



ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

REPUBLIC OF GUYANA

v.

REPUBLIC OF SURINAME

REPLY OF THE REPUBLIC OF GUYANA

VOLUME I

1 APRIL 2006

REPLY OF GUYANA

PART I

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Reply of Guyana

CHAPTER 1

INTRODUCTION

1.1 Guyana submits this Reply pursuant to the Rules of Procedure adopted by the Arbitral Tribunal on 30 July 2004. Article 9(1) provided that Guyana would submit its Reply by 1 March 2006. This date was subsequently changed to 1 April 2006, as confirmed by the Tribunal in its letter of 1 March 2006.

1.2 This Reply responds to the Counter-Memorial filed by Suriname dated 1 November 2005. It also responds to points raised in Suriname's Preliminary Objections to jurisdiction and admissibility in its Memorandum dated 23 May 2005, which the Arbitral Tribunal decided were to be addressed in the merits phase of the proceedings by Order dated 18 July 2005. The Reply addresses the issues that divide the Parties in light of the arguments put forward by Suriname in its written pleadings and does not merely repeat the arguments made by Guyana in its Memorial. For the avoidance of doubt, in respect of any matter not addressed in the Reply Guyana maintains the arguments set forth in its Memorial.

1.3 In its Application and Memorial Guyana has put forward submissions in respect of three distinct claims. Guyana's first claim is directed to the delimitation of the maritime boundaries between the two States. It submits that the Arbitral Tribunal should adjudge and declare that "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 of true north for a distance of 200 nautical miles."¹ In respect of the territorial sea, this submission is based on the application of Article 15 of the 1982 Convention which mandates the use of an equidistance line in the absence of any special circumstances (neither Party has made any claim in respect of historic title). In respect of the delimitation of the continental shelves and exclusive economic zones of the two States, Guyana's claim is based squarely on the application of Articles 74 and 83 of the 1982 Convention which mandate the achievement of an equitable solution.

1.4 Guyana's second claim is that Suriname is internationally responsible for violating its obligations under the 1982 Convention, the UN Charter and general international law by using armed force in maritime areas of which Guyana has sovereignty or exercises jurisdiction and that it is liable to make reparation for these violations.² Guyana's third claim is that Suriname is internationally responsible for violating its obligations under the 1982 Convention to make every effort to enter into provisional arrangements of a practical nature pending agreement on the delimitation of the continental shelves and exclusive economic zones of Guyana and Suriname, and that it is liable to make reparation for these violations.³

¹ Memorial of Guyana [hereinafter "MG"], p. 135, para. 1.

² *Ibid.*, p. 135, Submission 2.

³ *Ibid.*, p. 135, Submission 3.

I. General Observations on Suriname's Approach

1.5 Before proceeding further, Guyana first observes the tone that is adopted by Suriname at various points in its written pleading. On numerous occasions, Suriname asserts that Guyana's claims or arguments are not made in good faith;⁴ it accuses Guyana of acting perversely;⁵ it refers to "slippery and misleading statements in Guyana's Memorial"⁶ and to Guyana's "gross misrepresentation of the facts;"⁷ and it accuses Guyana of "deliberate misrepresentations."⁸ Guyana respectfully submits that these and other unfriendly remarks are unfounded and inappropriate to the dignity that characterises inter-State proceedings such as these, particularly where they involve two friendly neighbouring countries. The remarks are noted but shall not be responded to. Guyana expresses the hope that the conduct of these proceedings can be mutually respectful whatever differences may exist between the Parties on issues of fact and law.

1.6 Guyana's second general observation concerns the decision by Suriname not to make any use of materials that are held in the restricted archives of the Dutch Ministry of Foreign Affairs and to impede access to these documents by Guyana and the Tribunal. Guyana first sought access to the Dutch archives in August 2004. At Suriname's objection, the Netherlands refused to allow Guyana to review them. In February 2005, Guyana asked the Tribunal to order Suriname to withdraw its objection so that the Netherlands would permit Guyana to access the archives on the same basis as Suriname. Suriname responded by vigorously resisting disclosure of any of the Dutch documents to Guyana or the Tribunal. It was not until a year later, on 22 February 2006 -- after oral hearings in The Hague, four separate Orders from the Tribunal and the report of the Independent Expert appointed by the Tribunal -- that the first set of these documents was finally disclosed to Guyana. In the brief time Guyana has had to review them, it is readily apparent why Suriname fought to keep them hidden. They thoroughly undermine Suriname's case, including the principal arguments on which the Counter-Memorial is based. The newly-available documents confirm *inter alia* that:

(1) The geographical circumstances do *not* support Suriname's argument for a deviation from the provisional equidistance line in its favour. To the contrary, the Netherlands itself regarded Suriname's coastline as "regular," and rejected the idea that the relevant portion of it -- between the Corentyne and Coppename Rivers -- was "concave" as Suriname argues.⁹ Rather, the Dutch considered that this part of

⁴ Suriname Counter-Memorial [hereinafter "SCM"], p. 4, paras. 1.15-1.16.

⁵ *Ibid.*, p. 13, para. 2.25

⁶ *Ibid.*, p. 90, para. 5.81.

⁷ *Ibid.*, p. 67, para. 5.10.

⁸ *Ibid.*, pp. 83-84, para. 5.57.

⁹ Letter from the Government Council of Surinam to the Governor of Surinam (13 February 1953) (original in Dutch, translation provided by Guyana) [hereinafter "Letter to the Governor of Suriname (13 February 1953)"]. See Reply of Guyana [hereinafter "RG"], Vol. II, Annex R28.

the coastline “flows in a direction of approximately 180° West between the Coppename and the Corantine,” *i.e.*, that it is relatively straight.¹⁰ Thus, the Dutch emphasised that “Suriname cannot even appeal to the circumstance, as can Germany [in the *North Sea Continental Shelf Cases*] that the configuration of the coast makes the equidistance line ‘disadvantageous.’”¹¹

(2) There are no “special circumstances” under applicable international law that would justify a deviation from the equidistance line in Suriname’s favour. The Dutch specifically concluded, and advised Suriname, that the so-called “navigation channel” that Suriname invokes in these proceedings in support of its 10° claim is not in law a “special circumstance.”¹²

(3) The Netherlands never accepted -- indeed, it rejected -- Suriname’s claim to a 10° boundary line in the continental shelf. The Netherlands regarded itself as having reached agreement with the United Kingdom, in accordance with international law, that the boundary would be determined by application of equidistance principles,¹³ which it considered “acceptable” and “desirable.”¹⁴ In preparation for the 1966 Marlborough House talks between Suriname and Guyana, the Netherlands Foreign Minister “emphatically pointed out” to Suriname’s Prime Minister that Suriname “must not deviate from the equidistance principle for the delimitation of the continental shelf.”¹⁵ Internally, the Dutch Foreign Ministry referred to the “weakness, not to say the impossibility” of Suriname’s boundary claim, which it considered “exaggerated and unrealistic.”¹⁶ Following the Marlborough House talks, at which Suriname ignored the Foreign Minister’s message, the Dutch again resolved to “expressly instruct” Suriname that an equidistance boundary was the only one that could be justified by law.¹⁷

¹⁰ *Ibid.*

¹¹ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966) (original in Dutch, translation provided by Guyana) (emphasis in original). See RG, Vol. II, Annex R39.

¹² Memorandum from Legal Affairs to Director, Western Hemisphere, on Draft Memoranda to Georgetown and Paris Regarding Border Issues (18 October 1966) (original in Dutch, translation provided by Guyana). See RG, Vol. II, Annex R40.

¹³ Memorandum to Director, Western Hemisphere, Regarding the Borders between Surinam and British Guyana and Surinam and French Guyana (11 March 1964) (original in Dutch, translation provided by Guyana) [hereinafter “Memorandum regarding the Borders between Surinam and British Guyana and Surinam and French Guyana (11 March 1964)”]. See RG, Vol. II, Annex R33.

¹⁴ *Aide Memoire* from the Netherlands to the United Kingdom (6 August 1958). See MG, Vol. II, Annex 66.

¹⁵ Memorandum on Surinam – British Guyana Boundary (31 March 1966) (original in Dutch, translation provided by Guyana) [hereinafter “Memorandum on Surinam – British Guyana Boundary (31 March 1966)”]. See RG, Vol. II, Annex R38.

¹⁶ Memorandum from Mr. E.O. Baron van Boetzelaer on Border Arrangement Suriname/British Guyana (19 November 1965) (original in Dutch, translation provided by Guyana) [hereafter “Memorandum from Mr. E.O. Baron van Boetzelaer on Border arrangement Surinam/British Guyana (19 November 1965).”] See RG, Vol. II, Annex R37.

¹⁷ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11.

(4) Suriname, the Netherlands and France reached agreement that the maritime boundary between Suriname and French Guiana should be based on equidistance. An agreement in principle was reached on a boundary line along an azimuth of N30E, which Suriname considered a straight-line or simplified version of the equidistance line.¹⁸

Guyana and the Tribunal need no longer speculate on the reasons Suriname sought to withhold these materials. The documents speak for themselves.

1.7 Guyana's third observation is that Suriname seeks to downplay the historical significance of the conduct of the Parties, including in particular the negotiations and communications that occurred between the United Kingdom and the Netherlands in the 1950s and 1960s.¹⁹ The same point may be made regarding Suriname's efforts to downplay the conduct of the Parties in granting oil concessions, and in other actions that have respected the historical equidistance line of N34E. No doubt this is motivated in part by the reality that history confirms the agreement of the former colonial powers as to the existence of an agreed land boundary terminus at Point 61 and the propriety of using an equidistance line to delimit the maritime boundary. In the absence of any evidence to the contrary -- and in particular the fact that no contradictory material has been provided by Suriname from the restricted Dutch archive -- Guyana considers that its historical account is essentially unchallenged.

1.8 Guyana's fourth observation is closely connected to the previous two: by the time of drafting this Reply Guyana had been given very late access to the relevant documents in the Dutch archives. As a result, it has been placed in a situation of considerable disadvantage in preparing this pleading. Suriname has had full access to the documents but has chosen not to allow them to be made available to the Tribunal or to Guyana in a timely manner. Given the late arrival of these documents, the time required to translate them from Dutch to English, and the very limited time Guyana has had to review them for this Reply, Guyana reserves its right to present to the Tribunal at the oral hearings additional documents from among those it has only recently obtained but has not had adequate time to review in detail prior to the submission of this pleading.

1.9 A fifth observation concerns Suriname's use of geography and cartography. As a result of its dependence on strained and unlikely geographical arguments -- historically rejected by the Dutch -- Suriname has prepared and then sought to utilise maps that tend to create incorrect impressions of the geographical circumstances which do not treat the relevant coastlines or geographic features of the two States in an equivalent manner. For example, the map prepared by Suriname for these proceedings (used *inter alia* as Counter-Memorial Figures 1, 2, 3, 4, 5, 29, 30, 31, 32, 33, 34, 35) gives the impression that Suriname has a much longer coastline than Guyana, whereas the opposite is true. Indeed, Volume I of Suriname's Counter-Memorial is striking for the way in which it fails to provide even a single map that shows the full territory and coastline of Guyana, or a single map that shows the broader geographic context in which this dispute arises. From Suriname's maps, the reader of the Counter-Memorial would not be aware that Guyana's coastline is longer than

¹⁸ Short report of the discussions held on 2, 16 and 23 April 1964 at the Department of Foreign Affairs about a proclamation relating to the continental shelf of Surinam (April 1964) (original in Dutch, translation provided by Guyana). See RG, Vol. II, Annex R36.

¹⁹ See e.g., SCM, p. 37, para. 3.61; p. 63, para. 5.2.

that of Suriname (482 and 384 km, respectively). The impression created is misleading. This is most apparent with Suriname's Figure 30 which purports to show "The Relevant Geographic Circumstances in this Case."²⁰ By providing a closed frame of reference that cuts off a large part of Guyana's coastline and fails to represent the general directions of the two coastlines the representation is artificial, amounting to a "refashioning of geography" in a manner that international courts and tribunals have declared impermissible. The intended effect may be seen by comparing Suriname's standard map with that used by Guyana, including, for example, Plates 9 and 39 in Guyana's Memorial.²¹ This approach is even more greatly exaggerated at Suriname's Figures 11 to 26, which suggest that Guyana's coastline (and the areas in which it has granted oil concessions) are considerably less extensive than those of Suriname.²² As described in more detail in Chapter 3 of this Reply, other significant deficiencies include the erroneous descriptions of the configurations and lengths of the relevant coastlines,²³ the use of arbitrary and inaccurate lines to represent the relevant coastlines resulting in the invocation of alleged perpendiculars and angles that have no relation to geographic reality,²⁴ and the use of maps including segments of coastline that have no entitlement to being included as part of the relevant coastline for the equidistance determination.²⁵ Guyana invites the Tribunal to treat Suriname's maps with considerable caution.

1.10 Relatedly, Suriname has utilised an official chart -- NL 2218 -- that was produced by the Suriname Maritime Agency in June 2005 after these proceedings were commenced (and after Guyana's Memorial was submitted).²⁶ Relying on this chart, Suriname has identified an additional basepoint (basepoint S14, located at Suriname's Vissers Bank)²⁷ that was not relied upon by Guyana. The use of this basepoint at Vissers Bank does not alter the plotting of the provisional equidistance line but does have the effect of extending the length of Suriname's relevant coastline by approximately 42 kilometres. Guyana does not accept the accuracy of the map. The geographical feature that allegedly justifies Suriname's additional basepoint does not appear on any of the predecessors to Chart NL 2218, or on any other chart. In addition, Guyana has obtained satellite imagery of the area in question that does not show the existence of the alleged feature.²⁸ Guyana challenges the accuracy of Chart NL 2218 and submits that it should not be relied upon by the Tribunal in these proceedings for any purposes, as set forth in Chapter 3 of this Reply.²⁹

²⁰ *Ibid.*, Chapter 6, Figure 30 (following p. 94).

²¹ MG, Chapter 4, Plate 9 (following p. 38); Plate 39 (following p. 108).

²² SCM, Chapter 5, Figures 11-18 (following p. 70); Figures 19-26 (following p. 76).

²³ *See infra* Chapter 3, paras. 3.10-3.24.

²⁴ *See infra* Chapter 3, para. 3.33.

²⁵ *See infra* Chapter 3, paras 3.19-3.24.

²⁶ SCM, Vol. III, Annex 68.

²⁷ *Ibid.*, Annex 69.

²⁸ Thomas D. Rabenhorst, Analysis of Recent Shoreline Revisions to the 2005 Edition of Dutch Nautical Chart NL 2218 (March 2006). *See* RG, Vol. II, Annex R2.

²⁹ *See infra* paras. 3.19-3.20.

II. Issues for the Tribunal

A. Points of Agreement

1.11 The Tribunal is charged with resolving the dispute between Guyana and Suriname concerning the application of the 1982 Convention.³⁰ In carrying out that task, the conclusion of the first round of written pleadings indicates that a number of significant points of agreement exist between the Parties.

1.12 First, the Parties are in agreement that the applicable law is to be found in the 1982 Convention and that its relevant provisions reflect customary international law.³¹ This agreement relates both to the jurisdictional issues raised by Suriname and to the merits of the dispute. These points may seem obvious but they are significant in situating the dispute squarely within the parameters of the 1982 Convention which directs the Tribunal to apply the Convention and other rules of international law that are not incompatible with it.³² It follows that specific provisions of the Convention are relevant to these proceedings, and in particular Articles 15, 74 and 83 as regards the merits. It is principally on the interpretation and application of these provisions that the Parties are divided.

1.13 Second -- and relatedly -- the Parties are also in broad agreement on the content of the law applicable to the merits of the delimitation issues (the significance of these points of concurrence is further elaborated in Chapter 5), even if there are material differences as to the application of that law to the facts. They agree, for example, that in interpreting and applying the provisions of the 1982 Convention, it is appropriate to have regard to the jurisprudence of international courts and tribunals. They agree also that the caselaw of the International Court of Justice is of considerable authority.³³ In this way, the Tribunal is not being asked to come entirely afresh to these issues of law.

1.14 Third, the Parties agree that the Arbitral Tribunal's task is to delimit a single maritime boundary up to a limit of 200 nautical miles from the baseline.³⁴

1.15 Fourth, both Parties accept the approach adopted by the International Court to the delimitation of maritime spaces, and in particular, the propriety of an approach that directs the delimitation first of the territorial sea and then of the continental shelf and exclusive economic zone, and that each is to be carried out in two steps:

³⁰ United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, [hereinafter "1982 Convention"], art. 286, 833 U.N.T.S. 397, 21 I.L.M. 1245, 1324 (1982).

³¹ MG, pp. 77-78, paras. 7.3-7.4; *see* SCM, pp. 38-39, paras. 41-43.

³² 1982 Convention, art. 293.

³³ MG, p. 86, para. 2.28; SCM, p. 39, para. 4.4.

³⁴ MG, p. 107, para. 9.1; SCM, p. 6, paras. 2.2-2.4.

- *First*, the Arbitral Tribunal must identify and draw a provisional equidistance line; and
- *Second*, the Arbitral Tribunal may take into account special circumstances that could justify a shift in that line³⁵ (having regard, of course, to the distinct requirements of Article 15, on the one hand, and Articles 74 and 83, on the other).

1.16 Fifth, and perhaps most strikingly, the Parties are in general agreement on the location of the provisional equidistance line. **Plate R8** (in Volume III only) shows Suriname's provisional equidistance line superimposed on that of Guyana. The Tribunal will recognise that there is no material difference.

1.17 And sixth, the Parties agree that geological and geophysical circumstances are of no relevance to this case. The position now adopted by Suriname marks a significant change from that adopted at the Marlborough House talks in 1966. The minutes of that meeting record that Suriname's view was that geological factors (in particular, the direction of the "valley of the [Corentyne] river") were relevant.³⁶ In its Counter-Memorial, however, Suriname "agrees with Guyana's statement that geological factors are of no material relevance for this case."³⁷ The Tribunal can therefore proceed on the basis that geological and geophysical factors can be put to one side in delimiting the maritime boundaries.

B. Points of Disagreement

1.18 It is within these broad parameters that the Tribunal is called upon to resolve the dispute between the Parties. Guyana submits that there are a number of discrete but related issues which are of particular significance. Although not exhaustive, the Tribunal's conclusions on these points will go a considerable way in directing it towards particular conclusions.

1.19 On the issue of its *jurisdiction*, one issue concerns whether or not the Tribunal should determine that Guyana and Suriname are bound under international law to treat Point 61 (which Suriname refers to as the "1936 Point") as the starting point for the delimitation of the maritime boundary. Guyana submits that as a matter of substance the Parties are in agreement on this point and that the Tribunal should so declare. Guyana's arguments are set out in detail in Chapter 2 of this Reply. At this stage, it suffices to note that since independence Suriname has treated Point 61 as the starting point for its maritime claim. The facts also show that even before that the United Kingdom and the Netherlands had consistently treated Point 61 as their starting point. Seventy years of consistent practise is, in Guyana's view, factually dispositive and legally irresistible. Lest there be any doubt, the Tribunal will have noted that the Parties' submissions reflect perfect agreement that if the

³⁵ MG, p. 88, para. 7.32; SCM, p. 42, para. 4.13.

³⁶ Minutes of a Meeting Held at Marlborough House (at p. 11), London, England (23 June 1966) [hereinafter "Marlborough House Minutes"]. See RG, Vol. II, Annex R12.

³⁷ MG, p. 89, para. 7.35; SCM, p. 7, para. 2.6

Tribunal is to engage in a delimitation then it should start at Point 61.³⁸ With these concordant submissions it is not tenable to claim that there exists anything other than perfect agreement between the Parties as to the location of the starting point for the maritime delimitation.

1.20 It is noteworthy that Suriname is in agreement with this approach so long as it is agreed that Point 61 and the 10° line were identified “in a combined operation.”³⁹ Suriname in effect argues that the Tribunal has jurisdiction to delimit the boundary along a 10° line but no jurisdiction to delimit the maritime boundary according to any other line or lines. The merit of this approach speaks for itself. In any event, Guyana submits that the evidence before the Tribunal is clear: the Boundary Commissioners and then the British and Dutch governments first decided to fix the land boundary terminus at Point 61, and only thereafter turned to address the question of the direction of the maritime boundary. Guyana submits that the facts also establish that:

- (1) the 10° line was solely to deal with possibility that a navigation channel might come into use along the western channel of the Corentyne River and for the purpose of easing the administration of such future navigation (it was not based on any actual navigational use);
- (2) it was understood that circumstances could change allowing another direction to be selected without revisiting the identification of Point 61;
- (3) the 10° line was only up to the outer limit of the territorial sea then pertaining, and that this did not exceed 3 nm;
- (4) British and Dutch agreement on the 10° line dissolved based on the non-use of the potential navigation channel, so that by the early 1960s the British moved to identify an equidistance line in accordance with the requirements of evolving international law; and
- (5) thereafter the British and Dutch and then Guyana and Suriname continued to treat Point 61 as the starting point for their respective claims and their oil concessions.

1.21 These are essentially issues of fact to be decided by the Tribunal on the basis of the evidence before it. That evidence shows that Suriname’s jurisdictional argument has no merit. Even if it did, it would still not denude the Tribunal of jurisdiction, which would be established by reference to the subsidiary or alternative means that Guyana has identified in Chapter 2.⁴⁰ That too appears to be recognised by Suriname. It has provided a notably modest effort in its Counter-Memorial at responding to the arguments raised by Guyana at the oral hearing in July 2005.⁴¹

³⁸ See Guyana Submission 1 (MG, p. 135) and Suriname Submission 2B (SCM, p. 125).

³⁹ SCM, pp. 57-58, para. 4.56.

⁴⁰ See *infra* Chapter 2, paras. 2.37-2.46.

⁴¹ See, e.g., Uncorrected Transcript of Hearing on Need for a Hearing on Suriname’s Preliminary Objections, p. 31, line 37 to p. 37, line 15 (Day Two; Friday, 8 July 2005).

1.22 On the **merits** of the dispute as to the maritime delimitation the Tribunal has three essential tasks in applying Articles 15, 74 and 83 of the 1982 Convention:

- (1) to identify with precision the location of the provisional equidistance line;
- (2) to decide whether there are any special geographical circumstances that justify any shift in that equidistance line to achieve an equitable solution; and
- (3) to decide whether historical special circumstances or the conduct of the Parties justify a shift in that equidistance line to achieve an equitable solution.

1.23 As regards the establishment of a *provisional equidistance line*, it is significant that Guyana and Suriname are in agreement as to where it is located. A comparison of Suriname Figure 31 and Guyana Plate 41 is set out at **Plate R8** (in Volume III only). This indicates agreement (subject to minor differences only in the territorial sea). It also indicates that in the area up to the 200 metre isobath the provisional equidistance lines of both Guyana and Suriname closely track the 34° historical equidistance line. Even on Suriname's own approach, it is self-evident that the 10° line is entirely unrelated to a provisional equidistance line.

1.24 As regards the existence of any *special geographic circumstances*, the Parties are divided. Guyana submits that the geography in the area is generally unremarkable. As the newly available documents from the restricted Dutch archive make clear, this was also the view of the Dutch government.⁴² Moreover, to the extent that geographic circumstances justify any shift in the provisional equidistance line, it is in favour of Guyana. The geographic reality is that there is a general, modest concavity along all of Guyana's relevant coastline that continues across Point 61 well into Suriname until the convex protrusion located at Hermina Bank. This last anomaly controls almost the entire length of the provisional equidistance line from around 100 nm to the 200 nm limit, and pushes the line sharply to the north to Guyana's prejudice. The geographic circumstances justify a shift in the provisional equidistance line toward the 34° historical equidistance line first identified and employed by the United Kingdom in the 1950s. The historical equidistance line has served as the basis for Guyana's maritime boundary claim ever since independence and its adoption would provide an equitable solution.

1.25 As described in further detail in Chapter 3, Guyana strongly disputes Suriname's claims as to the relative shapes and lengths of the coastlines of the two States. The geography of the area in question demonstrates that:

- (1) there are no configurations along the coastlines that have material effects on the provisional equidistance line, except the protrusion at Hermina Bank in Suriname;
- (2) the shape of the relevant coastline as a whole is generally concave and neutral to both Parties until it reaches Hermina Bank, where it becomes convex (to Guyana's prejudice);

⁴² Letter to the Governor of Suriname (13 February 1953), *supra* Chapter 1, note 9.

- (3) Guyana's total coastline and relevant coastline are materially longer than those of Suriname, not shorter as Suriname claims;
- (4) the maritime area appurtenant to Guyana's relevant coastline is larger than the one appurtenant to Suriname's relevant coastline, not smaller as Suriname claims;
- (5) the maritime area relevant to delimitation of the Guyana/Suriname boundary is divided equitably between the two Parties by the 34° historical equidistance line; and
- (6) the relevant maritime area is not divided equitably by Suriname's proposed 10° line.

Guyana's submissions on these points are supported by a report commissioned from an independent expert, Dr. Robert W. Smith, a geographer for the United States government for the past 30 years and the author or editor of numerous publications on coastal geography and maritime delimitation.⁴³

1.26 Each of these are issues on which the Tribunal is called upon to make findings of fact. In the circumstances, Guyana submits that it is simply not tenable for Suriname to claim that the provisional equidistance line is inequitable to Suriname's interests. The provisional equidistance line favours Suriname; its adoption would give rise to an inequitable result for Guyana having regard to the geographic circumstances and the conduct of the Parties. *A fortiori*, Suriname's 10° claim would be even more inequitable to Guyana. Geography and conduct support a shift of the provisional equidistance line to the historical equidistance line of N34E in order to achieve an equitable solution.

1.27 As regards the length of Guyana's coast, Suriname ignores the Award of 3 October 1899 of the Arbitral Tribunal delimiting the land boundary between the Colony of British Guiana and the United States of Venezuela.⁴⁴ In accordance with Article XIV of the 1897 Treaty of Arbitration, that award is a "full, perfect, and final settlement of all the questions referred to the Arbitrators."⁴⁵ The award has not been set aside or vacated or replaced by any other binding legal obligation. Guyana is entitled to rely on the Award and Suriname cannot ignore it. Moreover, Suriname itself has recognised the binding effect of the award. At the Conference of CARICOM Heads of Government in March 1999 held in Paramaribo, Suriname joined with all other CARICOM governments in reiterating "their support for the territorial integrity and sovereignty of Guyana."⁴⁶

⁴³ Dr. Smith's curriculum vitae is attached as Annex 1 to his report: Robert W. Smith, Independent Report on the Guyana-Suriname Coastal Geography and the Impact on Maritime Boundary Delimitation (2006) [hereinafter "Report of Robert W. Smith"]. See RG, Vol. II, Annex R1.

⁴⁴ Award of the Arbitral Tribunal under Article I of the Treaty of Arbitration signed at Washington on 2 February 1897 between Great Britain and the United States of Venezuela (3 October 1899). See RG, Vol. II, Annex R21.

⁴⁵ Treaty of Arbitration signed at Washington on 2 February 1897 between Great Britain and the United States of Venezuela, art. XIV. See RG, Vol. II, Annex R21.

⁴⁶ Communiqué Issued on the Conclusion of the Tenth Inter-Sessional Meeting of the Conference of the Heads of Government of the Caribbean Community (CARICOM) 4-5 March 1999, Paramaribo, Suriname. See RG, Vol. II, Annex R16.

1.28 As regards *historical special circumstances and the conduct of the Parties*, Guyana and Suriname are very far apart. Suriname wishes to discount all reference to the conduct of the Parties, including the historical conduct of the former colonial powers. It would prefer to ignore history and conduct. This is reflected in the number of annexes included in the Counter-Memorial. There are just seven historical documents drawn from the publicly accessible national archives in The Hague, and none from any Surinamese archive. Six of the documents date back to the 1930s and one dates to 1959. Suriname has chosen to exclude any archival material from the period between June 1937 and March 1959, and there is no archival material after 1959. This appears to be the first maritime delimitation on record in which one of the parties seeks to airbrush history out of the proceedings. But history and conduct are important. Guyana relies on history and conduct for the purpose of demonstrating that the historical equidistance line identified by the United Kingdom from the late 1950s is close to the modern provisional equidistance line up to the 200 metre isobath. This also serves to demonstrate that the historical equidistance line is not inequitable. This is reflected in the negotiations between the United Kingdom and the Netherlands in the 1950s and 1960s in which both colonial powers agreed that a maritime boundary along an equidistance line was “acceptable” and “desirable.” Guyana notes once again that Suriname has not introduced any materials from the restricted Dutch archive to counter Guyana’s reliance on the materials in the British archive and other Netherlands archives. There is accordingly no evidence before the Tribunal that would indicate any historical material or other material on conduct to support the view that the equidistance line identified by the United Kingdom (along N34E) could be considered to produce an inequitable result. The oil concessions granted by Guyana rely on that equidistance line and have also been generally respected by Suriname. The totality of the conduct -- of the former colonial powers prior to independence and of Guyana and Suriname after independence -- provides indicia of the Parties’ views on what would constitute an equitable solution, independent of the views they have expressed in the context of these arbitral proceedings. Guyana submits that the conduct of the Parties indicates that the historical equidistance line results in an equitable delimitation of their maritime boundaries.

1.29 The differences between the Parties are stark. Suriname invites the Tribunal to refashion geography and to ignore history and conduct. Guyana invites the Tribunal to respect geography, history and conduct. Guyana submits that it is the latter approach alone that would lead to an equitable result, and that the latter approach alone would respect the 1982 Convention and established international jurisprudence.

III. The Structure of Guyana's Reply

1.30 Against the background of the factors identified above, Volume I of Guyana's Reply is organized as follows:

Chapter 2 shows that this Tribunal has jurisdiction to delimit the maritime boundary between Guyana and Suriname and to address the other claims made by Guyana, and that the arguments of Suriname that any aspect of these claims is inadmissible are without foundation;

Chapter 3 addresses the pertinent issues of geography, and demonstrates that the geographical factors that are to be taken into account in delimiting maritime boundaries under Articles 15, 74 and 83 of the 1982 Convention are fully supportive of Guyana's claim and provide no assistance to Suriname's contentions;

Chapter 4 similarly addresses the pertinent issues of history and the conduct of the Parties and of their colonial predecessors, and demonstrates that the historical factors that are to be taken into account in delimiting maritime boundaries under Articles 15, 74 and 83 of the 1982 Convention are fully supportive of Guyana's claim and provide no assistance to Suriname's contentions;

Chapter 5 addresses in general the law that is applicable to the dispute between the Parties and explains why Suriname's departure from established principles and practise is unsustainable;

Chapter 6 responds to Suriname's arguments concerning the delimitation of the territorial sea and demonstrates why the principle of equidistance is applicable under Article 15 of the 1982 Convention and that there exist no special circumstances that are at variance with an equidistance line along an azimuth of 34°;

Chapter 7 responds to Suriname's arguments concerning the delimitation of the continental shelf and the exclusive economic zone and demonstrates why the applicable principles under Articles 74 and 83 of the 1982 Convention confirm that an equitable solution is achieved with a line of 34°;

Chapter 8 responds to Suriname's arguments on its use of force ;

Chapter 9 responds to Suriname's arguments concerning its failure to enter into practical and provisional arrangements pending agreement on delimitation;

Chapter 10 sets out the Submissions of Guyana, which have been revised only to take into account Suriname's preliminary objections.

1.31 Volumes II and III of this Reply contain supporting materials. Volume II contains annexes. Guyana has commissioned reports from three independent experts on geographic issues. Dr. Robert W. Smith, former geographer for the United States Department of State, has provided a report concerning the coastal geography of Guyana and Suriname and the impact of the geography on the maritime boundary delimitation. Dr. Thomas D. Rabenhorst, Director of Cartographic Instruction at the University of Maryland, has submitted a paper on

the satellite imagery and cartography of Vissers Bank where Suriname purports to locate a coastal basepoint (S14) on an alleged low-tide coast. And the Johns Hopkins Applied Physics Laboratory has submitted its mathematical calculations of coastal lengths, sizes of appurtenant maritime areas and divisions of the relevant maritime area produced by the provisional equidistance line and the boundary lines claimed by the Parties. These three independent reports are set out at Annexes R1 through R3. The rest of the Annexes are arranged in the following order: Expert Reports; Governmental Documents (Guyana); Governmental Documents (Suriname); Governmental Documents (other); Diplomatic Documents; Treaties, Agreements and Awards; National Legislation (Guyana); Case Law; Technical Data; and Documents from the Dutch Archives Produced by Order of the Tribunal. Volume III contains a complete set of maps and illustrations.

Reply of Guyana

CHAPTER 2

JURISDICTION

2.1 Guyana presented its views on the Tribunal's jurisdiction in Chapter 6 of the Memorial. As stated therein, Article 288(1) of the 1982 Convention provides that a tribunal constituted under Article 287 has jurisdiction "over any dispute concerning the interpretation or application of [the] Convention." The present dispute concerns the interpretation and application of Articles 15, 74, 83 and 279 of the Convention. It is exclusively concerned with the maritime boundary between Guyana and Suriname. As described in Chapters 3 and 4 of the Memorial, and as further explained below, Guyana and Suriname accept the same point as the northern terminus of their land boundary and the starting point for maritime delimitation. Point 61 (known to Suriname as the 1936 Point) was initially fixed and adopted as the northern land boundary terminus in 1936 by the United Kingdom and the Netherlands. It has been recognised as such by them, and by Guyana and Suriname, continuously and unequivocally for the past 70 years. Although Guyana and Suriname claim different boundary lines in the territorial sea and the areas beyond -- Guyana claims a line of N34E and Suriname claims a line of N10E -- it is very significant that both of these lines emanate from the same point: Point 61.¹

2.2 In its Preliminary Objections of 23 May 2005, Suriname challenged the jurisdiction of the Tribunal to delimit the Parties' maritime boundary arguing that there is no agreement on the location of the land boundary terminus at Point 61 -- and therefore no agreed starting point for a maritime delimitation.² However, Suriname further argued that there *is* an agreement that the land boundary terminus is at Point 61 *if* the maritime boundary runs from that point along the N10E line that Suriname claims.³ For Suriname, the agreement on the location of the land boundary terminus at Point 61 is "inextricably linked" to a maritime boundary along a line of N10E emanating from that point. On this basis, Suriname's Submissions ask the Tribunal:

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.⁴

2.3 The contradiction in Suriname's argument is clear. For Suriname, there is an agreed land boundary terminus at Point 61 and the Tribunal has jurisdiction, but *only if* it agrees with Suriname's claim on the merits that the maritime boundary should follow the 10° line. By contrast, if the Tribunal decides that the maritime boundary follows a *different* course from the one claimed by Suriname, then, according to Suriname, both the agreement on Point 61

¹ The astronomical coordinates of this point as identified in 1936 are: latitude 5° 59' 53.8" N and longitude 57° 08' 51.5" W. The geodetic coordinates of this same Point 61, determined by means of modern GPS techniques, are 6° 00' 05" N and 57° 08' 44.5" W in the World Geodetic Reference System of 1984 (WGS84). For brevity's sake, Guyana hereafter refers to this point simply as Point 61, without repeating each time that the same point is called the 1936 Point by Suriname.

² Suriname's Memorandum on Preliminary Objections (hereafter "SPO"), pp. 3-4, paras. 1.8-1.9.

³ SCM, p. 3, para. 1.11; p. 15, para. 3.1; p. 125, para. 2.B.

⁴ *Ibid.*, p. 125, para. 2.B.

and the basis for the Tribunal's jurisdiction *disappear*. Suriname's argument boils down to this: the Tribunal has jurisdiction if it rules on the merits in Suriname's favour, but it deprives itself of jurisdiction if it rules otherwise. Such an argument defeats itself.

2.4 The argument is also defeated by the facts. The evidence shows clearly that since 1936 the Parties have mutually, consistently and unequivocally accepted Point 61 as the land boundary terminus. For 70 years, both Suriname and Guyana have referred to or treated that location (and *only* that location) as the land boundary terminus (i) in official governmental publications;⁵ (ii) in maritime boundary treaty negotiations;⁶ (iii) in communications with one another and with third Parties;⁷ and (iv) in setting the limits of oil concessions.⁸ Not once have Guyana or Suriname (or the United Kingdom or the Netherlands before them) adopted any other point as the land boundary terminus. This unblemished historical record is confirmed by Suriname's Counter-Memorial which does not cite a single instance when either State (or colonial predecessor) adopted a different point as the land boundary terminus.

2.5 The evidence also defeats Suriname's argument that the Parties' mutual adoption of Point 61 as the land boundary terminus was conditioned on their acceptance of Suriname's claim of a maritime boundary line of N10E. To the contrary, as shown below, there was no linkage between Point 61 and the 10° line even within the territorial sea. The agreement between the United Kingdom and the Netherlands to establish the land boundary terminus at Point 61 was prior to and independent of their understanding on the direction of the maritime boundary line. Neither Guyana nor Suriname, nor their colonial predecessors, ever made their adoption of Point 61 conditional upon acceptance of Suriname's claimed 10° line or any other line. Indeed, until the filing of Suriname's Preliminary Objections on 23 May 2005, there is no evidence that Suriname has ever previously claimed linkage between Point 61 and the N10E maritime boundary line.

⁵ "Regional Location and Trade," Section 1.21 in *Suriname Planatlas* (1988) ("a Dutch-British frontier commission established a point on the west bank of the Corantijn River (the so-called Kayzer-Phipps point, 5°59'53"8 north latitude - 57°08'51"5 west longitude) as the most northern point on Suriname's border with Guyana, as well as the point of departure for the seaward dividing line between both countries."). See MG, Vol. II, Annex 47.

⁶ See, e.g., 1962 Dutch Draft Treaty between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland establishing the frontier between Surinam and British Guiana, Article 1(3)(b) (referencing "the point on the left bank where the river debouches into the sea"). See MG, Vol. III, Annex 91; 1961 British Draft Treaty – British Guiana/Surinam Boundary, Part I, Article I. See MG, Vol. III, Annex 90.

⁷ Description of the Western Boundary of the Republic of Suriname (28 June 2000), see MG, Vol. II, Annex 51; Letter from the Ambassador of Guyana to Suriname to Clement Rohee, Minister of Foreign Affairs, with attached Note Verbale No. 2566/HA/eb from the Republic of Suriname to the Cooperative Republic of Guyana (31 May 2000), see MG, Vol. II, Annex 78.

⁸ California Oil Company (British Guiana) Limited - Oil Exploration Licence, Issued on 15th April 1958, see MG, Vol. III, Annex 105; Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965), see MG, Vol. III, Annex 107; Guyana Natural Resources Agency, Berbice Agreement (12 October 1989), see MG, Vol. III, Annex 150; Petroleum Prospecting Licence Between the Minister Responsible for Petroleum Representing the Government of the Cooperative Republic of Guyana and CGX Resources Inc. (9 December 1998), see RG, Vol. II, Annex R23 (this document was inadvertently produced in incomplete form at MG, Vol. III, Annex 157); Map indicating the concession area of the Colmar Surinam Oil Company, see SCM, Chapter 5, Figure 6 (following p. 66); Staatsolie Pecten concession area, see SCM, Chapter 5, Figure 22 (following p. 76); SCM, p. 78, note 375; Survey of Concession Agreements Between the Republic of Suriname and Staatsolie Maatschappij Suriname N.V. (24 February 2004), see SCM, Vol. III, Annex 56 and SCM, Chapter 5, Figure 23 (following p. 76).

2.6 Suriname has also objected to the admissibility of Guyana's Second and Third Submissions on Suriname's unlawful use of force and failure to pursue provisional measures of a practical nature. Suriname contends that these submissions are inadmissible because Guyana did not act in good faith and lacks "clean hands."⁹ Guyana disputes that it acted in bad faith or with unclean hands. Chapters 8 and 9 of this Reply respond to Suriname's arguments on the merits. In its Memorandum on Preliminary Objections, Suriname did not identify a single authority in support of its novel arguments on inadmissibility. As Guyana indicated at the Oral Hearings on Suriname's Preliminary Objections, these arguments cannot be resolved by the Tribunal without a consideration of the merits.¹⁰

2.7 By its Order No. 2 of 18 July 2005, the Tribunal decided that Suriname's 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" and indicated that it would rule on these objections in its final award.¹¹

2.8 In this Chapter, Guyana first responds to Suriname's objections to jurisdiction; then it responds to Suriname's objections to admissibility.

I. The Jurisdiction of the Tribunal To Delimit the Maritime Boundary

2.9 Suriname contends that the Tribunal lacks jurisdiction to delimit the maritime boundary because there is no agreement on a land boundary terminus at Point 61, and therefore no agreed starting point for maritime delimitation, *unless* the Tribunal endorses Suriname's claim to a maritime boundary line of N10E from Point 61.¹² As shown below, independently of the N10E line or any other maritime boundary ultimately established by the Tribunal, the practise of the Parties reflects agreement that the northern land boundary terminus and starting point for maritime limitation is located at Point 61. For 70 years the Parties' mutual reliance on Point 61 as the land boundary terminus has been uniform and without exception. Suriname has offered no evidence of even a single instance when a point other than Point 61 was relied upon by either Party as the land boundary terminus. Nor has Suriname supplied proof that the Parties' mutual adoption of Point 61 as the land boundary terminus was conditioned on acceptance of the N10E line. The historical record begins with the fixing of Point 61 as the land boundary terminus by the United Kingdom and the Netherlands in 1936. It continues to the present day reflected *inter alia* in a series of public declarations and pronouncements by which the Parties accepted Point 61 independent of the direction of the maritime boundary.

A. The Fixing of the Land Boundary Terminus at Point 61 in 1936

2.10 The details of the joint effort by the United Kingdom and the Netherlands to fix the land boundary terminus in 1936 are set out in Guyana's Memorial.¹³ Suriname does not dispute this history but attempts to re-characterize the mixed Boundary Commission's task.

⁹ SPO, p. 47, para. 7.8.

¹⁰ See, e.g., Uncorrected Transcript of Hearing on Need for a Hearing on Suriname's Preliminary Objections, p. 20, lines 16-24 (Day Two; Friday, 8 July 2005).

¹¹ Order No. 2 of 18 July 2005, Preliminary Objections, p. 2.

¹² SCM, p. 3., para. 1.11; p. 15, para. 3.1; p. 125, para. 2B.

¹³ See MG, pp. 14-18, paras. 3.5-3.14.

