CHAPTER 5

The Ghana-Côte D'Ivoire Maritime Boundary Dispute: A View from the Ghana Side

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1 Introduction: What Was at Stake?

The area the subject of the litigation was more than 30,000 km^2 of maritime territory, in a significant part of which Ghana had awarded exploration rights to oil companies over the years. Indeed, there were at least six blocks in respect of which there were subsisting rights. These included the Tweneboa, Enyenra, and Ntomme (TEN) deposits which were in development before the litigation began and brought into

This is dedicated to Marietta Brew Appiah-Opong, for her leadership: discerning, determined, and decisive.

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T. Acheampong and T. Kojo Stephens (eds.), *Petroleum Resource Management in Africa*,
https://doi.org/10.1007/978-3-030-83051-9_5

production in the course of the proceedings. Since production began in 2016, government revenue from those deposits is estimated at about US$1 billion up to the end of 2020.[1]

Other fields in the disputed area where appraisal of discoveries has yielded positive results have not yet reached the production stage. It was the increasingly aggressive letters that Côte d'Ivoire was sending out to Ghana's grantees and its public announcements that it would award rights in parts of the area that precipitated the initiation of litigation. The area in respect of which there were subsisting rights granted by Ghana is shown on Fig. 1.

2 A Summary of Key Steps in the Proceedings

Article 287 of UNCLOS recognizes the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS) as the principal institutions for mandatory resolution of disputes relating to the interpretation and application of the Convention. However, in the absence of either a pre-designated recourse mechanism to which they have submitted or agreement by the disputing parties, the default procedure prescribed for mandatory resolution is arbitration by a tribunal of five members selected by the parties. The selection is to be made preferably from a list maintained by the Secretary-General of the United Nations of persons nominated by state parties, each of which state party is entitled to provide up to four names. Persons on the list are expected to be "experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity."[2] Given that there had been no agreement to the contrary between the parties, it is the procedure under Annex VII that Ghana invoked to initiate proceedings.

At the invitation of the President of ITLOS, pursuant to his role as default appointing authority in the absence of agreement between the parties,[3] the parties met in Hamburg, Germany on 2 and 3 December 2014. They agreed to a transfer of the dispute to resolution by a Special Chamber of ITLOS constituted by three ITLOS judges and two party-nominated ad hoc Judges. This agreement was adopted and implemented

[1] See https://www.mofep.gov.gh/publications/petroleum-reports.

[2] (Article 2(1), Annex VII).

[3] (article 3(e), Annex VII).

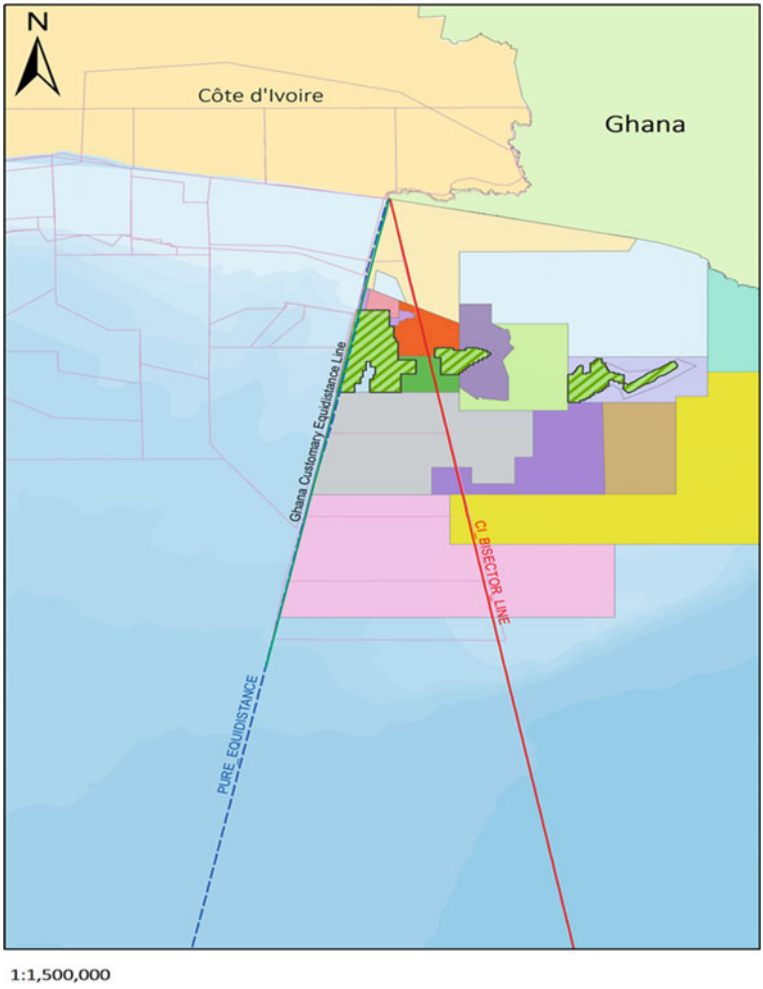
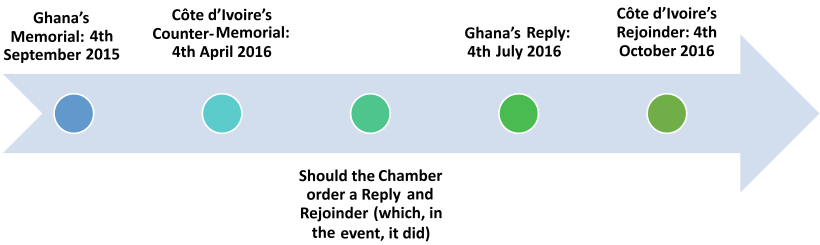


