Judgment, ICJ Reports 2009*, p. 61, at p. 103, para. 122), which was also adopted in the Judgment of the Tribunal in the dispute concerning *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)* (*Judgment, ITLOS Reports 2012*, p. 4, at p. 123, para. 477). The Special Chamber notes that in conducting the disproportionality test, the relevant area encompasses the entire area under dispute identified in paragraphs 381-6 above (see *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, at p. 125, para. 493; *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award of 7 July 2014, para. 490).

534. As was stated in paragraph 386, the size of the relevant area has been calculated to be approximately 198,723 square kilometres. The Special Chamber is bound to emphasize that under the particular circumstances of this case this figure can only be an approximation. This is due to the fact that the outer limits of the continental shelf beyond 200 nm have not yet been finally established under article 76, paragraph 8, of the Convention. Nevertheless the Special Chamber finds that this figure is sufficient to conduct the disproportionality test.

535. The Special Chamber will now establish whether the equidistance line has caused a significant disproportion by reference to the ratio of the lengths of the coastlines of the Parties and the ratio of the relevant maritime area allocated to each Party.

536. As already established in paragraph 379 above, the length of the relevant Ghanaian coast is 139 kilometres and that of Côte d'Ivoire is 352 kilometres. The ratio of the length of the relevant coasts of the Parties is approximately 1:2.53 in favour of Côte d'Ivoire.

537. The Special Chamber notes that its delimitation line allocates approximately 65,881 square kilometres to Ghana and 132,842 square kilometres to Côte d'Ivoire. The ratio of the allocated areas is approximately 1:2.02 in favour of Côte d'Ivoire. The Special Chamber finds that this ratio does not lead to any significant disproportion in the allocation of maritime areas to the Parties relative to the respective lengths of their relevant coasts.

538. The Special Chamber concludes that, taking into account all the circumstances of the present case, the result achieved by the application of the delimitation line adopted in paragraphs 481 and 527 of the Judgment does not entail such disproportionality as to create an unequitable result.

E. Conclusion on delimitation

539. All coordinates and azimuths used by the Special Chamber in this Judgment are given by reference to WGS 84 as a geodetic datum.

540. The single maritime boundary for the territorial sea, the exclusive economic zone and the continental shelf within and beyond 200 nm starts at BP 55+ with the coordinates 05° 05′ 23.2″ N, 03° 06′ 21.2″ W and is defined by turning points A, B, C, D, E, F with the coordinates set out in paragraph 401 and connected by geodetic lines. From turning point F, the single maritime boundary continues as a geodetic line starting at an azimuth of 191° 38′ 06.7″ (see para. 481) until it reaches the outer limits of the continental shelf.

X. INTERNATIONAL RESPONSIBILITY OF GHANA

A. Introduction

541. The Special Chamber now turns to the issue of the international responsibility of Ghana.

542. Côte d'Ivoire submits that Ghana's conduct in the disputed part of the continental shelf violated international law, the Convention, and the Order for the prescription of provisional measures of 25 April 2015.

543. In response, Ghana submits that the allegations made by Côte d'Ivoire are unfounded, emphasizing that it acted in compliance with international law at all times and complied faithfully with the Order of the Special Chamber of 25 April 2015.

544. Côte d'Ivoire invokes three different grounds for its claim that Ghana is internationally responsible. First, it bases its claim upon an alleged violation of Côte d'Ivoire's sovereign rights by Ghana by conducting or licensing hydrocarbon activities in an area over which Côte d'Ivoire claims to have sovereign rights; second, it invokes a violation of article 83 of the Convention; and, third, it claims that Ghana acted contrary to its obligations as set out in the Order of the Special Chamber of 25 April 2015. The Special Chamber will deal with each of these claims and the arguments exchanged between the Parties in this respect in turn.

B. Jurisdiction of the Special Chamber to decide on international responsibility of Ghana

545. Before deciding on international responsibility, the Special Chamber has to ascertain that it has jurisdiction to entertain the claim

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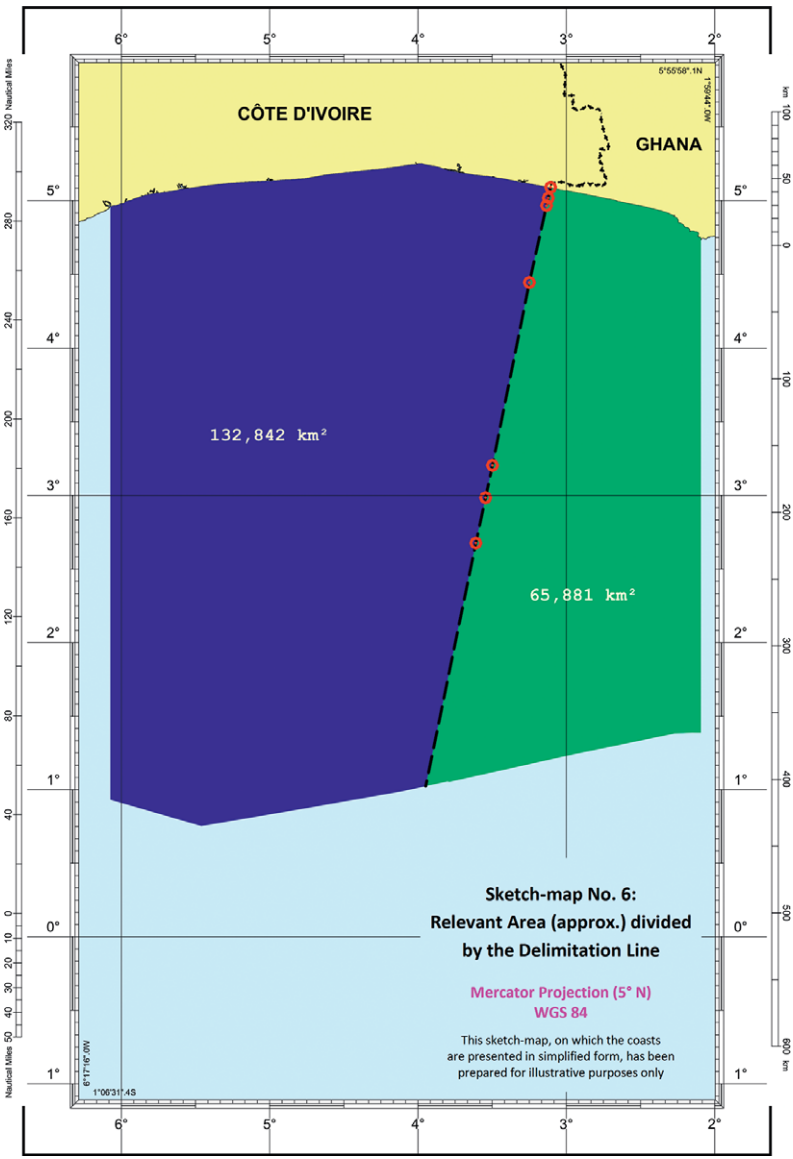

invoking Ghana's international responsibility. The Special Chamber notes that Ghana does not question the Special Chamber's jurisdiction to decide on the claims of Côte d'Ivoire concerning Ghana's alleged international responsibility. Considering that jurisdiction is the very

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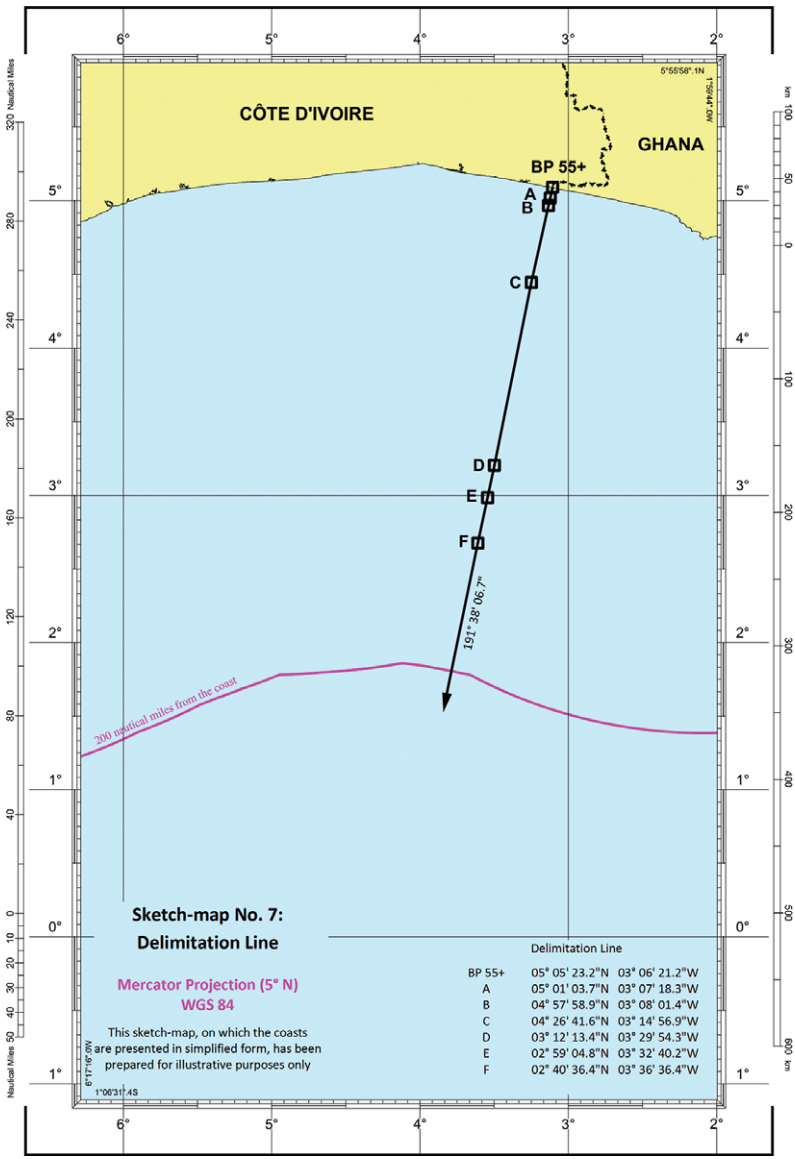

basis of its judicial functions, the Special Chamber holds that it has to ascertain its jurisdiction *proprio motu* although such jurisdiction has not been disputed by Ghana. The Special Chamber will first ascertain whether the Special Agreement of 3 December 2014 provides for

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jurisdiction to decide on claims for international responsibility in this case.