Rather than fix the land boundary terminus, Suriname argues that the Boundary Commissioners were asked merely to make a “recommendation” as to the location of the land boundary terminus, for later acceptance or rejection by their respective governments.¹⁴ Suriname’s contention is belied by the historical record. Indeed, the very title of the Boundary Commission’s report -- “Report on *the Inauguration of the Mark at the Northern Terminal of the Boundary Between Surinam and British Guiana*” -- indicates that the exercise was intended to be definitive.¹⁵

2.11 Suriname’s own documents confirm that the Boundary Commission’s task was to fix the land boundary terminus definitively, not merely to make a recommendation. Annex 1 of Suriname’s Counter-Memorial is a July 1935 draft boundary treaty between the United Kingdom and the Netherlands.¹⁶ The covering memorandum from the British Secretary of State to the Netherlands Minister Plenipotentiary in London makes clear that the Boundary Commission had full authority to fix the land boundary terminus at a point certain. It states in relevant part: “It does not appear practicable for a treaty to be concluded ... until a final settlement has been reached regarding those points in the boundary which are *to be delimited by the Boundary Commissioners* at their forthcoming meeting.”¹⁷

2.12 The body of the 1935 draft treaty further confirms the point. Article 1, paragraph 2 states that the northern land boundary terminus shall be at a “point at which a line drawn on a true bearing of 28° from a beacon to be erected” intersects the shore line.¹⁸ The approximate coordinates of the proposed beacon are given, but only provisionally. In a footnote, the draft states that the beacon is “to be erected before the treaty is signed by a joint commission.”¹⁹ It goes on to state that the “geographic co-ordinates [in the draft treaty] are only intended as a guide as to where the beacon is to be erected. ... When the beacon is erected its position can be more accurately ascertained, and the coordinates shown above can then be corrected if necessary for the purposes of the final draft of the treaty.”²⁰ These provisions make clear that the Boundary Commission was authorised to fix the precise location of the land boundary terminus and that the coordinates they chose would then be incorporated into the final draft treaty.

2.13 Suriname’s contention that the Boundary Commission’s job was merely to make a “recommendation” as to the location of the land boundary terminus is also at odds with the action taken by the Commission -- the burial of a concrete block with a visible pillar engraved in brass. If the Boundary Commissioners’ terms of reference were as limited as Suriname now claims, it is unlikely they would have invested the time and effort in laying such a permanent marker. Laying the marker was a serious endeavour. The Boundary

¹⁴ See, e.g., SPO, pp. 6-7, paras. 2.4-2.6 (repeatedly characterising the fixing of the land boundary terminus by the Boundary Commission as a mere “recommendation”).

¹⁵ Report on the Inauguration of the Mark at the Northern Terminal of the Boundary Between Surinam and British Guiana (5 July 1936). See MG, Vol. II, Annex 11.

¹⁶ Letter of the Secretary of State for Foreign Affairs to the Netherlands Minister, enclosing Draft Treaty (4 July 1935). See SCM, Vol. II, Annex 1.

¹⁷ SCM, Vol. II, Annex 1, para. 2 (emphasis added).

¹⁸ *Ibid.*, Article 1(2).

¹⁹ *Ibid.*, Article 1(2), note 1.

²⁰ *Ibid.*, Vol. II, Annex 1, Article 1(2), note 2.

Commissioners buried a concrete block below the surface of the earth. The concrete block supported a visible pillar with a brass bolt embedded at the top and marked “A” together with the words “BRITISH GUIANA” engraved on its northwest face and “SURINAME” engraved on its northeast face.²¹ The nature of the marker and the effort involved in laying it indicate that the intention was to establish a permanent land boundary terminus.

2.14 This is confirmed by subsequent practise. The Parties’ actions immediately following the burial of the concrete and brass pillar at Point 61 reflect their understanding that the Boundary Commission had definitively fixed the land boundary terminus. Within days of placing the marker, the Chief British Commissioner wrote to the United Kingdom’s Undersecretary of State for the Colonies: “With regard to the Northern Terminal of the Boundary between Surinam and British Guiana, *we have now fixed this point with the Netherlands Commission.*”²² The actions of the Netherlands were to the same effect. On 17 July 1936, just two weeks after the marker had been laid, the Netherlands Boundary Commissioner reported to the Netherlands Minister of Colonies on the “*fixing the northern end of the border on the left bank of the Corantijn.*”²³ Consistent with this understanding, the Netherlands subsequently referred to Point 61 as the “*limit between Netherlands and British Territory.*”²⁴ On 20 August 1938, the Netherlands Boundary Commissioner wrote that the construction of the beacon at this site had constituted “*the establishment of the boundary sign in the Northern end point of the boundary between Surinam and British Guiana.*”²⁵

2.15 In 1939, the British sent the Dutch a final draft treaty, which incorporated Point 61 as the land boundary terminus and starting point for maritime delimitation.²⁶ Suriname suggests that it is “speculative” whether the Dutch would have signed it had not World War II intervened.²⁷ But the Dutch themselves did not speculate. In a 1953 letter to the International Law Commission, they said flatly that “[t]he Western boundary of Surinam *has been settled* as follows in a draft treaty between the Netherlands and the United Kingdom, the ratification of which has been interrupted by the last war.”²⁸ The Dutch letter specifically treats as “settled” the starting point for maritime delimitation fixed by “the landmark referred

²¹ MG, Vol. II, Annex 11, at 5(a-d).

²² Letter from Major Phipps, Chief British Commissioner, British Guiana Brazil Boundary Commission, to the Under Secretary of State for the Colonies, Colonial Office (9 July 1936) [hereinafter “Letter from Major Phipps (9 July 1936)”. See MG, Vol. II, Annex 12 (emphasis added).

²³ Letter from the Dutch Boundary Commissioner Vice-Admiral C.C. Kayser to the Dutch Minister of Colonies (17 July 1936) (emphasis added) (original in Dutch, translation provided by Guyana). See MG, Vol. II, Annex 41.

²⁴ Letter from S.A. Edgell, Hydrographic Department to the Colonial Secretary (20 December 1938). See MG, Vol. II, Annex 15.

²⁵ Letter from Head of the Commission for the Settlement of the Boundary to the Minister for the Colonies (20 August 1938) (emphasis added) (original in Dutch, translation provided by Guyana). See RG, Vol. II, Annex R27.

²⁶ 1939 British Draft Treaty, Article 1(2). See MG, Vol. III, Annex 89.

²⁷ SPO, p. 8, para. 2.9.

²⁸ Information and Observations Submitted by Governments Regarding the Question of the Delimitation of the Territorial Sea of Two Adjacent States, *Yearbook of the International Law Commission*, 1953, Vol. II, Doc. A/CN.4/71 and Add. 1-2, 82-83 (1959)(emphasis added). See RG, Vol. II, Annex R9.

to in article 1 (2)” of the 1939 draft treaty; that is, the concrete and brass pillar that was laid at Point 61.²⁹

2.16 It is thus clear that the colonial powers mutually and unequivocally treated the Boundary Commission’s actions as a definitive settlement of the land boundary terminus at Point 61. Since 1936, their consistent and sustained practise, as well as that of Guyana and Suriname, only underscores this common understanding. At no time since 1936 did either of the Parties (or their colonial predecessors) adopt any point other than Point 61 as the land boundary terminus.

B. Suriname’s Public Pronouncements that Point 61 Is the Land Boundary Terminus

2.17 Suriname’s claim in these proceedings is inconsistent with its own public pronouncements. It has repeatedly issued statements claiming Point 61 as the land boundary terminus. In defining Suriname’s “Seaward Boundary,” for example, the official *Planatlas* (published by Suriname’s National Planning Office in 1988) states:

a Dutch-British frontier commission established a point on the west bank of the Carantijn River (the so-called Kayzer-Phipps point, 5° 59’ 53” north latitude - 57° 08’ 51” 5 west longitude [*i.e.*, Point 61]) as the most northern point on Suriname’s border with Guyana, as well as the point of departure for the seaward dividing line between both countries.³⁰

2.18 Suriname’s endorsement of Point 61 is likewise reflected in a 1989 exchange of diplomatic notes with Guyana. On 11 January 1989, Guyana sent a *note verbale* to Suriname protesting the latter’s reported granting of an oil concession in Guyanese waters.³¹ The response of the Embassy of Suriname stated that Guyana’s *Note Verbale* had been “brought to the attention of the Ministry of Foreign Affairs of Suriname and other relevant authorities.”³² Suriname’s response unambiguously recognised Point 61 as the land boundary terminus, stating that “the western sea boundary” of Suriname is “formed by” a “line” that is “drawn from latitude 5° 59’ 53” and longitude 57° 08’ 51” W [*i.e.*, Point 61].”³³

2.19 Suriname reaffirmed its adoption of Point 61 as the land boundary terminus on 31 May 2000, when its Minister of Foreign Affairs wrote to the Embassy of Guyana in Paramaribo:

The Government of the Republic of Suriname wishes to reiterate that from the point mark Latitude 5° 59’ 53.8” North, Longitude: 57° 08’ 51.5” West

²⁹ *Ibid.*

³⁰ “Regional Location and Trade,” Section 1.21 in *Suriname Planatlas* (1988). See MG, Vol. II, Annex 47. The statement in Suriname’s *Planatlas* that the Boundary Commission “established” Point 61 “as the most northern point on Suriname’s border with Guyana” constitutes further refutation of the argument in the Counter-Memorial that the Boundary Commission had done nothing more than make a “recommendation” as to the possible location of the land boundary terminus. *Ibid.* See also SPO, pp. 6-7, paras. 2.4-2.6.

³¹ *Note Verbale* from the Cooperative Republic of Guyana to the Republic of Suriname (11 January 1989). See MG, Vol. III, Annex 70.

³² *Note Verbale* from the Embassy of the Republic of Suriname to the Ministry of Foreign Affairs of the Cooperative Republic of Guyana (23 January 1989). See RG, Vol. II, Annex R13.

³³ *Ibid.*

[*i.e.*, Point 61], the direction of the boundary line in the territorial waters is on a true bearing of 10° East.³⁴

2.20 Suriname's official position that Point 61 is the land boundary terminus was underscored yet again at the Twenty-First Meeting of the Conference of Heads of Government of CARICOM on 2-5 July 2000. At that meeting, Suriname's President, Jules A. Wijdenbosch, presented a formal description of the "western boundary of Suriname with the neighbouring country of Guyana."³⁵ The description affirmed Point 61 as the land boundary terminus. Suriname's western border was described as the "shortest line" from the "southern boundary" with Brazil "along the west bank of the Upper Corentyne and the Corentyne rivers to the point marked: Latitude 5°59'53".8 North and Longitude 57°08'51.5" West [*i.e.*, Point 61], where the aforesaid shoreline cuts the coast in sea." From "this marked point" is drawn the "western limit of the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf of Suriname."³⁶ To support this statement, Suriname presented a copy of the 1936 Mixed Boundary Commission's report.³⁷

C. Suriname's Use of Point 61 in Setting the Limits of Its Oil Concessions

2.21 The Parties' mutual recognition of Point 61 is also reflected *inter alia* in their oil concession practises which treat that point as the land boundary terminus. British Guiana began this practise in 1958 with a concession to the California Oil Company which began at "a point in latitude 5°59'53.8" North, longitude 57°08'51.5" West, established by the intersection of the Surinam and British Guiana international boundary demarcated by a large triangular wooden beacon,"³⁸ -- that is, Point 61. Subsequent oil concessions by British Guiana and Guyana also used Point 61 as the land boundary terminus.³⁹

³⁴ Letter from Karshanjee Arjun, Ambassador of Guyana to Suriname to Clement Rohee, Minister of Foreign Affairs, with attached *Note Verbale* No. 2566/HA/eb from the Republic of Suriname to the Cooperative Republic of Guyana (31 May 2000). See MG, Vol. II, Annex 78. Suriname made a similar statement in a letter of the same date sent to CGX Energy Co. Letter from the Minister of Foreign Affairs of the Republic of Suriname to Kerry Sully, President, CGX Energy, Inc. (31 May 2000). See MG, Vol. II, Annex 49.

³⁵ Description of the Western Boundary of the Republic of Suriname (28 June 2000). See MG, Vol. II, Annex 51. See also Description of the Western Boundary of the Republic of Suriname (28 June 2000) *produced in Documentation Provided by the Delegation of the Republic of Suriname at the Twenty-First Meeting of the Conference of Heads of Government of the Caribbean Community, Canouan, St. Vincent and the Grenadines (2-5 July 2000)* [Extracts]. See RG, Vol. II, Annex R18.

³⁶ Description of the Western Boundary of the Republic of Suriname (28 June 2000). See MG, Vol. II, Annex 51.

³⁷ See Report on the Inauguration of the Mark at the Northern Terminal of the Boundary Between Surinam and British Guiana (5 July 1936) *produced in Documentation Provided by the Delegation of the Republic of Suriname at the Twenty-First Meeting of the Conference of Heads of Government of the Caribbean Community, Canouan, St. Vincent and the Grenadines (2-5 July 2000)* (extracts). See RG, Vol. II, Annex R18.

³⁸ California Oil Company (British Guiana) Limited - Oil Exploration Licence, Issued on 15th April 1958 [extracts]. See MG, Vol. III, Annex 105.

³⁹ Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965), see MG, Vol. III, Annex 107; Guyana Natural Resources Agency, Berbice Agreement (12 October 1989), see MG, Vol. III, Annex 150; Petroleum Prospecting Licence Between the Minister Responsible for Petroleum Representing the Government of the Cooperative Republic of Guyana and CGX Resources Inc. (9 December 1998), see RG, Vol. II, Annex 23 (this document was inadvertently produced in incomplete form at MG, Vol. III, Annex 157).

2.22 Suriname's practice is equally consistent. This is clearly illustrated in Suriname's Counter-Memorial, in Figures 8 through 26, all of which depict the common starting point for the maritime boundaries claimed by Suriname and Guyana, as well as for oil concessions issued by both States. Figures 22 through 26, in particular, depict how Suriname's concession to Staatsolie between 1993 and 2000 emanated from Point 61.⁴⁰

2.23 In sum, the conduct of the Parties overwhelmingly demonstrates that Guyana and Suriname have treated Point 61 as their northern land boundary terminus.

D. Suriname Never Adopted a Land Boundary Terminus Other than Point 61

2.24 Against this evidence, Suriname makes a half-hearted effort to create the appearance of a dispute over the location of the land boundary terminus. The argument is set forth in both the Memorandum on Preliminary Objections and the Counter-Memorial. It is based on a map provided by the Dutch to the British in 1959 on which the Dutch had drawn an illustrative closing line for the Corentyne River, the western endpoint of which lay on the Guyana coast approximately two miles north of Point 61. It is undisputed, however, that the point on the 1959 map was never regarded as marking the actual mouth of the Corentyne River, where the river debouches into the sea, and where the Dutch and the British had agreed to fix the land boundary terminus. Rather, the Dutch explained in 1959 that they were proposing to treat the entrance to the river as a juridical bay, and were drawing a closing line of 10 nm across this "bay." Thus, the endpoints of the closing line were chosen because of their distance from one another (10 nm) rather than their location at the actual mouth of the river.⁴¹ The British objected to the closing line on the grounds that international law did not recognise a juridical bay at the entrance to the Corentyne River, and thus there was no justification for a closing line anywhere other than at the actual point where the river flows into the sea.⁴² The Dutch promptly abandoned both the closing line and its endpoints. Significantly, their next draft treaty (of 1962) included Point 61 as the endpoint for the river closing line, and described it as "the point on the left bank where the river debouches into the sea."⁴³ Suriname's written pleadings neglect to mention this.

2.25 Instead, the Memorandum on Preliminary Objections and the Counter-Memorial attempt to resurrect the 1959 map by noting that Suriname briefly revived it at the 1966

⁴⁰ SCM, Chapter 5, Figures 22-26 (following p. 76).

⁴¹ The Dutch position was that the closing line for the Corentyne River mouth should "follow the principles generally accepted for determining the extent of bays where both coasts belong to the same state." Memorandum from L. J. Van der Burg, Head of Legal Affairs Department, to Head of Hydrography (15 December 1958). See SPO, Annex 13. The flaw in this approach was obvious: both "coasts" of the Corentyne River did not belong to the same State.

⁴² Letter from R.H. Kennedy, Hydrographic Department, Admiralty to J.J. d'A Collings, Foreign Office, Colonial Office (17 August 1959). See SPO, Annex 23. Among the reasons cited for rejecting the Dutch approach was the fact that the two coasts of the Corentyne River belonged to different States. Commander Kennedy also objected to the closing line drawn by the Dutch because it was "well northward of the limit of the territorial sea of British Guiana ... [and] ... encloses as Dutch internal waters some of the British Guiana territorial sea."

⁴³ 1962 Dutch Draft Treaty between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland establishing the frontier between Surinam and British Guiana, Article 1(3)(b). See MG, Vol. III, Annex 91.

Marlborough House talks with Guyana.⁴⁴ Suriname's minutes of the meetings include a rough sketch of the coastline appurtenant to the Corentyne River with a hand-drawn closing line resembling the one the Dutch drew in 1959 and later discarded.⁴⁵ However, in late 1965, shortly before the Marlborough House talks, Dr. F.S. Essed (who led Suriname's delegation at Marlborough House) confirmed that Suriname regarded Point 61 as the land boundary terminus and starting point for maritime delimitation: "The possibility of negotiating on this border [*i.e.*, in the continental shelf] is therefore still open provided that, of course, the point on the west bank of the Corantijn, *where it meets the sea*, is taken as the starting point in dividing the continental shelf."⁴⁶

2.26 Whatever its negotiating strategy in bringing up the 1959 closing line at Marlborough House, Suriname acknowledges that it was rejected by Guyana (as it had been previously by the British), and that Guyana insisted that the starting point for delimitation of the maritime boundary must be at Point 61, where the river meets the sea.⁴⁷ Even more to the point, the 1959 map was never raised by Suriname again. For the next 40 years, Suriname and Guyana treated Point 61 -- and no other point -- as the land boundary terminus and the starting point for maritime delimitation.

2.27 Thus, it is curious that Suriname now takes a contrary position. All of the sudden, it appears, Suriname has decided that Point 61 is no longer located at "the point at which the river bank changes into the coastline."⁴⁸ However, since its independence in 1975, Suriname has uniformly and repeatedly given the coordinates for this location -- where "the river bank changes into the coastline" -- as "Latitude: 5° 59' 53.8" North, Longitude: 57° 08' 51.5" West" -- the exact coordinates of Point 61. Indeed, both the Netherlands and Suriname have consistently regarded Point 61 as "the left bank of the River Courentyne *at the sea*" since 1936. This is the language used to describe the location of the point both before it was established (in the 1935 draft treaty)⁴⁹ and after it was fixed by the Boundary Commission (in the 1939 draft treaty).⁵⁰ And in 1965 Suriname's Dr. Essed referred to the same point in describing the starting point for maritime delimitation as "the point on the west bank of the Corentijn, *where it meets the sea*."⁵¹ Thus, for Suriname (as for the Netherlands), the point where the Corentyne River *meets the sea*, that is, *where the river bank changes to the coastline*, has always been the point fixed by the Boundary Commissioners in 1936: Point 61. Always, at least, until these proceedings.

⁴⁴ SPO, p. 17, para. 3.11. *See also* Report of the Discussions Held Between Suriname and Guyana at Marlborough House, London, England (23 June 1966). *See* SPO, Annex 17, p. 3.

⁴⁵ *Ibid.*

⁴⁶ Report on the Discussion held at the Office of the Secretary-General of the Netherlands Ministry of Foreign Affairs between Surinamese and Dutch Delegations (30 November 1965) (original in Dutch, translation provided by Guyana) [hereinafter "Report on the Discussion held 30 November 1965"]. *See* MG, Vol. II, Annex 43.

⁴⁷ SPO, p. 24, para. 5.6; Annex 17, p. 7.

⁴⁸ SCM, p. 17, para. 3.13; SPO, p. 9, para. 2.13.

⁴⁹ Letter of the Secretary of State for Foreign Affairs to the Netherlands Minister, enclosing Draft Treaty (4 July 1935). *See* SCM, Vol. II, Annex 1.

⁵⁰ 1939 British Draft Treaty, Article 1(2). *See* MG, Vol. III, Annex 89.

⁵¹ Report on the Discussion held 30 November 1965, *supra* Chapter 2, note 46.

2.28 In its Memorandum on Preliminary Objections, Suriname also raised a so-called “Point X” as a potential land boundary terminus.⁵² Suriname apparently had second thoughts, however, because the idea was discarded in the Counter-Memorial. “Point X” was evidently identified solely for purposes of this case. Neither the point nor the purported “geometric method” by which it was constructed was ever mentioned (and apparently was never even thought of) by Suriname at any time in the past 70 years. Suriname makes no pretense to the contrary. Nor does Suriname supply any precedent in the caselaw or in State practise for the use of its “geometric method” in establishing a closing line at the mouth of a river. Guyana is aware of none. In any event, one look at Suriname’s depiction of “Point X” (at Figure 3 of the Memorandum on Preliminary Objections) is sufficient to dispense with it. It is very clearly a long way from the actual mouth of the river. Inasmuch as Suriname’s Counter-Memorial has abandoned Point X, the Tribunal need not consider it further.

E. Point 61 Is Not “Inextricably Linked” to a 10° Line

2.29 Suriname argues in its Memorandum on Preliminary Objections and Counter-Memorial that Point 61 and the 10° line were “inextricably linked,”⁵³ with the adoption of each dependent on the adoption of the other. Thus, Suriname claims that there is either an agreement on *both* Point 61 and the 10° line, in which case the Tribunal has jurisdiction to delimit the maritime boundary (along the 10° line), or there is an agreement on *neither*, in which case the Tribunal has no jurisdiction. History refutes Suriname’s argument. In actuality, Point 61 and the 10° line were determined independently; since the adoption of Point 61 Suriname has not conditioned its acceptance on agreement on a 10° line. It has always been Guyana’s position that the Parties’ mutual and enduring adoption of the former in no way implies their acceptance of the latter. Thus, it is surprising to read in the Counter-Memorial that “Guyana does not contest that the 1936 Point and the 10° Line were established in combination.”⁵⁴ This is simply not true.

2.30 The work of the Mixed Boundary Commission in 1936 demonstrates the independence of Point 61 from the 10° line. As the 1935 draft treaty makes clear, the Commissioners were given full authority to fix the precise coordinates of the land boundary terminus at a location “compatible with permanence.”⁵⁵ Notwithstanding the as-yet-undetermined location of that point, the United Kingdom and the Netherlands had already decided on a boundary line in the sea at N28E.⁵⁶ From the perspective of the treaty drafters, the precise location of the land boundary terminus, on the one hand, and the angle of the boundary line, on the other, were thus distinct matters. And the location of the land boundary terminus was certainly not linked to a boundary line of 10°.

2.31 The Boundary Commission report also makes clear that the location of the land boundary terminus and the angle of the boundary line in the sea were determined separately, with priority given to the terminus. Again, the title of the report is instructive: “Report on

⁵² SPO, p.11, para. 2.17.

⁵³ SCM, p. 3, para. 1.11; p. 15, para. 3.1

⁵⁴ *Ibid.*, p. 57, para. 4.56.

⁵⁵ Letter of the Secretary of State for Foreign Affairs to the Netherlands Minister, enclosing Draft Treaty (4 July 1935). See SCM, Vol. II, Annex 1, art. 1(2), note 2.

⁵⁶ SCM, p. 19, para. 3.5.

the Inauguration of the *Northern Terminal Point Mark* of the Suriname/British Guiana Boundary.”⁵⁷ It is telling that the reference is to the fixing of the land boundary terminus, not to setting the direction of the maritime boundary in the territorial sea. Furthermore, as paragraph 3 of the report makes clear, it was only *after* the land boundary terminus had been definitively set at Point 61 that the Dutch Commissioner raised the subject of the angle of the boundary line in the sea.⁵⁸ The Counter-Memorial itself recognises that *first* “the Commissioners chose a point on the ground” as the land boundary terminus and *then* “observations at the mouth of the Corentyne River revealed that the 28° azimuth line proposed by the Netherlands did not meet the purpose for which it was proposed...”⁵⁹ In the 1953 memorandum to the Governor of Suriname, quoted above, the Dutch Foreign Ministry explained that “with this bearing the channel would fall partly within Surinam territory and partly within British territory, which could result in difficulties regarding lighting and beacon. Therefore, a bearing was chosen of 10° East.”⁶⁰

2.32 The independence of the settlement of the land boundary terminus from the agreement on the boundary line in the territorial sea is further confirmed by Annex 14 of Suriname’s Counter-Memorial, a 20 June 1937 “Top Secret” letter from the Dutch Boundary Commissioner to the Minister of State for the Colonies. This notes that “the joint commission is proposing a departure from the original instructions [to demark a 28° boundary line in the territorial sea. O]f the boundary markers referred to in the report *only the concrete block indicating the boundary terminus has been erected for the present*. The other markers [indicating the direction of the boundary in the territorial sea] and the beacon visible from the sea will be erected as soon as both Governments have given their approval to our proposals [on substituting a 10° line for the 28° line in the territorial sea].”⁶¹

2.33 Moreover, when the Dutch Commissioner proposed to change the 28° line to one of 10° so as to avoid intersecting a potential western navigation channel at the mouth of the Corentyne River, the British Commissioner agreed -- on the understanding that it would be “a comparatively simple matter to *rebuild the direction pillar*” should circumstances warrant.⁶² There was no suggestion of changing the terminus. The Counter-Memorial reveals that there never was a western or 10° navigation channel in the Corentyne River, only the “possibility” that one might eventually be formed. A 1931 letter from the Dutch Minister of Defense to the Minister for the Colonies, stated that although “the navigation channel lies along the Dutch [i.e., eastern] bank, the possibility cannot be ruled out that in future it may come to run between the English coastal bank [and] the middle of the Corentijn...”⁶³ Thus, there is no support for Suriname’s argument that Point 61 was accepted as the land boundary terminus

⁵⁷ Report on the Inauguration of the Mark at the Northern Terminal of the Boundary Between Surinam and British Guiana (5 July 1936). See MG, Vol. II, Annex 11.

⁵⁸ *Ibid.*, para. 3.

⁵⁹ SCM, p. 17, paras. 3.7-3.8.

⁶⁰ Letter to the Governor of Suriname (13 February 1953), *supra* Chapter 1, note 9.

⁶¹ Letter of C.C. Kayser, Head of the Boundary Settlement Commission, to the Minister of State, Minister for the Colonies (20 June 1937). See SCM, Vol. II, Annex 14.

⁶² Letter from Major Phipps (9 July 1936), *supra* note 22. See MG, Vol. II, Annex 12. See also MG, p. 19, para. 3.16.

⁶³ Letter of the Minister of Defense to the Minister for the Colonies (27 February 1931). See SCM, Vol. II, Annex 11.

by the Dutch only on condition that the British accept the 10° line in the sea. To the contrary, whereas the Parties' establishment of Point 61 as the land boundary terminus was deemed to be permanent, their acceptance of the 10° line was subject to change if and when the circumstances warranted.

2.34 Point 61 and the 10° line were used together for approximately 20 years but only up to a three nm limit. By the early 1960s, circumstances changed. It had become clear that the "western navigational channel" in the Corentyne River was not being utilised, so that the rationale for the 10° line disappeared.⁶⁴ Suriname does not dispute these changed circumstances. Although it makes a point of stating that it does not concede them, it offers no evidence of any navigation along the 10° line.⁶⁵ Nor does Suriname dispute that the United Kingdom, as a consequence of the changed circumstances, decisively rejected the 10° line, even within the three-nm limit of the territorial sea, but continued along with the Netherlands to treat Point 61 as the land boundary terminus. As set forth in Suriname's own Counter-Memorial, the British "abandoned the 10° line position but retained the 1936 Point as the starting point for the equidistance line."⁶⁶ The Counter-Memorial continues: "Guyana and Suriname carried these varying points of view into the Marlborough House talks and retain them to this day."⁶⁷ Thus, by Suriname's own admission Guyana and Suriname have always treated Point 61 as the land boundary terminus notwithstanding their disagreement as to Suriname's claim to a 10° line.⁶⁸

⁶⁴ Letter from J.C.E. White, British Hydrographic Department to N.B.J. Huijsman, Colonial Office (16 October 1962), *see* MG, Vol. II, Annex 28; Letter from Governor of British Guiana Sir Ralph Grey to J.W. Stacpoole, Colonial Office (3 May 1963), *see* MG, Vol. II, Annex 30.

⁶⁵ SCM, pp. 59-60, para. 4.66.

⁶⁶ *Ibid.*, pp. 58-59, para. 4.62.

⁶⁷ *Ibid.*

⁶⁸ Guyana's rejection of the 10° line is reflected, *inter alia*, by its 1971 draft treaty proposed to Suriname, its Maritime Boundaries Act of 1977, the 1986 Petroleum Act, and its issuance of numerous oil concessions east of the N10E line. 1971 Treaty Between the Republic of Guyana and the Kingdom of the Netherlands for the Definition of the Frontier Between Guyana and Surinam, *see* MG, Vol. III, Annex 93; Maritime Boundaries Act 1977, Act No. 10 of 1977 (1977), *see* MG, Vol. III, Annex 99; 1986 Petroleum (Exploration and Production) Act, Act No. 3 of 1986 (1986); *see* RG, Vol. II, Annex R24 (this document was inadvertently produced in incomplete form at MG, Vol. III, Annex 100); Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965), *see* MG, Vol. III, Annex 107; Oil Exploration Licence No. 222, between the President and Commander-in-Chief of Guyana and Oxoco (Guyana) Ltd. (13 January 1971), *see* MG, Vol. III, Annex 110; Oil Exploration Licence No. 226, between the President and Commander-in-Chief of Guyana and Oxoco Guyana Ltd. (15 November 1972), *see* MG, Vol. III, Annex 113; Heads of Agreement Between The Government of Guyana and Seagull Petroleum Limited (2 April 1979), *see* MG, Vol. III, Annex 118; Letter from M. Ala, Seagull Petroleum Ltd. to H.O. Jack, Minister of Energy and Natural Resources (9 July 1979), *see* MG, Vol. III, Annex 119; Secret Memorandum by the Minister of Energy and Natural Resources, Application for Permission by Seagull/Denison and Major Crude Oil for exploration rights for petroleum in Guyana (November 1979), *see* MG, Vol. III, Annex 120; Agreement for an Oil Prospecting Licence Between Denison/Seagull and Government, Memorandum by the Minister of Energy and Mines (9 April 1981), *see* MG, Vol. III, Annex 122; LASMO Oil (Guyana) Limited and BHP Petroleum (Guyana) Inc., Co-operative Republic of Guyana Exploration Licence: Satira, 1988/1989 Work Programme and Budget (16 November 1988), *see* MG, Vol. III, Annex 145; Guyana Natural Resources Agency, Abary Agreement (12 October 1989), *see* MG, Vol. III, Annex 149; Guyana Natural Resources Agency, Berbice Agreement (12 October 1989), *see* MG, Vol. III, Annex 150; Petroleum Prospecting Licence Between Guyana Geology and Mines Commission and Maxus Guyana Limited (25 November 1997), Annex A "Description of Contract Area," *see* MG, Vol. III, Annex 155; Petroleum Prospecting Licence Between the Minister Responsible for Petroleum Representing the Government of the Cooperative Republic of Guyana and CGX Resources Inc. (24 June 1998), *see* MG, Vol. III, Annex 156;

2.35 To be sure, Suriname has consistently claimed that the land boundary terminus is at Point 61 and that the maritime boundary should follow a 10° line commencing at that point. But that does not make the two positions “inextricably linked.” There is no evidence that Suriname had ever taken the position that its acceptance of Point 61 is *dependent on* Guyana’s acceptance of the 10° line before these proceedings. In fact, the record shows exactly the opposite: Suriname *never* conditioned its acceptance of Point 61 to its 10° claim. In 1965, for example, Dr. Essed expressly de-linked Point 61 (which he insisted on as the starting point for maritime delimitation) from the maritime boundary line in the continental shelf (which he called “still open” to negotiation).⁶⁹ The following year, at the 1966 Marlborough House talks, Suriname also de-linked its 10° claim from Point 61.⁷⁰ As indicated above, at those talks Suriname sketched a closing line north of Point 61, from which it claimed a maritime boundary line of 10° both in the territorial sea and the continental shelf. There is no evidence showing linkage at any subsequent time.

2.36 The evidence leaves no room for doubt that the Parties have treated Point 61 as the land boundary terminus and starting point for maritime jurisdiction notwithstanding any disagreement as to the maritime boundary. The conduct of the Parties with respect to Point 61 fully satisfies the criteria for a binding, tacit agreement put forward by Suriname in its Counter-Memorial; namely, that the conduct is “mutual, consistent, sustained and unequivocal.”⁷¹ Equally, the record does not support Suriname’s contention, advanced for the first time in these proceedings, that its adoption of Point 61 as the land boundary terminus is “inextricably linked” to acceptance of the 10° line as the maritime boundary in the territorial sea and the areas beyond. Thus, the Tribunal’s jurisdiction will not be compromised if it delimits a boundary other than the 10° line advocated by Suriname.

F. Article 9 of the 1982 Convention

2.37 Guyana submits that the Tribunal’s jurisdiction is clearly established on the basis of the Parties’ agreement on the land boundary terminus and starting point for maritime delimitation at Point 61. But in the unlikely event that the Tribunal rules otherwise, it would still have jurisdiction. Under Article 9 of the 1982 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.

Petroleum Prospecting Licence Between the Minister Responsible for Petroleum Representing the Government of the Cooperative Republic of Guyana and CGX Resources Inc. (9 December 1998), *see* RG, Vol. II, Annex 23 (this document was inadvertently produced in incomplete form at MG, Vol. III, Annex 157).

⁶⁹ Report on the Discussion held 30 November 1965, *supra* Chapter 2, note 46.

⁷⁰ Report of the Discussions Held Between Suriname and Guyana at Marlborough House, London, England (23 June 1966) [hereinafter “Marlborough House Discussions”] (original in Dutch, translation provided by Guyana). *See* MG, Vol. II, Annex 69.

⁷¹ SCM, p. 52, para. 4.40.

2.38 Article 9 of the Convention provides that “[i]f a river flows directly into the sea, the baseline shall be a straight line across the *mouth of the river* between points on the low-water line of its banks.” To draw a baseline across the mouth of the river requires, in the first instance, a determination of where the river’s mouth is. Accordingly, determining the location of a river’s mouth constitutes an application of Article 9 of the Convention, and falls within the jurisdiction of the Tribunal under Article 288(1). Indeed, even Suriname’s erroneous argument that the mouth of the Corentyne River should be determined under Article 10, rather than Article 9,⁷² confirms the Tribunal’s jurisdiction under Article 288(1) because it calls upon the Tribunal to interpret or apply Article 10. In fact, as shown below, it is Article 9 that applies to the mouth of the Corentyne River, not Article 10. But the interpretation or application of either Article is within the Tribunal’s jurisdiction under Article 288(1).

2.39 Article 10 does not apply to rivers. It applies only to bays (or estuaries that have the characteristics of bays), and then only *when both coasts belong to a single State*.⁷³ This is clearly not the case of the Corentyne River. It is a river, not a bay, and its western bank or “coast” belongs to Guyana. To fit this case into Article 10, Suriname resorts to the untenable argument that the “coasts” of the Corentyne River “belong to a single State” because the “low-water line of its west bank is part of the territory of Suriname.”⁷⁴ This is not correct. The low-water line of a sea or river does not constitute a “coast” under any definition of the term. The coast begins where the low-water line ends, and it is not in dispute that the west “coast” of the river belongs to Guyana. Suriname itself expressly acknowledges this.⁷⁵ Thus, Suriname cannot credibly claim that both “coasts” belong to it. As Commander Kennedy wrote in 1959, the British were “against any closing line here by likening the river mouth to a bay” because the regime of bays does not apply under Article 7 of the 1958 Convention (the predecessor to Article 10 of the 1982 Convention) “[i]n the case of a river, the banks of which belong to two or more States...”⁷⁶

2.40 Suriname argues that Article 9 is inapplicable *ipso facto* whenever a river forms an estuary -- even one whose estuary does not meet the criteria for treatment as a bay.⁷⁷ This is a misreading of Article 9. Suriname’s argument is based on language that appears only in the French text which provides that Article 9 applies where a river “*se jette dans la mer sans former d’estuaire*.” This phrase does not appear in the English, Chinese, Russian, Spanish or Arabic texts, all of which are “equally authentic” under Article 320. At all events, the texts are easily reconciled. Article 9 and Article 10 are complementary and taken together they cover river mouths without bay-like estuaries (Article 9) and river mouths with estuaries that can be assimilated to bays (Article 10).

⁷² *Ibid.*, p. 8, para. 2.10.

⁷³ 1982 Convention, art. 10(1).

⁷⁴ SCM, p. 9, para. 2.11.

⁷⁵ *Ibid.*, p. 95, para. 6.11

⁷⁶ Letter from R.H. Kennedy, Hydrographic Department, Admiralty to J.J. d’A Collings, Foreign Office, Colonial Office (17 August 1959). See SPO, Annex 23. Commander Kennedy’s reference to a closing line as having a maximum extent of 24 miles, which Suriname invokes to demonstrate that 10 miles was a “conservative” closing line (SPO, p. 10, para. 2.15, note 43), is entirely inapposite because of his clear statement that the Corentyne River mouth was not a juridical bay under the 1958 Convention. *Ibid.*, Annex 23.

⁷⁷ SCM, p. 8, para. 2.10.

2.41 The complementarity of Articles 9 and 10 is confirmed by the *travaux préparatoires* and by simple logic. The *travaux* show that for Article 9 the International Law Commission “intended that the phrase ‘a river flows directly into the sea’ meant that the river flows into the sea without forming an estuary, and estuaries were assimilated to bays.”⁷⁸ This is the only logical interpretation. “[E]stuaries – the tidal mouths of rivers where the tide meets the current of fresh water – are so commonly found that it is argued there are few rivers which do not have them.”⁷⁹ Thus, if the mere presence of an estuary were sufficient to avoid application of Article 9, the Article would be reduced to inutility in violation of the principle of effectiveness (*ut res magis valeat quam pereat* or *effet utile*) under Article 31 of the Vienna Convention. Further, rivers with estuaries that are not juridical bays under Article 10 -- the vast majority of rivers -- would lie outside the scope of *both* Article 9 and Article 10. There is no other provision in the Convention that would apply to them. Thus, the assimilation of estuaries to bays where they meet the requirements of Article 10 is the only interpretation that renders Article 9 effective, ensures that all rivers are covered by one of the two Articles, and reconciles the meaning of the French text with the other authentic texts.

G. Partial Maritime Delimitation

2.42 Guyana considers that the jurisdiction of the Tribunal is so clearly established that there is no need to present additional arguments. Nevertheless, it is worth pointing out that there is no basis for Suriname’s assertion that a dispute over the starting point for maritime delimitation *ipso facto* defeats jurisdiction under the Convention. Suriname itself admits that beyond 15 nm the location of the starting point does not affect maritime delimitation.⁸⁰ Accordingly, by Suriname’s own admission, the Tribunal can still interpret and apply Articles 74 and 83 of the Convention, and at the very least, effect a partial delimitation of the maritime boundary in the EEZ and continental shelf without deciding on any dispute over the land boundary terminus.

2.43 Figure 4 of Suriname’s Memorandum on Preliminary Objections depicts equidistance lines drawn from each of Point 61 and a hypothetical “Point X,”⁸¹ which is the northernmost of the potential land boundary termini mentioned by Suriname. According to the Memorandum on Preliminary Objections, Figure 4 indicates that “[m]ore than 248 km² of maritime space is enclosed between those two equidistance lines,”⁸² and that therefore “the location of the land boundary terminus makes a difference.”⁸³ However, Suriname admits that the 248 km² difference in maritime space results because “those two equidistance lines do not meet until they have extended approximately 15 nautical miles from the coast.”⁸⁴ Figure 4 shows that beyond 15 nm the lines converge into a single line. Suriname thus

⁷⁸ Myron H. Nordquist *et al.* (eds.), 2 United Nations Convention on the Law of the Sea 1982: A Commentary [hereinafter “Nordquist, 2 United Nations Convention”] 111, para. 9.5(b) (1993) (emphasis added).

⁷⁹ *Ibid.* (emphasis added). See also *The Law of the Sea - Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea* 27, para. 62 (1989) (“there are very few rivers which do not have estuaries”).

⁸⁰ SPO, p. 11, para. 2.20.

⁸¹ *Ibid.*, Chapter 2, Figure 4 (following p. 12).

⁸² *Ibid.*, p. 11, para. 2.20.

⁸³ *Ibid.*, p. 12, para. 2.22.

⁸⁴ *Ibid.*, p. 11, para. 2.20.

accepts that, even using the “land boundary terminus” determined by its novel (and unsupported) “geometric method,” beyond 15 nm it makes no difference whether the land boundary terminus is located at Point 61, at “Point X” or at any point in between; the provisional equidistance line is unaffected by the location of the land boundary terminus.

2.44 On this approach, the Tribunal would not exercise jurisdiction over the 12 nm territorial sea and the first three nm of the EEZ and continental shelf. But the Tribunal’s jurisdiction to interpret and apply Articles 73 and 84 for the remaining 185 nm of the EEZ limit would be manifest. There is no reason in principle or in the practice of international tribunals to prevent a partial delimitation of the maritime boundary between Guyana and Suriname in this way.

2.45 Suriname contends that “[a]ny determination of a maritime boundary between States with adjacent coasts must start from an agreed starting point” and that “[t]he application of the law of maritime delimitation in every case is dependent upon the location of the land boundary terminus.”⁸⁵ Yet, Suriname is not able to point to any authority in support of this proposition. To the contrary, the practise of the International Court of Justice indicates that an international tribunal may effect a partial maritime delimitation from a point at sea.

2.46 In the *Gulf of Maine Case*, a Chamber of the Court effected a partial maritime delimitation between Canada and the United States from a point at sea designated as Point A.⁸⁶ Although Point A was several miles seaward of the Canada-United States land boundary, the Chamber effected a partial delimitation beyond the area where the islands in dispute were situated.⁸⁷ There is no reason in principle why the Tribunal here could not effect a similar partial delimitation between Guyana and Suriname.

⁸⁵ *Ibid.*, p. 12, para. 2.21.