Fig. 1 Offshore Oil & Gas Licenses awarded by Ghana in area claimed by Côte d'Ivoire (*Credit* Nana Adusei Poku)

by the Tribunal which, on 12 January 2015, issued an order constituting the Special Chamber. Thus, in the jargon of UNCLOS, what began as Annex VII proceedings were converted into Annex VI proceedings–Annex VI being the part of the Convention which established ITLOS and provided for its jurisdiction. One advantage of this was that the administration of the process then became the responsibility of ITLOS and the parties did not have to negotiate their own ad hoc arrangements, nor did they have to bear the costs of the Tribunal as they would have had to in arbitration proceedings. The Special Chamber was made up of:

- Judge Boualem Bouguetaia, as President;
- Judge Rudiger Wolfrum;
- Judge Jin-Hyun Paik;
- Dr. Thomas A. Mensah, former Judge and President of ITLOS, nominated by Ghana as ad hoc Judge; and
- Judge Ronny Abraham, then President of the International Court of Justice, nominated by Côte d'Ivoire as ad hoc Judge.

A first procedural meeting held by the President of the Special Chamber with representatives of the parties a month after its formal constitution, on 18 February 2015, resulted in an order setting out a timetable for the proceedings as follows:



The time limits for the Reply and the Rejoinder were, at Ghana's request, later extended to 25 July 2016 and 14 November 2016 respectively.

Côte d'Ivoire indicated at this meeting that it would ask the Special Chamber for certain provisional measures to be "prescribed" restraining certain activities by Ghana. It filed its Request for provisional measures on 27 February 2015. Ghana's statement in response was filed on 23 March 2015. Oral hearings were conducted on 29 and 30 March 2015.

The Special Chamber delivered its decision on the Ivorian Request on 25 April 2015.

Following indications given at the first procedural meeting and confirmed subsequently, an order was made for oral hearings to be held in February 2017. They were, indeed, held between 6 and 16 February 2017. The judgment of the Tribunal was delivered on Saturday, 23 September 2017.

3 Côte d'Ivoire's Request for Provisional Measures

By its request filed on 27 February 2015, Côte d'Ivoire asked the Special Chamber to require "Ghana to:

(a) take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area;
(b) refrain from granting any new permit for oil exploration and exploitation in the disputed area;
(c) take all steps necessary to prevent information resulting from past, ongoing, or future exploration activities conducted by Ghana, or with its authorization, in the disputed area from being used in any way whatsoever to the detriment of Côte d'Ivoire; and, generally, take all necessary steps to preserve the continental shelf, its superjacent waters and its subsoil; and
(d) desist and refrain from any unilateral action, entailing a risk of prejudice to the rights of Côte d'Ivoire and any unilateral action that might lead to aggravating the dispute."[4]

Ghana described this as a "far-reaching and unprecedented request" whose effect, if granted, would be "to close down large parts of Ghana's well-established offshore oil and gas industry" in which "more than US$ 4.5 billion has been invested."[5]

[4] Côte d'Ivoire's Request for Provisional Measures, translated into English in transcript of ITLOS proceedings held on Sunday, 29 March 2015, pp. 1–2.

[5] Ghana's Written Statement, Vol. I, paragraph 2.

On 25 April 2015, the Tribunal delivered its decision and made the following orders for the duration of the dispute until final Judgment was rendered:

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

Each of the Parties was required to submit an initial report to the Special Chamber of their compliance with its orders no later than 25 May 2015.

The considerations that the Special Chamber sought to balance in arriving at its decision are exemplified by its statement, on the one hand, "that the exploration and exploitation activities, as planned by Ghana, may cause irreparable prejudice to the sovereign and exclusive rights invoked by Côte d'Ivoire in the continental shelf and superjacent waters of the disputed area, before a decision on the merits is given by the Special Chamber, and that the risk of such prejudice is imminent"; and on the other, its view that "an order suspending all exploration or exploitation activities conducted by or on behalf of Ghana in the disputed area, including activities in respect of which drilling has already taken place,

would ... cause prejudice to the rights claimed by Ghana and create an undue burden on it."[6]

It is not quite clear what was the scope of the order for Ghana to prevent information on activities "in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire." The orders relating to environmental monitoring and the prevention of serious environmental harm seemed declaratory, rather than an imposition of new and specific obligations. In fulfillment of the order to "pursue cooperation," the respective Agents of the Parties and their technical teams met on several occasions. In the main, the Ivorian side sought information on operational activities, including issues of environmental monitoring and compliance. While it could not be said with confidence that they were fully satisfied with the information they got, these meetings provided opportunities for personal interaction which must have contributed to lowering the tension aroused by Ghana's initiation of litigation. The parties also did submit the reports required of them by 25 May 2015 as prescribed by the Special Chamber.