546. The Special Chamber would like to underline at the outset that jurisdiction to adjudicate over the alleged violation of the provisional measures prescribed by its Order of 25 April 2015 (see final submission no 3 of Côte d'Ivoire) belongs to the inherent competence of the Tribunal. Accordingly, the question as to whether the Special Chamber has jurisdiction to decide on the international responsibility of Ghana arises only in respect of final submission no 2 of Côte d'Ivoire.

547. The Special Chamber notes that in the Special Agreement the Parties recorded "their agreement to submit to a special chamber of the International Tribunal for the Law of the Sea the dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean", thus describing and at the same time limiting the scope of the dispute. The Minutes of Consultations agreed between Ghana and Côte d'Ivoire on 3 December 2014 (see para. 5) describe the scope of the dispute in identical terms. The first question to be decided is whether the words "dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean" also embrace a dispute on international responsibility deriving from hydrocarbon activities in the disputed area.

548. The Special Chamber concedes that the word "concerning" may be understood to include within the scope of the dispute other issues which are not part of delimitation but are closely related thereto. It is evident that the dispute between Ghana and Côte d'Ivoire on international responsibility arose out of the delimitation dispute between them. However, in the view of the Special Chamber, it would stretch the meaning of the words "dispute concerning the delimitation of their maritime boundary" too much to interpret it in such a way that it included a dispute on international responsibility.

549. The position that it is not possible to include final submission no 2 of Côte d'Ivoire on international responsibility in the original dispute on delimitation is, in the view of the Special Chamber, supported if consideration is given to the Notification under article 287 and Annex VII, article 1, of 19 September 2014 of Ghana, which described the mandate of the dispute-settlement mechanism. It reads:

> the establishment of the single maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean delimiting the territorial sea, exclusive economic zone ("EEZ") and continental shelf, including the continental shelf beyond 200 nautical miles.

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550. On the basis of these considerations, the Special Chamber concludes that its jurisdiction to decide on final submission no 2 of Côte d'Ivoire concerning the alleged international responsibility of Ghana is not covered by the Special Agreement by which the dispute concerning delimitation was submitted to it.

551. Therefore, the Special Chamber will now ascertain whether the Parties, following institution of the proceedings, have implied by their conduct in the pleadings on the merits that they accepted the jurisdiction of the Special Chamber to deal with the claim concerning Ghana's international responsibility.

552. International jurisprudence has accepted that the jurisdiction of an international court or tribunal may be broadened by the conduct of parties in the proceedings (*forum prorogatum*). The ICJ, in the *Armed Activities on the Territory of the Congo* case, summarized the relevant jurisprudence on *forum prorogatum* as follows:

> The attitude of the respondent State must . . . be capable of being regarded as "an unequivocal indication" of the desire of that State to accept the Court's jurisdiction in a "voluntary and indisputable" manner (*Corfu Channel (United Kingdom* v. *Albania), Preliminary Objection, Judgment, 1948, ICJ Reports 1947-1948*, p. 27); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro), Provisional Measures, Order of 13 September 1993, ICJ Reports 1993*, p. 342, para. 34 . . .).
>
> (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, ICJ Reports 2006*, p. 6, at pp. 18-19, para. 21)

553. As mentioned above (see para. 545), Ghana has not objected to the Special Chamber deciding on the allegation that it is internationally responsible. On the contrary, in its Reply as well as at the hearing, Ghana argued against the claim made by Côte d'Ivoire. Ghana denied that it had breached general international law or its obligations under the Convention or those set out in the Order of the Special Chamber of 25 April 2015. In its final submissions Ghana requested the Special Chamber to reject Côte d'Ivoire's submissions concerning Ghana's international responsibility as unfounded in substance. This conduct leads the Special Chamber to conclude that Ghana accepted its jurisdiction to decide on the claim of international responsibility on the merits.

554. Therefore, the Special Chamber finds that it has jurisdiction to decide on Côte d'Ivoire's claim against Ghana on the latter's alleged international responsibility as well as on reparation.

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555. The Special Chamber adds that articles 286 and 288 of the Convention, according to which the jurisdiction of the dispute-settlement bodies under Part XV of the Convention concerns the interpretation and application of the Convention, do not bar it from deciding on international responsibility. Although the Convention does not contain rules concerning international responsibility, article 293, paragraph 1, of the Convention provides for the possibility to have recourse to other rules of international law. Article 293, paragraph 1, of the Convention reads: "[a] court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention".

556. Following the jurisprudence of the Tribunal (see *M/V "Virginia G" (Panama/Guinea–Bissau), Judgment, ITLOS Reports 2014*, p. 4, with reference to earlier jurisprudence of the Tribunal), the Special Chamber will revert to general international law when deciding on issues concerning international responsibility. The Special Chamber also recalls in this context article 304 of the Convention, which reads:

> The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

557. As to the identification of the rules of general international law on international responsibility, the Special Chamber reiterates the Tribunal's statement in its Judgment in the *M/V "SAIGA"* (*No 2*) *Case*, where it stated:

> It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed" (*Factory at Chorzów, Merits, Judgment No 13, 1928, PCIJ, Series A, No 17*, p. 47).
>
> (*M/V "SAIGA"* (*No 2*), (*Saint Vincent and the Grenadines* v. *Guinea*), *Judgment, ITLOS Reports 1999*, p. 10, at p. 65, para. 170)

558. The Special Chamber observes that the Seabed Disputes Chamber of the Tribunal stated in its Advisory Opinion that several of the ILC Articles on Responsibility of States for Internationally Wrongful Acts are considered to reflect customary international law (see *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10,

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at p. 56, para. 169). The Special Chamber adds that article 1 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts also reflects customary international law. This article reads: "[e]very internationally wrongful act of a State entails the international responsibility of that State".

559. Accordingly, the Special Chamber will decide on the alleged international responsibility of Ghana on the basis of the relevant customary international law, as reflected in several articles of the ILC Articles on Responsibility of States for Internationally Wrongful Acts.

560. The first step in deciding on a claim for the international responsibility of Ghana is to ascertain whether it has violated international law, to which the Special Chamber will now turn.

C. Violation of sovereign rights

561. In its final submissions, Côte d'Ivoire requests the special Chamber "to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area constitute a violation of: . . . the exclusive sovereign rights of Côte d'Ivoire over its continental shelf, as delimited by this Chamber". Côte d'Ivoire submits that Ghana's unilateral activities in this respect engage the latter's responsibility.

562. In support of its claim, Côte d'Ivoire refers to the principle whereby "States should refrain from any unilateral economic activity in a disputed area pending a definitive delimitation". Côte d'Ivoire refers to "three unchallenged foundations" of its argument on sovereign rights, namely that "the rights pertaining to the exploration and exploitation of the continental shelf are exclusive rights; . . . those rights exist *ipso facto* and *ab initio*; [and] the delimitation does not have the effect of creating them but of clarifying their scope".

563. For Côte d'Ivoire, the "principle of exclusivity" of sovereign rights "requires that the exploration and exploitation of the continental shelf are conducted either by the coastal State itself, whether on its behalf or with its authorization, or with its express consent". Côte d'Ivoire argues that exclusivity is an "inherent feature" of these rights.

564. Côte d'Ivoire argues that "the rights to the exploration and exploitation of the continental shelf . . . are timeless, a quality to which the term '*ab initio*' also refers". Côte d'Ivoire invokes the *North Sea Continental Shelf* cases in support of its submission concerning the inherent character of sovereign rights, and argues that "a logical consequence" of the "inherence of sovereign rights" is that "the exclusive

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rights to the continental shelf can be violated even when the delimitation line is still to be defined".

565. Côte d'Ivoire maintains that the "delimitation judgment does not therefore create sovereign rights; it merely clarifies their geographic scope with the force of *res judicata*". Côte d'Ivoire contends that its inherent rights to its continental shelf "predate" the Special Chamber's Judgment on the merits and that therefore such Judgment "is not a precondition to the engagement of responsibility". It explains, however, that a "judgment on the merits is certainly a precondition to the implementation of responsibility", because it is only following the Judgment "that Côte d'Ivoire and Ghana will know the precise limit of their sovereign rights".

566. Regarding the material scope of sovereign rights over the continental shelf, Côte d'Ivoire notes the finding of the Special Chamber in its Order of 25 April 2015 stating that these rights include "all rights necessary for or connected with the exploration of the continental shelf and the exploitation of its natural resources". In this regard, it observes that, since seismic exploration is an activity "necessary for and connected with the exploration of the continental shelf", it "constitutes a violation of sovereign rights if it has not been conducted with the express consent of the coastal State".

567. Côte d'Ivoire submits that "international jurisprudence recognizes the principle whereby unilateral activities carried out or authorized by a coastal State in a contested marine area, under certain circumstances, engage the responsibility of those performing them when they violate the sovereign rights of another State". According to Côte d'Ivoire, "[s]uch is the case of activities carried out in spite of the objections of the other State concerned, in an area which comes under the sovereign rights of that State, and the extent of which has been definitively established by the judgment or award relating to the delimitation". Côte d'Ivoire refers to several international judicial decisions which, it submits, "recognize the principle of State responsibility for activities in a disputed area".