⁸⁶ This starting-point reflected the first point of intersection of the two lines representing the limits of the fishing zones respectively claimed by the Parties, and was stipulated by the Special Agreement referring the dispute to the Chamber:

The reason for choosing this point of intersection – rather than the international boundary terminus fixed under the Treaty between the two States dated 24 February 1925, and situate in the Grand Manan Channel, which might have seemed more logical – is that the seaward of this last-mentioned point are Machias Seal Island and North Rock, the sovereignty over which is in dispute, and that the Parties wish to reserve for themselves the possibility of a direct solution of this dispute.

Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), 1984 I.C.J. Reports 246, 265-266, para. 20 (12 October 1984).

⁸⁷ *Ibid.*, p. 346 (chart depicting the delimitation line drawn by the chamber). It should also be noted that in the *Gulf of Maine Case*, the Court did not consider alternate delimitation methods as barring partial maritime delimitation. Primarily because the point of departure selected by the Parties did not coincide with a point located on the path of an equidistance line, the Court did not apply “the technical method of equidistance” but instead adopted another method based on respect for the geographical situation of the two coasts between which maritime delimitation was to be effected. *Ibid.*, at pp. 332-333, paras. 212-213. Accordingly, although the equidistance principle is clearly applicable to the present dispute, the existence of alternate methods of delimitation is not a bar to the Tribunal’s jurisdiction to effect a partial delimitation.

II. The Admissibility of Guyana's Second and Third Submissions

2.47 Suriname does not offer a single judicial authority in support of its contention that Guyana's Second and Third Submissions on unlawful threats or use of force and failure to negotiate in good faith are inadmissible. Suriname's argument is that "the principles of good faith and clean hands ... hold that States wishing to bring a claim before an international tribunal must have acted properly and correctly prior to the events giving rise to the claim."⁸⁸ As discussed in Chapters 8 and 9 of this Reply, Suriname's accusations about Guyana's purported lack of good faith or clean hands are without merit. For present purposes, however, it is sufficient to point out that these claims go to the merits and could not -- even if proven -- constitute a bar to the admissibility of Guyana's Submissions.

2.48 In support of its "inadmissibility" argument, Suriname invokes an article by Sir Gerald Fitzmaurice that is inapposite to the question of admissibility. The relevant part of the article discusses the principle *ex injuria non oritur jus* -- "States cannot profit from their own wrong, or plead their own omissions [*sic*] or negligences as a ground absolving them from performances of their international obligations; and similarly that rights and benefits cannot be derived from wrong-doing."⁸⁹ The principle is, of course, sound but its application goes to the merits not to the question of admissibility. At no point did the author suggest otherwise. As applied here, to prevent Guyana from achieving "profit from [its] own wrong," Suriname would have to establish *inter alia* that Guyana's conduct has been wrongful. That is plainly a matter that can only be decided by the Tribunal upon a consideration of the merits. Neither Fitzmaurice nor any of the cases string-cited by Suriname in a lengthy footnote suggest in any way that lack of good faith or clean hands may operate as a bar to the admissibility of claims.⁹⁰

⁸⁸ SPO, p. 47, para. 7.8.

⁸⁹ Gerald Fitzmaurice, "The General Principles of International Law Considered from the Standpoint of the Rule of Law," 92 *Recueil des Cours*, at 117 (1957). See SPO, Annex 40.

⁹⁰ The cases cited by Suriname at SPO, p. 47, para. 76, note 168 state merely that (in Suriname's words) "a State may not profit from wrongdoing in the context of treaty relations." Again, the principle is not disputed by Guyana; but whether Guyana has engaged in wrongdoing (which Guyana strongly denies) sufficient to bar it from obtaining the relief that it seeks in these proceedings is an issue for the merits. Nothing in the cited cases suggests otherwise. Moreover, Judge Hudson, in his concurring opinion in *Netherlands v. Belgium (Diversion of Water from the Meuse)* 1937, P.C.I.J. Series A/B, No. 70, p. 77 emphasised that "The general principle is one of which an international tribunal should make a very sparing application."

III. Conclusion

2.49 Suriname's objections to the Tribunal's jurisdiction to entertain Guyana's First Submission on delimitation of the maritime boundary, and to the admissibility of Guyana's Second and Third Submissions on illegal use of force and failure to pursue provisional measures of a practical nature are unfounded. As demonstrated in paragraphs 2.9 through 2.46, the jurisdiction of the Tribunal to delimit the maritime boundary is firmly established: first and foremost, by the Parties' longstanding adoption of and agreement on Point 61 as the land boundary terminus and starting point for maritime delimitation; second, by virtue of Article 9 of the 1982 Convention which empowers the Tribunal to determine the location of the Corentyne River mouth, the west bank of which is the undisputed starting point for maritime delimitation; and third, by the Tribunal's ability to effect a partial maritime delimitation covering almost all of the boundary in the continental shelf at the least. With respect to admissibility, Suriname has failed to offer any legal or factual argument to support its contention that Guyana's Second and Third Submissions are not admissible. To the contrary, Suriname's complaints about an alleged lack of good faith or clean hands challenge the merits of Guyana's Submissions not their admissibility. Accordingly, the law and the facts fully establish both the jurisdiction of the Tribunal to address Guyana's Submissions and their admissibility. There is no reason for the Tribunal to decline to proceed to the merits of each of these Submissions.

CHAPTER 3

THE GEOGRAPHICAL CIRCUMSTANCES

3.1 Guyana and Suriname agree that coastal geography is of “fundamental importance” in the delimitation of their maritime boundary.¹ However, they are far apart in how they depict that geography and the conclusions they draw from it.

3.2 Guyana submits that the most salient feature of the coastal geography of Guyana and Suriname is that it is unremarkable. There are no islands or low-tide elevations to be taken into account. Hence, there is nothing about the coastal geography in this case that would require or warrant an adjustment *in Suriname’s favour* to the provisional equidistance line that, both Parties agree, is the necessary starting point for the delimitation of their maritime boundary.

3.3 Suriname disagrees, even as it acknowledges that there are no islands or low-tide elevations affecting the delimitation of the maritime boundary. Despite this admission, Suriname contends that there are other coastal features that require the Tribunal to abandon the provisional equidistance line, and with it the entire concept of equidistance, in favour of a boundary consisting of a straight line emanating from the land boundary terminus at Point 61 and extending seaward on an azimuth of N10E through the territorial sea and the continental shelf to the 200 nm EEZ limit. Suriname’s approach would grant it more than 19,510 km² of maritime space to which it would not be entitled by the provisional equidistance line that it has itself drawn. Suriname’s argument in favour of such a radical result rests entirely on five (erroneous) propositions about the relevant geography:

- (1) Guyana’s coastline is “convex,” whilst Suriname’s is “concave;”²
- (2) Suriname’s coastline is “longer” (indeed, “50 percent longer”) than Guyana’s;³
- (3) The maritime area appurtenant to Suriname’s coast is “larger” than that appurtenant to Guyana’s coast;⁴
- (4) The provisional equidistance line effects an “inequitable” division of the relevant maritime area that is prejudicial to Suriname;⁵ and
- (5) The alleged “river valley” or “navigation channel” at the mouth of the Corentyne River which follows an azimuth of N10E should define the maritime boundary between the two States on the grounds that it produces a more “equitable” delimitation than either an equidistance line based on modern charts, or the historical equidistance line claimed by Guyana which follows an azimuth of N34E.⁶

¹ SCM, p. 11, para. 2.18.

² *Ibid.*, p. 94, paras. 6.7-6.8.

³ *Ibid.*, p. 105, para. 6.58.

⁴ *Ibid.*, Chapter 6, Figure 33 (following p. 97).

⁵ *Ibid.*, p. 99, para. 6.27.

⁶ *Ibid.*, pp. 101-102, paras. 6.37-6.40.

3.4 Guyana strongly disputes each of these propositions. The first four are not only false, but patently so. And the fifth cannot be supported in law, logic or geography. What Suriname has done is precisely what the International Court has consistently said it must not: it has refashioned geography. It has performed plastic surgery on Guyana's coastline, reshaping it as "convex" when it is actually concave. The only convexity that affects the provisional equidistance line is found on *Suriname's* coast, not Guyana's, and it operates to Suriname's *benefit*, not its detriment.

3.5 Suriname has also refashioned the *length* of Guyana's coastline. It has arbitrarily cut off a substantial portion of it to make it appear shorter than Suriname's when, in fact, it is longer. The Tribunal is sure to notice that not a single map or chart included within or annexed to the Counter-Memorial depicts the totality of Guyana's coastline. Instead, Suriname's maps cut Guyana in half, truncating it in the west at the Essequibo River. Suriname asks the Tribunal to ignore the half of Guyana's territory that lies to the west of that river.

3.6 Subtlety is not a hallmark of the Counter-Memorial. There is no nuance, just blatant manipulation of the coastal geography. After making it appear, contrary to reality, that its coastline is longer, Suriname proceeds to project seaward from that "longer" coastline a maritime area that appears to be broader and larger than the one projected from Guyana's "shorter" coastline.⁷ Unsurprisingly, the provisional equidistance line -- upon whose location and direction the Parties are in almost complete agreement -- "cuts off" more of Suriname's artificially inflated maritime area than Guyana's just-as-artificially reduced area, creating the carefully orchestrated illusion of prejudice to Suriname.

3.7 Suriname's argument is graphically depicted and summarized in Figure 33 of the Counter-Memorial, where all of these manipulations come together. For ease of reference, Figure 33 is reproduced herein as **Plate R1** (following this page). Although Figure 33 is more thoroughly deconstructed later in this Chapter,⁸ it is worth calling attention here to some of its more egregious cartographic distortions:

- Guyana's relevant coastline is dramatically shortened. It does not even extend as far west as two of the coastal basepoints that, by Suriname's admission, control the provisional equidistance line, let alone as far west as the last point along Guyana's coast that "faces" the boundary with Suriname;
- By contrast, Suriname's coastline extends eastward substantially *beyond* the last basepoint that controls the provisional equidistance line. Thus, Suriname has used contradictory methodologies for depicting the length of its own and Guyana's coastlines in order to lengthen the former and shorten the latter;
- The two States' curving and river-indented coastlines are not only arbitrarily converted into straight lines, but the irrational effects of this device are compounded by the manner in which Guyana's "straight" coastline has been rendered. Guyana's "coastline" does not even follow its coast but instead commences in the east well out to sea, considerably to the north of Point 61, and

⁷ *Ibid.*, Chapter 6, Figure 33 (following p. 97).

⁸ *See, e.g., infra* Section III(B).

extends to the west only as far as the east bank of the Essequibo River, substantially to the south and east of Guyana's last two controlling basepoints. The obvious purpose is not only to shorten but to flatten out the Guyana coast, so that the perpendicular lines Suriname draws from the two endpoints of this artificial coastline enclose a maritime area appurtenant to Guyana that is much smaller than the one that actually exists;

- By deliberately flattening out Guyana's coast in precisely the right amount, Suriname has enabled itself to draw perpendiculars to the endpoints of this make-believe coastline that "coincidentally" follow azimuths of N34E, which just happens to be the line that Guyana contends should be the maritime boundary. From this "coincidence," Suriname draws the self-serving conclusion that Guyana itself must have used (and implicitly endorsed) the same flawed methodology of artificial coastal baselines and perpendiculars to arrive at its N34E claim. Nothing could be farther from the truth;
- Suriname's manipulations reach their climax with the construction of a "bisector" of the "angle" where the artificially-straightened coastlines of Guyana and Suriname "meet." It does not require more than a casual glance at Figure 33 to observe that the two "coastlines" depicted therein *do not meet* (at Point 61 or anywhere else). It is elementary that lines that do not intersect cannot form an angle, let alone one that can be bisected. Hence, Suriname's depiction of a "bisector" with an angle of 17° is just as artificial, mathematically and geographically, as its claim that a boundary line along this angle effects a more equitable delimitation than an equidistance line.

3.8 Suriname does not stop there, however. To get from N17E to N10E, it concocts a "river valley" at the bottom of the Corentyne River and invokes this as a "special circumstance" to justify a boundary line that follows the angle of the thalweg at the river's mouth -- for a distance of 200 nm through the entire territorial sea⁹ and the areas beyond.¹⁰ The internal contradictions of this argument are glaring. First, the submerged "river valley" has nothing to do with coastal geography and is not a special circumstance to be taken into account in maritime delimitation. Suriname itself has said that there is "no reason to ascribe any role to geological or geophysical factors."¹¹ Second, Suriname's insistence that a "navigation channel" following a 10° angle should be treated as a special circumstance suffers from the same infirmity (*i.e.*, it is not an element of coastal geography) and belies its argument that the conduct of the Parties is not a special circumstance to be taken into account in a maritime boundary delimitation. Moreover, the Counter-Memorial does not challenge Guyana's evidence that by the early 1960s it had become clear that there was no usage of a navigation channel following the 10° line.¹² Indeed, Annex 11 to the Counter-Memorial, a 1931 communication between Ministers of the Netherlands government, reveals that there

⁹ SCM, pp. 103-104, paras. 6.50-6.53.

¹⁰ *Ibid.*, pp. 104-105, paras. 6.54-6.57.

¹¹ *Ibid.*, p. 7, para. 2.6.

¹² MG, p. 98, para. 8.26.

never was a 10° navigation channel in the Corentyne River, only the “possibility” that one might eventually come into existence.¹³

3.9 The conclusion is clear. Suriname constructed its case backwards. It concluded that the maritime boundary between the two States should be a N10E line extending for a full 200 nm, and then sought to find a legally and geographically sound argument to support this claim. The legal flaws in Suriname’s approach are addressed in Chapter 5 of this Reply. This Chapter focuses on geography and, in particular, exposes the lengths to which Suriname has gone not only to *refashion* but to *invent an entirely new* geography in order to make it appear that both an equidistance line based on the most modern charts and Guyana’s historical equidistance line fail to produce an equitable solution in this case. As shown below, Suriname’s depiction of the relevant geography as well as the conclusions it draws therefrom have no merit.

I. The Shapes of the Relevant Coastlines

3.10 It is apparent from the Counter-Memorial that Suriname suffers from an identity crisis: it thinks it is *Germany*. Or, more to the point, it wants the *Tribunal* to think it is Germany. This explains Suriname’s attempt to refashion its own coastal geography to make it appear as though it, like the Federal Republic of Germany in the *North Sea Continental Shelf Cases*, is disadvantaged by a peculiarly concave coastline relative to its neighbours such that maritime boundaries based on equidistance would cut off its maritime space shortly in front of its coastline.¹⁴ To this end, Suriname cites the *North Sea Continental Shelf Cases* more than 20 times in its Counter-Memorial.¹⁵ But repeated incantation of the International Court’s judgment does not produce the desired alchemy. Suriname cannot transform itself into Germany and its coastline cannot be made to resemble Germany’s. **Plate R2** (following this page) compares the coastline at issue in the *North Sea Continental Shelf Cases* with the coastline in these proceedings. It depicts how Germany’s concave coastline in relation to its two neighbours, Denmark and the Netherlands, resulted in the convergence, shortly in front of its coastline, of provisional equidistance lines used to delimit its maritime boundaries with those States. **Plate R2** also shows that the same result does not obtain for Suriname when provisional equidistance lines are used to mark its maritime boundaries with Guyana and French Guiana. As these two maps clearly demonstrate, in contrast to Germany’s situation, Suriname’s equidistance lines actually *diverge*. This would not be possible if Suriname’s coastline were entirely or deeply concave, as the Counter-Memorial contends. When viewed side by side with the profound concavity of Germany’s entire coastline, the shallow concavity of Suriname’s coastline is barely noticeable.

3.11 The dissimilarity between Suriname’s coastline and that of Germany was readily apparent to the Dutch -- as shown in the documents recently produced to Guyana by Order of the Tribunal. For example, the Acting Chairman of the Government Council of Suriname wrote that: “The coastline of Suriname is fairly regular and flows in a direction of approximately 180° west between the Coppename and the Corantine.”¹⁶ It is difficult to

¹³ Letter of the Minister of Defense to the Minister for the Colonies (27 February 1931). See SCM, Vol. II, Annex 11.

¹⁴ SCM, p. 100, para. 6.33.

¹⁵ See, e.g., *ibid.*

¹⁶ Letter to the Governor of Suriname (13 February 1953), *supra* Chapter 1, note 9.

imagine a coastline that is less concave than one extending “in a direction of approximately 180°,” *i.e.*, a relatively straight line. Thus, a Foreign Ministry memorandum dated June 1966 concluded that:

Suriname cannot even appeal to the circumstances, as can Germany, that the configuration of the coast makes the equidistance line ‘disadvantageous.’¹⁷

A. The Shape of Guyana’s Coastline

3.12 In furtherance of its futile effort to squeeze this case into the mold of the *North Sea Continental Shelf Cases*, Suriname also tries to refashion Guyana’s coastline. The Counter-Memorial repeatedly refers to Guyana’s coastline as “convex,” just as it characterises Suriname’s own coastline as “concave.”¹⁸ Its central theme is: “In this case, both the convexity of Guyana’s coast and the concavity of Suriname’s coast operate together to make the provisional equidistance line manifestly inequitable to Suriname.”¹⁹ The argument is based on two false premises. First, the relevant coastline of Guyana is *concave* not *convex*. Second, the relevant coastline of Suriname is partially *convex*, not deeply or entirely *concave*.

3.13 **Plate R3** (following page 38) shows the provisional equidistance line and the coastal basepoints from which it was derived. On the Guyanese side of the land boundary terminus, the basepoints extend from Devonshire Castle Flats in the west to Point 61 in the east. (These are the same outer basepoints attributed to Guyana by Suriname and depicted in Figure 31 of the Counter-Memorial, which presents Suriname’s almost identical version of the provisional equidistance line.) This is the *relevant* portion of Guyana’s coastline because it alone controls the direction of the provisional equidistance line with Suriname. No other points on Guyana’s coast influence the location or direction of the equidistance line. Guyana’s coastline between these outer basepoints is entirely concave. **Plate R3** signals in red where each coastline has a concave trend and in black where it is convex. The Plate shows that *both* coastlines are characterised by a general concavity *except* for an area of convexity along the Suriname coast east of the Coppename River. **Plate R3** also shows with red arrows that equidistance boundary lines marking Guyana’s maritime borders with Suriname in the east and with Venezuela, Trinidad & Tobago and Barbados in the west *converge*, confirming the overall *concave* nature of Guyana’s coastal setting.²⁰

¹⁷ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11 (emphasis in original).

¹⁸ SCM, p. 100, para. 6.34.

¹⁹ *Ibid.*

²⁰ As part of its strained effort to portray Guyana’s coastline as “convex,” Suriname points to “three coastal convexities on Guyana’s coast.” *Ibid.*, p. 95, para. 6.11. These turn out to be nothing more remarkable than the mouths of three rivers that empty into the Atlantic Ocean along Guyana’s coast: the Corentyne, the Berbice and the Essequibo. These and all other rivers that empty into larger water bodies necessarily display coastlines that briefly flare out on a convex path until they meld into the normal direction of the general coastline. Thus, all of the rivers along Suriname’s coast -- the Coppename and the Suriname, as well as the Corentyne -- display the same characteristics, briefly flaring out to form localised convexities along a generally concave coastline. Indeed, the east (or Surinamese) bank of the Corentyne exhibits the same brief convexity as the west (or Guyanese) bank, a fact that the Counter-Memorial neglects to mention. None of these small convexities, on either Guyana’s or Suriname’s side of the land boundary terminus, alters the general concavity of the relevant coastlines, or otherwise exerts an effect on the provisional equidistance line.

B. The Shape of Suriname's Coastline

3.14 **Plate R3** shows that the general concavity of the coastline that begins in Guyana at Devonshire Castle Flats northwest of the land boundary terminus continues its concave course across Point 61 and into Suriname as far east as the Coppename River. Slightly further to the east, at Hermina Bank, Suriname's coastline changes from concave to convex and continues on a convex course to the border with French Guiana at the Maroni River. Suriname effectively concedes this point by (i) characterising its coastline as "concave" (or "recessed") "between Turtle Bank [just to the east of Point 61] and Hermina Bank,"²¹ and (ii) describing Hermina Bank as a "headland."²² Here, Suriname refashions language as well as geography. What the Counter-Memorial calls a "convexity" on Guyana's coastline, is a "headland" if it is on Suriname's coast. Yet, what distinguishes Suriname's coastline from Guyana's is not only the convexity in Suriname's coast at Hermina Bank. More importantly, it is the effect this convexity has on the direction of the provisional equidistance line, materially altering its course -- in Suriname's favour -- over almost all of the last 100 nm out to the 200 nm EEZ limit.

3.15 **Plate R4** (following this page) shows that three of the basepoints that control the provisional equidistance line are located in very close proximity to one another (less than one mile apart) along the Surinamese coastal convexity at Hermina Bank. **Plate R4** shows the exaggerated effect that these basepoints -- the easternmost basepoints on Suriname's coast -- have on the direction of the provisional equidistance line. Specifically, they dramatically alter the direction of the provisional equidistance line in Suriname's favour from a point approximately 100 nm seaward of Point 61 until shortly before the line reaches the 200 nm EEZ limit. **Plate R5** (in Volume III only), an annotated reproduction of Figure 31 in the Counter-Memorial, shows the same effect for the basepoints at Hermina Bank.²³ Thus, while most of Suriname's relevant coastline (*i.e.*, the coastline between Point 61 and Hermina Bank) is concave, the basepoints at Hermina Bank, which cover only a small part of that coastline, control almost the entire outer half of the provisional equidistance line. The pronounced change of direction of the provisional equidistance line in this manner -- occasioned by the serendipitous fact that Suriname's final basepoints appear just after the coastline turns from concave to convex -- results in a shift of more than 4,000 km² of maritime space to Suriname from Guyana. Accordingly, the relevant coastal geography is the opposite of what Suriname says it is, and it leads to the opposite conclusion. The *convexity of Suriname's coast* coupled with the *concavity of Guyana's coast* makes the provisional equidistance line prejudicial to *Guyana*. In the interests of seeking an equitable solution, the disproportionate effects of Suriname's limited coastal convexity justify an adjustment to the provisional equidistance line in favour of Guyana.²⁴

²¹ *Ibid.*, p. 95, para. 6.10.

²² *Ibid.*, p. 97, para. 6.22.

²³ Suriname's Figure 31 contains an additional basepoint (S14) at Vissers Bank, east of Hermina Bank, that Guyana regards as unjustified. *See infra*, paras. 3.19-3.20. This basepoint does not affect the direction of the equidistance line, however.

²⁴ These conclusions are supported by the Report of Dr. Robert W. Smith, an independent expert consulted by Guyana. Report of Robert W. Smith, *supra* Chapter 1, note 43 (RG, Vol. II, Annex R1). As set forth in Dr. Smith's Report, the general concavity of *both* coastlines, Guyana's as well as Suriname's, fully distinguishes Suriname's situation from that of Germany in the *North Sea Continental Shelf Cases*. In the case of Germany, as shown in **Plate R2**, the pronounced concavity of its coastline relative to the coastlines of its neighbours led to

II. The Lengths of the Relevant Coastlines

3.16 Both the totality of Guyana's coastline and its *relevant* coastline are longer than Suriname's. In its Memorial, Guyana stated that its entire coastline measured 482 km in length as compared to 384 km for Suriname.²⁵ These measurements are not challenged in the Counter-Memorial. In regard to the *relevant* coastlines, it is significant that both Parties agree that the delimitation to be effected in this case should extend only to the 200 nm EEZ limit.²⁶

3.17 Accordingly, Guyana considers 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.²⁷ These coastal basepoints define the limits of each Party's area of legal entitlement. No other portions of the coastline beyond these outer basepoints are relevant because they do not generate legal entitlement to any maritime areas subject to delimitation by the Tribunal. As the International Court determined in *Greenland/Jan Mayen*:

It is appropriate to treat as *relevant* the coasts between points E and F and between points G and H on sketch map No. 1 [*i.e.*, the Parties' outermost coastal basepoints], in view of their role in generating the complete course of the median line provisionally drawn which is under examination.²⁸

3.18 Guyana's 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). The coastline between these two points is shown in green on **Plate R6** (following page 40). 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 is shown in red on **Plate R6**. It

provisional equidistance lines that cut off the seaward projection of its territory shortly in front of its coast. That is not the case here, where, as shown in the text above, the general concavity of the coastline is shared by Suriname and Guyana, and Suriname is not cut off in any way by provisional equidistance boundaries with its two neighbours. Contrary to Suriname's contention, a concave coastline does not in itself render an equidistance boundary inequitable. It all depends on the relationship between that coastline and those of neighbouring States, and specifically, whether all of the relevant coastlines taken together, and in combination with an equidistance line, produce a pronounced cut-off effect, as in the *North Sea Continental Shelf Cases*. Where, as here, no cut-off occurs, the equidistance line is not rendered inequitable to one of the Parties simply because that Party claims its coastline is concave. In the present case, Dr. Smith concludes, the provisional equidistance line is inequitable only to Guyana, because of the convexity along Suriname's Hermina Bank, and the exaggerated impact this has on the direction of the equidistance line.

²⁵ MG, p. 8, para. 2.9.

²⁶ SCM, p. 6, para. 2.3.

²⁷ *Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 68, para. 67 (14 June 1993). See also Report of Robert W. Smith (at p. 12), *supra* Chapter 1, note 43.

²⁸ *Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 68, para. 67 (emphasis added). The sketch map to which the Court referred can be found at RG, Vol. II, Annex R25.

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.²⁹

A. Suriname's Attempt To Lengthen Its Own Coastline

3.19 Suriname attempts to overcome Guyana's 62 km advantage in relevant coastline length in two ways: first, by adding 42 km to the length of its own coastline; and second, by cutting off 50 km of Guyana's coastline. Neither of these manipulations of the coastal geography is justified. To extend its own coastline, Suriname places an additional basepoint at Vissers Bank, 42 km east of the easternmost basepoint (S14) at Hermina Bank (as depicted in Figure 31 of the Counter-Memorial). But the additional basepoint at Vissers Bank should be disregarded for three reasons. First, the source of the extra basepoint, as revealed in Annex 68 of the Counter-Memorial, is a June 2005 update of chart NL 2218,³⁰ the only chart (and the only version of chart NL 2218) that supports it. Thus, Suriname introduces and relies on a chart that did not exist at the time these proceedings were commenced, but was prepared under the auspices of the *Suriname Maritime Agency* and published after Guyana's Memorial was filed -- just in time for inclusion in the Counter-Memorial. On this basis alone, Guyana submits that it should be given no weight by the Tribunal.³¹ Second, the information available in another Dutch chart, NL 2014,³² on which Suriname places principal reliance (according to Annex 68 of the Counter-Memorial) for the location of its other coastal basepoints, disproves the existence of a low-tide coast at Vissers Bank where Suriname placed its purported basepoint S14. In fact, on chart NL 2014, the geographical position of Suriname's "basepoint" at Vissers Bank is almost four km out to sea, and there is no evidence of a feature there that is above water at low tide. The result is graphically depicted on **Plate R7** (following this page). Third, as more fully described in the Expert Report prepared by

²⁹ In measuring the Parties' relevant coastlines, Guyana has employed the means of measurement utilised by the Court in *Greenland/Jan Mayen*, 1993 I.C.J. 38, 79-81, paras. 91-92 at 80, sketch-map No. 2. Specifically, Guyana's technical experts measured the distance along geodesic lines connecting each Party's coastal basepoints. Other forms of measuring the distance between the outermost coastal basepoints also exist, including measurement along the low-water line. This form of measurement requires that closing lines be drawn across all river mouths along the relevant coastline, which was done neither by Guyana nor Suriname prior to these proceedings. According to Dr. Smith's report, measurement along for low-water line yields a greater disparity -- in Guyana's favour -- in the lengths of the Parties relevant coastlines 1.47 to 1 (246 km to 167 km). Report of Robert W. Smith (at p. 13), *supra* Chapter 1, note 43.

³⁰ NL 2218 First Edition, June 2005 (correct through NM 2005/462), at a scale of 1:75,000.

³¹ It is plain that the hastily-prepared June 2005 version of chart NL 2218 should be given no weight. Apart from its demonstrated technical defects, it was not prepared exclusively by neutral sources. See *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, 1986 I.C.J. 554, 583, para. 56 (22 December 1986) ("Other considerations which determine the weight of maps as evidence relate to the neutrality of their sources towards the dispute in question and the Parties to that dispute."); *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, 2001 I.C.J.; 40, 274, para. 37 (16 March 2001) (Dissenting Opinion of Judge Torres Bernardez) ("The weight of maps as evidence depends on a range of considerations such as their technical reliability and accuracy determined by how and when they were drawn up, their official or private character, the neutrality of their sources towards the dispute in question and the Parties to that dispute, etc. In general, the value as evidence attached to them by international courts and tribunals is corroborative or confirmatory of conclusions arrived at by other means unconnected with the maps, because the maps as such are not a legal title. However, if map evidence produced by third Parties is reliable, uniform and voluminous it may even constitute a highly important evidential element, of recognition or general opinion or repute, as to the fact of a territorial situation in a given period (see, for example, Chapter VIII of the 1998 Arbitral Award in the *Eritrea/Yemen* Arbitration.)").

³² NL 2014 July 1990 Edition (correct through NM 2004/420), at a scale of 1:250,000.

Dr. Thomas Rabenhorst, Director of Cartographic Instruction at the University of Maryland (Baltimore County), current high-resolution satellite imagery does not support the position of the low-tide coast at Vissers Bank that is shown on the June 2005 version of chart NL 2218. Dr. Rabenhorst's technical report merits the Tribunal's careful attention. It concludes:

After reviewing the 2005 edition of NL 2218, along with other relevant nautical charting and satellite imagery, there is, in my opinion, no plausible explanation for the revised placement of the low-tide shoreline in the vicinity of Vissers Bank. The absence of supporting data from earlier charts and the lack of soundings to support the new location of the low-tide coast lead to one conclusion; the position of the low-tide coast on the 2005 edition of NL 2218 cannot be accurate. While it is impossible to know exactly where the low-tide coast would be positioned without direct access to a satellite image taken precisely at a low-tide interval, or a thorough set of depth soundings in the maritime area in question, it is safe to say that it is not where it has been depicted on the 2005 edition. The position of the low-tide coast on this new chart is several kilometres north of where the cartographic evidence would reasonably place it.

The SPOT [*i.e.*, satellite] imagery referred to in this report does, however, support the low-tide coast as it has been portrayed on the 1969 edition of NL 2218, as well as the other smaller scale Dutch nautical charts, namely NL 2014 and 2017. This imagery also supports the low-tide coast as depicted on NIMA 24370.³³

3.20 Without a basepoint at Vissers Bank, the length of Suriname's relevant coastline is 153 km as compared to 215 km for Guyana. Guyana's relevant coast is thus 62 km longer. Because no existing chart -- including those prepared by the Dutch, the British or the United States -- shows a low-tide coast of any type at Vissers Bank, Suriname had no choice but to concede to Guyana the longer relevant coastline unless a new chart somehow materialized that justified placing a basepoint at that location. The new version of chart NL 2218, which fortuitously appeared in June 2005 thanks to the Suriname Maritime Agency, accomplished just that and provided the desired basepoint that purportedly extended Suriname's relevant coastline by an additional 42 km. However, as Dr. Rabenhorst found, Suriname's new chart erroneously placed the low-tide coast at Vissers Bank almost four km north of where the satellite and cartographic evidence calls for it to be placed. Suriname cannot artificially extend the length of its relevant coastline by means of a newly-created, self-serving and discredited chart.³⁴

3.21 In locating the coastal basepoints for the construction of the provisional equidistance line in these proceedings, Guyana followed Article 5 of the 1982 Convention, which provides

³³ Thomas D. Rabenhorst, Analysis of Recent Shoreline Revisions to the 2005 Edition of Dutch Nautical Chart NL 2218 (2006). See RG, Vol. II, Annex R2, at p. 7 ("Conclusions").

³⁴ In addition to the erroneous placement of basepoint S14 at Vissers Bank, Suriname has also misplaced its basepoint S1. In contrast to S14, S1 does not lengthen Suriname's relevant coastline. Guyana disputes S1 because Suriname has placed it on *Guyana's own coast*. Guyana considers this an intrusion on its sovereignty. See also *infra* Chapter 6, paras. 6.14-6.15. Moreover, Suriname positions S1 at the end of a 10° line from Point 61 to the coast. In Guyana's view, this prejudices the decision of the Tribunal as to the N10E boundary line that Suriname claims.

that “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.”³⁵ For this purpose, Guyana relied on US NIMA charts 24370 and 24380,³⁶ which have the following advantages: (i) they were produced by a neutral third party (rather than Guyana, Suriname or either of their colonial predecessors who might be felt to have an interest in these proceedings); and (ii) they are the only nautical charting series that provides continuous, large scale coverage of the entire relevant coastal areas of both Parties. By contrast, the charts primarily relied on by Suriname were issued by the Netherlands or Suriname itself and cover only selected portions of the relevant coastlines. Fortunately, the Parties’ use of different charts does not, in this case, lead to material differences in the location or direction of the provisional equidistance line. As Suriname states: “the two sets of charts used by the Parties should not differ significantly in their depiction of the low-water lines of Suriname and Guyana.”³⁷ Thus, as shown in **Plate R8** (in Volume III only), the provisional equidistance lines presented by Guyana and Suriname are almost identical, notwithstanding their reliance on different charts and, in some cases, different coastal basepoints.

B. Suriname’s Attempt To Shorten Guyana’s Coastline

3.22 After attempting to give itself a longer coastline by creating a non-existent low-tide coast at Vissers Bank, Suriname’s refashioning of geography could hardly get more extreme. But it does. The purported addition of 42 km to Suriname’s relevant coastline do not make up for the 62 km advantage in coastline length held by Guyana. Thus, in order to support its claim to a longer coastline than Guyana’s, Suriname has to resort to an even more extreme makeover of the coastal geography: it has to shorten Guyana’s coastline. Suriname accomplishes this by using two different (and inconsistent) methods of measuring the relevant coastlines: one for measuring its own coastline and another for measuring Guyana’s. On its own side of Point 61, Suriname measures the distance from Point 61 not only to the easternmost basepoint controlling the provisional equidistance line (which, for Suriname, is the alleged “basepoint” as Vissers Bank) but all the way to Warappa Bank, which lies even further to the east than Vissers Bank. By contrast, on Guyana’s side, Suriname measures only from Point 61 to the Guyanese basepoint located on the east bank of the Essequibo River -- which is substantially short of the last two basepoints along Guyana’s coast. Only by virtue of this amputation of 50 km of Guyana’s relevant coastline can Suriname claim that its coastline is longer. Suriname offers two very feeble excuses for lopping off a substantial portion of the Guyana coast. It claims that: (i) the two westernmost basepoints at Devonshire Castle Flats are situated on a “protrusion” into the Atlantic Ocean; and (ii) Guyana’s sovereignty over the land west of the Essequibo River is “disputed by Venezuela.”³⁸

3.23 Neither of these claims has any merit. The first is yet another example of Suriname’s efforts to refashion geography to its own advantage. It also indicates the different and inconsistent standards Suriname employs on either side of the land boundary terminus. For Suriname, Devonshire Castle Flats is a “protrusion” into the Atlantic Ocean, whilst its own

³⁵ 1982 Convention, art. 5. The coordinates of the Parties’ coastal basepoints, as well as the turning points of the provisional equidistance line, are listed in Annex R26 to this Reply.

³⁶ U.S. NIMA Chart 24380, Second Edition, 6 March 1999 (correct through NM 10/99).

³⁷ SCM, p. 96, para. 6.15, note 435.

³⁸ *Ibid.*, p. 95, para. 6.11; p. 98, para. 6.23.

Hermina Bank is euphemistically called “the eastern headland of the Surinamese concavity.”³⁹ As is clear from **Plate R3** (following page 38), Guyana’s westernmost basepoints are located on neither a protrusion nor a headland, but are situated where the general and extended concavity of Guyana’s coastline begins. Thus, there is no *geographical* basis for disregarding the two basepoints that both Guyana and Suriname have located there.

3.24 Nor is there any *legal* basis for ignoring Devonshire Castle Flats or Guyana’s coastline west of the Essequibo River. The Counter-Memorial refers to this part of Guyana’s coastline as “disputed by Venezuela” no less than seven times, implying that it is somehow out of bounds as far as these proceedings are concerned.⁴⁰ No such conclusion is possible, however. Guyana’s land boundary with Venezuela was fixed in 1899 by a competent international arbitral tribunal.⁴¹ Following the award, the Parties -- Venezuela and the Colony of British Guiana -- implemented it by reaching a binding international agreement on the land boundary.⁴² Venezuela accepted both the arbitral award and the subsequent boundary agreement for more than 60 years until shortly before Guyana achieved independence in 1966. No other State (including Suriname prior to the filing of its Counter-Memorial) has expressed the slightest doubt as to the validity of the award, the boundary agreement or Guyana’s sovereignty over the territory covered by the award and the agreement. Indeed, as a member of CARICOM, Suriname itself has repeatedly confirmed its full support of Guyana’s sovereignty over this territory.⁴³ The Counter-Memorial is inconsistent with Suriname’s long-held position in this regard. Guyana submits that this Tribunal may not ignore the award of a duly-constituted tribunal or the longstanding boundary agreement. And Suriname may not use Venezuela’s belated objection to that award or agreement for the purpose of surgically shortening Guyana’s relevant coastline.

C. Suriname’s Flawed Method of Defining the Parties’ Relevant Coastlines

3.25 Suriname offers another way to measure the relevant coastlines which ignores the outermost basepoints of *both* Parties, but the results are no different: Guyana still has the longer relevant coastline. For Suriname, the way to determine the relevant coastline is to

³⁹ *Ibid.*, p. 97, para. 6.22.

⁴⁰ *See, e.g., ibid.*, p. 98, para. 6.23.

⁴¹ Award of the Arbitral Tribunal under Article I of the Treaty of Arbitration signed in Washington on 2 February 1897 between Great Britain and the United States of Venezuela (3 October 1899). *See* RG, Vol. II, Annex R21. The arbitrators in that case indicated the very considerable authority of the Award: the Right Honourable Charles Baron Russell of Killowen, Lord Chief Justice of England; the Right Honourable Sir Richard Henn Collins, Master of the Rolls and Records of the Chancery of England; the Honourable Melville Weston Fuller, Chief Justice of the United States Supreme Court; the Honourable David Josiah Brewer, United States Supreme Court Justice; and His Excellency Frederic de Martens, Permanent Member of the Council of the Ministry of Foreign Affairs of Russia.

⁴² Agreement between the British and Venezuelan Boundary Commissioners, With Regard to the Map of the Boundary, published as Sessional Paper No. 266 of the Combined Court, Annual Session, 1905. *See* RG, Vol. II, Annex R22.

⁴³ *See, e.g.,* Press Release 98/2003, CARICOM Communiqué Issued at Conclusion of 24th Meeting of Conference of Heads of Government, 14 (23 July 2003). *See* RG, Vol. II, Annex R20. On the issue of the land boundary between Guyana and Venezuela, the Heads of Government “reaffirmed their firm support for the maintenance of the territorial integrity and sovereignty of Guyana and its right to develop the resources of its territory.” *See also* Press Release 18/2001, Statement on the Guyana-Venezuela Relations Issued by the Heads of Government of CARICOM and Canada (23 January 2001) (reiterating the support of the Heads of Government “for the sovereignty and territorial integrity of Guyana”). *See* RG, Vol. II, Annex R19.

measure the length of the coast that “faces” the maritime boundary to be delimited whether or not it controls the direction of the provisional equidistance line. Guyana does not consider this an appropriate way to measure the lengths of the relevant coastlines since it lacks any legal or logical foundation. But it is a method that also demonstrates that Guyana’s relevant coastline is longer than Suriname’s.

3.26 Rather than approach the matter subjectively, as is done in the Counter-Memorial, Guyana has obtained an independent report from the Johns Hopkins Applied Physics Laboratory (JHAPL) which determined mathematically which parts of Guyana’s and Suriname’s coastlines actually face the maritime boundary, and the lengths of those “facing” coastlines. The Johns Hopkins study is attached hereto as Annex 3. The results are depicted in **Plate R9** (in Volume III only) which shows the “facing” coastlines of Guyana and Suriname in green and red, respectively. The lengths of these coastlines are: 383 km for Guyana; 333 km for Suriname.⁴⁴

3.27 Thus, if coastal geography is taken as nature created it, which is what the rulings of the International Court require, Guyana’s relevant coastline is longer than Suriname’s. This is true regardless of whether the relevant coastline consists of: (i) the entire coastline from international boundary to international boundary; (ii) the portion of the coastline lying between the outermost basepoints that control the direction of the provisional equidistance line; or (iii) the portion of the coastline “facing” the maritime boundary. In all cases, Guyana has the longer coastline.⁴⁵ As shown below, once the fiction of Suriname’s “longer” relevant coastline is exposed, the rest of its argument collapses like a house of cards.

III. The Appurtenant and Relevant Maritime Areas

3.28 Based on its “longer” relevant coastline, Suriname claims an appurtenant maritime area larger than Guyana’s. Suriname is correct only in its acknowledgment that a coastal State’s appurtenant maritime area is a function of the length of its coastline. Hence, the State with the longer relevant coastline will inevitably have the larger appurtenant maritime area. That explains why Suriname has gone to such great lengths to make it appear that its relevant coastline is the longer of the two. But, as shown above, it is Guyana that has the longer relevant coastline. It is therefore Guyana that has the larger appurtenant maritime area.

A. Determining the Appurtenant and Relevant Maritime Areas

3.29 It is axiomatic, and Suriname agrees, that “the land dominates the sea”⁴⁶ and that sovereignty over the landmass, including “the maritime front of this landmass,” is what generates a coastal State’s claim to the maritime area appurtenant to its coastline.⁴⁷ Thus, the

⁴⁴ It is unclear from the Counter-Memorial what criteria, other than subjective eyeballing of an unidentified map, Suriname used to determine where its coast stops facing the boundary with Guyana and begins facing the boundary with French Guiana, except that this place is identified as somewhere at the “east end of Warappa Bank.” SCM, p. 98, para. 6.25. From this point to Point 61 measures 140 nm (259.28 km), according to Suriname. *Ibid.* The Johns Hopkins study, upon which Guyana relies, gives Suriname a longer facing coastline (333 km) than it claims for itself in the Counter-Memorial. Even so, Suriname’s facing coastline is shorter than Guyana’s.