Some controversy, however, persisted between the parties as to the precise scope of the order prohibiting "new drilling" in the disputed area. Côte d'Ivoire complained that by allowing existing (partially drilled and suspended) wells to be re-entered and drilled to their total depths or completed, Ghana had violated this prohibition. This argument was rejected in the final Judgment of the Special Chamber which accepted Ghana's contention that the deepening of existing wells or completion work constituted "ongoing activities for which drilling has already been carried out" and was permitted by the Provisional Measures decision.

4 The Boundary Delimited by the Tribunal and Its Basis

The Tribunal was asked by the parties to draw a single delimitation line spanning their maritime zones, namely the territorial sea, the exclusive economic zone, and the extended continental shelf beyond 200 nautical miles. While article 15 of UNCLOS specifically prescribes equidistance as the method of delimiting the territorial seas of the states in the

[6] https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/23_published_texts/2015_23_Ord_25_Avr_2015-E.pdf.

absence of special circumstances, the method of delimiting the other zones is less precisely prescribed in the Convention. Delimitation in these other zones was to "be effected … in order to achieve an equitable solution."[7] The Special Chamber took the view, nonetheless, that international law jurisprudence had developed to the point that a method involving equidistance had become the default mode of delimitation for these zones as well, to be applied unless there were features of the coast which made it inappropriate. It described the coasts of the parties as "straight rather than indented."[8] That it was justified in not accepting the invitation of Côte d'Ivoire to depart from equidistance on the basis of the precedent in the *Case concerning Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau* is evident from a cursory look at the geographical features involved in that case, in particular the presence of islands and indentations along the coast of the mainland (Fig. 2).

It also did not accept the argument that the geography and interests of neighboring countries were relevant and justified a departure from equidistance. In sum, it held that a tribunal before which a dispute arose was required in cases such as that before it, to (a) identify the relevant coasts of the parties; (b) locate base points thereon reflecting the shape of the coast; (c) draw a provisional line based on equidistance and the base points from a point on the coast related to the land boundary of the parties; (d) determine whether there were any relevant circumstances warranting an adjustment of the provisional line; and (e) assess the proportionality of the maritime areas assigned to the respective parties by its application of the method thus far. Its determination of the relevant coasts of Ghana and Côte d'Ivoire is shown on Fig. 3.

It determined that there were no relevant circumstances warranting an adjustment of the provisional equidistance line it had drawn. It rejected, inter alia, an argument by Côte d'Ivoire that the provisional equidistance line gave Ghana a disproportionate amount of the petroleum resources in the area and was a relevant circumstance justifying an adjustment of the provisional equidistance line. After expressing doubts as to the factual accuracy of the Ivorian assertion, it proceeded to say that "delimitation of maritime areas is to be decided objectively on the basis of the geographic

[7] (Article 74(1) and 83(1).

[8] Paragraph 287 of the Judgment.

Fig. 2 Islands & indentations relevant to the Guinea v Guinea-Bissau maritime boundary delimitation (*Source* myworldatlas.info)

configuration of the relevant coasts. Maritime delimitation is not a means for distributing justice."[9] "In assessing the international jurisprudence", it went on to "emphasize that such jurisprudence, at least in principle, favours maritime delimitation which is based on geographical considerations. Only in extreme situations … if the envisaged delimitation was 'likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned' may considerations other than geographical ones become relevant. … Côte d'Ivoire

[9] Paragraph 452.