568. Côte d'Ivoire states that "Ghana has engaged in extensive unilateral activities, both exploration and exploitation, in the disputed area" and that "[t]he oil exploration activities conducted by Ghana in the majority of the blocks located entirely or partially in the disputed area consist not only of seismic studies, but also of operations which are physically harmful to the continental shelf".

569. According to Côte d'Ivoire, "Ghana was fully aware of the existence of a delimitation dispute, well before it commenced its activities in the disputed area" and "Ghana was fully informed of

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Côte d'Ivoire's opposition to oil exploration activities' being carried out in the disputed area". Côte d'Ivoire argues that Ghana's "activities potentially affect the sovereignty or sovereign rights of Côte d'Ivoire and run the risk of irreparable harm" and that "the internationally wrongful act on the part of Ghana is established even regardless of the delimitation to be decided".

570. Côte d'Ivoire submits that the appropriate reparation for the violation of its sovereign rights has two aspects. First, in respect of "the wrongful act . . . of the gathering and analysis of exclusive information, *restitutio in integrum* is the most appropriate form of reparation". Côte d'Ivoire notes the finding of the Special Chamber in its Order of 25 April 2015 "that 'the exclusive right to access to information about the resources of the continental shelf is . . . among' the sovereign rights".

571. Second, Côte d'Ivoire submits that reparation by equivalence or compensation "should be envisaged both for the loss of hydrocarbon production and for any damage that Ghana's activities may have caused to rocks and deposits".

572. In its final submissions, Côte d'Ivoire requests the Special Chamber "to invite the Parties to carry out negotiations in order to reach agreement on the terms of the reparation due to Côte d'Ivoire", and

> to state that, if they fail to reach an agreement within a period of 6 months as from the date of the Judgment to be delivered by the Special Chamber, said Chamber will determine those terms of reparation on the basis of additional written documents dealing with this subject alone.

573. In its final submissions, Ghana requests the Special Chamber to adjudge and declare that "Côte d'Ivoire's claim alleging violation of . . . Côte d'Ivoire's sovereign rights is rejected". Invoking factual and legal grounds, Ghana denies that its activities have violated Côte d'Ivoire's sovereign rights.

574. Ghana describes Côte d'Ivoire's submission on the violation of sovereign rights as "unsupported by authority, principle or the evidence". Ghana submits that "it can hardly be said that State A violates State B's sovereign rights by undertaking activities in a maritime area which both States treated as belonging to State A, even if some of the area is later awarded to State B".

575. According to Ghana, the propositions "that the sovereignty of a State entails exclusive sovereign rights over the State's territory" and "that a judicial determination of a disputed boundary is declarative, not constitutive" do not support "the far-reaching conclusion that Côte d'Ivoire seeks to draw".

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576. Ghana considers that "as a general principle, [it] is not disputed" that a State's sovereign rights "include exclusive rights to exploit the natural resources of the territorial sea, over which it has sovereignty, and to do so on its continental shelf, over which it has sovereign rights". Ghana considers that this position "is reflected in paragraph 61 of the Order of 25 April 2015".

577. In respect of the *North Sea Continental Shelf* cases relied on by Côte d'Ivoire, Ghana's position is that

> there is a "considerable difference" between the proposition that . . . a State is *not obliged to proclaim* its rights over the continental shelf within 200 M (or territorial sea), and the proposition that a State *can act inconsistently* with such claimed rights and then assert them retrospectively—with financial consequences—over an area which it has belatedly declared to be in dispute.

578. Ghana describes the proposition that "a judicial determination of a disputed boundary is declarative, not constitutive" as "uncontroversial as a general principle" and states "that a disputed maritime area is not to be treated as *terra nullius* until a tribunal rules on the location of the maritime boundary".

579. Ghana further argues:

> If . . . Articles 77, 81 and 193 of UNCLOS are automatically violated by any State which conducts activities in a disputed maritime area, then one would expect to see international courts and tribunals finding such violations in every boundary case in which such activities have been undertaken, yet none has ever done so.

580. Ghana maintains that the courts and tribunals referred to by Côte d'Ivoire in this context "have *not* treated maritime boundary awards as rendering the parties liable for activities in the area when it was disputed" and that they "have consistently declined to punish a State for good-faith use of territory which is ultimately awarded to its neighbour".

581. Ghana submits that "even if there were . . . a rule against unilateral activity in a disputed area, that is not the sort of activity that we are dealing with here". According to Ghana, its activities "in the relevant area are not, and have never been 'unilateral'", they "have been conducted openly and with Côte d'Ivoire's cooperation", "in accordance with a common understanding of a customary boundary". Ghana further submits that "[u]ntil 2009, when Côte d'Ivoire proposed a new maritime boundary line, there was no 'disputed area'". Ghana contends that "it is very difficult for a State to say that its rights have been violated by things which another State has done with its consent".

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582. Regarding Côte d'Ivoire's claim for *restitutio in integrum* for the violation of its sovereign rights, Ghana contends that Côte d'Ivoire "has failed to establish the existence of the right to information which it seeks to protect" and that there is "no legal basis for the Special Chamber to order Ghana to provide the very extensive list of information which Côte d'Ivoire now seeks". While Ghana states that the Special Chamber considered the right to information to "be 'plausibly' among the rights of the coastal State over its continental shelf", it notes "Côte d'Ivoire's failure to cite any relevant authority in support of the existence of such a right".

583. In respect of Côte d'Ivoire's claim for compensation for the violation of its sovereign rights, Ghana states that "[t]he exploitation activities carried out by Ghana have proceeded for many years, with the knowledge and acquiescence of Côte d'Ivoire" and notes that "[t]he same or similar physical changes to the marine environment would take place if any part of the disputed area lay within the territory of Côte d'Ivoire". According to Ghana, "[i]t would be absurd to compensate Côte d'Ivoire . . . for physical changes to the seabed brought about by oil production works which Côte d'Ivoire itself wants to pursue in the very same way". Accordingly, Ghana submits that "[t]he only financial loss which Côte d'Ivoire will have suffered, if awarded any part of the disputed area, is the loss of net revenues derived from oil production in that area (having regard to the costs)".

584. Ghana notes that Côte d'Ivoire has accepted that such issues should be reserved for negotiation between the Parties.

* * *

585. The Special Chamber notes that the arguments advanced by the two Parties touch upon several distinct but interrelated factual and legal issues. As far as facts are concerned, the Parties disagree as to when Ghana should have been aware that a delimitation dispute with Côte d'Ivoire existed and, when it was aware, as to the scope of the disputed area. The Parties further disagree about the legal consequences of such knowledge. Although the Parties agree upon the nature of the rights of coastal States in respect of the continental shelf off their coast, they disagree about the consequences to be drawn therefrom. The Parties further agree upon the legal nature of a judgment on delimitation but again disagree on the consequences to be drawn therefrom in the present case. Finally, the Parties disagree on the manner in which the compensation claimed should be calculated. The Special Chamber will deal with each of these issues in turn as necessary.

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586. The Special Chamber notes that, although Côte d'Ivoire informed Ghana of a delimitation dispute, the precise date when such information was provided remains unclear. It is not necessary for the Special Chamber to establish this date for the purposes of the present case. The Special Chamber also notes that over time Côte d'Ivoire suggested different methods of delimitation, the consequence of which was that the scope of the maritime area under dispute differed for each of the proposals. In February 2009, Côte d'Ivoire proposed a delimitation based on a meridian. In May 2010, it proposed a different meridian and, in November 2011, Côte d'Ivoire changed its position and advocated the application of the angle bisector method. The line developed in 2011 was again modified in May 2014. The application of these different methods of delimitation resulted in disputed areas the location and size of which differed.

587. However, the Special Chamber also notes Côte d'Ivoire's statements that the hydrocarbon activities of Ghana in the disputed area had increased since 2009 and that Ghana had undertaken drilling in the TEN field from 26 January 2009 until 26 August 2014. The TEN field borders the blocks for mineral resource activities licensed by Côte d'Ivoire and is situated in all the maritime areas which Côte d'Ivoire had qualified as being disputed.

588. Therefore, the Special Chamber is of the view that Ghana, when carrying out hydrocarbon activities in the TEN field, was or should have been aware that such activities were taking place in an area also claimed by Côte d'Ivoire.

589. On the basis of this consideration, the Special Chamber must now establish whether hydrocarbon activities carried out by a State in a disputed area before the area in question has been delimited by adjudication may give rise to international responsibility when these activities are carried out in a part of the area attributed by the judgment to the other State.

590. The Special Chamber agrees with the statements of the two Parties that the sovereign rights which coastal States enjoy in respect of the continental shelves off their coasts are exclusive in nature and that coastal States have an entitlement to the continental shelves concerned without the need to make a relevant declaration. However, the Special Chamber disagrees with both Parties as to the meaning of a judgment on the delimitation of a continental shelf. The Parties both consider such a judgment only to be of a declaratory nature but they disagree as to the consequences to be drawn from such a qualification.

591. The Special Chamber emphasizes that in a case of overlap both States concerned have an entitlement to the relevant continental shelf

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on the basis of their relevant coasts. Only a decision on delimitation establishes which part of the continental shelf under dispute appertains to which of the claiming States. This means that the relevant judgment gives one entitlement priority over the other. Such a decision accordingly has a constitutive nature and cannot be qualified as merely declaratory.

592. In the view of the Special Chamber, the consequence of the above is that maritime activities undertaken by a State in an area of the continental shelf which has been attributed to another State by an international judgment cannot be considered to be in violation of the sovereign rights of the latter if those activities were carried out before the judgment was delivered and if the area concerned was the subject of claims made in good faith by both States.

