

**ARBITRAL TRIBUNAL CONSTITUTED PURSUANT TO ARTICLE 287, AND IN ACCORDANCE  
WITH ANNEX VII, OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

**IN THE MATTER OF AN ARBITRATION BETWEEN:**

**GUYANA**

**- AND -**

**SURINAME**

---

**AWARD OF THE ARBITRAL TRIBUNAL**

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**The Arbitral Tribunal:**

H.E. Judge L. Dolliver M. Nelson, President

Professor Thomas M. Franck

Dr. Kamal Hossain

Professor Ivan Shearer

Professor Hans Smit

**Registry:**

Permanent Court of Arbitration

The Hague, 17 September 2007

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## CHAPTER I - PROCEDURAL HISTORY

1. By its Notification and Statement of Claim dated 24 February 2004, Guyana initiated arbitration proceedings concerning the delimitation of its maritime boundary with Suriname, and concerning alleged breaches of international law by Suriname in disputed maritime territory. Guyana has brought these proceedings pursuant to Articles 286 and 287 of the 1982 United Nations Convention on the Law of the Sea (the “Convention”) and in accordance with Annex VII to the Convention. Guyana and Suriname (the “Parties”) ratified the Convention on 16 November 1993 and 9 July 1998, respectively.
2. In its Notification and Statement of Claim, Guyana stated that the Parties are deemed to have accepted arbitration in accordance with Annex VII of the Convention by operation of Article 287(3) of the Convention. Guyana noted that neither Party had made a declaration pursuant to Article 287(1) of the Convention regarding their choice of compulsory procedures, and that neither Party had made a declaration pursuant to Article 298 regarding optional exceptions to the applicability of the compulsory procedures provided for in Section 2.
3. In its Notification and Statement of Claim, Guyana appointed Professor Thomas Franck as a member of the Arbitral Tribunal in accordance with Article 3(b) of Annex VII. In its 23 March 2004 “Notification under Annex VII, Article 3(c) of UNCLOS Regarding Appointment to the Arbitral Tribunal with Reservation”, Suriname appointed Professor Hans Smit in accordance with Article 3(c) of Annex VII, but reserved its right “to present its views with regard to jurisdiction and any other preliminary matters to the full Arbitral Tribunal when it is constituted”.
4. By joint letter to the Secretary-General of the Permanent Court of Arbitration (“PCA”) dated 15 June 2004, the Parties noted that they had agreed to the appointment of the remaining three members of the Tribunal in accordance with Article 3(d) of Annex VII, being:

H.E. Judge L. Dolliver M. Nelson (President);  
Dr. Allan Philip; and  
Dr. Kamal Hossain.

5. In their 15 June 2004 joint letter to the Secretary-General of the PCA, the Parties also requested that the PCA serve as Registry to the Tribunal.
6. On 16 June 2004, the Secretary-General of the PCA responded that the PCA was willing to serve as Registry for the proceedings. Ms. Bette Shifman was appointed to serve as Registrar with Mr. Dane Ratliff acting as assistant. Ms. Shifman was subsequently replaced by Ms. Anne Joyce, who was in turn replaced by Mr. Brooks W. Daly.
7. On 30 June 2004, the Parties sent draft Rules of Procedure for the conduct of the proceedings to the Tribunal for consideration at a procedural meeting to be held on 30 July 2004 in London.
8. At a procedural meeting held on 30 July 2004 in London, the Tribunal adopted its Rules of Procedure and Terms of Appointment with the Parties' consent. The Rules of Procedure specified that Guyana should submit its Memorial on or before 15 February 2005, Suriname should submit its Counter-Memorial on or before 1 October 2005, Guyana could submit a Reply on or before 1 March 2006, and that Suriname could submit a Rejoinder on or before 1 August 2006.
9. On 3 September 2004, Dr. Allan Philip tendered his resignation. Dr. Philip died later that same month. The Tribunal regrets the loss of his commendable service.
10. In a letter dated 3 September 2004, the President of the Tribunal asked the Parties to attempt to agree on a replacement for Dr. Philip in accordance with Article 6(1)(b) of the Tribunal's Rules of Procedure and Article 3(d) of Annex VII to the Convention.
11. In a joint letter dated 29 September 2004, the Parties informed the Tribunal that they had agreed that hearings should be held in Washington, D.C., at the headquarters of the Organization of the American States ("OAS").
12. In a further joint letter dated 30 September 2004, the Parties informed the Tribunal that they had not been able to agree on a substitute arbitrator for Dr. Philip and requested the Arbitral Tribunal to select the substitute arbitrator in accordance with Article 6(b) of the Tribunal's Rules of Procedure.

13. In its letter to the President dated 1 October 2004, Guyana set out its views on the replacement procedure for Dr. Philip, and, in its letter to the President dated 6 October 2004, Suriname did the same.
14. In a letter to the Parties dated 27 October 2004, the President of the Tribunal communicated the Tribunal's selection of Professor Ivan Shearer as substitute arbitrator for Dr. Philip in accordance with Article 6(1)(b) of its Rules of Procedure.
15. Guyana, in its letter to the President dated 28 October 2004, and Suriname, in its letter to the President dated 29 October 2004, indicated their acceptance of Professor Shearer as substitute arbitrator for Dr. Philip.
16. In a letter to the President dated 4 November 2004, Guyana stated that Suriname had objected to Guyana's access to specific files located in the archives of The Netherlands Ministry of Foreign Affairs, and reserved its right to petition the Tribunal to require Suriname to withdraw its objection to Guyana having access to those files.
17. In a letter to the President dated 22 December 2004, Guyana set out its views on Suriname's refusal of access to certain files in the archives of The Netherlands Ministry of Foreign Affairs, and requested the Tribunal to "require Suriname to take all steps necessary to enable the parties to have access to historical materials on an equal basis and immediately to advise The Netherlands that it withdraws its objection of 7 December [2004]".
18. In its letter to the President dated 27 December 2004, Suriname responded to Guyana's 22 December 2004 letter, stating that "this is not a case of 'equal access' to public records. The records in question are not public", and, "[t]hey cover many sensitive subjects including national security matters and matters pertaining to Suriname's other territorial disputes with Guyana". Further, Suriname stated that access to the files was restricted under a general policy of The Netherlands regarding records relevant to ongoing international boundary disputes.
19. Guyana responded by letter to the President dated 4 January 2005 and requested that the Tribunal "adopt an Order requiring both parties to cooperate and to refrain from

interference with each other's attempts to obtain documents or other information from non-parties; and, in the case of any interference already consummated, to take all necessary action to undo the effects of such interference”.

20. In a letter to the Parties dated 17 January 2005, the President solicited Suriname's comments on Guyana's letter dated 4 January 2005 and emphasized to both Parties the importance of equality of arms and good faith cooperation in international legal proceedings, recalling that these principles are laid down in the instruments governing the arbitration, including Articles 5 and 6 of Annex VII to the Convention, and Articles 7(1) and (2) of the Tribunal's own Rules of Procedure.
21. In its letter to the President dated 18 January 2005, Suriname requested an extension to the deadline set for its response to the President's 17 January 2005 letter, from 21 January 2005 to 24 January 2005. This request was granted.
22. In its letter to the President dated 24 January 2005, Guyana requested an extension of two weeks for the submission of its Memorial, from 15 February 2005 until 1 March 2005, which the Tribunal granted.
23. In its letter to the President dated 26 January 2005, Suriname assented to Guyana's request for an extension noting a reciprocal offer made by Guyana to agree to an extension of two weeks to the deadline for submission of the Counter-Memorial to 1 November 2005. The Tribunal consented to the extension.
24. On 27 January 2005, Suriname responded to the Tribunal by providing comments on Guyana's letter dated 4 January 2005, observing, *inter alia*, that some of the files in question are “unrelated to the maritime boundary dispute” and involve third party States.
25. In a letter to the President dated 1 February 2005, Guyana reiterated its request for an Order in the terms set out in its letter of 4 January 2005.
26. On 7 February 2005, the President invited Guyana to submit a “list of the specific documents and information in the archives of The Netherlands Ministry of Foreign Affairs it is seeking to access, indicating in general terms the relevance of each item

solely as it pertains to the maritime boundary dispute before this Arbitral Tribunal”, and invited Suriname to “communicate ... Suriname’s position as to whether the specific items sought by Guyana in that list should be released to Guyana, and if not, on what basis they should be withheld” following receipt of the list.

27. In a letter to the President dated 14 February 2005, Guyana responded to the Tribunal’s letter dated 7 February 2005 by providing a list of documents to which it sought access at The Netherlands Ministry of Foreign Affairs, and a list of subjects those documents “consist of, discuss or relate to, ... all of which self-evidently pertain directly to the maritime boundary dispute presently before the [T]ribunal”.
28. In a letter to the President dated 21 February 2005, Suriname stated that “Guyana has not identified a single specific document that it needs nor has it even attempted to explain why it needs the documents in question”, and that “Suriname’s position is that none of the items on Guyana’s list ... is a file or document that Suriname has an obligation under international law to make available to Guyana”.
29. On 22 February 2005, Guyana submitted its Memorial.
30. In a letter to the President dated 2 March 2005, Guyana stated that “since access to [the] files was denied, Guyana [was] not in a position to identify the documents with any greater precision”, and suggested modalities by which the Tribunal might examine the documents in question.
31. In a letter to the President dated 9 March 2005, Suriname stated that Guyana had not complied with the Tribunal’s 7 February 2005 request, and that Guyana’s request should “be denied or at least held in abeyance until after Suriname’s Counter-Memorial is submitted”.
32. In a letter to the President dated 28 March 2005, Guyana argued that it required “access to the documents at the earliest possible time, so as to allow sufficient time for their precise translation from Dutch to English, careful review of their contents, and their potential use in connection with the submission of Guyana’s Reply”, adding that “[d]ue

to the shortness of time ... Guyana requires access to the documents before Suriname's Counter-Memorial is filed".

33. In a letter to the President dated 30 March 2005, Suriname noted that Guyana's letter was "highly inappropriate" and that "[t]his matter has been fully discussed".
34. In a letter to the Parties dated 2 May 2005, the President invited the Parties to set out their positions in full concerning Guyana's request for an Order and the Tribunal's power to make such an Order, and established 6 and 7 July 2005 as dates for a hearing on the matter in The Hague.
35. On 4 May 2005, Suriname wrote to the President, to note that it would be likely to file Preliminary Objections, to request an oral hearing on any such Preliminary Objections should they be filed, and to request that the deadline for submissions on access to documents be extended from 23 May 2005 to 13 June 2005.
36. By letter dated 6 May 2005, the President extended the deadline for submissions on access to documents from 23 May 2005 to 13 June 2005.
37. In a letter dated 6 May 2005, Guyana set out its views on the proposed hearing dates and noted that it would oppose any proposal to bifurcate the proceedings to hold a separate hearing on Suriname's Preliminary Objections.
38. On 13 May 2005, Suriname indicated that it would file Preliminary Objections on jurisdiction and admissibility pursuant to Article 10(2)(a) of the Tribunal's Rules of Procedure, and requested suspension of proceedings on the merits and an oral hearing on its Preliminary Objections.
39. In a letter to the President dated 17 May 2005, Guyana opposed Suriname's proposals as to a separate pleading schedule and an oral hearing to decide the issues raised in Suriname's Preliminary Objections.
40. On 20 May 2005, Suriname filed Preliminary Objections on jurisdiction and admissibility.

41. In a letter to the Parties dated 24 May 2005, the President invited submissions by 10 June 2005 on “whether or not the preliminary objections should be dealt with as a preliminary matter and the proceedings suspended until these objections have been ruled on” and noted that the Tribunal would on the basis of those views determine whether to reserve time at the hearing on 7 and 8 July 2005 to discuss the procedure for dealing with Suriname’s Preliminary Objections.
42. Suriname, in its letter to the President dated 26 May 2005, submitted its views in response to the President’s letter to the Parties dated 24 May 2005, and, *inter alia*, requested that its Preliminary Objections “be dealt with as a preliminary matter and that the proceedings on the merits remain suspended until there has been a decision on those Preliminary Objections”.
43. In a letter to the President dated 10 June 2005, Guyana responded to the President’s 24 May 2005 request, submitting, *inter alia*, that none of Suriname’s Preliminary Objections could “be said to be preliminary (or exclusively preliminary) in character, and none [could] properly be said to go exclusively to the question of the Tribunal’s jurisdiction”. Guyana submitted that the proceedings should not be suspended, and that consideration of Suriname’s Preliminary Objections should be joined to the merits.
44. On 13 June 2005, the Parties submitted further views on Guyana’s application for an Order requesting access to documents in the archives of The Netherlands Ministry of Foreign Affairs.
45. By letter dated 23 June 2005, the President of the Tribunal invited the Parties to a meeting in The Hague on 7 and 8 July 2005, at which each Party would 1) “be given [the opportunity] to present its case on access to documents held in [The Netherlands’ National Archives]”, and 2) be given an opportunity to present its arguments on whether Suriname’s Preliminary Objections should be “ruled on as a preliminary issue, or whether a ruling on these Objections should be made in the Tribunal’s final [a]ward”. The President informed the Parties of the Tribunal’s intention to issue an Order disposing of these matters subsequent to the meeting.

46. The Tribunal met with the Parties in The Hague on 7 and 8 July 2005 and heard the Parties' arguments on the issues identified in the President's 23 June 2005 letter.
47. On 18 July 2005, the Tribunal issued Order No. 1 entitled "Access to Documents", which sets out in operative part:

THE ARBITRAL TRIBUNAL UNANIMOUSLY DECIDES AND ORDERS:

1. the Tribunal shall not consider any document taken from a file in the archives of The Netherlands to which Guyana has been denied access;
  2. Suriname shall take all measures within its power to ensure that Guyana have timely access to the entire file from which any such document already introduced or to be introduced into evidence was taken, either by withdrawing its objections made to The Netherlands government, or, if this proves unsuccessful, by providing such file directly to Guyana;
  3. each Party may request the other Party, through the Tribunal, to disclose relevant files or documents, identified with reasonable specificity, that are in the possession or under the control of the other Party;
  4. the Tribunal shall appoint, pursuant to article 11(3) of the Tribunal's Rules of Procedure and in consultation with the Parties, an independent expert competent in both the Dutch and English languages;
  5. the expert shall, at the request of the Party producing the file or document, review any proposal by that Party to remove or redact parts of that file or document [as each Party may have a legitimate interest in the non-disclosure of information that does not relate to the present dispute, or which, for other valid reasons, should be regarded as privileged or confidential].
  6. any disputes between the Parties concerning a Party's failure or refusal to produce, in whole or in part, any document or file referred to in paragraphs 1 and 2, shall be resolved in a timely manner by the expert referred to in paragraph 4 of this Order;
  7. as provided in article 11(4) of the Tribunal's Rules of Procedure, the Parties shall cooperate fully with the expert appointed pursuant to paragraph 4 of this Order.
48. On 18 July 2005, the Tribunal also issued Order No. 2 entitled "Preliminary Objections", which sets out in operative part:

THE ARBITRAL TRIBUNAL UNANIMOUSLY DECIDES AND ORDERS:

1. under article 10 of the Tribunal's Rules of Procedure, the submission of Suriname's Preliminary Objections did not have the effect of suspending these proceedings;
  2. because the facts and arguments in support of Suriname's submissions in its Preliminary Objections are in significant measure the same as the facts and arguments on which the merits of the case depend, and the objections are not of an exclusively preliminary character, the Tribunal does not consider it appropriate to rule on the Preliminary Objections at this stage;
  3. having ascertained the views of the parties, the Tribunal shall, in accordance with article 10(3) of the Tribunal's Rules of Procedure, rule on Suriname's Preliminary Objections to jurisdiction and admissibility in its final award;
  4. after the Parties' written submissions have been completed, the Tribunal shall, in consultation with the Parties, determine the further procedural modalities for hearing the Parties' arguments on Suriname's Preliminary Objections in conjunction with the hearing on the merits provided for in article 12 of the Tribunal's Rules of Procedure.
49. By letter to the President dated 20 July 2005, Guyana requested certain "relevant files" in the possession or under the control of Suriname, pursuant to the Tribunal's Order No. 1.
50. On 25 July 2005, Suriname asked the Tribunal to reject Guyana's request for access to documents made on 20 July 2005, but stated that it would comply with its obligations under paragraph 2 of Order No. 1.
51. Suriname wrote to the President again on 29 July 2005, setting out the manner in which it intended to implement paragraph 2 of Order No. 1, and agreed to give Guyana access to certain files and documents, provided they did not exclusively concern the maritime boundary between Suriname and French Guiana or exclusively concern the land boundary dispute between British Guiana and Suriname.
52. On 2 August 2005, Guyana renewed its request, by letter to the President, for disclosure of the files it had identified on 20 July 2005 pursuant to paragraph 3 of Order No. 1 and set out its reasons why Suriname's proposal for the handling of File 169A would violate paragraph 2 of Order No. 1.

53. On 8 August 2005, Suriname clarified by letter to the President that it interpreted paragraph 3 of Order No. 1 to mean that “if Suriname chooses not to present any documents from The Netherlands files, the paragraph 2 procedure does not apply and Guyana will have no right of access to those files unless it can make a showing of specific need for specific documents, beyond a general claim of ‘relevance’”, and asked the Tribunal to confirm that Suriname’s reading was correct. Suriname also stated that documents concerning the boundary between French Guiana and Suriname “have nothing to do with the case before the Tribunal”, and that, if the independent expert was expected to make determinations of relevance on his own, it would be appropriate for the Parties to ask the Tribunal to review those determinations. Suriname agreed nonetheless to arrange for Files 161 and 169A to be submitted to the independent expert.
54. In its letter dated 12 August 2005, Guyana explained its view that the role of the independent expert was “to review any proposal by a Party to remove or redact a file or document, and to resolve in a timely manner any dispute between the Parties over the failure or refusal of a Party to produce, in whole or in part, any such file or document”. Guyana stated that it was “ready and willing” to disclose documents to Suriname in accordance with paragraph 3 of Order No. 1.
55. By an e-mail dated 23 August 2005, the President circulated draft terms of reference for the independent expert, inviting the Parties’ comments.
56. On 25 August 2005, Guyana set out its comments by letter to the President on the role of the independent expert and on the draft terms of reference.
57. In a letter to the President dated 30 August 2005, Suriname commented on the role of the independent expert and on the draft terms of reference, reiterating its request for interpretation of Order No. 1.
58. By letter to the President dated 31 August 2005, Guyana expressed its concern that the expert should act expeditiously regarding Guyana’s request for access to documents.

59. In his e-mail to the Parties dated 13 September 2005, the President proposed to appoint Professor Hans van Houtte as the independent expert pursuant to paragraph 4 of Order No. 1.
60. On 16 September 2005, both Parties wrote to the President endorsing the appointment of Professor van Houtte as the independent expert pursuant to paragraph 4 of Order No. 1.
61. Suriname notified the Tribunal, by letter to the President dated 4 October 2005, that it would be represented by a new Agent, the Honourable L.I. Kraag-Keteldijk, Minister of Foreign Affairs for the Republic of Suriname, who replaced the Honourable Maria E. Levens.
62. On 12 October 2005, the Tribunal issued Order No. 3, the operative part of which provides as follows:

THE ARBITRAL TRIBUNAL UNANIMOUSLY ORDERS:

1. Prof. Hans van Houtte is appointed to serve the Arbitral Tribunal as the independent expert pursuant to paragraph 4 of Order No. 1;
2. the attached terms of reference for the independent expert appointed pursuant to paragraph 4 of Order No. 1 are adopted; and
3. the Arbitral Tribunal shall finally resolve any disputes that the independent expert cannot resolve pursuant to paragraph 2.12 of the terms of reference.

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INDEPENDENT EXPERT'S TERMS OF REFERENCE

IN ACCORDANCE WITH TRIBUNAL ORDER NO. 1

1. BACKGROUND

1.0. In the context of the arbitration before the Arbitral Tribunal concerning the delimitation of the maritime boundary between Suriname and Guyana ("the Parties"), the Parties are in dispute concerning access to certain documents in the archives of The Netherlands Ministry of Foreign Affairs. The Tribunal's "Order No. 1 of 18 July 2005, Access to Documents" ("the Order") summarizes the arguments of the Parties regarding "Guyana's application for an Order requesting

access to documents in The Netherlands' archives, and is attached hereto as "Annex 1".

1.1. Paragraph 4 of the Order provides:

*the Tribunal shall appoint, pursuant to article 11(3) of the Tribunal's Rules of Procedure and in consultation with the Parties, an independent expert competent in both the Dutch and English languages.*

1.2. The Expert has signed a confidentiality undertaking and declared that he "will, as directed by the Arbitral Tribunal, perform his duties honourably and faithfully, impartially and conscientiously, and will refrain from divulging or using, outside the context of the tasks to be performed by him in this arbitration, any documents, files and information which may come to his knowledge in the course of the performance of his task."

1.3. The Parties are to cooperate with the Expert pursuant to paragraph 7 of the Order, which reads:

*as provided in article 11(4) of the Tribunal's Rules of Procedure, the Parties shall cooperate fully with the expert referred to in paragraph 4 of this Order.*

1.4. The Expert or the Tribunal may terminate this agreement at any time by providing notice of intent to terminate one month before the termination should become effective.

1.5. The Tribunal reserves the right to modify these Terms of Reference from time to time as it determines necessary.

## 2. SCOPE

### *General*

2.0. The Expert shall consult the Tribunal when in doubt regarding questions of procedure. The Expert shall follow such guidelines for determining relevance as may be communicated to him by the Tribunal, including attempting to distinguish between files and documents that relate exclusively to the land boundary between the Parties, other disputes or boundaries with third Parties, and those that relate to the maritime boundary between the Parties to this dispute. In light of the Parties' arguments, and in accordance with the Rules of Procedure of the Arbitral Tribunal, the United Nations Convention on the Law of the Sea ("UNCLOS"), and the relevant Tribunal Orders, the Expert shall not, in carrying out any tasks associated with this section 2, be bound by strict rules of evidence and may evaluate documents or files in any form permitted by the Arbitral Tribunal. The Tribunal, in its final award, will decide on the relevance, cogency and weight to be given to any files or documents, or parts thereof, ultimately disclosed and relied upon by the Parties in their pleadings.

*Procedure to be followed pursuant to paragraph 5 of the Order*

2.1. Paragraph 5 of the Order provides:

*the expert shall, at the request of the Party producing the file or document, review any proposal by that Party to remove or redact parts of that file or document for the reasons set forth under (c) in the last preambular paragraph of this Order.*

2.2. Sub-paragraph (c) of the last preambular paragraph of the Order provides:

*each Party may nevertheless have a legitimate interest in the non-disclosure of information that does not relate to the present dispute, or which, for other valid reasons, should be regarded as privileged and confidential.*

2.3. In accordance with paragraphs 2, 3 and 5 of the Order, where a Party has invoked paragraph 5 of the Order, and produced a file or document, but proposed removal or redaction of it for the reasons set forth in sub-paragraph (c) of the last preambular paragraph of the Order, the Party proposing removal or redaction shall produce the entire un-redacted file or document for the Expert's inspection. After having satisfied himself that the file or document before him is complete, the Expert may invite the Party seeking to redact or remove the files or documents, to set out, and/or elaborate on reasons already given, why those documents or files (or parts thereof) should be removed or redacted. Where the Expert so invites the Party seeking to redact or remove files or documents, he shall thereafter invite the Party seeking access to the documents or files, to comment on the reasons given by the Party seeking to withhold the documents or files.

2.4. The Expert shall produce a report on his findings, preserving to the fullest extent possible the confidential nature of the files or documents at issue, and setting out the reasons for his conclusions. The report shall be communicated to the Parties and the Tribunal. The Tribunal will consider the report and determine whether redaction or removal is appropriate.

*Procedure to be followed pursuant to paragraph 3 of the Order*

2.5. Paragraph 3 of the Order provides:

*each Party may request the other Party, through the Tribunal, to disclose relevant files or documents, identified with reasonable specificity, that are in the possession or under the control of the other Party.*

2.6. The Tribunal may engage the Expert to review a request made pursuant to paragraph 3 of the Order, in order to aid the Tribunal in its determination of whether the files or documents which are the subject of the request, are indeed prima facie relevant, and have been identified with reasonable specificity. To that end, the Tribunal may ask the Party in possession or control of the files or documents to produce them to the Expert for his inspection.

2.7. The Expert shall produce a report on his findings, preserving to the fullest extent possible the confidential nature of the files or documents at issue, and setting out the reasons for his conclusions. The report shall be communicated to the Parties and the Tribunal. The Tribunal will consider the report and determine whether access is to be granted or denied.

*Procedure to be followed pursuant to paragraph 6 of the Order*

2.8. Paragraph 6 of the Order provides:

*any disputes between the Parties concerning a Party's failure or refusal to produce, in whole or in part, any document or file referred to in paragraphs 1 and 2, shall be resolved in a timely manner by the expert referred to in paragraph 4 of this Order.*

2.9. The Expert shall be free to propose his own solution to resolve a dispute between the Parties pursuant to paragraph 6 of the Order. The Expert shall at every stage afford both Parties an opportunity to set out their position, and shall fully take into account the arguments of the Parties.

2.10. The Expert shall keep the Tribunal apprised of his progress in resolving a dispute pursuant to paragraph 6 of the Order. The Expert shall consult the Tribunal regarding his proposed solution to such a dispute, before such solution is communicated to the Parties.

2.11. Once the Tribunal has acted upon the Expert's proposed solution, it shall be communicated to the Parties.

2.12. Where the Expert determines that a dispute cannot be resolved in a timely manner by him, he shall refer it to the Tribunal.

63. On 12 October 2005, the Tribunal also issued Order No. 4, the operative part of which provides:

**THE ARBITRAL TRIBUNAL UNANIMOUSLY ORDERS:**

1. (a) Suriname shall cooperate fully with the independent expert appointed pursuant to The Tribunal's Order No. 3, and facilitate his immediate access to the entire File 169A and entire File 161 in The Netherlands' Foreign Ministry archives ensuring that such access is granted within two weeks from the date of this Order, indicating which documents, and on what basis, it wishes to remove or redact from those files before they are to be given to Guyana; and  
  
(b) the independent expert shall, in accordance with paragraph 5 of Order No. 1 and the Terms of Reference, review Suriname's proposal(s) for removal or redaction of documents mentioned above.
2. (a) The independent expert shall review Guyana's request in its letter dated 20 July 2005 for access to documents pursuant to paragraph 3 of Order No. 1, in order to determine whether those files have been identified with reasonable specificity and appear relevant; and  
  
(b) Suriname shall facilitate the independent expert's timely access to the files identified in Guyana's letter dated 20 July 2005, to the extent the expert

may deem such access necessary to determine reasonable specificity and relevance in accordance with paragraph 3 of Order No. 1.

3. The independent expert shall endeavour to report on his findings as soon as possible.
64. In a letter dated 14 October 2005, Suriname informed the President that it had requested The Netherlands Ministry of Foreign Affairs to provide the independent expert access to Files 161 and 169A, pursuant to Order No. 4.
65. On 24 October 2005, Suriname sent a Memorandum to the President proposing which documents in Files 161 and 169A Guyana could be given access to, and which should be withheld, but it did not disclose that Memorandum to Guyana on grounds that its contents were confidential.
66. By letter dated 27 October 2005, Guyana objected to Suriname not disclosing its 24 October 2005 Memorandum to Guyana and proposed a method of disclosure to preserve the confidentiality of the documents.
67. On 28 October 2005, Guyana sent a letter to the independent expert providing its views “in connection with paragraph 2 (a)” of Order No. 4, as to which documents and files the independent expert should review and why.
68. On 31 October 2005, Suriname filed its Counter-Memorial, dated 1 November 2005, with the PCA Registry.
69. By letter to the President dated 2 November 2005, Suriname responded to Guyana’s letter of 27 October 2005, asking that the Tribunal disregard Guyana’s objection and requesting that the independent expert review all the documents being withheld from Guyana in The Netherlands Ministry of Foreign Affairs archives.
70. By letter to the President dated 4 November 2005, Guyana responded to Suriname’s letter dated 2 November 2005, submitting that the Terms of Reference allow for disclosure of Suriname’s Memorandum to Guyana.

71. On 8 November 2005, Suriname wrote to the President in response to Guyana's 4 November 2005 letter and reiterated its objections to disclosure to Guyana of Suriname's Memorandum or the files in The Netherlands Ministry of Foreign Affairs archives before the independent expert had made his determination in respect of them.
72. On 10 November 2005, Guyana wrote to Suriname agreeing to disclose to Suriname, in accordance with Order No. 1, documents that Suriname had requested in a letter to Guyana dated 8 November 2005, which had not been copied to the Tribunal.
73. On 10 November 2005, Guyana wrote to the President in response to Suriname's letter of 8 November 2005 addressed to the President and reaffirmed the views it had set out in its letters dated 4 November 2005 and 28 October 2005.
74. In a letter to the Parties dated 28 November 2005, the President rejected Guyana's request for disclosure of Suriname's 24 October 2005 Memorandum, but allowed Guyana's request made in its letter dated 28 October 2005 that the independent expert inspect certain files in The Netherlands Ministry of Foreign Affairs archives.
75. On 12 December 2005, Guyana wrote to Professor van Houtte asking to "be afforded a timely opportunity to present its comments pursuant to paragraph 2.3 [of the Terms of Reference] before any decisions relating to disclosure or withholding of documents are made".
76. On 18 January 2006, following an examination of the files in question, the independent expert submitted a report of his findings and recommendations to the Tribunal.
77. Guyana set out its views in a letter to Suriname dated 18 January 2006 on documents it had been requested to disclose to Suriname and requested certain further documents from Suriname. On 24 January 2006, Suriname requested further documents from Guyana by letter.
78. At the President's request, the Registrar provided the Parties with a copy of the independent expert's report on 26 January 2006, and invited comments on it by 31 January 2006.

79. On 31 January 2006, Suriname sent two letters to the President concurring with several of the independent expert's findings and recommendations but objecting to the disclosure of a specific document in File 161. Suriname disagreed with the independent expert's finding that its position and practice with regard to its eastern maritime boundary "might be relevant" to the present dispute concerning Suriname's western maritime boundary.
80. In a letter to the President dated 31 January 2006, Guyana concurred with the independent expert's findings and requested that the Tribunal immediately adopt his recommendation "to the effect that this material should be disclosed to the Tribunal and Guyana".
81. Suriname and Guyana wrote to the President on 1 February 2006 and 2 February 2006, respectively, further elaborating their views as to the relevance of documents concerning Suriname's eastern maritime boundary.
82. The Parties each wrote to the President on 3 February 2006, setting out their proposals for the scheduling of the oral hearing.
83. In a letter to Suriname dated 10 February 2006, Guyana responded to Suriname's requests for documents made on 8 November 2005 and 24 January 2006 and reiterated its own requests for documents from Suriname.
84. On 16 February 2006, the Tribunal issued Order No. 5, the operative part of which provides:

THE ARBITRAL TRIBUNAL UNANIMOUSLY ORDERS:

1. The recommendations of the independent expert in Sections 5 and 6 of his report (concerning documents in Files 161 and 169A) are hereby adopted, and Suriname is hereby requested to grant Guyana immediate access to the files in accordance with those recommendations;
2. The documents compiled from Files 162, 311, 2022, and 2949 and referred to by the independent expert, in Section 7 of his report, shall be sent immediately to Suriname for comment and possible redaction;

3. Suriname, on an expedited basis and in any case no later than 22 February 2006, shall transmit directly to Guyana any documents that it does not propose to redact or withhold, and shall indicate to the independent expert any proposals for redaction or withholding and the reasons therefor.

85. Suriname wrote to Guyana on 17 February 2006, responding to Guyana's letter dated 18 January 2006 and disclosing some of the requested documents. Suriname produced further requested documents on 21 February 2006.
86. Suriname produced certain documents pursuant to the Tribunal's Order No. 5 under cover of two letters to Guyana dated 22 February 2006, and noted that it would submit others to the independent expert for possible redaction "in accordance with paragraph 3 of the Tribunal's Order No. 5".
87. On 22 February 2006, Suriname provided the Registrar with documents that it wished to have redacted by the independent expert, which were in turn forwarded to the independent expert on 24 February 2006.
88. In a letter to the President dated 24 February 2006, Guyana noted that, according to its understanding of the schedule of pleadings, Guyana's Reply would be due on 1 April 2006 and Suriname's Rejoinder on 1 September 2006, and requested confirmation from the Tribunal as to these dates.
89. On 27 February 2006, Suriname provided a "Memorandum for the independent expert setting forth Suriname's reasons for the proposed redactions in the documents that were sent to you by letter dated 22 February 2006" under cover of a letter to the Registrar. This Memorandum was not sent to the Co-Agent for Guyana in accordance with the Tribunal's decision in its letter dated 28 November 2005.
90. In a letter to the President dated 27 February 2006, Suriname stated that it had no objection to Guyana's understanding of the pleading schedule and noted that, "except for the eighteen pages containing Suriname's proposed redactions that were sent to you on 22 February 2006, all of the remaining documents that Suriname had been ordered to produce to Guyana have now been produced".

91. The independent expert set out his recommendations on Suriname's 22 February 2006 proposals for redaction in a letter to the President dated 28 February 2006.
92. On instruction of the President, the Parties were informed by the Registry on 1 March 2006 that their understanding of the pleading schedule was correct, thereby confirming the due date for Guyana's Reply as 1 April 2006 and for Suriname's Rejoinder as 1 September 2006.
93. In a letter to Guyana dated 2 March 2006, Suriname requested production of any further documents that might pertain to Suriname's 8 November 2005 request for documents.
94. On 6 March 2006, Guyana confirmed by letter that it had produced all documents requested of it.
95. The President wrote to the Parties on 6 March 2006, noting his full agreement with the independent expert's recommendations, and instructing Suriname to implement those recommendations "without delay".
96. On 6 March 2006, Suriname requested by e-mail certain clarifications from the independent expert regarding his recommendations.
97. Suriname disclosed documents, under cover of a letter to Guyana dated 7 March 2006, in accordance with the decision of the Tribunal of 6 March 2006, but withheld others pending clarification from the independent expert.
98. Suriname disclosed further documents, under cover of a letter to Guyana dated 10 March 2006, in accordance with clarifications received from the independent expert.
99. Suriname provided the independent expert with the full set of documents it had disclosed to Guyana from Files 161 and 169A under cover of a letter to the independent expert dated 22 March 2006.
100. Guyana filed its Reply dated 1 April 2006 with the Registry on 31 March 2006.

101. The Registrar wrote to the Parties on 4 April 2006, to communicate the Tribunal's proposal that the oral hearings be held in Washington, D.C. from 7 to 20 December 2006 and asking the Parties to confirm their availability on those dates.
102. On 4 April 2006, the Registrar forwarded a letter to Suriname from the independent expert dated 30 March 2006 requesting Suriname to "indicate the references for the enclosed documents, which [the independent expert] was unable to find in the bundle [he] received from [Suriname] of documents submitted to Guyana".
103. In a letter to the Parties dated 6 April 2006, the Registrar confirmed that the oral hearings would be held at the headquarters of the OAS from 7 to 20 December 2006.
104. Suriname wrote to Guyana on 14 April 2006 proposing a schedule for the oral hearings, and Guyana proposed a different schedule in a letter to Suriname dated 28 April 2006.
105. Suriname noted its disagreement with Guyana's proposed schedule in a letter to Guyana dated 28 April 2006.
106. On 2 May 2006, Guyana wrote to Suriname modifying its proposed schedule in response to Suriname's letter of 28 April 2006.
107. Suriname filed its Rejoinder dated 1 September 2006 with the Registry on 30 August 2006.
108. On 27 November 2006, after consultation with the Parties, the Tribunal issued Order No. 6 appointing a hydrographer, Mr. David Gray (the "Hydrographer"), as an expert to assist the Tribunal pursuant to Article 11(3) of the Tribunal's Rules of Procedure. The operative part of Order No. 6 provides as follows:

THE ARBITRAL TRIBUNAL UNANIMOUSLY ORDERS:

1. Mr. David H. Gray is appointed to serve the Arbitral Tribunal as a hydrographic expert pursuant to Article 11(3) of the Tribunal's Rules of Procedure;
2. the attached terms of reference for the hydrographic expert are adopted.

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## HYDROGRAPHER'S TERMS OF REFERENCE

### IN ACCORDANCE WITH ARTICLE 11(3) OF THE RULES OF PROCEDURE

#### 1. Background

1.1. As set out in Guyana's "Statement of the Claim and the Grounds on Which it is Based," dated 24 February 2004, Guyana has initiated an arbitration pursuant to Articles 286 and 287 of the 1982 United Nations Convention on the Law of the Sea (the "Convention") and Article 1 of Annex VII to the Convention with regard to a dispute concerning the delimitation of its maritime boundary with Suriname.

1.2. The Parties to the Arbitration are:

(a) Guyana, represented by H.E. Samuel Rudolph Insanally, as Agent, and Sir Shridath Ramphal and Mr. Paul S. Reichler, as Co-Agents.

(b) Suriname, represented by the H.E. Lygia L.I. Kraag-Keteldijk, as Agent, and Mr. Paul C. Saunders and Mr. Hans Lim A Po, as Co-Agents.

1.3. Addresses for the Agents and Co-Agents are on file with the Permanent Court of Arbitration ("PCA"), which is serving as Registry for the Arbitration.

1.4. The Arbitral Tribunal, which has been validly constituted in accordance with Article 3 of Annex VII to the Convention, is composed of:

H.E. Judge L. Dolliver M. Nelson (President)

Dr. Kamal Hossain

Professor Thomas M. Franck

Professor Ivan Shearer

Professor Hans Smit

1.5. Rules of Procedure for the Arbitration were adopted on 30 July 2004. Written pleadings have been submitted by the Parties in accordance with the Rules of Procedure, as amended. Oral hearings are to be held from 7 December 2006 to 20 December 2006 in Washington D.C.

1.6. The Expert or the Tribunal may terminate this agreement at any time by providing written notice of intent to terminate one month before the termination should become effective.

1.7. The Tribunal reserves the right to modify these Terms of Reference from time to time as it determines necessary.

#### 2. The Expert

Pursuant to Article 11(3) of the Rules of Procedure, Mr. David H. Gray (the "Expert"), hydrographer, shall serve as an expert to assist the Arbitral Tribunal in accordance with these Terms of Reference.

2.2. The Expert hereby declares that he will, as directed by the Arbitral Tribunal, perform his duties honourably and faithfully, impartially and conscientiously, and will refrain from divulging or using, outside the context of the tasks to be performed by him in this arbitration, any documents, files and information, including all written or oral pleadings, evidence submitted in the Arbitration, verbatim transcripts of meetings and hearings, or the deliberations of the Arbitral Tribunal, which may come to his knowledge in the course of the performance of his task.

3. Scope

3.1. The Expert shall assist the Arbitral Tribunal, should it determine that it has jurisdiction to do so, in the drawing and explanation of the maritime boundary line or lines in a technically precise manner.

3.2. The Expert will make himself available to assist the Arbitral Tribunal as required by it in the preparation of the Award.

3.3 The Expert shall perform his duties according to international hydrographic and geodetic standards.

109. Oral hearings were held in Washington, D.C., at the headquarters of the OAS, from 7 to 20 December 2006.

110. The Hydrographer, on 20 December 2006, requested the following in writing:

[T]hat the Parties provide the position of Marker “B”, and other points in this 1960 survey within the geographic area of the mouth of the Corentyne River, their geodetic datum, and the WGS-84 datum position of these points if they have been determined by re-computation of the 1960 survey.

111. Guyana, in a letter dated 28 December 2006, provided World Geodetic System 1984 (“WGS-84”) coordinates for Marker “B” obtained from a 2004 GPS Survey conducted at the site of what Guyana claimed to be Marker “B”.

112. The Hydrographer, in a communication from the Registrar to the Parties dated 7 January 2007, requested clarification of Guyana’s response to his 20 December 2006 request as it appeared that Guyana had provided the WGS-84 coordinates of Marker “A” and not those of Marker “B” and that the coordinates given did not exactly correspond to those of Marker “A” as stated in Guyana’s Memorial, paragraph 2.10.

113. Guyana, in a communication dated 10 January 2007, confirmed that it had mistakenly provided coordinates for Marker “A” in its letter dated 28 December 2007 and that

those coordinates had been rounded off for the sake of simplicity, and provided WGS-84 coordinates for Marker “B” obtained from a 2004 GPS Survey conducted at the site of what Guyana claimed to be Marker “B”.

114. Suriname, in a letter dated 12 January 2007, informed the Tribunal that it had been unable to find any information in response to the Hydrographer’s request of 20 December 2006, contested the use of the WGS-84 coordinates for Marker “A” provided in Guyana’s Memorial, paragraph 2.10, claiming that it “does not have the ability to verify those coordinates” as Guyana could not provide any evidence as to the discovery or location of Marker “B”, and urged the Tribunal to use the astronomical coordinates previously used by both Parties as the WGS-84 coordinate values.
115. Guyana, in a letter dated 19 January 2007, argued that the Tribunal should reject Suriname’s proposal to use astronomical coordinates for Marker “A”, as these coordinates were inaccurate and represented a difference of more than 411 metres with the WGS-84 coordinates, and claimed that there was no ground to assume that Marker “B” was no longer in its original location and that there was no need for any data in support of its determination of the coordinates of Marker “A”.
116. Suriname, in a letter dated 29 January 2007, argued that there was no evidence that what Guyana alleged was Marker “B” was indeed Marker “B” or that what Guyana alleged was Marker “B” was in the location where the 1936 Mixed Boundary Commission (“Mixed Boundary Commission”)<sup>1</sup> placed Marker “B”, and contended further that a site visit would have no value as it “would not provide any enlightenment on the question of whether the current location of Marker “B” is the same as its original location”.
117. Guyana, in a letter dated 13 February 2007, offered further arguments regarding the discovery and location of Marker “B” and evidence in the form of two affidavits.
118. Suriname, in a letter dated 16 February 2007, requested that the Tribunal disregard Guyana’s letter dated 13 February 2007 on the grounds that the Parties “have no right to introduce any new material”.