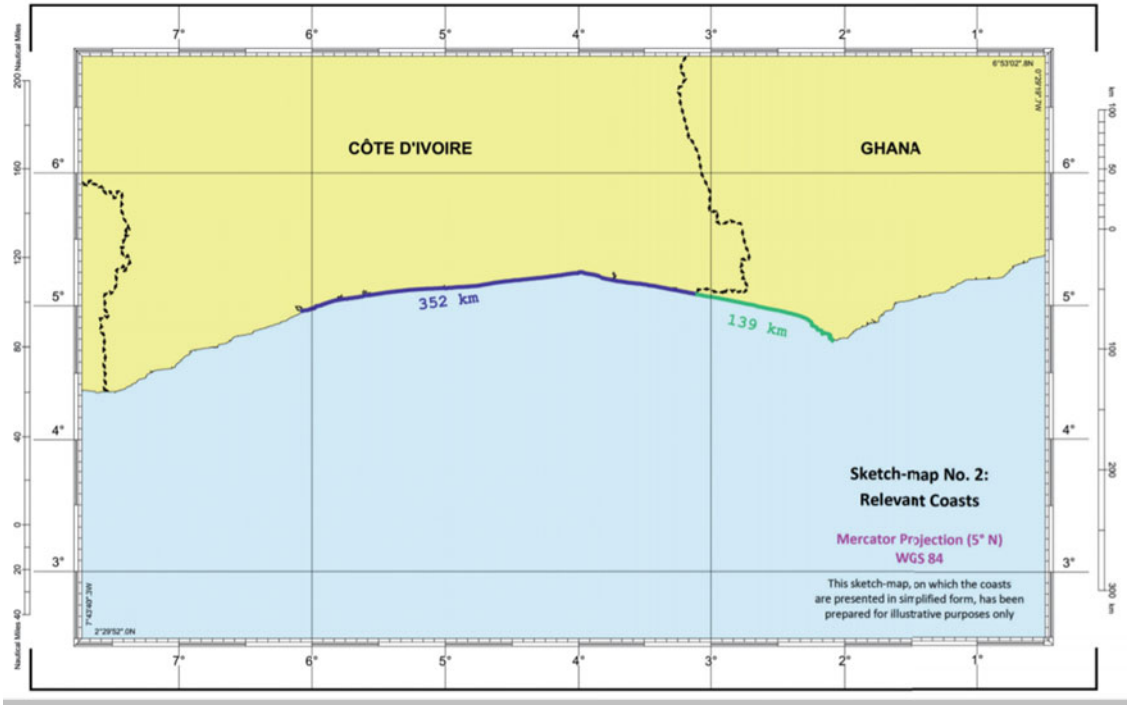


Fig. 3 The relevant coasts in the Ghana – Côte d'Ivoire delimitation (*Source* ITLOS [2017: p. 107])[10]

[10] see: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_merits/23_published_texts/C23_Judgment_20170923.pdf, page 107.

has not advanced any arguments which might lead the Special Chamber to deviate from such jurisprudence."[11] It also concluded that on the basis of applicable principles, there was no disproportion in the respective maritime areas allocated to the parties.

The delimitation line determined by the Special Chamber and the respective claims of the parties are depicted in Fig. 4.

In the words of two colleagues on the Ghana team, "[a]s a result of the judgment, Ghana gained 80.5 square kilometers of maritime area beyond the … boundary it claimed. Ghana's maritime area decreased by 7 square kilometers in the territorial sea and 22.5 square kilometers in the continental shelf beyond 200 nautical miles and increased by 110 square kilometers in the EEZ and continental shelf within 200 nautical miles."[12] The disparities between the Judgment line and that claimed by Ghana arose mainly from slight differences in the location of selected base points and the fact that the Tribunal chose to connect the land boundary to a point on the low waterline on the coast, taking account of the direction between the two last pillars on the land boundary.

4.1 "Fifty Years of Practice Can't Mean Nothing!"

In a memorable presentation in the second round of Ghana's arguments on 13 February 2017, which is fortunately still available on the ITLOS website,[13] Paul Reichler argued that "the 50-year practice of the Parties," as evidenced in maps, laws, and other documents, twelve of which he exhibited one after the other, issued from 1957 to 2009 explicitly recognizing a line as the maritime boundary between them, "cannot mean nothing." He urged the Tribunal to consider the acknowledgment of such a line as constituting at least a *modus vivendi*, "a relevant circumstance requiring an adjustment of the provisional equidistance line," however modest.

In an equally memorable presentation earlier that same day, Professor Philippe Sands, using a series of maps and other documents, laid out the history of "extensive activity over time and area: concessions and wells; two countries, two national oil companies (GNPC and PETROCI), five

[11] Paragraph 453.

[12] Brillembourg & Renzler.