⁴⁵ Report of Robert W. Smith (at p. 13), *supra* Chapter 1, note 43.

⁴⁶ SCM, p. 45, para. 4.20 (citing *North Sea Continental Shelf Cases*, 1969 I.C.J. 3, 51, para. 96).

⁴⁷ *Ibid.*, pp. 45-46, paras. 4.20-4.21 (citing *Libya v. Malta*, 1985 I.C.J. 13, 41, para. 49).

maritime area appurtenant to a State's relevant coastline and over which it may claim entitlement is determined by projecting its coastline seaward. In these proceedings, the claims to be adjudicated extend only to the 200 nm EEZ limit and not to the continental shelf beyond 200 nm. Hence, the areas of appurtenance at issue here are those lying within 200 nm of the Parties' relevant coastlines.

3.30 The International Court has made clear, however, that there is a distinction between the maritime areas *appurtenant* to the States that are parties to a delimitation proceeding and the maritime area that is *relevant* to the delimitation itself.⁴⁸ For example, a maritime area might be within 200 nm of the relevant coastline of one of the parties, and therefore appurtenant to it, but the same area might lie more than 200 nm from -- and not be appurtenant to -- the relevant coastline of the other party. Such areas are not relevant to the delimitation because they cannot be claimed by both parties. Also not relevant to the delimitation are maritime areas belonging to third States since their rights may not be affected in proceedings to which they are not parties. Thus, the maritime area relevant to the delimitation is that which satisfies three conditions: (1) it is appurtenant to one of the parties; (2) it is within 200 nm of the relevant coastline of both parties; and (3) it does not lie across the boundary with any third State.

3.31 The jurisprudence of the International Court and arbitral tribunals does not point to a single, all-purpose formula for determining the appurtenant maritime areas or the area relevant to the delimitation. In Guyana's view, the maps on **Plate R10** (following page 46) illustrate the appropriate method, consistent with applicable precedent, for determining the maritime areas appurtenant to the relevant coastlines of Guyana and Suriname, as well as the area that is relevant to this delimitation. Maps A and B depict the *appurtenant* maritime areas of Guyana and Suriname, respectively. In each case, the relevant coastline is projected seaward for 200 nm by means of an envelope of arcs; these arcs project the coastline in *all* seaward directions so that they encompass *all* of the maritime space lying within 200 nm of any portion of the relevant coastline. In the particular geographic circumstances of this case, the envelopes of 200 nm arcs best define the Parties' appurtenant maritime areas because their coastlines are relatively unremarkable (*i.e.*, no islands, low-tide elevations or significant peninsulas) and there is a wide expanse of open sea in front of them.⁴⁹ Map A shows that parts of the maritime space appurtenant to Guyana are also appurtenant to Venezuela, to Trinidad & Tobago, and to Barbados, as well as to Suriname. And Map B shows that parts of the maritime space appurtenant to Suriname are also appurtenant to French Guiana as well as to Guyana. Maps A and B show the sizes of the maritime areas appurtenant to the Parties' relevant coastlines (whether or not they are also appurtenant to the coastlines of other states). The sizes are: 246,746 km² for Guyana, and 225,173 km² for Suriname.

3.32 Map C on **Plate R10** shows the maritime area *relevant to this delimitation*. It is the maritime space where the Parties' respective areas of appurtenance *overlap*, and where all of the space lies within 200 nm of *both* coastlines. As depicted in Map C, the area of overlapping appurtenances does not encompass any maritime space that lies across the

⁴⁸ *Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 64, para. 59.

⁴⁹ See Report of Robert W. Smith (at pp. 4-5), *supra* Chapter 1, note 43.

boundaries of any third State.⁵⁰ Map C, therefore, shows *all* of the maritime space that is: (1) appurtenant to at least one of the Parties; (2) within 200 nm of both of the relevant coastlines; and (3) not within the boundary of any third State. This is the area relevant to the delimitation, where the equitableness of the provisional equidistance line and the Parties' respective claim lines of 10° and 34° must be tested. This is done in Sections IV and V of this Chapter.

B. Suriname's Approach

3.33 Suriname takes an arbitrary approach to defining the appurtenant and relevant maritime areas. As depicted in Figure 33 of the Counter-Memorial (reproduced at **Plate R1** (following page 34)), it takes what it defines as the relevant coastlines of Guyana and Suriname, transmutes them into straight-baseline coastal façades and extends them seaward along straight lines perpendicular to these façades. There are several serious flaws in this approach. In the first place, as described above, Suriname has erroneously defined the relevant coastlines as “facing” coastlines rather than the coastal lengths lying between the outermost basepoints that control the direction of the provisional equidistance line. Second, Suriname has unjustifiably lengthened its own coastline and shortened Guyana's, giving itself the longer coastline and ultimately the longer coastal façade. Third, the straight-baseline façades distort the actual coastlines, which are not straight lines. Fourth, as alluded to previously and discussed further in Section IV of this Chapter, the coastal façade Suriname attributes to Guyana does not track Guyana's actual coastline, but alters its direction substantially. Fifth, there is no logical explanation -- and Suriname provides none -- for projecting the coastal façades only in one direction (*i.e.*, straight ahead along lines perpendicular to the coast) rather than in all seaward directions to encompass all of the appurtenant maritime space within 200 nm of the coastline. It cannot be justified that the maritime space just inside Suriname's perpendicular lines is treated as “appurtenant” and “relevant,” whilst the space just outside those lines -- and well within 200 nm of the relevant coastlines of both Parties -- is not. Yet, this is what results from Suriname's reliance on perpendicular lines that project seaward in only one direction. This alone exposes the arbitrariness of Suriname's methodology.⁵¹

3.34 Guyana does not accept Suriname's approach. By giving itself a longer coastal façade than Guyana, Suriname ensures itself a larger appurtenant maritime area. By projecting the façades seaward in only one direction Suriname substantially shrinks the relevant maritime area, excluding large parts of that area located within 200 nm of the two relevant coastlines. The combination of these two geographic distortions makes meaningless any division of the resulting maritime space by an equidistance line or any other line. However, it is interesting to note that if the same methodology were followed with only one correction -- substituting the Parties' actual “facing” coastlines for the subjective versions of them used by Suriname -- the results would be similar to those obtained by using an envelope of 200 nm arcs as described at paragraph 3.11 and 3.12. For illustration purposes only, **Plate R11** (following this page) demonstrates that, when applied to Guyana's *entire* “facing” coastline (and not one that has been arbitrarily shortened or re-routed by Suriname), Suriname's approach produces

⁵⁰ There is one exception. A very small corner of the overlapping appurtenances lies across Suriname's boundary with French Guiana. This area is so small that it has no effect on any of the calculations performed later in this Chapter. Accordingly, it has been excluded from Map C on **Plate R10**.

⁵¹ Report of Robert W. Smith (at pp. 11-13), *supra* Chapter 1, note 43.

a larger appurtenant maritime area for Guyana than for Suriname. Maps A and B on **Plate R11** depict the actual “facing” coastlines of Guyana and Suriname, respectively. The maps also depict a dashed straight-line coastal façade for each “facing” coastline. These façades have been fitted mathematically to the low-tide “facing” coasts (and not altered to suit the interests of one of the Parties). Specifically, the straight lines have been drawn by experts from the Johns Hopkins Applied Physics Laboratory in a mathematically precise way -- so that the longest façade possible leaves an amount of sea on the landward side of the line that is exactly equal to the amount of land on the seaward side. The same approach has been applied in drawing both then Guyana and Suriname façades. As shown in Maps A and B, when Suriname’s “perpendicular” methodology is applied to these façades, Guyana’s *appurtenant* maritime area is 126,457 km², and Suriname’s is 117,217 km². Map C of **Plate R11** shows what the *relevant* maritime area would be if Suriname’s methodology were used. It depicts the maritime space that is appurtenant to either Guyana’s or Suriname’s “facing” coastline and located within 200 nm of both coastlines. In the following sections of this Chapter, Guyana shows how this area is divided by the provisional equidistance line, and by the boundary lines of 10° and 34° claimed respectively by Suriname and Guyana.

IV. The Equitableness of the Provisional Equidistance Line

3.35 All of Suriname’s efforts to refashion geography are aimed in one direction: attacking the equitableness of the provisional equidistance line and demonstrating that it is “manifestly inequitable to Suriname.”⁵² In fact, when geography is viewed as nature created it, the provisional equidistance line is demonstrably inequitable to Guyana, not Suriname.

A. The Division of the Relevant Maritime Area Effected by the Provisional Equidistance Line

3.36 **Plate R12** (following page 48) shows how the provisional equidistance line divides the relevant maritime area between Guyana and Suriname. Map A depicts the relevant maritime area as depicted in **Plate R10**. This is the relevant maritime area that results from projecting the relevant coastlines seaward in all directions for 200 nm by means of an envelope of arcs (rather than arbitrarily in one direction as Suriname has done). When the provisional equidistance line is drawn on this map, it divides the relevant maritime area as follows: 84,909 km² to Guyana and 81,842 km² to Suriname. The ratio is 1.04 to 1. This is substantially lower than the ratio of the lengths of the Parties’ relevant coastlines (1.4 to 1) and is inequitable to Guyana.

3.37 Map B on **Plate R12** depicts the relevant maritime area as shown in **Plate R11**, in which the relevant maritime area was derived by projecting straight-baseline coastal façades seaward for 200 nm in one direction only, along perpendicular lines. This is Suriname’s approach, modified only by using mathematically-determined “facing” coastlines and fitted straight lines that accurately represent their true directions. The provisional equidistance line, drawn on this map, distributes 83,039 km² to Guyana, and 74,025 km² to Suriname, a ratio of 1.12 to 1. This is also substantially lower than the ratio of the lengths of the two States’ relevant coastlines, and is also inequitable to Guyana. There is no basis for Suriname’s claim that it is disadvantaged by the provisional equidistance line, even when its own self-serving

⁵² See, e.g., SCM, p. 100, para. 6.34.

and highly questionable methodology is employed. To the contrary, the provisional equidistance line is prejudicial only to Guyana.

B. The Division of the Relevant Maritime Area Produced by Suriname's "Angle Bisector"

3.38 Suriname's claim that a boundary line following an azimuth of N17E more equitably divides the relevant maritime areas⁵³ is also without merit. The procedure by which Suriname comes up with that line is unsupportable. As depicted in Figure 33 in the Counter-Memorial, it is based upon, *inter alia*, a straight-line coastal façade attributed to Guyana that does not reflect the true direction or length of Guyana's coast. Only by distorting the direction and length of Guyana's coast is Suriname able to produce a coastal façade that, when coupled with Suriname's own façade, results in a perpendicular line that is 34° east of true north and a bisector that is 17° east of true north. Suriname's manipulation of the coastal geography is compounded by the fact that the coastal façade ascribed to Guyana is so distorted that it does not even intersect with Suriname's coastal façade at Point 61. As clearly reflected in Figure 33, Guyana's ostensible coastal façade does not follow Guyana's coastline but starts well out into the Atlantic Ocean. Since the two coastal façades fail to meet, they cannot form an angle, let alone a bisector which has any significance.

3.39 Suriname's manipulation of Guyana's coastal façade to produce a perpendicular of 34° and a bisector of 17° is transparent. Suriname has tilted the coastal façade by just the right amount to draw a perpendicular that "coincidentally" matches the N34E maritime boundary line claimed by Guyana. Suriname must have had great difficulty maintaining a straight face when it wrote: "Guyana, by setting forth a line as its claim line that is in truth based on its coastal front, rather than the equidistance method, implicitly acknowledges the utility of coastal front methodology in the situation of adjacent states..."⁵⁴ This kind of statement underscores the bankruptcy of Suriname's approach to the geographical issues in this case.⁵⁵

3.40 **Plate R13** (in Volume III only) shows how a maritime boundary of N17E would actually divide the relevant maritime area. Map A depicts the relevant maritime area based on an envelope of 200 nm arcs. It shows that the N17E line gives 73,956 km² to Guyana, and 92,795 km² to Suriname. The ratio is 0.80 to 1. In view of the sizeable difference in the lengths of the Parties' relevant coastlines in Guyana's favour (*i.e.*, 1.4:1), the distribution of the relevant maritime area produced by a N17E line would be manifestly inequitable to Guyana. Map B shows that the same result obtains under Suriname's approach (as modified to reflect the mathematically correct coastal façade lengths and directions). Drawn on that map, the N17E line gives 71,868 km² of the relevant maritime space to Guyana and 85,196 km² to Suriname, a ratio of 0.84 to 1, notwithstanding Guyana's longer relevant coastline and larger area of appurtenance. It is plainly inequitable to Guyana.

⁵³ *Ibid.*, p. 103, paras. 6.47-6.48.

⁵⁴ *Ibid.*, p. 102, para. 6.40.

⁵⁵ Guyana has never used or contemplated coastal fronts or façades to delimit its maritime boundary with Suriname and it considers their use unjustified. Guyana's boundary claim is, and always has been, based on the equidistance method, and specifically the equidistance line drawn by the United Kingdom in the early 1960s with a general bearing of N34E. This claim, and its equidistance basis, were fully explained to Suriname by Guyana's representatives at the Marlborough House talks in June 1966. Marlborough House Discussions, *supra* Chapter 2, note 70. Guyana emphasised there, as it has ever since, that its claim to a N34E maritime boundary line is based on the equidistance principle.

C. Suriname's "Three Segments" of the Provisional Equidistance Line

3.41 Suriname attacks the provisional equidistance line on the grounds that the line is too sensitive to so-called "microgeographic" features.⁵⁶ Yet, Suriname does not treat like with like. Microgeographic features are bad when they favour Guyana but when they favour Suriname they are treated not as "microgeography" but as part of the normal geography of the area. The Counter-Memorial pursues this approach by dividing the provisional equidistance line into three segments and then applying contradictory geographical standards to these segments, depending upon which side of the land boundary terminus a particular geographical feature falls.⁵⁷

1. The First Section

3.42 The first segment of the provisional equidistance line extends seaward from Point 61 for approximately 100 nm, slightly beyond the 200-metre isobath.⁵⁸ Suriname argues that the provisional equidistance line here produces a "cut-off effect" that is prejudicial to Suriname due to: (i) "the change in direction of the South American coast at the mouth of the Corantijn River;" (ii) "the location of the land boundary terminus where the western bank of that river meets the sea;" and (iii) "the convexity of Guyana's adjacent coast immediately west of that location and the Suriname coastal concavity stretching toward the Coppename River."⁵⁹ Suriname argues: "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."⁶⁰

3.43 As indicated above in paragraphs 3.10 to 3.15, this is simply not true. Guyana's relevant coastline west of the mouth of the Corentyne River is *not* convex but *concave*, as is Suriname's coastline from Point 61 eastward to the mouth of the Coppename River, just beyond the basepoints that control the first segment of the provisional equidistance line. The transition of the South American coast from concave to convex does not occur at the mouth of the Corentyne River but considerably further east at Suriname's Hermina Bank.⁶¹ As discussed below, and as Suriname admits, it is the convexity at Hermina Bank that pushes the *second* segment of the provisional equidistance line in a direction favourable to Suriname.⁶² But there are no convexities on either side of Point 61 that affect the direction of the provisional equidistance line in its *first* segment.

3.44 To be sure, there are localized convexities on both sides of the mouth of virtually *every* river that flows into an ocean or other larger body of water.⁶³ The natural flow of any river into the ocean necessarily leaves its banks rounded, or convex. It is clear from many of the Plates or Figures presented by the Parties that *both* banks of the mouth of the Corentyne

⁵⁶ SCM, p. 98, para. 6.24.

⁵⁷ *Ibid.*, pp. 96-98, paras. 6.19-6.23.

⁵⁸ *Ibid.*, Chapter 6, Figure 32 (following p. 98).

⁵⁹ *Ibid.*, p. 97, para. 6.20.

⁶⁰ *Ibid.*, p. 97, para. 6.21.

⁶¹ Report of Robert W. Smith (at p. 5), *supra* Chapter 1, note 43.

⁶² *See infra* note 77.

⁶³ *See supra* note 20.

River are rounded (*i.e.*, convex), as are both banks of every other river along Guyana's or Suriname's coast.⁶⁴ But these localized convexities do not change the general concavity of the coastline extending from Devonshire Castle Flats in Guyana across the land boundary terminus to the Coppename River in Suriname. Nor do they affect the direction of the provisional equidistance line.

3.45 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. This is shown in **Plate R14** (in Volume III only). 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.⁶⁵

2. The Second Section

3.46 According to the Counter-Memorial, the second segment of the provisional equidistance line "starts shortly after it crosses the 200-meter depth contour, where it takes a sharp turn to the north. This is the first pronounced change in direction of the provisional equidistance line. The change of direction is caused by the fact that the eastern headland of the Suriname concavity (Hermina Bank) begins to take effect on the line."⁶⁶ Except for the euphemistic language about the "eastern headland of the Surinamese concavity"⁶⁷ (a/k/a the Surinamese *convexity*), Guyana agrees. But Suriname understates the "pronounced" effects produced by the "headland" or convexity at Hermina Bank. As depicted in **Plate R15** (in Volume III only) and in Figure 32 of the Counter-Memorial, the Surinamese basepoints on Hermina Bank control the direction of the *entire* provisional equidistance line in its second section. There are no corresponding convexities on Guyana's coastline. Thus, the incidental occurrence of these basepoints at precisely the location where Suriname's coastline has changed from concave to convex produces a dramatic effect on the direction of almost half of the provisional equidistance line. In its first section, that line follows a relatively straight

⁶⁴ See, e.g., SCM, Chapter 6, Figure 32 (following p. 98).

⁶⁵ Suriname complains that "the intense congregation of Guyana's basepoints just west of the Corentijn River," coupled with the fact that its own "controlling basepoints are spread out," somehow exerts undue or unfair influence on the first segment of the provisional equidistance line. *Ibid.*, p. 97, para. 6.21. This is wrong. In fact, the opposite is more often true. Take for instance a small island State that opposes a large mainland State. The island may only have a handful of basepoints to offset scores of basepoints on the mainland State. Nevertheless, it is always the island State that controls a disproportionately large maritime area. This is one of the situations where equidistance may be inequitable, because the island generally will grab more than its proportionate share of maritime space, notwithstanding its fewer or more "spread out" basepoints. The key factor that determines the amount of maritime area that a basepoint influences is the location of the point, not the number of basepoints or the presence of basepoint clusters.

⁶⁶ *Ibid.*, p. 97, para. 6.22.

⁶⁷ *Ibid.*

course for approximately 100 nm. But for the coastal change from concavity to convexity at Hermina Bank, the relatively constant course of the equidistance line would likely continue along the same course all the way to the 200 nm EEZ limit.⁶⁸ However, because of the convexity of Hermina Bank the equidistance line (in Suriname's words) "takes a sharp turn to the north"⁶⁹ and gives Suriname more than 4,000 km² at Guyana's expense. Thus, it is Guyana that is prejudiced by the purported hypersensitivity of the provisional equidistance line to what Suriname calls "incidental features" of microgeography that do not represent the general direction of the coastline.⁷⁰

3. The Third Section

3.47 The third and final segment of the provisional equidistance line is very short. According to Suriname, this segment "starts just as it approaches the 200-nautical-mile limit."⁷¹ Suriname's complaint about this segment is that it veers "to the east to Suriname's disadvantage" because "Guyana's controlling basepoints are located on the protruding coast west of the Essequibo River in coastal areas claimed by Venezuela."⁷² These basepoints are depicted in Figure 32 of the Counter-Memorial. Regrettably, Figure 32 does not allow the reader to see Guyana's entire coastline. Instead, it cuts off Guyana just after the two basepoints immediately west of the Essequibo River, making it impossible to visualize the coastline's true shape. **Plate R3** (following page 38), by contrast, shows the entire Guyanese coastline, demonstrating that the coastline becomes concave just to the east of the two outermost basepoints at Devonshire Castle Flats; and that this concavity continues from there across the border with Suriname all the way to the Coppename River. Guyana's 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. Suriname cannot just cast aside these two basepoints under the banner of "microgeography" because it does not like their effects. Nor can it jettison them because they lie on a coast that is "claimed by Venezuela."⁷³ The third segment of the provisional equidistance line cannot credibly be described as "inequitable" to Suriname. Indeed, as shown above, *none of the three segments* of the line is in any way inequitable to Suriname.

D. Suriname's Equidistance Boundary with French Guiana

3.48 Suriname's attack on the equitableness of the equidistance line in these proceedings contrasts sharply with its position on its maritime boundary with French Guiana. In its Memorial, Guyana presented evidence that Suriname and France have reached an agreement in principle to delimit Suriname's maritime boundary with French Guiana by means of an equidistance line with a general bearing of N30E.⁷⁴ Suriname did not refute any of this

⁶⁸ Report of Robert W. Smith (at p. 9), *supra* Chapter 1, note 43.

⁶⁹ SCM, p. 97, para. 6.22.

⁷⁰ *Ibid.*, p. 106, para. 6.60. *See also* Report of Robert W. Smith (at p. 9), *supra* Chapter 1, note 43.

⁷¹ SCM, p. 98, para. 6.23.

⁷² *Ibid.*

⁷³ *See supra* para. 3.24.

⁷⁴ "Regional Location and Trade," Section 1.2.1 in *Suriname Planatlas*. *See* MG, Vol. II, Annex 47 ("According to Suriname, the eastern seaward dividing line between Suriname and French Guiana is formed by an *equidistance line* with a direction of 30° east of true north....") (emphasis added). *See also* MG, pp. 9-10, para. 2.15; p. 36, para. 3.50; pp. 43-44, para. 4.14.

evidence in its Counter-Memorial. It stated merely that no final agreement on a boundary agreement with French Guiana has been put into effect.⁷⁵ Since then, Guyana has obtained additional evidence about the equidistance boundary between Suriname and French Guiana from the website of Suriname's state-owned oil company, Staatsolie,⁷⁶ and from documents in the archives of the Dutch Foreign Ministry that were produced to Guyana by Order of the Tribunal. Annex R10 of this Reply consists of maps published by Staatsolie on its website showing *inter alia* Suriname's maritime boundary with French Guiana. This boundary is reproduced in **Plate R16** (in Volume III only) exactly as it appears in the maps on Staatsolie's website. **Plate R16** also superimposes an equidistance line. It is beyond dispute that Staatsolie has depicted Suriname's maritime boundary with French Guiana as a simplified or straight-line version of the equidistance line. The documents received by Guyana from the Dutch archives confirm that it has been the consistent position of Suriname and the Netherlands (as well as France) for the past 40 years that the boundary between Suriname and French Guiana should be a simplified equidistance line following an azimuth of N30E. For example, in 1964 an internal memorandum of the Dutch Foreign Ministry reported that: "The French have already declared that they wish to observe the equidistance principle. Suriname agrees."⁷⁷ In the same year, the Prime Minister of Suriname, Mr. J.A. Pengel, wrote that:

With regard to the eastern boundary between Suriname and French Guyana, the following starting points apply:

In the sea and on the continental shelf, the boundary follows a line with an azimuth of 30° East of the True North from the final point by the sea of the boundary in the Maroni.

The direction is the average direction of the "equidistance line" constructed from this final point. The method is adopted, as Suriname prefers a fixed line, which can always be constructed, to a changing equidistance line.⁷⁸

3.49 Suriname's contradictory positions with respect to its boundary with French Guiana and its boundary with Guyana are especially difficult to reconcile given the fact that the coastal geography of Suriname/French Guiana is similar to that of Guyana/Suriname. There

⁷⁵ SCM, p. 12, para. 2.20.

⁷⁶ Selection of Recent Maps taken from Staatsolie's Web Site. See RG, Vol. II, Annex R10.

⁷⁷ Memorandum on Continental Plateau Suriname (9 April 1964) (original in Dutch, translation provided by Guyana) [hereinafter "Memorandum on Continental Plateau Suriname (9 April 1964)"]. See RG, Vol. II, Annex R34.

⁷⁸ Letter regarding the Arrangement of Boundaries from J.A. Pengel, Prime Minister of Suriname (12 February 1964) (original in Dutch, translation provided by Guyana). See RG, Vol. II, Annex R32. The agreement with France on an equidistance boundary is reflected in an exchange of notes between the Netherlands and France. The Netherlands' note, dated 20 August 1958, proposed "to settle the lateral delimitation of the continental shelf adjacent to the Overseas French Department of Guyana as well as of Suriname by "reaching an agreement with the French Republic ... in accordance with the principle of equidistance as defined in Article 6 [of the 1958 Convention on the Continental Shelf]." Letter from the Royal Embassy of the Netherlands to the French Ministry of Foreign Affairs (20 August 1958) (original in French, translation provided by Guyana). See RG, Vol. II, Annex R30. The French communicated their agreement "that the delimitation be established by applications of the equidistance principle" in a note dated 11 May 1963. Letter from French Ministry of Foreign Affairs to the Royal Embassy of the Netherlands (11 May 1963) (original in French, translation provided by Guyana). See RG, Vol. II, Annex R31. These documents were recently obtained by Order of the Tribunal.

are no islands, detached low-tide elevations or peninsulas that might unduly alter the course of the equidistance line. In both situations, the coastlines are curving, and marked by indentations caused by rivers that flow into the Atlantic Ocean. Both coastlines are affected by the accretion and erosion that is constantly taking place at the mouths of these rivers. Whilst the relevant Guyana/Suriname coastline is generally concave (with the exception of Hermina Bank), and the relevant Suriname/French Guiana coastline is convex, these factors combine in this particular geographic setting to render the use of equidistance lines *beneficial* to Suriname -- along *both* boundaries. There is no “cut-off” effect on Suriname. To the contrary, as shown in **Plate R2** (following page 36), equidistance lines extending seaward from Suriname’s land boundary termini with Guyana and French Guiana *diverge* from one another all the way out to, and beyond, the 200 nm EEZ limit. In its Counter-Memorial, Suriname provides no explanation of why the relevant coastal geography supports an equidistance boundary with French Guiana but not with Guyana. Guyana submits that there is no credible geographical justification for Suriname’s contradictory positions.

3.50 The Suriname/French Guiana maritime boundary is not the only one on the Atlantic Coast of South America based on an equidistance line. Notably, every one of the settled maritime boundaries along this coast has been based on equidistance. These include: French Guiana/Brazil, Brazil/Uruguay and Uruguay/Argentina.⁷⁹ This considerable body of State practise refutes Suriname’s argument that an equidistance line should not be used in areas where coastal accretion or erosion might unduly influence the positional stability of the controlling basepoints.⁸⁰ There is considerable on-going accretion and erosion along the entirety of the Atlantic Coast of South America caused by the many rivers that flow into the ocean, including the Amazon and the Plate. Yet, equidistance has been the means of delimiting maritime boundaries in all of these situations.⁸¹

V. Assessing the Equitableness of the Boundary Lines Claimed by the Parties

3.51 Suriname contends that its “right to control” the navigational approaches to the Corentyne River “through the exercise of its sovereign rights in the territorial sea constitute a special circumstance that requires the adjustment of any delimitation method that would deny that right.”⁸² On this basis, Suriname claims that the purported “navigation channel” at the mouth of the Corentyne River, which follows a direction of N10E, entitles it to a maritime boundary along a line of N10E in the territorial sea and the continental shelf to a distance of 200 nm from Point 61. It will not be lost on the Tribunal that such a claim has nothing to do with coastal geography. Rather, it is based entirely on the alleged conduct of the Parties, including their colonial predecessors, in identifying a possible “navigation channel” of N10E and accepting it over a certain period of time. Hence, Suriname contradicts its own argument

⁷⁹ Eduardo Jimenez de Aréchea, “South American Maritime Boundaries, Region III,” in *International Maritime Boundaries*, Volume I, Jonathan I Charney and Lewis M. Alexander (eds.), American Society of International Law, Maritime Nijhoff Publisher, 1993, p. 285.

⁸⁰ SCM, pp. 33-34, paras. 3.50-3.51; p. 100, para. 6.35.

⁸¹ Report of Robert W. Smith (at p. 10), *supra* Chapter 1, note 43. It is worth noting that Suriname’s coastal façade/ perpendicular/bisector methodology is even more susceptible to the effects of a coastal accretion and erosion than an equidistance line, especially if the accretion or erosion occurs at or near one of the endpoints of the coastal façade, and thereby tilts it in a different direction. In the present case, both coastal façades begin and end at or near river mouths (the Corentyne, the Essequibo and the Suriname) where accretion and erosion regularly occur.

⁸² SCM, pp. 103-104, para. 6.51.

that the conduct of the Parties is irrelevant to these proceedings, that coastal geography is the “*only* relevant circumstance” in this case⁸³ and that “the present dispute can and should be resolved *exclusively* on the basis of the coastal geography of the delimitation area.”⁸⁴ Guyana agrees with the first of these inconsistent Surinamese positions; to wit, that the conduct of the Parties is indeed a relevant factor to be taken into account in rendering an equitable delimitation of the Guyana/Suriname maritime boundary, as described in Chapter 4 of this Reply. Guyana disagrees, however, that the alleged “navigation channel” at the mouth of the Corentyne River can constitute a special or relevant circumstance to be accorded any weight in the delimitation process for the reasons set forth below.

A. Suriname Has Failed To Show “Special Circumstances”

3.52 First, the “navigation channel” may never have existed, and certainly ceased to be accepted as such more than 40 years ago. Guyana showed this in its Memorial⁸⁵ and Suriname offered no evidence to the contrary.⁸⁶ Indeed, as indicated previously,⁸⁷ the Counter-Memorial itself provides evidence that there was never an actual 10° navigational channel in the Corentyne River but only the “possibility” (as stated in a contemporaneous Dutch government document) that one might eventually come into existence.⁸⁸ Thus, when Suriname explained to Guyana the basis for its N10E claim at Marlborough House in 1966, it made no mention of a navigation channel, but instead invoked the direction of the “river valley” (*i.e.*, the thalweg) at the mouth of the Corentyne River. Guyana has now made available to the Tribunal both its own and Suriname’s minutes of the Marlborough House talks. Both sets of minutes confirm that Suriname’s claim to a N10E line was based solely and exclusively on this submerged feature of riverine geology; namely, the “river valley” at the mouth of the Corentyne, and not on any “navigation channel.”⁸⁹ Underwater geomorphology, of course, has nothing to do with coastal geography, as Suriname accepts. Guyana is not aware of any instance in which the International Court or any arbitral tribunal has ever considered the direction of a thalweg a special or relevant circumstance. That is surely the reason why the Counter-Memorial focuses instead on the nonexistent “navigation channel.” As discussed in Chapter 5 of this Reply, the “navigation channel” -- even if it enjoyed a brief existence before expiring more than 40 years ago -- would still not, as a legal matter, constitute a special circumstance affecting the delimitation of the maritime boundary in these proceedings. The Dutch themselves agreed that the navigation channel could not be a “special circumstance” under the 1958 Convention on the Continental Shelf. They were sharply critical of the Surinamese for taking the position at Marlborough House that there were *any* “special circumstances” to justify a departure from the equidistance principle in the continental shelf. An internal Foreign Ministry document recently disclosed to Guyana by Order of the Tribunal reports as follows on the Marlborough House talks:

⁸³ *Ibid.*, p. 46, para. 4.22 (emphasis added).

⁸⁴ *Ibid.*, p. 45, para. 4.19 (emphasis added).

⁸⁵ MG, p. 98, para. 8.26; pp. 32-33, para. 3.45.

⁸⁶ SCM, pp. 26-27, paras. 3.32-3.33.

⁸⁷ *See supra* Chapter 2, note 63.

⁸⁸ Letter of the Minister of Defence to the Minister for the Colonies (27 February 1931), *supra* Chapter 2, note 63.

⁸⁹ Marlborough House Discussions, *supra* Chapter 3, note 55. *See also* Marlborough House Minutes, *supra* Chapter 1, note 36.

The report from London (ref. no. red 6713) revealed that during its discussions with the delegation of Guyana regarding the delimitation of the CS between the two countries, the Surinam delegation in London adopted the point of view that this delimitation should not follow the equidistance line, but should follow a different course, on the grounds of “special circumstances” (in the sense of Art. 6 of the Geneva Convention on the CS).

This is not a surprise to us, to the extent that we were already aware that *Suriname wishes to claim a larger part of the CS than that country is entitled to, according to the equidistance principle.*

During the discussion which took place on 2 June under your chairmanship, I already indicated that there was admittedly no objection to Surinam attempting to agree with Guyana that Surinam should acquire a larger part of the CS, but that *a delegation of the Kingdom cannot adopt the legal view that there are any “special circumstances” in the sense of the Geneva Convention.*

*I would emphatically like to reiterate this view.*⁹⁰

3.53 Second, even during the limited period -- 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.⁹¹ 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.

B. The Division of the Relevant Maritime Area Produced by a N10E Boundary Line

3.54 A boundary line of N10E for *any* distance would be grossly inequitable to Guyana. **Plate R17** (following page 56) shows how such a line would divide the relevant maritime area. Map A, which depicts the relevant maritime area based on an envelope of 200 nm arcs, shows that a N10E boundary line would give Guyana only 65,169 km² of this area and leave the remaining 101,581 km² to Suriname (a ratio of 0.64 to 1) notwithstanding Guyana’s longer relevant coastline and larger area of appurtenance. Map B uses Suriname’s “facing” coastline and “perpendicular” approach, for illustration purposes only, and shows that a N10E boundary line would divide the relevant maritime area by giving Guyana 63,029 km² and Suriname 94,034 km² (a ratio of 0.67 to 1) despite Guyana having the longer relevant coastline and larger appurtenant maritime area. The delimitation produced by the 10° line is patently inequitable to Guyana, whichever methodology is used.

⁹⁰ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11 (emphasis added).

⁹¹ MG, pp. 96-97, paras. 8.20-8.23 (citing 1939 British Draft Treaty, Article 1, *see* MG, Vol. II, Annex 89; Diplomatic Note from the British Foreign Office to E. Michiels van Verduynen, Netherlands Minister to the United Kingdom (16 September 1949), *see* MG, Vol. II, Annex 65; 1961 British Draft Treaty -- British Guiana/Surinam Boundary, Part II, Article VII, *see* MG, Vol. III, Annex 90; 1962 Dutch Draft Treaty between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland establishing the frontier between Surinam and British Guiana, *see* MG, Vol. III, Annex 91).

C. The Division of the Relevant Maritime Area Resulting from a Boundary Line of N34E

3.55 In contrast to Suriname's proposed N10E line, Guyana's claimed N34E line results in an equitable distribution of the relevant maritime area. **Plate R18** (following this page) demonstrates this. Map A (where the relevant maritime area is based on an envelope of 200 nm arcs) shows that a boundary line of N34E would divide the relevant maritime area by giving Guyana 96,621 km² and Suriname 70,130 km² -- a ratio of 1.38 to 1.0. This ratio affords each Party a maritime area that is in direct proportion with the coastal length ratio (1.4 to 1) and therefore constitutes an equitable result. Map B, where the relevant maritime area has been derived by Suriname's approach ("facing" coastlines and perpendicular lines), leads to the same conclusion. It shows that a N34E boundary line divides the relevant maritime area by giving Guyana 94,688 km² and Suriname 62,376 km² -- a ratio of 1.52 to 1.0. This is very close to the ratio of the lengths of the two States' relevant coastlines. Thus, the geographic data prove that a 34° line results in an equitable delimitation of the maritime boundary between Guyana and Suriname.

VI. Conclusion

3.56 Suriname's approach to the geographical circumstances in this case has been to refashion them. Its case is based on five false propositions: (1) Guyana's coastline is convex, when it is really concave; (2) Guyana's relevant coastline is shorter than Suriname's, when it is really longer; (3) the maritime area appurtenant to Guyana's coast is smaller than that of Suriname, when it is actually larger; (4) the provisional equidistance line divides the relevant maritime area in a manner inequitable to Suriname, when it does not; and (5) a boundary line of N10E is justified by special circumstances, when it is not. Suriname's attempt to displace equidistance as the touchstone by which the delimitation in this case should be effectuated with a contrived and convoluted substitute, consisting of straightened coastal façades (that do not accurately reflect the directions or lengths of the actual coastlines), perpendicular lines and angle bisectors, has no merit and should be rejected by the Tribunal. There is no precedent for such an approach in a case involving geographical circumstances similar to those present here.

3.57 The geographical circumstances in this case support adoption of Guyana's N34E historical equidistance line because it leads to an equitable solution. It divides the relevant maritime area in a manner that is proportionate to the lengths of the Parties' relevant coastlines. In contrast, neither Suriname's proposed boundary line of N10E nor its "angle bisector" approach can be justified by the geographic circumstances or the manner in which they divide the relevant maritime area, which is grossly disproportionate to lengths of the relevant coastlines and highly prejudicial to Guyana.

3.58 The N34E historical equidistance line closely approximates the provisional equidistance line from the starting point on Guyana's low-tide coast to the 200-metre isobath, which Suriname describes as the "first segment" of the provisional equidistance line. Thereafter, and for almost all of the remaining 100 miles out to the 200 nm EEZ limit, in Suriname's own words the provisional equidistance line "takes a sharp turn to the north"⁹² as a result of the last of Suriname's genuine coastal basepoints located in close proximity to one another on the convex "headland" of Hermina Bank, the only convex feature on an otherwise

⁹² SCM, p. 97, para. 6.22.

concave coastline stretching from Devonshire Castle Flats in Guyana to the mouth of the Copperane River in Suriname. This anomalous and incidental feature deprives Guyana of more than 4,000 km² of maritime space and transfers it to Suriname. This in itself justifies an adjustment to the provisional equidistance line in Guyana's favour. As Suriname has written in regard to three other maritime delimitation cases: "In each of these cases, the delimitation method chosen by the Court or Chamber of the Court was adjusted to reflect the greater entitlement of the state with the longer relevant coast."⁹³ In these proceedings, that State is Guyana. Furthermore, the geographical data show that a boundary line of 34° equitably divides the relevant maritime area between Guyana and Suriname. Indeed, the 34° line provides each Party with a proportion of the maritime space relevant to this delimitation (1.39 to 1) that is as close as possible to the ratio between their relevant coastlines (1.4 to 1). For these reasons, as well as the reasons set forth in the next Chapter of this Reply relating to the conduct of the Parties, Guyana submits that equity requires that the maritime boundary follow an azimuth of N34E, in both the territorial sea and the continental shelf, from Point 61 to the 200 nm limit.

⁹³ *Ibid.*, p. 105, para. 6.59 (citing *Gulf of Maine*, *Libya/Malta*, and *Jan Mayen*).

Reply of Guyana

CHAPTER 4

THE CONDUCT OF THE PARTIES

4.1 In this Chapter, Guyana responds to four questions in regard to which the Memorial and the Counter-Memorial are in disagreement: first, whether the conduct of the Parties is relevant to the resolution of the issues before the Tribunal; second, whether the Parties' conduct evidences an agreement on the location of the land boundary terminus and starting point for maritime delimitation at Point 61; third, whether the conduct of the Parties reflects their views on the equitableness of the maritime boundary line of N10E claimed by Suriname; and fourth, whether the conduct of Guyana and Suriname indicates their views on the equitableness of the delimitation produced by Guyana's historical equidistance line of N34E.

4.2 In brief, Guyana's responses to these questions are: (1) the conduct of the Parties *is* relevant in these proceedings, in both establishing the existence of an agreed land boundary terminus and identifying the method of maritime delimitation that best ensures an equitable result; (2) for the past 70 years, both Guyana and Suriname (and the United Kingdom and the Netherlands before them) have consistently accepted Point 61 as the land boundary terminus; (3) no Party -- including Suriname and the Netherlands -- has ever regarded as equitable the delimitation produced by Suriname's proposed N10E line, especially in regard to the continental shelf; and (4) by contrast, and notwithstanding their formal positions, the actions of the Parties indicate that they *all* regarded as equitable the delimitation produced by the historical equidistance line claimed by Guyana.

I. The Parties' Differing Views on the Relevance of Conduct

4.3 As set forth in the Memorial, Guyana considers that "the conduct of the parties is a circumstance which is highly relevant to the determination of the method of delimitation."¹ Suriname, in contrast, argues that conduct is relevant only when it is sufficient to meet the strict requirements of a tacit agreement.² According to Suriname: "The conduct of the parties is relevant only if it is *mutual, sustained, consistent and unequivocal* in indicating the intention of both parties to accept a particular line for a particular purpose. Otherwise the conduct of the parties must be disregarded."³

4.4 Suriname has misinterpreted the law regarding the significance of the conduct of the parties in a maritime delimitation proceeding. It is not correct that conduct is relevant only when it is sufficient to meet the conditions for a tacit agreement. The International Court has expressly stated that even when conduct is insufficient to give rise to a tacit agreement, it may nonetheless be relevant if it reveals what boundary line or lines the parties themselves have considered equitable outside the context of their legal dispute.

4.5 In *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, the ICJ was confronted with essentially the same question as the one now before the Tribunal; *i.e.*, what would be an

¹ MG, p. 13, para. 3.2 (citing *Case Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 83-84, paras. 117-118).

² See, e.g., SCM, p. 51, paras. 4.37-4.38.

³ *Ibid.*, p. 52, para. 4.40 (emphasis added).

equitable maritime boundary? In examining that question, the Court found that the parties' conduct could be relevant even though there was no tacit agreement:

It should be made clear that the Court is not here making a finding of tacit agreement between the Parties -- which, in view of their more extensive and firmly maintained claims, would not be possible -- nor is it holding that they are debarred by conduct from pressing claims inconsistent with such conduct on some such basis as estoppel. The aspect now under consideration of the dispute which the Parties have referred to the Court, as an alternative to settling it by agreement between themselves, is what method of delimitation would ensure an equitable result; and *it is evident that the Court must take into account whatever indicia are available of the lines or lines which the Parties themselves may have considered equitable or acted upon as such*....⁴

4.6 The principle is an evidentiary one, and requires that, in finding an equitable solution, international courts or tribunals take into account conduct indicative of the line or lines the parties themselves have considered equitable. Under this approach, conduct is significant not because it has a legally binding effect *per se*. Rather, it is relevant because it may tend to prove or disprove a party's contentions about the equitableness of the boundary line it is advocating (or opposing) in formal proceedings.⁵ Suriname itself acknowledges the point. Even as it asserts that conduct is relevant only when it is "mutual, sustained, consistent and unequivocal," the Counter-Memorial recognises (albeit in as dismissive a way as possible) that "[i]n *Tunisia/Libya* ... the conduct noted by the Court was taken into account not under the rubric of acquiescence or estoppel but merely as a *corroborating indication of the equity of the chosen line*."⁶

4.7 It is in this sense and for this purpose that Guyana invokes the Parties' conduct. As demonstrated in the Memorial, and as further illustrated in Sections II through IV below, the Parties' conduct demonstrates that both Guyana and Suriname (and the United Kingdom and the Netherlands before them): (i) have agreed to Point 61 as the land boundary terminus; and (ii) have recognised that a maritime boundary line based on Guyana's 34° historical equidistance line yields an equitable maritime delimitation in this case, while the N10E line claimed by Suriname does not. Thus, Suriname's argument that the Parties' conduct does not

⁴ *Tunisia v. Libya*, 1982 I.C.J. 18, 84, para. 118 (emphasis added). Suriname misstates the point of the *Tunisia/Libya* case. For example, it refers to "the standard laid down in *Tunisia/Libya*" as "requiring evidence of an express or tacit agreement." SCM, p. 81, para. 5.45. Yet, as the citation in text makes clear, the ICJ expressly disavowed a finding of tacit agreement.