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<sup>1</sup> See paras. 137 and 138.

119. Guyana, in a letter dated 21 February 2007, argued that “all correspondence concerning the coordinates of Marker ‘B’ has been proper” as it was submitted in response to a request made by the Hydrographer.

120. The Tribunal, on 12 March 2007, issued Order No. 7, which provided in operative part:

1. The correspondence and materials submitted to date by the Parties regarding the discovery and location of Marker “B” were submitted in response to the Hydrographer’s inquiry of 20 December 2006 and form part of the record in this matter;
2. The Parties shall not make further communications to the Tribunal or Registrar relating to the location of Markers “A” and “B” except after first seeking leave of the Tribunal or upon request of the Tribunal;
3. The Hydrographer shall, after inviting the Parties’ representatives to be present, conduct a site visit in Guyana. The modalities for the Hydrographer’s site visit shall be established through one or more orders in coming days

121. The Tribunal issued Order No. 8 on 21 May 2007, which provided in operative part:

1. The Hydrographer’s terms of reference for the site visit are to inspect what Guyana alleges to be Marker “B” and the surrounding area, as he deems appropriate, and to gather data relevant to the issues that have arisen as a result of his question to the Parties of 20 December 2006 and the Parties’ subsequent correspondence;
2. Unless otherwise agreed with the Hydrographer, the Parties, the Hydrographer, and the Registrar shall travel to the site from Georgetown on the mornings of 31 May and 1 June 2007, returning to Georgetown in the afternoon or evening of each day;
3. As soon as possible, Guyana shall propose a time and place for participants in the site visit to meet in Georgetown on the mornings of 31 May and 1 June for transportation to the site;
4. The Parties’ representatives shall cooperate fully with the Hydrographer;
5. Following the site visit, the Hydrographer shall submit a written report to the Tribunal, which shall be shared with the Parties. The Tribunal shall provide the Parties an opportunity to comment on the Hydrographer’s report.

122. On 31 May 2007, the Hydrographer conducted a site visit in Guyana, accompanied by the Registrar and the representatives of the Parties.

123. On 4 July 2007, the Hydrographer's "Report on Site Visit" was sent to the Parties, who were invited to provide comments on it.
124. On 24 July 2007, Suriname submitted its comments on the Hydrographer's Report accepting the Hydrographer's conclusions and suggesting the correction of certain typographical errors and the addition of one clarification.
125. On 25 July 2007, Guyana submitted its comments on the Hydrographer's Report, accepting the Hydrographer's conclusions and stating no objection to the changes suggested by Suriname.
126. On 30 July 2007, the Hydrographer submitted a "Corrected Report on Site Visit" reflecting Suriname's suggested changes, which was circulated to the Parties.

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## CHAPTER II - INTRODUCTION

### A. GEOGRAPHY

127. Guyana and Suriname are situated on the northeast coast of the South American continent and are separated by the Corentyne (in Dutch, Corantijn) River, which flows northwards into the Atlantic Ocean.
128. The territory of Guyana spans approximately 214,970 square kilometres and its approximate population is 769,000. Guyana's land boundaries, which in part follow the course of rivers, are shared with Venezuela to the west and south, Brazil to the south and east, and Suriname to the east. To the north, it faces the Atlantic Ocean. Guyana became an independent State in 1966, after more than 160 years of British colonial rule.
129. The territory of Suriname is approximately 163,270 square kilometres and its approximate population is 438,000. Suriname shares borders with Guyana to the west, Brazil to the south, and French Guiana to the east. To the north, it also faces the Atlantic Ocean. Suriname gained independence from The Netherlands in 1975, after more than 170 years of Dutch colonial rule.
130. The coastlines of Guyana and Suriname are adjacent. They meet at or near to the mouth of the Corentyne River and together form a wide and irregular concavity. There are no islands in Guyana and Suriname's territorial seas.
131. Neither Guyana nor Suriname has signed international maritime boundary agreements with their neighbouring States.
132. The length of the straight-line coastal frontage of Guyana as calculated from the approximate coordinates of the land boundary terminus with Venezuela to the approximate coordinates of the mouth of the Corentyne River is 223 nautical miles ("nm"), and the length of the straight-line coastal frontage of Suriname as calculated from the approximate coordinates of the land boundary terminus with French Guiana to the approximate coordinates of the mouth of the Corentyne River is 191 nm.

133. The seafloor off the coasts of Guyana and Suriname consists of soft mud out to the 20 metre depth contour and is constantly subjected to erosion and accretion. The horizontal distance between the high water line and the low water line, i.e. the area of tidal flats, low tide elevations and drying areas, is as much as 3 nm in several places along both coasts. The seafloor does not attain a 50-metre depth contour (25 fathoms) until about 50 nm offshore, and does not attain a 200-metre depth contour (often considered the geological continental shelf break) until 80 nm offshore.
134. The Corentyne River is navigable inland for about 50 miles and is also tidal for many miles inland. At Bluff Punt, Suriname, where the river is about 4 nm wide, the river begins to widen out considerably so that just 5 nm farther seaward, the low water lines are 12 nm apart. In that trapezoidal area, the river exhibits large tidal flats, drying areas and shoals such that most marine traffic follows a channel along the east side of the river estuary; there is a shallower navigation channel in the western half.
135. Navigation into the Corentyne River from seaward is normally in the deeper channel, which is closer to the east bank of the river. However, there were, at least in 1940, navigational aids to assist passage through the shallower channel that is closer to the west bank of the river. For example, prior to 1928 and ending prior to 1940 there was a leading line of  $190\frac{1}{2}^\circ$  through this channel using the chimneys at Skeldon and Springlands as a set of range markers.<sup>2</sup> From sometime after 1928 until sometime prior to 1949, there were also buoys along the west side of this channel.<sup>3</sup> Additionally, there was a 10-metre high beacon built in 1938 as part of the 1936 boundary survey and it is still shown on both the British and Dutch charts, although the beacon ceased to exist prior to 2004.<sup>4</sup>
136. The vertical range of the tide between high water and low water is generally in the order of three metres along the coast. In the Corentyne River, the effect of the tide is felt

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<sup>2</sup> The leading line was printed on the 1928 edition of NL chart 222, and was cancelled by a Notice to Mariners in 1940.

<sup>3</sup> The buoys were added by hand on the 1928 edition of NL chart 222 (unknown date), and the buoys were noted as “not present” in 1949.

<sup>4</sup> Guyana Memorial, Annex 11, para. 6. and Minutes of 3rd Conference of the Mixed Commission for the Definition of the Boundary between British Guiana and Surinam, 21 December 1938. Suriname’s Judge’s binder Tab C-5. The beacon was not there when Counsel for Guyana visited the site in 2004.

several miles inland. In the mouth of the river, the in-going tidal stream sets southwest whilst the out-going stream sets north. In the rainy season, the out-going stream attains rates of 3 to 3½ knots and its influence is felt 10 or 12 nm offshore; the edge of the stream is distinctly marked by discoloured water.

## **B. HISTORICAL BACKGROUND**

137. The efforts to establish a border between Guyana and Suriname date back to colonial times. In 1799, the border between Suriname and Berbice, a colony then situated in the eastern part of modern Guyana, was agreed by colonial authorities to run along the west bank of the Corentyne River. A Mixed Boundary Commission including members from the United Kingdom, The Netherlands, and Brazil was formed in 1934 to establish the southern and northern points of the boundary with greater precision. The southern point, being a tri-junction between the boundaries of British Guiana, Suriname, and Brazil, was established at the source of the Kutari River, a tributary of the Corentyne River. In 1936, the Mixed Boundary Commission made its recommendation that the northern end of the border between British Guiana and Suriname should be fixed at a specific point on the west bank of the Corentyne River, near to the mouth of the river, a point then referred to as “Point 61” or the “1936 Point”. The rationale for locating the border along the western bank of the Corentyne River rather than its thalweg and locating the border terminus on the western bank was to enable The Netherlands to exercise supervision of all traffic in the river.
138. In 1936, the British and Dutch members of the Mixed Boundary Commission also concluded that the maritime boundary in the territorial sea should be fixed at an azimuth of N10°E from Point 61 (the “10° Line”) to the limit of the territorial sea.
139. In 1939, the United Kingdom prepared a draft treaty on the delimitation of the boundary between British Guiana and Suriname, which provided that the boundary of the territorial sea would lie along the 10° Line; however, the Second World War intervened and the Dutch government did not respond to the United Kingdom’s draft treaty.
140. In 1957, the United Kingdom Foreign Office decided that it would delimit the British Guiana-Suriname maritime boundary from that time onwards by means of an equidistance line, which it understood would follow the 10° Line up to the three mile

limit from the coast and then an azimuth of N33°E to its intersection with the 25 fathom line. In 1958, British Guiana granted exploration rights to the California Oil Company in an area up to a line following N32°E from Point 61. Later, in 1965, a concession in an almost identical geographical area was granted to Guyana Shell Limited, a subsidiary of Royal Dutch Shell. Between that time and the year 2000, Guyana granted several other concessions allowing operations in the area disputed in these proceedings.<sup>5</sup> For instance, in 1988, it granted a concession for oil exploration to a consortium of LASMO Oil (Guyana) Limited and BHP Petroleum (Guyana) Inc. (the “LASMO/BHP Consortium”).

141. Suriname has also granted concessions for oil exploration in an area of competing claims in these proceedings.<sup>6</sup> In 1957, a concession agreement was entered into with the Colmar Company and in 1964, the concession agreement was amended to clarify the western limit of the concession area as the 10° Line in respect of the territorial sea and, beyond that, in respect of the continental shelf.
142. In 1961, the United Kingdom prepared a new draft delimiting the territorial seas along the 10° Line and the contiguous zones, as well as the continental shelf, by means of what it regarded as an equidistance line. In 1962, The Netherlands responded to the United Kingdom draft treaty with a draft of its own, providing, without reference to specific maritime zones, that the maritime boundary was to follow the 10° Line.
143. In 1965, the United Kingdom prepared a new draft treaty, providing this time that the entire maritime boundary, in the territorial sea as well as the continental shelf, would extend along an equidistance line, seaward from Point 61 to the outer limits of the continental shelf; however, it was not accepted by The Netherlands.

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<sup>5</sup> Between 1965 and 2000, Guyana issued nine concessions to various companies and consortiums: to Oxoco (1971), Major Crude (1980), Seagull-Denison (1979-81), Lasmo-BHP (1988), Petrel (Albary concession, 1989), Petrel (Berbice concession, 1989), Maxus (1997), CGX (1998), and Esso (1999). See Guyana Memorial, paras. 4.9, 4.21-4.43; Suriname Counter-Memorial, paras. 5.7-5.44.

<sup>6</sup> Suriname issued one concession directly to Colmar in 1957, and later entered into service contracts through Staatsolie with five other companies or consortia: Suriname Gulf Oil Company (1980), Pecten (1993), Burlington Resources (1999), Repsol (2003), and Maersk (2004). See Suriname Counter-Memorial, paras. 5.7-5.44; Guyana Memorial, paras. 4.9, 4.21-4.43.

144. In 1966, shortly after Guyana achieved independence, the United Kingdom hosted direct talks between Guyana and Suriname referred to as the “Marlborough House talks”. The negotiations failed due to the Parties’ inability to reach agreement on the location of the land boundary. With regard to the maritime boundary, Guyana advocated use of the equidistance principle for delimitation resulting in a line of N33°E to N34°E, whereas Suriname’s position was that the demarcation of the boundary should be carried out in accordance with other geographic considerations.
145. In 1971, Guyana prepared a draft boundary treaty providing for Guyanese sovereignty over an inland area in the region of the sources of the Corentyne River disputed by the Parties, and Surinamese sovereignty over the Corentyne River itself. With regard to the maritime boundary, the draft treaty adopted the same approach as the United Kingdom’s draft treaty of 1965 as it relied on an equidistance line seaward from Point 61. This proposal was rejected by Suriname.
146. In 1977 and 1978, Guyana and Suriname each adopted domestic legislation relating to their maritime boundaries. On 30 June 1977, Guyana enacted its Maritime Boundaries Act 1977, which defined Guyana’s maritime boundaries as those determined by agreement with adjacent States or, in the absence of agreement, by means of equidistance lines (Article 35(1) of the Act). On 14 April 1978, Suriname enacted the Law Concerning the Extension of the Territorial Sea and the Establishment of a Contiguous Economic Zone, which did not define the lateral boundaries of the territorial sea or the exclusive economic zone.
147. In 1980, Suriname established its national petroleum company, Staatsolie. From that year to the present, Staatsolie has held the exclusive right to obtain concessions to all of Suriname’s open offshore area, limited to its west by the 10° Line. During this period, three of Staatsolie’s concessions were granted in the area in dispute between the Parties.
148. In 1989, the maritime boundary between Guyana and Suriname was discussed during the talks held in Paramaribo between President Hoyte of Guyana and President Shankar of Suriname. They agreed that modalities for joint utilization of the border area should be established pending settlement of the border question and that concessions that had already been granted should remain in force. Representatives of the Guyana Natural

Resources Agency and Staatsolie met in 1990 and 1991 pursuant to the agreement reached by Presidents Hoyte and Shankar, but no agreement was reached by them. The Parties, however, signed a Memorandum of Understanding governing “Modalities for Treatment of the Offshore Area of Overlap Between Guyana and Suriname as it Relates to the Petroleum Agreement Signed Between the Government of Guyana and the LASMO/BHP Consortium on 26 August 1988”, which was a preliminary document stating that the rights granted to the LASMO/BHP consortium in the “area of overlap” were to be fully respected. The Memorandum of Understanding provided that, within thirty days, representatives of both governments would meet to conclude discussions on modalities for joint utilization of the area, pending the conclusion of a final boundary agreement. The Memorandum of Understanding, however, was never implemented by Suriname, and the negotiations on joint utilization did not progress any further.

149. Both Parties submit that they have been issuing fishing licences and patrolling the waters belonging to the area of overlapping claims in these proceedings between 1977 and 2004.
150. Among the concessions issued by Guyana for oil exploration in the disputed area of the continental shelf was a concession granted in 1998 to CGX Resources Inc. (“CGX”), a Canadian company. In 1999, CGX arranged for seismic testing to be performed over the entire concession area, the eastern border of which was a line following an azimuth of N34°E. On 11 and 31 May 2000, Suriname demanded through diplomatic channels that Guyana cease all oil exploration activities in the disputed area. On 31 May 2000, Suriname ordered CGX to immediately cease all activities beyond the 10° Line. On 2 June 2000, Guyana responded to Suriname, stating that, according to its position, the maritime boundary between Guyana and Suriname lay along an equidistance line.
151. On 3 June 2000, two patrol boats from the Surinamese navy approached CGX’s oil rig and drill ship, the *C.E. Thornton*, which was located at 7° 19' 37"N, 56° 33' 36"W, approximately 15.4 miles west of the eastern limit of the concession area. The Surinamese patrol boats ordered the ship and its service vessels to leave the area within twelve hours. The crew members aboard the *C.E. Thornton* detached the oil rig from the sea floor and withdrew from the concession area. The Surinamese patrol boats

followed them throughout their departure. CGX has not since returned to the concession area.

152. Also operating in the disputed area under licences from Guyana were the oil companies Maxus Guyana Ltd. (“Maxus”) (concession granted in 1997) and Esso Exploration and Production (Guyana) Company (“Esso”) (concession granted in 1999). On 8 June and 18 August 2000, Staatsolie informed Esso that it was operating in Surinamese waters without a licence, and that this was unacceptable to Suriname. In September 2000, Esso invoked the *force majeure* clause in its concession agreement with Guyana and ceased its operations in the concession area. Citing the approach taken by Suriname, Maxus also refrained from carrying out exploration activities in its concession area.
153. On 6 June 2000, the Prime Minister of Trinidad and Tobago offered and subsequently provided his good offices at a meeting between the Guyanese and Surinamese foreign ministers. Both foreign ministers expressed a desire to resolve the dispute peacefully. Guyana’s draft Memorandum of Understanding, which would have allowed all existing exploration concessions and licences to be respected until a final agreement on the maritime boundary could be reached, was not accepted by Suriname. The foreign ministers of Guyana and Suriname agreed that a Joint Technical Committee should begin working immediately and that they should reconvene the joint meetings of their respective national border commissions (“National Border Commissions”). The Joint Technical Committee held several meetings in June 2000; however, no agreement was reached.
154. At the Twenty-First Meeting of the Heads of Government of the Caribbean Community and Common Market (“CARICOM”), held at St. Vincent and the Grenadines from 2 to 5 July 2000, the Presidents and Prime Ministers of CARICOM issued a statement affirming the importance of settling the dispute by peaceful means and offering the good offices of Prime Minister Patterson of Jamaica to that end. Talks were held between Presidents Jagdeo of Guyana and Wijdenbosch of Suriname from 14 to 17 July 2000 at Montego Bay and Kingston. No agreement was reached during these negotiations.

155. In 2000 and 2002, President Jagdeo met with the new Surinamese President Venetiaan and the Parties agreed to reconstitute their respective National Border Commissions. The National Border Commissions held a joint meeting in 2002 and formed a joint Subcommittee on Hydrocarbons. Having met several times in 2002, the Subcommittee on Hydrocarbons reported that it could not find common ground even in interpreting its mandate. The National Border Commissions likewise held several more joint meetings in 2002 and 2003, but were not able to reach agreement.
156. Eleven months after the last meeting of the National Border Commission and in view of the lack of progress in diplomatic negotiations, Guyana initiated the present proceedings on 24 February 2004.

### **C. THE PARTIES' CLAIMS**

157. Guyana sets forth its claims in its Notification and Statement of Claim dated 24 February 2004, which were further specified in its Memorial and Reply. Guyana, in its Reply, requests that the Arbitral Tribunal adjudge and declare that:

(1) Suriname's Preliminary Objections are rejected as being without foundation;

(2) from the point known as Point 61 (5° 59' 53.8" north and longitude 57° 08' 51.5" west), the single maritime boundary which divides the territorial seas and maritime jurisdictions of Guyana and Suriname follows a line of 34° east and true north for a distance of 200 nautical miles;

(3) Suriname is internationally responsible for violating its obligations under the 1982 United Nations Convention on the Law of the Sea, the Charter of the United Nations, and general international law to settle disputes by peaceful means because of its use of armed force against the territorial integrity of Guyana and/or against its nationals, agents, and others lawfully present in maritime areas within the sovereign territory of Guyana or other maritime areas over which Guyana exercises lawful jurisdiction; and that Suriname is under an obligation to provide reparation, in a form and in an amount to be determined, but in any event no less than U.S. \$33,851,776, for the injury caused by its internationally wrongful acts;

(4) Suriname is internationally responsible for violating its obligations under the 1982 United Nations Convention on the Law of the Sea to make every effort to enter into provisional arrangements of a practical nature pending agreement on the delimitation of the continental shelf and exclusive economic zones in Guyana and Suriname, and by jeopardising or hampering the reaching of the final agreement; and that Suriname is under an obligation to provide reparation, in a form and in an

amount to be determined, for the injury caused by its internationally wrongful acts.<sup>7</sup>

158. In the course of its oral pleadings, Guyana reaffirmed its claims as set forth in its Reply, and modified its fourth submission as follows:

in relation to submission 4, that is in relation to our allegation that Suriname was in breach of its obligations concerning provisional measures, Guyana ... limits its claim which it advances with utmost strength, but limits its claim to one for declaratory relief.<sup>8</sup>

159. In its Reply, Guyana described the course of its claim line as commencing “from the outer limit of the territorial sea boundary at a point located at 6° 13' 46"N, 56°59' 32"W, and should from there follow a line of N34°E up to the 200-mile limit to a point located at 8° 54' 01.7"N, 55° 11' 07.4"W.”<sup>9</sup>

160. Suriname, in its Memorandum setting out Preliminary Objections of 23 May 2005, requested the Tribunal to adjudge and declare that:

1. The Tribunal does not have jurisdiction to determine Guyana's Claim;
2. In the event the Tribunal does not uphold Suriname's first submission, Guyana's second and third submissions are inadmissible; [and]

For the foregoing reasons, the Tribunal should bring these proceedings to a close forthwith.

161. Suriname, in its Counter-Memorial, further specified its claims, which it subsequently modified in its Rejoinder and reaffirmed during the oral proceedings:

Suriname respectfully requests the Tribunal

1. To uphold Suriname's Preliminary Objections, filed 23 May 2005, as reaffirmed in its Counter-Memorial, filed 1 November 2005, in accordance with the Rules of Procedure.

Alternatively, Suriname respectfully requests the Tribunal

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<sup>7</sup> Guyana Reply, para. 10.1.

<sup>8</sup> Transcript, p. 1465.

<sup>9</sup> Guyana Reply, para. 7.59.

2. A. To reject Guyana's three submissions set forth at page 135 of its Memorial and Guyana's four submissions set forth at page 153 of its Reply.
  2. B. To determine that the single maritime boundary between Suriname and Guyana extends from the 1936 Point as a line of 10° east of true north to its intersection with the 200-nautical mile limit measured from the baseline from which the breadth of Suriname's territorial sea is measured.
  2. C. To find and declare that Guyana breached its legal obligations to Suriname under Articles 74(3) and 83(3) of the 1982 Law of the Sea Convention, by authorizing its concession holder to drill an exploratory well in a known disputed maritime area thereby jeopardizing and hampering the reaching of a maritime boundary agreement.
  2. D. To find and declare that Guyana breached its legal obligations to Suriname under Articles 74(3) and 83(3) of the 1982 Law of the Sea Convention, by not making every effort to enter into a provisional arrangement of a practical nature.
162. Suriname's N10°E claim line (the "Suriname Claim Line"), contrasted with Guyana's N34°E claim line (the "Guyana Claim Line"), is illustrated in Map 1 at the end of this Chapter.
163. The arguments of the Parties with respect to their claims are summarized in the following Chapter.



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## CHAPTER III - ARGUMENTS OF THE PARTIES

### A. SUBMISSIONS ON JURISDICTION

#### *Guyana's Position*

164. It is Guyana's position that it has complied fully with all requirements for the submission of this dispute to resolution under Part XV of the Convention. Guyana states that it brings the claim to uphold its rights under Articles 15, 74, 83 and 279 of the Convention and that the dispute concerns exclusively the maritime boundary between Guyana and Suriname.<sup>10</sup>
165. Guyana sets out the attempts between the two States to resolve the maritime boundary dispute following June 2000, referring in particular to the establishment of a Joint Technical Committee and negotiations under the good offices of the Prime Minister of Jamaica.<sup>11</sup> It submits that the Parties' efforts to settle their maritime boundary dispute from 1975 to 2000 and the acceleration of these efforts after June 2000, discharge the requirement in Article 279 of the Convention to seek a solution by peaceful means in accordance with the UN Charter.<sup>12</sup> Guyana maintains that there has been a full exchange of views between the two States<sup>13</sup> and that Guyana has complied with the requirement of Article 283(1) of the Convention to proceed expeditiously with such an exchange.<sup>14</sup>
166. In Guyana's view, all possibility of settlement by direct negotiation or third party facilitation had been exhausted by February 2004, and there is no requirement for it to

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<sup>10</sup> For Guyana's submissions on jurisdiction, see Guyana Memorial, Vol. I, Chapter 6.

<sup>11</sup> Guyana Memorial, paras. 6.5-6.6; for a general description of those negotiations, see Guyana Memorial, paras. 5.13-5.19.

<sup>12</sup> Guyana Memorial, para. 6.7.

<sup>13</sup> Guyana Memorial, paras. 5.13-5.19.

<sup>14</sup> Guyana Memorial, para. 6.8.

continue attempts to negotiate where it concludes that the possibilities of settlement are exhausted.<sup>15</sup>

167. According to Guyana, it is entitled under Article 286 of the Convention to pursue recourse to binding decisions under Section 2 of Part XV, and as neither Guyana nor Suriname has made a written declaration pursuant to Article 287(1) of the Convention as to a choice of means for the settlement of disputes, arbitration under Annex VII is deemed to be accepted by both States by operation of Article 287(3).<sup>16</sup> Guyana adds that neither Guyana nor Suriname has made a declaration pursuant to Article 298 of the Convention that it does not accept one or more of the possible procedures provided for in Section 2 of Part XV.<sup>17</sup>
168. Guyana contends that the dispute concerns the interpretation and the application of Articles 15, 74, 83 and 279 of the Convention and does not concern any matter other than the delimitation of the maritime boundary, making it unnecessary for an Annex VII Tribunal to reach a finding of fact or law regarding land or riverine boundaries.<sup>18</sup> Guyana disputes Suriname's assertion that the Tribunal would be required to determine the unresolved status of the land boundary terminus in delimiting the maritime boundary.<sup>19</sup> Guyana's position is that the Parties have always been in agreement as to the status of Point 61 as the land boundary terminus and the starting point of maritime boundary claims, as is evidenced by the conduct of the Parties and their colonial predecessors over 70 years.<sup>20</sup> Guyana maintains that the purpose of the Mixed

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<sup>15</sup> Guyana Memorial, para. 6.9, citing the following cases: *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan)*, Order of 27 August 1999, ITLOS Reports 1999, p. 280, at para. 60 (“*Southern Bluefin Tuna*”); *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95 (“*MOX Plant*”); *Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10, at para. 48 (“*Land Reclamation*”); see also Transcript, pp. 59-60.

<sup>16</sup> Guyana Memorial, paras. 6.10-6.12; Transcript, p. 60.

<sup>17</sup> Guyana Memorial, para. 6.14.

<sup>18</sup> Guyana Memorial, para. 6.15.

<sup>19</sup> Guyana Reply, paras. 1.19-1.21, Chapter 2.

<sup>20</sup> Guyana Reply, paras. 4.8-4.11.

Boundary Commission was to fix the boundary definitively and considers that Suriname has itself accepted, and relied upon, Point 61 as the land boundary terminus.<sup>21</sup>

169. Guyana does not agree with Suriname that Point 61 and a territorial sea delimitation following N10°E from that point were identified by the Parties in combination.<sup>22</sup> Guyana argues instead that the Mixed Boundary Commission first identified Point 61 and then adopted a territorial sea delimitation. Guyana maintains that the N10°E line dividing the territorial seas was chosen despite previous instructions to continue the boundary in a N28°E direction and was considered to be a provisional arrangement solely to allow for the possibility that the western channel approach to the Corentyne River might be used for navigation,<sup>23</sup> a purpose it states had disappeared by the early 1960s.<sup>24</sup>

170. Guyana argues that under Article 9 of the Convention:

the Tribunal has jurisdiction to determine the location of the mouth of the Corentyne River, where the Parties agree that their land boundary terminus was established. Guyana submits that a determination under Article 9 would lead the Tribunal to the same conclusion that the conduct of the Parties for 70 years establishes: that Point 61 is located at the mouth of the river. However, even if, for the sake of argument, the Tribunal were to determine that the mouth of the river is at another point, it would have jurisdiction to start the delimitation of the maritime boundary at that point.<sup>25</sup>

171. Guyana further contends that “even Suriname’s erroneous argument that the mouth of the Corentyne River should be determined under Article 10, rather than Article 9, confirms the Tribunal’s jurisdiction under Article 288(1)”.<sup>26</sup>

172. Guyana also submits that “the Tribunal can still interpret and apply Articles 74 and 83 of the Convention, and at the very least affect a partial delimitation of the maritime boundary in the exclusive economic zone and continental shelf without deciding on any

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<sup>21</sup> Guyana Reply, paras. 2.9-2.28.

<sup>22</sup> Guyana Reply, paras. 2.1-2.8, 2.29-2.36.

<sup>23</sup> Guyana Reply, paras. 1.20, 2.29-2.36.

<sup>24</sup> Guyana Reply, paras. 5.57-5.67.

<sup>25</sup> Guyana Reply, para. 2.37.

<sup>26</sup> Guyana Reply, para. 2.38.

dispute over the land boundary terminus”.<sup>27</sup> In support of this argument, Guyana cites the *Gulf of Maine* case, in which a Chamber of the ICJ effected a partial maritime delimitation between Canada and the United States from a point at sea designated as Point A.<sup>28</sup>

173. Regarding Suriname’s additional submission that Guyana’s second and third claims are inadmissible as Guyana acted in bad faith and lacks clean hands, Guyana argues that Suriname’s submission has no factual basis<sup>29</sup> and is not supported by legal authority.<sup>30</sup>

#### *Suriname’s Position*

174. Suriname contends that the Tribunal has no jurisdiction in respect of Guyana’s first claim regarding the maritime delimitation between Guyana and Suriname if there is no agreement on the 1936 Point,<sup>31</sup> and that Guyana’s second and third claims are inadmissible.<sup>32</sup> Suriname has however conceded that if there is an agreed maritime boundary in the territorial sea, the 1936 Point “provides a perfectly adequate starting point” and as a result, the Tribunal would have jurisdiction in respect of Guyana’s first claim.<sup>33</sup>
175. Suriname agrees with Guyana that the Tribunal’s jurisdiction is founded on Part XV of the Convention, but contends that Article 288(1) of the Convention, which 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” precludes the Tribunal from having jurisdiction over Guyana’s first claim if there is no agreement on the 1936 Point.<sup>34</sup> Suriname maintains that the drafting history of the dispute resolution clauses of the Convention demonstrates that its dispute resolution provisions were never intended

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<sup>27</sup> Guyana Reply, para. 2.42.

<sup>28</sup> Guyana Reply, para. 2.46, citing *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Judgment, I.C.J. Reports 1984, p. 246 (“*Gulf of Maine*”).

<sup>29</sup> Transcript, pp. 581-582.

<sup>30</sup> Guyana Reply, paras. 2.6, 2.47-2.48.

<sup>31</sup> Transcript, pp. 795-796.

<sup>32</sup> Suriname Preliminary Objections, para. 1.1.

<sup>33</sup> Transcript, pp. 795-796.

<sup>34</sup> Suriname Preliminary Objections, para. 4.1.

to give rise to jurisdiction to determine territorial issues.<sup>35</sup> Moreover, Articles 15, 74 and 83 of the Convention do not admit the determination of land boundary termini<sup>36</sup> so the Tribunal should exercise caution when considering its jurisdiction in these circumstances.<sup>37</sup>

176. Suriname's position is that if there is no agreement on the maritime boundary in the territorial sea, there has been no agreement between the Parties or their colonial predecessors as to the location of the land boundary terminus, and that the Tribunal therefore lacks jurisdiction to resolve Guyana's first claim.<sup>38</sup> Suriname's interpretation of the history of negotiations and other practices of the Parties and their colonial predecessors is that the 1936 Point has never been regarded as definitive,<sup>39</sup> as evidenced by, *inter alia*, the British draft treaty proposal of 1939 and the opinion of the Prime Minister of The Netherlands on Surinamese independence in 1975 regarding the territorial extent of Suriname.<sup>40</sup>

177. Suriname maintains that, in the absence of an agreement on the maritime boundary in the territorial sea, the 1936 Point amounted only to a recommendation in preparation for agreement by treaty and that the actual location of the land boundary terminus was open to doubt at the time of the Boundary Commission's work.<sup>41</sup> In Suriname's view, the precise location of the land boundary terminus makes a substantial difference to the maritime entitlements in this case,<sup>42</sup> referring in particular to an analysis using Point X (6° 08' 32"N, 57° 11' 22"W), the position Suriname considers to be the most northerly possible location for a land boundary terminus. Suriname contends that the 1936 Point is not located where the western bank of the Corantijn River joins the sea, being the reference point established in the 1799 Agreement of Cession, and cites, *inter alia*,

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<sup>35</sup> Suriname Preliminary Objections, paras. 4.2-4.7.

<sup>36</sup> Suriname Preliminary Objections, para. 4.11; Transcript, pp. 772-773.

<sup>37</sup> Suriname Rejoinder, paras. 2.70-2.80; Transcript, pp. 767-768.

<sup>38</sup> Suriname Preliminary Objections, paras. 1.8-1.11, 4.14; Suriname Rejoinder, paras. 2.6-2.9; Transcript, pp. 761-762, 778-779.

<sup>39</sup> Suriname Rejoinder, paras. 2.15-2.29.

<sup>40</sup> Suriname Preliminary Objections, paras. 2.1-2.12.

<sup>41</sup> Suriname Preliminary Objections, paras. 2.1-2.10; Suriname Rejoinder, paras. 2.15-2.23.

<sup>42</sup> Suriname Preliminary Objections, paras. 2.19-2.22.

instances where the land boundary terminus has been referred to without mention of the 1936 Point.

178. Suriname argues that, in the absence of an agreement on the maritime boundary in the territorial sea, the location of the 1936 Point inland from the low water mark means that it cannot, by definition, be the land boundary terminus in any event.<sup>43</sup> According to Suriname, the Tribunal would need to select a land boundary terminus on the low water line, thereby prejudicing the position of the land boundary, as Suriname contends Guyana does by selecting base point G1 (6° 00' 27.9"N, 57° 08' 21.1"W) as its point of commencement of the maritime boundary at the low water line.
179. It is Suriname's position that the land boundary terminus and the disputed maritime and land claims have been part of a broader dispute between the Parties, which is supported by the historical record of the Parties' negotiations and practice.<sup>44</sup> Suriname maintains that the work of the Boundary Commission in the 1930s was to recommend a settlement of the land boundary as a whole and therefore rejects Guyana's view that the location of the 1936 Point should be accepted as a land boundary terminus, given that other parts of the boundary remain in dispute.<sup>45</sup>
180. Suriname maintains that, in the absence of an agreement on the maritime boundary in the territorial sea, the 1936 Point could only bind it by agreement, by acquiescence, or by Suriname's actions and reliance on them estopping it from claiming an alternative location for the land boundary terminus.<sup>46</sup> Suriname points to the absence of a treaty and argues that, to acquiesce, Suriname must have remained consistently silent in the face of Guyana's assertion of a contrary position, which the historical record does not evidence. Suriname argues that it cannot be estopped from questioning the status of the 1936 Point, since representations regarding the 1936 Point were made only in the context of negotiations, and that Guyana's awareness of Suriname's overall claim

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<sup>43</sup> Suriname Rejoinder, paras. 2.10-2.14.

<sup>44</sup> Suriname Preliminary Objections, paras. 3.4-3.15.

<sup>45</sup> Suriname Rejoinder, para. 2.22.

<sup>46</sup> As to Suriname's submissions on these points in general, see Suriname Preliminary Objections, paras. 5.1-5.15.

necessarily precluded Guyana from relying on any statement, action or inaction to its detriment.<sup>47</sup>

181. It is Suriname's submission that the Tribunal lacks jurisdiction to delimit a boundary by determining a closing line across the mouth of the Corantijn River under Articles 9 and 10 of the Convention.<sup>48</sup> Suriname maintains that it is Article 10, relating to bays, which would apply in respect of the Corantijn mouth in any event. It further argues that the drawing of any baseline or closing line is for the coastal State and not for a court or tribunal, although a court or tribunal can find that the manner in which those lines are drawn violates international law.<sup>49</sup> Moreover, Suriname disputes Guyana's argument that the Tribunal would have jurisdiction to make a partial delimitation from a point at 15 nm from coastal baselines should it not have jurisdiction to make a full delimitation, submitting that Guyana wrongly relies upon the *Gulf of Maine* case and fails to establish that such partial delimitations are possible in the instant case in which a starting point has not been agreed upon.<sup>50</sup>
182. Suriname contends that Guyana's second and third claims are inadmissible, as Guyana did not act in good faith and lacks clean hands.<sup>51</sup> Suriname maintains that the doctrine of clean hands has been recognized since the early jurisprudence of the Permanent Court of International Justice and that recent International Court of Justice ("ICJ") judgments and opinions leave it open to parties to invoke the doctrine.<sup>52</sup> In Suriname's view, even if these claims are found to be admissible, clean hands should be considered in determining the merits of Guyana's claims. According to Suriname, Guyana lacks clean hands as it authorized drilling in the disputed area, gave no notice to Suriname

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<sup>47</sup> Suriname Preliminary Objections, paras. 5.10-5.15.

<sup>48</sup> Suriname Rejoinder, paras. 2.55-2.61.

<sup>49</sup> Transcript, pp. 800-801.

<sup>50</sup> Suriname Rejoinder, paras. 2.62-2.69, citing *Gulf of Maine*, Judgment, I.C.J. Reports 1984, p. 246.

<sup>51</sup> Suriname Preliminary Objections, paras. 7.1-7.9; Suriname Rejoinder, paras. 2.81-2.120; Transcript, pp. 1100-1101.

<sup>52</sup> Suriname Rejoinder, paras. 2.91-2.109.

(press reports being insufficient), and failed to withdraw support for the activity following Suriname's first complaints.<sup>53</sup>

183. Suriname maintains that Guyana's second claim, that it engaged in a wrongful act by expelling the CGX vessel in June 2000, must fail as Suriname has not acquiesced in Guyana's claim to maritime territory<sup>54</sup> and Guyana cannot claim that it exercises lawful jurisdiction in the disputed area. Suriname points out that the ICJ has never in the same judgment awarded reparations for violation of State sovereignty in a case in which it was requested to delimit a boundary determining such sovereignty.<sup>55</sup> According to Guyana, such a claim would amount to an *ex post facto* application of Guyana's first claim and would encourage States in the future to engage in activity designed to create facts on the ground in support of their claims. Suriname asserts that based on the oil concession practice of the Parties, Guyana's actions were in breach of the 1989 *modus vivendi* and signalled an aggressive posture by Guyana.<sup>56</sup>
184. With respect to Guyana's third claim, Suriname contends that Guyana lacks clean hands and that the record demonstrates Guyana's failure to negotiate in good faith.<sup>57</sup> Suriname argues, with reference to the Parties' negotiating history since the June 2000 incident, that Guyana unreasonably demanded the reinstatement of the CGX operation while offering little in return, thereby jeopardizing resolution of the dispute and breaching Articles 74(3) and 83(3) of the Convention. Suriname further argues that Guyana withheld information regarding its oil concessions in bad faith and maintains that Guyana's core request, that exploration activities resume, amounted to a request that Suriname acquiesce in Guyana's prejudicial activity.<sup>58</sup>

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<sup>53</sup> Suriname Rejoinder, paras. 2.110-2.115.

<sup>54</sup> Suriname Preliminary Objections, paras. 6.7-6.11.

<sup>55</sup> Suriname Rejoinder, paras. 2.84-2.90.

<sup>56</sup> Suriname Preliminary Objections, paras. 6.3-6.6.

<sup>57</sup> Suriname Preliminary Objections, paras. 6.39-6.44.

<sup>58</sup> Suriname Rejoinder, paras. 2.116-2.120.

185. Accordingly, Suriname requests that the Tribunal find that it does not have jurisdiction to determine Guyana's maritime delimitation claim and that Guyana's second and third claims are inadmissible.<sup>59</sup>

## **B. THE PARTIES' INTERPRETATION OF THE FACTUAL RECORD**

### *Guyana's Position*

186. Guyana bases its claims in part on an account of the record of the practices of Guyana and Suriname and their colonial predecessors. Guyana refers to the work of the Mixed Boundary Commission, constituted by The Netherlands and the United Kingdom in 1934, and argues that the historical record demonstrates that the northerly point of the boundary it established, Point 61, was treated as the northern land boundary terminus between the colonies until the independence of Guyana and Suriname. It argues further that Point 61 has been recognized expressly by Guyana and Suriname since independence.<sup>60</sup>

187. Guyana refers to the work of the Mixed Boundary Commission and to the positions taken by The Netherlands and the United Kingdom at the time, and submits that the *de facto* delimitation of the territorial sea recommended by the Commission along an azimuth of N10°E from Point 61 was reached to accommodate The Netherlands' practical concern at the time that both navigable approaches to the mouth of the Corentyne River should remain under its authority to allow it to carry out its administration of shipping on the river. Guyana emphasized that this delimitation did not purport to follow an equidistance line, and was provisional and liable to change, being "motivated solely by considerations of administrative and navigational efficiencies."<sup>61</sup>

188. Guyana maintains that the attempts in 1939 by the United Kingdom and The Netherlands to draft a treaty settling the entire length of the boundary, based on a delimitation of the territorial waters along an azimuth of N10°E from a beacon to be

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<sup>59</sup> Suriname Preliminary Objections, Chapter 8.

<sup>60</sup> Guyana Memorial, para. 3.10.

<sup>61</sup> Guyana Memorial, para. 3.16.

erected at the northern terminus of the land boundary,<sup>62</sup> reflected a consensus between the two countries at that time.<sup>63</sup> Guyana argues it was the outbreak of war in 1939 and the occupation of The Netherlands in 1940 that prevented signature of the treaty and that the English text proposed by the United Kingdom for a treaty settling the boundary in 1949 was identical to the 1939 draft treaty.