[13] https://www.itlos.org/en/main/cases/webcast/webcast-archives-case-no-23/

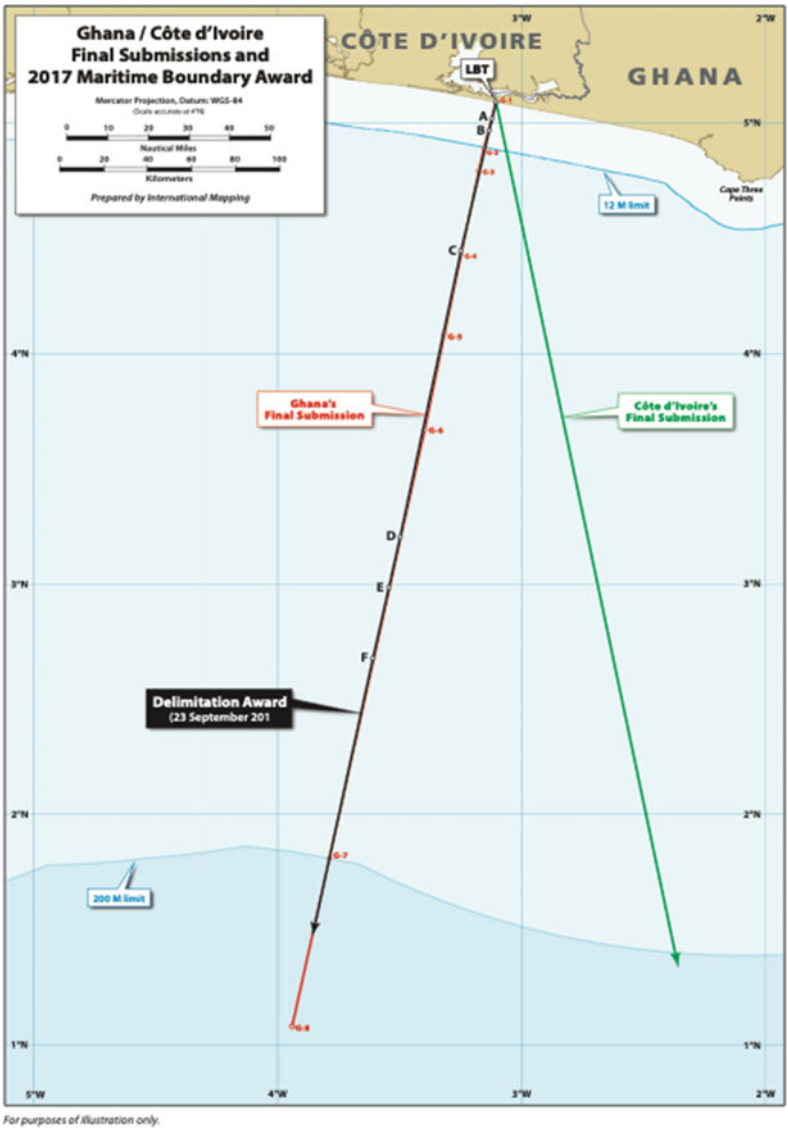


Fig. 4 The Judgment Delimitation Line & the Parties' Claimed Lines (*Credit* International Mapping)

decades, hundreds of authorizations, an even larger number of contracts, tens of thousands of square kilometres," without meaningful protest on either side. "If this is not the basis of tacit agreement between two States, … it is really difficult to see what would be a tacit agreement," he contended. The image he used to summarize this history of activity is reproduced below, showing oil blocks demarcated and allocated over the period and wells drilled close to what was depicted as the boundary line on their respective maps (Fig. 5).

The Tribunal rejected both the argument for tacit agreement and that for an adjustment of the provisional equidistance line on the basis of a relevant circumstance, being the existence of a *modus vivendi*. It gave a number of reasons for its position. Among these were that even those

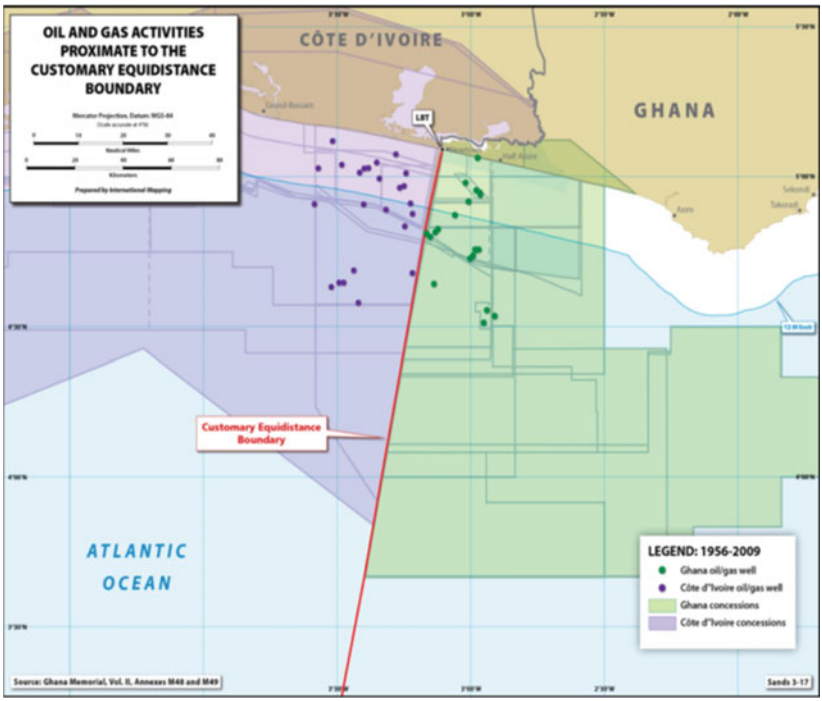


Fig. 5 Oil & Gas Activities on either side of Ghana's Claimed Boundary (*Source* Ghana Memorial to ITLOS)

maps of the parties which had a broken line extending from land into the sea with their names on opposite sides were not a sufficiently clear indication that the line depicted an international maritime boundary. With regard to documents in which officials of Côte d'Ivoire gave permission to vessels authorized by Ghana to turn around in Ivorian territorial waters while engaged in seismic surveys near the "maritime boundary between Ghana and Côte d'Ivoire", it said that "the mere use of the term 'maritime boundary' cannot prove the existence of an 'agreed' maritime boundary any more than a map depicting a line in a particular way does."[14]

It also held that various exchanges between the parties in 1988 and 1992, and meetings between 2008 and 2014, show "the Parties' recognition of the absence of a maritime boundary between them."[15]Besides, "[t]he boundary the Special Chamber has to delimit is a single maritime boundary delimiting the territorial sea, exclusive economic zone and the continental shelf. In the Special Chamber's view, evidence relating solely to the specific purpose of oil activities in the seabed and subsoil is of limited value in proving the existence of an all-purpose boundary which delimits not only the seabed and subsoil but also superjacent water columns."[16] It regarded the "conduct of the Parties with respect to matters other than oil concessions and operations" as confirming "the uncertainty as to the maritime boundary."[17]