⁵ In *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, 1985 I.C.J. 13, 29, para. 25, the ICJ reiterated the evidentiary import of the Parties' conduct in this respect. The Court stated that it

has considered the facts and arguments brought to its attention in this respect, particularly from the standpoint of 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" (I.C.J. Reports 1982, p. 84, para. 118). It is however 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 material way from the view advanced by that Party before the Court.

⁶ SCM, p. 52, para. 4.39 (emphasis added).

evinced a tacit agreement to delimit the maritime boundary by means of an equidistance line is entirely beside the point. It responds to an argument Guyana has not made.

II. The Parties' Conduct in Relation to Point 61

4.8 Even applying Suriname's own standard -- that conduct is relevant only when it is "mutual, consistent, sustained and unequivocal"⁷ -- the conduct of the Parties demonstrates that they have mutually adopted and agreed upon Point 61 as the land boundary terminus. As described in Chapter 2 of this Reply, Guyana and Suriname (and their colonial predecessors) have unequivocally relied on Point 61 as the land boundary terminus for the past 70 years. Beginning in 1936 when the Mixed Boundary Commission first fixed Point 61, they have adopted that location -- and only that location -- as their actual land boundary terminus in bilateral and multilateral communications, in official governmental publications and in their oil concession practises.⁸

4.9 In its Memorandum on Preliminary Objections, Suriname half-heartedly suggested that other points might conceivably be used as the land boundary terminus. The suggestion has been dropped in the Counter-Memorial. For instance, Suriname invoked a point that the Dutch drew on a map of the Corentyne River and presented to the British in 1959 as a possible endpoint of a closing line for the river based on the erroneous assumption that the river mouth could be assimilated to a juridical bay. As described in Chapter 2, the point and the closing line were immediately rejected by the British and by 1962 the Dutch had abandoned them and returned to using Point 61 as the end point of the river closing line in the Corentyne in their treaty proposals to the British.⁹ Suriname does not claim that the point on the 1959 map was ever used for any practical purpose.

4.10 "Point X" is even more theoretical. It is nothing more than a geometric calculation done solely for the purposes of these proceedings. As shown in Chapter 2, it has never before been invoked by Suriname or the Netherlands as a possible land boundary terminus and it is not even located at the mouth of the Corentyne River, which is where the Parties have always agreed that the maritime delimitation must commence.

4.11 The conclusion is clear. The only land boundary terminus that both Parties have ever adopted and used in actual practise is Point 61. They have done so mutually, consistently and unequivocally for 70 years. By their conduct, Guyana and Suriname have mutually agreed that their northern land boundary terminus is located at Point 61.

III. The Parties' Conduct in Relation to Suriname's Claimed 10° Line

4.12 In contrast to the Parties' mutual, consistent, sustained and unequivocal acceptance of Point 61 as the land boundary terminus, the Parties have never mutually accepted the 10° line claimed by Suriname. Thus, under the standard for ascertaining the relevance of conduct set forth in the Counter-Memorial, Suriname's claim to a 10° line fails. There is no tacit agreement on that line. Furthermore, the conduct of the Parties indicates that, outside of

⁷ *Ibid.*, p. 52, para. 4.40.

⁸ SCM, p. 52, para. 4.40.

⁹ 1962 Dutch Draft Treaty between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland establishing the frontier between Suriname and British Guiana, *supra* Chapter 2, note 6.

these proceedings, none of them considered the delimitation effected by the N10E line as equitable.

A. Suriname's Claim of a 10° Line in the Territorial Sea

4.13 As discussed in Chapter 2, Suriname argues that if the land boundary terminus was established at Point 61, the maritime boundary line was equally set at 10°, at least in the territorial sea.¹⁰ The point of departure for this argument is that Point 61 and the 10° line in the territorial sea were “inextricably linked,”¹¹ with the validity of each dependent on the validity of the other. Yet, as Chapter 2 demonstrates, history disproves Suriname's claims. From even before the Boundary Commission began work in 1936, the record makes clear that the location of the land boundary terminus, on the one hand, and the angle of the maritime boundary in the territorial sea, on the other hand, were regarded as distinct issues. Paragraphs 2.29 through 2.36 lay out in detail the conduct of the Parties which demonstrates that for 70 years prior to the commencement of these proceedings neither Guyana nor Suriname (or the United Kingdom or the Netherlands) ever treated Point 61 and the 10° line as dependent upon one another. Suriname itself admits that the British rejected the 10° line in the early 1960s but continued to maintain that the land boundary terminus was at Point 61, and that Guyana never accepted the 10°, even in the territorial sea, but always agreed that the land boundary terminus was at Point 61.¹² Thus, by Suriname's own “mutual, consistent, sustained and unequivocal” standard, there was no tacit agreement with regard to its claim to a N10E line.

B. The Equitableness of the Delimitation Produced by the 10° Line

4.14 Chapter 3 of this Reply demonstrates that the 10° line claimed by Suriname produces a manifestly inequitable division of the relevant maritime space in both the territorial sea and the continental shelf. The application of the 10° line gives Suriname 60% of this space, notwithstanding the fact that Guyana's relevant coastline is longer and its appurtenant maritime area is larger than Suriname's.¹³ The conduct of the Parties is consistent with these geographical circumstances. It demonstrates that they did not consider a delimitation along the 10° line equitable.

4.15 Prior to 1966, Suriname's 10° claim pertained only to the territorial sea, and then only for a distance of 3 nm. In that era, the line was not advanced or defended on the basis of its equitableness, but as a means of facilitating Dutch administration of a so-called “navigation channel” at the mouth of the Corentyne River. The 10° line passed very close to Guyana's coastline and produced a significant cut-off effect. Contemporaneous Dutch records from the early 1930s reveal that there never was a 10° navigation channel, only the “possibility” that one might come into existence.¹⁴ By the 1960s, that justification for the line had ceased to exist because a 10° navigational channel had never come into use.¹⁵ Suriname has put no

¹⁰ See, e.g., SCM, p. 3, para. 1.11; p. 15, para. 3.1. See also SPO, p. 18, para. 3.14.

¹¹ SCM, p. 3, para. 1.11.

¹² See *supra* Chapter 2, para. 2.34.

¹³ See *supra* Chapter 3, paras. 3.54.

¹⁴ Letter of the Minister of Defense to the Minister for the Colonies (27 February 1931). See SCM, Vol. II, Annex 11.

¹⁵ MG, p. 98, para. 8.26; pp. 32-33, para. 3.45.

evidence before the Tribunal to prove use of such a channel. At the Marlborough House talks in June 1966, Suriname still advanced a claim to a 10° maritime boundary line both in the territorial sea and the continental shelf, but not on the basis of a navigational channel.¹⁶ Nor was Suriname's claim founded on the equitableness of the division of the Parties' maritime areas that a 10° line would produce; instead, it was based on a purported "geographic reality" of the direction of the western thalweg of the Corentyne River. Indeed, Suriname expressly disavowed reliance on legal or equitable argumentation, pointing out that Parties' differing views on maritime delimitation "can possibly be explained by the fact that you [*i.e.*, Guyana] view the case from the mainly legal perspective whereas we see it as more geographical."¹⁷ Nowhere in either set of minutes of the Marlborough House talks, nor at any time since, has Suriname ever explained why, in its view, the "geographical reality" of the direction of the unused, western thalweg should dictate the direction of the maritime boundary within, much less beyond, the confines of the territorial sea. Even the Counter-Memorial does not attempt to defend this position.¹⁸

4.16 The historical records make clear that Suriname claimed a 10° boundary line because that was the most favourable claim for which it could articulate a rationale -- albeit a weak one. Such conduct hardly makes Suriname unique. States frequently adopt maximalist boundary claims to start from the strongest possible negotiating position. The evidence shows that Suriname was doing just that. Between 1961 and 1965, the British and the Dutch exchanged several draft treaties for a comprehensive (*i.e.*, land as well as maritime) settlement of the British Guiana/Suriname boundary. The most contentious issue involved sovereignty over the New River Triangle. Each State's draft treaty gave the Triangle to itself; neither was prepared to give it up. In October 1965, at a time of rising nationalistic sentiment in Suriname, its Parliament passed a resolution declaring Surinamese sovereignty over the Triangle and forbidding any compromise of this claim.¹⁹ The next month, in November 1965, Suriname's Ministers met with their Dutch counterparts to discuss boundary matters. Suriname's chief spokesman, Dr. F.E. Essed, stated emphatically that:

After the motion of the Surinamese parliament on 7 October 1965, compromises are no longer possible. This motion forces the government to go for broke; it is everything or nothing. Hence no compromise on the border along the western bank of the Corantijn New River nor on the triangle in the southwest. ... *The situation regarding the border delineation on the continental shelf is different* as no agreement was made on this border in the border treaties of 1799 and 1816. *The possibility of negotiating on this border is therefore still open*²⁰

¹⁶ Marlborough House Discussions (at p. 8), *supra* Chapter 2, note 70.

¹⁷ *Ibid.*, p. 11.

¹⁸ See, e.g., SCM, p. 19, para. 3.12 ("the 10° line was selected as a boundary for the territorial waters because of, to use present day terminology, a special circumstance, namely the need to guarantee the Netherlands sole responsibility for the care for and supervision of all shipping traffic in the approaches to a river under its sovereignty"); p. 27, para. 3.33 (referring to "the continuing validity of navigational interests as a special circumstance *in the territorial sea*") (emphasis added).

¹⁹ Text of Motion adopted by the States of Suriname on 7 October 1965. See MG, Vol. III, Annex 102.

²⁰ Report on the Discussion held 30 November 1965, *supra* Chapter 2, note 46. See MG, Vol. II, Annex 43.

4.17 Thus, Suriname's extreme claim to a 10° maritime boundary line in the continental shelf was an element of its negotiating strategy. Having decided not to budge on any of its land boundary claims, Suriname entered the negotiations with Guyana with only one card to play: the maritime boundary in the continental shelf. It was only by means of a compromise there that Suriname could hope to obtain Guyana's agreement to Suriname's land claims. In other words, Suriname adopted its claim to the 10° line in the continental shelf precisely to have room to compromise it. There is nothing improper in this approach but it underscores that Suriname's 10° claim was not premised on a belief that it was equitable. To the contrary, the claim was advanced precisely because it was *not* equitable and therefore could be compromised in return for what Suriname really wanted -- the New River Triangle. Suriname's 10° claim was aptly described by the head of Guyana's delegation at Marlborough House, Mohammed Shahabudeen (then Guyana's Solicitor General): "We say with respect that to project the river valley beyond the river proper to a 100 miles out to the continental shelf is an artificial procedure which fails to bring us to grips with the realities of the situation."²¹

4.18 The historical record reveals that the Dutch, too, never regarded Suriname's claim to a 10° boundary line in the continental shelf as equitable. In fact, the Dutch vigorously opposed the claim -- as revealed in records recently obtained by Order of the Tribunal from the archives of the Netherlands Foreign Ministry. As described in the Memorial, shortly after the adoption of the 1958 Convention on the Continental Shelf, the Netherlands -- acting on its own initiative -- proposed to the United Kingdom that the continental shelf boundary between British Guiana and Suriname be settled on the basis of an equidistance line. The British responded positively.²² As of 1964, according to an internal memorandum recently disclosed to Guyana, the position of the Dutch Foreign Ministry on the continental shelf boundary was "that it had *already been agreed* with the British Government that the principle of equidistance would be accepted in this respect, as shown by the Dutch Aide Memoire concerned dated 6 August 1958 and the reply to this received from the Foreign Office dated 13 January 1959."²³ In November 1965, in regard to Dr. Essed's statement of Suriname's negotiating position vis-à-vis British Guiana (quoted above), the Deputy Director General of the Dutch Foreign Ministry, Mr. van Boetzelaer, wrote that "there is an extremely exaggerated and unrealistic idea on the part of Suriname about the 'rights' which the Netherlands (Suriname) can claim in certain border areas."²⁴ The memorandum (obtained by Order of the Tribunal) continues:

In this context there was a plan for a discussion to take place which I would chair, with the Suriname delegation, which would be attended for our part by DGPZ and/or POAD, JURA and DWH, as well as a representative of the Cabinet of the Deputy Prime Minister, Mr. Biesheuvel, in order to obtain a clear insight into the wishes of Suriname,

²¹ Marlborough House Minutes (at p. 12), *supra* Chapter 1, note 35.

²² MG, pp. 26-27, para. 3.32 (citing *Aide Memoire* from the Netherlands to the United Kingdom (6 August 1958) [hereinafter "Aide Memoire from the Netherlands (6 August 1958)"]. See MG, Vol. II, Annex 66.

²³ Memorandum regarding the Borders between Surinam and British Guyana and Surinam and French Guyana (11 March 1964), *supra* Chapter 1, note 13 (emphasis in original).

²⁴ Memorandum from Mr. E.O. Baron van Boetzelaer on Border arrangement Surinam/British Guyana (19 November 1965), *supra* Chapter 1, note 16.

and on the other hand, *to try to convince Suriname of the weakness, not to say the impossibility of achieving (part of) their claims.*²⁵

4.19 Other recently disclosed Dutch documents similarly refer to the “weakness, not to say impossibility” of Suriname’s claims.²⁶ In March 1966, in preparation for the negotiations that were to take place at Marlborough House, the Foreign Minister of the Netherlands “emphatically pointed” out to the Prime Minister of Suriname that Suriname should abandon its argument for a 10° line in the continental shelf:

M. [*i.e.*, the Minister] also emphatically pointed [out] that if Suriname wishes to achieve anything with British Guyana, it must not deviate from the equidistance principle for the delimitation of the continental shelf.²⁷

4.20 Immediately following the Marlborough House talks, in another internal memorandum the Dutch Foreign Ministry expressed displeasure that “the Suriname delegation in London adopted the point of view that this delimitation should *not* follow the equidistance line, but should follow a *different* course, on the grounds of ‘special circumstances’ (in the sense of Art. 6 of the Geneva Convention on the CS).”²⁸ The memorandum continued: “This is not a surprise to us, to the extent that we were already aware that Suriname wishes to claim a larger part of the CS than that country is entitled to, according to the equidistance principle.”²⁹ After emphasising that “a delegation of the Kingdom *cannot* adopt the *legal view* that there are any ‘special circumstances’ in the sense of the Geneva Convention,” the memorandum concludes:

the Government of the Kingdom should expressly instruct the Suriname delegation never to appeal to the view that the delimitation of the Suriname CS should deviate from the equidistance line *in law*.³⁰

4.21 The Dutch Government’s refusal to accept Suriname’s position on the continental shelf boundary is also reflected, *inter alia*, in the letter sent by the Prime Minister of the Netherlands to the Prime Minister of Suriname setting out Suriname’s boundaries on the eve of its independence in November 1975.³¹ Guyana and Suriname agree on the text of this letter.³² They disagree, however, on its meaning. According to the Counter-Memorial, the

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Memorandum on Surinam – British Guyana Boundary (31 March 1966), *supra* Chapter 1, note 15.

²⁸ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Letter from J.M. den Uyl, Prime Minister of the Kingdom of the Netherlands to H.A.E. Arron, Prime Minister, Government of the Republic of Suriname (25 November 1975) (original in Dutch, translation provided by Suriname) [hereinafter “Letter of 25 November 1975 from the Prime Minister of the Netherlands”]. See MG, Vol. II, Annex 46.

³² In relevant part, it states that the boundary runs

along a line with a direction of 10° east of True North through the territorial sea, without prejudice to the rights which according to international law belong to the sovereign

letter shows that the Netherlands endorsed the 10° line “as marking Suriname’s boundary with Guyana in both the territorial sea of Suriname and in the maritime zones beyond the territorial sea.”³³ Suriname’s assertion is, however, inconsistent with the actual text of the letter. The plain meaning indicates that the Netherlands believed that the continental shelf boundary should follow an equidistance line.

4.22 In addressing Suriname’s rights beyond the territorial sea, it is conspicuous that the Netherlands defined those rights generally by reference to “international law.”³⁴ Applicable international law at the time was reflected in the 1958 Convention on the Continental Shelf, which provided for delimitation in the continental shelf to be based on equidistance, absent either special circumstances or historical title. As the recently-disclosed documents from the Dutch archives reveal, it was the position of the Netherlands that no special circumstances existed to justify a departure from the equidistance line, as to which there was already an agreement in principle with the British; historical title was never asserted. If, as Suriname claims, the Netherlands Prime Minister had meant to say that Suriname’s maritime boundary with Guyana followed the 10° line through the continental shelf as well as the territorial sea, he presumably would have chosen a more direct formulation for saying so. Instead, he chose a form of words that suggests exactly the opposite of what Suriname argues. The letter itself underscores the point. The first sentence states: “In compliance with your request, and assuming that *the territory of a country should be defined as clearly as possible at its attaining independence*, I have the honour of informing you of the following with regard to the boundaries of Suriname.”³⁵ Consequently, the fact that the Netherlands eschewed a direct statement in support of the 10° line in favour of an invocation of general principles of international law favours the conclusion that the Netherlands rejected Suriname’s 10° claim in the continental shelf. This is precisely what the recently-disclosed documents from the Dutch archives confirm.

IV. The Parties’ Conduct in Relation to an Equidistance Line, Including the 34° Line Claimed by Guyana

A. The Conduct of the United Kingdom and the Netherlands

4.23 The conduct of the United Kingdom and the Netherlands, and then of Guyana and Suriname, demonstrates that all Parties recognised that an equidistance line would produce an equitable delimitation of the maritime boundary. The Parties’ mutual recognition that equidistance yields an equitable result began in 1958, shortly after the adoption of the 1958 Convention on the Continental Shelf. As previously discussed,³⁶ on 6 August 1958, the Netherlands Embassy in London delivered an *Aide Memoire* to the United Kingdom Foreign Office proposing an agreement that would establish the Guyana/Suriname continental shelf

Republic of Suriname as a coastal state in the part of the sea area delimited by the continuation of this line.

Ibid.

³³ SCM, p. 23, para. 3.26.

³⁴ See *supra* note 32 (providing relevant text of the letter).

³⁵ Letter of 25 November 1975 from the Prime Minister of the Netherlands, *supra* note 31 (emphasis added).

³⁶ MG, pp. 26-27, para. 3.32. See also *supra* para. 4.18.

boundary by reference to an equidistance line.³⁷ The text of the *Aide Memoire* is worth revisiting here because it so directly refutes Suriname's argument that the equidistance principle does not yield an equitable result in this case. In pertinent part it states:

The Convention on the Continental Shelf ... is considered to lay down *acceptable* general principles of international law concerning the delimitation of continental shelves.

...

It is deemed desirable that such an agreement [concerning the continental shelf] be concluded between the Netherlands and the United Kingdom by exchange of notes *in which the principle of "equidistance" ... would be adopted* as the determinant of the line dividing the continental shelf adjacent to Suriname and British Guiana.³⁸

4.24 The Dutch view that it was both "acceptable" and "desirable" to adopt the principle of equidistance for the delimitation of the boundary in the continental shelf was reiterated on numerous occasions, including a bilateral meeting on 15 October 1958, in which the Parties mutually acknowledged that they were "both wedded to the principle of the 'median line'" and "that there was nothing between [them] as to how the line was to be drawn."³⁹ The Counter-Memorial does not dispute these events, but attempts to minimise them. For example, Suriname states: "Suriname does not contest the diplomatic history that indicates that at one stage in the late 1950s the colonial powers were considering an equidistance line as the continental shelf boundary."⁴⁰ This and similar statements are apparently intended to blur the much sharper reality that there was an unequivocal agreement between the Dutch and the British that equidistance was an equitable way to delimit the maritime boundary. Indeed, as stated above, documents recently disclosed to Guyana from the archives of the Netherlands Foreign Ministry by order of the Tribunal reveal that, in the view of the Dutch government, "*it had already been agreed* with the British Government that the principle of equidistance would be accepted in this respect."⁴¹

4.25 Suriname argues that, even if the Parties agreed in principle to use an equidistance line in the continental shelf, they never agreed on "the line itself,"⁴² in part due the absence of reliable maps of the delimitation area. Although it is true that the lack of reliable maps was not without consequence, this does not detract from their agreement that the maritime

³⁷ *Aide Memoire* from the Netherlands (6 August 1958), *supra* note 22.

³⁸ *Ibid.* (emphasis added).

³⁹ Letter from E.W.A. Scarlett, Colonial Office to C.M. Anderson, Foreign Office (16 October 1958) [hereinafter "Letter from the Colonial Office to the Foreign Office (16 October 1958)"]. See MG, Vol. II, Annex 23.

⁴⁰ SCM, p. 10, para. 2.16; p. 19, para. 3.14 ("The Netherlands and United Kingdom carried out some preparatory work to identify an equidistance line for the continental shelf at the end of the 1950s."); p. 20, para. 3.15 ("In the late 1950s the Netherlands and the United Kingdom considered the possibility of delimiting the continental shelf between Suriname and Guyana by application of the equidistance method.").

⁴¹ Memorandum regarding the Borders between Surinam and British Guyana and Surinam and French Guyana (11 March 1964), *supra* Chapter 1, note 13 (emphasis in original).

⁴² SCM, p. 21, para. 3.18.

boundary should be delimited by means of equidistance. Indeed, the initial 1958 Dutch *Aide Memoire* references active steps the Dutch Navy was already taking to correct the problems with existing charts by creating a new one.⁴³ Both Parties thus viewed the imprecision of existing charts as nothing more than a practical impediment to be overcome on the way toward achieving the agreed goal of creating a proper equidistance line. In 1958, the British developed an equidistance line to delimit British Guiana's concession to California Oil Company along a putative boundary with Suriname. The line, of which the Dutch were advised (and specifically informed that it was without prejudice to the joint development of an agreed equidistance line) commenced at Point 61 and generally followed an azimuth of N32E.⁴⁴ There was no protest from either the Dutch or the Surinamese.

4.26 Dutch and Surinamese conduct evidencing acceptance of the equidistance principle continued through the early 1960s. In December 1961, the United Kingdom proposed a draft boundary treaty that included a provision delimiting the continental shelf by means of a segmented equidistance line with an average bearing of N34E. As set forth in the Memorial,⁴⁵ the proposed equidistance line was developed by Commander Kennedy based on Dutch chart 217, precisely because the Dutch were most likely to recognise it as a good faith effort "to follow the principles on which both [the British] and the Dutch [had] agreed [*i.e.*, equidistance principles]."⁴⁶ Accordingly, the maritime boundary proposed in the 1961 draft treaty represented the United Kingdom's best effort to give practical effect to the Parties' existing agreement that the continental shelf boundary should be delimited by means of an equidistance line.

4.27 The Counter-Memorial suggests that the Parties' joint endorsement of the equidistance method ended in 1962 when the Netherlands communicated its counter-draft treaty to the United Kingdom.⁴⁷ As Suriname now professes to see it, the 1962 Dutch draft "employed the 10° Line to delimit the territorial sea and the continental shelf, a position that has been maintained by Suriname up to the present."⁴⁸ This argument is supported neither by the actual wording of the draft treaty⁴⁹ nor by Suriname's internal documents. According to a 21 June 1966 briefing note to the Dutch Deputy Prime Minister for a meeting with a Netherlands parliamentary committee: "*Suriname had already agreed to the equidistance line being used to determine the border on the continental shelf in 1962 (as well as being prepared to 'exchange' the triangle for the thalweg), [although] it later changed its mind.*"⁵⁰

⁴³ *Aide Memoire* from the Netherlands (6 August 1958), *supra* note 22.

⁴⁴ MG, pp. 25-26, paras. 3.29-3.30 (explaining that the concession's eastern boundary ran from Point 61 at N13E for only three 3 nm, and from there, at N32E for a distance of 69 miles up to a point on the 25 fathom line).

⁴⁵ *Ibid.*, pp. 29-30, paras. 3.37-3.39.

⁴⁶ *Ibid.*, Vol. II, Annex 25.

⁴⁷ 1962 Dutch Draft Treaty between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland establishing the frontier between Suriname and British Guiana, *supra* Chapter 2, note 6.

⁴⁸ SCM, p. 37, para. 3.62.

⁴⁹ The text in fact makes no mention of the continental shelf, but proposes only that the maritime boundary consist of a "line with a true bearing 10° East of true North" from Point 61. 1962 Dutch Draft Treaty, *supra* Chapter 2, note 6.

⁵⁰ Briefing Note for the Dutch Deputy Prime Minister for a meeting with the Parliamentary Committee (21 June 1966) (original in Dutch, translation provided by Guyana) (emphasis added). See MG, Vol. II, Annex 44.

Consequently, as of 1962, Suriname was on record as having agreed to an equidistance line to delimit the boundary in the continental shelf.

4.28 In 1965, British Guiana issued another oil concession in the boundary area. The eastern limit of the concession area, awarded to Royal Dutch Shell, proceeded from Point 61 along an azimuth of N33E, closely approximating the segmented equidistance line with an average bearing of N34E drawn by Commander Kennedy in 1961.⁵¹ Although the concession was well publicised (and Royal Dutch Shell was well known to the Dutch and the Surinamese), there was no protest either from the Netherlands or Suriname. To the contrary, when Royal Dutch Shell later drilled a well in the area licenced to it by Guyana, logistical support was provided from Paramaribo.⁵² Thus, Suriname is wrong to assert that “there was never any practice in reliance on the equidistance line between the colonial powers.”⁵³ To the contrary, the Dutch dispatched their naval forces to survey the delimitation area for the purpose of drawing an accurate equidistance line; the British used contemporaneous Dutch charts to develop an equidistance line that they incorporated into a draft treaty; and British Guiana issued two oil concessions bounded in the east by lines closely approximating the British-drawn equidistance line, without protest from the Netherlands or Suriname.

4.29 By late 1965 Suriname appears to have “changed its mind” about the desirability of an equidistance boundary in the continental shelf. In 1966, it explicitly rejected Guyana’s proposal at the Marlborough House talks for an equidistance boundary line of “33-34 degrees.”⁵⁴ But, as indicated above, Suriname did not reject the historical equidistance line proposed by Guyana because of the inequity of the division of maritime space that such a line would have produced. Nor did Suriname contend that its proposed 10° line was more equitable -- or equitable at all. Rather, considerations of equity were subordinated to Suriname’s larger strategic goal of using its 10° claim as leverage to help it secure the New River Triangle.

4.30 This negotiating position put Suriname in conflict with the Netherlands as well as Guyana. As of 1966 -- both before and after the Marlborough House talks -- it was the clear position of the Netherlands that the continental shelf boundary should be settled by means of an equidistance line. According to the contemporary Dutch and British charts, that meant a line with a general bearing of N34E. As indicated above, the documents recently disclosed to Guyana by order of the Tribunal reveal that in March 1966, in preparation for the Marlborough House talks, the Dutch Foreign Minister “emphatically pointed out” to Suriname’s Prime Minister that in bargaining with Guyana, Suriname “must not deviate from the equidistance principle for the delimitation of the continental shelf.”⁵⁵ The Foreign Minister implored Suriname to adopt a different strategy for wresting the New River Triangle from Guyana, one that would not depart from acceptance of the equidistance principle in the continental shelf: “As regards the triangle in the South, one of Suriname’s powerful trump

⁵¹ MG, p. 32, para. 3.44. *See also* Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965). *See* MG, Vol. III, Annex 107.

⁵² Affidavit of Clemsford A. Pollydore, former Geologist with the Guyana Geology Department and Petroleum Engineer with the Guyana Ministry of Energy and Mines. *See* MG, Vol. IV, Annex 177.

⁵³ SCM, p. 63, para. 5.2.

⁵⁴ Marlborough House Minutes (at pp. 10-11), *supra* Chapter 1, note 36.

⁵⁵ Memorandum on Surinam – British Guyana Boundary (31 March 1966), *supra* Chapter 1, note 15.

cards is that it owns the Corantine River, with which it can apply pressure in various ways if necessary. References could be made to this without resorting to threats during the discussion in London.”⁵⁶ In June 1966, after the Marlborough House talks, the Netherlands criticised Suriname for attempting “to claim a larger part of the CS than that country is entitled to, according to the equidistance principle,” and resolved to “expressly instruct the Suriname delegation never to appeal to the view that the delimitation of the Suriname CS should deviate from the equidistance line *in law*.”⁵⁷

B. *The Conduct of Suriname*

4.31 The Counter-Memorial devotes the better part of a full chapter -- Chapter 5 -- to reprising at great length the Parties’ conduct with respect to the granting of oil concessions in the area between the N10E and N34E lines. Suriname’s presentation, which spans 18 pages⁵⁸ and includes 20 map inserts, is crafted so as to foster the impression that Suriname was actively cultivating oil fields as far west as the 10° line year-in, year-out. On examination, however, it becomes clear that Suriname’s argument is based on a rhetorical device. The Counter-Memorial reviews the Parties’ oil concession practises chronologically, year-by-year. In so doing, Suriname is able to invoke each of its concessions in multiple passages, thus creating the impression that it was far more active than it really was.

4.32 Another of the techniques Suriname uses to exaggerate its oil concession practise is to attack Guyana’s Memorial by asserting dishonesty in Guyana’s description of the facts. Adopting a disturbingly antagonistic tone, Suriname goes so far as to accuse Guyana of “gross misrepresentation of the facts.”⁵⁹ These attacks are wholly unjustified. Guyana’s Memorial pointed out clearly that Suriname had issued oil concessions in the area between the N10E and N34E lines and displayed exactly where they were. Indeed, the Counter-Memorial does not add a single name to the list of Suriname’s concessions previously identified by Guyana. The fact is, when Suriname’s concessions are examined, they do not support Suriname’s claim for a 10° line. To the contrary, they reinforce the conclusion that Suriname recognised that the historical equidistance line equitably distributes the relevant maritime area between the two Parties.

4.33 Suriname’s oil concession history can be divided into two periods: before and after the 1982 Convention. In the latter period, between 1982 and 2004 (when the present proceedings were initiated), Suriname issued five concessions in the area between the 10° and 34° lines. In the three most recent concessions, the western boundary line coincided with a line of N33E (measured from Point 61). The two remaining concessions existed on paper only. Thus, Suriname’s concessions to Burlington (in 1999),⁶⁰ Repsol (in 2003) and Maersk (in 2004)⁶¹ -- all of which were bounded in the west by a line of 33° -- closely approximate the historical equidistance line and provide evidence that notwithstanding Suriname’s formal

⁵⁶ *Ibid.*

⁵⁷ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11.

⁵⁸ SCM, pp. 63-81, paras. 5.1-5.44.

⁵⁹ *Ibid.*, p. 67, para. 5.10.

⁶⁰ MG, Chapter 4, Plate 32 (following p. 60).

⁶¹ *Ibid.*, Vol. V, Plates 33-34 (Repsol and Maersk concessions).

claim to a 10° line, the delimitation produced by the historical equidistance line is equitable. The two paper concessions, which indicated a 10° boundary line in the west, were issued to Staatsolie and Pecten (both in 1993). The concession to state-owned Staatsolie was, in effect, a concession by Suriname to itself and therefore constitutes little more than a restatement of Suriname's formal claim to the 10° line. Moreover, Staatsolie never engaged in any activities of its own in its "concession area." Rather, it issued "service contracts"⁶² to others, including the concessions to Burlington, Repsol and Maersk that had a western boundary line of N33E. With regard to Pecten, the record shows that no exploratory activity was ever contemplated. This was only a paper concession in the purest sense; the purpose was merely to gather and analyse data that had previously been collected by other licencees.⁶³

4.34 The Counter-Memorial is notably defensive about these post-1982 concessions, and particularly the three concessions with a western boundary line of N33E. Suriname attempts to derive some solace from the fact that Burlington's map of the concession area (depicted in Plate 32 of the Memorial) shows Suriname's claimed N10E boundary line as well as the N33E line that represented the western boundary of the concession area.⁶⁴ In Guyana's view, this only underscores the fact that the concession ignored Suriname's 10° claim in deference to a line approximating the historical equidistance line. There is no better way of pictorially representing the Parties' shared view that the N34E line represented an equitable division of the two States' maritime areas and the N10E line did not. Further, there is no suggestion in the record that Burlington ever undertook any exploration activity within that small fraction of its concession area that lay west of the N34E line.

4.35 Even more defensive is Suriname's attempt to explain away its use of the N33E line as the western boundary of the concessions issued to Repsol and Maersk. Suriname tries to minimize the impact of these concessions by contending that they were issued after the CGX incident in 2000 and thus "were clearly intended not to intrude into areas known to be in dispute."⁶⁵ According to Suriname, "[t]he restraint shown by Staatsolie was practiced so as not to inflame the boundary problem."⁶⁶ Suriname's self-congratulation is difficult to reconcile with the facts. First of all, the Repsol and Maersk concessions used the same N33E boundary line as Suriname's 1999 Burlington concession which *predated* the CGX incident. Second, having threatened and then used armed force to expel CGX's drilling rig, it is ironic that Suriname should applaud itself for self-restraint. And it strains credulity. The more likely conclusion is that the Repsol and Maersk concessions, like the Burlington concession, were further manifestations of the Parties' long-standing recognition of the fairness of the historical equidistance line.

4.36 Still struggling to deal with the Repsol, Maersk and Burlington concessions, Suriname offers yet another explanation: that Suriname was barred by an agreement with Guyana that neither Party would issue any concessions between the N10E and N34E lines. Suriname

⁶² See, e.g., SCM, p. 64, para. 5.5.

⁶³ MG, p. 55, para. 4.37 (citing Staatsolie, "Exploration History," available at <http://www.staatsolie.com/explorationinformation/3-1.html> [last viewed 31 January 2005] (referring to "paper studies" of offshore oil potential involving no seismic testing, drilling or other physical activity in the area).

⁶⁴ SCM, p. 85, para. 5.64.

⁶⁵ *Ibid.*, p. 85, para. 5.65.

⁶⁶ *Ibid.*, p. 89, para. 5.78.

cites, in this regard, the Memorandum of Understanding signed by representatives of the two States in 1991.⁶⁷ Suriname neglects to mention, however, that it never ratified the MOU, rendering it a nullity under Surinamese law, and that, in 1994, Suriname's Foreign Minister told his Guyanese counterpart that the MOU "had no validity." Suriname also cites a 1995 meeting between Staatsolie and the Guyana Geology and Mines Commission (which issued oil concessions on behalf of Guyana) as the source of the "agreement" that neither Party would issue concessions in the area claimed by both of them.⁶⁸ But a review of the "Agreed Minutes" of that meeting shows that no such agreement was reached.⁶⁹ To be sure, Staatsolie's S.E. Jharap "was of the *opinion* that some resolution to the [boundary] issue must be negotiated before either country should explore in the 'Area of Overlap'."⁷⁰ But "[h]e declared that it was the responsibilities of the respective Governments to urgently pursue the matter."⁷¹ GGMC's Brian Sucre responded that "Guyana's Foreign Ministry was eager to pursue the matter with Suriname, however, Suriname apparently was not keen to deal with the issue."⁷² Indeed, the Chairman of Suriname's Border Commission had only recently declared to Guyana that "the offshore area" was not "a subject of discussion."⁷³

4.37 Thus, Suriname cannot explain its respect for the N33E line in its most recent oil concessions as the fulfillment of an agreement with Guyana, since there plainly was none. For the same reason, the Counter-Memorial lacks credibility in accusing Guyana of being in breach of the non-existent agreement by issuing repeated concessions that extended as far east as the N34E line.⁷⁴ The explanation for the Parties' behaviour with respect to setting the boundaries of their oil concessions lies elsewhere. In Guyana's view, it lies in their mutual understanding that a boundary line of N33E or N34E produced an equitable division of their maritime spaces.

4.38 In the period prior to the 1982 Convention, Suriname issued three oil concessions: to Colmar, Staatsolie and Gulf. As initially issued in 1960, the Colmar concession extended to Suriname's western boundary with British Guiana without specifying where that boundary was.⁷⁵ The 10° line was belatedly inserted as the boundary in 1964/65⁷⁶ at the time Suriname first decided to claim such a line in the continental shelf for the reasons discussed in paras. 4.15 to 4.20. Suriname asserts that this concession remained "active" in whole or in part

⁶⁷ *Ibid.*, p. 77, para. 5.36.

⁶⁸ *Ibid.*, p. 78, para. 5.38.

⁶⁹ Agreed Minutes for 27 April 1995 Meeting of Staatsolie and Guyana Geology and Mines Commission (29 December 1995). See SPO, Vol. II, Annex 32.

⁷⁰ *Ibid.*, p. 5.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Report on the Inaugural Meeting of the Border Commissions of Guyana and Suriname (17-18 May 1995). See RG, Vol. II, Annex R15.

⁷⁴ SCM, p. 78, para. 5.39.

⁷⁵ MG, p. 49, para. 4.26 (citing Th. E. Wong, "Hydrocarbon Exploration and Exploitation in Suriname," printed in *The History of Earth Sciences in Suriname* 388 (1998)). See MG, Vol IV, Annex 172.

⁷⁶ "Summary of 1 March 1965 Concession Agreement of Colmar Surinaamse Olie Maatschappij" and "Map of Colmar Suriname 1965 Concession Area," *Petroleum Concession Handbook* (1965) [extracts]. See MG, Vol. IV, Annex 169 (including 10° line).

throughout the period lasting until 1982.⁷⁷ In reality, however, the Colmar concession was never “active” in any meaningful sense to the west of the N34E historical equidistance line. As Guyana showed in its Memorial, such drilling as took place in the concession area occurred well to the east (*i.e.*, on the Surinamese side) of the 34° line.⁷⁸ In addition, whatever seismic testing was done was limited either to the eastern side of the historical equidistance line or occurred beyond the 200-metre isobath that represented the seaward limit of the line at that time.⁷⁹ Suriname’s Counter-Memorial makes no effort to deny these facts. Consequently, far from supporting Suriname’s claim that its conduct was consistent with its claim to a N10E line, the actual conduct of the Colmar concession shows Surinamese respect for and tacit recognition of the fairness of the N34E line.

4.39 The same is true for Suriname’s concession to Staatsolie in 1980. This was in effect another concession by Suriname to itself. Although, the Counter-Memorial presents the paper trail creating and describing the concession in minute detail, it is striking that Suriname produces no evidence of any actual conduct undertaken by Staatsolie to effectuate its formal concession west of the 34° line. All it did during this period was to issue a “service contract” to Gulf in 1980. This short-lived concession included only a small wedge lying west of the N34E line, all of which was located in the near-shore area. While there is some suggestion that Gulf conducted limited seismic testing, the record is undisputed that Guyana protested this activity and Staatsolie responded by advising Guyana that the concession had lapsed and would not be reissued.⁸⁰

4.40 Guyana’s views on the equitableness of the historical equidistance line finds support not only in Suriname’s conduct relating to the maritime boundary under discussion here, but also in Suriname’s conduct in regard to its boundary with French Guiana. As discussed in Chapter 3, Suriname has reached an agreement in principle with France to delimit its only other maritime boundary -- with French Guiana -- by means of an equidistance line along an azimuth of N30E.⁸¹ Numerous maps published by Staatsolie depict the Suriname/French Guiana boundary as a simplified version of the equidistance line; this is illustrated in **Plate R16** (in Volume III only). As shown in Chapter 3, Suriname’s pursuit of an equidistance solution with French Guiana cannot be reconciled with its opposition to an equidistance line in these proceedings based on the geographical circumstances. Although this issue was raised in the Memorial, Suriname chose not to respond directly. Instead, the Counter-Memorial sidestepped the problem by denying that a final agreement on the French Guiana boundary has been reached and by arguing that, in any event, the matter is irrelevant (a view that the Independent Expert appointed by the Tribunal does not seem to share).⁸² Suriname also sought to avoid dealing with this issue by objecting to Guyana’s access to documents in the archives of the Dutch Foreign Ministry. The vehemence of Suriname’s resistance only underscores the fact that its contradictory positions on equidistance cannot be reconciled. In fact, the Dutch documents -- ultimately produced to Guyana by Order of the Tribunal -- show

⁷⁷ See, e.g., SCM, p. 72, para. 5.25.

⁷⁸ MG, p. 49, para. 4.26.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, pp. 50-51, para. 4.28.

⁸¹ See *supra* Chapter 3, paras. 3.48-3.49.