593. In this context, the Special Chamber takes note of the convergent decision of the ICJ in *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* which stated:

> The Court observes that Nicaragua's request for this declaration [concerning Colombia's violation of Nicaragua's rights in the disputed area] is made in the context of proceedings regarding a maritime boundary which had not been settled prior to the decision of the Court. The consequence of the Court's Judgment is that the maritime boundary between Nicaragua and Colombia throughout the relevant area has now been delimited as between the Parties. In this regard, the Court observes that the Judgment does not attribute to Nicaragua the whole of the area which it claims and, on the contrary, attributes to Colombia part of the maritime spaces in respect of which Nicaragua seeks a declaration regarding access to natural resources. In this context, the Court considers that Nicaragua's claim is unfounded.

(*Judgment, ICJ Reports 2012*, p. 624, at p. 718, para. 250)

594. On the basis of the foregoing, the Special Chamber finds the argument advanced by Côte d'Ivoire that the hydrocarbon activities carried out by Ghana in the disputed area constitute a violation of the sovereign rights of Côte d'Ivoire is not sustainable, even assuming that some of those activities took place in areas attributed to Côte d'Ivoire by the present Judgment. Therefore, the Special Chamber finds that Ghana did not violate the sovereign rights of Côte d'Ivoire.

595. As a consequence of the above, the Special Chamber considers it unnecessary to deal with Ghana's argument that Ghana's hydrocarbon activities took place east of the "customary equidistance line" and therefore cannot engage international responsibility and were consented to by Côte d'Ivoire, since the Special Chamber has already established that this line has no legal relevance (see paras. 228 and 246 above).

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D. Violation of article 83 of the Convention

596. The Special Chamber will now turn to the alleged violation of article 83 of the Convention. It notes that this claim by Côte d'Ivoire is based upon two different approaches, one invoking a violation of article 83, paragraph 1, and the other invoking article 83, paragraph 3, of the Convention.

597. Article 83 of the Convention reads:

1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement.

(1) Violation of article 83, paragraph 1, of the Convention and the customary law obligation to negotiate in good faith

598. In its final submission 2(ii), Côte d'Ivoire requests the Special Chamber to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area constitute a violation of "the obligation to negotiate in good faith, pursuant to article 83, paragraph 1, of [the Convention] and customary law".

599. Côte d'Ivoire submits that "Ghana's unilateral activities in the disputed area, its inflexibility in the negotiations, together with the timely closing off of all avenues for settling the dispute judicially" constitute "violations of the obligation to negotiate in good faith, as prescribed in article 83, paragraph 1 of [the Convention]".

600. Côte d'Ivoire argues that Ghana's behaviour "is contrary to paragraph 1, which provides that delimitation is determined by way of agreement (and not by way of a *fait accompli*)". Côte d'Ivoire explains that "[t]he obligation to negotiate in good faith is even more necessary when the deposit is shared ('straddles' the boundary)". It contends that

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"Ghana never negotiated in good faith on the delimitation of its maritime boundary with Côte d'Ivoire".

601. In its final submissions, Ghana requests the Special Chamber to adjudge and declare that "Côte d'Ivoire's claim alleging violation of Article 83 of [the Convention] . . . is rejected". In respect of the alleged violation of article 83 of the Convention and the "general obligation to negotiate in good faith", Ghana's position is that Côte d'Ivoire's "argument is without merit".

602. Ghana points out that Côte d'Ivoire "does not refer to any specific facts in support of Ghana's alleged violation of international law" and fails to set out the respects in which Ghana is said to have been "inflexible" or to explain why it claims that Ghana was "aware of the illegality of its attitude". Ghana states that its "activities have been conducted openly and with Côte d'Ivoire's cooperation, on the basis of a common understanding of the location of the international maritime boundary, and in reliance on representations made by Côte d'Ivoire".

603. Ghana submits that, despite the fact that "Côte d'Ivoire abruptly and unexpectedly changed position", it "engaged with Côte d'Ivoire in good faith in order to negotiate a settlement, including engaging in ten bilateral meetings over five years". According to Ghana, a finding that Ghana's "consistent and responsible approach" in negotiations constitutes a violation of international law "cannot be based on a State's seeking to maintain a *status quo* on which both States have relied for decades, and upon which significant commercial investments have been made".

* * *

604. The Special Chamber notes that the obligation under article 83, paragraph 1, of the Convention to reach an agreement on delimitation necessarily entails negotiations to this effect. The Special Chamber emphasizes that the obligation to negotiate in good faith occupies a prominent place in the Convention, as well as in general international law, and that this obligation is particularly relevant where neighbouring States conduct maritime activities in close proximity. The Special Chamber notes, however, that the obligation to negotiate in good faith is an obligation of conduct and not one of result. Therefore, a violation of this obligation cannot be based only upon the result expected by one side not being achieved. Negotiations took place between Ghana and Côte d'Ivoire over six years, with 10 meetings between 2008 and 2014. Those meetings all dealt with the issue of maritime delimitation. In the view of the Special Chamber, Côte

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d'Ivoire has not produced any convincing arguments that these negotiations were not meaningful. Agreement was reached at least on the exact location of the land boundary terminus (BP 55), for example. The fact that Ghana tried to preserve the *status quo* as it saw it is, in the view of the Special Chamber, not a violation of an obligation to negotiate in good faith. Equally, the fact that Ghana initially closed off the avenue for a judicial settlement is not contrary to the obligation to negotiate in good faith, as Côte d'Ivoire claims. Article 298 of the Convention explicitly permits States Parties to exclude certain disputes from compulsory procedures.

605. In conclusion, the Special Chamber takes the view that Côte d'Ivoire has not convincingly substantiated that Ghana did not negotiate in good faith and accordingly dismisses its claim for international responsibility on the basis of a violation of article 83, paragraph 1, of the Convention.

(2) Violation of article 83, paragraph 3, of the Convention

606. In its final submission no 2(iii), Côte d'Ivoire requests the Special Chamber to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area constitute a violation of "the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3, of [the Convention]". Côte d'Ivoire submits that "Ghana's unilateral activities in the disputed area . . . constitute violations of the specific obligations provided for in paragraph 3 of article 83".

607. Côte d'Ivoire contends that

> Ghana has engaged its responsibility with respect to Côte d'Ivoire for . . . having, by its unilateral behaviour, rendered impossible both the conclusion of provisional arrangements and the conclusion of a definitive delimitation agreement, in application of article 83, paragraph 3, of [the Convention].

608. Regarding its interpretation of article 83, paragraph 3, Côte d'Ivoire submits that "unilateral economic activities are prohibited in an area under dispute" and that "the only activities authorized on the continental shelf of a disputed area are those carried out by virtue of provisional arrangements". According to Côte d'Ivoire, article 83, paragraph 3, "imposes on States an obligation to exercise restraint during the transitional period before the conclusion of an agreement on delimitation or the end of judicial proceedings".

609. Côte d'Ivoire further submits that "there is no reason to consider that invasive activities alone are prohibited by paragraph 3 of

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article 83" and that "[u]nilateral exploration and exploitation activities in the disputed area are in particular of a nature 'to jeopardize or hamper the reaching of the final agreement', both because they always create an atmosphere of animosity between the Parties and because they tend to create a *fait accompli* on which the wrongdoing State may subsequently attempt to rely".

610. Côte d'Ivoire states that "[t]he arbitration in *Guyana* v. *Suriname* is the first clear example of engagement of responsibility for wrongful acts in a disputed area" and that in relation to "invasive exploration activities" that tribunal, "without any ambiguity, considered that Guyana had violated [the Convention]".

611. Regarding State practice in undelimited maritime areas, Côte d'Ivoire notes that "States generally refrain from undertaking exploration or exploitation activities there without the consent of the other State concerned".

612. In respect of Ghana's drilling activities, Côte d'Ivoire submits that "Ghana's drilling in the disputed area must be characterized as [a violation of paragraph 3 of article 83]" and "that it is not necessary for drilling to have taken place in an area which you declare to be Ivorian". In this respect, Côte d'Ivoire notes that in "*Guyana* v. *Suriname*, Guyana's responsibility was engaged for drilling just one well, even though it was located in an area which the tribunal ultimately declared to be Guyanese". Côte d'Ivoire states that Ghana "took care not to inform Côte d'Ivoire of its intention to carry out activities in the disputed area and clearly refused to suspend them despite Côte d'Ivoire's strong opposition".

613. Côte d'Ivoire further submits that "Ghana in no way informed either Côte d'Ivoire or the Chamber of this overlapping configuration of the deposits which it started to exploit during this case; even less did it suggest a form of cooperation with a view to exploitation".

614. Côte d'Ivoire maintains that "Ghana's activities in the disputed area, together with its inflexibility in the negotiations, hampered the conclusion of a delimitation agreement" and that "Ghana's attitude is all the more incompatible with the letter and spirit of article 83 in that, whilst it was negotiating with Côte d'Ivoire, . . . it had manifestly stepped up its activities in the disputed area".

615. Côte d'Ivoire submits that "satisfaction in the form of a judicial ruling is an appropriate form of reparation for the violation of article 83, paragraph 3".

616. According to Ghana, "[t]here has been no violation of Article 83(3)" of the Convention. Ghana maintains that "[i]t cannot be the case that the reaching of a final agreement on the Parties' maritime boundary

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is hampered or jeopardized by the continuation of peaceful economic activities which have represented the *status quo* for many years".

617. Ghana disputes Côte d'Ivoire's interpretation of article 83, paragraph 3. According to Ghana, "Article 83(3) imposes no obligation *actually to enter into* provisional arrangements, and a State does not violate that provision by not entering into such arrangements, so long as a good faith effort has been made in that direction". Where no provisional arrangements are made, Ghana submits that "[t]he drafters of the Convention specifically chose *not* to impose" a complete moratorium on economic activity in an area in dispute.

618. According to Ghana,

> Article 83(3) does *not* require States to refrain from any *particular* type of activity—however defined—in a disputed area; rather, it requires them "not to jeopardize or hamper" the reaching of the final agreement. Any activity in a disputed area must therefore be judged, not on the basis of its physical effects, but on the basis of its likely effect on the process of reaching a final agreement.