189. Guyana refers to the United Kingdom's own 1957-1958 delimitation, which was carried out in order to enable an oil concession to be granted to the California Oil Company in 1958. The United Kingdom delimited the territorial sea along a line following an azimuth of N10°E from Point 61 to a distance of three miles from the coast and then an azimuth of N33°E thereafter until intersection with the 25 fathom depth line (45.7 metres), which Guyana argues reflected a good faith attempt to establish a boundary based on the equidistance principle.<sup>64</sup> Guyana states that this is demonstrated by the intention of the British to conduct this exercise in accordance with the principles embodied in the UN International Law Commission's ("ILC") 1956 Draft Articles on Maritime Delimitation<sup>65</sup> (the "ILC Draft Articles"), which were subsequently adopted in the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone (the "1958 Territorial Sea Convention") and the 1958 Geneva Convention on the Continental Shelf (the "1958 Continental Shelf Convention" and together, the "1958 Conventions").<sup>66</sup>
190. Guyana points to the British use of Dutch maps in support of its contention that the exercise was carried out in good faith and submits that The Netherlands did not object to the California Oil Company concession, having been informed of it and knowing that the grant of the concession was made in reliance on the equidistance principle. Guyana also refers to Dutch willingness in 1958 to delimit the maritime boundary in conformity with Article 6(2) of the 1958 Continental Shelf Convention, the United Kingdom's positive response to such a proposal, and Dutch charts illustrating a "median line" dating from 1959 as evidence for The Netherlands' support for such an approach.

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<sup>62</sup> Guyana Memorial, paras. 3.17-3.19.

<sup>63</sup> Guyana Memorial, para. 3.19.

<sup>64</sup> Guyana Memorial, paras. 3.22-3.31.

<sup>65</sup> *Report of The International Law Commission to the General Assembly*, Yearbook of the International Law Commission 1956, Vol. II, Doc. A/3159 ("YBILC").

<sup>66</sup> Guyana Memorial, para. 3.24.

191. Guyana submits that the segmented line adopted by the United Kingdom in its 1961 draft treaty reflected an attempt to track the course of a true equidistance line more closely in proposing the prolongation of the territorial sea delimitation along an azimuth of N10°E to a distance of six miles from the coast and the continuation of the boundary along an azimuth of N33°E for 35 miles, N38°E for a further 28 miles, and along an azimuth of N28°E to the edge of the continental shelf as defined by international law.<sup>67</sup>
192. Guyana argues that The Netherlands' draft treaty proposed in 1962 did not reject the concept of using an equidistance line to delimit the continental shelf area, which it failed to address, as the true focus of the dispute rested on competing territorial claims inland.<sup>68</sup> According to Guyana, the record relating to the exchange of draft treaties in 1961-1962 reflects a common understanding that Point 61 represented the northern land boundary terminus and a commitment to delimitation of the continental shelf based on equidistance.<sup>69</sup>
193. It is Guyana's contention that the United Kingdom took an approach consistent with its position in the 1961-1962 exchange in delimiting British Guyana's western maritime boundary, and that this approach was also embodied in the United Kingdom's draft treaty of 1965, which dispensed with the earlier use of a N10°E azimuth to delimit the territorial sea, proposing an equidistance delimitation from Point 61 to the edge of the continental shelf. Guyana submits that the United Kingdom considered the original rationale for delimiting the territorial sea in this way was no longer applicable as commercial ships could not use the western channel accessing the Corentyne River. In Guyana's view, the Dutch were in agreement that the old rationale was no longer valid, but did not sign the treaty due to disagreements over the competing inland claims,<sup>70</sup> objecting to the proposed change as a negotiating tactic. Guyana points out that The Netherlands supported delimitation based on the principle of equidistance in other contexts, referring, *inter alia*, to the position taken by The Netherlands in its maritime

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<sup>67</sup> Guyana Memorial, paras. 3.37-3.39.

<sup>68</sup> Guyana Memorial, para. 3.42.

<sup>69</sup> Guyana Memorial, para. 3.43.

<sup>70</sup> Guyana Memorial, para. 3.46.

boundary dispute with Germany in 1965,<sup>71</sup> and with respect to the treaty concerning the North Sea maritime boundary concluded with the United Kingdom in the same year.<sup>72</sup>

194. For Guyana, the record of negotiations between the Parties in 1966 demonstrates its consistent assertion that delimitation should be according to the equidistance principle and reveals that Suriname's approach was rooted in political considerations rather than the applicable law. Guyana submits that Suriname's proposal to adopt a boundary following a N10°E azimuth from Point 61 to the edge of the continental shelf, reflecting the direction of the thalweg of the Corentyne River's western channel, was at odds with the position previously accepted by The Netherlands.<sup>73</sup> Further, the Dutch Prime Minister's advice to Suriname as to the extent of its territory on independence is cited by Guyana as consistent with the principle of equidistance in its description of Suriname's eastern maritime boundary.
195. Guyana argues that the practice of the Parties between 1966 and 2004 reflects a mutual recognition that the boundary should follow an equidistance line "to a very great extent the line of N34E". This is evidenced by the grant of oil concessions and the conduct of seismic testing<sup>74</sup> based upon an equidistance line matching that developed by the United Kingdom in 1957-1958. Guyana asserts that its practice from 1966 to the present day, and the United Kingdom's practice from 1957-1958, has been largely unopposed by The Netherlands<sup>75</sup> and that it has maintained a position based on delimitation by equidistance in negotiations with Suriname, in domestic legislation, in the grant of concessions for oil exploration, in the exercise of fisheries, and in law enforcement activities.<sup>76</sup> For Guyana, Suriname has conducted itself since independence in a manner "generally respectful" of the line delimited by the United Kingdom in 1957-1958, as did its colonial predecessor over a greater historical period,<sup>77</sup> largely refraining from

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<sup>71</sup> *North Sea Continental Shelf (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment, I.C.J. Reports 1969, p. 3 ("*North Sea Continental Shelf*").

<sup>72</sup> Guyana Memorial, paras. 3.45-3.48.

<sup>73</sup> Guyana Memorial, paras. 4.6-4.8.

<sup>74</sup> Guyana Memorial, Chapter 4.

<sup>75</sup> Guyana Memorial, para. 4.1.

<sup>76</sup> Guyana Memorial, para. 4.1.

<sup>77</sup> Guyana Memorial, para. 4.2.

granting oil concessions, sanctioning exploration, exercising fisheries jurisdiction or otherwise enforcing its laws in the continental shelf area to the west of an equidistance line.<sup>78</sup>

196. Guyana refers to the Parties' domestic legislation enacted in 1977-1978 and argues that territorial definitions used in the legislation reflect Guyanese acceptance of a boundary following an azimuth of N34°E. While Surinamese legislation remained silent on the matter, Guyana maintains that an explanatory memorandum to its 1978 Act indicates acceptance of delimitation by the equidistance principle wherever possible.<sup>79</sup> The Parties' domestic laws regulating petroleum exploitation in 1980-1986 are also described by Guyana as reliant on such an understanding.<sup>80</sup> Guyana maintains that its own initiatives to advertise petroleum exploration opportunities, manifest in its 1986 Petroleum Act, were based on a delimitation following a N34°E azimuth and were not objected to by Suriname or Staatsolie.
197. Referring to graphical depictions,<sup>81</sup> Guyana states that the pattern of oil concessions granted by the Parties in the continental shelf area makes "abundantly clear" that a boundary situated along an azimuth of N34°E was generally respected.<sup>82</sup> Guyana contends that it has pursued a consistent practice of allowing surveying activities and granting oil concessions in areas up to the Guyana Claim Line,<sup>83</sup> referring in particular to the activities of Royal Dutch Shell in 1966-1975, the oil concession granted by Guyana to Seagull-Denison in 1979-1981, and its concession granted to LASMO/BHP in 1988, as well as what it sees as Surinamese complicity with this practice.<sup>84</sup> Guyana argues, *inter alia*, that Royal Dutch Shell's exploration activities under a Surinamese concession were to the east of the Guyana Claim Line, while its activities to its west

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<sup>78</sup> Guyana Memorial, paras. 4.2.

<sup>79</sup> Guyana Memorial, paras. 4.12-4.14, referring to the Law Concerning the Extension of the Territorial Sea and the Establishment of a Contiguous Economic Zone of 14 April 1978 ("Surinamese April 1978 law").

<sup>80</sup> Guyana Memorial, paras. 4.15-4.20.

<sup>81</sup> Guyana Memorial, Plate 9, Plate 13; Vol. V, Plate 11, Plate 12.

<sup>82</sup> Guyana Memorial, paras. 4.3-4.5.

<sup>83</sup> Guyana Memorial, paras. 4.21-4.43.

<sup>84</sup> Guyana Memorial, paras. 4.25-4.29.

were conducted under a Guyanese concession.<sup>85</sup> While both the licence issued by Staatsolie to Gulf in 1981 and the 1989 proposed concession to IPEL extended to territory to the west of the Guyana Claim Line, resulting in Guyanese protests, Guyana maintains that activities under Surinamese concessions in fact took place to the east of the Line.<sup>86</sup>

198. Guyana maintains that Suriname did not object to two of Guyana's concessions covering areas up to or approaching the Guyana Claim Line following the Joint Communiqué agreed between the Presidents of Guyana and Suriname in 1989<sup>87</sup> and continued to respect Guyana's concessions west of the line despite failed negotiations in 1991 and 1994. As further evidence of its respect for the Guyana Claim Line, Suriname did not protest against activity under the eleven concessions issued in the maritime area subject to this arbitration before May 2000, including frequent requests for entry into Surinamese waters by seismic survey ships.
199. Guyana submits that Staatsolie's activities and public statements have an official and public character and "are to be treated as reflecting ... the views of Suriname", due to its State ownership and regulatory remit.<sup>88</sup> In Guyana's view, Staatsolie's concession agreements are also broadly consistent with a Guyana Claim Line delimitation<sup>89</sup> and its activities, including materials used to promote oil concessions, also reflect such a delimitation.
200. The exercise of fisheries jurisdiction by Guyana and Suriname between 1977 and 2004 is said by Guyana to reflect a recognition or acquiescence in a boundary along the Guyana Claim Line.<sup>90</sup> Guyana refers, *inter alia*, to Suriname's alleged admission that it has not exercised fishing jurisdiction east of the line, to Guyana's establishment of a fishery zone, to its grants of fishing licences, and to its practices regarding the seizure of

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<sup>85</sup> Guyana Memorial, para. 4.26.

<sup>86</sup> Guyana Memorial, paras. 4.38-4.39.

<sup>87</sup> Guyana Memorial, para. 4.32.

<sup>88</sup> Guyana Memorial, para. 4.15.

<sup>89</sup> Guyana Memorial, para. 4.43.

<sup>90</sup> Guyana Memorial, paras. 4.44-4.52.

unlicensed fishing vessels as evidence of consistent conduct supporting its claim.<sup>91</sup> Guyana also refers to the activities of its coast guard, defence force, and Transport and Harbours Department in areas west of the line, and claims that Surinamese agencies have engaged in no such activities to the west of the line.

201. Regarding the activity of CGX under its 1998 concession, Guyana maintains that Suriname did not protest against this activity and expressly consented to crossings into the Surinamese side of the Guyana Claim Line.<sup>92</sup> Guyana contends that Suriname expressed no concern at CGX's presence west of the line until May 2000, when anti-Guyana rhetoric in the run-up to Surinamese parliamentary elections placed political pressure on its government to move against the CGX concession.<sup>93</sup> According to Guyana, Surinamese demands for Guyana to cease oil exploration activities in areas west of the Guyana Claim Line, including its 31 May 2000 demand that CGX cease its activities, were also the product of political change in Suriname.<sup>94</sup>
202. Guyana avers that on 2 and 3 June 2000 Suriname used its navy and air force to intimidate the CGX oilrig and drill ship, the *C.E. Thornton*, in defiance of Guyana's immediate proposal for dialogue and complaints that the action was taking place while Guyana was calling for diplomatic negotiations regarding the matter.<sup>95</sup> Guyana further contends that the 14 September 2000 apprehension of Guyanese-licensed fishing trawlers in an area previously understood to be Guyanese waters was Suriname's first action of this type.<sup>96</sup>

#### *Suriname's Position*

203. Suriname argues that to the extent that there was an agreement regarding the 1936 Point and the land boundary terminus, that agreement was established only with reference to the maritime boundary in the territorial sea along an azimuth of N10°E from that

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<sup>91</sup> Guyana Memorial, paras. 4.45-4.49.

<sup>92</sup> As to Guyana's arguments regarding Surinamese expulsion of a CGX vessel in 2000 in general, see Guyana Memorial, Chapter 5.

<sup>93</sup> Guyana Memorial, paras. 5.3-5.7.

<sup>94</sup> Guyana Memorial, paras. 5.4-5.7.

<sup>95</sup> Guyana Memorial, paras. 5.8-5.9.

<sup>96</sup> Guyana Memorial, para. 5.12.

point.<sup>97</sup> Suriname reviews the genesis of the delimitation in the territorial seas and the 1936 Point and asserts that the location of the latter was determined largely by the need for a stable location away from the shore and the former by the need to secure Dutch responsibility for shipping traffic in the approaches to the Corantijn River.<sup>98</sup>

204. According to Suriname, there was little agreement between the Parties and their colonial predecessors as to the adoption of an equidistance line and Suriname and Guyana have never worked jointly to identify a line based upon this principle.<sup>99</sup> Suriname maintains that The Netherlands' policy on national resources from the end of the 1950s, as well as Suriname's own since independence, have reflected the view that Suriname's western limit of the continental shelf area was not bounded by an equidistance line.<sup>100</sup> Suriname argues that its domestic law is consistent with its continental shelf claim and distinguishes the explanatory memorandum to its April 1978 law,<sup>101</sup> contending that Suriname after independence did not become a party to the 1958 Conventions and, in its view, neither did Guyana.<sup>102</sup>
205. It is Suriname's contention that the United Kingdom relied on the N10°E azimuth territorial sea boundary following completion of the work of the Mixed Boundary Commission in attempts to delimit the maritime boundary as a whole during the 1950s.<sup>103</sup> Suriname argues that the Parties' conduct shows acknowledgement of special circumstances justifying the territorial sea boundary, and disagrees that delimitations proposed in the 1950s were based on equidistance principles.<sup>104</sup> Suriname suggests that the United Kingdom's abandonment of the N10°E azimuth territorial sea boundary from 1965 related to an aim to achieve an equidistance settlement similar to that achieved over the North Sea continental shelf.<sup>105</sup> However, Suriname submits that following

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<sup>97</sup> Suriname Counter-Memorial, para. 3.2.

<sup>98</sup> Suriname Counter-Memorial, paras. 3.3-3.13.

<sup>99</sup> Suriname Counter-Memorial, para. 3.14.

<sup>100</sup> Suriname Counter-Memorial, paras. 3.19-3.21.

<sup>101</sup> Suriname Counter-Memorial, paras. 3.22-3.26.

<sup>102</sup> Suriname Counter-Memorial, para. 3.24.

<sup>103</sup> Suriname Counter-Memorial, paras. 3.28-3.29.

<sup>104</sup> Suriname Counter-Memorial, para. 3.30.

<sup>105</sup> Suriname Counter-Memorial, paras. 3.31-3.32.

1965, a need continued for Surinamese sovereignty over the western approach to the Corantijn River to allow for the regulation of lighter shipping vessels.<sup>106</sup>

206. Suriname does not accept that the United Kingdom believed that The Netherlands was likely to agree to a territorial sea and continental shelf boundary based on equidistance.<sup>107</sup> Suriname maintains, *inter alia*, that Guyana's first proposal to delimit the continental shelf along an azimuth of N34°E was made at the Marlborough House talks in 1966<sup>108</sup> and that Guyana's practice regarding the eastern limit of its continental shelf has been inconsistent, with reference to the differing eastern boundaries of Guyanese oil concessions.<sup>109</sup> Suriname submits that an inconsistency of approach is reflected in Guyanese legislation, such as its 1977 Maritime Boundaries Act and Guyana's definition of its fishery zone pursuant to that Act, and Guyana's activities in enforcing its fisheries jurisdiction.<sup>110</sup> Suriname illustrates this variance graphically<sup>111</sup> and contends that the Guyana Claim Line is unrelated to the various equidistance lines Guyana argues the Parties have historically favoured.<sup>112</sup>
207. Suriname agrees that the Dutch chart 217 and British chart 1801 were the most accurate available in the 1950s, but submits that the equidistance line set out in Guyana's Memorial based on these charts and recent U.S. National Imagery and Mapping Agency ("NIMA") charts is not calculated accurately and does not represent an historical equidistance line.<sup>113</sup> Suriname disagrees that the Guyana Claim Line approximates modern equidistance lines and lines based on the principle of equidistance historically proposed by the Parties,<sup>114</sup> and that the Parties' conduct has been consistently based on such a line.<sup>115</sup> Suriname disputes the allegation that The Netherlands and Suriname

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<sup>106</sup> Suriname Counter-Memorial, para. 3.33.

<sup>107</sup> Suriname Counter-Memorial, paras. 3.34-3.35.

<sup>108</sup> Suriname Counter-Memorial, para. 3.36.

<sup>109</sup> Suriname Counter-Memorial, paras. 3.36-3.42.

<sup>110</sup> Suriname Counter-Memorial, paras. 3.39-3.42.

<sup>111</sup> Suriname Counter-Memorial, Figures 3, 4 and 5.

<sup>112</sup> Suriname Counter-Memorial, paras. 3.43-3.51.

<sup>113</sup> Suriname Counter-Memorial, paras. 3.15-3.18 and 3.45-3.46.

<sup>114</sup> Suriname Counter-Memorial, paras. 3.52-3.58.

<sup>115</sup> Suriname Counter-Memorial, para. 3.58.

made no objection to Guyana's reliance on the Guyana Claim Line, referring in particular to the position taken at the 1966 Marlborough House talks that the maritime boundary followed a N10°E line from a land boundary terminus yet to be established.<sup>116</sup>

208. Suriname argues that it has consistently maintained that the position of its maritime boundary with Guyana should follow the Suriname Claim Line with respect to the territorial sea, continental shelf, and exclusive economic zone<sup>117</sup> and that only for a brief period was delimitation of the continental shelf by the equidistance method considered.<sup>118</sup> Suriname cites, *inter alia*, the diplomatic record as evidence that from 1954 onwards, Suriname advanced its own position within The Kingdom of The Netherlands and that The Netherlands acted only as its advisor. Suriname further points out that the 1958 Dutch proposal based on Article 6 of the 1958 Continental Shelf Convention was not acted upon by the United Kingdom.<sup>119</sup> According to Suriname, Guyana and the United Kingdom have not consistently proposed the Guyana Claim Line, as evidenced by a number of proposals that incorporated a delimitation of the territorial sea following an azimuth of N10°E and other equidistance lines not adopting a N34°E course.

## C. GUYANA'S DELIMITATION CLAIM

### 1. Applicable Law and Approach to Delimitation

#### *Guyana's Position*

209. Guyana refers to Article 293 of the Convention directing the Tribunal to apply the law embodied in the Convention and "*other rules of international law not incompatible with this Convention*". Guyana also submits that the conduct of the Parties must be seen in the context of international law relating to maritime boundaries as it has developed since the Parties and their predecessor colonial powers have sought to delimit the

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<sup>116</sup> Suriname Counter-Memorial, para. 3.59.

<sup>117</sup> Suriname Counter-Memorial, paras. 3.26 and 3.60-3.62.

<sup>118</sup> Suriname Counter-Memorial, paras. 3.44 and 3.61.

<sup>119</sup> Suriname Rejoinder, paras. 3.90-3.121.

boundary and that its evolution falls into the following periods: prior to 1958, 1958-1982, and 1982 onwards.<sup>120</sup>

210. Guyana's view is that international law, as it developed from the period prior to 1958, has reflected the principle that delimitation between adjacent States should be carried out according to equidistance, as reflected in the 1956 ILC Draft Articles, embodied in the 1958 Conventions, including the 1958 Territorial Sea Convention and the 1958 Continental Shelf Convention now forming the basis of delimitation under the Convention on the Law of the Sea.<sup>121</sup>
211. Guyana reviews what it argues was the law applicable to maritime boundary delimitation during the periods prior to 1982 and asserts, referring to its account of the historical record, that the Parties and their colonial predecessors understood that the applicable law required an equidistance approach to be adopted. Guyana refers, *inter alia*, to legislation passed by the Parties following independence, which it argues was enacted in response to the requirements of the 1958 Conventions, thereby demonstrating acceptance of the principles reflected in the 1958 Conventions in the years prior to 1982.<sup>122</sup> Such principles, Guyana argues, included an approach based on equidistance, such as that required under Article 6 of the 1958 Continental Shelf Convention.<sup>123</sup>
212. Guyana submits that the territorial sea should be delimited in accordance with Article 15 of the Convention to the distance specified in Article 3.<sup>124</sup> Guyana contends that Part VI of the Convention is applicable to the Parties as to their rights over, and the delimitation of, the continental shelf as defined in Article 76(1) of the Convention.<sup>125</sup> Guyana refers to the provisions of Part VI of the Convention it considers relevant to the determination of the outer extent of the continental shelf, and asserts that the sovereign rights to exploration and exploitation of natural resources provided for under that Part

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<sup>120</sup> For Guyana's submissions regarding the applicable law, see Guyana Memorial, paras. 7.1-7.37. See also Transcript, pp. 237-305.

<sup>121</sup> Transcript, pp. 244-250.

<sup>122</sup> Guyana Memorial, paras. 7.18-7.19. See Transcript, pp. 247-249.

<sup>123</sup> Guyana Memorial, para. 7.19, with reference in particular to the explanatory memorandum accompanying the Surinamese April 1978 law.

<sup>124</sup> Guyana Memorial, paras. 7.22-7.23.

<sup>125</sup> Transcript, p. 238.

are inherent rights. Guyana submits that Part V of the Convention is applicable to the Parties as to their rights regarding the exclusive economic zone and its delimitation and refers to the provisions of Part V of the Convention it considers relevant to the determination of the outer extent of the exclusive economic zone.<sup>126</sup>

213. Guyana requests that the Tribunal decide on the course of a single boundary line delimiting the territorial sea, continental shelf, and exclusive economic zone so as to avoid the disadvantages inherent in a plurality of separate delimitations.<sup>127</sup> Guyana maintains that this approach does not preclude the Tribunal from delimiting the territorial sea prior to the continental shelf and exclusive economic zone.<sup>128</sup>

214. In Guyana's view there is a difference in approach as to how the territorial sea and the exclusive economic zone and continental shelf are to be delimited, stemming from the differences in accepted practice between the application of Article 15 of the Convention using the "equidistance/special circumstances rule" and the application of Articles 74 and 83 of the Convention under which delimitation is effected in accordance with the "equitable principles/relevant circumstances rule".<sup>129</sup> Guyana argues that the approach adopted by the ICJ recognizes this distinction, but finds the approaches to be closely related.<sup>130</sup>

215. Regarding each of the maritime zones in dispute, Guyana considers that the Tribunal should follow what it identifies as the delimitation practice of the ICJ and arbitral tribunals. Pursuant to this practice, the Tribunal would draw a provisional equidistance line, consider whether there are any special circumstances that justify a shift in that equidistance line to achieve an equitable solution, and then decide whether historical special circumstances or the conduct of the Parties justify a shift in the equidistance line

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<sup>126</sup> Transcript, p. 238.

<sup>127</sup> Guyana Memorial, para. 7.30, citing *Gulf of Maine*, Judgment, I.C.J. Reports 1984, p. 246, at p. 327, para. 194.

<sup>128</sup> Guyana Memorial, para. 7.31, citing *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Merits, Judgment, I.C.J. Reports 2001, p. 40, at pp. 93-94, paras. 174, 176 ("*Qatar/Bahrain*").

<sup>129</sup> Transcript, pp. 260-261.

<sup>130</sup> Guyana Memorial, para. 7.32, citing *Qatar/Bahrain* and *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. 2002, p. 303, at para. 288 ("*Cameroon/Nigeria*").

to achieve an equitable solution.<sup>131</sup> In Guyana's submission, equidistance should be calculated by identification of the relevant coasts of the Parties and the identification of relevant baselines and base points from which an equidistance line can be measured.<sup>132</sup> According to Guyana, the relevant coast of Guyana facing the region over which the delimitation is to be effected spans 255 kilometres along its low-water line and that of Suriname spans 224 kilometres along its low-water line on the same basis and it depicts these coastlines respectively on U.S. NIMA charts 24380 and 24370.<sup>133</sup>

216. Guyana argues that the Tribunal should not apply an equidistance line derived from modern charts, as such a delimitation would ignore the conduct of the Parties since the 1960s and lead to an inequitable result.<sup>134</sup> Guyana points out that international tribunals have long taken into account the conduct of the parties, in particular their grant of oil and gas concessions, as circumstances to be taken into account in boundary delimitation.<sup>135</sup>
217. Guyana's position is that the Convention does not admit the approach advanced by Suriname calling for a delimitation of maritime areas by reference to general principles of equity.<sup>136</sup> Guyana distinguishes Suriname's approach, which it argues is aimed at the apportionment of maritime space *de novo*, from the delimitation of maritime areas that already appertain to the coast of a State. Guyana argues that neither the Convention, nor the jurisprudence of the ICJ support the former approach or the concept that a State might be disadvantaged by its geography in the manner suggested by Suriname.<sup>137</sup>

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<sup>131</sup> Guyana Reply, para. 1.22. Transcript, pp. 263-268.

<sup>132</sup> Guyana Memorial, para. 8.33.

<sup>133</sup> Guyana Memorial, para. 8.35.

<sup>134</sup> Guyana Memorial, para. 8.50.

<sup>135</sup> Guyana Memorial, paras. 7.34-7.35.

<sup>136</sup> Guyana Reply, paras. 5.24-5.28.

<sup>137</sup> Guyana Reply, paras. 5.29-5.32.

### *Suriname's Position*

218. Subject to its preliminary objections on jurisdiction, Suriname agrees to the application of a single maritime boundary.<sup>138</sup> Suriname submits, with reference to international jurisprudence relating to the use of single maritime boundaries, that such a maritime boundary may be applied notwithstanding oil concession or fisheries practice at variance with it.<sup>139</sup> Suriname contends that such practice is not likely to be of legal relevance unless it demonstrates express or tacit agreement as to the location of a boundary.<sup>140</sup>
219. Suriname maintains that delimitations based on the equidistance method are subject to adjustment or abandonment if an equitable solution is not achieved<sup>141</sup> and that, as a matter of practice, any initial step of identifying a provisional equidistance line should be subordinate to that objective.<sup>142</sup> In Suriname's view the various equidistance lines presented by Guyana illustrate that changes to coastal geography over time have a disproportionate effect on the location of an equidistance line; therefore, this method does not lead to an equitable result with regard to the delimitation between Guyana and Suriname.<sup>143</sup>
220. Suriname refers to the findings in the award of the arbitral tribunal constituted under Annex VII of the Convention in *Barbados/Trinidad and Tobago*<sup>144</sup> in support of its position on the approach applicable to delimitation of a single maritime boundary. According to Suriname, this case illustrates that relevant circumstances taken into consideration in delimiting a single maritime boundary are geographic in nature. Suriname submits that the *Barbados/Trinidad and Tobago* tribunal treated resource-

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<sup>138</sup> Suriname Counter-Memorial, para. 4.3.

<sup>139</sup> Suriname Counter-Memorial, paras. 4.4-4.17.

<sup>140</sup> Suriname Counter-Memorial, paras. 4.54-4.55; Transcript, pp. 896-899.

<sup>141</sup> Suriname Counter-Memorial, para. 4.17-4.18.

<sup>142</sup> Suriname Counter-Memorial, para. 4.42, citing, *inter alia*, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18, at p. 79, para. 109 (“*Tunisia/Libya*”).

<sup>143</sup> Suriname Counter-Memorial, paras. 3.50-3.51.

<sup>144</sup> Suriname Rejoinder, paras. 3.9-3.22, citing *Arbitration between Barbados and the Republic of Trinidad and Tobago*, Award (11 April 2006), 45 I.L.M. p. 798 (2006), online: <<http://www.pca-cpa.org>> (“*Barbados/Trinidad and Tobago*”).

related considerations cautiously (distinguishing the *Jan Mayen* case),<sup>145</sup> and accepted that the ratio of adjacent States' relevant coastal lengths are relevant for an equitable delimitation. Suriname further argues that the tribunal in *Barbados/Trinidad and Tobago* correctly regarded a provisional equidistance line as "hypothetical" only.

221. Suriname's position is that the present dispute can and should be resolved on the basis of the geographical characteristics of the coast and that the relationship between such characteristics and the maritime delimitation area should be the primary relevant special circumstance.<sup>146</sup> For Suriname, the maritime boundary should divide the area of overlap created by the frontal projection of neighbouring States' coastlines and the delimitation within this area should be based on equitable principles aimed at an equal division,<sup>147</sup> avoiding a "cut-off" of the seaward projection of the coast of either neighbouring State.<sup>148</sup> Suriname contends that this approach avoids distortions to the line of the boundary that are inherent in the equidistance method and allows for flexibility in achieving an equitable solution.<sup>149</sup> Suriname finds precedent for use of bisector angles drawn between coastal fronts in the *Gulf of Maine* and the *Tunisia/Libya* cases and submits that the "angle bisector" method is the most appropriate in the current proceedings as it gives rise to a straight line boundary from the coast and reflects the overall geographic relationship between the Parties.<sup>150</sup>
222. In disputing Guyana's reliance on equidistance, Suriname argues that the two-step process advanced by Guyana is to be used only where appropriate, and that principles of non-encroachment and avoidance of a "cut-off" effect are also pertinent.<sup>151</sup> Suriname

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<sup>145</sup> Suriname Rejoinder, paras. 3.12-3.13; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Reports 1993, p. 38 ("*Jan Mayen*").

<sup>146</sup> Suriname Counter-Memorial, paras. 4.19-4.22.

<sup>147</sup> Suriname Counter-Memorial, paras. 4.27-4.36.

<sup>148</sup> Suriname Counter-Memorial, paras. 4.29-4.30, citing *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, at p. 53.

<sup>149</sup> Suriname Counter-Memorial, paras. 4.35-4.36, citing *Gulf of Maine*, Judgment, I.C.J. Reports 1984, p. 246.

<sup>150</sup> Suriname Rejoinder, paras. 3.230-3.241; Transcript, pp. 976-982.

<sup>151</sup> Suriname Rejoinder, paras. 3.26-3.44.

denies that there is a legal presumption in favour of equidistance delimitation, such a presumption having been rejected by the drafters of the Convention.<sup>152</sup>

223. Suriname rejects the proposition that the Parties' calculations of equidistance lines reflect agreement between them, citing the Parties' disagreement as to the location of the starting point of the line, the charts used, and the effect of Vissers Bank on an equidistance projection.<sup>153</sup> Suriname also contends that other South American delimitations depart in varying degrees from true equidistance lines, and questions the relevance of the Suriname/French Guiana maritime boundary in the absence of a binding agreement between those States.<sup>154</sup>

## 2. The Role of Coastal Geography

### *Guyana's Position*

224. Guyana disputes Surinamese claims regarding the coastal geography of the Parties.<sup>155</sup> Guyana asserts that there are no configurations along the coastlines of the Parties that have a material prejudicial effect on the course of a provisional equidistance line, except for a protrusion in the coast of Suriname at Hermina Bank that Guyana argues causes the line to follow a northerly course to the prejudice of Guyana.<sup>156</sup> In Guyana's view, its relevant coastline is modestly concave<sup>157</sup> and Suriname's is convex<sup>158</sup> (due to the protrusion of Hermina Bank) rather than vice versa, and Guyana's relevant coastline is materially longer than Suriname's rather than shorter, as Suriname claims.<sup>159</sup> Guyana contends that the relevant coastal configurations and lengths presented by Suriname are inaccurate due to the exclusion of relevant basepoints further west on the Guyana coast (Devonshire Castle Flats), the inclusion of a new base point on the Surinamese coast (Vissers Bank) that, it argues, charts existing prior to the date of Guyana's Memorial do

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<sup>152</sup> Suriname Rejoinder, paras. 3.45-3.52.

<sup>153</sup> Suriname Rejoinder, paras. 3.206-3.219; Transcript, pp. 958-963.

<sup>154</sup> Suriname Rejoinder, paras. 3.220-3.229.

<sup>155</sup> Guyana Reply, paras. 1.24-1.27, Chapter 3, paras. 5.33-5.52.

<sup>156</sup> Transcript, pp. 157-158.

<sup>157</sup> Transcript, pp. 161, 194.

<sup>158</sup> Transcript, pp. 161-162, 195.

<sup>159</sup> Guyana Reply, paras. 3.10-3.24.

not support, and the inaccurate contention that the coastline west of the Essequibo River is disputed by Venezuela.<sup>160</sup> In this connection Guyana made clear that its land boundary with Venezuela was fixed in 1899 by a competent international arbitral tribunal and as a member of CARICOM, Suriname itself has repeatedly confirmed its full support of Guyana's sovereignty over this territory.<sup>161</sup>

225. Guyana also disputes Suriname's method of representing the facing coasts of the Parties by their approximation to single axis façades, which it argues are not representative, and by the use of perpendiculars to those axes to project the Parties' appurtenant maritime areas.<sup>162</sup> According to Guyana, the jurisprudence of the ICJ regarding maritime boundary delimitation does not support the approximation or "refashioning" of the geographical reality of coastlines, nor has the ICJ recognized a right to delimitation by coastal front projection, distinguishing situations where such a method has been used and where a "cut-off" has been avoided on the basis of disproportionate encroachment on a maritime area.<sup>163</sup> Further, Guyana's calculation of the maritime areas appurtenant to the Parties' relevant coasts using the relevant coastal lengths presented by Guyana reveals Guyana to have a larger appurtenant maritime area than Suriname, rather than a smaller one as Suriname claims.<sup>164</sup>

226. In Guyana's view, both Suriname's maritime claim line and its proposed provisional equidistance line would fail to divide the maritime areas appurtenant to the Parties' relevant coasts equitably,<sup>165</sup> in part because of the distorting effects of the coastal headland at Hermina Bank.<sup>166</sup> Guyana rejects Suriname's contention that its provisional equidistance line is prejudicial to Suriname and "cuts off" its coastal area, arguing, *inter alia*, that Suriname's position is at odds with the equidistance delimitation achieved between Suriname and French Guiana and that the angle of the Corentyne River thalweg does not amount to a relevant special circumstance. Guyana's position is that

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<sup>160</sup> Guyana Reply, paras. 3.19-3.24.

<sup>161</sup> Guyana Reply, paras. 3.19-3.24; Transcript, pp. 170-172.

<sup>162</sup> Guyana Reply, paras. 3.28-3.34; Transcript, pp. 233-234.

<sup>163</sup> Guyana Reply, paras. 5.33-5.52; Transcript, p. 200.

<sup>164</sup> Guyana Reply, paras. 3.28-3.34.

<sup>165</sup> Guyana Reply, paras. 3.35-3.51; Transcript, p. 199.

<sup>166</sup> Transcript, p. 214.

the Guyana Claim Line divides these maritime areas equitably, representing a division of appurtenant maritime areas more closely reflecting the ratio of the relevant coastal lengths of the Parties. Guyana also argues that equidistance delimitation reflects practice in South America generally.<sup>167</sup>

### *Suriname's Position*

227. Suriname asserts that, when plotting a boundary based on the equidistance method in the present case, micro-geography of the coastal configurations gives rise to unwanted distortions, which are caused by reliance on coastal baselines.<sup>168</sup> For Suriname, the equidistance method is overly reliant on micro-geography, rather than dominant coastal features, and has been properly criticized for this reason.<sup>169</sup> Suriname therefore prefers the determination of relevant coasts, in order to avoid what are asserted to be distortions caused by the use of coastal baselines.
228. Disputing Guyana's basis for determining the relevant coasts<sup>170</sup> Suriname submits that between adjacent States, the relevant coast for calculation of an equidistance line is the part of the coast facing the area being delimited, rather than the outer extent of the baselines.<sup>171</sup> Suriname contends that the relevant coasts identified by Guyana are excessive in length and that broader equitable principles can be taken into account in identifying them. In Suriname's view, the length and direction of the Parties' coastlines are relevant factors as they illustrate whether a delimitation line is equitable.<sup>172</sup> While the disparity is not as great as that found to be significant in *Barbados/Trinidad and Tobago*, Suriname argues that the disparity in relative relevant coastal lengths favours Suriname in this case.<sup>173</sup> Suriname also disputes the basis on which Guyana calculates appurtenant maritime areas, asserting that the area of overlapping maritime entitlements

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<sup>167</sup> Guyana Reply, paras. 3.50, 3.51-3.58.

<sup>168</sup> Suriname Counter-Memorial, paras. 4.44-4.49.

<sup>169</sup> Suriname Counter-Memorial, paras. 4.44-4.53; Transcript, p. 976.

<sup>170</sup> Suriname Rejoinder, paras. 3.160-3.170.

<sup>171</sup> Transcript, p. 935.

<sup>172</sup> Suriname Rejoinder, paras. 3.171-3.182.

<sup>173</sup> See Transcript, p. 935.

is to be determined using lines perpendicular to the angles of the States' coastal fronts.<sup>174</sup>

229. According to Suriname, the section of its provisional equidistance line nearer to the coast cuts across the coastal front of Suriname due to the effect of a coastal convexity on the western side of the mouth of the Corantijn River, and a concavity on the east side exaggerates this effect.<sup>175</sup> For Suriname, this is an example of the undue influence of coastal irregularities that, with Guyana's arguments regarding the same effect caused by Hermina Bank, make the case against equidistance delimitation. Suriname, however, denies that Hermina Bank is an irregularity with reference to the overall aspect of its coast.

### 3. Conduct of the Parties

#### *Guyana's Position*

230. For Guyana, the conduct of the Parties is relevant in determining whether there has been a tacit agreement on the location of the boundary, but may also be evidence of whether the Parties have considered a boundary line to be equitable.<sup>176</sup> Guyana maintains that there is no evidence that the Parties considered the Suriname Claim Line to be equitable,<sup>177</sup> arguing, *inter alia*, that it was rejected by the United Kingdom from the early 1960s and that it was advanced merely as a negotiation tactic by Suriname in the context of the disputed land boundary. With reference to certain contemporary sources, Guyana argues in particular that The Netherlands did not support the Suriname Claim Line.

231. Guyana asserts that the Parties' conduct shows that they considered delimitation using an equidistance method appropriate and therefore accepted the Guyana Claim Line as equitable.<sup>178</sup> According to Guyana, the record demonstrates that The Netherlands found

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<sup>174</sup> Suriname Rejoinder, paras. 3.195-3.199.

<sup>175</sup> Suriname Rejoinder, paras. 3.183-3.194; Transcript, pp. 936-937.

<sup>176</sup> Guyana Reply, paras. 4.3-4.7.

<sup>177</sup> Guyana Reply, paras. 4.12-4.22.

<sup>178</sup> Guyana Reply, paras. 4.23-4.49.

it acceptable or desirable to approach delimitation using an equidistance method, referring in particular to negotiations in 1958 and to Suriname's behaviour with regard to Guyana's grant of oil concessions,<sup>179</sup> and distinguishing the position taken by The Netherlands and Suriname in the 1966 negotiations in London. Guyana maintains that Suriname overstates the geographical extent of Suriname's oil concessions, and argues that those extending west of the Guyana Claim Line were inactive in that area or were material on paper only.<sup>180</sup> Guyana argues that Suriname also misrepresents the status of the 1991 Memorandum of Understanding, which it did not implement.<sup>181</sup> For Guyana, its adherence to an equidistance position, represented by the Guyana Claim Line, is manifest from its legislation, fisheries and oil practice; while oil concessions were not all granted up to a line of N34°E, their eastern limits were generally consistent with it.

232. Guyana contends that it would be inequitable to ignore the existence of an historical equidistance line reflected by the Guyana Claim Line and the conduct of the Parties in respecting that line.<sup>182</sup> Regarding oil concessions, Guyana maintains that its concessions were granted having regard to the Guyana Claim Line and that Suriname has offered or granted oil concessions respecting a similar delimitation; Guyana distinguishes from their habitual practice the occasions since independence when Suriname has granted concessions on the Guyanese side of the Guyana Claim Line.<sup>183</sup> Guyana further argues that fishing practice and the exercise of other forms of governmental authority show recognition of the line in question.<sup>184</sup>

#### *Suriname's Position*

233. The conduct of the Parties is, in Suriname's submission, of limited legal relevance, in the context of a single maritime boundary,<sup>185</sup> as it must demonstrate the Parties' mutual

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<sup>179</sup> Transcript, pp. 283-284.

<sup>180</sup> Guyana Reply, paras. 3.31-3.39.

<sup>181</sup> Guyana Reply, para. 4.36.

<sup>182</sup> Guyana Memorial, para. 8.51; Transcript, pp. 337-338.

<sup>183</sup> Guyana Memorial, para. 8.51; Transcript, p. 338.

<sup>184</sup> Guyana Memorial, paras. 8.51-8.56.

<sup>185</sup> Suriname Counter-Memorial, paras. 4.37-4.41.

intention to accept a specific delimitation.<sup>186</sup> Suriname argues that international tribunals have only considered party conduct relevant where it is “mutual, sustained, consistent, and unequivocal” and that the conduct referred to by Guyana does not meet this standard,<sup>187</sup> but in fact demonstrates the existence of a “notorious, long-lived, public and contentious” maritime boundary dispute.<sup>188</sup>

234. Suriname contends that the approach to party conduct taken by the ICJ in the *Tunisia/Libya* case<sup>189</sup> is not applicable in the present case.<sup>190</sup> There, Suriname argues, the ICJ had reference to a *modus vivendi* only in respect of a part of the Tunisia/Libya maritime boundary and only by reason of the colonial powers’ (France and Italy) demonstration of consistent acceptance of a boundary<sup>191</sup> as part of an intentional effort to avoid overlapping oil concessions over an extended period.<sup>192</sup> Suriname also cites ICJ precedent rejecting similar arguments that States should be bound by acquiescence or estoppel by reason of its oil concession practices.<sup>193</sup>

235. Suriname disputes Guyana’s reference to forty years of consistent oil concession practice as not grounded in fact.<sup>194</sup> According to Suriname, the geographical extent of oil concessions from 1965 until 2000<sup>195</sup> shows that both of the Parties had concessions in operation in the area of overlapping claims for the majority of the period since the 1950s. Suriname maintains that from 1957, with Suriname’s earliest offshore petroleum concession, a N10°E azimuth line bounded the western limit of the concession area

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<sup>186</sup> Suriname Counter-Memorial, para. 4.37.