⁸² SCM, p. 12, paras. 2.19-2.20. Professor Dr. Hans Van Houtte, Report: Examination of Dutch Archives Files, Section 6.

that Suriname and the Netherlands decided more than 40 years ago that the boundary with French Guiana should be based on equidistance and never waived from this position (which was also agreed to by France).⁸³ Surely if Suriname were in a position to articulate a credible argument as to why the application of the equidistance principle yields an equitable result with French Guiana but not with Guyana, it would have done so in the Counter-Memorial.⁸⁴

C. *The Conduct of Guyana*

4.41 In the Memorial, Guyana showed that, from the moment it achieved independence in May 1966, it adopted and maintained the position of the United Kingdom that its maritime boundary with Suriname should be an equidistance line commencing at Point 61 and extending seaward along an azimuth of N34E. This position was communicated to Suriname at the Marlborough House talks in June 1966, one month after Guyana became independent. Guyana's lead spokesman, Solicitor General Mohamed Shahabuddeen invoked "applicable principles of general international law" as follows:

I have in mind the Geneva Convention of 1958 on the Continental Shelf, article 6(1), and the Geneva Convention of 1958 on to [*sic*] Territorial Sea, articles 12 and 24(3). These provisions in general provided for demarcation in the continental shelf and contiguous zone in accordance with the principle of equidistance. *The application of these principles would result in a line running generally at 33-34 degrees east of true North ...*⁸⁵

4.42 This is the same line that was developed by the British as an equidistance line based on contemporaneous Dutch charts, and incorporated into the treaties that the United Kingdom proposed to the Netherlands in 1961 (as a segmented equidistance line with an average bearing of 34°) and again in 1965 (as a straight line with a bearing of N34E).⁸⁶ As shown in Chapter 4 of the Memorial, this is also the same line that Guyana has claimed as its maritime boundary with Suriname ever since, in its official publications and communications, in its laws (especially the regulations promulgated under the Petroleum Act of 1986⁸⁷) and in numerous oil concessions.⁸⁸ Guyana's conduct for more than four decades consistently

⁸³ Memorandum on Continental Plateau Suriname (9 April 1964), *supra* Chapter 3, note 77, *See* RG, Vol. II, Annex R34; Preparatory Memorandum for Meeting with Prime Minister of Suriname (29 April 1964) (original in Dutch, translation provided by Guyana), *see* RG, Vol. II, Annex 35; Report of the interdepartmental commission of experts with regard to determining the territorial waters and the continental shelf of the Kingdom (3 June 1954) (original in Dutch, translation provided by Guyana). *See* RG, Vol. II, Annex R29.

⁸⁴ Suriname attempts to use the *Jan Mayen* case to support its position that its agreement to delimit its maritime boundary with French Guiana by means of an equidistance line is irrelevant to the issues here. SCM, p. 12, para. 2.22. The case is inapposite for the reasons stated in Chapter 5, paragraph 5.52 of this Reply.

⁸⁵ Marlborough House Minutes, *supra* Chapter 1, note 36.

⁸⁶ Thus, the Counter-Memorial errs when it states that "Guyana did not offer a rationale for its position" at the Marlborough House talks, and again, when it says that this was the "first time" Suriname had been "confront[ed]" with a N34E claim. SCM, p. 28, para. 3.36.

⁸⁷ 1986 Petroleum (Exploration and Production) Act, Act No. 3 of 1986 (1986). *See* RG, Vol. II, Annex R24 (this document was inadvertently produced in incomplete form at MG, Vol. III, Annex 100).

⁸⁸ *See, e.g.*, MG, p. 37, para. 4.1.

manifests its understanding that the historical equidistance line of N34E equitably divides the relevant maritime area.

4.43 Suriname chides Guyana's use of the term "historical equidistance line" on grounds that it is neither "historical" nor an "equidistance line."⁸⁹ Such criticism is misplaced. The Memorial demonstrates how the 34° line was derived by British Commander Kennedy in the early 1960s as an equidistance line⁹⁰ and illustrates graphically⁹¹ that it closely approximates an equidistance line drawn on either of the two contemporaneous maps of the delimitation area: Dutch map 217 or British map 1801. As stated by Mr. Shahabuddeen at the Marlborough House talks, Guyana regarded the 33°/34° line developed by Commander Kennedy as an accurate equidistance line;⁹² and based on the existing maps he was correct. Guyana's subsequent conduct, including its public declarations, its official communications regarding its maritime boundary with Suriname and its oil concessions were predicated on the understanding that the 34° line was an equidistance line. Thus, for Guyana there was no distinction between equidistance and the 34° line. To be sure, more recent maps reflect a variance between a strict equidistance line and the 34° historical equidistance line, as Guyana itself recognised and depicted in Plate 36 of the Memorial.⁹³ Thus, the Memorial distinguishes between strict equidistance based on more recent maps and historical equidistance as plotted on the maps of the earlier period. The historical equidistance line is the line drawn on those maps and then relied on by Guyana thereafter. In that sense, it is both "historical" and an "equidistance line."

4.44 Suriname further alleges that Guyana's conduct does not support its claim to the historical equidistance line: "Guyana's practice in respect of the eastern limit of its 200-nautical-mile zone is *wholly at variance* with the 34° line. All of that practice points to use of the *equidistance* line as the limit of the Guyanese exclusive economic zone."⁹⁴ In support of this allegation, the Counter-Memorial points to three elements: (i) Guyana's Maritime Boundaries Act of 1977; (ii) Guyana's practise with respect to fisheries; and most importantly (iii) Guyana's practise in regard to oil concessions. As shown below, none of these elements detracts from the conclusion that Guyana, by its conduct, has manifested its clear understanding that the delimitation produced by the historical equidistance line is equitable.

4.45 Consistent with the 1958 Convention on the Continental Shelf, to which Guyana became a party at independence, Guyana's Maritime Boundaries Act⁹⁵ defines Guyana's maritime boundaries by reference to an equidistance line in the absence of agreement with neighbouring states.⁹⁶ Suriname attacks this and claims that it manifests an inconsistent commitment to the historical equidistance line. To buttress this attack, the Counter-Memorial

⁸⁹ See, e.g., SCM, p. 24, para. 3.27.

⁹⁰ MG, p. 28, para. 3.35.

⁹¹ *Ibid.*, Chapter 3, Plate 7 (following p. 30).

⁹² Marlborough House Minutes (at p. 10), *supra* Chapter 1, note 36.

⁹³ MG, Chapter 8, Plate 36 (following p. 92).

⁹⁴ SCM, p. 28, para. 3.38.

⁹⁵ 1977 Maritime Boundaries Act, Act No. 10 of 1977 (1977). See MG, Vol. III, Annex 99.

⁹⁶ *Ibid.*, art. 35.

includes three Figures (3 through 5) that depict a so-called “1977 Maritime Boundaries Act Line.”⁹⁷ The impression given is that the Act included or at least described such a line. It did not. The Act neither included, described nor made reference to a particular boundary line. Suriname’s “1977 Maritime Boundaries Act Line” is thus a complete fiction. In reality, the 1977 Maritime Boundaries Act and its use of “equidistance” are best understood by reference to what had come before. As Mr. Shahabudeen stated at the Marlborough House talks in 1966, Guyana understood that application of equidistance principles yielded “a line running in a general direction 33°-34° east of true North.”⁹⁸ The 1977 Maritime Boundaries Act was based on that understanding, as was the subsequent Petroleum Act of 1986⁹⁹ and the regulations promulgated thereunder, which codified Guyana’s maritime boundary with Suriname as a line commencing at Point 61 and extending seaward for 200 nm along an azimuth of N34E. Guyana’s laws are thus not inconsistent with its claim to the historical equidistance line and its understanding that the delimitation produced by the N34E line is equitable.

4.46 With regard to fisheries, Guyana acknowledged in its Memorial that its fisheries enforcement zone did not extend as far east as the N34E line. Guyana does not dispute the statement in the Counter-Memorial that its fisheries zone limit “broadly coincides with the equidistance line and has no relation to the 34 degree line.”¹⁰⁰ Ironically, Suriname’s depiction of its own fisheries enforcement practices, in Figure 29, shows that, with very few exceptions, it too confined its exercise of fisheries jurisdiction to its own side of the equidistance line.¹⁰¹ As the Counter-Memorial explains: “While Suriname does not have the resources to engage in constant fisheries surveillance throughout its claimed waters, that does not mean that it has renounced its claim to the 10° line...”¹⁰² Guyana agrees, and adds that the same is true for Guyana in regard to its claim to the 34° line.

4.47 With regard to oil concessions, Suriname claims that “Guyana’s own oil practice does not support the 34° line”¹⁰³ because its concessions do not all extend as far as the historical equidistance line. In support of this contention, Suriname launches still more *ad hominem* attacks against the “drafters of Guyana’s Memorial”¹⁰⁴ and accuses Guyana of “deliberate misrepresentations.”¹⁰⁵ Guyana does not consider this intemperate approach to be appropriate. It simply notes that it has been completely forthcoming with the facts. All the data showing the eastern limits of Guyana’s concessions were included in the Memorial. In fact, they were all graphically depicted in Guyana’s Plates submitted in connection

⁹⁷ SCM, Chapter 3, Plates 3-5 (following p. 30).

⁹⁸ Marlborough House Minutes, *supra* Chapter 1, note 36.

⁹⁹ 1986 Petroleum (Exploration and Production) Act, Act No. 3 of 1986 (1986). See RG, Vol. II, Annex R24 (this document was inadvertently produced in incomplete form at MG, Vol. III, Annex 100).

¹⁰⁰ SCM, p. 29, para. 3.40.

¹⁰¹ *Ibid.*, Chapter 5, Figure 29 (following page 92).

¹⁰² *Ibid.*, pp. 90-91, para. 3.84 note 425.

¹⁰³ *Ibid.*, p. 68, para. 5.13.

¹⁰⁴ *Ibid.*, p. 79, para. 5.41.

¹⁰⁵ *Ibid.*, p. 84, para. 5.57.

therewith.¹⁰⁶ Moreover, the relevant point is not that each and every one of the concessions reached all the way to the N34E line but that Guyana's oil concession practise is consistent with the Parties' mutual recognition that a maritime boundary along the historical equidistance line is equitable. This is confirmed by looking at the eastern boundaries of Guyana's concessions (as set forth in the Memorial):

<u>Year</u>	<u>Licensee</u>	<u>Eastern Limit</u>
1965	Royal Dutch Shell	N32.6E
1972	Oxoco	N33.3E
1979	Major Crude	N33.3
1981	Seagull/Denison Mines	N33.5E°
1988	LASMO/BHP	N33.8E
1989	Petrel ("Abary")	N31E
1989	Petrel ("Berbice")	N34E
1998	CGX	N34E° / N31.4E°
1999	Esso	N31.8°

4.48 It is true that not every one of Guyana's concessions reached the N34E line. However, six of the ten concessions extended to the east as far as or beyond the N33E line. The rest extended at least to N31E. Moreover, as described in the Memorial, extensive oil exploration activity including seismic testing was performed throughout all of these concession areas, right up to the N34E line. By contrast, Surinamese licences generally did not traverse beyond the 34° line.¹⁰⁷ Thus, Guyana's oil concession practise is fully consistent with its understanding that a delimitation of the maritime boundary with Suriname along a line of or approximating N34E would be equitable.¹⁰⁸

¹⁰⁶ See, e.g., MG, Vol. V, Plate 6 (showing the eastern boundary of the 1958 California Oil Co. Concession); Plate 8 (showing the eastern boundary of the Royal Dutch Shell Oil Concession of 1965); Plate 9 (showing current oil concessions of Guyana and Suriname, including eastern boundaries of Guyanese concessions).

¹⁰⁷ *Ibid.*, p. 38, para. 4.4.

¹⁰⁸ Suriname suggests that the *Cameroon/Nigeria* case renders irrelevant to these proceedings the oil concession practises of both Parties because those practises do not manifest an express or tacit agreement on the boundary line separating their respective oil concessions. SCM, p. 52, para. 4.40. Guyana disagrees with Suriname's interpretation of the Court's decision. In that case, Nigeria argued that the maritime boundary should take "into account the wells and other installations on each side of the line established by oil practice and should not change the status quo in this respect." *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)*, 2002 I.C.J. 1, 122, para. 256 (10 October 2002). In effect, Nigeria argued that the maritime boundary was defined by the two States' oil concession practises, without more. The ICJ rejected that argument, stating that "oil concessions and oil wells are not *in themselves* to be considered as relevant circumstances justifying the adjustment or shifting of the provisional

V. Conclusion

4.49 In the circumstances of this case, the conduct of the Parties is relevant. Even under the strict test of relevance preferred by Suriname -- conduct that is mutual, sustained, consistent and unequivocal -- the Parties have shown by their actions that they are in agreement that the land boundary terminus and starting point for maritime delimitation is located at Point 61. The same test applied to Suriname's claim to a 10° boundary line shows that there was no agreement in regard to that line either in the territorial sea or the continental shelf, and that the 10° line was not "inextricably linked" to Point 61. Under the test of relevance that was articulated by the International Court in the *Tunisia/Libya* and *Libya/Malta* cases, the conduct of the Parties further demonstrates that, regardless of their formal legal positions and the absence of an agreement (tacit or otherwise), they each understood that a delimitation along the 34° historical equidistance line would produce an equitable result and that, by contrast, a delimitation by means of a 10° line would not.

delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account." *Ibid.*, 140-141, para. 304 (emphasis added). Guyana is not contending in these proceedings, as Nigeria did before the Court, that the Parties' respective oil concessions in themselves define the course of their maritime boundary. To the contrary, as set forth above, Guyana's view is that the conduct of the Parties' as a whole, including their oil concession practises, shows that they each understood that a delimitation of their maritime boundary by means of an equidistance line would be equitable. To this end, Guyana considers it significant that the line of 33-34° that separates the Parties' oil concessions was originally developed as an equidistance line in conformity with contemporaneous British and Dutch charts. The fact that the respective oil concessions of Guyana and Suriname crystallised around this line demonstrates that, by their conduct, they considered it equitable, even if they never reached an express or tacit boundary agreement. *Tunisia v. Libya*, 1982 I.C.J. 18, 84, para. 118 ("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").

CHAPTER 5

THE APPLICABLE LAW

5.1 Suriname has responded to Guyana's arguments on the law to be applied in Chapter 4 of its Counter-Memorial, substantial parts of which appear as academic treatise rather than pleading. Suriname is in general agreement with Guyana. At times, however, Suriname departs from established international practise, as reflected in settled international jurisprudence. Suriname appears anxious to avoid any use of an equidistance line -- whether provisional, historic or other -- and to this end has sought refuge in case-law that pertains to very different geographic circumstances. In this Chapter Guyana addresses the material points of difference in approach to the law, and it is to be read against the background of the relevant geographic circumstances described in Chapter 3.

5.2 Chapter 7 of Guyana's Memorial addressed in overview "The Law of Maritime Delimitation." That Chapter described the evolution of the relevant rules of international law in the three relevant periods:

- First, in the period prior to 1958 during which the United Kingdom and the Netherlands reached agreement on the identification of the terminus of the land boundary and the starting point for the delimitation of the maritime boundary, as well as the understanding concerning the delimitation of the territorial sea along a line of N10E for a distance of 3 miles so as to make effective the administration of navigation along a channel on the western side of the Corentyne River;¹
- Second, in the period after 1958 when the law of the sea was first codified contemporaneously with efforts by the United Kingdom and the Netherlands to reach agreement on equidistance for the delimitation of the maritime areas off the coasts of Guyana and Suriname;² and
- Third, the period after 1982 and the adoption of the UN Convention on the Law of the Sea and its Articles 15, 74 and 83 which set forth the rules that are to be applied by the Tribunal in resolving the present dispute.³

Suriname has not challenged Guyana's description of the evolution of the rules.

5.3 Chapter 7 of Guyana's Memorial identified the salient international judicial and arbitral practise relating to the applicable international rules, including seven key principles:⁴

- (1) the Tribunal must apply Articles 15, 74 and 83 of the 1982 Convention (Suriname has not disputed this, although it has carefully avoided discussion of the requirements of these provisions);⁵

¹ MG, pp. 79-80, paras. 7.7-7.10.

² *Ibid.*, pp. 80-84, paras. 7.11-7.20.

³ *Ibid.*, pp. 84-86, paras. 7.21-7.27.

⁴ *Ibid.*, pp. 86-89, paras. 7.28-7.36.

⁵ *See* MG, p. 86, para. 7.29.

(2) the Tribunal should decide on the course of a single delimitation line (Suriname agrees);⁶

(3) the Tribunal should begin by delimiting the territorial sea⁷ and then delimit the continental shelf and exclusive economic zone⁸ (Suriname has avoided addressing the delimitation of the territorial sea in accordance with Article 15);

(4) the rules governing the delimitation of the territorial sea and that of the continental shelf and EEZ are closely related but not identical⁹ (Suriname is silent on this issue but has not challenged the point);

(5) for the delimitation of each of these three maritime areas practise begins by provisionally drawing an equidistance line and then considering whether there are circumstances that should lead to an adjustment of each line (Suriname has not disputed this point);

(6) geological and geomorphological factors are of no material relevance to this case (Suriname agrees)¹⁰; and

(7) the conduct of the Parties (including that of the colonial powers and that in respect of oil concessions) is an important consideration in effecting the boundary delimitation, not least because it demonstrates the Parties' attitudes toward the equidistance and historical equidistance lines and their equitableness¹¹ (Suriname disagrees).

5.4 Chapter 4 of the Counter-Memorial identifies three areas in which Suriname is in significant disagreement with the approach taken by Guyana. The disagreements concern:

(1) the relevance of the Parties' agreement that the Tribunal should delimit a single maritime boundary;

(2) the significance of certain geographic factors; and

(3) the Parties' inheritance of agreement on a delimitation of the territorial sea along the N10E line.

⁶ SCM, p. 6, para. 2.2; p. 38, para. 4.1; p. 125, para. 9.2B.

⁷ See MG, p. 87, para. 7.31.

⁸ See MG, p. 88, para. 7.32.

⁹ *Ibid.*

¹⁰ SCM, p. 7, para. 2.6.

¹¹ MG, pp. 88-89, paras. 7.34, 7.36.

I. Single Maritime Boundary

5.5 Guyana has invited the Tribunal to delimit a single maritime boundary to divide the territorial sea and maritime jurisdictions of Guyana and Suriname for a distance of 200 nm.¹² Suriname has indicated its agreement.¹³

5.6 Notwithstanding agreement, Suriname proceeds to a lengthy and academic excursus on the history of the single maritime boundary in international law.¹⁴ The relevance of this exercise is not clear to Guyana, since the point is altogether absent from Suriname's application of the law to the facts.

5.7 Suriname argues that the concept of the single maritime boundary does not appear in the 1982 Convention, that Guyana's request is accordingly rooted in customary international law and not the 1982 Convention, and that the boundary that Guyana seeks will not be the result of the application of Articles 15, 74 and 83 of the 1982 Convention.¹⁵ Implicit in Suriname's approach is an effort to decouple these proceedings from the 1982 Convention as the applicable law. Suriname's purpose seems to be to avoid the requirements of Article 15, that impose an equidistance line, and to create a legal framework that would see the Tribunal refashion geography in a way that the 1982 Convention does not allow. The approach is misconceived. The law to be applied by this Tribunal is set forth in Article 293: the applicable law is the 1982 Convention and "other rules of international law not incompatible with [the 1982] Convention." It cannot be disputed that the applicable law includes Articles 15, 74 and 83 of the 1982 Convention as well as such customary rules as are not incompatible with the Convention. Those customary rules include the concept of the single maritime boundary, the application of which is fully consistent with the relevant rules of delimitation to be found in the 1982 Convention.

5.8 Guyana's approach reflects that adopted by the International Court of Justice in its most recent case-law. Two ICJ cases are especially pertinent.

5.9 In *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* the Court was applying customary law (as both States were not parties to the 1982 Convention) and also establishing a single maritime boundary. However, the Court recognised that the task of delimitation to be carried out in relation to the territorial sea was different from that to be carried out in relation to areas beyond the territorial sea:

Delimitation of territorial seas does not present comparable problems [to the drawing of a single line which would delimit both the continental shelf and the superjacent water column], since the rights of the coastal State in the area concerned are not functional but territorial, and entail sovereignty over the sea-bed and the superjacent waters and air column. Therefore, when carrying out that part of its task, the Court has to apply first and foremost the principles and rules of international customary law which refer to the delimitation of the territorial sea, while taking into account that

¹² *Ibid.*, p. 135, Submission 1.

¹³ SCM, p. 38, para. 4.1.

¹⁴ *Ibid.*, pp. 38-44, paras. 4.2-4.17.

¹⁵ *Ibid.*, p. 38, paras. 4.1-4.2.

its ultimate task is to draw a single maritime boundary that serves other purposes as well.¹⁶

The Court proceeded in two phases: *first* it delimited the territorial sea (in accordance with rule of customary law reflected in Article 15 of the 1982 Convention), and *second* it delimited the maritime areas beyond the territorial sea.¹⁷ In carrying out that task it recognised also that its ultimate task was “to draw a single maritime boundary.”¹⁸ Guyana has adopted precisely the same two-phased approach in the present proceedings, having regard to the fact that the language of Article 15 of the 1982 Convention (and the obligations it imposes) are different from the language and obligations of Articles 74 and 83.

5.10 In its discussion of this ICJ judgment Suriname has provided only a partial and incomplete account. Suriname claims that in carrying out its task the International Court declined to give effect to a 1947 line drawn by the former British colonial power. It explains that the Court’s decision was motivated “because of the character of the delimitation process in which it was engaged.”¹⁹ Suriname’s suggestion seems to be that historical factors are to be excluded where a single maritime boundary is being established. This is wrong, as a careful reading of the relevant part of the Judgment makes clear. The International Court of Justice ruled as follows:

237. In its Application of 1991 Qatar requested the Court to draw the single maritime boundary “with due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947” (see paragraph 31 above). According to Qatar

“the 1947 line in itself constitutes a special circumstance insofar as it was drawn in order to permit each of the two interested States actually to exercise its inherent right over the sea-bed. While it cannot be said that any historic title has derived from that decision, the situation thus created however does not fall short of it.”

During the oral proceedings Qatar modulated this view when it said that

“the nature of the 1947 line . . . relates not so much to the line itself, as drawn, but rather to the elements on the basis of which the line was drawn by the British; in our view the important factor is, above all, that this line was drawn starting from the principal coasts and was constructed in a simplified manner on the basis of a few significant points.”

238. Bahrain has contested the relevance of the 1947 line for the present delimitation process on a number of grounds. It stated, *inter alia*, that its course does not meet the requirements of contemporary law and that it merely served the purpose of regulating activities of oil companies and

¹⁶ *Qatar v. Bahrain*, 2001 I.C.J. 40, 93, para. 174.

¹⁷ *Ibid.*, 94, para. 176.

¹⁸ *Ibid.*, 91, para. 168.

¹⁹ SCM, pp. 42-43, para. 4.14.

was not intended by its authors nor understood by its recipients as having binding legal force.

239. The Court does not need to determine the legal character of the “decision” contained in the letters of 23 December 1947 to the Rulers of Bahrain and Qatar with respect to the division of the sea-bed. It suffices for it to note that neither of the Parties has accepted it as a binding decision and that they have invoked only parts of it to support their arguments.

240. The Court further observes that the British decision only concerned the division of the sea-bed between the Parties. The delimitation to be effected by the Court, however, is partly a delimitation of the territorial sea and partly a combined delimitation of the continental shelf and the exclusive economic zone. The 1947 line cannot therefore be considered to have direct relevance for the present delimitation process.²⁰

5.11 Suriname’s position is analogous to that of Qatar. It relies on the N10E line in the territorial sea as a “special circumstance” but not on grounds of historical title. Yet it is clear from these unabridged paragraphs of the Judgment that the principal reason for the Court’s decision was not “because of the character of the delimitation process in which it was engaged,” as Suriname has put it. That was only a supplementary reason. The Court declined to take account of the 1947 line because *neither* party had accepted it as binding and *both* only relied on parts of it. Moreover, it is clear from the pleadings that unlike the present case, the practise of neither Qatar nor Bahrain after independence was based on the 1947 line. In this way the 1947 “decision” is very different from the 1936 decision of the United Kingdom and the Netherlands concerning the location of the terminus of the land boundary and the starting point of the maritime boundary, which Guyana and Suriname, both before and after independence, *did* then respect. It may be that this has caused Suriname to skirt over the real significance of this part of the International Court’s judgment. In any event, the Court’s Judgment in the *Qatar v. Bahrain* case confirms the correctness of the methodology proposed by Guyana.

5.12 This is further confirmed by the approach of the International Court of Justice in the *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria*. Both States were parties to the 1982 Convention, and both invited the Court to establish a single maritime boundary:

The Court observes that the maritime areas on whose delimitation it is to rule in this part of the Judgment lie beyond the outer limit of the respective territorial seas of the two States. The Court further recalls that the Parties agree that it is to rule on the maritime delimitation in accordance with international law. Both Cameroon and Nigeria are parties to the United Nations Law of the Sea Convention of 10 December 1982, which they ratified on 19 November 1985 and 14 August 1986 respectively. *Accordingly the relevant provisions of that Convention are applicable, and in particular Articles 74 and 83 thereof*, which concern delimitation of the

²⁰ *Qatar v. Bahrain*, 2001 I.C.J. Reports, 40, 113, paras. 237-240.

continental shelf and the exclusive economic zone between States with opposite or adjacent coasts. Paragraph 1 of those Articles provides that such delimitation must be effected in such a way as to “achieve an equitable solution.”²¹

Suriname’s assertion that “the Court did not address the application of the delimitation articles of the Convention”²² is evidently not correct. The Court did not have to focus on Article 15, having identified a longstanding agreement on the boundary in the territorial sea to which it gave effect.

5.13 The Court then proceeded to note that “the Parties agreed in their written pleadings that the delimitation between their maritime areas should be effected by a single line.”²³ At paragraph 288 it stated:

The Court has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are when a line covering several zones of coincident jurisdictions is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. This method, which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an “equitable result.”²⁴

In delimiting the line beyond the territorial sea the Court did not indicate whether the methodology it was applying -- the “equitable principles/relevant circumstances method” -- derived from the Articles of the Convention or customary law. It certainly did not say that it was not applying Articles 74 and 83 of the Convention, or that it was applying customary law. It did not have to do so, since it plainly considered the two approaches to be synonymous. But the crucial point is that it only proceeded to delimit the area beyond the territorial sea *after* it had first decided on the delimitation of the territorial sea: the delimitation of the territorial sea is addressed at paragraphs 247 to 268 of the Judgment, and the delimitation of the areas beyond is addressed in the section that follows at paragraphs 269 to 307 of the Judgment. The delimitation of the latter in no way informs the delimitation of the former. The Parties’ agreement on a single maritime boundary does not affect the delimitation of the territorial sea.

5.14 The 1982 Convention endorsed the emergence of the concept of the exclusive economic zone as a new maritime area in which a coastal State has exclusive sovereign rights, both over the non-living resources and the living resources.²⁵ In contrast to the continental shelf, the EEZ is an area not extending beyond 200 nm from the territorial sea baselines.²⁶ The delimitation of its outer limits is thus solely based on a distance criterion,

²¹ *Cameroon v. Nigeria*, 2002 I.C.J. 1, 133, para. 285 (emphasis added).

²² SCM, pp. 43-44, para. 4.15.

²³ *Cameroon v. Nigeria*, 2002 I.C.J. 1, 134, para. 286.

²⁴ *Ibid.*, 135, para. 288.

²⁵ 1982 Convention, arts. 55-75.

²⁶ *Ibid.*, arts. 57.

irrespective of the physical nature of the continental shelf as a natural prolongation.²⁷ Furthermore, coastal States have to proclaim formally an EEZ whereas the continental shelf accrues to them *ipso facto* and *ab initio*.²⁸ Guyana proclaimed its exclusive economic zone through its Maritime Boundaries Act of 1977,²⁹ while Suriname enacted the Law Concerning the Extension of the Territorial Sea and the Establishment of a Contiguous Zone in 1978.³⁰

5.15 Suriname's contention that Guyana neglects the concept of the exclusive economic zone in its Memorial holds no substance.³¹ The delimitation of the continental shelf and that of the EEZ were dealt with simultaneously by the Third U.N. Conference on the Law of the Sea, despite the different nature of the zones and the separate question of the limits.³² The delimitation discussion has resulted in an identical formula, which can be found in both Article 74 and Article 83 of the Convention. The Parties agree that the delimitation of their continental shelf and exclusive economic zone is to be effected upon the basis of these Articles 74 and 83. In the relevant part of these identical provisions it is stated that the delimitation of the continental shelf/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."

5.16 Accordingly, Guyana sees no reason to depart from the approach adopted by the International Court of Justice in the cases of *Qatar v. Bahrain* and *Cameroon v. Nigeria*. As applied to these proceedings the applicable law of the 1982 Convention determines that the Tribunal should first delimit the territorial sea and then proceed to delimit the maritime areas beyond the territorial sea. In carrying out that task the Tribunal is to apply Articles 15, 74 and 83 of the 1982 Convention. As described in Chapter 8 of Guyana's Memorial, Article 15 contrasts with Articles 74 and 83 in significant ways, not least because it is a zone of sovereignty. The differences are also reflected in the two-step approach adopted by the International Court in *Qatar v. Bahrain* and *Cameroon v. Nigeria*: the territorial sea is to be delimited first, then maritime areas beyond the territorial sea are to be delimited.

II. The Significance of Certain Geographic Factors

5.17 Suriname devotes a significant part of its chapter on applicable law to what it calls "the legal role of the geography of the coast as the predominant relevant circumstance in delimitation of a single maritime boundary."³³ Suriname's strategy is clear: it seeks to

²⁷ As observed in *Oppenheim's International Law*, p. 781 (R. Jennings & A. Watts eds., 9th ed. 1995): "In fact one effect of the distance criterion for the outer limit of the exclusive economic zone is to rob the natural prolongation idea of its relevance in a large number, probably the majority, of real situations."

²⁸ *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, 1969 I.C.J. 3, 29, para. 39 (20 February 1969).

²⁹ Maritime Boundaries Act 1977, Act No. 10 of 1977 (1977). See MG, Vol. III, Annex 99.

³⁰ Law Concerning the Extension of the Territorial Sea and the Establishment of a Contiguous Economic Zone of 14 April 1978 (1978) (original in Dutch, translation on deposit with United Nations). See MG, Vol. III, Annex 104.

³¹ SCM, pp. 22-23, paras. 3.24-3.26.

³² Third U.N. Conference on the Law of the Sea, Official Records, Vol. XVIII, Resumed 11th Session, Documents of the Conference, 155-221 (1982).

³³ SCM, pp. 44-45, para. 4.18.

diminish the role of equidistance and enhance the function of its particular conception of geography, arguing that “coastal geography constitutes the basis of title” and “the idea of a frontal projection of that coastal geography is fundamental.”³⁴ The approach is misconceived, as Guyana has shown in Chapter 3 of this Reply. It is premised on a view of the geography of the area in question that is distinct from the facts and geographic realities. It is also an approach that is internally contradictory. At paragraph 4.19 of its Counter-Memorial Suriname claims that the dispute “can and should be resolved exclusively on the basis of coastal geography.” Yet it then proceeds to ignore actual geography and base its support for the N10E line on a submerged geological feature and the angular position of a long-discarded shipping channel that may never have existed, is unrelated to coastal geography, and in any event was never claimed to have extended more than three nautical miles.

5.18 In support of its particular conception of geography Suriname invokes a number of “fundamental principles”: these include the need to avoid cut-off (or encroachment); the absence of any legal presumption in favour of equidistance; the need to disregard irregularities in the configuration of the coastlines where they would have a disproportionate effect; and the need for an equitable division of areas of overlapping coastal front projections.³⁵ Suriname’s arguments in relation to each of these matters is misconceived, for the reasons set out in detail later in this and subsequent Chapters. Suriname either identifies a legal principle where none exists, or mischaracterises the conditions under which a principle or rule is properly to be applied.

5.19 Suriname’s approach may be reduced to three basic techniques: (a) re-inventing the geographic facts -- for example, claiming that Suriname is prejudiced by its concave coast when in reality it is Guyana that is prejudiced by the convexity on Suriname’s coast at Hermina Bank;³⁶ (b) seeking to extend its coastline by identifying a fictitious basepoint at Vissers Bank (based on a newly-created map of doubtful accuracy in the midst of these proceedings); and (c) failing to provide an appropriate geographic methodology and metrics - - for example in relation to the assertions concerning the diminished lengths of Guyana’s coastline.

5.20 Guyana notes that Suriname stresses that its coastline (or the relevant coastline) is longer than that of Guyana.³⁷ That is wrong, both geographically and legally. It fails to take account of the Arbitral Award of 3 October 1899 delimiting the land boundary between the Colony of British Guiana and the United States of Venezuela.³⁸ In accordance with Article XIV of the 1897 Treaty of Arbitration that award is a “full, perfect, and final settlement of all the questions referred to the Arbitrators.”³⁹ The award has not been set aside or vacated or replaced by any other binding legal obligation. The Award definitively establishes the

³⁴ *Ibid.*, p. 57, para. 4.55.

³⁵ *Ibid.*, p. 57, para. 4.54.

³⁶ *See supra* Chapter 3, paras. 3.14-3.15.

³⁷ SCM, p. 57, para. 6.58.

³⁸ Award of the Arbitral Tribunal under Article I of the Treaty of Arbitration signed at Washington on 2 February 1897 between Great Britain and the United States of Venezuela (3 October 1899). *See* RG, Vol. II, Annex R21.

³⁹ Treaty of Arbitration signed at Washington on 2 February 1897 between Great Britain and the United States of Venezuela, art. XIV. *See* RG, Vol. II, Annex R21.

western boundary of Guyana with Venezuela. Suriname and the Tribunal must respect the award. Indeed, Suriname has recognised its binding effect: at the Meeting of Conference of CARICOM Heads of Government in March 1999, held in Paramaribo, Suriname joined with all other CARICOM governments in reiterating “their support for the territorial integrity and sovereignty of Guyana.”⁴⁰ Suriname is not entitled to ignore legal or geographic reality.

5.21 Nor can Suriname ignore history and conduct, as it generally seeks to do. In this regard Suriname has adopted a contradictory stance, conceding that conduct is relevant where it touches on the effectiveness of its claimed N10E line, which is entirely dependent on an alleged “special circumstance” (the long-discarded potential navigation channel) that is said to reflect a historical practise from 1936.⁴¹ The fact that such practise came to an end -- if indeed it ever existed at all -- by the early 1960s is conveniently ignored by Suriname. The upshot is that Suriname is content to rely on conduct where no evidence is before the Tribunal (in relation to the use of the potential navigation channel on the Corentyne), but to disregard conduct where there is evidence before the Tribunal (as in the case of the well documented conduct of the colonial powers and of all the Parties in respect of various oil concessions). Conduct either is or is not relevant: Suriname cannot have it both ways.

5.22 Suriname’s inconsistent approach is coupled with an equally imaginative re-reading of the applicable rules of international law and a selective reading of international jurisprudence. Suriname’s approach is clear. It seeks to place itself in the position of Germany (in the *North Sea* cases) and Cameroon (in the maritime dispute with Nigeria). Suriname in effect claims to be a geographically disadvantaged State that invites the Tribunal to utilise equitable principles to refashion given geographical facts. Suriname’s argument faces numerous difficulties: the case-law provides no support for its arguments on the relationship between geography and equitable principles; its own geographical circumstances are far removed from those of Germany in the *North Sea*, with which it seeks to compare itself; and its arguments are remarkably similar to those of Cameroon that were decisively rejected by the International Court of Justice in delimiting that country’s maritime boundary with Nigeria.

5.23 Guyana responds to Suriname’s claims by reference to the fundamental principles that are applicable, recognising that the 1982 Convention and international law:

- (1) do not allow the Tribunal to apportion maritime areas by reference to general considerations of equity;
- (2) do not correct the effects of history and geography by a redistribution of territorial or jurisdictional maritime zone in favour of States that claim to be “geographically disadvantaged”;
- (3) do not empower the Tribunal to refashion the geographical situation of the Parties;

⁴⁰ Communiqué Issued on the Conclusion of the Tenth Inter-Sessional Meeting of the Conference of the Heads of Government of the Caribbean Community (CARICOM) 4-5 March 1999, Paramaribo, Suriname. See RG, Vol. II, Annex R16.

⁴¹ SCM, pp. 103-104, paras. 6.51-6.53.

(4) allow history and conduct to be taken into account in delimiting maritime spaces by indicating what line or lines the Parties themselves may have regarded as equitable.

The application of these principles and the response to Suriname's detailed arguments are addressed in Chapters 6 and 7. Guyana regrets that in drafting this section it has been required to include numerous extracts from the case-law, as a result of Suriname's selective references.

A. The 1982 Convention and International Law Do Not Allow the Tribunal to Apportion Maritime Areas by Reference to General Considerations of Equity

5.24 The Tribunal is not called upon to apply general considerations of equity. As the International Court has made clear, "equity is not a method of delimitation."⁴² In the area beyond the territorial sea the Tribunal must, however, achieve "an equitable solution." An equitable solution plainly favours a shift of the provisional equidistance line to the east: this is fully explained in Chapter 3. Geographic considerations all point in favour of Guyana's arguments: the configuration of the relevant coasts, the lengths of the coasts, the sizes of the appointment maritime areas and the division of the relevant space effected by the provisional equidistance line are all factors that would justify a shift of the provisional equidistance line to the east.

5.25 Notwithstanding the clarity of the ICJ's ruling, Suriname argues that the Tribunal should divide areas of overlapping coastal front entitlements "equitably."⁴³ In support of this claim it relies on a number of cases, but principally the *North Sea Continental Shelf Cases*. The approach is misconceived: the geographical circumstances are very different, as **Plate R2** (following page 36) shows; in the present case the coastal irregularities relate to the convexity at Hermina Bank on Suriname's coast that distorts the provisional equidistance line for its last 100 nm in a way that favours Suriname;⁴⁴ and Suriname's own line is based on a long-discarded and hypothetical geological feature (a potential navigation channel) that lies in close proximity to the land boundary terminus. Suriname's argument also faces the real difficulty that in the *North Sea Continental Shelf Cases* the International Court did not delimit the territorial sea. Suriname is in effect inviting the Tribunal to apportion areas of maritime space, rather than to delimit, and to refashion an existing geographic reality. That is a task the International Court indicated was not to be carried out. The law of the sea does not permit the apportionment of rights over any maritime spaces by reference to general considerations of equity. The Court's words merit careful consideration as they are directly relevant to this case:

Delimitation is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination de novo of such an area. Delimitation in an equitable manner is one thing, but not the same thing as awarding a just and equitable share of a previously undelimited area, even though in a number of cases the results may be comparable, or even identical.

⁴² *Cameroon v. Nigeria*, 2002 I.C.J. 1, 138, para. 294

⁴³ SCM, pp. 48-51, paras. 4.27-4.36.

⁴⁴ See *supra* Chapter 3, paras. 3.14-3.15.

More important is the fact that the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, -- namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right. In order to exercise it, no special legal process has to be gone through, nor have any special legal acts to be performed. Its existence can be declared (and many States have done this) but does not need to be constituted. Furthermore, the right does not depend on its being exercised. To echo the language of the Geneva Convention, it is "exclusive" in the sense that if the coastal State does not choose to explore or exploit the areas of shelf appertaining to it, that is its own affair, but no one else may do so without its express consent.

It follows that even in such a situation as that of the North Sea, the notion of apportioning an as yet undelimited area considered as a whole (which underlies the doctrine of the just and equitable share) is quite foreign to, and inconsistent with, the basic concept of continental shelf entitlement, according to which the process of delimitation is essentially one of drawing a boundary line between areas which already appertain to one or other of the States affected. The delimitation itself must indeed be equitably effected, but it cannot have as its object the awarding of an equitable share, or indeed of a share, as such, at all, -- for the fundamental concept involved does not admit of there being anything undivided to share out. Evidently any dispute about boundaries must involve that there is a disputed marginal or fringe area, to which both parties are laying claim, so that any delimitation of it which does not leave it wholly to one of the parties will in practice divide it between them in certain shares, or operate as if such a division had been made. But this does not mean that there has been an apportionment of something that previously consisted of an integral, still less an undivided whole.⁴⁵

5.26 The same approach was followed by the Court of Arbitration in the *Anglo-French Continental Shelf Case*, which rejected France's claim that the doctrine of the equality of States constituted an equitable ground:

The doctrine of the equality of States, applied generally to the delimitation of the continental shelf, would have vast implications for the division of the continental shelf among the States of the world, implications which have been rejected by a majority of States and which would involve, on a

⁴⁵ *North Sea Continental Shelf*, 1969 I.C.J. 3, 22, paras. 18-20.

huge scale, that refashioning of geography repudiated in the North Sea Continental Shelf cases.⁴⁶

5.27 And again it was picked up by the International Court in the *Libya/Malta* case, in a passage to which Suriname does not refer:

The normative character of equitable principles applied as a part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of Parties to seek first a delimitation by agreement, which is also to seek an equitable result. That equitable principles are expressed in terms of general application, is immediately apparent from a glance at some well-known examples: the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature; the related principle of non-encroachment by one party on the natural prolongation of the other, which is no more than the negative expression of the positive rule that the coastal State enjoys sovereign rights over the continental shelf off its coasts to the full extent authorized by international law, in the relevant circumstances; the principle of respect due to all such relevant circumstances; the principle that although all States are equal before the law and are entitled to equal treatment, “equity does not necessarily imply equality” (I.C.J. Reports 1969, p. 49, para. 91), nor does it seek to make equal what nature has made unequal; and the principle that there can be no question of distributive justice.⁴⁷

And most recently in *Cameroon v. Nigeria* the International Court of Justice reiterated these fundamental principles, this time in a case for which the applicable law was the 1982 Convention:

The Court is bound to stress in this connection that delimiting with a concern to achieving an equitable result, as required by current international law, is not the same as delimiting in equity. The Court’s jurisprudence shows that, in disputes relating to maritime delimitation, equity is not a method of delimitation, but solely an aim that should be borne in mind in effecting the delimitation.

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” (I.C.J. Reports 1969, p. 49, para. 91). Although certain geographical peculiarities of maritime areas to be delimited may be taken into account by the Court, this is solely as relevant

⁴⁶ *Anglo-French Continental Shelf Case*, Decision of 30 June 1977, 18 I.L.M. 397, para. 195 (1979). See also *ibid.*, paras. 244-245, 249.

⁴⁷ *Libya v. Malta*, 1985 I.C.J. 13, 39, para. 46.

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 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” (*I.C.J. Reports 1969*, p. 50, para. 91).⁴⁸

In the present case the “incidental special feature” is the convexity at Hermina Bank, which shifts the provisional equidistance line in favour of Suriname. It is the consequences of that irregular feature which the Tribunal should abate.

5.28 These judgments and awards indicate that the approach proposed by Suriname is at variance with established international practise. Suriname has raised the same factors as did Cameroon, in particular the concavity of its coastline as compared to the convexity of Nigeria’s.⁴⁹ Applying the principles set forth above the International Court of Justice rejected Cameroon’s claim for a maritime delimitation.⁵⁰ The application of the long-established principles identified in these preceding paragraphs must have the same consequence for Suriname’s effort to refashion geography as they did for the approach proposed by Cameroon.