For Ghana, "the question is always what disturbs the *status quo* and hampers the reaching of agreement".

619. Ghana maintains that neither the *travaux* of the Convention nor the *Award in the arbitration regarding the delimitation of the maritime boundary between Guyana and Suriname* supports Côte d'Ivoire's case on article 83. Ghana distinguishes *Guyana* v. *Suriname* from the present case on the basis that, in *Guyana* v. *Suriname*, "wholly new and unilateral activities had been undertaken following the emergence of the dispute". In contrast, Ghana describes its activities in the relevant area as "simply the continuation of decades of previous activity of a kind which would have been conducted by Côte d'Ivoire".

620. Regarding the State practice referred to by Côte d'Ivoire, Ghana submits that it is "of no assistance at all" and that "in any event there is nothing to say that any restraint demonstrated by those States in their particular circumstances was based on what they considered to be their obligations under article 83". Ghana distinguishes the examples cited by Côte d'Ivoire on the basis that "none of them involved demands by one State that the other State cease activities which it had undertaken without opposition for decades".

621. Ghana highlights the importance of the factual background and contends that "Ghana's activities cannot meaningfully be described as unilateral". It maintains that "rather than changing the *status quo*, [its] activities in the relevant area *are* the *status quo*". Accordingly, Ghana argues that "in those circumstances it is impossible to see how they jeopardize or hamper the reaching of a final agreement".

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622. Regarding provisional arrangements, Ghana submits that Côte d'Ivoire "was not proposing any such arrangements, rather . . . , it demanded a moratorium on *all* economic activity in the area to which it had abruptly laid claim". In this context, Ghana contends that its "entirely reasonable position [does not] amount to a violation of Article 83".

623. In respect of the obligation not to jeopardize or hamper the reaching of an agreement, Ghana submits that "Côte d'Ivoire has simply failed to point to any conduct whatsoever by Ghana which could be said to conceivably jeopardize or hamper the determination of the boundary". Referring to the history of negotiations between the Parties, Ghana states that the "record shows that [it] was conscious of, and took very seriously, its obligation not to jeopardize or hamper the reaching of a final agreement, and acted throughout in a spirit of good faith and neighbourliness".

* * *

624. The Special Chamber notes that the Parties disagree on the interpretation of article 83, paragraph 3, of the Convention and on the possibility of its application. In its reasoning, Côte d'Ivoire relies, in particular, on the Arbitral Award of 17 September 2007 (*Award in the arbitration regarding the delimitation of the maritime boundary between Guyana and Suriname*, Award of 17 September 2007, *RIAA, vol. XXX*, pp. 1-144).

625. The Special Chamber will first deal with the interpretation of article 83, paragraph 3, of the Convention. Article 83, paragraph 3, which is quoted in paragraph 597, reads:

> Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

626. The Special Chamber notes that article 83, paragraph 3, of the Convention contains two interlinked obligations for the States concerned, namely to "make every effort to enter into provisional arrangements of a practical nature" and "during this transitional period, not to jeopardize or hamper the reaching of the final agreement".

627. The Special Chamber would like to point out that the first of the two obligations under article 83, paragraph 3, of the Convention constitutes an obligation of conduct, as evidenced by the words "shall make every effort". The obligation is designed to promote interim

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regimes of a practical nature pending final delimitation. The wording of this obligation, in the view of the Special Chamber, clearly indicates that it does not amount to an obligation to reach an agreement on provisional arrangements. The Special Chamber notes, however, that the language in which the obligation is couched indicates that the parties concerned are under a duty to act in good faith. This obligation is enhanced by the phrase that such acts have to be undertaken "in a spirit of understanding and cooperation".

628. As far as the case before it is concerned, the Special Chamber notes that Côte d'Ivoire did not request Ghana to enter into provisional arrangements. Côte d'Ivoire only requested Ghana to refrain from continuing its hydrocarbon activities. As has already been stated above (para. 605), the Special Chamber held that Côte d'Ivoire did not substantiate its claim that Ghana did not act in good faith. In the view of the Special Chamber, it would have been for Côte d'Ivoire to propose the establishment of "provisional arrangements of a practical nature" and thus to trigger the requisite negotiations. This was all the more necessary since Ghana's hydrocarbon activities had continued over several years. Although the Special Chamber holds that this practice was not acquiesced to by Côte d'Ivoire, it is nevertheless a fact to be taken into account when assessing the relationship between the two Parties. Not having requested Ghana to enter into negotiations on provisional arrangements of a practical nature bars Côte d'Ivoire from claiming that Ghana has violated its obligations to negotiate on such arrangements.

629. The Special Chamber will now turn to the second obligation under article 83, paragraph 3, of the Convention, namely "during this transitional period, not to jeopardize or hamper the reaching of the final agreement". In its view, in interpreting the obligation "not to jeopardize or hamper the reaching of the final agreement", account has to be taken of article 83, paragraph 3, of the Convention as a whole. This is confirmed by the fact that the first obligation (shall make every effort to enter into provisional arrangements of a practical nature) and the second (during this transitional period, not to jeopardize or hamper the reaching of the final agreement) are connected by the word "and". This is not without relevance. This means, in the view of the Special Chamber, that the two obligations are connected. The introductory words to the effect that the States concerned have to act in "a spirit of understanding and cooperation" apply to both. Consequently, the words "shall make every effort" also apply to the second obligation, qualifying it as an obligation of conduct too.

630. On that basis, the Special Chamber reads the provision of article 83, paragraph 3, of the Convention as follows: the transitional period referred to means the period after the maritime delimitation

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dispute has been established until a final delimitation by agreement or adjudication has been achieved. Article 83, paragraph 3, covers two situations in this transitional period, namely the situation where a provisional arrangement has been reached which would regulate the conduct of the parties in the disputed area and the situation where no such provisional arrangement has been reached. The obligations States encounter in respect of a disputed maritime area for which no provisional arrangement exists are described by the words "not to jeopardize or hamper the reaching of the final agreement". In interpreting these words, account has to be taken of the general obligation under article 83, paragraph 3, of the Convention that in the transitional period States have to act "in a spirit of understanding and cooperation".

631. On the basis of the above, it is now for the Special Chamber to decide whether the hydrocarbon activities of Ghana in the disputed maritime area, after realizing that that area was also claimed by Côte d'Ivoire, jeopardized or hampered the reaching of the final agreement as claimed by Côte d'Ivoire. The Special Chamber does not come to this conclusion for two reasons.

632. The Special Chamber takes note of the fact that Ghana finally suspended its activities by implementing its obligations in accordance with the Order of the Special Chamber of 25 April 2015 namely, *inter alia*, to ensure that no new drilling either by Ghana or under its control would take place in the disputed area. It would, however, have been preferable if Ghana had adhered to the request of Côte d'Ivoire earlier to suspend its hydrocarbon activities in that area.

633. Finally, the Special Chamber takes into account that Ghana has undertaken hydrocarbon activities only in an area attributed to it. This is particularly relevant in this case in the light of paragraph 2(iii) of the final submissions of Côte d'Ivoire which reads: "to declare and adjudge that the activities undertaken unilaterally by Ghana in the Ivorian maritime area constitute a violation of . . . the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3, of UNCLOS". Hence the activities of Ghana do not meet the qualification of the relevant submission of Côte d'Ivoire since they did not take place in the Ivorian maritime area. It is therefore impossible to state that Ghana has undertaken activities which have jeopardized or hampered the conclusion of an agreement as envisaged by article 83, paragraph 3, of the Convention.

634. On the basis of the foregoing, the Special Chamber finds that Ghana has not violated article 83, paragraphs 1 and 3, of the Convention, and accordingly it dismisses final submission no 2(ii) and (iii) of Côte d'Ivoire.

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E. Alleged violation by Ghana of the provisional measures prescribed by the Special Chamber

635. In its final submissions, Côte d'Ivoire "requests the Special Chamber . . . to declare and adjudge that Ghana has violated the provisional measures prescribed by [the Special] Chamber by its Order of 25 April 2015" (hereinafter "the Order"). Côte d'Ivoire further requests the Special Chamber "by way of reparation, to declare that by failing to comply with the Order imposed on it, Ghana has committed an internationally wrongful act engaging its responsibility".

636. According to Côte d'Ivoire, Ghana "has violated the Order . . . on at least two counts". It specifies that, "*[f]irst*, Ghana has disregarded the provisional measure prohibiting it from performing any 'new drilling', prescribed in paragraph 108, sub-paragraph (1)(a)" of the Order. Côte d'Ivoire maintains that

> [t]he most reasonable interpretation of paragraph 108(1)(a) of the Order . . . leads to the observation that Ghana must ensure that no new drilling occurs in the disputed area, in the sense of any action consisting of crushing the rock, which was not ongoing as at 25 April 2015.

It disputes Ghana's "highly restrictive" interpretation of the obligations imposed on it by the measure prescribed by the Order, an interpretation according to which Ghana considers that this measure prohibits it solely from drilling new wells.

637. Côte d'Ivoire alleges that "the drilling activities have been continued in the TEN field" and that the stepping up of Ghana's activities in the TEN block, where Ghana has authorized drilling to be carried out in order to ensure that the financial returns are obtained as quickly as possible, is worthy of note. It claims that the "reports on the activities of the two drilling rigs present in the disputed area refer to 15 activity campaigns . . . on the TEN field between 25 April 2015 and 30 September 2016", including the drilling of well Nt07. Côte d'Ivoire adds that "[t]he second drilling phase on this well started on 13 July 2015 and ended on 5 August" and that "during that drilling campaign nearly 1,400 further metres' depth of rock were drilled, within a period of 24 days of continuous drilling".