In his separate opinion, Judge Mensah agreed that Ghana had "not met the very high standard of proof that is required to prove" tacit agreement. He acknowledged that the parties had "attached a certain significance" to the customary equidistance line claimed by Ghana. But that did not make it a "maritime boundary" or an "international boundary": It may have been "nothing more than an agreed line of convenience for a particular purpose."[18]

Having rejected the contention that the conduct of the parties amounted to tacit agreement as to a boundary, the Special Chamber took the position that Ghana's proposal that that conduct be taken into

[14] Paragraph 218.

[15] Paragraph 222.

[16] Paragraph 226.

[17] Paragraph 227.

[18] Paragraphs 4 & 5 of Judge Mensah's Separate Opinion.

account to adjust the provisional equidistance line appeared "to be an attempt to revive a tacit maritime boundary that was rejected by the Special Chamber by circumventing the high standard of proof required for the existence of a tacit agreement. The Special Chamber considers that accepting such argument would, in effect, undermine its earlier finding on the existence of a tacit agreement."[19]

It remained to be considered whether Ghana had violated international law by continuing to authorize operations in the disputed area before delimitation had been effected. In a separate opinion, Judge Jin-Hyun Paik expressed the view that Ghana had violated article 83(3) of UNCLOS which enjoined "the States concerned, in a spirit of understanding and cooperation, [to] make every effort … not to jeopardize or hamper the reaching of … final agreement." He thought that once Côte d'Ivoire made its proposal in February 2009, "the existence of a dispute and the location of the disputed area were, and should have been, clear to Ghana" and that in continuing and stepping up activities in the area, its "conduct was far from the exercise of restraint required" under article 83(3).[20] The main Judgment, as well as the Separate Opinion of Judge Mensah, decided that Ghana had not, on the facts, violated either the duty to co-operate or that not to hamper agreement. It noted that it "would … have been preferable if Ghana had adhered to the request of Côte d'Ivoire earlier to suspend its hydrocarbon activities in that area"—earlier than it did, according to the Special Chamber, in compliance with the Provisional Measures Orders on 25 April 2015.[21] The Special Chamber appeared torn between taking account of the practice of the parties over the years and its essential validation of Ghana's boundary claim, on the one hand, and an unease about whether Ghana should have imposed more restraint on itself at some point, after Côte d'Ivoire put forward a dramatically different line and method of delimitation from that which had guided the parties previously. In the context of rejecting the Ivorian argument that Ghana had not conducted negotiations in good faith, the Judgment observed that "[t]he fact that Ghana tried to preserve the *status quo* as it saw it, is … not a violation of an obligation to negotiate in good faith."[22]

[19] Paragraph 478; See also Judge Mensah's Separate Opinion, paragraph 9.

[20] Paragraph 14 of Judge Paik Separate Opinion.

[21] Paragraph 632, main Judgment.

[22] Paragraph 604.

5 Negotiation Versus Litigation

Reading the minutes of the negotiation meetings held by the parties between July 2008 and May 2014 (see Volume V of Ghana's Memorial), it is hard to imagine how they could have concluded for Ghana in a result anywhere resembling the outcome of the litigation. Indeed, the parties were so far apart that it is hard to see how a resolution was possible in principled negotiations. While Ghana maintained equidistance as the appropriate method of delimitation throughout the negotiations, Côte d'Ivoire rejected that and insisted on alternatives whose principal feature was the consistency with which they allocated to it significant areas in which Ghana was engaged in exploration and, in some instances, production. Figure 6 shows the different lines in contention and their impacts if adopted.

5.1 Diplomacy While Litigating

Without doubt, the institution of proceedings by Ghana was received by Côte d'Ivoire with consternation, if not outrage. The facilitative role of the President of ITLOS allowed the parties to conclude the agreement which led to the dispute being referred to the Special Chamber. The provisional orders prescribed by the Chamber gave representatives of the parties the opportunity to interact and discuss particular matters within identified and relatively narrow parameters. In addition, the respective heads of state were clearly anxious to avoid the dispute exacerbating tensions between the two countries. Indeed, at some point in the proceedings, they enlisted the assistance of the former Secretary-General of the United Nations, the late Mr. Kofi Annan, to explore the possibility of achieving a resolution. The heads of states' commitment to peaceful resolution is graphically illustrated by the fact that the successive Presidents of Ghana while the dispute was pending, Presidents John Mahama and Nana Akufo-Addo, visited Côte d'Ivoire and received Ivorian national honours. President Alhassan Ouattara in turn received Ghanaian national honors in Accra shortly after the ITLOS decision. Indeed, a joint statement issued by the parties in Hamburg, accepting the decision immediately after it was delivered on 23 September 2017, was evidence of the success of the diplomatic efforts.