B. The 1982 Convention and International Law Do Not Correct the Effects of History and Geography by a Redistribution of Territorial or Jurisdictional Maritime Zones in Favour of States that Claim to be “Geographically Disadvantaged”

5.29 Suriname’s unstated argument is that it is a geographically disadvantaged State that would, but for the application of equitable considerations, be stuck with an inequitable equidistance line. The argument is wrong: Suriname is not geographically disadvantaged, as Chapter 3 of this Reply makes clear. But even if it were, Suriname’s argument that international law requires an equitable division of any area of overlapping coastal fronts⁵¹ is not supported by the 1982 Convention or any other rules of international law. Neither seek to correct the effects of geography or history by a territorial or jurisdictional redistribution of maritime areas for States that may be described as geographically disadvantaged. Suriname’s claim to redistributive justice is unmerited and unjustifiable. If followed it would introduce considerable instability into maritime statal relations.

5.30 This is clear from Article 70 of the 1982 Convention which establishes rights for geographically disadvantaged States in relation to the exclusive economic zone only. There

⁴⁸ *Cameroon v. Nigeria*, 2002 I.C.J. 1, 138, paras. 294-295.

⁴⁹ *Ibid.*, p. 127, para. 272; p. 138, para. 296; p. 139, para. 300.

⁵⁰ *Ibid.*, p. 138, para. 297; p. 139, para. 301.

⁵¹ SCM, pp. 48-51, paras. 4.27-4.36.

is no equivalent provision in relation to rights over the continental shelf. Article 70(2) defines geographically disadvantaged coastal States as those

whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the sub-region or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.⁵²

5.31 Suriname does not claim to be a “geographically disadvantaged State” within the meaning of Article 70. Self-evidently it cannot so claim. The drafters of the 1982 Convention did not make any special provision for geographically disadvantaged States to claim any entitlement to maritime zones. Rights associated with a disadvantaged State relate only to fisheries, not to continental shelf resources. Suriname is now inviting the Tribunal to ignore the 1982 Convention and refashion geography in ways that the Convention never intended.

5.32 In support of its claim to equitable division of overlapping fronts Suriname relies on the *Gulf of Maine* case.⁵³ It is not clear to Guyana how Suriname benefits from reliance on that case. The coastal geography was markedly different and it also involved unsettled issues of title over an island. Moreover, that case was concerned in significant part -- and in the relevant part for the purposes of this case -- with “opposite coasts” that did not possess a relationship of lateral adjacency,⁵⁴ in circumstances in which islands were present. In that case there were also differences in the lengths of the relevant coastlines, but that factor favours Guyana not Suriname. Moreover, the applicable law was particular to the circumstances of that case and was not that reflected in Articles 15, 74 and 83 of the 1982 Convention. Suriname refers to the part of the Judgment that invokes the objective of aiming “at an equal division of areas” where maritime projections overlap.⁵⁵ It is notable that Suriname does not refer the Tribunal to any other jurisprudence supporting the approach adopted by the Chamber. It is not an approach that has been followed, for example in the recent Judgment of the International Court in *Cameroon v. Nigeria*.

C. The 1982 Convention and International Law Do Not Empower the Tribunal to Refashion the Geographical Situation of the Parties

5.33 The justification for Suriname’s N10E line and the exclusion of an equidistance approach is premised on nothing less than a refashioning of geography: shortening Guyana’s coastline, adding an additional basepoint to Suriname’s coastline, constructing concave and convex coastlines where none appear, and relying upon non-existent coastal irregularities and then ignoring coastal irregularities that do exist (Hermina Bank). The system is fully discussed in Chapter 3. This approach suffers from numerous drawbacks, but most significantly the fundamental principle that the applicable law does not permit the Tribunal to refashion geography. Whilst the International Court of Justice has on occasion been sensitive

⁵² 1982 Convention, art. 70(2).

⁵³ SCM, p. 48, para. 4.28.

⁵⁴ *Gulf of Maine (Canada v. United States)*, 1984 I.C.J. 246, 334, para. 216.

⁵⁵ SCM, p. 48, para. 4.28; p. 51, para. 4.36.

to the unduly distorting effect of minor geographical features, Guyana is not aware of any example in which the mainland coastal frontage of a State has been discounted.

5.34 The International Court of Justice's most recent summary of the pertinent legal principles was in the *Cameroon v. Nigeria case*. The Court stated:

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” (I.C.J. Reports 1969, p. 49, para. 91). 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.⁵⁶

In that case the Court declined to take into account a claim as to the alleged concavity of Cameroon's coastline. No account was taken of any minor irregularities in the configuration of the coastline. No use was made of perpendiculars, or bisectors or the other approaches relied upon by Suriname to reconfigure the geographic circumstances. Suriname chooses to ignore this Judgment.

5.35 Suriname considers it appropriate to define relevant maritime spaces by using straight coastal façades, perpendiculars and angle bisectors.⁵⁷ This approach is not supported by the law. It relies on artificial techniques that are at odds with international practise and jurisprudence. In the case of *Qatar v. Bahrain* the ICJ observed that:

the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in its immediate vicinity.⁵⁸

5.36 Suriname has not drawn straight baselines. Yet it now seeks to achieve the same result by presenting inappropriate arguments as to artificially-straightened coastal façades, bisectors and perpendiculars that ignore actual geographic reality. The observations of the Court relating to exceptional practises apply equally in respect of the methodologies invoked by Suriname. They are not to be utilised in circumstances of adjacent States and where (Hermina Bank apart) the coast in question is not irregular in the sense identified by the Court.

⁵⁶ *Cameroon v. Nigeria*, 2002 I.C.J. 3, 138, para. 295.

⁵⁷ See, e.g., SCM, p. 49, para. 4.31; p. 56, para. 4.52.

⁵⁸ *Qatar v. Bahrain*, 2001 I.C.J. 40, 103, para. 212. See also 1982 Convention, art. 17.

5.37 Suriname finds it useful to refer to the *North Sea Continental Shelf Cases*, but it is selective in its approach. The starting point is the statement of the Court:

Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline. Equality is to be reckoned within the same plane, and *it is not such natural inequalities as these that equity could remedy*. But in the present case there are three States whose North Sea coastlines are in fact comparable in length and which, therefore, have been given broadly equal treatment by nature except that the configuration of one of the coastlines would, if the equidistance method is used, deny to one of these States treatment equal or comparable to that given the other two. Here indeed is a case where, in a theoretical situation of equality within the same order, an inequity is created. What is unacceptable in this instance is that a State should enjoy continental shelf rights considerably different from those of its neighbours merely because in the one case the coastline is roughly convex in form and in the other it is markedly concave, although those coastlines are comparable in length. It is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result.⁵⁹

5.38 A pre-requisite for any “refashioning” of geography is the existence of an “incidental special feature.” In the absence of any such feature -- as is the case in the present matter (with the exception of the convexity at Hermina Bank) -- equitable or other principles will not be invoked to remedy natural differences. Suriname cannot get around the evident difficulty it faces by relying on the argument that “the frontal projection of coasts ... was the central factor in *North Sea Continental Shelf*.”⁶⁰ The ICJ in the *North Sea Continental Shelf Cases* did not recognise any absolute right to a frontal projection, as Suriname implies, given that many delimitation disputes arise precisely because there may be an overlap between such projections. Suriname is not assisted by its assertion that the “frontal projection” principle “controlled the selection of the relevant coasts in both Gulf of Maine and Tunisia/Libya,”⁶¹ or by any of the other case law that it cites for that proposition. To speak of coastal fronts is to speak in generalities; applying equidistance is to apply a more precise approach that reflects the meeting point of coastal fronts. It is only because the precision of equidistance may lead to an inequity -- for example as a result of the geographic circumstances that pertained in the *North Sea Continental Shelf Cases* -- that other factors are to be taken into account *after* a provisional equidistance line has been identified. But Suriname is not Germany; Chapter 3 and **Plate 2** make that clear. And Suriname is not entitled to rely on an absolute right to a

⁵⁹ *North Sea Continental Shelf*, 1969 ICJ Report, 3, 49, para. 91 (emphasis added).

⁶⁰ SCM, p. 47, para. 4.26.

⁶¹ *Ibid.*

projection of its coastal front any more than is Guyana, and cannot properly make use of straight lines and bisectors and perpendiculars that distort the geographic realities.⁶²

5.39 The principle that geography is not to be refashioned has been endorsed consistently. In the *Anglo-French* case the Court of Arbitration confirmed that nature could not be refashioned and indicated the limits of its functions:

[I]t is rather a question of remedying the disproportionality and inequitable effects produced by particular geographical configurations or features in situations where otherwise the appurtenance of roughly comparable attributions of continental shelf to each State would be indicated by the geographical factors. Proportionality, therefore is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf.⁶³

5.40 The International Court in the *Tunisia-Libya* case adopted the same approach, after Tunisia first raised the question of whether one State or the other was favoured by nature. This was “an argument which the Court does not consider to be relevant since, even accepting the idea of natural advantages or disadvantages, ‘it is not such natural inequalities as these that equity could remedy.’⁶⁴ In the *Gulf of Maine* case the Chamber stated that “the facts of geography are not the product of human action amenable to positive or negative judgment, but the result of natural phenomena, so that they can only be taken as they are.”⁶⁵ In the *Libya-Malta* case the Court stated that “it is the coastal relationships in the whole geographical context that are to be taken account of and respected,” and:

The pertinent general principle, to the application of which the proportionality factor may be relevant, is that there can be no question of “completely refashioning nature”; the method chosen and its results must be faithful to the actual geographical situation.⁶⁶

5.41 These are the pertinent principles in the applicable law, well-established but ignored by Suriname. The burden is on Suriname to persuade the Tribunal of the existence of incidental special features that may have the effect of giving Guyana a disproportionate and inequitable maritime area. Suriname makes two arguments to that end. *First* it argues for the existence of a principle of avoiding “any” effect of encroachment on areas in front of a State’s coast; and *second* it argues for the principle that incidental coastal features or irregular coastal configurations should not be allowed to have a disproportionate effect.

5.42 As regards the so-called “principle of non-encroachment,” Suriname invokes the *North Sea Continental Shelf Cases*.⁶⁷ Contrary to the impression that Suriname seeks to

⁶² See *supra* para. 5.36.

⁶³ *Anglo-French Continental Shelf Case*, Decision of 30 June 1977, 18 I.L.M. 397, para. 101.

⁶⁴ *Tunisia v. Libya*, 1982 I.C.J. 18, 64, para. 79 (citing *North Sea Continental Shelf Cases*, 1969 I.C.J. 3, 50, para. 91)

⁶⁵ *Gulf of Maine (Canada v. United States)*, 1984 I.C.J. 271, para. 37.

⁶⁶ *Libya v. Malta*, 1985 I.C.J. 13, 45, para. 57.

⁶⁷ SCM, p. 47, paras. 4.25-4.26; p. 48, para. 4.29.

create, there is no such principle in international law, and as an equitable principle its effect is neither absolute nor applicable without particular regard to the geographical facts of any case. In the *North Sea* cases the International Court made it clear that the objective was to leave “as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.”⁶⁸ The Court plainly recognised that some degree of encroachment was inevitable, and did not in any way decide on the avoidance of any encroachment. What it objected to was the cutting off of a projection very shortly before the State concerned. The test is disproportion. There is no cutting off shortly in front of Suriname. Suriname’s selective quotation provides a misleading and erroneous impression.

5.43 Suriname claims that the Court took account the principle of non-encroachment to avoid a cut-off effect in various cases, including the Chamber in the *Gulf of Maine* case.⁶⁹ This is not correct. The United States invoked the so-called principle (along with various other principles),⁷⁰ but it was rejected by the Chamber:

Each Party’s reasoning is in fact based on a false premise. The error lies precisely in searching general international law for, as it were, a set of rules which are not there. This observation applies particularly to certain “principles” advanced by the Parties as constituting well-established rules of law [...] One could add to these the ideas of “non-encroachment” upon the coasts of another State or of “no cutting-off” of the seaward projection of the coasts of another State, and others which the Parties put forward in turn, which may in given circumstances constitute equitable criteria, provided, however, that no attempt is made to raise them to the status of established rules endorsed by customary international law.⁷¹

5.44 The Chamber was making clear the difference between rules of international law, on the one hand, and criteria for determining equitableness on the other hand. Suriname is melding law and equity, notwithstanding the clear statement by the Chamber as to the

⁶⁸ *North Sea Continental Shelf*, 1969 I.C.J. 3, 55, para. 101(C)(1).

⁶⁹ SCM, p. 50, para. 4.34.

⁷⁰ *Gulf of Maine (Canada v. United States)*, 1984 I.C.J. 246, 258, para. 12.

⁷¹ *Ibid.*, p. 298, para. 110. *See also ibid.*, 312, para. 157:

157. There has been no systematic definition of the equitable criteria that may be taken into consideration for an international maritime delimitation, and this would in any event be difficult a priori, because of their highly variable adaptability to different concrete situations. Codification efforts have left this field untouched. Such criteria have however been mentioned in the arguments advanced by the parties in cases concerning the determination of continental shelf boundaries, and in the judicial or arbitral decisions in those cases. There is, for example, the criterion expressed by the classic formula that the land dominates the sea; the criterion advancing, in cases where no special circumstances require correction thereof, the equal division of the areas of overlap of the maritime and submarine zones appertaining to the respective coasts of neighbouring States; the criterion that, whenever possible, the seaward extension of a State’s coast should not encroach upon areas that are too close to the coast of another State; the criterion of preventing, as far as possible, any cut-off of the seaward projection of the coast or of part of the coast of either of the States concerned; and the criterion whereby, in certain circumstances, the appropriate consequences may be drawn from any inequalities in the extent of the coasts of two States into the same area of delimitation.

distinction between legal rules and equitable criteria. The Chamber did not think it would be useful “to undertake a more or less complete enumeration in the abstract of the criteria that are theoretically conceivable, or an evaluation, also in the abstract, of their greater or lesser degree of equitableness.”⁷² As the Chamber put it:

The essential fact to bear in mind is, as the Chamber has stressed, that the criteria in question are not themselves rules of law and therefore mandatory in the different situations, but “equitable,” or even “reasonable,” criteria, and that what international law requires is that recourse be had in each case to the criterion, or the balance of different criteria, appearing to be most appropriate to the concrete situation.⁷³

5.45 In other words, criteria of the kind invoked by Suriname are not to be applied as law. The fact that they have been identified and applied as relevant criteria for assessing equitableness in one case does not mean that they are to be applied in a mechanical fashion in any another case. Yet, that is what Suriname now invites the Tribunal to do. It has misunderstood the approach taken by the International Court, and it has also failed to take account of the fact that the geographic and historic circumstances that the Chamber faced in the *Gulf of Maine* case were entirely different from those that pertain in the present case.

5.46 In the *Libya/Tunisia* case, the Court did not as such apply any “principle of non-encroachment.” It did make clear, however, that the “application of the principles and rules enunciated, and the factors indicated, by the Court in 1969 may lead to widely differing results according to the way in which those principles and rules are interpreted and applied, and the relative weight given to each of those factors in determining the method of delimitation.”⁷⁴ And the following year, in the *Libya/Malta* case -- which is not invoked by Suriname -- the Court referred to the “principle of non-encroachment by one party on the natural prolongation of the other, which is no more than the negative expression of the positive rule that the coastal State enjoys sovereign rights over the continental shelf off its coasts *to the full extent authorized by international law in the relevant circumstances.*”⁷⁵ These authorities enunciate an altogether different approach than that now invoked by Suriname. If there is any encroachment in the present case, then it would result from a N10E line cutting off Guyana’s natural prolongation, and not a N34E line cutting off Suriname. It is the convexity at Hermina Bank that shifts the last 100 miles of the provisional equidistance line to encroach on an area that would otherwise fall within the maritime zones of Guyana. It is also clear that a N34E line has less of an impact on Suriname in the territorial sea than an equidistance line. This is shown in **Plate R19** (following page 98).

5.47 Suriname elevates the “principle of non-encroachment” to a status that the International Court has declined to give it, and seeks to give it an effect which is wholly novel and unsupported by established jurisprudence. As addressed in Chapter 6 below, Suriname ignores entirely the cut-off effect which its own N10E line would have for Guyana, especially in the territorial sea. And Suriname ignores that Cameroon invoked the concept of non-encroachment in its case against Nigeria and that the International Court rejected it.

⁷² *Ibid.*, p. 313, para. 158.

⁷³ *Ibid.*

⁷⁴ *Libya v. Tunisia*, 1982 I.C.J. 18, 44, para. 38.

⁷⁵ *Libya v. Malta*, 1985 I.C.J. 13, 39, para. 46 (emphasis added).

Suriname's case is analogous to that of Cameroon. Suriname has presented no argument to explain why the Tribunal should adopt a different approach with regard to its claim than that adopted by the International Court in relation to Cameroon.

5.48 As regards the so-called principle that incidental coastal features or irregular coastal configurations should not be allowed to have a disproportionate effect, Suriname relies exclusively on the *North Sea Continental Shelf Cases*.⁷⁶ There the Court was dealing with a very different geographic situation. Suriname's Figure 33 may be compared with the sketch maps prepared by the International Court of Justice and shown at page 16 of its Judgment (and reproduced as Annex R25 in Volume II to this Reply). Referring to the lines B-E and D-E the Court explained:

[W]here two such lines are drawn at different points on a concave coast, they will, if the curvature is pronounced, inevitably meet at a relatively short distance from the coast, thus causing the related continental shelf area to take the form approximately of a triangle with its apex to seaward and, as it was put on behalf of the Federal Republic, "cutting off" the coastal State from the further areas of the continental shelf outside of and beyond this triangle. The effect of concavity could of course equally be produced for a country with a straight coastline if the coasts of adjacent countries protruded immediately on either side of it.⁷⁷

5.49 In the *North Sea Continental Shelf Cases* the Court was faced with a "pronounced" curvature. That was the distinguishing coastal irregularity, coupled with the coastlines of the Netherlands and Denmark. What was in issue in the *North Sea* cases was a situation in which, on either of the hypotheses mentioned in the passage excerpted above, the continental shelf of Germany was cut off very shortly in front of its coastline, with a corresponding widening of the continental shelf of neighbouring States. Suriname's situation is entirely different. As described in Chapter 3, there is no "pronounced" curvature in its case, any more than there is a pronounced (or indeed any) "convexity" in Guyana's case. Nor can it be said that Suriname has a "relatively recessed" coastline, or that its coastline is significantly longer than that of Guyana (its coastline is in fact considerably shorter). There are no coastal irregularities close to the land boundary terminus that would impact an equidistance line in any disproportionate way in that area, and there are no ill-placed islets. The only real coastal irregularity is Hermina Bank, and that favours Suriname.

5.50 It is notable that Suriname has not been able to identify any case-law that indicates similar geographic circumstances to those pertaining to the present proceedings in which analogous arguments to those which it has presented have prevailed or even been given effect. As elaborated in Chapters 6 and 7, Suriname's arguments on the relevance of coastal features and configurations do not assist its claims.

⁷⁶ SCM, p. 47, para. 4.25; pp. 48-49, para. 4.30; p. 54, para. 4.45; p. 94, para. 6.6; p. 100, para. 6.32; p. 102, para. 6.39. Suriname also makes a passing reference to the *Gulf of Maine* case, although without elaboration. *Ibid.*, p. 101, para. 6.38. The geography of that case is altogether different from the Guyana-Suriname case, not least because in large part the Chamber proceeded on the basis that "the coasts of the two States are opposite coasts." *Gulf of Maine (Canada v. United States)*, 1984 I.C.J. 246, 334, para. 216.

⁷⁷ *North Sea Continental Shelf*, 1969 I.C.J. 3, 17, para. 8.

5.51 Instead, Suriname makes sweeping propositions in support of what it calls “simplified geographical methods of delimitation, in particular bisectors and perpendiculars,”⁷⁸ as well as the use of geometrical methods to avoid distortions.⁷⁹ In support of this argument Suriname relies heavily on the use of angle bisectors or perpendiculars in just one case, the *Gulf of Maine* case.⁸⁰ But a careful reading of that case -- as well as the chart showing the area to be delimited -- indicates why reliance upon that case is misconceived and of no assistance to Suriname. The circumstances that caused the Chamber to adopt the approach it did -- more than twenty years ago and without applying the 1982 Convention -- are not present in this case. The Chamber adopted a simplified approach instead of an equidistance line for two clearly stated reasons. First, a simplified approach would avoid the utilisation of basepoints located on minor geographical features such as isolated rocks (some very distant from the coast) and low-tide elevations.⁸¹ In the case of Guyana and Suriname, there are no isolated rocks or low-tide elevations, or any other coastal features that should be discounted on account of the distorting effect they may have (other than Hermina Bank). The second (and main) reason was that the Chamber considered that a lateral equidistance line “would encounter the difficulty of the persistent uncertainty as to sovereignty over Machais Island and the Parties’ choice of Point A as the obligatory point of departure for the delimitation line,” where Point A was not derived from two basepoints one of which was in the unchallenged possession of each of the United States and Canada.⁸² Neither of these determinative factors is relevant to the present case. Suriname is not able to refer to any other case in which the method it invokes has been applied.⁸³

5.52 Further, Suriname is notably defensive when it comes to the question of its agreement with France (French Guiana). It does not dispute that the agreement (which is not yet in force) reflects a straight equidistance line with a single constant azimuth of N30E in the territorial sea and continental shelf.⁸⁴ Indeed, all the delimitations agreed on the South American Atlantic Coast use an equidistance line.⁸⁵ The line agreed by France and Suriname does not reflect any of the arguments raised by Suriname in respect of non-encroachment and cut-off or in relation to coastal irregularities. Suriname fails to explain why the very same

⁷⁸ SCM, p. 49, para. 4.31.

⁷⁹ *Ibid.*, p. 50, para. 4.34.

⁸⁰ *Ibid.*, pp. 49-50, para. 4.32.

⁸¹ *Gulf of Maine (Canada v. United States)*, 1984 I.C.J. 246, 332, para. 210.

⁸² *Ibid.*, p. 332, para. 211.

⁸³ Suriname refers to *Tunisia/Libya*, stating that “the Court viewed the coast in the vicinity of the land boundary as a straight line, so that the boundary in that sector could be established as a perpendicular to the general direction of the coast.” SCM, p. 50, para. 4.34. It is true that the Court did use the word “perpendicular,” but the passage referenced by Suriname (para. 133(B)(4) of the Judgment) does not support the proposition that the Court applied an approach to delimitation that made use of simplified lines and perpendiculars. The Court merely identified as one of the relevant circumstances to be taken into account in achieving an equitable delimitation “the land frontier between the Parties, and their conduct prior to 1974 in the grant of petroleum concessions, resulting in the employment of a line seawards from Ras Ajdir at an angle of approximately 26° east of the meridian, which line corresponds to the line perpendicular to the coast at the frontier point which had in the past been observed as a de facto maritime limit. *Tunisia v. Libya*, 1982 I.C.J. 18, para. 133 (B). The Court was not creating a perpendicular line so much as noting the existence of one that had been observed in the practise of the States.

⁸⁴ MG, pp. 9-10, para. 2.15; SCM, p. 12, paras. 2.19-2.23.

⁸⁵ Jimenez de Arechega, “South American Maritime Boundaries, Region III,” p. 285, *supra* Chapter 3, note 79.

arguments and principles it now raises were not deemed to be relevant along the same coastline. The *Jan Mayen* case does not assist Suriname. In its Judgment the ICJ merely rejected the argument that an earlier agreement of 1965 between Denmark and Norway that made use of a median line committed those same two States to use a median line in a future delimitation of a different area.⁸⁶ Guyana agrees with that proposition, particularly having regard to the very different geographic circumstances of the two areas to be delimited in *Jan Mayen*. Guyana has not argued that Suriname is *committed* to the use of a median line with Guyana because it used one with French Guiana. Guyana's argument is that the use of an equidistance line in the agreement with French Guiana indicates that Suriname considered that method to result in an equitable solution. Given the similarities of the coastal situations, the burden is on Suriname to explain why an equidistance approach is equitable in one area but inequitable in another a little further up the coast, having regard to the fact that the two areas share many of the same essential coastal features. Suriname argues for the irrelevance of its agreement with French Guiana precisely because that agreement -- and the practise of South American States on the Atlantic Coast -- undermines its opposition to an equidistance approach.

*D. The 1982 Convention and International Law Allow History and Conduct
To Be Taken into Account in Delimiting Maritime Spaces*

5.53 Suriname argues that the conduct of the parties to a maritime dispute “is generally not relevant to the maritime delimitation.”⁸⁷ In support of that view it engages in a selective review of the relevant international jurisprudence⁸⁸ and makes a number of unsubstantiated assertions, for example, that conduct is to be disregarded if it relates to diplomatic efforts to find solutions that have failed.⁸⁹ Guyana has set out its views on the significance of conduct in Chapter 4 of this Reply, to which the Tribunal is referred.

5.54 Guyana submits that conduct is relevant to a maritime delimitation in a number of distinct ways. In this case, the conduct of the Parties and the colonial powers is highly relevant. The strict test of relevance identified by Suriname -- conduct that is mutual, sustained, consistent and unequivocal -- is easily met in establishing the existence of an agreement that the starting point for the maritime delimitation is located at Point 61. The same test, applied to Suriname's claim to a N10E boundary line, shows that there was no agreement in regard to that line, either in the territorial sea or the continental shelf, and that the N10E line was not “inextricably linked” to Point 61.

5.55 The International Court articulated a distinct test for the relevance of conduct in another way in the *Tunisia/Libya* case:

[i]t 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.⁹⁰

⁸⁶ *Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 51, para. 28.

⁸⁷ SCM, p. 51, para. 4.37.

⁸⁸ *Ibid.*, pp. 51-53, paras. 4.37-4.41.

⁸⁹ *Ibid.*, pp. 52-53, para. 4.41.

⁹⁰ *Tunisia v. Libya*, 1982 I.C.J. 18, 84, para. 118.

5.56 The point was reiterated in the *Libya/Malta* case.⁹¹ That test is applicable in this case. The conduct of the Parties, including their oil concession practises, shows that they each understood that a delimitation of their maritime boundary by means of an equidistance line would be equitable. It is significant that the line of 33-34° that separates the Parties' oil concessions was originally developed as an equidistance line in conformity with contemporaneous British and Dutch charts. The fact that the respective oil concessions of Guyana and Suriname crystallised around the historical equidistance line indicates that, by their conduct, the Parties considered that line to be equitable in result, even if they never reached an express or tacit boundary agreement. The conduct of the Parties thus demonstrates that, regardless of their formal legal positions and the absence of an agreement (tacit or otherwise), they each understood that a delimitation along the N34E historical equidistance line would be equitable; and that, by contrast, a delimitation by means of a N10E line would be inequitable.

III. The Parties Have Not Inherited Agreement on a Delimitation of the Territorial Sea Along the 10° Line

5.57 The third part of Suriname's chapter on the applicable law of maritime delimitation concerns the establishment of the territorial sea boundary.⁹² Suriname argues that to the extent that the Parties are bound by Point 61 as the starting point for the delimitation of the maritime boundary then they are also bound by a N10E line as the delimitation of the territorial sea. Suriname further argues that any binding obligation on the N10E line extends to the 12-mile limit of the modern territorial sea.

5.58 Suriname's arguments in this part of its case are not based on any provisions of the 1982 Convention. They are explicitly based on rules of general international law and constitute a recognition of the Tribunal's right to apply rules of international law that are not incompatible with the 1982 Convention, as provided by Article 293.

5.59 Suriname's first argument is that Point 61 and the N10E line were established in combination. Contrary to Suriname's assertion,⁹³ Guyana does not accept this. As Guyana described in its Memorial and as further elaborated in Chapter 2 above, Point 61 and the N10E line were initially recognised in 1936 but the former was not dependent upon determination of the latter. It is clear that the Boundary Commissioners first reached agreement on the land boundary terminus.⁹⁴ Only after that had been done did they proceed to address the direction of the boundary in the territorial sea. It is clear that the boundary might just as easily have followed a 28° line as a 10° line. The Commissioners' agreement on the latter was not a precondition on the location of the starting point. Rather, it was to ensure that the administration of navigation was made as efficient as possible. The N10E line was approved as a potential navigation channel, and not for any other reason. The Commissioners agreed that if circumstances changed then the direction of the line could change.⁹⁵

⁹¹ *Libya v. Malta*, 1985 I.C.J. 13, 29, para. 25.

⁹² SCM, pp. 57-62, paras. 4.56-4.72.

⁹³ *Ibid.*, pp. 57-58, para. 4.56.

⁹⁴ *See supra* Chapter 2, para. 2.31.

⁹⁵ *See supra* Chapter 2, para. 2.33.

5.60 This is not merely a semantic point. The agreement on the starting point at Point 61 and on the direction of the line were distinct acts. The Commissioners and the States accepted that a change of circumstances could justify a change in the direction of the line, but they did not express any such agreement or understanding as to the starting point of the delimitation. It is therefore not correct to state, as Suriname does, that “[t]here is no basis for saying that the combined 1936 Point/10° line position can be sundered, retaining one part and disregarding the other.”⁹⁶

5.61 As indicated, the practise in relation to the N10E line that the colonial powers followed after 1936 explicitly envisaged the possibility of a change in the direction of the line. All that had been identified to justify the line was a potential navigation channel. Agreement on the N10E line was therefore provisional and liable to change.⁹⁷ During the colonial period the circumstances did change: by the 1950s the potential navigation channel was no longer perceived to follow -- and did not follow -- the N10E line. By the early 1960s the circumstances had changed so that the United Kingdom communicated its decision to act on the change of circumstances in a new draft boundary treaty that dispensed with the N10E line. As described in Guyana’s Memorial, the western channel of the Corentyne river was no longer one that was even considered to be potentially usable by commercial ships (and there is no evidence that it was actually used). The rationale for the N10E line disappeared. In 1962, of the 680 ships that were reported to have used the navigation channel not one was reported to have used the N10E line.⁹⁸

5.62 The “special circumstance” of navigation that may have justified the N10E line for a distance of three miles had ceased to exist well before Guyana achieved independence. By the time Guyana reached independence, the “Practise of the colonial powers mutually respected Point 61 but not the 10° line. Suriname itself argues that the conduct of the parties is relevant “only if it is mutual, sustained, consistent and unequivocal.”⁹⁹ Whilst those words characterise the conduct of the United Kingdom, the Netherlands, Guyana and Suriname over the period from 1936 to the present day in relation to Point 61, they do not describe the conduct of all these States in relation to the N10E line, even in respect of its limited utilisation up to a 3-mile limit of the territorial sea.

5.63 There can be no question then of the *uti possidetis* principle applying in relation to the N10E line since the critical date for its application is that of independence.¹⁰⁰ Suriname acknowledges that the British abandoned any respect they might have had for the 10° line before Guyana achieved independence in 1966, and that Guyana itself has never recognised or utilised the N10E line.

5.64 Nor can Suriname gain any support from the principles set forth in the 1969 Vienna Convention on the Law of Treaties. First, the Vienna Convention was only adopted well after the N10E line had ceased to benefit from the mutual support of the colonial powers.

⁹⁶ SCM, p. 59, para. 4.65.

⁹⁷ MG, p. 19, para. 3.16.

⁹⁸ *Ibid.*, pp. 32-33, para. 3.45.

⁹⁹ SCM, p. 52, para. 4.40.

¹⁰⁰ *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*, 1986 I.C.J. 554, 566, para. 23 (“The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved.”).

Second, the Vienna Convention and the principles reflected therein only apply to treaties.¹⁰¹ Suriname has provided no authority to indicate that the Convention -- and in particular the rule contained in Article 62(2)(c) -- applies to legal obligations arising from the conduct of parties that are not articulated in the form of a treaty obligation.

5.65 In summary: (1) the N10E line up to a 3-mile limit of the territorial sea was distinct from the practise on Point 61; (2) it had a specific purpose that was only potential in character and was never actually utilised, as was clear by the early 1960s; (3) it did not form part of the *uti possidetis juris* at the time of independence of Guyana or Suriname; and (4) it was never reflected in a treaty obligation and was therefore not covered by the principle reflected in Article 62 of the 1969 Vienna Convention, which post-dated practise on its utilisation.

5.66 Suriname further argues that any binding obligation on the N10E line extends beyond the 3-mile territorial up to the limits of the modern 12-mile territorial sea. If Guyana is correct in its argument that the N10E line was only justified on the basis of a potential navigation channel -- and that it became clear by the early 1960s that no such channel had been used or would be used -- then there can be no question of its extension to the 12-mile limit. Only if Suriname succeeds in persuading the Tribunal that the N10E line continued to be recognised as a binding obligation at the time of Guyana's independence and then survived its non-utilisation or recognition by Guyana does the question of its extension arise.

5.67 Suriname relies on the award of the Arbitral Tribunal of 31 July 1989 in the arbitration for the delimitation of the maritime boundary between Guinea-Bissau and Senegal.¹⁰² It claims that the situation between Guyana and Suriname is "identical" to that of Guinea-Bissau and Senegal. Suriname is wrong and it ignores material differences. First, the agreement on the delimitation of the territorial sea set forth in a 1960 Exchange of Letters between France and Portugal (the former colonial powers) was determined to have the force of law. There was no equivalent agreement between the United Kingdom and the Netherlands. Second, the 1960 agreement was to delimit the territorial sea "as far as the outer limit," without specifying what that outer limit was, without linking it to the existence of any special circumstance, and to follow the same line as that of the continental shelf. By contrast the 1936 Commissioners' report and the practise of the States thereafter up until the early 1960s was explicitly limited to a potential western navigational channel, only up to the then limit of the territorial sea, and not applicable to any continental shelf, which did not exist. These differences are significant, not least because the existence of the N10E delimitation line is unconnected to a delimitation of any waters beyond 3 miles, and is premised on a "special circumstance" that never extended beyond 3 miles. Suriname therefore derives no assistance from this award. The Arbitral Tribunal correctly ruled that "the 1960 Agreement must be interpreted in light of the law in force at the date of its conclusion."¹⁰³ Applying that principle to the present case -- notwithstanding the fact that there was no written agreement -- leads to the conclusion that the legal obligation binding the United Kingdom and the

¹⁰¹ Article 1 of the Vienna Convention on the Law of Treaties provides that "[t]he present Convention applies to treaties between States." Article II(1)(a) defines a "treaty" as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." Vienna Convention on the Law of Treaties, entered into force 27 January 1988, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969).

¹⁰² SCM, pp. 60-61, para. 4.68.

¹⁰³ Guinea-Bissau/Senegal, Award of 31 July 1989, 83 ILR 1, para. 85 (1990).

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Netherlands could not exceed that which was reflected in their practise between 1936 and the early 1960s. That inevitably means that absent special circumstances to justify its utilisation the N10E line could not extend beyond three-mile navigation channel that was envisaged in 1936. Since there was never anything other than a potential navigational channel, and it was never extended beyond the three-mile limit, the N10E line could never exceed that distance.

CHAPTER 6

DELIMITATION OF THE TERRITORIAL SEA

6.1 Guyana set out its approach to the delimitation of the territorial sea in Chapters 7 and 8 of its Memorial. In sum, Guyana proposed that in accordance with Article 15 of the 1982 Convention, the delimitation of the territorial sea should follow a line of N34E for a distance of 12 miles starting from Point 61, which the Parties had long agreed was the terminus of the land boundary.¹ A provisional equidistance line would lie partly to the east (*i.e.*, the Suriname side) of N34E and give more maritime space to Guyana. However, Guyana submits that a line of N34E is appropriately based on the historical equidistance line taking into account the conduct of the Parties. It reflects Guyana's conduct since it achieved independence in 1966 and has been reflected also by Suriname in its actual conduct, including the failure to protest Guyana's use of that line and its award of oil concessions respectful of that line. The boundary was depicted at Plate 36 of Guyana's Memorial.² Guyana submits that there are no grounds for departing from an equidistance line having a general bearing of N34E in the territorial sea.³

6.2 Suriname's Counter-Memorial is striking for the fact that it responds to these arguments without a separate chapter on the delimitation of the territorial sea. Instead, it has touched on the delimitation of territorial waters in various parts of its Counter-Memorial.⁴ Suriname treats the delimitation of the territorial sea and areas beyond the territorial sea in an integrated manner. This is not accidental. In proposing a single maritime boundary, Suriname avoids the clear distinction in the 1982 Convention between those areas within the territorial sea and areas that fall outside. Suriname ignores the requirements of Article 15 of the 1982 Convention notwithstanding the fact that it is essentially identical to Article 12 of the 1958 Convention and that it "is to be regarded as having a customary character."⁵ The approach taken by Suriname is wrong. As described in Chapter 5, the practise in the international case-law has been to treat the delimitation exercises distinctly in respect of these two areas. This has been the case most recently, for example, in the dispute between Cameroon and Nigeria.⁶ That case also was concerned with delimiting a single maritime boundary.

6.3 As Suriname's Submission 2B makes clear, the Parties are in agreement as to the starting point for the delimitation of the territorial sea. As to the direction of the maritime boundary within the territorial sea, Guyana's approach is based upon established international judicial and arbitral practise. By contrast Suriname requests the Tribunal to depart from such practise. In so doing, it invites the Tribunal to ignore the plain language and the requirements

¹ MG, p. 91, para. 8.1.

² *Ibid.*, Chapter 8, Plate 36 (following p. 92).

³ *Ibid.*, p. 91, para. 8.1.

⁴ Suriname sets forth its legal arguments concerning the delimitation of the territorial sea in just four paragraphs. See SCM, p. 95, para. 6.13; pp. 103-104, paras. 6.50-6.52. No reference is made to the requirements of Article 15 of the 1982 Convention and no attempt is made to explain how that provision is to operate in practice in this case.

⁵ *Qatar v. Bahrain*, 2001 I.C.J. 40, 94, para. 176. See also MG, pp. 84-85, para. 7.23.

⁶ *Cameroon v. Nigeria*, 2002 I.C.J. 1, 135, para. 288.

of Article 15 of the 1982 Convention; to invoke geographic considerations that are fictitious or wholly irrelevant to the delimitation of the territorial sea; and to take refuge in an alleged and hypothetical “special circumstance” notwithstanding the fact that it ceased to exist more than forty years ago, if it ever existed at all. Suriname’s approach is as novel as it is unencumbered by authority or legal justification. It should be rejected by the Tribunal, whose function is to apply the law. It is not the function of the Tribunal to engage in the kind of radical judicial innovation sought by Suriname or to refashion geography.

6.4 This Chapter is divided into four parts. The first part concerns the starting point for the delimitation of the territorial sea, on which the Parties agree that it is Point 61 (referred to by Suriname as the 1936 Point). The second section deals with Article 15 of the 1982 Convention and the applicable law concerning the delimitation of the territorial sea, which requires an equidistance line (median line) unless Suriname can establish that there exists a special circumstance to justify any other line. (Suriname does not argue historic title.) The third section demonstrates the Parties’ broad agreement on the location of the equidistance line in the territorial sea. In the fourth part, Guyana explains why there are no special circumstances to justify a departure from the equidistance line in Suriname’s favour, and why Suriname’s claim regarding potential navigational requirements is without merit. A fifth section sets out the conclusions to the arguments made in this Chapter, providing the precise coordinates for the line delimiting the territorial sea from Point 61 up to the point at which the delimitation of the continental shelf and the EEZ begins.

I. The Parties Agree that Point 61 Is the Starting Point for the Delimitation of the Territorial Sea

6.5 Whatever arguments may have been put forward by Suriname as to the question of the Tribunal’s jurisdiction,⁷ it is an inescapable fact that the Parties are in perfect agreement on the starting point for the delimitation of the territorial sea by this Tribunal if -- as it surely must -- it proceeds to the merits. This is clear from the Parties’ submissions. Guyana invites the Tribunal to delimit “from the point known as Point 61,”⁸ Suriname requests the Tribunal to determine a single maritime boundary “from the 1936 Point.”⁹ Point 61 and the 1936 Point are the same; they refer to precisely the same location identified by the Commissioners in 1936, namely 5° 59’ 53.8” N and 57° 08’ 51.5” W.

6.6 The starting point for the delimitation could not be elsewhere. Since 1936, the United Kingdom and the Netherlands consistently treated this as the starting point.¹⁰ Since the 1960s, Guyana and Suriname have followed suit.¹¹ The practise of all four States falls squarely within the standard identified by Suriname at paragraph 4.40 of its Counter-Memorial: their conduct is “mutual, sustained, consistent and unequivocal.” The Tribunal has before it the evidence to demonstrate seven decades of consistent practise. At paragraphs 3.10 and 8.7 of the Memorial, Guyana identified numerous examples of explicit and unambiguous Dutch and Surinamese support for Point 61, as recently as the *Note Verbale* and

⁷ See *supra* Chapter 2 for a complete refutation of Suriname’s preliminary objections.

⁸ MG, p. 135, Submission 1.

⁹ SCM, p. 125, Submission 2B.

¹⁰ MG, p. 92, para. 8.7.

¹¹ *Ibid.*

letter of 31 May 2000 and President Wijdenbosch's presentation to CARICOM in July 2000.¹² Against this background it is understandable that Suriname has not sought to argue in the Submissions set forth in its Counter-Memorial that the starting point for the delimitation should be anywhere other than Point 61.

II. The Delimitation of the Territorial Sea Is to Follow the Line of N34E from Point 61 Unless Suriname Can Establish the Existence of Special Circumstances

6.7 From Point 61 the delimitation is to take place in accordance with the requirements of the 1982 Convention. The practise of international courts and tribunals is to begin with the delimitation of the territorial sea and then move on to areas beyond 12 miles. The reason for this approach is not difficult to find. It rests on the fact that the applicable legal rules for the delimitation of the territorial sea are different from those that apply to areas beyond. As Guyana explained in its Memorial, Article 15 imposes a particular approach to the delimitation of the territorial sea, explicitly mandating the use of the equidistance principle (the median line) except where a claim to historic title can be established or where special circumstances exist.¹³ Unlike Articles 74 and 83 of the 1982 Convention, a court or tribunal delimiting the territorial sea in accordance with Article 15 or the customary rule it now reflects is not directed by the words of the Convention to "achieve an equitable solution." The International Court of Justice identified the reasons for the different approach in 2001 in its judgment in *Qatar v. Bahrain*:

Delimitation of territorial seas does not present comparable problems [to the delimitation of other maritime area], since the rights of the coastal State in the area concerned are not functional but territorial, and entail sovereignty over the sea-bed and the superjacent waters and air column.¹⁴

Suriname ignores Article 12 of the 1958 Convention, Article 15 of the 1982 Convention and the rationale for the distinction that is emphasised by the International Court.