638. Côte d'Ivoire adds that Ghana "has also disregarded its obligation to cooperate, prescribed as a provisional measure by the Special Chamber in paragraph 108, sub-paragraph (1)(e) of its Order". It specifies that "the Agent of Côte d'Ivoire on three occasions requested the Agent of Ghana to send information concerning the activities carried out in the disputed area, so as to have confirmation that they

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were in conformity with the Order of the Special Chamber" and refers, in particular, to the letter of 27 July 2015 which the Agent of Côte d'Ivoire sent to the Agent of Ghana on this matter. Côte d'Ivoire adds that it "repeated this request . . . during a bilateral meeting held on 10 September 2015 in Accra, precisely on the subject of the steps taken to comply with the provisional measures".

639. Côte d'Ivoire claims that Ghana nevertheless systematically refused to transmit to Côte d'Ivoire documents relating to the activities which it was carrying out in the disputed area, the reason being that it was neither required nor reasonably necessary to send them. It affirmed that Ghana "agreed to furnish these documents only after the matter had been referred to the President of the Special Chamber by Côte d'Ivoire and he had adopted a decision in this respect on 23 September 2016".

640. Ghana, in its final submissions, requests the Special Chamber to "adjudge and declare that . . . Côte d'Ivoire's claim alleging violation [by Ghana] of the Special Chamber's Order of 25 April 2015 is rejected".

641. Ghana maintains that it "has complied with its obligations under this part of the Order in full".

642. Ghana declares "[that] it has ensured that there is no new drilling in the disputed area" and that the only activity undertaken by the operators was the work carried out on wells which had already been drilled, which was necessary for them to go into production. Ghana maintains that these activities are permitted by virtue of the Order. From its point of view, the interpretation of the Order by Côte d'Ivoire does not take into account the spirit and letter of the Order which clearly indicates, in particular in paragraphs 99 and 100, that Ghana "was not required to suspend all ongoing activities in respect of which drilling had already taken place, including, specifically, exploration or exploitation activities".

643. As regards the TEN field, Ghana explains that "all of the wells were planned and approved by Ghana well before this claim was commenced" and that "[t]he idea suggested by Côte d'Ivoire that there has been an artificial acceleration of drilling of a new well in 2015 to try to defeat the Special Chamber is wholly unjustified". Ghana underlines that "prior to the Order, in the course of its ordinary activities, Tullow had already drilled eleven wells, of which ten were to be used for first oil production". According to Ghana, the eleventh well, Nt07, was to serve as "a water injector well for improving production" and it had been "drilled to a very substantial depth". Ghana explains that "[w]ater injectors are important to ensure that there is adequate production and

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that the reservoir is properly maintained". As regards well Nt07, it alleges that it already existed and was thus not, contrary to Côte d'Ivoire's claim, newly drilled.

644. Ghana maintains that it had also taken "steps to ensure that maritime safety was not compromised by the continuation of the permitted activities in the disputed area" and that these

> were entirely appropriate safety measures of a kind taken by all States engaged in petroleum operations to protect other maritime users, as well as the marine environment and the relevant equipment, from damage which may be caused by a collision or unduly close approach of other vessels.

645. As regards its obligation to cooperate, Ghana considers that it has "complied with the Order and has engaged in extensive cooperation with and reporting to Côte d'Ivoire since the issuance of the Order". It notes that it has

> continued its cooperation with Côte d'Ivoire, despite its firm belief that Côte d'Ivoire's claim to the "disputed area" is an unfounded attempt to interfere with Ghana's lawful use of its own territory, to its significant detriment.

646. Ghana affirms that "[a]ll of the questions raised in Côte d'Ivoire's letter of July 2015 were addressed at a meeting attended by agents of both Parties and numerous specialist representatives in September 2015, and in the work undertaken subsequent to that meeting". Ghana adds that, in some cases, Côte d'Ivoire had requested "far more information than was reasonably necessary to understand the nature of the activities in the disputed area", including daily reports thereon as well as other information.

* * *

647. As regards the question as to whether Ghana has violated the provisional measures prescribed by the Order of the Special Chamber, the Special Chamber notes that, pursuant to article 290 of the Convention, its Order for the prescription of provisional measures is obligatory in nature, creating legal obligations with which parties have to comply. In this regard, the Special Chamber draws attention to paragraph 6 of article 290, according to which "[t]he parties to the dispute shall comply promptly with any provisional measures prescribed under this article".

648. The Special Chamber observes that, in its Counter-Memorial, Côte d'Ivoire alleged that "Ghana has violated points (a), (c) and (e) of the provision" of the Order. Sub-paragraph (1)(a), (c) and (e), of paragraph 108 of the Order reads as follows:

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For these reasons,

The Special Chamber,

(1) Unanimously

Prescribes, pending the final decision, the following provisional measures under article 290, paragraph 1, of the Convention:

(a) Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area as defined in paragraph 60;

. . .

(c) Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment;

. . .

(e) The Parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute.

(*Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015*, p. 146, at p. 166, para. 108)

649. The Special Chamber notes that, in its Rejoinder and during the oral proceedings, Côte d'Ivoire did not maintain the argument concerning subparagraph 1(c) of the operative part of the Order.

650. As regards the provisional measures requiring Ghana to ensure that "no new drilling takes place . . . in the disputed area", the Special Chamber notes that drilling has been carried out by Ghana or under its control in the disputed area. However, it observes that during the oral proceedings Ghana explained that the only activities it had undertaken were "ongoing activities in respect of which drilling had already taken place" and that the purpose of these activities was to ensure the proper production and maintenance of the oil deposits. The Special Chamber further notes that Ghana indicated that it had taken the necessary steps in terms of maritime safety in order to protect other users of the sea and of the marine environment.

651. According to the information communicated to it, the Special Chamber notes, however, that drilling activities had been carried out by Ghana or under its control on wells already drilled. These drilling activities constitute "ongoing activities . . . for which drilling has already been carried out" and are covered by paragraphs 99 and 100 of its Order of 25 April 2015. These paragraphs read as follows:

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99. *Considering* that, in the view of the Special Chamber, the suspension of ongoing activities conducted by Ghana in respect of which drilling has already taken place would entail the risk of considerable financial loss to Ghana and its concessionaires and could also pose a serious danger to the marine environment resulting, in particular, from the deterioration of equipment;
100. *Considering* that, in the view of the Special Chamber, an order suspending all exploration or exploitation activities conducted by or on behalf of Ghana in the disputed area, including activities in respect of which drilling has already taken place, would therefore cause prejudice to the rights claimed by Ghana and create an undue burden on it.

652. The Special Chamber therefore concludes that, pursuant to the Order, no "new drilling" by Ghana or under its control has been carried out in the disputed area.

653. As regards the provisional measure requiring the Parties to pursue their cooperation, the Special Chamber notes that Ghana has contributed to cooperation on several occasions.

654. The Special Chamber observes that, during a bilateral meeting held on 10 September 2015, Ghana, in response to the letter of 27 July 2015 to the Agent of Ghana from the Agent of Côte d'Ivoire, addressed the questions concerning the activities carried out in the disputed area.

655. It also observes that, in response to the letter from the President of the Special Chamber sent to the Parties on 23 September 2016 (see para. 41), on 14 October 2016, Ghana presented additional information concerning the activities carried out in the disputed area, in accordance with paragraph 108, subparagraph (2), of the Order for the prescription of provisional measures dated 25 April 2015. It notes that this additional information was transmitted to Côte d'Ivoire.

656. The Special Chamber observes, however, that Ghana did not immediately provide all the information requested by Côte d'Ivoire and that it did so only after the President of the Special Chamber requested it to comply by letter dated 23 September 2016. The Special Chamber nevertheless considers that such conduct cannot reasonably be considered to constitute a violation of the measures prescribed in the Order of 25 April 2015.

657. Therefore, the Special Chamber is of the opinion that Ghana continued to cooperate and communicated to Côte d'Ivoire the information relating to the activities carried out in the disputed area, pursuant to the Order.

658. In the light of the above, the Special Chamber finds that Ghana did not violate the Order of 25 April 2015 of the Special Chamber prescribing provisional measures.

F. Conclusion on responsibility

659. On the basis of the above considerations, the Special Chamber concludes that none of the activities of Ghana engages its international responsibility. Therefore, the Special Chamber considers that there is no need to address the question of reparation.

XI. OPERATIVE CLAUSES

660. For these reasons,
THE SPECIAL CHAMBER

(1) Unanimously,
Finds that it has jurisdiction to delimit the maritime boundary between the Parties in the territorial sea, in the exclusive economic zone and on the continental shelf, both within and beyond 200 nm.

(2) Unanimously,
Finds that there is no tacit agreement between the Parties to delimit their territorial sea, exclusive economic zone and continental shelf both within and beyond 200 nm, and *rejects* Ghana's claim that Côte d'Ivoire is estopped from objecting to the "customary equidistance boundary".

(3) Unanimously,
Decides that the single maritime boundary for the territorial sea, the exclusive economic zone and the continental shelf within and beyond 200 nm starts at BP 55+ with the coordinates 05° 05′ 23.2″ N, 03° 06′ 21.2″ W in WGS 84 as a geodetic datum and is defined by turning points A, B, C, D, E, F with the following coordinates and connected by geodetic lines:

A: 05° 01′ 03.7″ N	03° 07′ 18.3″ W
B: 04° 57′ 58.9″ N	03° 08′ 01.4″ W
C: 04° 26′ 41.6″ N	03° 14′ 56.9″ W
D: 03° 12′ 13.4″ N	03° 29′ 54.3″ W
E: 02° 59′ 04.8″ N	03° 32′ 40.2″ W
F: 02° 40′ 36.4″ N	03° 36′ 36.4″ W

From turning point F, the single maritime boundary continues as a geodetic line starting at an azimuth of 191° 38′ 06.7″ until it reaches the outer limits of the continental shelf.

