

**SPECIAL CHAMBER OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
YEAR 2015**

25 April 2015

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| <u>List of Cases:</u> No. 23 |
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**DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY
BETWEEN GHANA AND CÔTE D'IVOIRE IN THE ATLANTIC OCEAN**

(GHANA/CÔTE D'IVOIRE)

Request for the prescription of provisional measures

ORDER

Present: Vice-President BOUGUETAIA, *President of the Special Chamber*,
Judges WOLFRUM, PAIK; *Judges ad hoc* MENSAH, ABRAHAM;
Registrar GAUTIER.

The Special Chamber of the International Tribunal for the Law of the Sea
(hereinafter “the Special Chamber”) formed to deal with the dispute concerning
delimitation of the maritime boundary between Ghana and Côte d’Ivoire in the
Atlantic Ocean,

composed as above,

after deliberation,

Having regard to articles 288, paragraph 1, and 290, paragraph 1, of the
United Nations Convention on the Law of the Sea (hereinafter “the Convention”) and

articles 15, paragraph 2, 21 and 25 of the Statute of the Tribunal (hereinafter “the Statute”),

Having regard to articles 89, 90 and 107 of the Rules of the Tribunal (hereinafter “the Rules”),

Having regard to the Notification and the “Statement of the claim and grounds on which it is based”, dated 19 September 2014 and addressed by the Republic of Ghana (hereinafter “Ghana”) to the Republic of Côte d’Ivoire (hereinafter “Côte d’Ivoire”), instituting arbitral proceedings under Annex VII to the Convention in “the dispute concerning the maritime boundary between Ghana and Côte d’Ivoire”,

Having regard to the Special Agreement concluded between Ghana and Côte d’Ivoire on 3 December 2014 (hereinafter “the Special Agreement”) to submit the dispute concerning 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,

Having regard to the Order of the Tribunal dated 12 January 2015 by which the Tribunal decided to accede to the request of Ghana and Côte d’Ivoire to form a special chamber,

Having regard to the Request submitted by Côte d’Ivoire to the Special Chamber on 27 February 2015 for the prescription of provisional measures, pursuant to article 290, paragraph 1, of the Convention,

Makes the following Order:

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;

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:

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| President | Bouguetaia |
| Judges | Wolfrum, Paik |
| Judges <i>ad hoc</i> | 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,

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 communiqué 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 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;

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:

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|--------|--------------|--------------|
| 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 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*, *I.C.J. Reports 2013*, p. 398, at p. 405, para. 25);

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 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*, *I.C.J. 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 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*, *I.C.J. 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 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*, *I.C.J. Reports 1996*, p. 226, at pp. 241-242, 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);

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 Cote 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 Cote 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*";

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 Cote 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 Cote 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 on-going 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;

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 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 prejudices 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;

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.

Done in English and French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this twenty-fifth day of April, two thousand and fifteen, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of the Republic of Côte d'Ivoire and the Government of the Republic of Ghana, respectively.

(signed)
Boualem BOUGUETAIA,
President of the Special Chamber

(signed)
Philippe GAUTIER,
Registrar

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