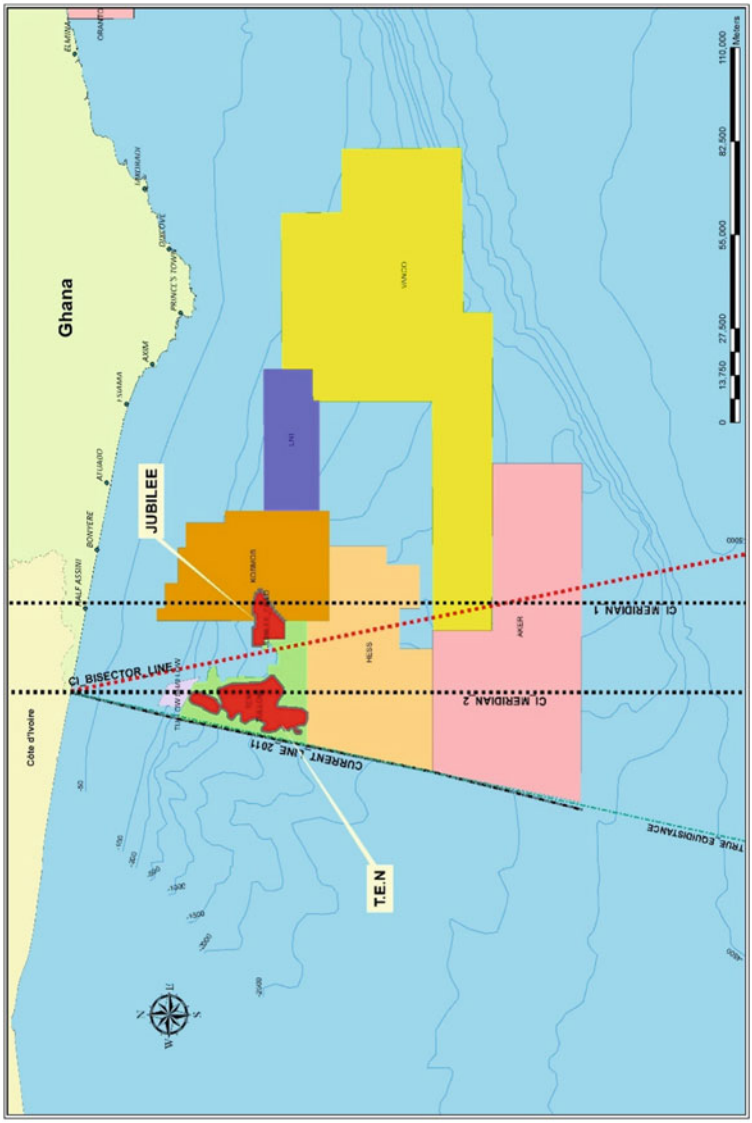


Fig. 6 The Parties' lines in the course of negotiations (*Credit* Nana Adusei Poku)

5.2 Organizing and Managing the Litigation Process

Officials from a broad range of Government institutions were involved in engagement with Côte d'Ivoire on maritime boundary issues. These included the Ministry of Energy, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Lands & Natural Resources, the Attorney-General's Department & Ministry of Justice, and institutions reporting to them. The Ghana National Petroleum Corporation, established in 1983 as Ghana's state oil enterprise, had a long history of relations with PETROCI, its Ivorian counterpart. The Petroleum Commission, established in 2011, formally assumed much of the advisory role to the Ministry of Energy that GNPC had previously played informally. In 2010, prompted by the ongoing negotiations with Côte d'Ivoire, the Ghana Boundary Commission (GBC) was established by an Act of Parliament, under the Chairmanship of the Minister of Lands & Natural Resources, with the Ministers of Foreign Affairs, Interior, Local Government and the Attorney-General as members. Prior to that, a technical group consisting, among others, of officials from the Survey Department, Geological Survey Department, (including retired heads from these institutions), GNPC, the Navy, the Ghana Maritime Authority and academics from some of Ghana's public universities, had worked together in the context of preparations for Ghana's submission to the UN Commission on the Limits of the Continental Shelf (CLCS) for the extension of the outer limits of its continental shelf beyond 200 nautical miles as provided in part VI, article 76 of UNCLOS. Indeed, it was the attempt to reach agreement with Côte d'Ivoire on Ghana's continental shelf submission that led to the commencement of negotiations on the maritime boundary between the two countries in 2008. Based on a review of the state of the negotiations, the Maritime Boundaries Secretariat (MBS) was set up in 2012, under the office of the Chief of Staff of President J.E. Atta-Mills, but physically located in the premises of the GNPC, which was asked to support it financially. The object was to provide a focal point for strategic evaluation of Ghana's options and assist the larger Boundary Commission and the Government more broadly in determining directions and galvanizing their implementation. The MBS consisted of a full-time National Co-Ordinator and an administrative staff of up to eight persons, with frequent inputs from an Advisor whose work had led to its establishment.