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(4) Unanimously,
Finds that it has jurisdiction to decide on the claim of Côte d'Ivoire against Ghana on the alleged international responsibility of Ghana.
(5) Unanimously,
Finds that Ghana did not violate the sovereign rights of Côte d'Ivoire.
(6) Unanimously,
Finds that Ghana did not violate article 83, paragraphs 1 and 3, of the Convention.
(7) Unanimously,
Finds that Ghana did not violate the provisional measures prescribed by the Special Chamber in its Order of 25 April 2015.

Judge PAIK, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Special Chamber.

Judge ad hoc MENSAH, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate opinion to the Judgment of the Special Chamber.

SEPARATE OPINION OF JUDGE PAIK

1. I voted in favour of the conclusion contained in operative paragraph (6) that "Ghana did not violate article 83, paragraphs 1 and 3, of the Convention", but my vote requires some explanation, especially with respect to the question as to whether Ghana violated article 83, paragraph 3, of the Convention. Operative paragraph (6) is a reply to final submission no 2(iii) of Côte d'Ivoire, in which Côte d'Ivoire requested the Special Chamber to "declare and adjudge that the activities undertaken unilaterally by Ghana in the *Ivorian maritime area* constitute a violation of . . . the obligation not to jeopardize or hamper the conclusion of an agreement, as provided for by article 83, paragraph 3, of UNCLOS" [emphasis added]. I had to reject this submission and vote in favour of the above operative paragraph, strictly because the activities undertaken by Ghana did not take place in the Ivorian maritime area but in an area attributed to Ghana, as the Special Chamber indicated in paragraph 633 of the Judgment. Leaving this formalistic reason aside, however, I have a serious reservation about the lawfulness of Ghana's activities in the disputed area in terms of article 83, paragraph 3, of the Convention. I also find the reasons given by the Special Chamber in support of its conclusion insufficient and

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unconvincing. I would have voted differently, had there been no reference to the "Ivorian maritime area" in final submission no 2(iii) of Côte d'Ivoire. Thus I feel obliged to clarify my view on this question.

2. Article 83, paragraph 3, of the Convention provides:

> Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

This provision sets forth "the procedure applicable where there is no agreement under paragraph 1" (see Myron H. Nordquist (ed.), *UNCLOS 1982: A Commentary, Vol. II*, p. 952). It imposes two obligations upon the States concerned: obligations to make every effort to enter into provisional arrangements of a practical nature and not to jeopardize or hamper the reaching of the final agreement.

3. The obligation "not to jeopardize or hamper" embodies a fundamental duty of restraint in the disputed area pending agreement. As the Annex VII Arbitral Tribunal stated in *Delimitation of the Maritime Boundary between Guyana and Suriname*, this obligation is "an important aspect of the Convention's objective of strengthening peace and friendly relations between nations and of settling disputes peacefully" (*Reports of International Arbitral Awards*, Vol. XXX, para. 465). It also has a significant practical dimension, given the fact that there are a large number of maritime areas in which continental shelf entitlements of neighbouring States overlap and that the reaching of the agreement on a maritime boundary usually takes a considerable amount of time. (For the survey of State practice in undelimited maritime areas, see British Institute of International and Comparative Law, *Report on the Obligations of States under Article 74(3) and 83(3) of UNCLOS in respect of Undelimited Maritime Areas*, 2016). The obligation under article 83, paragraph 3, of the Convention, though scant in substance, gives States in various parts of the world a guideline as to their conduct in the disputed maritime area during a lengthy transitional period. The present dispute provided the Special Chamber with an opportunity to clarify the meaning of this obligation. In light of its weight as a fundamental norm as well as its practical utility, the question as to how the obligation not to jeopardize or hamper should be interpreted and applied deserved scrutiny, but the Special Chamber's response fell short in this respect.

4. I agree with the Special Chamber's finding in paragraphs 627 and 629 of the Judgment that both obligations under article 83, paragraph

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3, of the Convention are an obligation of conduct. They are obligations, in the words of the Seabed Disputes Chamber of the Tribunal, "to deploy adequate means, to exercise best possible efforts, to do the utmost", to obtain the result envisaged in the provision (*Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, para. 110).

5. It is clear that the obligation not to jeopardize or hamper the reaching of a final agreement does not completely preclude activities by the States concerned in the disputed maritime area. This view is supported by both the text and the *travaux préparatoires* of the provision. Where a provisional arrangement exists, it is expected that activities would be conducted in accordance with that arrangement. However, in the absence of such an arrangement or where a provisional arrangement covers only a limited category of activities, the obligation not to jeopardize or hamper would be particularly relevant to regulating the conduct of States in the area to be delimited.

6. What actions would jeopardize or hamper the reaching of the final agreement? Article 83, paragraph 3, of the Convention does not elaborate on them. In my view, a key criterion is whether the actions in question would have the effect of endangering the process of reaching a final agreement or impeding the progress of negotiations to that end. In other words, it is a result-oriented notion. As such, the answer to the above question depends much on the particular circumstances of each case.

7. Therefore I do not consider that it would serve the purpose of article 83, paragraph 3, of the Convention to attempt to identify in general and in the abstract what are permissible activities and what are not. While activities that cause a permanent physical change to the marine environment would likely prejudice the reaching of the final agreement, as the Annex VII Arbitral Tribunal suggested in *Guyana* v. *Suriname* (see *Reports of International Arbitral Awards*, Vol. xxx, para. 467), less invasive activities carried out unilaterally could also be the source of serious tension between States, thus jeopardizing the prospects of agreement. A permanent physical change to the marine environment thus may be considered one of several relevant factors but should not be applied as a hard and fast threshold of jeopardizing or hampering the reaching of the final agreement.

8. I recall that in its Order of 25 April 2015, the Special Chamber indicated "significant and permanent modification of the physical character of the area in dispute" as one of the criteria for prescribing provisional measures suspending new drilling in the disputed maritime area (*Delimitation of the Maritime Boundary in the Atlantic Ocean*

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(Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, para. 89). However, this finding was made in the context of determining urgency, a prerequisite for prescribing provisional measures. Provisional measures, as an exceptional relief, may not be prescribed unless there is urgency in the sense of an imminent risk of irreparable prejudice caused to the rights of the parties pending the final decision. The Special Chamber found that activities resulting in significant and permanent modification of the physical character of the area in dispute could cause such irreparable prejudice to the rights of Côte d'Ivoire. It also found that the acquisition and use of information about the resources of the disputed area could likewise cause a risk of irreversible prejudice to the rights of Côte d'Ivoire.

9. Determination of what acts would cause irreparable prejudice to the rights of the parties pending the final decision and determination of what acts would have the effect of jeopardizing or hampering the reaching of the final agreement are two different legal functions. Therefore it is not guaranteed that criteria for the former can be applied by analogy to the latter. This is clear if the purposes of the two legal functions are compared. While the purpose of provisional measures is to preserve the rights of the parties pending the final decision, that of the obligation not to jeopardize or hamper is rather to facilitate and ensure the reaching of the final agreement, thus "strengthening peace and friendly relations between nations and of settling disputes peacefully".

10. In assessing whether the conduct of States would have the effect of jeopardizing or hampering the reaching of the final agreement, several factors may be considered. In particular, the type, nature, location, and time of acts as well as the manner in which they are carried out may be relevant. There is no single test or criterion that must be applied in all situations. A judicial body faced with the alleged violation of article 83, paragraph 3, of the Convention should take all those relevant factors into account and balance them in the framework of relations between the States concerned before making its decision.

11. In the present case, Ghana and its contractors have undertaken extensive exploration and exploitation activities in the disputed area. According to the information submitted to the Special Chamber, no fewer than 30 drilling operations including development drillings took place between 2010 and 2014 while the two Parties held bilateral negotiations on delimitation of the maritime boundary. The maritime areas in which some of the drilling operations took place were very close to the "customary equidistance boundary" claimed by Ghana. According to Côte d'Ivoire, at least two deposits in which Ghana

conducted drilling operations, namely the Tano West 1 and the TEN field (especially, "Enyenra" field), straddle the provisional equidistance line drawn either by Côte d'Ivoire or by Ghana. Apparently those drilling operations were undertaken without prior notification to Côte d'Ivoire. Moreover, they continued, and were even accelerated, despite Côte d'Ivoire's repeated requests in 2009, 2011 and 2014 to suspend any unilateral activity in the disputed area until a final determination of the maritime boundary. It may also be added that by April 2015, when provisional measures were prescribed by the Special Chamber, the TEN development project of Ghana, which includes the drilling and completion of up to 24 development wells to be connected through extensive subsea infrastructure in the disputed area, had progressed well on schedule towards the production of first oil in mid-2016.

12. Ghana argues that activities it has carried out in the maritime area in question were not "unilateral", as they were conducted with Côte d'Ivoire's cooperation on the basis of a common understanding of the location of the "customary equidistance boundary". Referring to *Guyana* v. *Suriname*, Ghana also argues that, in applying article 83, paragraph 3, of the Convention, what is important is whether activities may jeopardize or hamper the reaching of the final agreement "as a result of the perceived change to the *status quo* that they would engender". In Ghana's view, its activities in the relevant area, as a continuation of decades-long practice, were the *status quo*, rather than changing the *status quo*, thus not jeopardizing or hampering the reaching of the final agreement.

13. The Special Chamber has found that no tacit agreement on the maritime boundary between the Parties exists and that the requirements of estoppel have not been met in the present case. Therefore Ghana's argument that its activities in the disputed area were not unilateral is untenable. Nor am I convinced by Ghana's argument that its activities were the *status quo*, because drilling operations in the disputed area, unlike less invasive activities such as seismic surveys, would more likely engender the perception of change to the *status quo*. In my view, that is why Côte d'Ivoire broke its silence and decided to react to Ghana, first apparently in 1992 and then clearly in 2009, 2011 and 2014.