<sup>187</sup> Suriname Rejoinder, paras. 3.90-3.143, 3.144-3.157.

<sup>188</sup> Suriname Rejoinder, para. 3.84.

<sup>189</sup> Suriname Counter-Memorial, para. 5.1, citing *Tunisia/Libya*, Judgment, I.C.J. Reports 1982, p. 18.

<sup>190</sup> As to Suriname’s submission on this point generally, see Suriname Counter-Memorial, Chapter 5; Transcript, pp. 999-1010.

<sup>191</sup> Suriname Counter-Memorial, paras. 5.45-5.55.

<sup>192</sup> Suriname Counter-Memorial, paras. 5.49-5.53.

<sup>193</sup> Suriname Counter-Memorial, para. 5.71; Transcript, pp. 1010-1014, citing *Gulf of Maine*, Judgment, I.C.J. Reports 1984, p. 246. Suriname in its oral pleadings also dealt with *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13 (“*Libya/Malta*”) (Transcript, pp. 1014-1016) and the *Jan Mayen* case (Transcript, pp. 1016-1022).

<sup>194</sup> Suriname Counter-Memorial, para. 5.4.

<sup>195</sup> Suriname Counter-Memorial, paras. 5.9-5.44.

granted by Suriname<sup>196</sup> and that Guyana's oil concessions adopted various eastern limits not tending to demonstrate consistent use of the Guyana Claim Line.<sup>197</sup>

236. Suriname's position is that the concerns of concession holders and operators as to the overlapping nature of concessions gave rise to negotiations in 1989, the 1989 *modus vivendi*,<sup>198</sup> and ultimately the 1991 Memorandum of Understanding.<sup>199</sup> For Suriname, Staatsolie's grant of concessions outside of the area of overlapping claims does not reflect Suriname's acceptance of the Guyana Claim Line.<sup>200</sup> Instead, Suriname maintains that its position regarding its claim to the Suriname Claim Line has historically been well known to Guyana, so no action of Staatsolie could be taken as a renunciation of Suriname's claim. Suriname submits that its oil concession practice demonstrates its consistent assertion of the Suriname Claim Line and rejects Guyana's suggestion that its conduct demonstrated respect for the Guyana Claim Line, distinguishing its restraint from 1999 onwards as reflecting a wish not to exacerbate the dispute and a lack of interest by concessionaires in disputed areas.<sup>201</sup> Regarding the legal significance of its restraint, Suriname asserts that the ICJ has not taken restraint pending the resolution of a dispute as prejudicing the position of a party exercising such restraint.<sup>202</sup> As to Guyana's fisheries conduct, Suriname disputes Guyana's contention that it refrained from carrying out enforcement west of the Guyana Claim Line, maintaining the converse to be true and also citing its conduct of marine biology research as supportive of its own claim.<sup>203</sup>

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<sup>196</sup> Suriname Counter-Memorial, paras. 5.7, 5.13.

<sup>197</sup> Suriname Counter-Memorial, para. 5.13.

<sup>198</sup> Suriname Counter-Memorial, para. 5.36.

<sup>199</sup> Transcript, pp. 1058-1059.

<sup>200</sup> Suriname Counter-Memorial, paras. 5.56-5.72.

<sup>201</sup> Suriname Rejoinder, paras. 3.122-3.133.

<sup>202</sup> Suriname Counter-Memorial, paras. 5.73-5.79.

<sup>203</sup> Suriname Rejoinder, paras. 3.135-3.143.

#### 4. Delimitation of the Territorial Seas

##### *Guyana's Position*

237. The delimitation of the territorial seas should, in Guyana's view, follow an "historical equidistance line" following an azimuth of N34°E from Point 61 for a distance of 12 nm to a point at the outer limit of the territorial sea<sup>204</sup> (the "Guyana Territorial Sea Line").<sup>205</sup> Guyana maintains that there are no grounds admissible under Article 15 of the Convention for departing from the Guyana Territorial Sea Line.
238. According to Guyana, an equidistance line delimiting the territorial sea along a line following the course of the Guyana Territorial Sea Line has historically been given effect by the Parties.<sup>206</sup> Further or alternatively, Guyana submits that even if the Guyana Territorial Sea Line were not to be regarded as the relevant equidistance line, then the conduct of the Parties since 1966 in following it would be sufficient to constitute a "special circumstance" justifying an adjustment to the equidistance line.<sup>207</sup>
239. Point 61 is Guyana's starting point for maritime delimitation because, Guyana argues, the Parties' conduct reflects a long-standing agreement that it should be treated as such<sup>208</sup> and both Guyana's and Suriname's claims rely on this point.<sup>209</sup>
240. Relying on Article 5 of the Convention, Guyana maintains that the low-water line along the coast marked on charts officially recognized by the coastal State provides the normal baseline for measuring the breadth of the territorial sea, and that no reason exists to depart from this approach.<sup>210</sup> Guyana refers to various charts used by the Parties and cites the U.S. NIMA charts 24370 and 24380 as the most recent charts on which it relies.

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<sup>204</sup> Guyana identifies two different coordinates for this point: 6° 13' 49.0"N, 56° 59' 21.2"W (Guyana Reply, para. 6.44) and 6° 13' 46"N, 56° 59' 32"W (Guyana Reply, paras. 7.1, 7.59).

<sup>205</sup> As to Guyana's arguments concerning delimitation of the territorial sea, see Guyana Memorial, Chapter 8. See also Transcript, pp. 276-365.

<sup>206</sup> Guyana Memorial, para. 8.31(b); Transcript, pp. 337-338.

<sup>207</sup> Guyana Memorial, para. 8.31(c); Transcript, pp. 338-339.

<sup>208</sup> Guyana Memorial, para. 8.31(a); Transcript, pp. 76-136, 289.

<sup>209</sup> Guyana Reply, paras. 6.5-6.6.

<sup>210</sup> Guyana Memorial, para. 8.39.

241. With regard to the location of a provisional equidistance line in the territorial sea, Guyana states that both Parties' calculations give rise to lines that "closely track the N34°E historical equidistance line", at least with regard to the part of the line beyond the first 3 nm.<sup>211</sup>
242. Guyana contends that both the United Kingdom's delimitation of the equidistance line in 1957, based on Dutch chart 217 and British chart 1801, and equidistance lines extended to a distance of twelve miles from Point 61 on the recent U.S. NIMA charts, follow azimuths ranging from N34°E to N36°E; to Guyana there is no material difference between the equidistance lines based on these three charts.<sup>212</sup>
243. In its analysis, Guyana finds no special circumstances that would justify an adjustment to an equidistance line delimiting the territorial seas.<sup>213</sup> Guyana argues that neither Party has claimed historic title<sup>214</sup> and disputes Suriname's reliance on the navigational requirements giving rise to the use of a line following an azimuth of N10°E as a special circumstance justifying an adjustment.<sup>215</sup> Guyana asserts that the Tribunal should be cautious in finding that navigational requirements could amount to a special circumstance, distinguishing the *Beagle Channel* case as precedent for the relevance of navigational requirements and maintaining that any such decision in the present case would be the first of its kind.<sup>216</sup>
244. Guyana submits, in the alternative, that the accommodation of the potential need for navigational access to the Corentyne western channel was provisional in any event, had become irrelevant through lack of use by the early 1960s,<sup>217</sup> and had been expressly rejected by the United Kingdom since that time.<sup>218</sup> In Guyana's view, such a

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<sup>211</sup> Guyana Reply, paras. 1.23, 6.13-6.22.

<sup>212</sup> Guyana Memorial, paras. 8.41-8.43.

<sup>213</sup> Guyana Reply, paras. 6.23-6.43.

<sup>214</sup> Guyana Memorial, para. 8.44; Guyana Reply, para. 6.23.

<sup>215</sup> Transcript, pp. 351-358.

<sup>216</sup> Guyana Reply, paras. 6.24-6.34, citing *Controversy concerning The Beagle Channel Region (Argentina/Chile)*, Award of 18 February 1977, 17 I.L.M. p. 634, at p. 673, para. 108 (1978), R.I.A.A., Vol. 21, p. 53 (1997) ("*Beagle Channel*").

<sup>217</sup> Guyana Reply, paras. 6.35-6.37; Transcript, p. 342.

<sup>218</sup> Guyana Memorial, para. 8.46; Transcript, p. 343.

circumstance could not require alteration to the course of the territorial sea boundary beyond 3 nm in any event.<sup>219</sup> Guyana disputes that as a matter of law it is possible for the Parties to have inherited a delimitation of the territorial seas along the Suriname Claim Line, distinguishing the present case from one where the principle of *uti possidetis* or Article 62 of the Vienna Convention on the Law of Treaties might be applicable, or where colonial practice might constitute a special circumstance meriting adjustment to an equidistance line.<sup>220</sup>

#### *Suriname's Position*

245. Suriname maintains that the territorial sea boundary has in fact been long established along the Suriname Claim Line.<sup>221</sup> In Suriname's view, the position of the 1936 Point and the direction of the N10°E Line to the limit of the territorial waters were established in combination and, should the Tribunal find that the 1936 Point is established, it must also find that the N10°E Line is binding on the Parties to the limit of the territorial sea.<sup>222</sup> The navigational requirement for Surinamese control of the approaches to the Corantijn River would, for Suriname, remain a special circumstance requiring the adoption of such a boundary in any event.<sup>223</sup>

### **5. Delimitation of the Continental Shelf and Exclusive Economic Zone**

#### *Guyana's Position*

246. Guyana invites the Tribunal to find that the delimitation of the continental shelf and the exclusive economic zone should follow the Guyana Claim Line along an azimuth of N34°E up to 200 nm from coastal baselines from the terminus point of the boundary it

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<sup>219</sup> Guyana Reply, paras. 6.38-6.43.

<sup>220</sup> Guyana Reply, paras. 5.57-5.67.

<sup>221</sup> Suriname Counter-Memorial, paras. 4.56-4.72.

<sup>222</sup> Suriname Counter-Memorial, paras. 4.60-4.61; Transcript, p. 830.

<sup>223</sup> Suriname Counter-Memorial, paras. 6.50-6.53; Suriname Rejoinder, paras. 3.256-3.273.

proposes in the territorial sea.<sup>224</sup> Guyana reserves its rights in respect of any delimitation of the continental shelf beyond the 200 nm limit.<sup>225</sup>

247. With respect to the continental shelf, Guyana submits that application of the “equitable principles/relevant circumstances rule” in accordance with the practice of international tribunals and States<sup>226</sup> requires the Tribunal to calculate an equidistance line across the continental shelf by reference to coastal basepoints starting from the northern terminus of the agreed land boundary, in the same way as for delimitation of the territorial sea.<sup>227</sup> Guyana submits further that in the same way as for the line delimiting the territorial seas, the Tribunal should adjust the equidistance line to reflect any special circumstances that might exist in order to achieve an equitable outcome.<sup>228</sup>
248. Guyana describes the Guyana Claim Line in the continental shelf and the exclusive economic zone as an “historical equidistance line” and argues that the Parties’ conduct is significant in this case as the Parties have sought to identify and agree upon an equidistance line for a period in excess of forty years, a period over which international law has been developing with respect to the delimitation of maritime boundaries.<sup>229</sup> Guyana reviews the attempts to agree on delimitation made by the colonial powers prior to independence, and subsequently by Guyana and Suriname, in support of its argument that the Guyana Claim Line reflects historical acceptance of a line based on principles of equidistance.<sup>230</sup>
249. Guyana contends that the equidistance line drafted by the United Kingdom in 1957-1958 reflected British efforts to ensure that the California Oil Company concession was granted on the basis of a unilateral delimitation that adhered as closely as possible to the

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<sup>224</sup> Guyana identifies two different coordinates for this point: 6° 13' 49.0"N, 56° 59' 21.2"W (Guyana Reply, para. 6.44) and 6° 13' 46"N, 56° 59' 32"W (Guyana Reply, paras. 7.1, 7.59).

<sup>225</sup> Guyana Memorial, para. 9.1.

<sup>226</sup> Guyana Memorial, paras. 9.3-9.4.

<sup>227</sup> Guyana Memorial, para. 9.8.

<sup>228</sup> Guyana Memorial, para. 9.4.

<sup>229</sup> Guyana Memorial, para. 9.5.

<sup>230</sup> Guyana Memorial, paras. 9.6-9.25.

principle of equidistance embodied in the ILC Draft Articles.<sup>231</sup> Guyana refers to the reasoning of British officials on the matter to argue that the equidistance calculation, based on Dutch chart 217 of February 1939, was made to give as little ground for objection from The Netherlands as possible.<sup>232</sup>

250. Guyana argues that the efforts of the United Kingdom in 1957-1958 later formed the basis of the British draft treaty proposals, which in turn were based on the principle of equidistance.<sup>233</sup> According to Guyana, The Netherlands' own projection, prepared in 1959 on the basis of Dutch chart 222, was also charted on the basis of equidistance.<sup>234</sup> The British draft treaty proposal of 1961 is cited by Guyana as amounting to a simplification of the equidistance line, extending it from the limit of the 3 nm territorial sea to the 200-metre isobath.<sup>235</sup> Guyana submits that the concession given in 1965 to Royal Dutch Shell, in an area extending up to the 200-metre isobath, was based on the United Kingdom delimitation and did not elicit an objection from The Netherlands.<sup>236</sup> Guyana also relies upon correspondence from the Dutch Prime Minister to the new Surinamese government in 1975, which in its view makes clear that The Netherlands did not support a claim delimiting the continental shelf along a N10°E azimuth.<sup>237</sup>
251. In Guyana's view, the Guyana Claim Line also emerged over time as an historical equidistance line by reason of its use as a basis for the grant of oil concessions by the United Kingdom and subsequently by Guyana until the present time. To Guyana, this line was based on broad agreement and consistent practice between the United Kingdom and The Netherlands, also reflecting an understanding that delimitation would be effected by the application of the equidistance principle.<sup>238</sup> Guyana submits that there has been no record of a formal objection to such a delimitation until the year 2000.<sup>239</sup>

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<sup>231</sup> Guyana Memorial, paras. 9.9-9.17.

<sup>232</sup> Guyana Memorial, paras. 9.9-9.17.

<sup>233</sup> Guyana Memorial, para. 9.18; Transcript, p. 400.

<sup>234</sup> Guyana Memorial, para. 9.19.

<sup>235</sup> Guyana Memorial, para. 9.18.

<sup>236</sup> Guyana Memorial, para. 9.20.

<sup>237</sup> Guyana Memorial, para. 9.21.

<sup>238</sup> Guyana Memorial, para. 9.22; Guyana Reply, paras. 7.38-7.44.

<sup>239</sup> Guyana Memorial, para. 9.24.

The Guyana Claim Line therefore reflects a reasonable and equitable delimitation that has served as a basis for a “*de facto modus vivendi*” between Guyana and Suriname, initially up to the 200-metre isobath and latterly up to a 200 nm limit.<sup>240</sup>

252. Guyana maintains that there are no grounds for departing from the Guyana Claim Line, which it considers to be an “equitable solution” within the meaning of Article 83 of the Convention.<sup>241</sup> For Guyana, contemporaneous and modern charts where relevant circumstances such as islands or other geographic features are absent provide no support for accepting the Suriname Claim Line as equidistance.<sup>242</sup> As argued in the context of the delimitation of the territorial seas, Guyana again asserts that ease of navigation as the original justification for a N10°E azimuth line has disappeared, and, in any event, a N10°E line has never been followed beyond the historic 3 nm limit to the territorial seas.
253. Guyana accepts that the Guyana Claim Line is at modest variance to an equidistance line calculated on the basis of modern U.S. NIMA charts, but submits that modern projections closely approximate historical equidistance lines.<sup>243</sup> Guyana argues that while equidistance projections based on the most recent charts depart from the Guyana Claim Line between the 200-metre isobath and the 200 nm limit of the continental shelf,<sup>244</sup> they would not achieve an equitable solution, as they would ignore the practice of the two States over a forty-year period.<sup>245</sup> Guyana contends that international tribunals have long recognized the conduct of the parties as relevant in achieving an equitable solution<sup>246</sup> and that the Guyana Claim Line reflects what the Parties have

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<sup>240</sup> Guyana Memorial, para. 9.25.

<sup>241</sup> Guyana Memorial, paras. 9.29-9.31.

<sup>242</sup> Guyana Memorial, paras. 9.32-9.33.

<sup>243</sup> Guyana Memorial, paras. 9.26-9.28.

<sup>244</sup> Guyana Memorial, para. 9.34.

<sup>245</sup> Guyana Memorial, paras. 9.34-9.37.

<sup>246</sup> Guyana Memorial, paras. 9.35-9.37.

believed to represent equidistance since the 1950s<sup>247</sup> and therefore constitutes, unlike the Suriname Claim Line, an equitable outcome.<sup>248</sup>

254. As to the exclusive economic zone, Guyana's position is that the approach to be taken in delimiting the zone is the same as that to be taken with respect to the continental shelf,<sup>249</sup> with the aim of achieving an equitable solution. Guyana submits that there is a representative body of practice supporting the determination of a single maritime boundary for both the continental shelf and the exclusive economic zone.<sup>250</sup>
255. Guyana rejects Suriname's analysis melding the delimitation of the territorial sea, continental shelf, and exclusive economic zone into one.<sup>251</sup> Guyana's view is that, while the basepoints are not all agreed, the Parties are in fact in agreement as to the location of the provisional equidistance line for the continental shelf and exclusive economic zone.<sup>252</sup> Guyana argues such agreement confirms acceptance of the coastal starting point of the delimitation and shows that the coastline creates no material complication to delimitation.
256. In Guyana's view, geographical circumstances justify an adjustment of the equidistance line in favour of the Guyana Claim Line.<sup>253</sup> According to Guyana, the Parties' coastal configurations are not unusual and, with the exception of Hermina Bank, the relevant coasts do not give rise to special circumstances accepted in international jurisprudence as warranting adjustment to an equidistance line.

#### *Suriname's Position*

257. Suriname submits that the coastline of Guyana is characterized by coastal convexities between the Corantijn, Berbice, Essequibo rivers and beyond, while the Suriname coast

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<sup>247</sup> Guyana Memorial, para. 9.37.

<sup>248</sup> Guyana Reply, paras. 7.45-7.57.

<sup>249</sup> Guyana Memorial, paras. 9.43-9.45.

<sup>250</sup> Guyana Memorial, para. 9.45.

<sup>251</sup> Guyana Reply, paras. 7.6-7.14.

<sup>252</sup> Guyana Reply, paras. 7.15-7.22.

<sup>253</sup> Guyana Reply, paras. 7.23-7.37; Transcript, pp. 437-444.

is characterized by concavities between its river estuaries.<sup>254</sup> For purposes of an equidistant boundary, Suriname considers that its relevant coast runs east from the west bank of the mouth of the Corantijn River to the east end of the Warappa bank and the relevant coastline of Guyana is the coastline east of the Essequibo river.<sup>255</sup>

258. Without prejudice to its overall claim, Suriname presents a graphical and descriptive representation of a provisional equidistance line using base points on what it submits are the relevant coasts of Guyana and Suriname.<sup>256</sup> Suriname submits that the coastal fronts of Guyana and Suriname, which it contends face N34°E and 0° respectively, produce an overlapping area when projected seaward to a distance of 200 nm<sup>257</sup> and that its provisional equidistance line fails to divide this area of overlap in an equitable manner.<sup>258</sup>
259. Suriname argues that its provisional equidistance line excessively “cuts off” the maritime area abutting Suriname’s coast in breach of the “non-encroachment” principle, particularly with respect to the first section of the line (to shortly beyond the 200-metre isobath)<sup>259</sup> due to the effect of convexities and concavities, a trend, Suriname states, that employing a river closing line would not totally alleviate.<sup>260</sup> In Suriname’s analysis, the Guyana Claim Line cuts off a still greater area of Suriname’s coastal front projection than does its provisional equidistance line.<sup>261</sup>
260. Suriname calculates that a line dividing the area of overlapping coastal projections calculated equally would adopt an azimuth of N17°E from the 1936 Point, but submits

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<sup>254</sup> Suriname Counter-Memorial, paras. 6.4-6.7, citing *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, at p. 17, para. 8; Suriname Counter-Memorial, paras. 6.8-6.9, 6.24-6.35.

<sup>255</sup> Suriname Counter-Memorial, paras. 6.8-6.12.

<sup>256</sup> Suriname Counter-Memorial, paras. 6.13-6.18, Figure 31.

<sup>257</sup> Suriname Counter-Memorial, paras. 6.24-6.26, 6.41-6.44, Figure 33.

<sup>258</sup> Suriname Counter-Memorial, paras. 6.27-6.30.

<sup>259</sup> Suriname Counter-Memorial, para. 6.20.

<sup>260</sup> Suriname Counter-Memorial, paras. 6.20-6.21; Transcript, pp. 964-965.

<sup>261</sup> Suriname Counter-Memorial, para. 6.36.

that it is necessary to consider whether such a line should be adjusted in order to achieve an equitable delimitation.<sup>262</sup>

261. The need to prolong the existing Suriname-Guyana boundary along what it sees as its current course is also pointed to by Suriname as a relevant circumstance in the establishment of a single maritime boundary beyond the territorial sea.<sup>263</sup> According to Suriname, a N10°E azimuth extending the land boundary into the sea would reflect the “geographical reality” of the relationship between the two countries.<sup>264</sup> Moreover, the relative length of the relevant coasts of Suriname and Guyana is also a relevant circumstance that has been taken into account by previous international tribunals.<sup>265</sup> Suriname holds out the Suriname Claim Line as an equitable division, asserting that it would be based on a method reliant on coastal fronts rather than the selection of isolated base points, would not be influenced by protruding incidental features, and would not project towards the coast of either Party.<sup>266</sup>
262. Regarding the Guyana Claim Line, Suriname considers that Guyana’s position has not been consistent, that the line is not equidistant, and that it is not equitable.<sup>267</sup> Suriname disagrees that the coastlines of Guyana and Suriname do not lend themselves to an approach using generalizations of the coastlines in straight segments<sup>268</sup> and rejects Guyana’s view that the Suriname Claim Line is advanced for strategic reasons, arguing that the claim has been maintained since 1962. Suriname further contends that the Guyana Claim Line is perpendicular to Guyana’s coast, does not divide the area of overlap and accordingly, cannot be regarded as equitable.

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<sup>262</sup> Suriname Counter-Memorial, paras. 6.48-6.49.

<sup>263</sup> Suriname Counter-Memorial, paras. 6.54-6.57.

<sup>264</sup> Suriname Counter-Memorial, paras. 6.56-6.57.

<sup>265</sup> Suriname Counter-Memorial, para. 6.59, citing *Gulf of Maine* (Judgment, I.C.J. Reports 1984, p. 246), *Libya/Malta* (Judgment, I.C.J. Reports 1985, p. 13), and *Jan Mayen* (Judgment, I.C.J. Reports 1993, p. 38); Suriname Rejoinder, paras. 3.274-3.279.

<sup>266</sup> Suriname Counter-Memorial, para. 6.60.

<sup>267</sup> Suriname Rejoinder, paras. 3.242-3.253.

<sup>268</sup> Suriname Counter-Memorial, paras. 6.37-6.38, citing the approach taken in *Gulf of Maine* (Judgment, I.C.J. Reports 1984, p. 246).

**D. GUYANA'S THIRD SUBMISSION: ALLEGED UNLAWFUL THREAT AND USE OF FORCE BY SURINAME**

*Guyana's Position*

263. Guyana claims that Suriname's actions in June 2000 represented a breach of the requirement in Article 279 of the Convention to resolve disputes by peaceful means, a breach of Article 2(3) of the UN Charter requiring Member States to settle international disputes by peaceful means not endangering international peace and security, and Article 33(1) of the UN Charter requiring recourse to judicial settlement, negotiation and other forms of dispute resolution methods in such circumstances.<sup>269</sup> Guyana also claims that Suriname has breached Article 2(4) of the UN Charter in using or threatening to use force in its international relations against the territorial integrity of Guyana, which it argues remains applicable in the context of territorial or maritime boundary disputes.<sup>270</sup>
264. Guyana asserts that Suriname's 11 May 2000 complaint was its first formal protest against exploratory activity by Guyanese licensees and that Suriname adopted a military option notwithstanding Guyana's offers to negotiate made in response to Suriname's initial demands for termination of exploration activity.<sup>271</sup>
265. According to Guyana, the CGX rig operators were sufficiently threatened by Suriname's actions that a return to the area was considered unsuitable<sup>272</sup> and subsequent intimidation of the licensee Esso E & P Guyana similarly prevented its continued operations and caused it to terminate all exploration activities in its Guyanese concession area.<sup>273</sup> Guyana also maintains that Suriname threatened its licensee Maxus with respect to operations in the disputed area and that this in turn caused Maxus not to carry out further exploration in the area of its concession.<sup>274</sup>

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<sup>269</sup> Guyana Memorial, para. 10.3; Transcript, pp. 573-576.

<sup>270</sup> Guyana Memorial, paras. 10.4-10.5; Transcript, pp. 576-581.

<sup>271</sup> Guyana Memorial, paras. 10.12-10.23; Transcript, pp. 551-556.

<sup>272</sup> Transcript, pp. 562-564, 571.

<sup>273</sup> Guyana Memorial, paras. 10.17-10.21.

<sup>274</sup> Guyana Memorial, para. 10.21; Transcript, pp. 570-571.

266. In the context of the small-scale military capabilities of Guyana and Suriname, Guyana sees Suriname's threat or use of armed force as significant and amounting to an internationally wrongful act, engaging the international responsibility of Suriname.<sup>275</sup> Guyana claims to have suffered material injury in the form of loss of foreign investment in offshore exploration, loss of licensing fees, and other sources of income and foregone benefits in the development of Guyana's offshore resources.<sup>276</sup> In addition, Guyana claims an entitlement to compensation for losses occasioned by the adverse effect of Suriname's action on Guyana's standing as a nation.<sup>277</sup>
267. Guyana rejects Suriname's assertion that it took action against CGX, Esso E & P Guyana, and Maxus' operations in order to maintain the *status quo*, as well as Suriname's characterization of its operations as police action.<sup>278</sup> Guyana contends that the activities it authorized in the disputed maritime area were in line with a *status quo* represented by 40 years of oil practice by the Parties, that it gave notice of the proposed activities, and that drilling was accelerated in response to positive geological findings rather than in order to change the *status quo*. According to Guyana, force used in a disputed area of territory cannot be reconciled with the requirement to act with restraint under Articles 74(3) and 83(3) of the Convention. Guyana rejects Suriname's contention that Surinamese actions were lawful countermeasures in response to an unlawful act, stating that there was no unlawful act on the part of Guyana, and that such countermeasures would be illegal in any case as violations of the obligation to refrain from threatening to use force.<sup>279</sup> Guyana disputes that Suriname had "no choice" but to take the action, citing the possibility of requesting ITLOS to prescribe provisional measures,<sup>280</sup> and submits that such action was at variance with the requirements under Article 279 of the Convention and Article 33(1) of the UN Charter to resort first to alternative means.

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<sup>275</sup> Guyana Memorial, paras. 10.23-10.24.

<sup>276</sup> Transcript, p. 572.

<sup>277</sup> Guyana Memorial, paras. 10.27-10.33.

<sup>278</sup> Guyana Reply, paras. 8.1-8.19.

<sup>279</sup> Transcript, pp. 582-586.

<sup>280</sup> Transcript, pp. 556-557.

### *Suriname's Position*

268. According to Suriname, Guyana's claim that Suriname's escort of the CGX vessel from its location in June 2000 was unlawful is based on the erroneous premise that Guyana has title to the disputed maritime area.<sup>281</sup> Suriname posits that Guyana must wait for the establishment of legal title to the disputed area prior to seeking any judicial benefit from it. Suriname also asserts that Guyana's conduct in the disputed area constitutes an internationally wrongful act and that as a result Guyana lacks clean hands with respect to this submission.<sup>282</sup>
269. In Suriname's view, Guyana's second claim must also fail because no breach of the Convention has occurred. Suriname maintains that Article 279 of the Convention prohibits the use of force in the context of an attempt to resolve a "dispute ... concerning the interpretation or application of th[e] Convention" and that Article 301 of the Convention prohibits the use of force in the context of a party "exercising [its] rights and performing its duties under th[e] Convention". Suriname contends that neither circumstance applies and points to the requirement to exchange views under Article 283 of the Convention<sup>283</sup> as well as its view that Guyana did not consider there was a dispute until 2000. Moreover, according to Suriname, the breach of the UN Charter pleaded by Guyana cannot form the basis of a claim under the Convention alone.<sup>284</sup>
270. Suriname submits that Guyana exaggerates the nature of its naval operation<sup>285</sup> and characterizes it as a law enforcement measure of no greater force than was strictly necessary to achieve legitimate objectives.<sup>286</sup> Suriname further submits that the circumstances surrounding the action, including, *inter alia*, its instructions not to use or threaten force, are consistent with law enforcement under its domestic legislation and consistent with the type of force considered acceptable on arrest of a ship.<sup>287</sup> Suriname

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<sup>281</sup> Suriname Counter-Memorial, para. 7.1; Transcript, pp. 1076-1079.

<sup>282</sup> Suriname Counter-Memorial, para. 7.3.

<sup>283</sup> Transcript, pp. 1193-1198.

<sup>284</sup> Suriname Rejoinder, paras. 4.5-4.11; Transcript, p. 1092.

<sup>285</sup> Suriname Counter-Memorial, paras. 7.13-7.16.

<sup>286</sup> Suriname Counter-Memorial, para. 7.23; Transcript, pp. 1106-1110.

<sup>287</sup> Suriname Rejoinder, paras. 4.32-4.56.

denies that a use or threat of force has been proven or that any action was directed at Guyana because of the foreign nationality of the flag and crew of the vessel, and takes the position that exercise of coastal jurisdiction does not amount to armed force.<sup>288</sup> In the alternative, Suriname claims that its actions would constitute a lawful countermeasure against Guyana's actions.<sup>289</sup>

271. Suriname disputes that State responsibility was engaged by its acts and asserts that there has been no case in the context of a territorial dispute where a State found not to have title to territory has been held responsible for its actions in an area which had been the subject of dispute.<sup>290</sup>

272. According to Suriname, a decision was taken, in a departure from the established CGX concession work program initially agreed upon, to accelerate the drilling of a well and to locate it deliberately in the disputed area. This decision, it argues, was made in breach of the 1989 *modus vivendi* and 1991 Memorandum of Understanding.<sup>291</sup> Suriname submits that Articles 74(3) and 83(3) of the Convention create two obligations: to “make every effort to enter into provisional arrangements of a practical nature” and “not to jeopardize or hamper the reaching of a final agreement”, the latter specifically requiring restraint.<sup>292</sup> Suriname distinguishes between transitory or occasional actions characterizing the *status quo* and those representing irreparable prejudice,<sup>293</sup> and argues that exploratory drilling is an invasive exercise of sovereign rights over natural resources causing such prejudice.<sup>294</sup> Suriname contends that Guyana authorized drilling without adequate notice, consent or acquiescence in disputed waters

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<sup>288</sup> Suriname Rejoinder, paras. 4.57-4.73; Transcript, pp. 1110-1111, 1116-1126.

<sup>289</sup> Transcript, pp. 1126-1131.

<sup>290</sup> Suriname Counter-Memorial, paras. 7.17-7.21; Transcript, pp. 1101-1106.

<sup>291</sup> Suriname Counter-Memorial, para. 7.11.

<sup>292</sup> Suriname Rejoinder, para. 4.13.

<sup>293</sup> Suriname Counter-Memorial, paras. 7.42-7.43, citing *Aegean Sea Continental Shelf (Greece v. Turkey)*, Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976, paras. 30-31 (“*Aegean Sea*”).

<sup>294</sup> Suriname Rejoinder, paras. 4.13-4.16.

in breach of Articles 74(3) and 83(3) of the Convention, and that its own actions in response were necessary.<sup>295</sup>

273. In Suriname's estimation, Guyana has suffered no loss and alone bears the consequences of offering contracts concerning areas for which it does not have secure title.<sup>296</sup> The calculation of Guyana's claim<sup>297</sup> and Guyana's method of valuation of work to be performed under terminated concessions are disputed by Suriname. Suriname also disputes that the claims advanced relate to losses suffered by Guyana rather than its licensees and submits that the claim for loss of licensing fees is speculative.<sup>298</sup> Regarding Esso's invocation of a *force majeure* clause, Suriname argues that it may have been related to factors other than the dispute with Suriname<sup>299</sup> and that the concession areas in question concerned maritime territory that was for the larger part outside of the disputed area in any event.

**E. GUYANA'S FOURTH SUBMISSION AND SURINAME'S SUBMISSIONS 2.C AND 2.D: BREACH OF ARTICLES 74(3) AND 83(3) OF THE CONVENTION**

*Guyana's Position*

274. Guyana claims that Suriname breached Articles 74(3) and 83(3) of the Convention by failing to seek resolution by resort to practical provisional arrangements and by conducting itself in a manner that jeopardized reaching a final agreement.<sup>300</sup> Guyana submits that these breaches represent a serious threat to international peace and security<sup>301</sup> and that a forcible expulsion of a licensee's vessels from a disputed maritime area cannot be likened to the arrest of a ship on the high seas for law enforcement purposes.<sup>302</sup>

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<sup>295</sup> Suriname Counter-Memorial, paras. 7.40-7.45; Suriname Rejoinder, paras. 4.17-4.31.

<sup>296</sup> Suriname Counter-Memorial, paras. 7.26-7.39; Transcript, pp. 1131-1132.

<sup>297</sup> Suriname Counter-Memorial, paras. 7.29-7.39.

<sup>298</sup> Suriname Counter-Memorial, paras. 4.74-4.79.

<sup>299</sup> Suriname Counter-Memorial, paras. 7.35-7.36.

<sup>300</sup> Guyana Memorial, para. 10.6.

<sup>301</sup> Guyana Memorial, para. 10.7.

<sup>302</sup> Guyana Memorial, para. 10.8.

275. Guyana disagrees with Suriname's account of the negotiations between the Parties following the 1989 *modus vivendi*, the 1991 Memorandum of Understanding, and the events of June 2000.<sup>303</sup> Guyana maintains that Suriname rejected the 1991 Memorandum of Understanding by disavowing it, failing to ratify it, and thwarting efforts to establish modalities of operation subsequently. According to Guyana, Suriname similarly failed to cooperate following the action it took in June 2000, while Guyana did provide information regarding its oil concessions, but could not proceed further in the absence of agreement by Suriname on modalities for operation. In response to Suriname's claim that events prior to 1998 (the year of Suriname's accession to the Convention) are irrelevant to the Tribunal's determination as to a breach of Articles 74(3) and 83(3) of the Convention, Guyana argues that those events are relevant to the interpretation of post-1998 conduct as they demonstrate a consistent pattern of negative conduct.<sup>304</sup>

#### *Suriname's Position*

276. Suriname submits that only conduct after 8 August 1998, being the date on which the Convention came into force between the Parties, can be relevant to Guyana's allegation of breach of Articles 74(3) and 83(3) of the Convention. Further, Suriname maintains that to the extent that the obligations to make every effort to enter into provisional arrangements of a practical nature pending a final agreement under those Articles are enforceable, these have been breached by Guyana, rather than Suriname, through its unyielding approach in negotiations following the events of early June 2000.<sup>305</sup>

277. Regarding the negotiations attempted by the Parties, Suriname complains that Guyana's proposals were unworkable and that disclosure as to the commercial arrangements under the Guyana-CGX concession was lacking.<sup>306</sup> Suriname contends that Guyana's approach was to avoid formal commitments relating to anything other than the recommencement of operations under its concession agreements. Suriname submits that the 1989 *modus vivendi* and 1991 Memorandum of Understanding themselves

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<sup>303</sup> Guyana Reply, paras. 9.1-9.14.

<sup>304</sup> Transcript, pp. 607-609.

<sup>305</sup> Suriname Rejoinder, paras. 5.6-5.14.

<sup>306</sup> Suriname Counter-Memorial, paras. 8.2-8.10.

amounted to provisional arrangements of a practical nature pending resolution of the dispute, and that Guyana's entry into contracts with oil companies covering much of the disputed area constituted an unreasonable departure from those agreements.<sup>307</sup>

278. Suriname invites the Tribunal to find that Guyana lacks entitlement to a remedy in any event and, in the alternative, that Guyana has forfeited the right to bring this claim by acting in an obstructive manner.<sup>308</sup>

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<sup>307</sup> Suriname Counter-Memorial, paras. 8.11-8.16.

<sup>308</sup> Suriname Rejoinder, paras. 5.15-5.21.

#### CHAPTER IV - JURISDICTION TO DETERMINE THE MARITIME BOUNDARY

279. The Parties' positions regarding the Tribunal's jurisdiction to determine the maritime boundary are set out above in Chapter III(A) of this Award. Pursuant to its Procedural Order No. 2 (*supra*), the Tribunal deferred its decision on Suriname's Preliminary Objections to the Final Award.

280. The Tribunal takes note of Suriname's statement at the hearing that:

If ... there is indeed an agreed boundary in the territorial sea ... then the terminus of the maritime boundary provides a perfectly adequate starting point, and every issue that this Tribunal would have to decide would be governed by the provisions of the Law of the Sea Convention.<sup>309</sup>

In light of the Tribunal's finding in Chapter V of the Award that the starting point of the maritime delimitation between the Parties is the intersection of the low water line of the west bank of the Corentyne River and the geodetic line of N10°E which passes through Marker "B" established in 1936, the Tribunal need not consider further Suriname's jurisdictional objection with respect to Guyana's maritime delimitation claim. Accordingly, the Tribunal finds that it has jurisdiction to delimit the maritime boundary in dispute between the Parties.

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<sup>309</sup> Transcript, pp. 795-796.

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## CHAPTER V - DELIMITATION IN THE TERRITORIAL SEA

### A. THE PARTIES' POSITIONS

#### *Suriname's N10°E Line to 12 nm*

281. Suriname submits that the delimitation of the territorial sea should proceed along an azimuth of N10°E from the 1936 Point/Point 61 (the "10° Line") and that this boundary delimits the twelve-mile territorial sea of Suriname. Suriname posits that the 10° Line "began as an agreed boundary for the territorial sea",<sup>310</sup> and maintains that the Parties have never worked jointly to identify the equidistance line, much less agreed on its use to delimit their maritime boundary.<sup>311</sup>

#### *Special Circumstances and Historical Evidence of an Agreement*

282. According to Suriname the consistent and concerted behaviour of The Netherlands and the United Kingdom in their dealings with each other over many years established their mutual acceptance of that boundary through tacit or *de facto* agreement, acquiescence or estoppel.<sup>312</sup> Suriname contends that the need to guarantee The Netherlands' sole responsibility for the care for and supervision of all shipping traffic in the approaches to the Corentyne, a river under its sovereignty, constitutes a special circumstance under Article 15 of the Convention.<sup>313</sup>

283. For Suriname, the meaning of Article 15, including its reference to special circumstances, is to be understood in the context of the regime in which it appears. Article 2 of the Convention provides that the sovereignty of a coastal State extends beyond its land territory to an adjacent belt of sea described as the territorial sea, so that all activities in the territorial sea are subject to control and regulation by the coastal State, except as expressly provided otherwise.<sup>314</sup> Consequently, Suriname posits that

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<sup>310</sup> Suriname Rejoinder, para. 3.259.

<sup>311</sup> Suriname Counter-Memorial, para. 3.14.

<sup>312</sup> Transcript, p. 829.

<sup>313</sup> Suriname Counter-Memorial, para. 3.12, Suriname Rejoinder, paras. 3.263, 3.264.

<sup>314</sup> Transcript, p. 835.

“such navigational considerations”, namely the control of shipping by the coastal State, are special circumstances for the purposes of Article 15.<sup>315</sup>

284. In 1936 the Mixed Boundary Commission established the location of what Suriname called the 1936 Point, on the ground near the mouth of the Corentyne. Its purpose was “to indicate the direction of the boundary line in the territorial waters on a True bearing of N10°E, this direction being parallel to the mid-channel as indicated on the chart”.<sup>316</sup> The bearing of N10°E was a modification by the Mixed Boundary Commission to the proposals of the Governments of the United Kingdom and The Netherlands of a line following a bearing of N28°E. Suriname notes that this modification was accepted by The Netherlands and the United Kingdom by an exchange of notes of 22 November 1937 and 25 July 1938.<sup>317</sup>
285. Suriname maintains that, although they did not reach an agreement binding on the Parties, the United Kingdom and The Netherlands respected the 10° Line as the territorial sea boundary in their mutual relations from 1939 to 1965. Support for this position is found in the United Kingdom’s acceptance of the 10° Line through its failure to protest when The Netherlands provided details of its territorial sea boundary between Suriname and British Guiana to the International Law Commission in 1953. Suriname argues that the determination of the 10° Line was, among other things, “motivated solely by considerations of administrative and navigational efficiencies”.<sup>318</sup> The 1936 Point in combination with the 10° Line guaranteed The Netherlands’ sole control over the territorial waters in the approach to the Corentyne River.<sup>319</sup> Suriname contends that this navigational consideration still exists as a special circumstance under Article 15 of the Convention.