The range of institutions and officials involved meant that there was a variety of sources from which information and perspectives had to be teased out and forged into coherent narratives. The incorporation of environmental experts from the Environmental Protection Agency (EPA) and GNPC into the team in the course of the proceedings exemplified the flexibility required to respond to issues which came up and had to be addressed. The transition from negotiation under the auspices of the Boundary Commission to litigation, with the Attorney-General as the constitutionally mandated representative of the country, resulted in a change in leadership of the process. Preparing for litigation also involved engaging some of the best lawyers in this field, members of what has been described as the "invisible Bar" of public international lawyers, "who have practiced and who continue to practice as oral advocates before [the International Court of Justice, ITLOS and other tribunals] …, who know how things work out in practice, and who understand by experience the difficulties, pitfalls and tricks of the trade."[23] In the next chapter, Professor Pierre Klein discusses how the domestic Ghanaian team and its external advisers interacted with each other and developed into an integrated team. In a talk delivered shortly after the Special Chamber pronounced judgment, Mrs. Marietta Brew Appiah-Opong described what she had sought to do as leader of the team in the following terms: "I had to build good team spirit, ensure that no member felt more important than the other, identify any disruptive elements within the group and either have them replaced or neutralise the disruption."

The challenge of transition became particularly stark when the Government which had initiated the litigation in September 2014 was defeated in elections held in December 2016. By then, Ghana and Côte d'Ivoire had filed their written pleadings with ITLOS. Oral hearings were scheduled for February 2017. Ghana's new President was to take over on 7 January 2017. It was only then that he could nominate Ministers for the approval of Parliament. In the event, the incoming President nominated a team led by Madam Gloria Akuffo, who became Attorney-General when the constitutional requirements were complied with, to work with the existing team under the leadership of Mrs. Appiah-Opong. Meetings held throughout December 2016 and January 2017 confirmed and reinforced

[23] Keith Highet.

the validity of the decision to litigate while working to ensure that relations with Côte d'Ivoire were not damaged. The dramatic moments at the beginning of the oral hearings in Hamburg on 6 February 2017, when Mrs. Appiah-Opong handed over as Agent for Ghana to Madam Akuffo,[24] testify to the success of the transition.

In addition to managing and organizing its internal processes and institutional arrangements, Ghana had to take account of the ramifications of the litigation for its relations with the petroleum companies to which it had awarded exploration and production rights. It had to identify both the areas of common interest with the respective companies and areas of potential divergence.

That Côte d'Ivoire had attacked the competence of Tullow Oil in its operations in Ghana made it natural for Tullow to defend itself as it did by adding a statement in support of Ghana's case in opposition to the Ivorian application for provisional measures. On the other hand, Tullow had acquired rights in Côte d'Ivoire and was keen for the two countries to resolve their dispute in a manner that did not adversely affect it. Besides, as shown in a dispute in the High Court in England arising out of its termination of a rig hiring contract with a sub-contractor, Seadrill Ghana Operations Limited v Tullow Ghana Limited,[25] Tullow had its own commercial reasons for using the maritime boundary case as a pretext for getting out of expensive rates to which its contract with Seadrill committed it. One of its officials was quoted in an internal communication as asking whether "with a bit of manipulation," the Provisional Measures Orders of the Special Chamber could be used to invoke *force majeure* to terminate the rig hiring contract.

There were other companies who also had their own commercial reasons for wanting to delay performance of their obligations under Petroleum Agreements with Ghana or to excuse non-performance, even if those obligations did not involve drilling and were not affected by the Provisional Measures prohibition on new drilling. Some argued that the pendency of the litigation created uncertainty. Government officials engaged these companies on a case by case basis, though the starting point was that the existence of litigation did not, under their contracts, constitute *force majeure* and did not therefore excuse non-performance.

[24] https://www.itlos.org/en/main/cases/webcast/webcast-archives-case-no-23/

[25] [2018] EWHC 1640 (Comm).

6 Conclusions

In its issue number 802 on 10 October, 2017, Africa Energy Intelligence commented as follows on the management of the litigation process by the two countries: "Unlike the Ivory Coast which chose to have an oil man, Toungara, oversee the case, Ghana, whether under president John Mahama Dramani (sic) or Nana Akufo-Addo, elected to have lawyers run the show." This is, perhaps, an exaggeration, at least of what occurred on the Ghanaian side. What is true, however, is that the outcome required an impressive amount of work and collaboration; a combination of strategic thinking, extensive foraging for and meticulous examination of material; encouragement of open and respectful discussions alongside a requirement of prompt responsiveness to assignments; a clear-eyed evaluation of options and a tough-mindedness in decision-making.

Shortly after the Special Chamber delivered its Judgment on 23 September 2017, a colleague compared public reactions of appreciation and excitement in the country to those normally demonstrated when this football-loving country plays well and wins a major tournament. In this case, there was the added bonus of having contributed to preserving rights to substantial natural resources in Ghana's maritime areas.

Acknowledgements Pierre Klein, Dotse Tsikata, and Kofi Ansah made comments on earlier drafts. Nana Boakye Asafu-Adjaye provided information and made comments on a draft. Nana Adusei Poku generously responded to my requests for maps. I am grateful to all of them for their inputs. I, of course, remain solely and fully responsible for the final product.

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