14. I assume that Ghana believed for a long time that Côte d'Ivoire tacitly consented to its activities in the area in question. I also understand that it had reason to believe so. However, by February 2009 at the latest, when Côte d'Ivoire made a concrete proposal for the boundary using the geographical meridian, the existence of a dispute and the

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location of the disputed area were, and should have been, clear to Ghana. However, Ghana did not pay due attention to this development and its legal implications, but instead continued and even stepped up its unilateral activities in the disputed area. Such conduct was far from the exercise of restraint required under article 83, paragraph 3, of the Convention.

15. I acknowledge that Côte d'Ivoire has not fully substantiated the effect of Ghana's unilateral activities upon the then ongoing negotiations for the delimitation of the maritime boundary between the Parties. I further acknowledge that there is no clear indication one way or another in this respect in the minutes of the ten rounds of meetings. However, it would be reasonable to assume that the intensive hydrocarbon activities with accompanying massive financial investment in the disputed area would have left Ghana little room for flexibility in its negotiations with Côte d'Ivoire. This assumption can be further strengthened by Ghana's own position that the purpose of the bilateral negotiations was simply to formalize what the Parties had already agreed in practice.

16. Thus I find that the highly invasive activities carried out unilaterally by Ghana in the disputed area close to the "customary equidistance boundary" since 2009, if not earlier, appear to be quite troublesome. By carrying out and even stepping up those activities despite Côte d'Ivoire's repeated protests, I believe that Ghana violated its obligation under article 83, paragraph 3, of the Convention to make every effort, in a spirit of understanding and co-operation, not to jeopardize or hamper the reaching of the final agreement.

17. The fact that Ghana suspended much of its activities in compliance with the Order of the Special Chamber of 25 April 2015 (see paragraph 632 of the Judgment) cannot exonerate Ghana from its responsibility. Nor does the fact that Ghana's unilateral activities took place in the maritime area which the Special Chamber decides to allocate to Ghana preclude the wrongfulness of its activities. The obligation not to jeopardize or hamper under article 83, paragraph 3, of the Convention is applicable to the States concerned during the transitional period. It is an obligation to exercise caution and restraint in the area the legal status of which has yet to be decided. Therefore this obligation is breached as long as a State fails to exercise the required caution and restraint pending agreement, regardless of to which State the disputed area is allocated. To exonerate acts that could jeopardize or hamper the reaching of the final agreement for the reason that the area is ultimately attributed to a State undertaking such acts would significantly diminish the value of this obligation.

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18. As far as activities in the disputed area are concerned, the obligation not to jeopardize or hamper the reaching of a final agreement under article 83, paragraph 3, of the Convention is all the more important in light of the Special Chamber's finding in paragraph 592 of the Judgment that "maritime activities undertaken by a State in an area of the continental shelf which has been attributed to another State by an international judgment cannot be considered to be in violation of the sovereign rights of the latter if those activities were carried out before the judgment was delivered and if the area concerned was the subject of claims made in good faith by both States." Now States may see less reason to exercise restraint in the disputed maritime area. While a State may still be able to claim for compensation with respect to damage arising from activities of another State in the above situation, for example, on the basis of unjust enrichment, article 83, paragraph 3, of the Convention seems to be the only reliable legal device that can regulate the conduct of States in the area yet to be delimited. This is another reason why the obligation not to jeopardize or hamper should not be taken lightly.

19. In the present case, the Special Chamber decided that the oil concession limits of the Parties could not be considered to be their maritime boundary (see paragraph 225 of the Judgment). In so doing, the Special Chamber observed, quite rightly in my mind, that "[t]o equate oil concession limits with a maritime boundary would be equivalent to penalizing a State for exercising ... caution and prudence" and that "[i]t would be contrary to ... article 83, paragraph 3, of the Convention". The Special Chamber went further to warn that "[i]t would also entail negative implications for the conduct of States in the area to be delimited elsewhere". In a similar vein, to condone the unilateral activities of such a scale in the circumstances of the present case would certainly send a wrong signal to States pondering over their next move in a disputed maritime area elsewhere. I regret that the Special Chamber has just done that.

SEPARATE OPINION OF JUDGE AD HOC MENSAH

1. I agree with the Special Chamber that Ghana has not provided sufficiently convincing reasons to establish that there is in fact a tacit agreement between Ghana and Côte d'Ivoire for the delimitation of their territorial sea, exclusive economic zone and continental shelf within and beyond 200 nm, and I agree that Cote d'Ivoire is not estopped from objecting to the "customary equidistance boundary" as

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the maritime boundary between the maritime areas pertaining respectively to Ghana and Côte d'Ivoire.

2. While the facts and arguments adduced by Ghana, provide a plausible reason for Ghana to believe that the "customary equidistance" line has been accepted by Côte d'Ivoire as the boundary between the two States, Ghana has clearly not been able to prove that an agreement on this line exists between Ghana and Côte d'Ivoire.

3. International jurisprudence has consistently maintained that the threshold for the proof of an agreement on a maritime boundary is very high. As the International Court of Justice (ICJ) stated in *The Territorial and Maritime Dispute in the Caribbean Sea (Nicaragua* v. *Honduras)*, the evidence for the existence of a tacit agreement on a maritime boundary must be "compelling". This is because "the establishment of a permanent maritime boundary [between States] is a matter of grave importance", and such an agreement "is not easily to be presumed".

4. Thus, even though Ghana has shown why it believes that Côte d'Ivoire has accepted the "customary equidistance line" as the maritime boundary between Ghana and Côte d'Ivoire, it has not met the very high standard of proof that is required to prove that such an agreement exists between the two countries. Ghana has been unable to show that there is anything in the oil practice of the Parties, in the bilateral exchanges or negotiations of the Parties, or in their submissions to the CLCS, which constitutes "compelling proof" that there is in fact a tacit agreement between Ghana and Cote d'Ivoire on their maritime boundary.

5. It is no doubt true that the Parties seem to have attached a certain significance to the equidistance line which Ghana refers to as "the customary equidistance boundary". The oil concession blocks of the Parties have been aligned with this line, and the oil activities of each of the Parties, such as the granting of oil concessions, their seismic surveys and drilling operations, have all been confined to the area that falls on the right side of the line for that Party. But such a line is not necessarily the "maritime boundary". It may be nothing more than an agreed line of convenience for a particular purpose. As the ICJ pertinently observed in the *Nicaragua* v. *Honduras* case, "a *de facto* line" may not (have been intended as) an "agreed legal boundary, but . . . only as a . . . line for a specific, limited purpose, such as sharing a scarce resource". Hence such a line may not be "an international boundary".

6. It is also the case that the oil practice of a State cannot by itself establish a tacit agreement for an all-purpose boundary. To be a valid proof of the existence of an agreement on a maritime boundary, the

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concession line must be shown to be based on an agreement (express or tacit), on a maritime boundary and such an agreement should be capable of being proved independently of the oil practice. Ghana has not provided such a proof. As the Special Chamber rightly observes, Côte d'Ivoire has made it clear that the limits of its oil concession blocks are distinct from the limits of its maritime jurisdiction.

7. I agree, however, that the delimitation should be done by the normal method. Côte d'Ivoire has not provided any convincing reason why the Special Chamber should, in the present case, deviate from the standard methodology that is normally adopted by international courts and tribunals for the delimitation of maritime areas between States. Côte d'Ivoire has not given any convincing reason why the Special Chamber should not use the equidistance/relevant circumstances methodology in this case. I agree that there are no circumstances in the present case that would justify the use of any methodology other than the equidistance/relevant circumstances methodology.

8. I agree fully with the delimitation of the maritime areas between Ghana and Côte d'Ivoire, based on the provisional equidistance line described in paragraph 401 of the Judgment, and I agree that there are no relevant circumstances which would require any adjustment to be made to this line. I fully share the reasons given by the Special Chamber for this conclusion. In particular, I share the view that neither history nor geography (and certainly not the case law) provide a legal basis for considering the geography of Jomoro as constituting a circumstance that warrants or requires an adjustment of the provisional equidistance line. I agree that Jomoro is part of the territory of Ghana and that it cannot be isolated from the land territory of Ghana as a whole. Hence, having base points on Jomoro cannot be a relevant circumstance that would require an adjustment of the provisional equidistance line.

9. I also consider that the argument of Ghana that the oil practice of the Parties constitutes a relevant circumstance that would require an adjustment of the provisional equidistance line to conform to the "customary equidistance boundary" is an attempt to revive the claim that there is a tacit agreement on a maritime boundary between Ghana and Côte d'Ivoire**,** which has already been rejected by the Special Chamber.

10. Finally, I agree with the conclusion of the Special Chamber that Ghana has not violated either international law, or the Convention, or the Order of the Special Chamber of 25 April 2015, in undertaking activities in the disputed area.

11. With respect to the submission of Côte d'Ivoire that Ghana has violated the Order of the Special Chamber of 25 April 2015, I note that

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the Order prohibited "new drilling". In issuing this Order, the Special Chamber made it abundantly clear that the prohibition of "new drilling either by Ghana or under its control" does not entail the "suspension of exploration and exploitation activities in respect of which drilling has already taken place".

12. The Special Chamber has concluded (correctly, in my opinion) that the drilling that has been carried out in the disputed area, either by Ghana or under Ghana's control, has been merely "to ensure the proper production and maintenance of the oil deposits". This drilling has been part of "ongoing activities in respect of which drilling has already taken place", and not "new drilling" which is prohibited by the Order.

13. I also agree with the finding of the Special Chamber that Ghana has done nothing that is contrary to its obligation "to negotiate in good faith" or which can rightly be characterized as "jeopardizing or hampering" the conclusion of a provisional arrangement of a practical nature.

14. In this regard, it is pertinent to observe that the oil activities that have been carried out by Ghana in the disputed area have all been in maritime areas that have been attributed to Ghana by the present judgment. It is, thus, not correct to say that Ghana has undertaken "unilateral activities in Ivorian maritime area", as the final submissions of Côte d'Ivoire state. It is also not correct to say that Ghana has done anything that has "jeopardised or hampered" the conclusion of the final agreement on delimitation.

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