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<sup>315</sup> Suriname Counter-Memorial, paras. 6.51-6.52; Suriname Rejoinder, para. 3.265.

<sup>316</sup> Suriname Counter-Memorial, para. 3.8, citing Report on the Inauguration of the Mark at the Northern Terminal of the Boundary Between Surinam and British Guiana, Guyana Memorial, Annex II, at para. 4.

<sup>317</sup> Suriname Counter-Memorial, para. 3.9.

<sup>318</sup> Suriname Counter-Memorial, para. 3.12, citing Guyana Memorial, para. 3.16.

<sup>319</sup> Suriname Counter-Memorial, para. 3.13.

*Evolution of Historical Territorial Sea Agreement from 3 to 12 nm*

286. The historical acceptance of the 10° Line as the boundary of the territorial sea was in Suriname's view not altered by the extension of the breadth of the territorial sea to twelve miles. Suriname argues that where a text specifies the location and direction of the territorial sea boundary without reference to geographic limit, the correct interpretation is the ordinary meaning of the text, so that the boundary applies to the entire territorial sea up to the limits claimed by the parties at any given time in accordance with international law.<sup>320</sup> Suriname relies on the finding of the ICJ in the *Aegean Sea* case that an agreement "must be interpreted in accordance with the rules of international law as they exist today, not as they existed in 1931".<sup>321</sup> This is known as the inter-temporal law.

*Application of the Inter-temporal Law*

287. For Suriname, if the only reason for using the 10° Line in the present delimitation is that it was agreed in 1936, the Tribunal must apply the inter-temporal law in order to determine whether the 1936 agreement applies to the present-day extent of the territorial sea.<sup>322</sup> Where the location and direction of a territorial sea boundary is specified in an agreement but its seaward boundary is not specified, Suriname maintains that the question of whether the territorial sea boundary established by the Parties applies to all or only part of the territorial sea depends on the agreement's object and purpose.<sup>323</sup> Suriname's position is that the object and purpose of the territorial sea boundary established by the Parties was "clearly to limit the extent of Guyana's territorial sea",<sup>324</sup> for reasons of Suriname's having control over the approaches to the Corentyne.

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<sup>320</sup> Transcript, p. 850.

<sup>321</sup> Transcript, p. 851; *Aegean Sea*, Judgment, I.C.J. Reports 1978, p. 3, at p. 33, para. 80.

<sup>322</sup> Transcript, p. 852.

<sup>323</sup> Transcript, p. 853.

<sup>324</sup> Transcript, p. 854.

*Guyana's N34°E Line to 12 nm*

288. Guyana's position is that the delimitation of the territorial sea should follow an "historical equidistance line" along an azimuth of N34°E from Point 61 for a distance of 12 nm to a point at the outer limit of the territorial sea (being the Guyana Territorial Sea Line).<sup>325</sup> Guyana considers Point 61 as the appropriate starting point for maritime delimitation because the Parties' conduct reflects a long-standing agreement, over seventy years, that this point should be treated as such and both Guyana's and Suriname's claims rely on it. Guyana contends that both the United Kingdom's delimitation of the equidistance line in 1957, based on Dutch chart 217 and British chart 1801, and equidistance lines extended to a distance of twelve miles from Point 61 on the recent U.S. NIMA charts follow azimuths ranging from N34°E to N36°E.

*Historical Evidence of an Agreement on an Equidistance Line*

289. Guyana argues that the Guyana Territorial Sea Line is an equidistance line which should be followed when delimiting the territorial sea under Article 15 of the Convention as this line has historically been given effect by the Parties. Alternatively, Guyana submits that even if the Guyana Territorial Sea Line were not to be regarded as the relevant equidistance line, then the conduct of the Parties since 1966 in following it would be sufficient to constitute a special circumstance justifying an adjustment to the equidistance line.
290. Guyana takes the view that the arrangement made by the Mixed Boundary Commission resulting in the adoption of a 10° Line in 1936 was provisional in nature. Guyana accepts that during the period between 1936 and 1965, the conduct of the Parties generally followed a line of N10°E, but submits this was limited to a distance falling within the three-mile territorial sea as permitted by international law. Guyana notes that in 1965 the United Kingdom first proposed a draft treaty which departed from the 10° Line, and that this was due to the United Kingdom's decision to implement the median line principle enshrined in Article 12(1) of the 1958 Territorial Sea Convention. Further, explanatory documents prepared contemporaneously by officials from the

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<sup>325</sup> Guyana identifies two different coordinates for this point: 6° 13' 49.0"N, 56° 59' 21.2"W (Guyana Reply, para. 6.44) and 6° 13' 46"N, 56° 59' 32"W (Guyana Reply, paras. 7.1, 7.59).

United Kingdom and British Guiana indicate that the original navigational reasons put forward by The Netherlands for the 10° Line in the territorial sea were no longer applicable.<sup>326</sup> Guyana maintains that in 1966 on achieving independence Guyana informed The Netherlands that it shared this view. Guyana contends that thereafter its practice was predicated on the equidistance line as required by Article 12(1) of the 1958 Territorial Sea Convention.<sup>327</sup> According to Guyana, after Suriname achieved independence in 1975, its conduct was generally consistent with that of Guyana rather than with the 10° Line.<sup>328</sup> Guyana puts forward that the conduct of the parties in the grant of oil concessions respected the historical equidistance line of N34E within the territorial waters up to the three-mile limit and then up to the twelve-mile limit once that was established.<sup>329</sup>

291. Guyana argues that “special circumstances” for the purposes of maritime delimitation include the conduct of the Parties, particularly the existence, if there is one, of a *modus vivendi* reflected in a pattern of oil and gas concessions, as well as the conduct of the former colonial powers.<sup>330</sup> Guyana submits that:

the special circumstances in the territorial sea or beyond do not include land mass and geographic and geological factors which pertain to the seabed. Seabed special circumstances do not come within the Article 15 definition of special circumstances and that is long established, since at least 1985, and stated very clearly at paragraph 39 of the Libya-Malta case. That case, of course, was dealing with the continental shelf but the principle enunciated by the Court applies equally to the territorial sea.<sup>331</sup>

*Absence of Navigation by Early 1960s*

292. Guyana contends that by the early 1960s any potential need for navigational access to the Corentyne western channel had disappeared, in view of the lack of actual usage by that time. In that connection, Guyana cites the draft treaty proposed by the United

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<sup>326</sup> Guyana Memorial, para. 8.26.

<sup>327</sup> Guyana Reply, para. 8.20.

<sup>328</sup> Guyana Memorial, para. 8.30.

<sup>329</sup> Guyana Reply, para. 6.41.

<sup>330</sup> In support of this argument, Guyana cites *Tunisia/Libya*, Judgment, I.C.J. Reports 1982, p. 18, at paras. 84, 94, 119.

<sup>331</sup> Transcript, p. 332.

Kingdom in 1965, which took Point 61 as the starting point, but in Draft Article VII(1) proposed the use of a line to be drawn “in accordance with the principle of equidistance from the nearest points of the base lines from which the territorial sea of British Guiana and Surinam respectively is measured”.<sup>332</sup> Contemporaneous documents prepared by officials of the United Kingdom and British Guiana indicate that the original reasons given by The Netherlands no longer applied since the western channel of the Corentyne River was no longer navigable by commercial ships, which had become much larger and heavier than those operating in the 1930s.

*The N10°E Line, if it Governed Relations Between the Parties, Did Not Exist Beyond 3 nm*

293. Guyana disputes that even if there were a navigational factor to be treated as a special circumstance, it could not require alteration to the course of the territorial sea boundary beyond 3 nm. Guyana maintains that “the United Kingdom and The Netherlands agreed that any delimitation outside the territorial sea beyond three miles from Point 61 was to be carried out in accordance with the principle of equidistance”.<sup>333</sup> The United Kingdom in 1957 calculated the methodology to be applied in establishing an equidistance line using Dutch chart 217 and British chart 1801, and proposed a segmented line with a general bearing of N34°E. Guyana argues that The Netherlands did not object to this line or to its adoption by the United Kingdom and Guyana as an equidistance line in the territorial sea and eventually up to a limit of 12 nm.<sup>334</sup> Thus, according to Guyana, as a matter of law it was impossible for the Parties to have inherited a delimitation of the territorial seas beyond three miles along the 10° Line.<sup>335</sup>

*No Justification for Departure from the Provisional Equidistance Line*

294. Guyana maintains that there is no justification admissible under Article 15 of the Convention for departing from the provisional equidistance line in Suriname’s favour, and notes that Suriname has never claimed that it has an historic title to any maritime

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<sup>332</sup> Guyana Memorial, para. 8.26.

<sup>333</sup> Guyana Memorial, para. 8.24.

<sup>334</sup> Guyana Memorial, para. 8.24.

<sup>335</sup> Guyana Memorial, para. 8.28.

territory east of the 10° Line.<sup>336</sup> Guyana disputes that the arrangement made in 1936 between the Parties' colonial predecessors is a special circumstance. Guyana argues that there is very limited judicial authority for the proposition that navigational requirements can be treated as a special circumstance "having so decisive an effect" as that argued for by Suriname<sup>337</sup> and it distinguishes the *Beagle Channel* award on the grounds that the deviation accepted in that case was "relatively unimportant".<sup>338</sup> In the alternative, Guyana argues that navigational factors should not be treated as a special circumstance in the absence of an actual navigational need as opposed to a "purely hypothetical one", as in the western channel of the Corentyne River.<sup>339</sup>

## **B. THE TRIBUNAL'S FINDINGS PERTAINING TO THE DELIMITATION OF THE TERRITORIAL SEA**

295. The Tribunal recalls Article 15 of the Convention, which is based on Article 12 of the 1958 Territorial Sea Convention. Article 15 of the Convention provides that:

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 baselines 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.

296. Thus, Article 15 of the Convention places primacy on the median line as the delimitation line between the territorial seas of opposite or adjacent States.

### *Special Circumstances and Historical Evidence of an Agreement*

297. There is no evidence before the Tribunal to suggest that some form of historic title to the territorial waters in dispute had inured to either Party, nor are there any geographical features such as low-tide elevations or islands that the Tribunal would have to consider in delimiting the territorial sea.

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<sup>336</sup> Guyana Reply, para. 6.23.

<sup>337</sup> Guyana Reply, para. 6.26.

<sup>338</sup> Guyana Reply, para. 6.30, *Beagle Channel*, 17 I.L.M. p. 634, Annex IV, para. 4, XXI R.I.A.A. p. 57.

<sup>339</sup> Guyana Reply, para. 6.33.

298. The question remaining before the Tribunal is whether there are any special circumstances which might justify a departure from the median line approach prescribed by Article 15 of the Convention.
299. As has been recalled above, The Netherlands claimed control over the approaches to the Corentyne River by virtue of the fact that the waters of the River were under its exclusive sovereignty. At the time, an additional motivation for the United Kingdom to accept the claim of The Netherlands was that the burden of administering the maritime area would fall upon Suriname. Although the proposed treaty embodying this agreement was not signed, in large part because of the advent of the Second World War, the parties acted upon it for thirty years and, in their relations, regarded the 10° Line as the proper delimitation line in the territorial sea.
300. There is disagreement between the Parties as to what constitutes a special circumstance, and in particular, whether navigational considerations, such as those cited by Suriname to support the N10°E line in the territorial sea, can constitute a special circumstance.<sup>340</sup> Guyana reasons that the authorities for varying the median line to accommodate special circumstances of navigation are scarce and that where they do exist, for such a variation to take place there must be:

a known navigational channel or an established practice of navigation, and not the situation (as arises in the present case) where the navigational interest identified in 1936 was both hypothetical and recognised to be subject to change, and in respect of which for over 40 years there has been no evidence of any navigational use.<sup>341</sup>

301. In the Commentary accompanying the International Law Commission's ("ILC") proposals concerning the delimitation of the territorial sea, it was said that the presence of a navigable channel could make a boundary based on equidistance inequitable and could indicate the appropriateness of utilising the thalweg as the boundary.<sup>342</sup> This is not the situation in the present case, where the thalweg is to the east of a line based on equidistance and where, indubitably, a binding agreement between the Parties places the boundary in the river on the western bank. Moreover, the equidistance line is to the east

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<sup>340</sup> Guyana Reply, paras. 1.6, 3.51-3.53; Suriname Counter-Memorial, paras. 3.32-3.33, 6.51-6.53

<sup>341</sup> Guyana Reply, para. 6.30.

<sup>342</sup> YBILC, 1952, Vol. II, Doc.A/CN.4/53.

of the N10°E line. The ILC Commentary is instructive, however, in that it broadly indicates that navigational interests may constitute special circumstances.<sup>343</sup>

302. International courts and tribunals are not constrained by a finite list of special circumstances. The arbitral tribunal in the *UK – French Continental Shelf* arbitration took the approach that the notion of special circumstances generally refers to equitable considerations rather than a notion of defined or limited categories of circumstances:

The role of the ‘special circumstances’ condition in Article 6 is to ensure an equitable delimitation; and the combined ‘equidistance-special circumstances rule’, in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles. In addition, Article 6 neither defines ‘special circumstances’ nor lays down the criterion by which it is to be assessed whether any given circumstances justify a boundary line other than the equidistance line.<sup>344</sup>

303. The ICJ has followed a similar approach in its jurisprudence. The Court in the *Libya/Malta* case found that there is “assuredly no closed list of considerations”.<sup>345</sup> Furthermore, in the *Jan Mayen* case, after having found that it was appropriate “to begin the process of delimitation by a median line provisionally drawn”,<sup>346</sup> the ICJ stated that it was “now called upon to examine *every particular factor* of the case which might suggest an adjustment or shifting of [that] line” [emphasis added].<sup>347</sup> The Court continued by stating that an adjudicative body called upon to effect a delimitation of a maritime boundary “will consult not only ‘the circumstances of the case’ but also previous decided cases and the practice of States”,<sup>348</sup> and will be mindful of the need to achieve “consistency and a degree of predictability”.<sup>349</sup> The Tribunal agrees that special

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<sup>343</sup> See also *ibid.*, Doc. A/CN.4/61/Add.1/Annex.

<sup>344</sup> *UK – French Continental Shelf*, 54 I.L.R. p. 5 (1979), para. 70.

<sup>345</sup> *Libya/Malta*, Judgment, I.C.J. Reports 1985, p. 13, at p. 40, para. 48. However, it should be noted that that statement was limited; the Court found in that case that “only [considerations] that are pertinent to the institution of the continental shelf as it has developed within the law, and to the application of equitable principles to its delimitation, will qualify for inclusion.”

<sup>346</sup> *Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at para. 53.

<sup>347</sup> *Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at para. 54.

<sup>348</sup> *Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at para. 58.

<sup>349</sup> The Court in *Jan Mayen* (I.C.J. Reports 1993, p. 38, at para. 58) quoting the *Libya/Malta* Judgment (I.C.J. Reports 1985, p. 39, at para. 45).

circumstances that may affect a delimitation are to be assessed on a case-by-case basis, with reference to international jurisprudence and State practice.

304. Navigational interests have been found to constitute such special circumstances. Indeed, at the first Geneva Conference on the Law of the Sea, Commander Kennedy expressed the view that a special circumstance may consist in “the presence of a navigable channel.”<sup>350</sup> Arbitral tribunals subsequently adhered to this view, notably in the *Beagle Channel* arbitration. The tribunal in that case stated that it had been guided:

in particular by mixed factors of appurtenance, coastal configuration, equidistance, and also of convenience, navigability, and the desirability of enabling each Party so far as possible to navigate in its own waters. None of this has resulted in much deviation from the strict median line, except ... near Gable Island where the habitually used navigable track has been followed.<sup>351</sup>

305. Guyana attempted to limit the relevance of the finding of the tribunal in that case. Guyana argued that there is no habitual use of the western channel, that the deviation from the median line would not be minor, and that there are no islands in the territorial sea of the Parties.<sup>352</sup> The Tribunal does not agree with Guyana’s submission on the significance of the *Beagle Channel* award. The *Beagle Channel* tribunal’s statement that there was little deviation from the strict median line was merely descriptive; it was not prescribing that any deviation from the median line based on navigational concerns need be minor. On the contrary, the tribunal’s finding prescribes that factors such as “convenience, navigability, and the desirability of enabling each Party *so far as possible* to navigate in its own waters” [emphasis added], be taken into account.<sup>353</sup>

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<sup>350</sup> Proceedings of the Geneva Conference on the Law of the Sea, Thirty-second meeting, 9 April 1958, in *United Nations Conferences on the Law of the Sea: Official Records* (Buffalo: Hein, 1980), p. 93.

<sup>351</sup> *Beagle Channel*, 17 I.L.M. p. 634, at p. 673, para. 110 (1978).

<sup>352</sup> Guyana Reply, paras. 6.29-6.30.

<sup>353</sup> The arbitral tribunal in the *UK – French Continental Shelf* arbitration similarly considered the navigational, defence and security interests of both parties in its delimitation (54 I.L.R. p. 5, at para. 188 (1979)). Those considerations included defence plans, sea rescue, control of navigation, and responsibility for lights and buoys (para. 163). Although the arbitral tribunal considered those interests, it found that they did not exercise “a decisive influence on the delimitation of the boundary” in that case due to the “very particular character of the English Channel as a major route of international maritime navigation serving ports outside the territories of either of the Parties” (para. 188). However, the tribunal did find that even in that case, they could “support and strengthen ... any conclusions that are already indicated by the geographical, political and legal circumstances of the region” (para. 188).

306. The Tribunal concludes that special circumstances of navigation may justify deviation from the median line, and that the record amply supports the conclusion that the predecessors of the Parties agreed upon a N10°E delimitation line for the reason that all of the Corentyne River was to be Suriname's territory and that the 10° Line provided appropriate access through Suriname's territorial sea to the western channel of the Corentyne River. Contrary to Guyana's assessment above, Suriname has presented evidence of navigation in the western channel, albeit of small local craft, rather than large ocean-going vessels. The fact is that there is an "established practice of navigation"<sup>354</sup> in the western channel, not only a hypothetical one. Furthermore, the Tribunal must take account of Guyana's own admissions that there was recognition of a N10°E line for 3 nm:

from the late 1930s to the late 1950s – when a 'navigation channel' was thought to be a 'possibility', it was understood by both colonial powers to extend no farther than 3 nm from the Guyana coast. Thus, even if such a channel had existed, there is no basis for treating it as a special circumstance affecting maritime delimitation beyond 3 nm, let alone for a distance of 200 nm;<sup>355</sup> and,

To the extent that there ever was any agreement in relation to a 10-degree line, it was, in any event, limited to a distance of no more than 3 nautical miles. At no point during which United Kingdom and the Dutch appeared to have followed the line did the territorial sea ever exceed 3 miles. The 10-degree line was rejected by the United Kingdom in the early 1960s, well before the extension of the breadth of the territorial sea to 12 nautical miles by Guyana in 1977 and by Suriname in 1978. There are no grounds for now claiming that a 10-degree line should automatically extend 12 nautical miles as a result of a change in the law.<sup>356</sup>

307. The Tribunal holds that the 10° Line is established between the Parties from the starting point to the 3 nm limit. As the Tribunal accepts the 10° Line to the 3 nm limit, it also accepts the 1936 Point/Point 61 as a reference point for drawing the maritime delimitation line. Indeed, the Tribunal agrees with Suriname that the 1936 Point/Point 61 is inextricably linked to the Parties' agreement on a maritime boundary following the 10° Line.<sup>357</sup>

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<sup>354</sup> Guyana Reply, para. 6.30.

<sup>355</sup> Guyana Reply, para. 3.53.

<sup>356</sup> Transcript, p. 344.

<sup>357</sup> Suriname Preliminary Objections, para. 5.7.

308. An additional source of disagreement between the Parties has been the question of how to use the 1936 Point/Point 61 to determine the starting point of the maritime boundary. Guyana argued that the proper starting point was on the low water line at the shortest distance from the 1936 Point/Point 61,<sup>358</sup> a proposition disputed by Suriname.<sup>359</sup> As the 1936 Point/Point 61 was the reference point for the 10° Line which the Tribunal has accepted up to the 3 nm limit, the Tribunal finds that the starting point of the boundary (“Point 1”) is the intersection of the low water line of the west bank of the Corentyne River and the geodetic line of N10°E which passes through Marker “B”, a marker placed by the 1936 Mixed Boundary Commission 220 metres distant on an azimuth of 190° from Marker “A”, also known as the 1936 Point/Point 61. The Tribunal recalls that Suriname argued that it does not have jurisdiction to determine any question relating to the land boundary between the Parties.<sup>360</sup> The Tribunal’s findings have no consequence for any land boundary that might exist between the Parties, and therefore, in light of Suriname’s statement at the hearing discussed in Chapter IV,<sup>361</sup> this jurisdictional objection does not arise.
309. The Tribunal also recalls that the Parties were unable to agree on the coordinates of Marker “B”. The Tribunal Hydrographer requested, on 20 December 2006, “that the Parties provide the position of Marker ‘B’.”<sup>362</sup> In response, Guyana provided a set of WGS-84 coordinates which Suriname disputed,<sup>363</sup> urging the Tribunal to refer to the astronomical coordinates previously used by both Parties.<sup>364</sup> The Hydrographer therefore made a site visit to the location of Marker “B”, and determined its WGS-84 coordinates to be 5° 59’ 46.21”N, 57° 08’ 50.48”W.<sup>365</sup> The Parties accepted these coordinates as the location of Marker “B” and so does the Tribunal.

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<sup>358</sup> Transcript, pp. 179-180.

<sup>359</sup> Transcript, p. 691.

<sup>360</sup> Suriname Preliminary Objections, para. 4.14.

<sup>361</sup> “If ... there is indeed an agreed boundary in the territorial sea ... then the terminus of the maritime boundary provides a perfectly adequate starting point, and every issue that this Tribunal would have to decide would be governed by the provisions of the Law of the Sea Convention.” (Transcript, pp. 795-796)

<sup>362</sup> Written Question to the Parties from the Tribunal Hydrographer, 20 December 2006.

<sup>363</sup> Letter from Guyana to the Tribunal, 10 January 2007.

<sup>364</sup> Letter from Suriname to the Tribunal, 12 January 2007.

<sup>365</sup> Tribunal Hydrographer Corrected Report on Site Visit, 30 July 2007, para. 42.

*The Boundary Between 3 and 12 nm*

310. When Guyana and Suriname, as independent nations, extended the breadth of their territorial seas from 3 to 12 nm (in 1977 and 1978, respectively), neither addressed directly the question of the continuation of the 10° Line from the previous to the current limit of their territorial seas. That question appeared to have been subsumed within the wider question of the delimitation of the continental shelf and exclusive economic zone and the difference in approach between the Parties on this question.
311. Rather surprisingly, the question of whether and how, in the absence of an agreement to do so, a delimitation should be extended from the previous limit of territorial seas to a newly established limit, does not appear to have engaged the attention of States, courts, or commentators. The Tribunal agrees with Guyana that the *Guinea-Bissau – Senegal* case cited by Suriname does not support the view that there should be automatic extension of the territorial sea from the previously accepted limit of 3 nm, to the current limit of 12 nm. Indeed, the difference between this case and *Guinea-Bissau – Senegal* is that there was a written agreement between the parties in the latter case, given effect by the tribunal in that case. No authority was cited to the Tribunal of a comparable situation in any other case, although Suriname states:

The object and purpose of choosing the 10° Line was that navigation entering the river would be regulated by The Netherlands/Suriname and would not be subject to regulation by the United Kingdom/Guyana. Thus, the question is not just a technical issue of intertemporal law regarding the breadth of the territorial sea, but rather one of applying the contemporary law of the sea in light of the object and purpose of the agreement on the 10° Line. In this connection, an examination of the broad unilateral regulatory and enforcement powers of the coastal state with respect to navigation in the territorial sea in the 1982 Convention, as set forth in articles 19, 21, 22, 23, 25, 211(4) and 220(2)-(6), suggests that the application of the 10° Line to the full 12-nautical-mile territorial sea is required in order to achieve the object and purpose of the agreement.<sup>366</sup>

312. In the above submission, Suriname raises the conduct of the Parties over some thirty years to the level of a perfected instrument, a notion that the Tribunal rejects. Uncompleted treaties, such as the 1939 or 1949 British draft treaty, do not create legal rights or obligations merely because they had been under consideration. This point was

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<sup>366</sup> Suriname Rejoinder, para. 3.75.

decided by the ICJ in the *Sovereignty over certain Frontier Lands* case.<sup>367</sup> There, the Court considered efforts in 1889 and 1892 “by the two States to achieve a regular and continuous frontier between them” which ended in the drafting of a convention, but not in its ratification. The Court concluded that “[t]he unratified Convention of 1892 did not, of course, create any legal rights or obligations”.<sup>368</sup>

313. However, the Tribunal accepts that it must apply the Convention to the entirety of the case before it, and Article 15 allows the Tribunal to consider historic title and special circumstances as reasons for varying the median line in conducting a delimitation of the territorial sea. The Tribunal is also persuaded that coastal States need to exercise regulatory and enforcement powers with respect to navigation in the territorial sea under the Articles cited by Suriname. These regulatory enforcement powers extend to both Parties, although Suriname’s control over the approaches to the Corentyne River further justify the line the Tribunal has taken in delimiting the territorial sea along the N10°E azimuth to the 3 nm limit.
314. An automatic extension of the line, as it proceeds seaward, would however rapidly cease to have relevance to the special circumstances of navigation and control that brought it about.
315. Beyond the 3 nm limit to the 12 nm limit it is necessary to find a principled method by which the 10° Line may be connected to the single maritime boundary line determined by the Tribunal to delimit the continental shelves and exclusive economic zones of the Parties.
316. In a general sense, the extension of the territorial sea from its former limits to a distance of 12 nm from territorial sea baselines recognised by the Convention favours greater coastal State control over navigation, pollution, customs, and other coastal State laws, including its general criminal law. Such was recognised, for example, in the United States when a report was issued by the 105<sup>th</sup> Congress on the Coast Guard Authorization Act of 1997. Noting that Presidential Proclamation 5928 of December

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<sup>367</sup> *Case concerning Sovereignty over certain Frontier Land (Belgium v. Netherlands)*, Judgment, I.C.J. Reports 1959, p. 209.

<sup>368</sup> *Ibid.* at p. 229.

27, 1988, had defined the territorial sea of the United States as extending to 12 nm, the Report stated:

This will enable the Coast Guard to establish vessel operating requirements including vessel traffic systems, for all U.S. and foreign vessels within the 12-mile territorial sea. This will also clarify the area in which the Captain of the Port can direct a vessel to operate or anchor, establish safety zones to protect the navigable waters, protect the nation from terrorism, and investigate vessel casualties. In addition, the Coast Guard will be able to keep out of the expanded territorial sea vessels with a history of accidents, pollution incidents, or serious repair problems and vessels that discharge oil or hazardous substances or that are improperly manned. Currently, these substandard vessels may approach as close as three nautical miles to our coast before they can be instructed not to enter our waters. This additional area of legislative jurisdiction will enable the Coast Guard, through its Port State Control Program, to deal more effectively with substandard foreign flag vessels seeking to enter our ports.<sup>369</sup>

317. In an age of increased security and safety concerns regarding international boundaries, certainly navigational concerns have been imbued with greater significance. As cited above, similar arguments were advanced by Suriname in support of its view that the 10° Line had been accepted as the boundary between the two territories at a time when the territorial sea limit had been recognised by both The Netherlands and the United Kingdom as extending to 3 nm, and that the previous limit should automatically be regarded as extending on the same azimuth to the currently recognised territorial sea limit of 12 nm.<sup>370</sup> In its view, the logic behind the choice of a 10° Line in place of an equidistance line applied as strongly to the currently claimed and permissible 12 nm limits in the territorial seas.
318. Suriname also argued that not extending the 10° Line beyond the 3 nm limit would cause Guyana's territorial sea to "wrap-around" the northern limit of Suriname's territorial sea, thus defeating what it claimed was the "object and purpose" of the choice of the 10° Line in the first place, when the areas beyond were regarded by the international law of the time as high seas. In that connection, appeal was also made by Suriname to the inter-temporal law principle, applying it in this case to submit that

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<sup>369</sup> United States Congress, From 1st Session, Report of the 105th Congress, 105-236, Coast Guard Authorization Act of 1997.

<sup>370</sup> It should be noted that Guyana ratified the United Nations Convention on the Law of the Sea, 1982, on 31 July 1993 and has declared a 12 nm territorial sea and a contiguous zone extending to 24 nm. Suriname ratified the Convention on 9 July 1998 and has declared a 12 nm territorial sea. It has not declared a contiguous zone.

references to the territorial sea in the earlier instruments and instances of conduct should be regarded as references to the “limits claimed by the parties at any given time in accordance with international law.”<sup>371</sup> The Tribunal, however, cannot accept this submission in the present case, where the issue turns on conduct of the Parties justifying an adjustment based on special circumstances. The portion of the decision in the *Aegean Sea* case quoted by Suriname to support its submission,<sup>372</sup> where the ICJ regarded the definition of “territory”, appearing in an instrument dated 1931, as now including the continental shelf,<sup>373</sup> is not relevant.

319. The evidence in the case of the navigational and other interests of Suriname extending beyond 3 nm is, however, of some consequence. These considerations appear to have been present in the mind of British government experts, such as Commander Kennedy and Mr. Scarlett, who raised the new issue of the contiguous zone in internal discussions of the boundary.<sup>374</sup> It appears to have been a result of these discussions that the 1961 British draft treaty submitted to The Netherlands proposed that the N10°E line extend to 6 nm before turning to other directions beyond that point.
320. It is to be noted that, at the time of the discussions leading up to the United Kingdom’s draft treaty of 1961, there was no stated outer limit to the territorial sea contained in the 1958 Territorial Sea Convention. The limit of 12 nm established for the outer limit of the contiguous zone, however, effectively put a cap on any claims to territorial waters beyond that limit, in which event the claiming State would forego a claim to a contiguous zone.
321. It should also be noted that Article 24 of the 1958 Territorial Sea Convention specifies a median line in the delimitation of overlapping adjacent or opposite contiguous zones, in the absence of agreement, without regard to special circumstances. This provision does not appear in Article 33 of the Convention which is modelled on Article 24 of the 1958 Territorial Sea Convention.

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<sup>371</sup> Transcript, p. 850.

<sup>372</sup> Transcript, p. 851.

<sup>373</sup> *Aegean Sea*, Judgment, I.C.J. Reports 1978, p. 3, at pp. 35-36, para. 86.

<sup>374</sup> Commander Kennedy to Mr. Scarlett, 15 January 1959, Guyana Memorial, Annex 24; Mr. Scarlett to Commander Kennedy, 11 February 1959, Guyana Memorial, Annex 25.

322. Much attention was devoted at the hearing to the problem of the so-called wrap-around, or cut-off, effect of a delimitation of the territorial seas extending only to 3 nm. Such a delimitation line along the N10°E azimuth would allow Guyana's territorial sea to cut across the approaches to the river and thus defeat the purpose of that line to protect Suriname's navigational interests. A solution suggested by Suriname, based on the angle bisector method of delimitation, would be to extend the 10° Line to 12 nm and thereafter to proceed on a direction line of N17°E, the effect of which would be to divide equally the area of overlap. However, Suriname did not urge this solution on the Tribunal since its central argument was to promote a single maritime boundary on an azimuth of N10°E to the 200 nm limit. In its view, the N17°E line would have to be adjusted by reason of geographical circumstances and equitable criteria to a N10°E line for a distance of 200 nm. This line would, of course, remove the overlap altogether.
323. The Tribunal considers that, in determining a delimitation line dividing the Parties' territorial seas from the point at which the N10°E line ends at 3 nm to the 12 nm limit, a special circumstance is constituted by the very need to determine such a line from a point at sea fixed by historical arrangements of an unusual nature. Bearing this special circumstance in mind, the Tribunal arrives at a line continuing from the seaward terminus of the N10°E line at 3 nm, and drawn diagonally by the shortest distance to meet the line adopted later in this Award to delimit the Parties' continental shelf and exclusive economic zone.
324. In the judgment of the Tribunal, this line is in conformity with the relevant provisions of the Convention. It avoids a sudden crossing of the area of access to the Corentyne River, and interposes a gradual transition from the 3 nm to the 12 nm point. It also ensures that the line is convenient for navigational purposes.
325. The Tribunal therefore concludes that the territorial sea delimitation must be drawn from the point at which the N10°E line intersects the 3 nm limit to the point at which the equidistance line drawn by the Tribunal in Chapter VI of this Award intersects the 12 nm limit.
326. For illustrative purposes only, Map 2 at the end of this Chapter shows the course of the delimitation line through the territorial sea.

327. The verbal description of the international maritime boundary through the territorial sea is as follows. The delimitation line commences at Point 1, being the intersection of the low water line of the west bank of the Corentyne River and the geodetic line of N10°E which passes through Marker “B” established in 1936. Marker “B” has a WGS-84 position of 5° 59' 46.21"N, 57° 08' 50.48"W.<sup>375</sup>

328. From Point 1, the delimitation line proceeds along geodetic lines to the following points in the order given:

Point 2	6° 08.33'N,	57° 07.33'W
Point 3	6° 13.47'N,	56° 59.87'W.

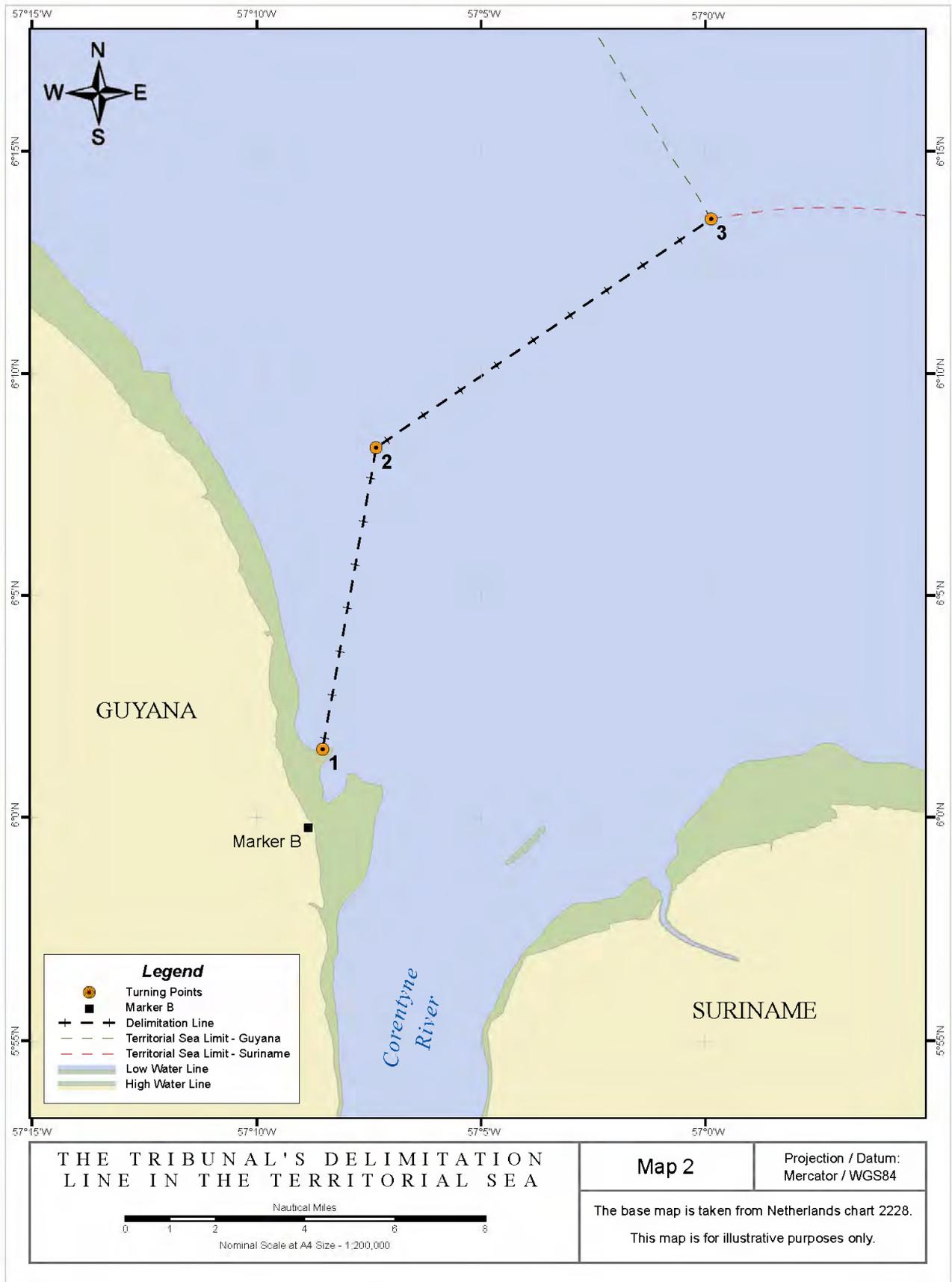
Geographic coordinates refer to the World Geodetic System 1984 (WGS-84).

329. From Point 3 onward, the delimitation line continues as described in Chapter VI.

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<sup>375</sup> Tribunal Hydrographer Corrected Report on Site Visit, 30 July 2007, para. 42.

Map 2



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## CHAPTER VI - DELIMITATION OF THE CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONES

330. Both the Republic of Guyana and the Republic of Suriname are parties to the United Nations Convention on the Law of the Sea, which they ratified on 31 July 1996 and 9 July 1998 respectively. They are therefore bound by the relevant provisions of the Convention and especially by the Articles concerning the delimitation of the exclusive economic zone and the continental shelf between States.<sup>376</sup> Neither Guyana nor Suriname has made declarations under Article 298 excluding maritime boundary disputes from the compulsory procedures specified in Part XV of the Convention.

331. These Articles provide that the delimitation of the continental shelf and the exclusive economic zone 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”.<sup>377</sup>

332. Emphasis is placed in both of these Articles on the equitable result.<sup>378</sup> The Court in the *Tunisia/Libya* case made this quite clear. It stated that:

In the new text (i.e. the official draft convention before the Conference the text of which has remained unchanged), any indication of a specific criterion which could give guidance to the interested States in their effort to achieve an equitable solution has been excluded. Emphasis is placed on the equitable solution which has to be achieved. The principles and rules applicable to the delimitation of the continental shelf areas are those which are appropriate to bring about an equitable result.<sup>379</sup>

333. The tribunal in the *Barbados/Trinidad and Tobago* arbitration has cast some useful light on the significance of this text. It remarked that:

This apparently simple and imprecise formula allows in fact for a broad consideration of the legal rules embodied in treaties and customary law as pertinent to the delimitation between the parties, and allows as well for the consideration of

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<sup>376</sup> Articles 74 and 83.

<sup>377</sup> Articles 74(1) and 83(1).

<sup>378</sup> *Eritrea/Yemen*, Award of the Arbitral Tribunal in the Second Stage of the Proceedings (Maritime Delimitation), 119 I.L.R. p. 417, at para. 116 (1999), *The Eritrea-Yemen Arbitration Awards of 1998 & 1999* (Permanent Court of Arbitration Award Series 2005), online: <<http://www.pca-cpa.org>> (“*Eritrea/Yemen II*”).

<sup>379</sup> *Tunisia/Libya*, Judgment, I.C.J. Reports 1982, p. 18, at para. 50.

general principles of international law and the contributions that the decisions of international courts and tribunals and learned writers have made to the understanding and interpretation of this body of legal rules.<sup>380</sup>

334. It is particularly important to note that this Tribunal has to determine a single maritime boundary delimiting both the continental shelf and the exclusive economic zone. These regimes are separate, but to avoid the difficult practical problems that could arise were one Party to have rights over the water column and the other rights over the seabed and subsoil below that water column, a single maritime boundary can be drawn. It is generally acknowledged that the concept of the single maritime boundary does not have its origin in the Convention but is squarely based on State practice and the law as developed by international courts and tribunals.<sup>381</sup> That is why the Tribunal has to be guided by the case law as developed by international courts and tribunals in this matter. This Tribunal has also taken into account the dictum of the *Barbados/Trinidad and Tobago* tribunal's award in drawing a single maritime boundary where it states:

Within those constraints imposed by law, the Tribunal considers that it has both the right and the duty to exercise judicial discretion in order to achieve an equitable result. There will rarely, if ever, be a single line that is uniquely equitable. The Tribunal must exercise its judgment in order to decide upon a line that is, in its view, both equitable and as practically satisfactory as possible, while at the same time in keeping with the requirement of achieving a stable legal outcome. Certainty, equity, and stability are thus integral parts of the process of delimitation.<sup>382</sup>

335. In the course of the last two decades international courts and tribunals dealing with disputes concerning the delimitation of the continental shelf and the exclusive economic zone have come to embrace a clear role for equidistance. The process of delimitation is divided into two stages. First the court or tribunal posits a provisional equidistance line which may then be adjusted to reflect special or relevant circumstances. It was in the *Jan Mayen* case that the ICJ clearly espoused this approach when it stated:

Thus, in respect of the continental shelf boundary in the present case, even if it were appropriate to apply, not Article 6 of the 1958 Convention, but customary law concerning the continental shelf as developed in the decided cases, it is in accord

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<sup>380</sup> *Barbados/Trinidad and Tobago*, 45 I.L.M. p. 798 (2006), at para. 222, online: <<http://www.pca-cpa.org>>.

<sup>381</sup> See *Qatar/Bahrain*, Merits, Judgment, I.C.J. Reports 2001, p. 40, at para. 173; and *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303, at para. 286.

<sup>382</sup> *Barbados/Trinidad and Tobago*, 45 I.L.M. p. 798 (2006), at para. 244, online: <<http://www.pca-cpa.org>>.

with precedents to begin with the median line as a provisional line and then to ask whether “special circumstances” require any adjustment or shifting of that line.<sup>383</sup>

336. With respect to the boundary of the fishery zone, it went on to add:

It thus appears that, both for the continental shelf and for the fishery zones in this case, it is proper to begin the process of delimitation by a median line provisionally drawn.<sup>384</sup>

337. The same approach was followed by the ICJ in the *Qatar/Bahrain* case. It expressly stated that

for the delimitation of the maritime zones beyond the 12-mile zone (i.e. the exclusive economic zone and the continental shelf) it will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line.<sup>385</sup>

338. It is important to note that recent decisions indicate that the presumption in favour of equidistance, established in the case law relating to States with opposite coasts, also applies in the case of States with adjacent coasts. In the *Cameroon/Nigeria* case, the ICJ applied this method to determine a lateral boundary between States with adjacent coasts.<sup>386</sup> It also should be recalled that this delimitation process was used in the northern sector of the boundary between Qatar and Bahrain “where the coasts of the two States are no longer opposite to each other but are rather comparable to adjacent coasts”.<sup>387</sup>

339. Arbitral tribunals have also adhered to this approach. In the maritime boundary dispute between Newfoundland and Labrador and Nova Scotia, the Tribunal stated:

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<sup>383</sup> *Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at para. 51.

<sup>384</sup> *Ibid.*, at para. 53.

<sup>385</sup> *Qatar/Bahrain*, Merits, Judgment, I.C.J. Reports 2001, p. 40, at para. 230.

<sup>386</sup> *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303, at para. 290.

<sup>387</sup> See *Qatar/Bahrain*, Merits, Judgment, I.C.J. Reports 2001, p. 40, at para. 170.

In the context of opposite coasts and latterly adjacent coasts as well, it has become normal to begin by considering the equidistance line and possible adjustments and to adopt some other method of delimitation only if the circumstances justify it.<sup>388</sup>

340. The *Barbados/Trinidad and Tobago* tribunal described a two-step approach to delimitation:

The determination of the line of delimitation thus normally follows a two-step approach. First, a provisional line of equidistance is posited as a hypothesis and a practical starting point. While a convenient starting point, equidistance alone will in many circumstances not ensure an equitable result in the light of the peculiarities of each specific case. The second step accordingly requires the examination of this provisional line in the light of relevant circumstances, which are case specific, so as to determine whether it is necessary to adjust the provisional equidistance line in order to achieve an equitable result. This approach is usually referred to as the “equidistance/relevant circumstances” principle. Certainty is thus combined with the need for an equitable result.<sup>389</sup>

341. As noted above, that tribunal went on to add “[c]ertainty, equity, and stability are thus integral parts of the process of delimitation”<sup>390</sup> – a proposition which accords with the view of this Tribunal.

342. Articles 74 and 83 of the Convention require that the Tribunal achieve an “equitable” solution. The case law of the International Court of Justice and arbitral jurisprudence as well as State practice are at one in holding that the delimitation process should, in appropriate cases, begin by positing a provisional equidistance line which may be adjusted in the light of relevant circumstances in order to achieve an equitable solution. The Tribunal will follow this method in the present case.

#### **A. RELEVANT COASTS**

343. The Tribunal will now turn its attention to the coasts of the Parties which are relevant to this maritime boundary delimitation – the relevant coasts “from which will be

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<sup>388</sup> Award of the Tribunal in the Second Phase, 26 March 2002, para. 2.28. See also *Eritrea/Yemen II*, 119 I.L.R. p. 417 (1999), *The Eritrea-Yemen Arbitration Awards of 1998 & 1999* (Permanent Court of Arbitration Award Series 2005), online: <<http://www.pca-cpa.org>>.

<sup>389</sup> *Barbados/Trinidad and Tobago*, 45 I.L.M. p. 798 (2006), at para. 242, online: <<http://www.pca-cpa.org>>. The *Barbados/Trinidad and Tobago* tribunal refers to the ICJ decisions in *Cameroon/Nigeria* (Judgment, I.C.J. Reports 2002, p. 303) and *Qatar/Bahrain* (Judgment, I.C.J. Reports 2001, p. 40), as well as Prosper Weil’s text *Perspectives du droit de la délimitation maritime* (p. 223 (1988)), in support of its two-step approach.

<sup>390</sup> *Barbados/Trinidad and Tobago*, 45 I.L.M. p. 798 (2006), at para. 244, online: <<http://www.pca-cpa.org>>.

determined the location of the baselines and the pertinent basepoints which enable the equidistance line to be measured”.<sup>391</sup>

### *The Parties’ Positions*

344. In its Memorial, Guyana contends that the determination of the relevant coasts involved the identification of the coastal fronts that generate legal entitlement to the maritime area in dispute based on the principle that “the land dominates the sea” citing the *North Sea Continental Shelf* cases,<sup>392</sup> the *Aegean Sea* case,<sup>393</sup> and *Qatar/Bahrain*.<sup>394</sup>

345. Guyana considered:

the relevant coastline for each Party to be the length of coast that lies between the outermost points along the coastal baseline that control the direction of the provisional equidistance line to a distance of 200 nm. These coastal basepoints define the limits of each Party’s area of legal entitlement. No other portions of the coastline beyond either outer basepoints are relevant because they do not generate legal entitlement to any maritime areas subject to delimitation by the Tribunal.<sup>395</sup>

346. Guyana explained that:

[its] relevant coast – the portion responsible for ‘generating the complete course of the median line’ – lies between Point 61 (its easternmost basepoint) and Devonshire Castle Flats (its westernmost basepoint). ... Guyana and Suriname are in agreement on the locations of these outer basepoints, as confirmed by Figure 31 in the Counter-Memorial. The distance between them is 215 km. In like manner, Suriname’s relevant coast extends from Point 61 in the west to the easternmost point along the Suriname coast that controls the direction of the provisional equidistance line. In Guyana’s view, this point is located on Hermina Bank at 55° 45’ 55.1”W; 6° 0’ 39.8”N. Suriname refers to this basepoint as S13. Suriname’s coastline between Point 61 and basepoint S13 ... measures 153 km. The ratio of the lengths of the Parties’ relevant coastlines is thus 1.4 to 1 (215 km to 153 km) in Guyana’s favour.<sup>396</sup>

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<sup>391</sup> *Qatar/Bahrain*, Judgment, I.C.J. Reports 2001, p. 40, at para. 178.

<sup>392</sup> *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, at para. 96.

<sup>393</sup> *Aegean Sea*, Judgment, I.C.J. Reports 1978, p. 3, at para. 86.

<sup>394</sup> Guyana Memorial, para. 8.35; *Qatar/Bahrain*, Merits, Judgment, I.C.J. Reports 2001, p. 40, at para. 185.

<sup>395</sup> Guyana Reply, para. 3.17.

<sup>396</sup> Guyana Reply, para. 3.18.

347. Guyana's contention is based on the dictum in the *Jan Mayen* case which treated certain sections of the coast as relevant, "in view of their role in generating the complete course of the median line provisionally drawn which is under examination".<sup>397</sup>

348. Suriname has argued that, since the area being delimited in the *Jan Mayen* case was the area between two opposite coasts, it was of little use in a case where the adjacent relevant coasts have somewhat different general directions and thus form an angle where they meet.<sup>398</sup>

349. In the view of Suriname:

the relevant coasts are coasts that face onto or abut the area to be delimited. And this means that the relevant coasts are those that extend to a point where the coasts face away from the area to be delimited. On the Suriname side, the relevant coast extends from the Corentyne River to the Warrapa Bank. From there on, the coasts turn southeasterly, and since it no longer faces or abuts onto the area to be delimited, it is no longer relevant.<sup>399</sup>

350. Suriname continues:

On the Guyana side, the relevant coast extends from the Corentyne River to the Essequibo River, and ... after a short turn northwards, the coast returns to [a] northwesterly trend, but from Devonshire Castle Flats on, it no longer faces or abuts into the area to be delimited.<sup>400</sup>

351. This criterion for determining the relevant coasts finds its basis in the *Tunisia/Libya* Judgment where the Court observed that:

[i]t is clear from the map that there comes a point on the coast of each of the two Parties beyond which the coast in question no longer has a relationship with the coast of the other Party relevant for submarine delimitation. The sea-bed areas off the coast beyond that point cannot therefore constitute an area of overlap of the extensions of the territories of the two Parties, and are therefore not relevant to the delimitation.<sup>401</sup>

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<sup>397</sup> *Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at para. 67.

<sup>398</sup> Suriname Rejoinder, para. 3.164.

<sup>399</sup> Transcript, p. 920.

<sup>400</sup> Transcript, pp. 920-921.

<sup>401</sup> *Tunisia/Libya*, Judgment, I.C.J. Reports 1982, p. 18, at para. 75.

*The Tribunal's Findings*

352. As the Tribunal proposes to begin this delimitation process with a provisional equidistance line, it seems logical and appropriate to treat as relevant the coasts of the Parties which generate “the complete course” of the provisional equidistance line.<sup>402</sup> “The equidistance line is the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured”,<sup>403</sup> a definition which is itself based on article 15 of the 1982 Convention. In the view of the Tribunal, the relevant coast of Guyana extends from Devonshire Castle Flats to a point just seaward of Marker “B”, and the relevant coast for Suriname extends from Bluff Point, the point on the east bank of the Corentyne River used in 1936 as the mouth of the river, to a point on Vissers Bank.

**B. COASTAL GEOGRAPHY**

353. As noted above, both Parties have requested the Tribunal, if it finds that it has jurisdiction, to determine a single maritime boundary delimiting the territorial seas, exclusive economic zones and continental shelves of Guyana and Suriname.<sup>404</sup> The Tribunal was not invited to delimit maritime areas beyond 200 miles from the baselines of Guyana and Suriname. Both Parties reserved their rights under Article 76(4) of the Convention. Thus in the present case the Tribunal is not concerned with matters concerning the delimitation of the outer continental shelf of the Parties.

354. It should be pointed out that the Parties themselves have agreed that geological or geophysical factors are of no relevance in this case.<sup>405</sup>

355. The Chamber of the ICJ in the *Gulf of Maine* case was the first international judicial body to be faced with the delimitation of a single maritime boundary – establishing a

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<sup>402</sup> *Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at para. 67; *Arbitration between Newfoundland and Labrador and Nova Scotia*, Second Phase (2002), at para. 4.20 (“*Newfoundland and Labrador and Nova Scotia*”).

<sup>403</sup> *Qatar/Bahrain*, Merits, Judgment, I.C.J. Reports 2001, p. 40, at para. 177.

<sup>404</sup> Guyana Memorial, p. 135; Suriname Counter-Memorial, Chapter 6.

<sup>405</sup> Guyana Memorial, para. 7.35; Suriname Counter-Memorial, para. 2.6.

line which in that case divided both the exclusive fishing zone and the continental shelf.

The Chamber explained that:

a delimitation which has to apply at one and the same time to the continental shelf and to the superjacent water column can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of these two objects to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them. In that regard, moreover, it can be foreseen that with the gradual adoption by the majority of maritime States of an exclusive economic zone and, consequently, an increasingly general demand for single delimitation, so as to avoid as far as possible the disadvantages inherent in a plurality of separate delimitations, preference will henceforth inevitably be given to criteria that, because of their more neutral character, are best suited for use in a multi-purpose delimitation.<sup>406</sup>

The Chamber proceeded to make clear what was meant by criteria of a “more neutral character”:

it is, accordingly, towards an application to the present case of criteria more especially derived from geography that it feels bound to turn. What is here understood by geography is, of course mainly the geography of the coasts which has primarily a physical aspect, to which may be added, in the second place, a political aspect.<sup>407</sup>

356. Geography, in particular coastal geography, provided the Chamber with a neutral criterion which favoured neither one nor the other of the two realities – the seabed of the continental shelf and the water column of the exclusive economic zone. “The quest for neutral criteria of a geographical character”, as was stated in the *Barbados/Trinidad and Tobago* arbitral award, “prevailed in the end over area-specific criteria such as geomorphological aspects or resource-specific criteria such as the distribution of fish stocks, with a very few exceptions (notably Jan Mayen, ICJ Reports 1993, p. 38)”.<sup>408</sup>

357. Both Parties are in agreement that geography (coastal geography) is of “fundamental importance” in the delimitation of the maritime boundary. In fact Suriname considers that the dispute should be resolved exclusively on the basis of the coastal geography of

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<sup>406</sup> *Gulf of Maine*, Judgment, I.C.J. Reports 1984, p. 246, at para. 194.

<sup>407</sup> *Ibid.*, at para. 195.

<sup>408</sup> *Barbados/Trinidad and Tobago*, 45 I.L.M. p. 798 (2006), at p. 837, para. 228, online: <<http://www.pca-cpa.org>>.

the delimitation area. Guyana relies not only on coastal geography but on history, including the conduct of activities by the Parties.<sup>409</sup>

### C. THE PROVISIONAL EQUIDISTANCE LINE

358. The Tribunal will now begin its examination of the provisional equidistance line to determine whether the line needs to be adjusted or shifted in order to achieve an equitable result. The Tribunal will first consider the arguments of the Parties with respect to the provisional equidistance line.

#### *The Parties' Positions*

359. For its analysis of the provisional equidistance line, Suriname divides the line into three sections. The first section starts from the coast up to the 200 metre isobath. The second section commences shortly after the provisional equidistance line leaves the 200 metre isobath, and the third section starts just as the provisional equidistance line approaches the 200-nautical-mile limit.

360. Suriname, in its Counter-Memorial, argues that:

due to geographical circumstances, the first section of the provisional equidistance line thrust east northeast in front of the mouth of the Corantijn River and continues in a northeasterly direction across the coastal front of Suriname.<sup>410</sup>

...

The cut-off effect is caused by a combination of Suriname's concavity pulling, and Guyana's convex coastline west of the mouth of the Corantijn River pushing, the provisional equidistance line toward and in front of Suriname's coast. ... The intense congregation of Guyana's basepoints just west of the Corantijn River on the convex coast of Guyana direct the provisional equidistance line in segment after segment as it extends into the sea. On the adjacent Suriname coast the controlling basepoints are spread out and indeed are largely absent from Suriname's recessed coast reaching toward the Coppename River. Thus, the coastal configuration of Guyana from the mouth of the Corantijn River west to the Berbice River pushed the first segment of the provisional equidistance line eastward. At the same time, the concave coast of Suriname does not offer any countervailing protuberance, and thus there are no basepoints on Suriname's coast to counter those of Guyana in order to turn the provisional equidistance line away from the front of the coast of

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<sup>409</sup> Guyana Reply, para. 3.1; Suriname Counter-Memorial, para. 2.18.

<sup>410</sup> Suriname Counter-Memorial, para. 6.20.

Suriname. Out as far as the 200-meter depth contour, the relative position of the basepoints on the adjacent coasts continues to direct the provisional equidistance line in this way: the provisional equidistance line continues to be pushed by Guyana's convex coast near the mouth of the Corantijn River and pulled by the concave nature of Suriname's coast toward and in front of the coast of Suriname.<sup>411</sup>

From this Suriname concludes that a line is created "that violates the principle of non-encroachment."<sup>412</sup>

361. The provisional equidistance line changes direction in the second section and then veers towards the north, owing to the fact, according to Suriname, that the eastern headland of Suriname's concavity (Hermina Banks) begins to take effect on the line. Thus, in Suriname's words:

for the first time basepoints on Suriname's coast counter the influence of the basepoints on Guyana's protruding convex coast just west of the mouth of the Corantijn River and turn the provisional equidistance line so that it ceases its swing in front of Suriname's coastal front. While the northward direction of the provisional equidistance line in this second sector might suggest that it is a reasonable line, it is in fact not an equitable delimitation line in this sector since it starts from an eastward point that has been determined by the convex/concave relationship between the neighboring coasts.<sup>413</sup>

362. It noted that the provisional equidistance line "begins in the wrong place too far to the east to mitigate the encroachment that is the result of the first segment of the provisional equidistance line".<sup>414</sup>

363. In the third sector, as the provisional equidistance line approaches the 200 nm limit, Suriname claims that the "basepoints on Guyana's prominent convex coastline west of the Essequibo River cause the provisional equidistance line [to] change direction and veer to the east across Suriname's coastal front" to Suriname's disadvantage.<sup>415</sup>

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<sup>411</sup> Suriname Counter-Memorial, para. 6.21.

<sup>412</sup> Suriname Counter-Memorial, para. 6.27.

<sup>413</sup> Suriname Counter-Memorial, para. 6.22.

<sup>414</sup> Suriname Counter-Memorial, para. 6.28.

<sup>415</sup> Suriname Counter-Memorial, para. 6.23.

364. Suriname concluded that the provisional equidistance line does not produce an equitable delimitation and that it must be adjusted, or another method employed, in order to achieve an equitable delimitation result.<sup>416</sup>

365. Guyana, for its part, responded with its own analysis of the provisional equidistance line. With respect to the first section of the line it agrees that:

it is true that the provisional equidistance line heads out from Point 61 for a very short distance in a direction toward Suriname's coast. But this is not caused by any alleged "convexity" along Guyana's coast. Rather, it is due to the fact that Point 61 is located on Guyana's coast and not in the middle of the Corentyne River. Once the provisional equidistance line encounters the first basepoints along Suriname's coast, it is pushed northward and away from Suriname. Thereafter, the corresponding coastal basepoints on each side of the Corentyne River provide a countervailing effect. Thus, after the first few km the provisional equidistance line is no longer affected by the fact that it starts from a point on Guyana's coast, and it proceeds thereafter without any further effect from its starting point or from any localised convexities on either bank at the mouth of the Corentyne River to the end of its first segment. Accordingly, the first segment of the provisional equidistance line does not produce a cut-off effect on Suriname any more than it produces on Guyana.<sup>417</sup>

366. As to the second section, Guyana agreed with Suriname that this section of the line represented the "first pronounced change in direction of the provisional equidistance line" and that that change was caused "by the fact that the eastern headland of the Suriname concavity (Hermina Bank) begins to take effect on the line".<sup>418</sup> But it argues that Suriname "understates the pronounced effects produced by the headland or convexity at Hermina Bank".<sup>419</sup> In Guyana's view, "the Suriname basepoints on Hermina Bank control the direction of the entire provisional equidistance line in its second section".<sup>420</sup>

367. Guyana argued that the first section of the provisional equidistance line:

follows a relatively straight course for approximately 100 nm. But for the coastal change from concavity to convexity at Hermina Bank, the relatively constant

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<sup>416</sup> Suriname Counter-Memorial, para. 6.30.

<sup>417</sup> Guyana Reply, para.3.45.

<sup>418</sup> Guyana Reply, para. 3.46, citing Suriname Counter-Memorial, para. 6.22.

<sup>419</sup> Guyana Reply, para. 3.46.

<sup>420</sup> Ibid.

course of the equidistance line would likely continue along the same course all the way to the 200 nm EEZ limit.<sup>421</sup>

This coastal change as a consequence “gives Suriname more than 4,000 km<sup>2</sup> at Guyana’s expense.”<sup>422</sup> Guyana considered itself “prejudiced by the purported hypersensitivity of the provisional equidistance line”.<sup>423</sup>

368. In reply to Suriname’s claims that in the third section the provisional equidistance line “veers ‘to the east to Suriname’s disadvantage’ because ‘Guyana’s controlling basepoints are located on the protruding coast west of the Essequibo River’”, Guyana pointed out that its “basepoints at Devonshire Castle Flats are not located on a ‘protruding coast’, but on the main body of the coastline where it changes to a more southeasterly direction”.<sup>424</sup> It stated that “[t]he third segment of the provisional equidistance line cannot credibly be described as ‘inequitable’ to Suriname” and concluded that “*none of the three segments* of the line is in any way inequitable to Suriname”.<sup>425</sup>

#### *The Tribunal’s Findings*

369. The Tribunal will deal first with the following argument submitted by Suriname. Suriname contends that:

the equidistance method does not produce an equitable result when employed in these geographic circumstances. The reason it does not do so is that it responds to incidental coastal features of the geographical situation. In doing so, as it often does in adjacent state situations, it cuts off the projection of the coastal front of one of the states – in this case it cuts off the projection of Suriname’s coastal front. Accordingly, another delimitation method is required to create an equitable solution.<sup>426</sup> [emphasis added]

and has put forward the argument:

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<sup>421</sup> Ibid.

<sup>422</sup> Ibid.

<sup>423</sup> Ibid.

<sup>424</sup> Guyana Reply, para. 3.47.

<sup>425</sup> Ibid.

<sup>426</sup> Suriname Rejoinder, p. 69, para. 3.79.

that when the equidistance method is not suitable in a delimitation between adjacent states, a method that employs coastal fronts and methods such as bisectors of the angle formed by adjacent coastal fronts or perpendiculars to the general direction of the common coastal front will do so.<sup>427</sup>

370. Suriname's preferred method was the bisection of the angle formed by the adjacent coastal fronts of Suriname and Guyana which extends from the coast at N17°E.<sup>428</sup> In support of its argument Suriname cited a number of cases which it claimed illustrated the utility of delimitation methods adopted to give effect to the relationship between neighbouring coastal fronts and thus taking into account the principle of non-encroachment to avoid the cut-off effect. These cases were *Tunisia/Libya*, *Gulf of Maine*, and *St-Pierre et Miquelon (Canada v. France)*.<sup>429</sup> Suriname contended that all these cases made use of simplified representation. It chose the *Gulf of Maine* as the best example of angle bisectors which it considered appropriate when the neighbouring coastal fronts form an angle "as often occurs in the case of adjacent States where the land boundary meets the sea in a coastal indentation or cavity":<sup>430</sup>

The best example is the first segment of the single maritime boundary prescribed in Gulf of Maine. In that situation, the adjacent neighboring coasts form an approximate right angle with an apex at the land boundary. The Chamber established coastal fronts drawn from Cape Elizabeth to the land boundary terminus, representing the general direction of the Maine coast and from the land boundary terminus to Cape Sable, representing the general direction of the portion of the Canadian coast facing the Gulf of Maine. The angle bisector between these two coastal front lines runs from the initial point of the maritime boundary established by the Chamber toward the central part of the Gulf. The use of an angle bisector in that type of configuration achieves the objective of an approximately equal division of the offshore area, coupled with what the Chamber termed "the advantages of simplicity and clarity."<sup>431</sup>

371. In its oral pleadings Guyana argued that:

When the provisional equidistance line does not, on its own, create an equitable solution, the consequence of that is to make adjustments to the provisional equidistance line that are required to achieve an equitable solution[,] [n]ot to abandon the equidistance methodology or the provisional equidistance line

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<sup>427</sup> Suriname Counter-Memorial, p. 103, para. 6.46.

<sup>428</sup> Suriname Counter-Memorial, paras. 6.47-6.48.

<sup>429</sup> *St-Pierre et Miquelon (Canada v. France)*, 95 I.L.R. p. 645 ("*St-Pierre et Miquelon*").

<sup>430</sup> Suriname Counter-Memorial, para. 4.34.

<sup>431</sup> Suriname Counter-Memorial, para. 4.32.

altogether, and certainly not to substitute an entirely unorthodox and highly subjective methodology in its place.<sup>432</sup>

372. The Tribunal is bound to note that the coastlines at issue in these cited cases cannot be compared to the configuration of the relevant coastlines of Guyana and Suriname. For instance, the *Gulf of Maine* case where the angle bisector was utilised in the maritime delimitation between Canada and the United States bears little resemblance to the maritime area which is of concern in this delimitation. It seems to this Tribunal that the general configuration of the maritime area to be delimited does not present the type of geographical peculiarities which could lead the Tribunal to adopt a methodology at variance with that which has been practised by international courts and tribunals during the last two decades. Such peculiarities may, however, be taken into account as relevant circumstances, for the purpose, if necessary, of adjusting or shifting the provisional delimitation line.<sup>433</sup> The Tribunal is therefore not persuaded that it should adopt in the present case what may be called the “angle bisector methodology”.

373. The Tribunal has noted that neither Guyana nor Suriname considers that the provisional equidistance line represents an equitable delimitation as required by international law, due to the geographical circumstances of the maritime area to be delimited. Here, the Tribunal must recall the statement made by the International Court of Justice in *Cameroon/Nigeria* with respect to coastal geography which because of its relevance is quoted in full:

The geographical configuration of the maritime areas that the Court is called upon to delimit is a given. It is not an element open to modification by the Court but a fact on the basis of which the Court must effect the delimitation. As the Court had occasion to state in the *North Sea Continental Shelf* cases, “[e]quity does not necessarily imply equality”, and in a delimitation exercise “[t]here can never be any question of completely refashioning nature”. Although certain geographical peculiarities of maritime areas to be delimited may be taken into account by the Court, this is solely as relevant circumstances, for the purpose, if necessary, of adjusting or shifting the provisional delimitation line. Here again, as the Court decided in the *North Sea Continental Shelf* cases, the Court is not required to take all such geographical peculiarities into account in order to adjust or shift the provisional delimitation line: “[i]t is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of

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<sup>432</sup> Transcript, p. 198.

<sup>433</sup> *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303, at para. 295. See *UK – French Continental Shelf*, 54 I.L.R. p. 5 (1979), at para. 249.

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”.<sup>434</sup>

374. In short, international courts and tribunals dealing with maritime delimitation should be mindful of not remaking or wholly refashioning nature, but should in a sense respect nature.
375. In their written and oral pleadings, both Parties agree that in the maritime delimitation area “there are no major promontories, islands, or other coastal features that render that coastline extraordinary”;<sup>435</sup> and that the coastal geography is “unremarkable”.<sup>436</sup> They both agree also that “there are no offshore islands and the coastlines on either side of the land boundary terminus are although not completely regular throughout their course, do not contain features such as peninsulas, major bays, island fringes or other such configurations.”<sup>437</sup> It is fair to point out that Suriname uses this representation of the coastline to support its bisector approach. However, the Tribunal takes the view that the characterisation of the coastline as “unremarkable” only strengthens the methodology adopted by the Tribunal.
376. Turning to the question of whether there are any features in the geographical configuration of the relevant coastlines which justify an adjustment of the equidistance line, the Tribunal must mention the following observation found in the report of the independent expert appointed by Guyana:

An important geographic reality in this case is that there are no offshore features, such as islands or low-tide elevations that influence the drawing of an equidistant line. Nor are there are large peninsulas or protrusions from one of the coastlines that dramatically skew the course of an equidistant line.<sup>438</sup>

377. The Tribunal agrees with this assessment of the coastal geography. In its view, the relevant coastlines do not present any marked concavity or convexity. After careful examination the Tribunal accordingly concludes that the geographical configuration of

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<sup>434</sup> *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303, at para. 295, citing *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 50, para. 91.

<sup>435</sup> Suriname Rejoinder, para. 3.183; Transcript, p. 162.

<sup>436</sup> Transcript, pp. 162, 227, 904; Guyana Reply, para. 3.2.

<sup>437</sup> Transcript, p. 162; Suriname Rejoinder, para. 3.183.

<sup>438</sup> Guyana Reply, Annex R.1, para. 4.

the relevant coastlines does not represent a circumstance that would justify any adjustment or shifting of the provisional equidistance line in order to achieve an equitable solution.

#### **D. CONDUCT OF THE PARTIES**

378. The Tribunal will now turn its attention to the question of the relevance of the conduct of the Parties with respect to the shifting or adjustment of the provisional equidistance line. Guyana has stated that:

in respect of the delimitation of the territorial sea and the continental shelf and exclusive economic zone, international courts and tribunals have long recognised that the conduct of the parties – and in particular the existence of a *modus vivendi* reflected in a pattern of oil and gas concessions – is an important circumstance to be taken into account in effecting a boundary delimitation. In the present case, the parties' oil concessions date back nearly 50 years and are based on a serious and good faith effort to identify a historical equidistance line which was plotted on the basis of the best British and Dutch charts available at the time (British chart 1801 and Dutch chart 217). The concessions reflect a *de facto* pattern of acceptance that the line extending from Point 61 on a bearing of approximately N34E has long been treated as reflecting an equidistance line which divides the parties' maritime spaces.<sup>439</sup>

379. Suriname, for its part, contended that:

[t]he conduct of the parties to a maritime boundary dispute, and in particular one that concerns a single maritime boundary, is generally not relevant to the maritime delimitation. Only if that conduct meets a very high legal standard may it be taken into account. The alleged conduct must be consistent and sustained and it must display clearly an intention by both parties to accept a specific line as an equitable basis of delimitation. The adopted line therefore must be the result of an express or tacit agreement. Conduct that does not meet that legal standard is simply irrelevant. Guyana has seriously misstated the law in this respect. Guyana has elevated the ephemeral conduct of the parties to a level of controlling legal importance, which plainly is not correct.<sup>440</sup>

380. This Arbitral Tribunal must first examine the case law of international courts and tribunals with respect to the conduct of activities, especially oil practice, in the relevant area.

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<sup>439</sup> Guyana Memorial, para. 7.34.

<sup>440</sup> Suriname Counter Memorial, para. 4.37.

381. The International Court of Justice examined for the first time the relevance of oil practice in the maritime boundary delimitation dispute between Tunisia and Libya. The Court in that case noted that “it is evident that the Court must take into account whatever indicia are available of the line or lines which the parties themselves may have considered equitable or acted upon as such”.<sup>441</sup> It was thus acknowledged that the conduct of the parties themselves with regard to oil concessions may determine the delimitation line.
382. In the *Gulf of Maine* case, Canada had requested the Chamber to find that the conduct of the parties proved at least the existence of a “*modus vivendi* maritime limit” or a “*de facto* maritime limit” based on the coincidence between the Canadian equidistance line (the “strict equidistance” line) and the United States “BLM line” (U.S. Bureau of Land Management) which it claimed was respected by the two parties and by numerous oil companies from 1965 to 1972. Canada relied on the findings of the Court in the *Tunisia/Libya* case. The United States denied that oil practice respected any particular line, but also denied the very existence of the “BLM line”.
383. The Chamber in the *Gulf of Maine* case had this to say on the oil practice of the parties throwing into relief a distinctive feature of the *Tunisia/Libya* case:

[T]he Chamber notes that, even supposing that there was a *de facto* demarcation between the areas for which each of the Parties issued permits (Canada from 1964 and the United States from 1965 onwards), this cannot be recognized as a situation comparable to that on which the Court based its conclusions in the *Tunisia/Libya* case. It is true that the Court relied upon the fact of the division between the petroleum concessions issued by the two States concerned. But it took special account of the conduct of the Powers formerly responsible for the external affairs of Tunisia – France – and of Tripolitania – Italy –, which it found amounted to a *modus vivendi*, and which the two States continued to respect when, after becoming independent, they began to grant petroleum concessions.<sup>442</sup>

384. In the *Libya/Malta* case, the ICJ expressly referred to “its duty to take into account whatever indicia are available of the (delimitation) line or lines which the Parties themselves may have considered equitable or acted upon as such”<sup>443</sup> – which was of

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<sup>441</sup> *Tunisia/Libya*, Judgment, I.C.J. Reports 1982, p. 18, at para. 118.

<sup>442</sup> *Gulf of Maine*, Judgment, I.C.J. Reports 1984, p. 246, at para. 150.

<sup>443</sup> *Libya/Malta*, Judgment, I.C.J. Reports 1985, p. 13, at p. 29, para. 25.

course the criterion introduced by the ICJ in the *Tunisia/Libya* case. It, however, concluded that it was:

unable to discern any pattern of conduct on either side sufficiently unequivocal to constitute either acquiescence or any helpful indication of any view of either Party as to what would be equitable differing in any way from the view advanced by that Party before the Court. Its decision must accordingly be based upon the application to the submissions made before it of principles and rules of international law.<sup>444</sup>

385. This Tribunal finds that, with respect to the role of oil practice in maritime delimitation disputes, the Judgment in the *Cameroon/Nigeria* case is of particular significance. It should be noted that the delimitation line had to be determined “in an area of very highly concentrated petroleum exploration and exploitation activity”.<sup>445</sup> Nigeria had contended that State practice with respect to oil concessions was “a decisive factor in the establishment of maritime boundaries” and added it was not the business of the Court to “redistribute such oil concessions between the States party to the delimitation”.<sup>446</sup> On the other hand, Cameroon held the view that “the existence of oil concessions has never been accorded particular significance in matters of maritime delimitation in international law”.<sup>447</sup>

386. The ICJ for its part having made an analysis of the case law relating to the role of oil practice in maritime delimitation declared that “although 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, oil concessions and oil wells are generally not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account. In the present case there is no agreement between the Parties regarding oil concessions”.<sup>448</sup>

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<sup>444</sup> Ibid.

<sup>445</sup> Suriname Rejoinder, para. 3.147; Suriname Rejoinder, Annex 41.

<sup>446</sup> *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303, at p. 447, para. 303.

<sup>447</sup> Ibid.

<sup>448</sup> Ibid., at pp. 447-448, para. 304.

387. Arbitral tribunals have supported this approach. The *St-Pierre et Miquelon* arbitration paid little regard to the oil practice of the parties. In this case, permits for exploration had been issued by both parties in areas of overlapping claims but “after reciprocal protests no drilling was undertaken”. The tribunal held that in the circumstances it had no reason “to consider the potential mineral resources as having a bearing on the delimitation”.<sup>449</sup>
388. In the view of the tribunal in the arbitration between Newfoundland and Labrador and Nova Scotia, “in order to establish that a boundary (not settled or determined by agreement) has been established through conduct, it is necessary to show an unequivocal pattern of conduct as between the two parties concerned relating to the area and supporting the boundary, which is in dispute”, citing the dictum in the *Libya/Malta* case, already referred to.<sup>450</sup>
389. The dictum that oil wells are not in themselves to be considered as relevant circumstances unless based on express or tacit agreement between the parties was expressly applied in the award in the *Barbados/Trinidad and Tobago* arbitration.<sup>451</sup> The award also made clear that the tribunal did “not consider the activities of either Party, or the responses of each Party to the activities of the other, themselves constitute a factor that must be taken into account in the drawing of an equitable delimitation line”.<sup>452</sup>
390. The cases reveal a marked reluctance of international courts and tribunals to accord significance to the oil practice of the parties in the determination of the delimitation line. In the words of the Court in the *Cameroon/Nigeria* case, “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. Only if they are based on express or tacit agreement between the parties may they be taken into account”.<sup>453</sup> The Tribunal is guided by this jurisprudence. Having carefully examined the practice of the

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<sup>449</sup> *St-Pierre et Miquelon*, 95 I.L.R. p. 645.

<sup>450</sup> *Newfoundland and Labrador and Nova Scotia*, Award Second Phase (2002), at para. 3.5.

<sup>451</sup> *Barbados/Trinidad and Tobago*, 45 I.L.M. p. 798 (2006), at para. 364, online: <<http://www.pca-cpa.org>>.

<sup>452</sup> *Ibid.*, at para. 366.

<sup>453</sup> *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303, at para. 304.

Parties with regard to oil concessions and oil wells, the Tribunal has found no evidence of any agreement between the Parties regarding such practice. The Tribunal takes the view that the oil practice of the Parties cannot be taken into account in the delimitation of the maritime boundary in this case.

391. Guyana, in support of the use of the equidistance method, had argued that it was of “material significance” that the draft agreement between Suriname and France (French Guiana) on the maritime boundary applies the principle of equidistance and follows a line of N30°E.<sup>454</sup> For its part, Suriname contended that its boundary negotiations with French Guiana had no relevance to this case. It made clear that there was no maritime boundary agreement in force between Suriname and France with respect to French Guiana, and even if there were, Suriname averred such would be “totally irrelevant to these proceedings”.<sup>455</sup> It held that the case between Guyana and Suriname took place in a different locale and the relevant considerations are notably different.<sup>456</sup> Suriname found support for its argument that the draft agreement between Suriname and French Guiana had little to do with the present case in the *Jan Mayen* case between Norway and Denmark where the Court stated that:

By invoking against Norway the Agreements of 1980 and 1981, Denmark is seeking to obtain by judicial means equality of treatment with Iceland. It is understandable that Denmark should seek such equality of treatment. But in the context of relations governed by treaties, it is always for the parties concerned to decide, by agreement, in what conditions their mutual relations can best be balanced. In the particular case of maritime delimitation, international law does not prescribe, with a view to reaching an equitable solution, the adoption of a single method for the delimitation of the maritime spaces on all sides of an island, or for the whole of the coastal front of a particular State, rather than, if desired, varying systems of delimitation for the various parts of the coast. The conduct of the parties will in many cases therefore have no influence on such a delimitation. The fact that the situation governed by the Agreements of 1980 and 1981 shares with the present dispute certain elements (identity of the island, participation of Norway) is of no more than formal weight. For these reasons, the Court concludes that the conduct of the Parties does not constitute an element which could influence the operation of delimitation in the present case.<sup>457</sup>

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<sup>454</sup> Guyana Memorial, para. 3.50.

<sup>455</sup> Suriname Counter-Memorial, para. 2.20.

<sup>456</sup> Ibid.

<sup>457</sup> *Jan Mayen*, Judgment, I.C.J. Reports 1993, p. 38, at para. 86.

This Tribunal accepts the contention of Suriname and therefore takes no account in the present case of the boundary negotiations which have been conducted between Suriname and France with respect to French Guiana. In the view of the Tribunal, this conduct is not relevant to the present case.

#### **E. CONCLUSION OF THE TRIBUNAL**

392. In light of the foregoing, the Tribunal does not consider that there are any relevant circumstances in the continental shelf or exclusive economic zone which would require an adjustment to the provisional equidistance line. There are no factors which would render the equidistance line determined by the Tribunal inequitable. The Tribunal has checked the relevant coastal lengths for proportionality and comes up with nearly the same ratio of relevant areas (Guyana 51% : Suriname 49%) as it does for coastal frontages (Guyana 54% : Suriname 46%); likewise there are no distortions caused by coastal geography. As the Parties have not chosen to argue the relative distribution of living and non-living natural resources throughout these zones, the Tribunal did not take these matters into account.
393. The Tribunal accepts the basepoints for the low-water lines of Suriname and Guyana provided by the Parties that are relevant to the drawing of the equidistance line beyond the territorial sea.<sup>458</sup>
394. Guyana has argued that Suriname's location of basepoint S1 is "inconsistent with the requirements of the [Convention], Article 5 of which provides that the normal baseline for measuring the breadth of the territorial sea is 'the low-water line along the coast.'"<sup>459</sup> The Tribunal accepts the equidistance line beyond the 12 nm limit. As S1 does not affect the equidistance line beyond 12 nm,<sup>460</sup> the Tribunal does not need to consider point S1 further, nor any other basepoints that would affect only the equidistance line within the 12 nm limit.

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<sup>458</sup> See Suriname Counter-Memorial, Annex 69; Guyana Reply, Annex 26.

<sup>459</sup> Guyana Reply, para. 6.14.

<sup>460</sup> See Technical Report of the Tribunal's Hydrographer in the Appendix to this Award.

395. Guyana also objected to Suriname's basepoint S14, which Suriname had identified relying on what Guyana claimed to be an inaccurate chart. The chart in question, NL 2218, was produced by the Netherlands Hydrographic Office (with the assistance of the Maritime Authority Suriname) in June 2005 after the proceedings in this arbitration had commenced.<sup>461</sup> In addition, Guyana claims that another Dutch chart, NL 2014, as well as satellite imagery, "disprov[e] the existence of a low-tide coast at Vissers Bank where Suriname placed its purported basepoint S14."<sup>462</sup>
396. The Tribunal is not convinced that the depiction of the low-water line on chart NL 2218, a chart recognised as official by Suriname, is inaccurate. As a result, the Tribunal accepts the basepoint on Vissers Bank, Suriname's basepoint S14.
397. Each Party provided its computed results of the provisional equidistance line based on the basepoints that it indicated. As described in the Appendix to the Award analysing the data provided by both Parties, the turning points indicated by the Parties have been recomputed because certain of them were not equidistant from the supposed basepoints within the limits of the rounding-off of the positional values and because neither Party computed the equidistance line using all the basepoints accepted by the Tribunal.
398. The Tribunal concludes that the single maritime boundary delimiting the exclusive economic zone and continental shelf between Guyana and Suriname shall be as shown for illustrative purposes only on Map 3 at the end of this Chapter. The precise, governing coordinates are set forth below and are explicated in the Appendix to the Award.
399. The delimitation of the exclusive economic zone and continental shelf shall commence at Point 3, being the intersection of the 12 nm limit with the boundary delimiting the territorial sea.

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<sup>461</sup> Guyana Reply, paras. 1.10, 3.19; Transcript, pp. 170-172; Suriname Rejoinder, Annex SR43.

<sup>462</sup> Guyana Reply, para. 3.19.

400. The coordinates of the turning points of the delimitation line through the exclusive economic zone and continental shelf are as follows:

a. The delimitation line is a series of geodetic lines joining the points in the order listed:

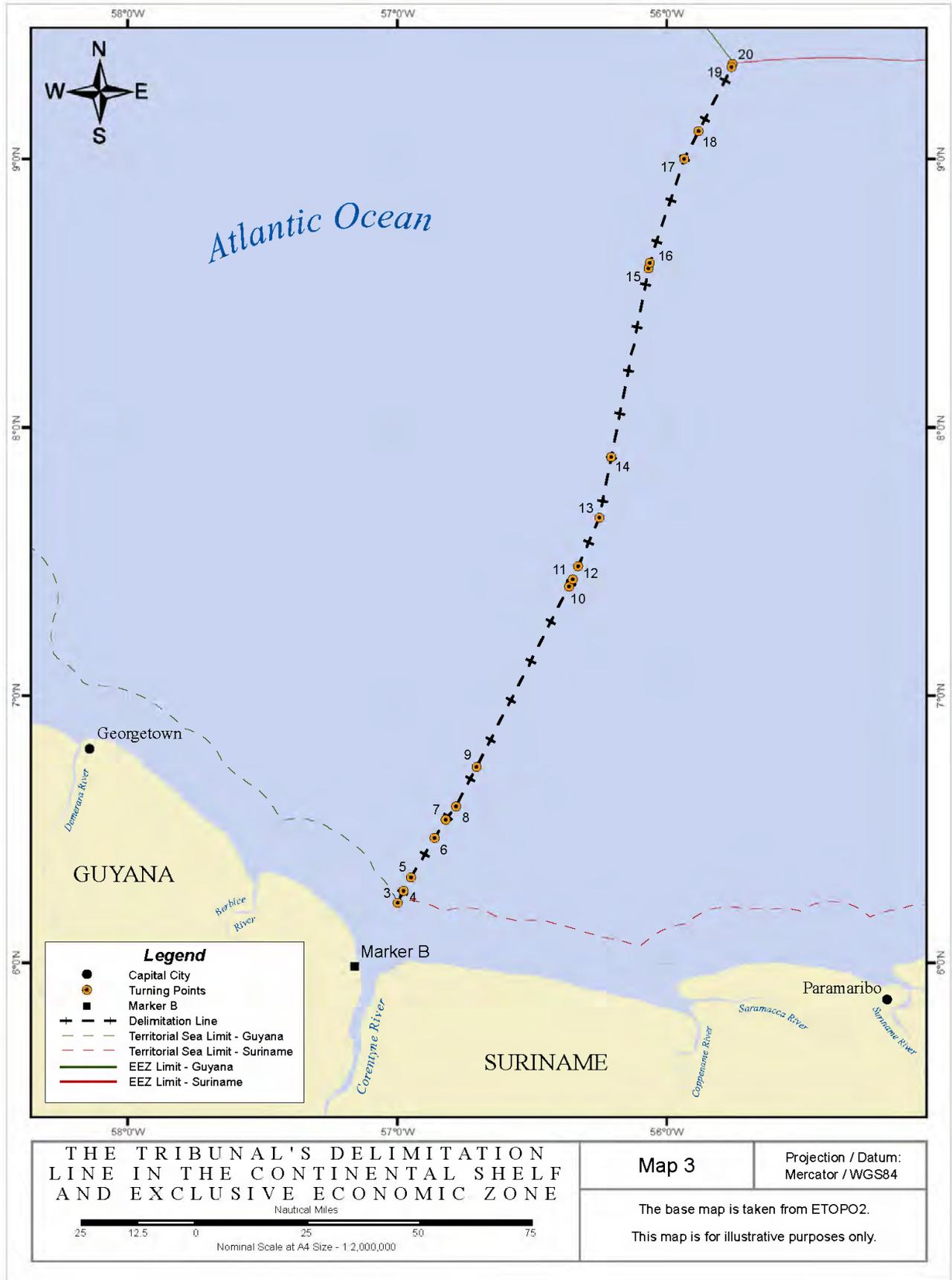
<u>Point #</u>	<u>Latitude</u>	<u>Longitude</u>
3.	6° 13.47'N,	56° 59.87'W
4.	6° 16.19'N,	56° 58.63'W
5.	6° 19.17'N,	56° 57.01'W
6.	6° 28.01'N,	56° 51.70'W
7.	6° 32.12'N,	56° 49.22'W
8.	6° 35.13'N,	56° 46.92'W
9.	6° 43.99'N,	56° 42.34'W
10.	7° 24.45'N,	56° 21.74'W
11.	7° 26.11'N,	56° 20.88'W
12.	7° 28.98'N,	56° 19.69'W
13.	7° 39.96'N,	56° 14.99'W
14.	7° 53.48'N,	56° 12.31'W
15.	8° 35.61'N,	56° 03.99'W
16.	8° 36.76'N,	56° 03.75'W
17.	9° 00.03'N,	55° 56.09'W
18.	9° 06.27'N,	55° 52.88'W
19.	9° 20.66'N,	55° 45.42'W

b. From Point 19, the delimitation line proceeds on a geodetic azimuth of N23° 57' 10"E to the 200 nautical mile limit of the exclusive economic zones of Guyana and Suriname, having an approximate position of:

Point 20      9° 21.35'N,                      55° 45.11'W.

c. Geographic coordinates and azimuths refer to the World Geodetic System 1984 (WGS-84) geodetic datum.

Map 3



## CHAPTER VII - GUYANA'S THIRD SUBMISSION

401. Guyana's third submission seeks recovery for damages suffered as a result of Suriname's allegedly unlawful actions in the 3 June 2000 incident concerning the *C.E. Thornton* drilling rig (the "CGX incident") as well as action subsequently taken by Suriname with respect to two additional Guyanese concession holders:

Suriname is internationally responsible for violating its obligations under the 1982 United Nations Convention on the Law of the Sea, the Charter of the United Nations, and general international law to settle disputes by peaceful means because of its use of armed force against the territorial integrity of Guyana and/or against its nationals, agents, and others lawfully present in maritime areas within the sovereign territory of Guyana or other maritime areas over which Guyana exercises lawful jurisdiction; and that Suriname is under an obligation to provide reparation, in a form and in an amount to be determined, but in any event no less than U.S. \$33,851,776, for the injury caused by its internationally wrongful acts.<sup>463</sup>

### A. JURISDICTION AND ADMISSIBILITY

#### 1. The Tribunal's Jurisdiction over Claims Relating to the UN Charter and General International Law

402. Guyana stated in its third submission, *inter alia*, that Suriname was "internationally responsible for violating its obligations under the Convention, the Charter of the United Nations, and general international law to settle disputes by peaceful means because of its use of armed force".<sup>464</sup> Suriname is of the view that the Tribunal had no jurisdiction to adjudicate alleged violations of the UN Charter or customary international law and declared that "to the extent that Guyana's claims are based on those violations, they must be dismissed".<sup>465</sup>

403. The law which this Tribunal is authorised to apply is contained in Article 293, paragraph 1, of the Convention, which 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".

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<sup>463</sup> Guyana Reply, para. 10.1.

<sup>464</sup> Guyana Reply, para. 10.1.

<sup>465</sup> Transcript, p. 1092.

404. In addition, this Tribunal notes that the preamble of the Convention itself has preserved the applicability of general international law, when, in its ultimate paragraph, it affirmed “that matters not regulated by this Convention continue to be governed by the rules and principles of general international law”.<sup>466</sup>

405. The International Tribunal for the Law of the Sea (“ITLOS”) has interpreted Article 293 as giving it competence to apply not only the Convention, but also the norms of customary international law (including, of course, those relating to the use of force). It made this clear in its findings in the *Saiga* case:

In considering the force used by Guinea in the arrest of the *Saiga*, the Tribunal must take into account the circumstances of the arrest in the context of the applicable rules of international law. *Although the Convention does not contain express provisions on the use of force in the arrest of ships, international law, which is applicable by virtue of article 293 of the Convention, requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply in the law of the sea, as they do in other areas of international law. [emphasis added]*<sup>467</sup>

406. In the view of this Tribunal this is a reasonable interpretation of Article 293 and therefore Suriname’s contention that this Tribunal had “no jurisdiction to adjudicate alleged violations of the United Nations Charter and general international law”<sup>468</sup> cannot be accepted. Furthermore, as the Tribunal will find (see paragraph 486 *infra*), the conduct of Suriname in the disputed area constituted a breach of its obligations under Articles 74(3) and 83(3) of the Convention over which the Tribunal has jurisdiction by virtue of Article 293, paragraph 1, of the Convention.

## 2. The Obligation to Exchange Views

407. Suriname has raised another jurisdictional issue. It stated that:

In the period from the time of the CGX incident, June 3rd, 2000, up until the point where the application was filed before this Tribunal in February 2004, Guyana never informed Suriname that Guyana believed that Suriname had violated Articles

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<sup>466</sup> The Convention, preamble.

<sup>467</sup> *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 7, at para. 155 (“*Saiga*”).

<sup>468</sup> Suriname Rejoinder, para. 4.7.

279 or 301, or even that it had violated the Law of the Sea Convention generally by Suriname's conduct in June 2000.<sup>469</sup>

408. Suriname contends that Guyana was under an obligation as specified in Article 283 of the Convention to inform Suriname of any alleged breach of the Convention, in particular Articles 279 and 301. "By failing to fulfill that obligation, Guyana did not undertake recourse to the Section 1 Procedures, and because of that failure to take recourse to Section 1 procedures, Guyana cannot avail itself of the Section 2 compulsory dispute jurisdiction".<sup>470</sup>
409. Suriname made reference to the case law of ITLOS to highlight the importance of the procedural requirements provided for in Article 283(1), that is the obligation to exchange views. It cited in particular the *Southern Bluefin Tuna* cases,<sup>471</sup> the *MOX Plant* case,<sup>472</sup> and the *Land Reclamation* case.<sup>473</sup> It will be recalled that in these cases ITLOS held that a party was under no obligation to exchange views when it concluded that the possibilities of reaching agreement had been exhausted.
410. This dispute has as its principal concern the determination of the course of the maritime boundary between the two Parties – Guyana and Suriname. The Parties have, as the history of the dispute testifies, sought for decades to reach agreement on their common maritime boundary. The CGX incident of 3 June 2000, whether designated as a "border incident" or as "law enforcement activity", may be considered incidental to the real dispute between the Parties. The Tribunal, therefore, finds that in the particular circumstances, Guyana was not under any obligation to engage in a separate set of exchanges of views with Suriname on issues of threat or use of force. These issues can be considered as being subsumed within the main dispute.

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<sup>469</sup> Transcript, pp. 1093-1094.

<sup>470</sup> Transcript, p. 1094.

<sup>471</sup> *Southern Bluefin Tuna*, Order of 27 August 1999, ITLOS Reports 1999, p. 280.

<sup>472</sup> *MOX Plant*, Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95, at para. 60.

<sup>473</sup> *Land Reclamation*, Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10, at para. 47.

### 3. Article 297 and the Characterisation of Guyana's Claim

411. Suriname in its oral pleadings has raised another jurisdictional objection. It declared that since Guyana's claims relate to a dispute concerning a coastal State's enforcement of sovereign rights with respect to non-living resources, the claim falls outside this Tribunal's jurisdiction pursuant to Part XV, section 3 of the Convention. Suriname explained that:

Article 297 says that section 2, compulsory dispute settlement, is only available for certain kinds of disputes that relate to the exercise by a coastal state of its sovereign rights or jurisdiction.<sup>474</sup>

412. Suriname further asserted that:

Among the three kinds of disputes listed in Article 297, there is no reference to a dispute concerning a coastal state's enforcement of its sovereign rights with respect to nonliving resources. Since Guyana's submission is a dispute concerning a coastal state's enforcement of its sovereign rights with respect to nonliving resources, the dispute is not encompassed in Section 2 of the Law of the Sea Convention.<sup>475</sup>

413. As noted above, Article 293 of the Convention gives this Arbitral Tribunal jurisdiction over any dispute concerning the interpretation and application of the Convention. This jurisdiction is subject to the automatic limitations set out in Article 297 and the optional exceptions specified in Article 298. Article 286 reads as follows:

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

414. Thus, any dispute concerning the interpretation or application of the Convention which is not excluded by the operation of Part XV, Section 3 (Articles 297 and 298) falls under the compulsory procedures in Section 2. Article 297, paragraph 3(a), which is relevant here, reads as follows:

Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2,

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<sup>474</sup> Transcript, p. 1099.

<sup>475</sup> Transcript, p. 1099.

*except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations. [emphasis added]*

415. Sovereign rights over non-living resources do not fall under this exception.
416. This Tribunal is therefore unable to entertain Suriname's argument that a dispute concerning a coastal State's enforcement of its sovereign rights with respect to non-living resources lies outside its jurisdiction.

#### **4. Good Faith and Clean Hands**

417. Suriname challenges the admissibility of Guyana's Third Submission on the grounds of lack of good faith and clean hands. It also argues in the alternative that the clean hands doctrine must be considered in deciding the merits of Guyana's Third Submission.
418. The doctrine of clean hands, as far as it has been adopted by international courts and tribunals, does not apply in the present case. No generally accepted definition of the clean hands doctrine has been elaborated in international law. Indeed, the Commentaries to the ILC Draft Articles on State Responsibility acknowledge that the doctrine has been applied rarely<sup>476</sup> and, when it has been invoked, its expression has come in many forms. The ICJ has on numerous occasions declined to consider the application of the doctrine,<sup>477</sup> and has never relied on it to bar admissibility of a claim or recovery. However, some support for the doctrine can be found in dissenting opinions in certain ICJ cases, as well as in opinions in cases of the Permanent Court of International Justice (the "PCIJ"). For example, Judge Anzilotti's 1933 dissenting opinion in the *Legal Status of Eastern Greenland* case states that "an unlawful act

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<sup>476</sup> James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, p. 162 (2002).

<sup>477</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136 at para. 63; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, p. 161, at para. 100; *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, Preliminary Objections, Judgment, I.C.J. Reports 2004, p. 279: in this case Belgium raised the question of clean hands in its preliminary objections (Preliminary Objections of the Kingdom of Belgium, *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, (5 July 2000), available at <http://www.icj-cij.org/docket/files/105/8340.pdf>), but the Court did not address the argument in its judgment.

cannot serve as the basis of an action at law”.<sup>478</sup> In the *United States Diplomatic and Consular Staff in Tehran* case, in which the ICJ declined to consider the issue of clean hands, Judge Morozov wrote in his dissent that the United States had “forfeited the legal right as well as the moral right to expect the Court to uphold any claim for reparation”. However, Judge Morozov went to great lengths to stress that “[t]he situation in which the Court has carried on its judicial deliberation in the current case has no precedent in the whole history of the administration of international justice either before this Court, or before any international judicial institution”,<sup>479</sup> citing the United State’s coercive and military measures against Iran which were carried out *simultaneously* with its application to the ICJ.<sup>480</sup> In the *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, *ad hoc* Judge Van den Wyngaert states that the Democratic Republic of Congo (“DRC”) did not come to the ICJ with clean hands, citing its violation of the Geneva Conventions in failing to prosecute a Government Minister suspected of breaching humanitarian law.<sup>481</sup> The finding with respect to clean hands was not however dispositive; it was merely included in Judge Van den Wyngaert’s discussion of immunity under international law and her conclusion that a Minister’s immunity does not extend to war crimes and crimes against humanity. The doctrine was therefore neither used as a bar to the admissibility of the DRC’s claim, nor as a ground to deny recovery. These cases indicate that the use of the clean hands doctrine has been sparse, and its application in the instances in which it has been invoked has been inconsistent.

419. Judge Schwebel’s dissenting opinion in the *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, which Suriname characterises as “the strongest affirmation of the clean hands doctrine”,<sup>482</sup> has also been relied on in support of the

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<sup>478</sup> *Legal Status of Eastern Greenland*, P.C.I.J. Series A/B, No. 53, p. 95 (Dissenting Opinion of Judge Anzilotti).

<sup>479</sup> *Diplomatic and Consular Staff*, Judgment, I.C.J. Reports 1980, p. 3, at p. 53 (Dissenting Opinion of Judge Morozov) [emphasis in original].

<sup>480</sup> *Diplomatic and Consular Staff*, Judgment, I.C.J. Reports 1980, p. 3, at p. 54 (Dissenting Opinion of Judge Morozov).

<sup>481</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, at para. 35 (Dissenting Opinion of Judge *ad hoc* Van den Wyngaert).

<sup>482</sup> Suriname Rejoinder, para. 2.102.

application of the clean hands doctrine.<sup>483</sup> In his dissent, Judge Schwebel reasoned that Nicaragua “had deprived itself of the necessary *locus standi*” to bring its claims, as it was itself guilty of illegal conduct resulting in deaths and widespread destruction.<sup>484</sup> In doing so, he relied heavily on Judge Hudson’s individual opinion in the *Diversion of Water from the Meuse* case,<sup>485</sup> which states:

It would seem to be an important principle of equity that where two parties have assumed an identical or reciprocal obligation, one party which is engaged in a *continuing* non-performance of that obligation should not be permitted to take advantage of a similar non-performance of that obligation by the other party.<sup>486</sup>  
[emphasis added]

420. An important aspect of Judge Hudson’s expression of the doctrine is the continuing nature of the non-performance of an obligation. In the *Diversion of Water from the Meuse* case, The Netherlands was seeking an order for Belgium to discontinue its violation of a treaty between the two countries while The Netherlands itself was engaging in “precisely similar action, similar in fact and similar in law” at the time its claim was brought before the PCIJ.<sup>487</sup> The fact that a violation must be ongoing for the clean hands doctrine to apply is consistent with the doctrine’s origins in the laws of equity and its limited application to situations where equitable remedies, such as specific performance, are sought. Indeed, Judge Hudson reminds us that it is a principle of international law that any breach leads to an obligation to make reparation, and that only special circumstances may call for the consideration of equitable principles.<sup>488</sup> Such circumstances arise, in his opinion, where a claimant is seeking not reparation for a past violation, but protection against a continuance of that violation in the future, in other words a “kind of specific performance of a reciprocal obligation which the

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<sup>483</sup> See e.g. *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, n. 82 (Dissenting Opinion of Judge *ad hoc* Van den Wyngaert).

<sup>484</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, at para. 272 (Dissenting Opinion of Judge Schwebel) (“*Nicaragua*”).

<sup>485</sup> *Nicaragua*, Merits, Judgment, I.C.J. Reports 1986, p. 14, at paras. 269-270 (Dissenting Opinion of Judge Schwebel).

<sup>486</sup> *Diversion of Water from the Meuse*, P.C.I.J. Series A/B, No. 70, p. 22, at p. 77 (Individual Opinion by Judge Hudson).

<sup>487</sup> *Diversion of Water from the Meuse*, p. 78 (Individual Opinion by Judge Hudson).

<sup>488</sup> *Ibid.*

demandant itself is not performing”.<sup>489</sup> Judge Hudson also stresses the limited applicability of the doctrine in more general terms:

The general principle is one of which an international tribunal should make *a very sparing application*. It is certainly not to be thought that a complete fulfillment of all its obligations under a treaty must be proved as a condition precedent to a State’s appearing before an international tribunal to seek an interpretation of that treaty. Yet, in a proper case, and with scrupulous regard for the limitations which are necessary, a tribunal bound by international law ought not to shrink from applying a principle of such obvious fairness.<sup>490</sup> [emphasis added]

421. The Tribunal holds that Guyana’s conduct does not satisfy the requirements for the application of the doctrine of clean hands, to the extent that such a doctrine may exist in international law. First, Guyana is seeking, with respect to its Third Submission, reparations for an alleged past violation by Suriname. Guyana is therefore not seeking a remedy of the type to which the clean hands doctrine would apply, even if it were recognised as a rule of international law. Secondly, the facts on which Suriname bases its assertion that Guyana has unclean hands do not amount to an ongoing violation of Guyana’s obligations under international law,<sup>491</sup> as in the *Case Concerning the Arrest Warrant of 11 April 2000*, the *United States Diplomatic and Consular Staff in Tehran* case, and the *Water from the Meuse* case. Guyana had not authorised any drilling activities subsequent to the CGX incident and was as a result not in violation of the Convention as alleged at the time it made its Third Submission to the Tribunal. Finally, Guyana’s Third Submission claims that Suriname violated its obligation not to resort to the use or threat of force, while Suriname bases its clean hands argument on Guyana’s alleged violation of a different obligation relating to its authorisation of drilling activities in disputed waters. Therefore, there is no question of Guyana itself violating a reciprocal obligation on which it then seeks to rely.

422. The Tribunal’s ruling on this issue extends both to Suriname’s admissibility argument based on clean hands and to its argument that clean hands should be considered on the merits of Guyana’s Third Submission to bar recovery.

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<sup>489</sup> Ibid.

<sup>490</sup> Ibid., at p. 77.

<sup>491</sup> Suriname Rejoinder, paras. 2.110-2.115.

## 5. The Admissibility of a State Responsibility Claim in a Maritime Delimitation Case

423. The Tribunal does not accept Suriname's argument that in a maritime delimitation case, an incident engaging State responsibility in a disputed area renders a claim for reparations for the violation of an obligation provided for by the Convention and international law inadmissible. A claim relating to the threat or use of force arising from a dispute under the Convention does not, by virtue of Article 2(3) of the UN Charter, have to be "against the territorial integrity or political independence" of a State to constitute a compensable violation. Moreover, the Convention makes no mention of the incompatibility of claims relating to the use of force in a disputed area and a claim for maritime delimitation of that area. As the Eritrea-Ethiopia Claims Commission explained, if the law recognised such an incompatibility, it would significantly weaken the fundamental rule of international law prohibiting the use of force:

border disputes between States are so frequent that any exception to the prohibition of the threat or use of force for territory that is allegedly occupied unlawfully would create a large and dangerous hole in a fundamental rule of international law.<sup>492</sup>

424. In *Cameroon/Nigeria*,<sup>493</sup> a case in which the International Court of Justice was called on to delimit a boundary between the two parties, the Court entertained several claims engaging Nigeria and Cameroon's State responsibility for the use of force within the disputed area. The Court found however that for all but one of these claims, insufficient evidence had been adduced to prove them.<sup>494</sup> With respect to the final claim by which Cameroon requested an end to Nigerian presence in a disputed area, the Court found that the injury suffered by Cameroon would be sufficiently addressed by Nigeria's subsequent pull-out as a result of the delimitation decision, rendering it unnecessary to delve into the question of whether Nigeria's State responsibility was engaged.<sup>495</sup> Even so, the Court clearly considered questions of State responsibility relating to use of force,

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<sup>492</sup> *Eritrea-Ethiopia Claims Commission*, Partial Award, *Jus ad Bellum: Ethiopia's Claims 1-8* (19 Dec. 2005), 45 I.L.M. p. 430 (2006), at para. 10, online: <<http://www.pca-cpa.org>>.

<sup>493</sup> *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303.

<sup>494</sup> *Ibid.*, at paras. 323-324.

<sup>495</sup> *Ibid.*, at paras. 310, 319.

and the admissibility of Cameroon or Nigeria's claims was never put into question on the grounds submitted here by Suriname.<sup>496</sup>

## **B. THE THREAT OR USE OF FORCE**

425. Guyana's claims, as formulated in its Third Submission, seek reparations for Suriname's alleged violation of its obligations under the Convention, the UN Charter, and general international law because of its use of armed force against the territorial integrity of Guyana and against its nationals, agents and others lawfully present in maritime areas within the sovereign territory of Guyana or other maritime areas over which Guyana exercises lawful jurisdiction. Guyana's claims in this respect arise from the CGX incident.

426. Guyana's position on the question of the threat or use of force can be summarized as follows. Guyana has claimed that Suriname has rejected Guyana's repeated offers of immediate high level negotiations concerning offshore exploratory activities by Guyana's licensee CGX. Instead it resorted to the use of force on 3 June 2000 to expel Guyana's licensee – the CGX exploratory rig and drill ship *C.E. Thornton* – and threatened similar action against other licensees, namely Esso E & P Guyana and Maxus. According to Guyana, Suriname's conduct has resulted in both material and non-material injury to Guyana, including the considerable loss of foreign investment and licensing fees. This has blocked the development of Guyana's offshore hydrocarbon resources, for which injuries Guyana is entitled to full reparation in accordance with international law.<sup>497</sup>

427. For Guyana the obligation to settle disputes by peaceful means is not subsumed under the prohibition of the use of force but “possesses a specific substance of its own”.<sup>498</sup> Guyana declared that “the Tribunal need not conclude that Suriname's conduct

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<sup>496</sup> In the jurisdiction and admissibility phase, Nigeria had argued that the State responsibility claims were inadmissible, but only on the grounds that Cameroon did not adduce enough evidence to support them. That challenge was rejected by the Court: *Cameroon/Nigeria*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 275.

<sup>497</sup> Guyana Memorial, Chapter 10.

<sup>498</sup> Transcript, pp. 573-574, citing Bruno Simma, ed., *The Charter of the United Nations: A Commentary*, p. 587 (2<sup>nd</sup> ed., 2002).

amounted to use of force in order to find that it has violated its obligation to settle this dispute by peaceful means”.<sup>499</sup>

428. In this respect Guyana has called attention to the various international instruments which have imposed upon States the obligation to settle disputes by peaceful means. It cites Article 279 of the Convention as embodying the central purpose of Part XV of the Convention which reads as follows:

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

429. Guyana invokes the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, citing in particular the provision which reads:

the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, *including territorial disputes and problems concerning frontiers of States*.<sup>500</sup> [emphasis added]

430. For Guyana this reflects an authoritative interpretation of the United Nations Charter falling within the ambit of Article 2(4) of the UN Charter.

431. In its oral pleadings, Guyana found further support for its argument in the 1982 Manila declaration on the peaceful settlement of international disputes, Article VII of which stated that “neither the existence of a dispute nor the failure of a procedure of peaceful settlement of disputes shall permit the use of force or threat of force by any of the states’ parties to the dispute”.<sup>501</sup>

432. With respect to the question of whether the CGX incident constituted a threat of force, the Tribunal considers it helpful to examine the statements of some of the main participants in that incident.

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<sup>499</sup> Transcript, pp. 575-576.

<sup>500</sup> Guyana Memorial, para. 10.5.

<sup>501</sup> Transcript, p. 575; G.A. Res. 37/10, Annex, U.N. Doc. A/RES/37/10 (15 Nov. 1982).

433. Mr Edward Netterville, the Rig Supervisor on the *C.E. Thornton*, described the incident in these terms in his witness statement:

Shortly after midnight on 4 June 2000, while this coring process (drilling for core samples) was underway, gunboats from the Surinamese Navy arrived at our location. The gunboats established radio contact with the C.E. Thornton and its service vessels, and ordered us to “leave the area in 12 hours,” warning that if we did not comply “the consequences will be yours.” The Surinamese Navy repeated this order several times. I understood this to mean that if the C.E. Thornton and its support vessels did not leave the area within twelve hours, the gunboats would be unconstrained to use armed force against the rig and its service vessels.<sup>502</sup>

434. Mr. Netterville made the following observations on this incident:

In my experience, Suriname’s threat to use force against the C.E. Thornton is unprecedented. I have been employed for over forty years in the marine and oil industry during which time I have served aboard oil rigs throughout the world. I have never experienced, nor heard of, any similar instance in which a rig has been evicted from its worksite by the threat of armed force. Nor, in discussions with others in the industry after June 2000, has anyone told me of a similar incident.<sup>503</sup>

435. Mr. Graham Barber, who served as Reading & Bates Area Manager for the project and had overall responsibility for its rig and shore-based operations, gave similar testimony. He stated that:

After midnight on 3 June 2000, during the jacking-up process, two gunboats from the Surinamese Navy approached us and shined their search lights on the rig. A Surinamese naval officer informed us by radio that we “were in Surinamese waters” and that we had 12 hours to leave the area or “face the consequences.” He repeated this phrase, or variations of it, several times. ... Faced with these threats from the Surinamese Navy, in the early morning hours of 4 June 2003, I convened a meeting with other persons in authority aboard the C.E. Thornton. We decided that we had no alternative other than to evacuate the rig from the Eagle location.<sup>504</sup>

436. Major J.P. Jones, Commander Staff Support of the LUMAR (the Suriname Air Force and Navy), recorded this exchange between himself and the drilling platform:

This is the Suriname navy. You are in Suriname waters without authority of the Suriname Government to conduct economic activities here. I order you to stop immediately with these activities and leave the Suriname waters.

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<sup>502</sup> Guyana Memorial, Annex 175.

<sup>503</sup> Guyana Memorial, Annex 175.

<sup>504</sup> Guyana Memorial, Annex 176.

The answer to this from the platform was: “we are unaware of being in Suriname waters”. I persisted saying that they were in Suriname waters and that they had to leave these waters within 12 hours. And if they would not do so, the consequences would be theirs. They then asked where they should move to. I said that they should retreat to Guyanese waters. He reacted by saying that they needed time to start up their departure. I then allowed them 24 hours to leave the Suriname waters. We then hung around for some time and after about one hour we left for New Nickerie.<sup>505</sup>

437. Major Jones added:

If the platform had not left our waters voluntarily, I would definitely not have used force. I had no instructions to that effect and anyhow I did not have the suitable weapons to do so. I even had no instructions to board the drilling platform and also I did not consider that.<sup>506</sup>

438. The captains of the two Surinamese patrol boats, Mr. M. Galong and Mr. R.S. Bhola, both confirmed that the drilling platform was ordered to leave Suriname waters within 12 hours and if this order was not complied with, the consequences would be theirs. With respect to what the consequences would be, both Captain Galong and Captain Bhola noted that they had no instructions with regard to the use of force. Captain Bhola stated that:

In the periods May 1989-1990 and 1997 up to now I have performed at least 30 patrol missions off the coast of Suriname. These patrol missions also involved the sea area between 10° and 30° North which is disputed between Suriname and Guyana. The patrols had mainly to do with expelling fishermen without a licence from Suriname waters. This has always been achieved by issuing summons. In such cases the commander of the vessel is in command of the operation. My instructions never imply that I may use force. And I have never used force. All things considered the course of the removal of the drilling platform, as far as I am concerned, does not differ essentially from the course taken during other patrols.<sup>507</sup>

439. The testimony of those involved in the incident clearly reveals that the rig was ordered to leave the area and if this demand was not fulfilled, responsibility for unspecified consequences would be theirs. There was no unanimity as to what these “consequences” might have been. The Tribunal is of the view that the order given by Major Jones to the rig constituted an explicit threat that force might be used if the order was not complied with. The question now arises whether this threat of the use of force

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<sup>505</sup> Suriname Rejoinder, Annex 20.

<sup>506</sup> Suriname Rejoinder, Annex 20.

<sup>507</sup> Suriname Rejoinder, Annex 16.

breaches the terms of the Convention, the UN Charter and general international law. The ICJ has thrown some light on the circumstances, where a threat of force can be considered illegal. It has declared that:

Whether a signalled intention to use force if certain events occur is or is not a “threat” within Article 2, paragraph 4, of the Charter depends upon various factors. If the envisaged use of force is itself unlawful, the stated readiness to use it would be a threat prohibited under Article 2, paragraph 4. Thus it would be illegal for a State to threaten force to secure territory from another State, or to cause it to follow or not follow certain political or economic paths. The notions of “threat” and “use” of force under Article 2, paragraph 4, of the Charter stand together in the sense that if the use of force itself in a given case is illegal – for whatever reason – the threat to use such force will likewise be illegal. In short, if it is to be lawful, the declared readiness of a State to use force must be a use of force that is in conformity with the Charter.<sup>508</sup>

440. The Tribunal also takes into consideration the findings of the ICJ in the *Nicaragua* case where it had occasion to refer to the application of the “customary international law of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4, of the Charter of the United Nations”<sup>509</sup> to what the Court termed “less grave forms of the use of force”.<sup>510</sup> The Court stated that:

As regards certain particular aspects of the principle in question, it will be necessary to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms. In determining the legal rule which applies to these latter forms, the Court can again draw on the formulations contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) ...). As already observed, the adoption by States of this text affords an indication of their *opinio juris* as to customary international law on the question. Alongside certain descriptions which may refer to aggression, this text includes others which refer only to less grave forms of the use of force.<sup>511</sup>

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<sup>508</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, at para. 47. Scholarly opinion is in line with this proposition: see Ian Brownlie, *International Law and the Use of Force*, p. 364 (1964).

<sup>509</sup> *Nicaragua*, Merits, Judgment, I.C.J. Reports 1986, p. 14, at para. 190.

<sup>510</sup> *Ibid.*, at para. 191.

<sup>511</sup> *Ibid.*

### C. LAW ENFORCEMENT ACTIVITIES

441. Suriname has maintained that the measures it undertook on 3 June 2000 were of the nature of reasonable and proportionate law enforcement measures to preclude unauthorized drilling in a disputed area of the continental shelf. It asserted that it was quite normal for coastal States to undertake law enforcement activities in disputed areas (usually in relation to fisheries) and also to do so against vessels under foreign flags including the flag of the other party to the dispute, unless specific arrangements exist. Suriname's practice in respect of fisheries enforcement in the disputed area is evidence of this. Suriname noted that it has drawn the Tribunal's attention to Article 2, paragraph 6, of its mining decree which provides that "he who undertakes mining activities without a licence can be punished by imprisonment for a maximum of two years, and/or fine of a maximum of 100,000 Suriname guilders."<sup>512</sup> The fact that the Attorney General was consulted before the 3 June 2000 action indicated that that action was a law enforcement measure.
442. Suriname has made much use of the case law of international courts and tribunals to support its claim. It has significantly relied on the judgment of the ICJ in the *Fisheries Jurisdiction* case (*Spain v. Canada*).<sup>513</sup> Suriname, in its Rejoinder, recalled that:

Spain contends that an exercise of jurisdiction by Canada over a Spanish vessel on the high seas entailing the use of force falls outside of Canada's reservation to the Court's jurisdiction. Spain advances several related arguments in support of this thesis. First, Spain says that the use of force by one State against a fishing vessel of another State on the high seas is necessarily contrary to international law; and as Canada's reservation must be interpreted consistently with legality, it may not be interpreted to subsume such use of force within the phrase "the enforcement of such measures". Spain further asserts that the particular use of force directed against the *Estai* was in any event unlawful and amounted to a violation of Article 2, paragraph 4, of the Charter, giving rise to a separate cause of action not caught by the reservation.

In rejecting Spain's argument, the Court stated that the "Court finds that the use of force authorized by the Canadian legislation and regulation falls within the ambit of what is commonly understood as enforcement of conservation and management measures and thus falls under the provisions of paragraph 2(d) of Canada's

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<sup>512</sup> Suriname Rejoinder, para. 4.34; Decree of 8 May 1986, Suriname Counter-Memorial, Annex 54 (translation provided in Suriname Rejoinder, Annex SR31).

<sup>513</sup> *Fisheries Jurisdiction (Spain v. Canada)*, Jurisdiction of the Court, Judgment, I.C.J. Reports 1998, p. 432 ("Fisheries Jurisdiction").

declaration. This is so notwithstanding that the reservation does not in terms mention the use of force. *Boarding, inspection, arrest and minimum use of force for those purposes are all contained within the concept of enforcement of conservation and management measures according to a 'natural and reasonable' interpretation of the concept.*"

The Court's reasoning squarely supports Suriname's position that a coastal state's instruction to an oil rig that it not conduct drilling on the continental shelf claimed by the coastal state, and that the oil rig depart the area, is an exercise of the law enforcement jurisdiction of the coastal state, not a violation of the prohibition on the international use of force.<sup>514</sup>

443. Suriname also relied on the judgment of ITLOS in the *Saiga* case to show that stopping and communicating with a vessel did not in themselves constitute "a use of force or threat to use force". It cited the Tribunal's views on the use of force in law enforcement activities:<sup>515</sup>

The normal practice used to stop a ship at sea is first to give an auditory or visual signal to stop, using internationally recognized signals. Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship. It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force. Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered.<sup>516</sup>

444. Guyana for its part considered the *Fisheries Jurisdiction* case as wholly irrelevant as a precedent to the present case. Guyana contended, *inter alia*, that that case concerned enforcement measures against fishing vessels on the high seas and not the use of force directly arising from a maritime dispute between two sovereign States. In addition the case solely concerned the interpretation of Canada's reservation to the Court's jurisdiction with respect to disputes arising out of or concerning management measures taken by Canada and the enforcement of such measures. Guyana affirmed that it was very clear that this precedent is irrelevant because the Court was not purporting to define the meaning of the term armed force, but was simply attempting to define the scope of Canada's reservation to the Court's jurisdiction.<sup>517</sup>

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<sup>514</sup> Suriname Rejoinder, paras. 4.59-4.61.

<sup>515</sup> Suriname Rejoinder, para. 4.61.

<sup>516</sup> *Saiga*, Judgment, ITLOS Reports 1999, p. 7, at para. 156.

<sup>517</sup> Transcript, p. 580.

445. The Tribunal accepts the argument that in international law force may be used in law enforcement activities provided that such force is unavoidable, reasonable and necessary.<sup>518</sup> However in the circumstances of the present case, this Tribunal is of the view that the action mounted by Suriname on 3 June 2000 seemed more akin to a threat of military action rather than a mere law enforcement activity. This Tribunal has based this finding primarily on the testimony of witnesses to the incident, in particular the testimony of Messrs Netterville and Barber. Suriname's action therefore constituted a threat of the use of force in contravention of the Convention, the UN Charter and general international law.
446. Suriname also argued that "should the Tribunal regard [its 3 June 2000] measures as contrary to international obligations owed by Suriname to Guyana, the measures were nevertheless lawful countermeasures since they were taken in response to an internationally wrongful act by Guyana in order to achieve cessation of that act".<sup>519</sup> It is a well established principle of international law that countermeasures may not involve the use of force. This is reflected in the ILC Draft Articles on State Responsibility at Article 50(1)(a), which states that countermeasures shall not affect "the obligation to refrain from the threat or use of force as embodied in the Charter of the United Nations". As the Commentary to the ILC Draft Articles mentions,<sup>520</sup> this principle is consistent with the jurisprudence emanating from international judicial bodies.<sup>521</sup> It is also contained in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,<sup>522</sup> the adoption of which, according to the ICJ, is an indication of State's *opinio juris* as to customary international law on the question.<sup>523</sup> Peaceful means of addressing Guyana's alleged breach of international law with respect to

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<sup>518</sup> See *S.S. "I'm Alone" (Canada/United States)*, R.I.A.A. Vol. 3, p. 1615; *Red Crusader (Commission of Enquiry, Denmark-United Kingdom)*, 35 I.L.R. p. 199; *Saiga*, Judgment, ITLOS Reports 1999, p. 7.

<sup>519</sup> Suriname Rejoinder, para. 4.32.

<sup>520</sup> James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2002).

<sup>521</sup> *Corfu Channel*, Judgment, I.C.J. Reports 1949, p. 4, at p. 35; *Nicaragua*, Merits, Judgment, I.C.J. Reports 1986, p. 16, at p. 127, para. 249.

<sup>522</sup> "States have a duty to refrain from acts of reprisal involving the use of force.": G.A. Res. 2625 (XXV) of 24 October 1970, first principle, para. 6.

<sup>523</sup> *Nicaragua*, Merits, Judgment, I.C.J. Reports 1986, p. 14, at para. 191.

exploratory drilling were available to Suriname under the Convention. A State faced with a such a dispute should resort to the compulsory procedures provided for in Section 2 of Part XV of the Convention, which provide among other things that, where the urgency of the situation so requires, a State may request that ITLOS prescribe provisional measures.<sup>524</sup> As it involved the threat of force, Suriname's action against the *C.E. Thornton* cannot have been a lawful countermeasure.

447. Having reached this conclusion the Tribunal must now deal with the question of whether Suriname's action has raised an issue of State responsibility.

#### **D. STATE RESPONSIBILITY**

448. In addressing Suriname's State responsibility and Guyana's request that this Tribunal grant compensation and an order precluding Suriname from resorting to further threats of force against Guyana or its licensees, the Tribunal considers it useful to look at the *Nigeria/Cameroon* case. In that case, the Court entertained several claims engaging Nigeria and Cameroon's State responsibility for the use of force within the disputed area. Although the claims were deemed to be admissible, in the same way this Tribunal has found Guyana's Third Submission to be admissible, the Court did not assess Nigeria's State responsibility. In its Rejoinder, Suriname argued the relevance of the *Cameroon/Nigeria* judgment:

In the *Cameroon v. Nigeria* case before the International Court of Justice, Cameroon alleged that Nigeria used force, in violation of UN Charter Article 2(4) and customary international law, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Peninsula of Bakassi. Even though the Court ultimately awarded to Cameroon certain areas along the border that were occupied by Nigerian military forces, the Court decided that its delimitation judgment (along with the anticipated evacuation of the Cameroonian territory by Nigeria) sufficiently addressed the injury allegedly suffered by Cameroon. Consequently, the Court did not further determine whether and to what extent Nigeria's responsibility to Cameroon had been engaged as a result of the occupation. On similar reasoning, even if the Tribunal in this case concludes that the incident occurred in waters that are now determined to be under Guyana's jurisdiction, the Tribunal should decline to pass upon Guyana's claim for alleged unlawful activities by Suriname.<sup>525</sup>

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<sup>524</sup> Article 290(5) of the Convention.

<sup>525</sup> Suriname Rejoinder, para. 4.3.

449. Guyana for its part contended that Suriname has disregarded the rule set forth in Article 1 of the ILC Draft Articles that every internationally wrongful act of a State entails the responsibility of that State. It was, in Guyana's view, very clear that Article 279 of the Convention imposed an obligation on States parties that is independent of the laws applicable to maritime boundary delimitation and the obligations under the Convention. "To argue otherwise", it said "would mean that a boundary dispute, *ipso facto*, justifies recourse to armed force". It maintained that Suriname's reliance on the *Cameroon/Nigeria* case was misplaced. In that case, it held, the Court did not enumerate a general principle that State responsibility is irrelevant to boundary disputes but limited itself solely to the relief sought by Cameroon.

450. The Tribunal agrees with Guyana's characterisation of the ICJ's judgment in *Cameroon/Nigeria*, but considers that, as was the case in *Cameroon/Nigeria*, Guyana's request for an order precluding Suriname from resorting to further threats of force is sufficiently addressed by this Tribunal's delimitation decision. The findings in the *Cameroon/Nigeria* case may be recalled:

In the circumstances of the case, the Court considers moreover that, by the very fact of the present Judgment and of the evacuation of the Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all events have been sufficiently addressed. The Court will not therefore seek to ascertain whether and to what extent Nigeria's responsibility to Cameroon has been engaged as a result of that occupation.<sup>526</sup>

451. In a like manner this Tribunal will not seek to ascertain whether and to what extent Suriname's responsibility to Guyana has been engaged as a result of the CGX incident of 3 June 2000. This dictum of the ICJ is all the more relevant in that as a result of this Award, Guyana now has undisputed title to the area where the incident occurred – the injury done to Guyana has thus been "sufficiently addressed".

452. This Tribunal will now deal with Guyana's claim for compensation. It is to be noted that the *Cameroon/Nigeria* judgment held that a declaratory judgment sufficed to satisfy the claim for compensation advanced by Cameroon. The circumstances of the claims in that case, however, are not entirely congruent with the claim made by Guyana with

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<sup>526</sup> *Cameroon/Nigeria*, Judgment, I.C.J. Reports 2002, p. 303, para. 319.

respect to the CGX incident. The Tribunal is of the view that the damages, in these proceedings, have not been proved to the satisfaction of this Tribunal and the claim for compensation, accordingly, is rejected on that ground.

## CHAPTER VIII - GUYANA'S FOURTH SUBMISSION AND SURINAME'S SUBMISSIONS 2.C AND 2.D

453. Guyana and Suriname have both made claims regarding breaches of Articles 74(3) and 83(3) of the Convention. Each Party alleges that the other breached its obligation to make every effort to enter into provisional arrangements. Guyana also claims that Suriname hampered or jeopardised the reaching of a final agreement by its conduct relating to the CGX incident. Suriname makes the same claim in respect of Guyana authorising its concession holder CGX to undertake exploratory drilling in the disputed area.

454. Guyana's Fourth Submission is set out as follows:

Suriname is internationally responsible for violating its obligations under the 1982 United Nations Convention on the Law of the Sea to make every effort to enter into provisional arrangements of a practical nature pending agreement on the delimitation of the continental shelf and exclusive economic zones in Guyana and Suriname, and by jeopardising or hampering the reaching of the final agreement; and that Suriname is under an obligation to provide reparation, in a form and in an amount to be determined, for the injury caused by its internationally wrongful acts.<sup>527</sup>

455. The Tribunal notes that Guyana withdrew its claim for reparation in respect of its Fourth Submission during the hearings.

456. Suriname's Submissions 2.C. and 2.D. are set out as follows:

2.C. To find and declare that Guyana breached its legal obligations to Suriname under Articles 74(3) and 83(3) of the 1982 Law of the Sea Convention, by authorizing its concession holder to drill an exploratory well in a known disputed maritime area thereby jeopardizing and hampering the reaching of a maritime boundary agreement.

2.D. To find and declare that Guyana breached its legal obligations to Suriname under Article 74(3) and 83(3) of the 1982 Law of the Sea Convention, by not making every effort to enter into a provisional arrangement of a practical nature.<sup>528</sup>

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<sup>527</sup> Guyana Reply, para. 10.1.

<sup>528</sup> Suriname Rejoinder, Chapter 6.

## **A. JURISDICTION AND ADMISSIBILITY**

457. Suriname challenges the Tribunal's jurisdiction over Guyana's Fourth Submission as well as its admissibility. It argues, as it did for Guyana's Third Submission, that Article 283(1) constitutes a bar to jurisdiction. For the same reasons that the Tribunal rejected the notion that Article 283(1) could bar its jurisdiction to hear Guyana's Third Submission, the Tribunal rules that it cannot bar its jurisdiction to hear Guyana's Fourth Submission. Suriname also contends that the claim is inadmissible as Guyana lacks clean hands.<sup>529</sup> The Tribunal rejects this argument for the same reasons the Tribunal rejected it in relation to Guyana's Third Submission.

458. Furthermore, Suriname claims that only conduct of the Parties after 8 August 1998, being the date of entry into force of the Convention between Guyana and Suriname,<sup>530</sup> is relevant to Guyana's Fourth Submission.<sup>531</sup> In this respect, the Tribunal recalls that an act of a State can constitute a breach of an international obligation only if the State is bound by that obligation at the time of the act. However, although acts prior to 8 August 1998 cannot form the basis of a finding by the Tribunal that Suriname violated an obligation under the Convention, such acts are relevant to the Tribunal's consideration of Suriname's subsequent conduct to the extent that they provide the background for that conduct and inform the Tribunal's interpretation of it.

## **B. THE OBLIGATIONS PROVIDED FOR BY ARTICLES 74(3) AND 83(3)**

459. Articles 74(3) and 83(3) of the Convention impose two obligations upon States Parties in the context of a boundary dispute concerning the continental shelf and exclusive economic zone respectively. The two obligations simultaneously attempt to promote and limit activities in a disputed maritime area. The first obligation is that, pending a final delimitation, States Parties are required to make "every effort to enter into provisional arrangements of a practical nature." The second is that the States Parties

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<sup>529</sup> Suriname Preliminary Objections, paras. 7.1-7.9.

<sup>530</sup> 8 August 1998 is the thirtieth day after Suriname ratified the Convention on the 9 July 1998: Transcript, p. 608.

<sup>531</sup> Suriname Rejoinder, para. 5(2)(i).

must, during that period, make “every effort ... not to jeopardize or hamper the reaching of the final agreement.”

### 1. Provisional Arrangements of a Practical Nature

460. The first obligation contained in Articles 74(3) and 83(3) is designed to promote interim regimes and practical measures that could pave the way for provisional utilization of disputed areas pending delimitation.<sup>532</sup> In the view of the Tribunal, this obligation constitutes an implicit acknowledgment of the importance of avoiding the suspension of economic development in a disputed maritime area, as long as such activities do not affect the reaching of a final agreement. Such arrangements promote the realisation of one of the objectives of the Convention, the equitable and efficient utilisation of the resources of the seas and oceans.<sup>533</sup>
461. Although the language “every effort” leaves “some room for interpretation by the States concerned, or by any dispute settlement body”,<sup>534</sup> it is the opinion of the Tribunal that the language in which the obligation is framed imposes on the Parties a duty to negotiate in good faith. Indeed, the inclusion of the phrase “in a spirit of understanding and cooperation” indicates the drafters’ intent to require of the parties a conciliatory approach to negotiations, pursuant to which they would be prepared to make concessions in the pursuit of a provisional arrangement. Such an approach is particularly to be expected of the parties in view of the fact that any provisional arrangements arrived at are by definition temporary and will be without prejudice to the final delimitation.<sup>535</sup>
462. There have been a number of examples of arrangements for the joint exploration and exploitation of maritime resources, often referred to as joint development agreements. Joint development has been defined as “the cooperation between States with regard to

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<sup>532</sup> Myron H. Nordquist, ed., *United Nations Convention on the Law of the Sea 1982: A Commentary, Vol. II*, p. 815 (Nijhoff) (“Virginia Commentary”); Rainer Lagoni, *Interim Measures Pending Delimitation Agreements*, 78 Am. J. Int’l L. p. 345, at p. 354 (1984).

<sup>533</sup> Thomas A. Mensah, *Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation*, in Rainer Lagoni & Daniel Vignes, *Maritime Delimitation*, p. 143, at p. 143 (Nijhoff 2006); the Convention, preamble.

<sup>534</sup> Virginia Commentary, Vol. II, p. 815.

<sup>535</sup> The Convention, Articles 74(3), 83(3).

exploration for and exploitation of certain deposits, fields or accumulations of non-living resources which either extend across a boundary or lie in an area of overlapping claims”.<sup>536</sup>

463. Joint exploitation of resources that straddle maritime boundaries has been particularly encouraged by international courts and tribunals. In the *Eritrea/Yemen* arbitration, the arbitral tribunal, although no mineral resources had yet been discovered in the disputed waters, wrote that the parties “should give every consideration to the shared or joint or unitised exploitation of any such resources.”<sup>537</sup> The ICJ in the *North Sea Continental Shelf* cases, in addressing the question of the unity of deposits as it relates to delimitation, noted that State practice in dealing with deposits straddling a boundary line has been to enter into undertakings with a view to ensuring the most efficient exploitation or apportionment of the products extracted.<sup>538</sup> Furthermore, the Court stated that agreements for joint exploitation were particularly appropriate where areas of overlapping claims result from the method of delimitation chosen and there is a question of preserving the unity of deposits.<sup>539</sup>
464. Provisional arrangements of a practical nature have been recognised as important tools in achieving the objectives of the Convention, and it is for this reason that the Convention imposes an obligation on parties to a dispute to “make every effort” to reach such arrangements.

## 2. Hampering or Jeopardising the Final Agreement

465. The second obligation imposed by Articles 74(3) and 83(3) of the Convention, the duty to make every effort ... not to jeopardise or hamper the reaching of the final agreement”, is an important aspect of the Convention’s objective of strengthening peace and friendly relations between nations and of settling disputes peacefully. However, it is important

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<sup>536</sup> Rainer Lagoni, *Report on Joint Development of Non-living Resources in the Exclusive Economic Zone*, I.L.A. Report of the Sixty-Third Conference, p. 509, at pp. 511-512 (1988), quoted in Mensah, *Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation*, in Rainer Lagoni and Daniel Vignes, *Maritime Delimitation*, p. 143, at p. 146 (Nijhoff, 2006).

<sup>537</sup> *Eritrea/Yemen II*, 119 I.L.R. p. 417 (1999), *The Eritrea-Yemen Arbitration Awards of 1998 & 1999* (Permanent Court of Arbitration Award Series 2005), online: <<http://www.pca-cpa.org>>.

<sup>538</sup> *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3 at para. 97.

<sup>539</sup> *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3 at para. 99.

to note that this obligation was not intended to preclude all activities in a disputed maritime area. The Virginia Commentary for example states that the obligation “does not exclude the conduct of some activities by the States concerned within the disputed area, so long as those activities would not have the effect of prejudicing the final agreement.”<sup>540</sup>

466. In the context of activities surrounding hydrocarbon exploration and exploitation, two classes of activities in disputed waters are therefore permissible. The first comprises activities undertaken by the parties pursuant to provisional arrangements of a practical nature. The second class is composed of acts which, although unilateral, would not have the effect of jeopardizing or hampering the reaching of a final agreement on the delimitation of the maritime boundary.
467. The Tribunal is of the view that unilateral acts which do not cause a physical change to the marine environment would generally fall into the second class. However, acts that do cause physical change would have to be undertaken pursuant to an agreement between the parties to be permissible, as they may hamper or jeopardise the reaching of a final agreement on delimitation. A distinction is therefore to be made between activities of the kind that lead to a permanent physical change, such as exploitation of oil and gas reserves, and those that do not, such as seismic exploration.
468. The distinction adopted by this Tribunal is consistent with the jurisprudence of international courts and tribunals on interim measures. The ICJ’s decision in the *Aegean Sea* case between Greece and Turkey distinguishes between activities of a transitory character and activities that risk irreparable prejudice to the position of the other party. Greece had requested that Turkey be ordered to refrain from all exploratory activity or scientific research without its consent pending a final judgment. In particular, Greece requested that Turkey be ordered to cease its seismic exploration in disputed waters, an activity involving the detonation of small explosions aimed at sending sound waves through the seabed. The Court declined to indicate interim measures, citing three factors: (1) the fact that seismic exploration does not involve any risk of physical damage to the seabed or subsoil, (2) that the activities are of a transitory

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<sup>540</sup> Virginia Commentary, Vol. II, p. 815.

character and do not involve the establishment of installations, and (3) that no operations involving the actual appropriation or other use of the natural resources were embarked upon.<sup>541</sup> In the circumstances, the Court found that Turkey's conduct did not pose the risk of irreparable prejudice to Greece's rights in issue in the proceedings.<sup>542</sup>

469. It should be noted that the regime of interim measures is far more circumscribed than that surrounding activities in disputed waters generally. As the Court in the *Aegean Sea* case noted, the power to indicate interim measures is an exceptional one,<sup>543</sup> and it applies only to activities that can cause irreparable prejudice. The cases dealing with such measures are nevertheless informative as to the type of activities that should be permissible in disputed waters in the absence of a provisional arrangement. Activities that would meet the standard required for the indication of interim measures, in other words, activities that would justify the use of an exceptional power due to their potential to cause irreparable prejudice, would easily meet the lower threshold of hampering or jeopardising the reaching of a final agreement. The criteria used by international courts and tribunals in assessing a request for interim measures, notably the risk of physical damage to the seabed or subsoil, therefore appropriately guide this Tribunal's analysis of an alleged violation of a party's obligations under Articles 74(3) and 83(3) of the Convention.

470. It should not be permissible for a party to a dispute to undertake any unilateral activity that might affect the other party's rights in a permanent manner. However, international courts and tribunals should also be careful not to stifle the parties' ability to pursue economic development in a disputed area during a boundary dispute, as the resolution of such disputes will typically be a time-consuming process. This Tribunal's interpretation of the obligation to make every effort not to hamper or jeopardise the reaching of a final agreement must reflect this delicate balance. It is the Tribunal's opinion that drawing a distinction between activities having a permanent physical impact on the marine environment and those that do not, accomplishes this and is consistent with other aspects of the law of the sea and international law.

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<sup>541</sup> *Aegean Sea*, Interim Protection, Order, I.C.J. Reports 1976, p. 3, at para. 30.

<sup>542</sup> *Ibid.* at para. 31.

<sup>543</sup> *Ibid.*

**C. THE TRIBUNAL’S FINDINGS ON THE DUTY TO MAKE EVERY EFFORT TO ENTER INTO PROVISIONAL ARRANGEMENTS OF A PRACTICAL NATURE**

471. Suriname claims that Guyana violated its duty to make every effort to enter into provisional arrangements as it persistently demanded that Suriname permit CGX to resume exploratory drilling and that Suriname accept Guyana’s concessions in the disputed area.<sup>544</sup> Guyana, on its side, claims that Suriname, both before and after the CGX incident, failed to make serious efforts to negotiate provisional arrangements.<sup>545</sup>
472. The efforts by Guyana and Suriname to arrive at provisional arrangements appear to have started in 1989. The Joint Communiqué of 25 August 1989 between the President of Guyana and the President of Suriname recorded that the two Presidents expressed concern over the potential for disputes “with respect to petroleum development within the area of the North Eastern and North Western Seaward boundaries of Guyana and Suriname respectively”.<sup>546</sup> They agreed that pending settlement of the boundary question, representatives of the Agencies responsible for petroleum development within the two countries should agree on modalities which would ensure that the opportunities available within the disputed area could be jointly utilised. Moreover, the Presidents agreed that concessions already granted in the disputed area would not be disturbed.<sup>547</sup>
473. The 1989 agreement led to the 1991 “Memorandum of Understanding – Modalities for Treatment of the Offshore Area of Overlap between Guyana and Suriname” (the “MOU”). The Staatsolie representatives negotiating the MOU however claimed that they lacked the authority to negotiate an agreement on the actual utilisation of resources in the disputed area. The MOU was therefore limited in scope: it applied only to one Guyanese oil concession, the 1988 concession to Lasmo/BHP, and provided that further discussions would have to occur if the concession holder made any discoveries.<sup>548</sup> The MOU provided further that representatives of both governments would meet within

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<sup>544</sup> Suriname Rejoinder, paras. 5.12-5.14.

<sup>545</sup> Guyana Reply, paras. 9.1-9.14.

<sup>546</sup> Joint Communiqué Signed at the Conclusion of the State Visit to Suriname by Hugh Desmond Hoyte, President of the Cooperative Republic of Guyana and Ramsewak Shankar, President of the Republic of Suriname (25 December 1989): Guyana Memorial, Annex 72.

<sup>547</sup> Guyana Memorial, para. 4.32.

<sup>548</sup> Suriname Preliminary Objections, paras. 6.26-6.28.

thirty days to conclude discussions on modalities for joint utilisation of the disputed area awaiting a final boundary agreement. Suriname, however, never sent a delegation or representative to conclude discussions, as contemplated by the MOU.<sup>549</sup> In 1994, Guyana submitted a new draft of proposed “Modalities for Treatment of the Offshore Area of Overlap between Guyana and Suriname”; however Suriname failed to respond to it.<sup>550</sup> Over the following years, Suriname did not engage in further discussions on the topic despite certain efforts by Guyana. There are also indications that the already limited MOU was disavowed by Suriname during that time.<sup>551</sup>

474. For the Tribunal, the evidence demonstrates that Suriname did not make every effort to enter into provisional arrangements before 8 August 1998. Although this alone cannot form the basis of a finding that Suriname violated the Convention, Suriname’s subsequent conduct, which was consistent with its pre-1998 conduct, did constitute a failure to meet its obligations under Articles 74(3) and 83(3) and constituted a violation of the Convention.
475. Indeed, in the build-up to the CGX incident of 3 June 2000, Suriname did not fulfil its obligation to make every effort to enter into provisional arrangements relating to the exploratory activities of Guyana’s concession holder CGX. While it was conducting seismic testing in the disputed area in 1999, CGX announced publicly that it had received approval from Guyana for its drilling programme,<sup>552</sup> and later the company announced a drilling schedule.<sup>553</sup> Less than three weeks after the latter announcement, which occurred on 10 April 2000, “the drilling plans had become known in Suriname via the ‘grapevine’.”<sup>554</sup> Suriname’s first reaction came in the form of a diplomatic note dated 10 May 2000, in which it cautioned Guyana against its proposed course of conduct.<sup>555</sup> Following Guyana’s response on 17 May 2000, asserting that all activities

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<sup>549</sup> Suriname Preliminary Objections, para. 6.28.

<sup>550</sup> Guyana Memorial, paras. 4.36-4.37.

<sup>551</sup> Cable 94 Georgetown 2405 from the United States Embassy in Georgetown, Guyana to the United States Secretary of State (21 July 1994), Guyana Reply, Annex R11: “Mungra responded that the MOU had no validity because it had never been approved by the Surinamese Parliament.”

<sup>552</sup> CGX Press Releases, 29 September 1999, reproduced in Guyana Memorial, Annex 158.

<sup>553</sup> Guyana Memorial, Annex 158.

<sup>554</sup> Suriname Preliminary Objections, paras. 6.34-6.35.

<sup>555</sup> Guyana Memorial, Annex 48.

were taking place within Guyanese territory,<sup>556</sup> Suriname again issued a *note verbale* objecting to the planned drilling, insisting on termination of all activities in the disputed waters, and informing Guyana of its intention to “protect its territorial integrity and national sovereignty”.<sup>557</sup> On 2 June 2000, hours before the CGX incident occurred, Guyana invited Suriname to “send a high level delegation to Georgetown within twenty-four (24) hours to commence dialogue” on matters relating to the maritime boundary.<sup>558</sup>

476. At all times Suriname was under an obligation to make every effort to reach a provisional arrangement. However, this obligation became particularly pressing and relevant when Suriname became aware of Guyana’s concession holder’s planned exploratory drilling in disputed waters. Instead of attempting to engage Guyana in a spirit of understanding and cooperation as required by the Convention, Suriname opted for a harder stance. Even though Guyana attempted to engage it in a dialogue which may have led to a satisfactory solution for both Parties, Suriname resorted to self-help in threatening the CGX rig, in violation of the Convention. In order to satisfy its obligation to make every effort to reach provisional arrangements, Suriname would have actively had to attempt to bring Guyana to the negotiating table, or, at a minimum, have accepted Guyana’s last minute 2 June 2000 invitation and negotiated in good faith. It notably could have insisted on the immediate cessation of CGX’s exploratory drilling as a condition to participating in further talks. However, as Suriname did not opt for either of these courses of action, it failed, in the build-up to the CGX incident, in its duties under Articles 74(3) and 83(3) of the Convention.

477. The Tribunal rules that Guyana also violated its obligation to make every effort to enter into provisional arrangements by its conduct leading up to the CGX incident. Guyana had been preparing exploratory drilling for some time before the incident,<sup>559</sup> and should have, in a spirit of cooperation, informed Suriname directly of its plans. Indeed, notification in the press by way of CGX’s public announcements was not sufficient for

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<sup>556</sup> Guyana Memorial, Annex 77.

<sup>557</sup> Guyana Memorial, Annex 78.

<sup>558</sup> Guyana Memorial, Annex 79.

<sup>559</sup> Guyana appears to have authorised CGX to drill in the disputed area on 10 August 1999, almost a full year before the CGX incident: Press Releases, Guyana Memorial, Annex 158.

Guyana to meet its obligation under Articles 74(3) and 83(3) of the Convention. Guyana should have sought to engage Suriname in discussions concerning the drilling at a much earlier stage. Its 2 June 2000 invitation to Suriname to discuss the modalities of any drilling operations, although an attempt to defuse a tense situation, was also not sufficient in itself to discharge Guyana's obligation under the Convention. Steps Guyana could have taken consistent with efforts to enter into provisional arrangements include (1) giving Suriname official and detailed notice of the planned activities, (2) seeking cooperation of Suriname in undertaking the activities, (3) offering to share the results of the exploration and giving Suriname an opportunity to observe the activities, and (4) offering to share all the financial benefits received from the exploratory activities.

478. Following the CGX incident in June of 2000, numerous meetings and communications between the Parties took place in which, in the opinion of the Tribunal, they both engaged in good faith negotiations relating to provisional arrangements. Already on 6 June 2000 the Parties expressed their determination to "put in place arrangements to end the current dispute over the oil exploration concessions".<sup>560</sup> Further discussions then took place, including on 13 June 2000 at a meeting of the Joint Technical Committee,<sup>561</sup> as well as on 17-18 June 2000<sup>562</sup> and 28-30 January 2002.<sup>563</sup> A meeting of the Subcommittee of the Guyana-Suriname Border Commission was held on 31 May 2002, at which modalities for negotiating a provisional arrangement were discussed.<sup>564</sup> Subsequently, two joint meetings of the Suriname and Guyana Border Commissions were held (on 25-26 October 2002 and 10 March 2003).<sup>565</sup> Although they were ultimately unsuccessful in reaching a provisional arrangement, both Parties demonstrated a willingness to negotiate in good faith in relatively extensive meetings

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<sup>560</sup> Guyana Memorial, Annex 81.

<sup>561</sup> Guyana Memorial, Annex 82.

<sup>562</sup> Guyana Memorial, Annex 83.

<sup>563</sup> Suriname Counter-Memorial, Annex 8, p. 6.

<sup>564</sup> Guyana Memorial, Annex 85.

<sup>565</sup> Guyana Memorial, Annexes 87-88.

and communications.<sup>566</sup> As a result, the Tribunal is satisfied that both Parties respected their obligation relating to provisional arrangements after the CGX incident.

**D. THE TRIBUNAL'S FINDINGS ON THE DUTY NOT TO HAMPER OR JEOPARDISE THE REACHING OF A FINAL AGREEMENT**

**1. Suriname's Submission 2.C**

479. Suriname claims that Guyana violated its obligation to make every effort not to hamper or jeopardise the reaching of a final agreement by allowing its concession holder to undertake exploratory drilling in the disputed waters.<sup>567</sup> With respect to this claim, the Tribunal finds that there is a substantive legal difference between certain oil exploration activities, notably seismic testing, and exploratory drilling.

480. The question that the Tribunal has to address here is whether a party engaging in unilateral exploratory drilling in a disputed area falls short of its obligation to make every effort, in a spirit of understanding and cooperation, not to jeopardise or hamper the reaching of the final agreement on delimitation. As set out above, unilateral acts that cause a physical change to the marine environment will generally be comprised in a class of activities that can be undertaken only jointly or by agreement between the parties. This is due to the fact that these activities may jeopardize or hamper the reaching of a final delimitation agreement as a result of the perceived change to the status quo that they would engender. Indeed, such activities could be perceived to, or may genuinely, prejudice the position of the other party in the delimitation dispute, thereby both hampering and jeopardising the reaching of a final agreement.

481. That however is not to say that all exploratory activity should be frozen in a disputed area in the absence of a provisional arrangement. Some exploratory drilling might cause permanent damage to the marine environment. Seismic activity on the other hand should be permissible in a disputed area. In the present case, both Parties authorised concession holders to undertake seismic testing in disputed waters, and these activities

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<sup>566</sup> See Suriname Daily Judge's Folder, Vol. II, Tab H5 for a list of diplomatic post-August 1998 exchanges between Suriname and Guyana concerning a provisional arrangement or final delimitation of the maritime boundary.

<sup>567</sup> Suriname Rejoinder, Chapter 6, Submission 2.C.

did not give rise to objections from either side. In the circumstances at hand, the Tribunal does not consider that unilateral seismic testing is inconsistent with a party's obligation to make every effort not to jeopardise or hamper the reaching of a final agreement.

482. To the extent that Suriname believed that Guyana's authorisation of its concession holder to undertake exploratory drilling in disputed waters constituted a violation of its obligation to make every effort not to jeopardise or hamper the reaching of a final agreement on delimitation, and if bilateral negotiations failed to resolve the issue, a remedy is set out in the options for peaceful settlement envisaged by Part XV and Annex VII of the Convention. The obligation to have recourse to these options is binding on both Guyana and Suriname.

## **2. Guyana's Fourth Submission**

483. Guyana claims Suriname violated its obligations under Article 74(3) and 83(3) to make every effort not to hamper or jeopardise the reaching of a final agreement by its use of a threat of force to respond to Guyana's exploratory drilling.<sup>568</sup>

484. Suriname had a number of peaceful options to address Guyana's authorisation of exploratory drilling. The first, in keeping with its other obligation under Articles 74(3) and 83(3), was to enter into discussions with Guyana regarding provisional arrangements of a practical nature to establish the modalities of oil exploration and potentially of exploitation. In the event of failure of the negotiations, Suriname could have invoked compulsory dispute resolution under Part XV, Section 2 of the Convention. That course of action would also then have given Suriname the possibility to request provisional measures "to preserve [its] rights ... or to prevent serious harm to the marine environment, pending the final decision."<sup>569</sup> The Tribunal finds that Suriname's threat of force in a disputed area, while also threatening international peace and security, jeopardised the reaching of a final delimitation agreement.

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<sup>568</sup> Guyana Reply, para. 8.1.

<sup>569</sup> The Convention, Article 290.

## **E. DECLARATORY RELIEF**

485. Both Parties have requested the Tribunal to declare that violations of the Convention have taken place. The Tribunal notes that in certain circumstances, “reparation in the form of satisfaction may be provided by a judicial declaration that there has been a violation of a right” or an obligation.<sup>570</sup>
486. The Tribunal therefore declares that both Guyana and Suriname violated their obligations under Articles 74(3) and 83(3) of the Convention to make every effort to enter into provisional arrangements of a practical nature. Furthermore, both Guyana and Suriname violated their obligations, also under Articles 74(3) and 83(3) of the Convention, to make every effort not to jeopardise or hamper the reaching of a final delimitation agreement.

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<sup>570</sup> *Saiga*, Judgment, ITLOS Reports 1999, p. 7, at para. 171.

Map 4



## CHAPTER IX - DISPOSITIF

487. For the reasons stated in paragraphs 280, 406, 410, and 457 of this Award, the Tribunal holds that:

- (i) it has jurisdiction to delimit, by the drawing of a single maritime boundary, the territorial sea, continental shelf, and exclusive economic zone appertaining to each of the Parties in the waters where their claims to these maritime zones overlap;
- (ii) it has jurisdiction to consider and rule on Guyana's allegation that Suriname has engaged in the unlawful use or threat of force contrary to the Convention, the UN Charter, and general international law; and
- (iii) it has jurisdiction to consider and rule on the Parties' respective claims under Articles 74(3) and 83(3) of the Convention relating to the obligation to make every effort to enter into provisional arrangements of a practical nature and the obligation not to jeopardise or hamper the reaching of a final agreement.

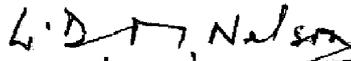
488. Accordingly, taking into account the foregoing considerations and reasons,

### THE ARBITRAL TRIBUNAL UNANIMOUSLY FINDS THAT

1. The International Maritime Boundary between Guyana and Suriname is a series of geodetic lines joining the points in the order listed as set forth in paragraphs 328 and 400 of this Award and shown for illustrative purposes only in Map 4 on the preceding page;
2. The expulsion from the disputed area of the CGX oil rig and drill ship *C.E. Thornton* by Suriname on 3 June 2000 constituted a threat of the use of force in breach of the Convention, the UN Charter, and general international law; however, for the reasons set out in paragraphs 450 and 452 of this Award, Guyana's request for an order precluding Suriname from making further threats of force and Guyana's claim for compensation are rejected;

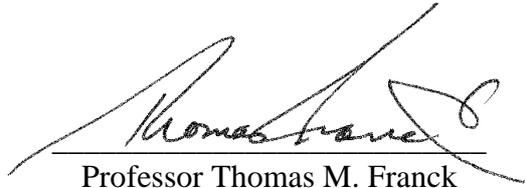
3. Both Guyana and Suriname violated their obligations under Articles 74(3) and 83(3) of the Convention to make every effort to enter into provisional arrangements of a practical nature and to make every effort not to jeopardise or hamper the reaching of a final delimitation agreement; and
4. The claims of the Parties inconsistent with this Award are rejected.

Done at The Hague, this 17<sup>th</sup> day of September 2007,



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H.E. Judge L. Dolliver M. Nelson  
President



Professor Thomas M. Franck



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Dr. Kamal Hossain



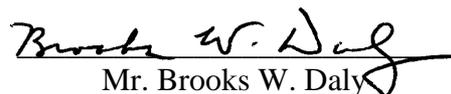
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Professor Ivan Shearer



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Professor Hans Smit



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Mr. Brooks W. Daly  
Registrar

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## APPENDIX

### Technical Report of the Tribunal's Hydrographer

David H. Gray  
M.A.Sc., P.Eng., C.L.S.

1. The full description of the line of delimitation, together with the necessary geographical coordinates, is given in the Award. All computations have been made on the Geodetic Reference System (1980) ellipsoid and all geographical coordinates are referenced to the World Geodetic System 1984 (WGS-84). The International Nautical Mile of 1852 metres has been used.
2. In compliance with the Tribunal's Procedural Orders No. 7 and 8, I obtained Global Positioning System (GPS) data at Marker "B" of the 1936 Mixed Commission Boundary Survey over a period of 4 ½ hours. These data resulted in a World Geodetic System 1984 (WGS-84 ITRF05<sup>1</sup>) position of:  
Latitude = 5° 59' 46.2059"N (± 0.077 metres)  
Longitude = 57° 08' 50.4824"W (± 0.101 metres)  
Ellipsoid Height = -24.022 metres (± 0.180 metres)

Given the indicated accuracy of the results, it would be appropriate to round off the results to:

Latitude = 5° 59' 46.21"N  
Longitude = 57° 08' 50.48"W

These values were computed using the Geodetic Survey of Canada's on-line Precise Point Positioning software and are based on the GPS satellite orbital parameters as derived from actual observations taken at tracking stations world-wide. The final values for the orbital parameters became available 21 days after the day on which the observations were taken.

The GPS survey data, in the form of RINEX files, have been provided to the Registry for permanent storage.

3. The location of Point 1 of the Award is the intersection of Low Water Line (LWL) along the west bank of the Corentyne River and a geodetic line through Marker "B" which has an initial azimuth of N10°E. Since this point moves with any movement of the Low Water Line, no geographical coordinates can be provided.
4. The geographic coordinates of base points along the Low Water Line of the coast of Suriname are:

Source and Number	Renumber	Latitude	Longitude
Annex CM69 S-1	S1	6° 01' 34.0"	57° 08' 22.0"
Annex CM69 S-2	S2	6° 01' 19.0"	56° 59' 02.0"
Annex CM69 S-3	S3	6° 01' 40.0"	56° 57' 24.0"

<sup>1</sup> Specifically, the International Terrestrial Reference Frame – 2005 version of WGS-84.

Annex CM69 S-4	S4	6° 01' 41.0"	56° 57' 21.0"
Annex CM69 S-5	S5	6° 01' 41.0"	56° 57' 15.0"
Annex CM69 S-6	S6	6° 00' 10.0"	56° 45' 10.0"
Annex CM69 S-7	S7	6° 00' 09.0"	56° 44' 48.0"
Annex CM69 S-8	S8	6° 00' 08.0"	56° 44' 29.0"
Annex CM69 S-9	S9	5° 57' 25.0"	56° 29' 57.0"
Annex CM69 S-10	S10	5° 57' 21.0"	56° 29' 18.0"
Annex CM69 S-11	S11	6° 00' 17.0"	55° 46' 44.0"
Annex CM69 S-12	S12	6° 00' 22.0"	55° 46' 22.0"
Annex CM69 S-13	S13	6° 00' 22.0"	55° 45' 56.0"
Annex CM69 S-14	S14	6° 01' 35.0"	55° 23' 19.0"

These geographic coordinates were provided by Suriname in Counter Memorial Annex 69, and were stated to be related to World Geodetic System 1984 (WGS-84).

5. The geographic coordinates of the pertinent turning points along the Low Water Line of the coast of Guyana are:

Source and Number	Renumber	Latitude	Longitude
Annex R26 G-1	G3	6° 00' 27.9"	57° 08' 21.1"
Annex R26 G-2	G9	6° 02' 42.9"	57° 08' 51.6"
Annex R26 G-3	G12	6° 03' 07.6"	57° 08' 54.0"
Annex R26 G-4	G13	6° 04' 26.3"	57° 09' 13.8"
Annex R26 G-5	G16	6° 05' 26.8"	57° 09' 26.6"
Annex R26 G-6	G18	6° 06' 12.9"	57° 09' 43.3"
Annex R26 G-7	G19	6° 06' 43.2"	57° 09' 52.8"
Annex R26 G-8	G21	6° 07' 42.8"	57° 10' 27.3"
Annex R26 G-9	G23	6° 09' 21.1"	57° 11' 28.2"
Annex R26 G-10	G25	6° 10' 45.0"	57° 12' 31.8"
Annex R26 G-11	G28	6° 16' 22.3"	57° 16' 28.0"
Annex R26 G-12	G30	6° 17' 12.7"	57° 17' 30.4"
Annex R26 G-13	G32	6° 18' 32.1"	57° 19' 06.4"
Annex R26 G-14	G33	6° 20' 12.8"	57° 22' 06.3"
Annex R26 G-15	G35	6° 40' 44.1"	57° 50' 17.7"
Annex R26 G-16	G38	7° 22' 53.8"	58° 28' 08.2"

These geographic coordinates were provided by Guyana in Reply Annex 26, and were stated to be related to World Geodetic System 1984 (WGS-84).

6. The geographic coordinates of the pertinent turning points along the Low Water Line of the coast of Guyana are:

Source and Number	Renumber	Latitude	Longitude
Annex CM69 G-1	G6	6° 01' 36.0"	57° 08' 33.0"
Annex CM69 G-2	G7	6° 02' 35.0"	57° 09' 06.0"
Annex CM69 G-3	G8	6° 02' 45.0"	57° 09' 04.0"
Annex CM69 G-4	G10	6° 02' 52.0"	57° 09' 04.0"
Annex CM69 G-5	G11	6° 02' 58.0"	57° 09' 05.0"
Annex CM69 G-6	G14	6° 05' 00.0"	57° 09' 35.0"
Annex CM69 G-7	G15	6° 05' 14.0"	57° 09' 37.0"

Annex CM69 G-8	G17	6° 06' 05.0"	57° 09' 54.0"
Annex CM69 G-9	G20	6° 07' 33.0"	57° 10' 32.0"
Annex CM69 G-10	G22	6° 07' 48.0"	57° 10' 41.0"
Annex CM69 G-11	G24	6° 10' 44.0"	57° 12' 19.0"
Annex CM69 G-12	G26	6° 10' 50.0"	57° 12' 24.0"
Annex CM69 G-13	G27	6° 16' 20.0"	57° 16' 31.0"
Annex CM69 G-14	G29	6° 17' 12.0"	57° 17' 29.0"
Annex CM69 G-15	G31	6° 18' 28.0"	57° 19' 06.0"
Annex CM69 G-16	G34	6° 20' 15.0"	57° 22' 11.0"
Annex CM69 G-17	G36	6° 40' 44.0"	57° 50' 21.0"
Annex CM69 G-18	G37	7° 22' 02.0"	58° 27' 32.0"
Annex CM69 G-19	G39	7° 23' 04.0"	58° 28' 14.0"

These geographic coordinates were provided by Suriname in Counter Memorial Annex 69, and were stated to be related to World Geodetic System 1984 (WGS-84).

7. Both Parties provided the geographical coordinates of the base points for determining the provisional equidistance line. Guyana objected to Suriname's points S1 and S14. Since the Tribunal has ruled that the delimitation within the territorial sea will be based on special circumstances, there is no need for the Tribunal to rule on the validity of Points S1 to S3 inclusive, and on the validity of Points G1 to G18 inclusive and Point G20. The Tribunal has ruled on the validity of point S14 in its Award. The Tribunal accepted the other base points provided by the Parties.
8. The turning points along the equidistance line between Guyana and Suriname from the outer limit of the Territorial Sea (12 nm) to the outer limit of Exclusive Economic Zone (200 nm) are:

Number	Controlling Points	Latitude	Longitude
Point 3	G21, S4	6° 13' 28.45161"N	56° 59' 52.26218"W
DHG-13	G21, S4, G23	6° 16' 11.10279"N	56° 58' 37.51896"W
DHG-14	G23, S4, S5	6° 18' 37.68430"N	56° 57' 17.99996"W
DHG-15	G23, S5, G24	6° 19' 10.47780"N	56° 57' 00.33300"W
DHG-16	G24, S5, G26	6° 28' 00.46428"N	56° 51' 42.18096"W
DHG-17	G26, S5, G28	6° 32' 07.38098"N	56° 49' 13.06749"W
DHG-18	G28, S5, S6	6° 35' 07.68334"N	56° 46' 55.20724"W
DHG-19	G28, S6, S7	6° 42' 35.21247"N	56° 43' 03.39402"W
DHG-20	G28, S7, S8	6° 43' 59.56866"N	56° 42' 20.14577"W
DHG-21	G28, S8, G29	7° 24' 27.15434"N	56° 21' 44.54451"W
DHG-22	G29, S8, S9	7° 26' 06.50731"N	56° 20' 52.94196"W
DHG-23	G29, S9, S10	7° 27' 15.41697"N	56° 20' 24.14252"W
DHG-24	G29, S10, G32	7° 28' 59.03779"N	56° 19' 41.27176"W
DHG-25	G32, S10, S11	7° 39' 57.89461"N	56° 14' 59.67507"W
DHG-26	G32, S11, S12	7° 53' 28.79027"N	56° 12' 18.58596"W
DHG-27	G32, S12, G33	8° 35' 36.59110"N	56° 03' 59.52666"W
DHG-28	G33, S12, G35	8° 36' 45.54470"N	56° 03' 45.09377"W
DHG-29	G35, S12, G37	9° 00' 01.60724"N	55° 56' 05.23673"W
DHG-30	G37, S12, G39	9° 06' 16.33399"N	55° 52' 52.78138"W
DHG-31	G39, S12, S13	9° 19' 15.26503"N	55° 46' 08.99996"W
DHG-32	G39, S13, S14	9° 20' 39.70398"N	55° 45' 25.31202"W

DHG-33 G39, S14

9° 21' 21.26226"N, 55° 45' 06.72306"W

9. A line N10°E (geodetic azimuth) through Marker "B" intersects the envelope of 3 nautical mile arcs about the Guyanese controlling points (see paragraphs 5 and 6 above) – specifically point G19 – at:  
Point 2 6° 08' 19.76727"N, 57° 07' 20.00890"W.
10. Points DHG-14, DHG-19, DHG-23 and DHG-31 are all less than 11 metres from the geodetic line between DHG-13-15, DHG-18-20, DHG-22-24, and DHG-30-32, respectively, and can be excluded as turning points of the delimitation line because of the rounding off of all geographical coordinates to the nearest 0.01 minutes of arc.
11. Because the coordinates used in the Award are to be expressed in 0.01 minutes of arc of Latitude and Longitude, and because selected points have now been omitted, the correlation of points in this Technical Report and the Award are interrelated in the following table:

Award Pt.	Technical Report Pt.	Latitude	Longitude
1.	1.	Intersection of LWL and N10°E line through Marker "B"	
2.	2.	6° 08.33'N,	57° 07.33'W
3.	3.	6° 13.47'N,	56° 59.87'W
4.	DHG-13	6° 16.19'N,	56° 58.63'W
5.	DHG-15	6° 19.17'N,	56° 57.01'W
6.	DHG-16	6° 28.01'N,	56° 51.70'W
7.	DHG-17	6° 32.12'N,	56° 49.22'W
8.	DHG-18	6° 35.13'N,	56° 46.92'W
9.	DHG-20	6° 43.99'N,	56° 42.34'W
10.	DHG-21	7° 24.45'N,	56° 21.74'W
11.	DHG-22	7° 26.11'N,	56° 20.88'W
12.	DHG-24	7° 28.98'N,	56° 19.69'W
13.	DHG-25	7° 39.96'N,	56° 14.99'W
14.	DHG-26	7° 53.48'N,	56° 12.31'W
15.	DHG-27	8° 35.61'N,	56° 03.99'W
16.	DHG-28	8° 36.76'N,	56° 03.75'W
17.	DHG-29	9° 00.03'N,	55° 56.09'W
18.	DHG-30	9° 06.27'N,	55° 52.88'W
19.	DHG-32	9° 20.66'N,	55° 45.42'W
20.	DHG-33	9° 21.35'N,	55° 45.11'W
		Approximate value	Approximate value

Map 5