6.8 Even more significantly, in the face of the clear language of Article 15 Suriname maintains a total silence. The Tribunal will note the striking fact that the Counter-Memorial makes just two references to Article 15, and then only in passing.¹⁵ At no point does Suriname engage with the language of Article 15. At no point does Suriname respond to Guyana's arguments about the meaning and effect of Article 15. At no point does Suriname deal with the international jurisprudence applying the rule reflected in Article 15, for example the cases of *Qatar v. Bahrain* and *Cameroon v. Nigeria*, in which the International Court first delimited the territorial sea in accordance with Article 15 (or the customary law equivalent) and then moved on to delimit the EEZ and continental shelf.

¹² See *supra* Chapter 2, para. 2.20.

¹³ MG, pp. 84-85, para. 7.23. As one commentator has put it: "At the ninth session (1980), several States suggested bringing the provisions of article 15 into line with articles 74 and 83 as they then stood. Article 15 remained unchanged, however, in the second and third revisions of the ICNT." Nordquist, 2 United Nations Convention 141.

¹⁴ *Qatar v. Bahrain*, 2001 I.C.J. 40, 93, para. 174.

¹⁵ SCM, p. 38, para. 4.2; p. 57, para. 4.54.

6.9 The Court made clear in *Qatar v. Bahrain* that it will “first and foremost” apply the principles and rules delimiting the territorial sea (while taking into account that its ultimate task is to draw a single maritime boundary that serves other purposes as well).¹⁶ Only after that will it move on to the delimitation of other areas. Suriname ignores established practise and invites the Tribunal to meld the delimitation of the territorial sea, the continental shelf and the EEZ into a single, one-step operation that ignores the requirements of Articles 15, 74 and 83 of the 1982 Convention.

6.10 Suriname’s silence on Article 15 is all the more surprising since that provision sets forth the same rule as Article 12(1) of the 1958 Convention on the Territorial Sea and Contiguous Zone. Guyana addressed Article 12(1) at paragraphs 7.12 to 7.14 of the Memorial, a recognition of the fact that the rule in Article 12(1) applied in the late 1950s and then throughout the 1960s during the relevant bilateral negotiations.¹⁷ On Article 12(1) also Suriname is silent, as though it can ignore away the applicable rules of international law and replace them with a distinct set of rules of its own making, unencumbered by practise or precedent.

6.11 Yet, the United Kingdom and the Netherlands ratified the 1958 Convention on the Territorial Sea.¹⁸ That set out a binding rule of international law that required the use of a median line to delimit the territorial sea. This is significant. When Guyana and Suriname met at Marlborough House in June 1966, the 1958 Convention was binding on both of them as a result of its ratification by the United Kingdom and the Netherlands. At that meeting, Suriname expressly recognised that it was bound by the 1958 Convention on the Territorial Sea. According to the minutes of the meeting, Dr F. E. Essed, the head of Suriname’s delegation, made it clear that Suriname treated the Convention as binding:

We do not wish that there should be any misunderstanding that Surinam in its present constitutional position is aware of the past and that the country has a past history. We do not wish to refute any international agreements. We are aware of the fact that the Geneva Conventions brought about an international agreement. Our discussions concerned only the question as to whether any binding agreement was ever reached. It is clear that we have not come here to refute such agreements. We honour international agreements.¹⁹

6.12 The language adopted by the delegation of Suriname in June 1966 could not be clearer. Suriname accepted that it was bound by a system of rules that imposed the median line rule for the delimitation of the territorial sea *unless* it could establish a historic title or some special circumstance justifying a departure from the median line. Having regard to the conduct of the Parties, the historical equidistance line is N34E to which Guyana has long been committed. Lest it be said that Suriname’s approach in 1966 was a one off, the same approach was reflected after it achieved independence. In preparing the adoption of its

¹⁶ *Qatar v. Bahrain*, 2001 I.C.J. 40, 93, para. 174.

¹⁷ MG, pp. 80-81, paras. 7.12-7.14.

¹⁸ The United Kingdom signed the 1958 Convention on the Territorial Sea and the Contiguous Zone on 9 September 1958 and ratified it on 14 March 1960. The Netherlands signed the Convention on 31 October 1958, and became a party on 18 February 1966.

¹⁹ Marlborough House Minutes (at p. 21), *supra* Chapter 1, note 36.

domestic maritime law, an Explanatory Memorandum of July 1977 stated that when the four 1958 Geneva Conventions were made, “the principal rules of international law with regard to maritime law were codified.”²⁰ The approach set forth in Article 12(1) of the 1958 Convention is the same as that now found in Article 15 of the 1982 Convention and it is one which Suriname has accepted for over forty years. Suriname has not been able to explain away its Explanatory Memorandum, which does not support the approach it now proposes. The burden is on Suriname to establish the basis for any departure from equidistance in the territorial sea. Guyana submits that Suriname has failed to meet the evidentiary burden of justifying any departure from the provisional equidistance line to its proposed line of N10E. Nor has it provided any persuasive argument against Guyana’s proposed historical equidistance line of N34E in the territorial sea.

III. The Parties Are in Broad Agreement on the Location of the Provisional Equidistance Line in the Territorial Sea

6.13 Guyana set out its arguments on the location of the equidistance line in Chapter 8 of the Memorial. Plate 36 showed the strict equidistance line up to the 12-mile limit of the territorial sea on three charts, along with the historical equidistance line (N34E) claimed by Guyana: British Chart 1801, Dutch Chart 217, and US NIMA Charts 24370 and 24380.²¹ Plate 38 showed a composite chart including those three equidistance lines and the N34E line (taking coastal information based on US NIMA Charts 24370 and 24380).²² Suriname has provided a large-scale chart showing its provisional equidistance line up to the 200-mile limit at Figure 31 of its Counter-Memorial. (The coastal data is based on NL 2017, NL 2014, NL 2218, BA 572, BA 527, BA 517 and BA 99.)²³

6.14 Within the territorial sea, the provisional equidistance line identified by the Parties is very similar, at least beyond three miles from Point 61. **Plate R19** (following page 98) shows coastal data based on NIMA nautical charts 24370 and 24380 and shows the Guyana and Suriname provisional equidistance lines up to 12 miles, as well as the N34E line. The differences relate to the location by Suriname of basepoint S1. Guyana submits that this is inconsistent with the requirements of the 1982 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.” Suriname does not have sovereignty over the coast at the location of its basepoint S1 and accordingly no basepoint should be located there in favour of Suriname.

6.15 In its Memorial, Guyana set out the basis upon which it plotted its provisional equidistance line.²⁴ Suriname has noted that Guyana did not provide the coordinates of its coastal basepoints.²⁵ These are now provided in Annex R26 of this Reply. The correct starting point for the provisional equidistance line is Guyana’s basepoint G1. This is located

²⁰ Explanatory Memorandum of the Government of Suriname relating to the Bill for the Extension of the Territory Sea of the Republic of Suriname and the Establishment of the Contiguous Economic Zone (July 1977). See MG, Vol. III, Annex 103; see also MG, p. 83, para. 7.19.

²¹ *Ibid.*, Chapter 8, Plate 36 (following p. 92).

²² *Ibid.*, Chapter 8, Plate 38 (following p. 104).

²³ SCM, Chapter 6, Plate 31 (following p. 96).

²⁴ MG, pp. 100-103, paras. 8.33-8.43.

²⁵ SCM, pp. 95-96, paras. 6.14.

on Guyana's coast, in conformity with the Parties' longstanding agreement that the land boundary terminus is at Point 61 on the west (Guyana) bank of the Corentyne River where it meets the sea. Basepoint G1 is positioned on the low-tide coast closest to Point 61.²⁶

6.16 Guyana's proposed historical equidistance line of N34E for a distance of 12 miles from Point 61 is fully consistent with long-standing provisions of international law. Indeed, that line emerged as the 1958 Convention was being drafted. Article 24 of the 1958 Convention gave coastal States a right to establish a contiguous zone up to 12 miles from the baselines from which the breadth of the territorial sea is measured. Article 24(3) provided 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 contiguous zone 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 the two States is measured.

6.17 By the late 1950s, it was evident that there was no agreement to exercise rights beyond a median line; the point was made forcefully by Mr. Sahabuddeen at the Marlborough House meeting in June 1966.²⁷

6.18 The N10E line claimed by Suriname is far removed from the historical equidistance line identified by Guyana and the provisional equidistance line on which both Parties broadly agree. It is equally clear that the provisional equidistance line and the N34E line claimed by Guyana as the historical equidistance line are in close proximity to each other, both up to a 3-mile limit and a 12-mile limit. The 10° line would constitute a significant encroachment that would cut-off the projection of Guyana's territorial sea very close to Guyana's coast. The arguments made by Suriname in respect of encroachment are unpersuasive and wrong; there is no general principle of non-encroachment. But the cut-off produced by a N10E line is manifestly inequitable to Guyana.

6.19 Guyana's approach to the use of the N34E historical equidistance line within the territorial sea is also consistent with the broad support reflected in the negotiation of the 1982 Convention presuming the use of a median line to delimit the territorial sea, appropriately modified to take account of forty years of conduct. In the negotiation of the 1982 Convention the use of the median line in the territorial sea (Article 15) had "widespread support":

The chairman reported in Geneva that there was widespread support for the retention, with two drafting amendments, of ICNT Article 15 on delimitation of the territorial sea between states with opposite or adjacent coasts. There was no such support, however, for any formulation on delimitation of the

²⁶ The minor discrepancy between the Parties' provisional equidistance lines in the territorial sea caused Guyana to re-examine its own line as initially depicted on Plate 38 of the Memorial. In so doing, Guyana re-plotted its line as now shown on **Plate R19** to take account of: (1) the fact that Suriname is not entitled to a basepoint on Guyana's coast, and (2) G1 is most appropriately situated at the point on the low-tide coast closest to Point 61. In this manner, **Plate R19** corrects the provisional equidistance line presented in Plate 38 of the Memorial.

²⁷ Marlborough House Minutes (at p. 6), *supra* Chapter 1, note 36.

economic zone and the continental shelf between states with opposite or adjacent coasts.²⁸

6.20 The practise of States since 1958 has confirmed the use of the median line to delimit the territorial sea, in particular on the Atlantic Coast of South America. It is reflected *inter alia* in agreements between French Guiana and Brazil, Brazil and Uruguay, and Uruguay and Argentina.²⁹

6.21 As described in Chapters 3 and 4 of the Memorial and in Chapter 4 of this Reply, Guyana has relied on an equidistance line of N34E over more than four decades. Modern charts now show an equidistance line falling to the east of the N34E line. Nevertheless, Guyana submits that it will be appropriate for the Tribunal to delimit along the N34E line since that line accords with the historical equidistance line identified since the 1950s.

6.22 The historical equidistance line of N34E within the territorial sea is consistent with the Parties' agreement on the location of the provisional equidistance line up to three miles and up to 12 miles. It is also consistent with the line identified by Commander Kennedy in 1958³⁰ and the line identified by Guyana's delegation at the Marlborough House talks in June 1966.

IV. There is No Special Circumstance Justifying a Departure from the Provisional or Historical Equidistance Line in Suriname's Favour

6.23 Suriname has never claimed that it has a historic title to any maritime territory east of the N10E line. It did not do so in the Marlborough House talks. It has not done so in its Counter-Memorial. Self-evidently it cannot do so now. Suriname's claim is that the N10E line to the outer limit of the territorial sea, at a distance of 12 miles from the baselines, is justified as a "special circumstance."³¹ Guyana strongly disputes this claim, for three reasons. *First*, the rationale for the N10E line -- a potential navigational channel -- cannot and does not constitute a "special circumstance" within the meaning of Article 12(1) of the 1958 Convention or Article 15 of the 1982 Convention. *Second*, and alternatively, even if a potential navigation channel could have constituted a special circumstance, Suriname has provided no evidence of any actual use of a navigation channel along the N10E line and it is plain that as long ago as the early 1960s the requirements of navigation no longer justified (if indeed they ever did) a N10E line for any distance. On the basis of the material before the Tribunal, it is clear that navigation has not constituted an arguable special circumstance for nearly fifty years. *Third*, and also in the alternative, even if navigational requirements could be said to constitute a special circumstance after 1958, it is plain that such requirements never extended beyond three miles of Point 61.

²⁸ Bernard Oxman, "The Third United Nations Conference on the Law of the Sea: The Seventh Session," 73 AM. J. INT'L L. 1, 22-23 (1979).

²⁹ Jimenez de Arechujá, "South American Maritime Boundaries, Region III," *supra* Chapter 3, note 79.

³⁰ MG, pp. 112-116, paras. 9.14-9.18.

³¹ SCM, p. 19, para. 3.12

A. Navigation Is Not a Special Circumstance

6.24 Suriname puts forward a remarkably discrete claim to a “special circumstance” justification for its N10E line. There is no reference to a “special circumstance” argument in the Counter-Memorial’s Table of Contents. Suriname makes no effort to explain its claim that navigation is a “special circumstance” within the meaning of Article 15 of the 1982 Convention. The reference is buried away at paragraph 3.12 of the Counter-Memorial:

[T]he 10° line was selected as a boundary for the territorial waters because of, to use present day terminology, a special circumstance, namely the need to guarantee the Netherlands sole responsibility for the care and supervision of all shipping traffic in the approaches to a river under its sovereignty.³²

6.25 Three comments may be made. *First*, it is not correct to suggest that the concept of “special circumstances” is of recent pedigree. As indicated above, in conventional law it dates back to 1958. *Second*, Suriname was well aware of the concept from its inception, having invoked it in the 1966 Marlborough House talks.³³ And *third*, notwithstanding its own characterisation, in 1966 Suriname only invoked as a special circumstance the existence of a “river valley” and not the requirements of navigation,³⁴ the “special circumstance” had nothing to do with any claim by either State to any sovereignty over the river. (For the avoidance of doubt, Guyana wishes to make clear that the sovereignty of the Corentyne River is not at issue in these proceedings). Moreover, the special circumstance invoked in 1966 is plainly geological in character, a feature that Suriname now accepts (in agreement with Guyana) cannot constitute a special circumstance within the meaning of the 1982 Convention.³⁵

6.26 Apart from paragraph 3.12, little else is said on the “special circumstance” until paragraphs 6.51 and 6.52 of the Counter-Memorial.³⁶ These are important paragraphs that Guyana invites the Tribunal to read with particular care and attention. They reveal the absence of any judicial authority for the proposition that navigational factors may be invoked as a “special circumstance” within the meaning of Article 15 of the 1982 Convention (or Article 12 of the 1958 Territorial Sea Convention). If Suriname succeeds, this would be the first time any arbitral or judicial authority would have accepted a navigational factor as a “special circumstance” having so decisive an effect. The implications of such a decision should cause the Tribunal to proceed with caution.

³² *Ibid.*

³³ Marlborough House Minutes (at p. 12), *supra* Chapter 1, note 36.

³⁴ MG, pp. 18-19, para. 3.16, note 34.

³⁵ *See infra* para. 6.33.

³⁶ SCM, pp. 103-104, paras. 6.51-6.52. *See also ibid.* p. 15-16. para. 3.3; p. 59-60, paras. 4.65- 4.66. At paragraph 4.13 of its Counter-Memorial Suriname refers to the decision of the International Court of Justice in *Qatar v. Bahrain* to adjust the provisional equidistance line on the ground of “special circumstances.” SCM, p. 42, para. 4.13. However, as Suriname well knows, the case did not concern navigational requirements and the geographical circumstances to which Suriname refers concerned the presence of a small, uninhabited island (Qit’at Jaradah) and another area that was either part of an island or was a low-tide elevation (Fasht al Azm). *Qatar v. Bahrain*, 2001 I.C.J. 40, 104-110, paras. 217-223. These geographical circumstances are entirely distinguishable from the navigational requirements upon which Suriname now relies.

6.27 At paragraph 6.51, Suriname addresses the possibility of the territorial sea portion of the maritime boundary being delimited *de novo*. Suriname claims that even then “it would still be pertinent to take into account the navigational considerations at the mouth of the river,” since the river is under the sovereignty of Suriname and Suriname had a recognised right to “control the approaches to that river.”³⁷ Guyana does not accept that Suriname has sovereignty over the entirety of the river, and the Tribunal is not required to express any view on the issue. More to the point, the Boundary Commission said nothing at all about Suriname’s sovereignty over the *approaches* to the river. The British Commissioner said that the N10E line was proposed simply to “avoid international complications about buoying the channel.”³⁸ And he made it clear that if circumstances changed then the direction of the boundary marker could change also.³⁹ This was also understood at the Marlborough House talks in June 1966. Mr. Shahabuddeen described the context as follows;

The original proposal was not for a 10° line but for a 28° line. This shows that the line was not intended to have any application beyond the territorial sea, i.e. the line was not to continue into the contiguous zone or the continental shelf. We accepted the original proposal. It seems that what afterwards happened was that the mixed Dutch and British Commission, which laid down the two concrete markers in 1936 on the left bank, thought that a boundary based on a 28° line would intersect the channel and therefore would result in difficulties in controlling it, with respect to the establishment of buoys. The commission accordingly agreed that it would be more convenient to establish a 10° line.⁴⁰

6.28 It is also clear that in the eyes of the Commissioner, the N10E line had a provisional character. They were prescient. Some twenty years later circumstances had changed and the United Kingdom abandoned its short-lived support for the N10E line.

6.29 What authority exists for the proposition that navigational considerations (and, as Suriname puts it, control over the approaches to a river) are considered to be a “special circumstance”? This is addressed at paragraph 6.52 of the Counter-Memorial. Suriname relies on a single arbitral authority -- the *Beagle Channel Award* -- but fails to point out to the Tribunal that the Court of Arbitration in that case characterised its own line as being “in principle a median line.”⁴¹ Suriname is not able to provide a single judicial authority, and to the best of Guyana’s knowledge none exists.

6.30 Beyond the *Beagle Channel Award*, Suriname is able to find only the most limited support for its claim that navigation requirements may constitute a “special circumstance” within the meaning of Article 15. At paragraph 6.52 of its Counter-Memorial Suriname states that “[n]avigational considerations remain an important factor in maritime delimitation practice.”⁴² There is then a reference to an earlier footnote in the Counter-Memorial.⁴³ That

³⁷ SCM, pp. 103-104, para. 6.51.

³⁸ MG, p. 19, para. 3.16. *See also* Letter from Major Phipps (9 July 1936), *supra* Chapter 2, note 22.

³⁹ Letter from Major Phipps (9 July 1936), *supra* Chapter 2, note 22.

⁴⁰ Marlborough House Minutes (at pp. 5-6), *supra* Chapter 1, note 36.

⁴¹ *Controversy Concerning the Beagle Channel Region (Argentina/Chile)*, Award of 18 February 1977, 17 I.L.M. 634, 673, para. 108 (1978).

⁴² SCM, p. 104, para. 6.52.

footnote identifies examples in which “navigational interests may lead to a deviation from the equidistance method in order to place the territorial sea boundary in the navigational channel.”⁴⁴ The first authority concerns debates of the ILC and the 1958 UN Conference on the Law of the Sea. Unfortunately for Suriname, these relate to the special circumstance where there is 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. The second authority relied on by Suriname is the Award of 18 February 1977 of the *Beagle Channel* Arbitration.⁴⁵ However, that too does not assist Suriname since a careful reading of the Award indicates that the none of the considerations relied upon “has resulted in much deviation from the strict median line except, for obvious reasons, near Gable Island, where the habitually used navigable track has been followed.”⁴⁶ The point is reinforced in Annex IV of the Award, which indicates that the boundary line drawn is in principle a median line, adjusted in certain relatively unimportant respects for reasons of local configuration or of better navigability for the Parties.⁴⁷ The differences with the present case are readily apparent. Suriname’s N10E line cannot be described as a “relatively unimportant” deviation from the median line; there is no equivalent to Gable Island; and, most significantly, Suriname has provided no evidence of any “habitual use” of a navigable track. The *Beagle Channel* Award does not assist Suriname.

6.31 Suriname also invokes two bilateral delimitation agreements, one between Indonesia and Singapore (1973) and another between Estonia and Latvia (1996).⁴⁸ They provide no assistance to Suriname. To the extent that there was any departure from a median line, in both cases the States involved negotiated and adopted a deviation in circumstances where there was agreement on the existence of an *actual* navigational need. That is altogether different from the present case, where a long forgotten *potential* navigational channel that may never have been used and certainly has not been used for more than forty years is in issue. Suriname has not produced any example of any States agreeing to a deviation from a median line in such circumstances, or an example of any judicial or arbitral body imposing such a line.

6.32 At the Marlborough House talks in June 1966, the issue of a “special circumstance” was addressed by Suriname on the basis of the alleged existence of a valley of the river, and not on the basis of navigation. As Suriname’s representative Dr. Calor put it on behalf of Suriname:

⁴³ *Ibid.*, p. 104, note 448 (referring to SCM, p. 15, para. 3.3, note 55). Guyana believes the correct cross-reference is to SCM, p. 15, para. 3.3, note 56.

⁴⁴ *Ibid.*, p. 15, para. 3.3, note 56.

⁴⁵ *Ibid.*, p. 104, para. 6.52; p. 15, para. 3.3, note 56.

⁴⁶ *Argentina v. Chile*, 17 I.L.M. 634, 673, para. 110.

⁴⁷ *Ibid.*, Annex IV, para. 4.

⁴⁸ Agreement Between the Republic Estonia and the Republic of Latvia on the Maritime Delimitation in the Gulf of Riga, the Strait of Irbe and the Baltic Sea (12 July 1996), *reprinted in* Delimitation Treaties Infobase, U.N. Division for Ocean Affairs and the Law of the Sea; Agreement Stipulating the Territorial Sea Boundary Lines Between Indonesia and the Republic of Singapore (25 May 1973), *reprinted in* Territorial Sea Boundary: Indonesia-Singapore (1974) (excerpts).

Regarding the border line and territorial water of Surinam and Guyana we have first importance given to geographical reality. At one point there is the valley of the river which, just as a hill top points upwards – a geographical reality, the river bends downwards. Just as the hilltop is followed, so should the line parallel to the valley be followed. This is an indication of a geographical consideration with us. *This is what we follow.*⁴⁹

6.33 Suriname's argument in 1966 had nothing to do with navigation, no doubt because it knew well that there was no navigation along the N10E line. The justification in 1966 was a geological argument. Yet, forty years later Suriname agrees with Guyana that "geological factors are of no material relevance for this case."⁵⁰ Its geological argument has now been recast as a navigational "special circumstance." Yet, Suriname has put no evidence before the Tribunal to prove that there is or has been any need to control navigation along the N10E line. To succeed in its claim, Suriname must at the very least establish that there has been and continues to be a habitual use of a river valley along the bed of the territorial sea for navigational purposes. It has not done so and Guyana submits it cannot do so.

6.34 In sum, Guyana strongly disputes that navigational requirements can be treated as a "special circumstance" within the meaning of Article 15 of the 1982 Convention or that they are in any way applicable in the present case.

B. By the Early 1960s It Was Clear that the N10E Line Was Not Justifiable as a Special Circumstance Because There Was No Navigation Along that Potential Route

6.35 Even if navigational circumstances might have been considered a "special circumstance" in 1936, they could no longer be so considered by the early 1960s. As Guyana pointed out in its Memorial, by that time the potential navigational channel along the western side of the Corentyne River was known not to be in use by commercial ships and would not be used, since these vessels were larger and heavier than those that operated in the 1930s.⁵¹ Suriname has not challenged the evidence put forward by Guyana, including the report by the Marine Superintendent of British Guiana's Transport and Harbours Department that by 1963 the western channel was no longer buoyed, and the report of the British Guiana Customs Department that in 1962 not one of the 680 ships navigating the area used the western channel.⁵²

6.36 If Suriname is to succeed in making its argument of a navigational "special circumstance" then it must prove that there existed (and still exists today) a navigational requirement. If by the early 1960s the western channel was no longer being buoyed and was not used, it is difficult to see on what basis Suriname could have argued for a navigation circumstance in 1966, let alone in 2006.

6.37 Suriname has put no supporting evidence before the Tribunal. It is not sufficient to take refuge in the claim that the change of navigational circumstances was not communicated

⁴⁹ Marlborough House Minutes (at p. 11), *supra* Chapter 1, note 36 (emphasis added).

⁵⁰ SCM, p. 7, para. 2.6.

⁵¹ MG, pp. 32-33, para. 3.45; p. 19, para. 3.16, note 33.

⁵² *Ibid.*, pp. 32-33, para. 3.45, notes 109-110.

to the Dutch.⁵³ It is for Suriname to prove the existence of a special circumstance. It plainly has not done so. And it cannot do so on the basis of the material before the Tribunal which evidences the abandonment by the United Kingdom of the N10E line over forty years ago. With that abandonment Suriname is faced with the evaporation of any possible claim that there exists a “mutual, sustained, consistent and unequivocal” conduct that supports the N10E line or recognition of a special navigational circumstance justifying such a line. Suriname recognises that the United Kingdom decisively rejected the N10E line and its rationale in the early 1960s and maintained this position thereafter, as did Guyana.⁵⁴

C. The N10E Line Was Never Argued as a Special Circumstance Beyond a Distance of Three Miles from the Territorial Sea

6.38 With the disappearance by 1962 of the buoying of the western channel and any hypothetical navigational use of the western channel of the Corentyne River there also disappeared the possibility of Suriname’s claim to a “special circumstance.” But if somehow -- by means that are entirely unclear to Guyana -- a navigational “special circumstance” could have survived more than forty years without navigation or navigational aids, then self-evidently the “special circumstance” only pertained for a distance of three miles in the territorial sea.

6.39 The evidence shows that in 1936 the Boundary Commissioners fixed a N10E line to the outer limit of the territorial sea, namely three miles. The United Kingdom never accepted that the N10E line could go beyond a three-mile limit. There is no evidence before the Tribunal that the Netherlands exercised “care for and supervision of” shipping traffic at any distance from Point 61, and certainly not at any distance beyond three miles.

6.40 At the time the United Kingdom abandoned its support for the N10E line there was no claim to a 12-mile territorial sea limit by the United Kingdom or the Netherlands. There is accordingly no possible basis for claiming that by the early 1960s a N10E line extending to 12 miles could be justified on the basis of conduct. At that time the area beyond three miles was a contiguous zone governed by the 1958 Convention on the Contiguous Zone. As Mr. Shahabuddeen explained in 1966, Article 24 of that Convention did not permit a “special circumstance” claim beyond the territorial sea.⁵⁵

6.41 Moreover, as described in Chapters 3 and 4 of Guyana’s Memorial and Chapter 4 of this Reply, the conduct of the Parties in the grant of oil concessions respected the historical equidistance line of N34E within the territorial waters.⁵⁶ This was the case up to the three-mile limit and then up to the 12-mile limit, once that was established. Suriname did not object to Guyana’s grant of oil licences in areas that it now claims to fall within its territorial sea. One would have expected that if there had been any Surinamese-controlled navigation in the area of territorial waters between N10E and N34E then Suriname would have objected to Guyana’s concessions. But it never did so. This historical conduct -- and Suriname’s silence -- over a forty-year period is inconsistent with the claim that Suriname now makes in its Counter-Memorial.

⁵³ SCM, p. 27, para. 3.33.

⁵⁴ *Ibid.*, p. 58-59, para. 4.62.

⁵⁵ Marlborough House Minutes (at pp. 13-14), *supra* Chapter 1, note 36.

⁵⁶ *See, e.g.*, MG, Plate 9 (following page 38). *See also supra* Chapter 4, paras. 4.31-4.39; 4.47-4.48.

6.42 Finally, for the reasons set out in Chapter 5, Suriname obtains no assistance from the award of the Arbitral Tribunal in *Guinea Bissau v. Senegal*. That decision is distinguishable, and does not support Suriname's claim that the special circumstance it invokes would extend from three miles to 12 miles with the change in the rules of international law and the practise of the Parties that occurred in the late 1970s.⁵⁷

6.43 Suriname therefore derives no assistance from this award. The Arbitral Tribunal correctly ruled that "the 1960 Agreement must be interpreted in light of the law in force at the date of its conclusion."⁵⁸ Applying that principle to the present case -- notwithstanding the fact that there was no written agreement -- leads to the conclusion that the legal obligation binding the United Kingdom and the Netherlands could not exceed that which was reflected in their practise between 1936 and the early 1960s. That inevitably means that absent special circumstances to justify its utilisation the N10E line could not extend beyond the three-mile navigation channel that was envisaged in 1936. Since there was never anything other than a potential navigational channel, and it was never extended beyond the three-mile limit, the N10E line could never exceed that distance.

V. The Coordinates of the Historical Equidistance Line in the Territorial Sea

6.44 For the reasons set out above, the delimitation of the territorial sea between Guyana and Suriname should commence at Point 61 and thereafter follow a line of N34E to the outer limit of the territorial sea, which is located at 6° 13' 49.0"N - 56° 59' 21.2"W. This is the historical equidistance line, modifying the provisional equidistance line in light of the conduct of the Parties since the late 1950s.

⁵⁷ See *supra* Chapter 5, note 103.

⁵⁸ *Guinea-Bissau v. Senegal*, Award of 31 July 1989, 83 I.L.R., para. 85 (1990).

Reply of Guyana

CHAPTER 7

THE DELIMITATION OF THE CONTINENTAL SHELF
AND EXCLUSIVE ECONOMIC ZONE

7.1 Guyana addressed the delimitation of the continental shelf and exclusive economic zone in Chapter 9 of its Memorial. In summary, Guyana submitted that in accordance with the requirements of Articles 74 and 83 of the 1982 Convention, the delimitation should follow a single line of N34E commencing from the outer limit of the territorial sea boundary (at 6° 13' 46.0" N; 56° 59' 31.9" W) up to the 200-mile limit to a point located at 8° 54' 01.7" N; 55° 11' 07.4" W. Guyana did not seek any delimitation beyond the 200-mile limit. Guyana's proposed line adopted the historical equidistance line of N34E first identified by the United Kingdom in the 1960s, on the basis of Dutch chart 217 and British chart 1801, initially up to the 200-metre isobath and then to the 200-mile limit. Over its initial path, the historical equidistance line is closely proximate to the provisional equidistance line plotted by Guyana on the basis of modern charts. Guyana submitted that a shift of the provisional equidistance line to the historical equidistance line up to the 200-mile limit was justified on grounds of history and conduct over a forty-year period and that the line of N34E would lead to an equitable result. By contrast, the line of N10E could not be justified on grounds of history, conduct or geography and would lead to a manifestly inequitable result. The single maritime boundary proposed by Guyana was depicted at Plate 39.¹ It is shown again here at **Plate R20** (following page 120).

7.2 Suriname's response to Guyana's arguments was set out in Chapter 6 of its Counter-Memorial. As already noted, Suriname melds the criteria for the delimitation of the territorial sea and of areas beyond into a single analysis. Suriname begins by re-emphasising its own conception of geographic reality;² it then identifies the provisional equidistance line;³ it next sets out why it considers that the characteristics of the provisional equidistance line are inequitable;⁴ and finally Suriname puts forth its arguments as to why the line of N10E is to be preferred and would lead to an equitable solution.⁵

7.3 The function of this Chapter is to reply to Suriname's arguments. It identifies the points of agreement and then the points of difference between the Parties upon which the Tribunal is called upon to adjudicate. It explains why Guyana's approach to the delimitation of the areas beyond the territorial sea is required by and fully consistent with the 1982 Convention, and why Suriname's approach is not and why it should be rejected. This Chapter does not restate the totality of Guyana's arguments as set forth in the Memorial. All these arguments are maintained. However, the approach taken by Suriname -- premised on a particular approach to geographic reality -- has had the merit of causing Guyana to look even more carefully at the relevant geographic circumstances. This fresh look confirms that Suriname's presentation of the geographical circumstances is disconnected from reality and without merit. But Suriname's approach has had an added benefit: it indicates that it is

¹ MG, Chapter 9, Plate 39 (following p. 108).

² SCM, pp. 93-95, paras. 6.2-6.12.

³ *Ibid.*, pp. 95-98, paras. 6.13-6.23.

⁴ *Ibid.*, pp. 98-101, paras. 6.24-6.36.

⁵ *Ibid.*, pp. 101-106, paras. 6.37-6.60.

Guyana that is disadvantaged by the geographic circumstances, and that the irregular convexity at Hermina Bank has the effect of turning the provisional equidistance line in Suriname's favour in a way that is inequitable to Guyana. To achieve an equitable solution, the provisional equidistance line should be shifted to the line of N34E. In this way Guyana's arguments as to history and conduct and the relevant geographical circumstances converge in supporting Guyana's claim.

7.4 In sum, Guyana submits that the delimitation of the continental shelf and exclusive economic zone is reasonably straightforward. The Parties agree that there should be no delimitation beyond 200 nm,⁶ and they agree on the location of the provisional equidistance line.⁷ They also agree that special circumstances can justify a departure from the provisional equidistance line,⁸ but disagree on the direction and extent of the change. That disagreement is based upon a fundamental difference of view as to the geographical circumstances that pertain and the history and conduct of the Parties. Suriname's approach is to disregard any real role for equidistance; to disregard actual geographic circumstances; and to give effect to geographical circumstances that do not actually exist. Suriname's approach is artificial and unsupported by geographical realities, practice or principle. Its 10° line would not lead to an equitable result.

7.5 This Chapter is divided into five parts. The first part concerns the issues of applicable law and the justification for a single maritime boundary in relation to the continental shelf and the EEZ, on which the Parties are in agreement. The second section deals with the consequences of the Parties' general agreement on the location of the provisional equidistance line. The third section demonstrates that geography and special circumstances justify a shift in the provisional equidistance line to N34E and not towards N10E. In the fourth part, Guyana explains how history and the conduct of the Parties demonstrates that a 34° line would lead to an equitable result and, equally pertinently, why a 10° line would not lead to an equitable result. A fifth section sets out the conclusions to the arguments made in this Chapter, providing the precise coordinates for the single line delimiting the boundary of the continental shelf and the EEZ from the outer limits of the territorial sea to the 200-mile limit.

I. The Significance of the Applicable Law and Established Approaches to Delimiting the Continental Shelf and EEZ

7.6 In Chapter 5 of this Reply, Guyana set out in detail the differences between the Parties on the issues of applicable law. Suriname takes an erroneous approach to the applicable law, making claims that find no support in the 1982 Convention, in general international law or in the practise of international courts and tribunals. This is reflected in particular in its approach to the relevance of the Parties' agreement that the Tribunal should delimit a single maritime boundary, on its efforts to refashion geography by means that are wholly at odds with the applicable law, and on an unsupportable claim for a delimitation along the 10° line.⁹

⁶ *Ibid.*, p. 6, para. 2.3.

⁷ See **Plate 8** (in Volume III only) (showing overlay of both lines).

⁸ SCM, pp. 44-45, para. 4.18; MG, p. 84, para. 7.23.

⁹ See generally SCM, Chapter 4.

7.7 The erroneous approach becomes clear in Chapter 6 of Suriname's Counter-Memorial, which is entitled "Application of the Law to the Facts." This is the Chapter in which Suriname explains the legal basis for its claim that the maritime boundary of the continental shelf and the EEZ should follow a 10° line. Suriname is bound to accept that the starting point for delimiting the boundary between the continental shelf and the EEZ is Articles 74 and 83 of the 1982 Convention, and the interpretation and application of those provisions by international courts and tribunals is of considerable significance.

7.8 Yet, it is striking that in the most important chapter of the Counter-Memorial Suriname makes no reference to Article 74 or Article 83 of the 1982 Convention. Indeed, it does not even address the 1982 Convention. Suriname manages to engage in the task of applying the law to the facts without actually ever referring to the law in question. The technique of disconnecting the facts from the law goes a long way to explaining how it is that Suriname is able to come up with a 10° line. It is an approach that was described by the Dutch government as far back as 1965 as reflecting an "extremely exaggerated and unrealistic idea on the part of Surinam about the 'rights' which the Netherlands (Surinam) can claim...."¹⁰ That description remains apt today; what was "unrealistic" in 1965 is even less arguable today.

7.9 Equally notable is the fact that Chapter 6 of Suriname's Counter-Memorial makes no effort to engage with Guyana's arguments on the relevance of the 1958 Geneva Convention on the Continental Shelf. In fact, Suriname simply ignores that Convention altogether in this important chapter. Having asserted that Article 311 of the 1982 Convention provides for the provisions of the 1982 Convention to apply, Suriname proceeds on the basis that the 1958 Convention is of no relevance.¹¹ That is not correct. As Guyana explains in its Memorial, Article 6(2) of the 1958 Convention provided support for the delimitation of the continental shelf by equidistance, and informed British and Dutch conduct and that of Guyana and Suriname after they had attained independence.¹² The equidistance rule in Article 6(2) was relied upon by the Parties for more than twenty-five years and it served as the catalyst for the developments in practise that occurred in the late 1950s. As Guyana noted in its Memorial, shortly after the adoption of the 1958 Convention, the Netherlands communicated to the United Kingdom its desire to delimit the maritime boundary between British Guiana and Suriname in the continental shelf by means of an equidistance line in conformity with Article 6(2) of that Convention.¹³ The 1958 Convention caused the United Kingdom to treat the outer limit of the continental shelf at the 200-metre isobath, beyond the 25-fathom line that previously existed.¹⁴ Upon achieving independence in May 1966, Guyana based its position on the 1958 Geneva Convention:

The application of the rules incorporated in these provisions [of the 1958 Convention] to the delimitation of the border in the contiguous zone and

¹⁰ Memorandum from Mr. E.O. Baron van Boetzelaer on Border arrangement Surinam/British Guyana (19 November 1965), *supra* Chapter 1, note 16.

¹¹ SCM, p. 11, para. 2.17.

¹² *See, e.g.*, MG, pp. 26-27, paras. 3.31-3.32.

¹³ *Aide Memoire* from the Netherlands to the United Kingdom (6 August 1958), *supra* Chapter 4, note 22.

¹⁴ MG, p. 30, para. 3.38.

the continental shelf leads to a boundary line in accordance with the equidistance principle which means a line of 33 to 34 degrees....¹⁵

At the Marlborough House talks in 1966, Suriname recognised that it was bound by the 1958 Convention.¹⁶ The materials now available from the restricted Dutch archive confirm that the Netherlands supported a delimitation based on equidistance and found itself in marked disagreement with Suriname.¹⁷ As the Dutch government put it in June 1966, against the background of Article 6 of the 1958 Convention:

...the Government of the Kingdom should expressly instruct the Surinam delegation never to appeal to the view that the delimitation of the Surinam CS should deviate from the equidistance line in law.¹⁸

Yet, Suriname persists in choosing to ignore entirely the law that applied then -- and continued to apply for nearly thirty years -- and gave rise to the conduct that produced Guyana's N34E line and its own failure to object to that line or the basis upon which it was invoked.

7.10 Suriname ignores conventional law in order to justify its approach, inviting the Tribunal to delimit as though the slate were clean of any conduct. It cannot be said that Suriname makes no reference to caselaw to justify its proposed line of delimitation. However, the caselaw that Suriname invokes is selective and self-serving. For example, in its efforts to apply the law to the facts, Suriname seeks to avoid the most recent International Court of Justice Judgments in *Qatar/Bahrain* and *Cameroon/Nigeria*. Each case gets just one mention in Chapter 6, in a footnote which seeks to explain why the Judgments are not relevant to the present case, on the grounds that the first concerned a delimitation that was "in the first instance" between opposite States and the latter concerned a boundary between adjacent States but one that only extended "for a short distance."¹⁹ Yet, both cases are relevant. The Judgments were treated by the ICJ as being about adjacent States and the conclusions were not based in any way upon the use of the complex techniques favoured by Suriname; recent caselaw does not invoke methodologies that rely upon the use of straight-baseline coastal façades, angle bisectors²⁰ or perpendiculars.²¹

7.11 By contrast, Suriname takes refuge in an older case that pre-dated the 1982 Convention and which concerns geographical circumstances that Guyana has shown (in Chapter 3) to be wholly different from those pertaining in the present case. The *North Sea Continental Shelf Cases* are invoked by Suriname on no less than eight occasions in Chapter

¹⁵ *Ibid.*, pp. 38-39, para. 4.6; *see also* Marlborough House Discussions (at p. 5), *supra* Chapter 2, note 70.

¹⁶ *See supra* Chapter 6, para. 5.11.

¹⁷ Memorandum on Surinam – British Guyana Boundary (31 March 1966), *supra* Chapter 1, note 15; Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11.

¹⁸ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11 (emphasis in original).

¹⁹ SCM, p. 93, para. 6.3, note 430.

²⁰ *Ibid.*, p. 103, paras. 6.46- 6.48, 6.50; p. 105, paras. 6.57-6.59.

²¹ *Ibid.*, p. 102, paras. 6.40, 6.42-6.43; p. 103, paras. 6.46-6.47; p. 104, para. 6.55.

6 alone. Yet, as Guyana has shown in Chapter 3 of this Reply, the circumstances of that case were entirely distinguishable.²² And we now know that this was a view shared by the Dutch government, which agreed as long ago as 1966 that:

Suriname cannot even appeal to the circumstance, as can Germany, that the configuration of the coast makes the equidistance line “disadvantageous.”²³

7.12 Similarly, the *Gulf of Maine* case concerned a dispute with entirely different geographical circumstances (in large part a delimitation of opposite States with heavily indented coastlines and the presence of islands). Yet, this case is referred to in the Counter-Memorial on no less than seven occasions in Chapter 6 alone. Suriname’s technique is clear: avoid the cases that are most relevant and recent, and focus on those that are most easily distinguishable and least pertinent.

7.13 Yet, these differences of approach cannot obscure the points on which the Parties are in agreement. Suriname does not dispute that the applicable law is to be found in the 1982 Convention, that its relevant provisions reflect customary international law, and that by Article 293 the Tribunal is to apply the Convention and other rules of international law that are not incompatible with it.²⁴ Suriname does not appear to disagree with the content of the law applicable to the merits of the delimitation of the continental shelf and the EEZ, even if there are material differences as to the application of that law to the facts. Suriname agrees that the Tribunal’s task is to delimit a single maritime boundary up to a limit of 200 nm from the baseline.²⁵ And Suriname does not challenge the methodology adopted by the International Court for the delimitation of the continental shelf and the EEZ; Suriname is bound to accept that the Tribunal should first identify and draw a provisional equidistance line, and only then decide whether there are any special circumstances to justify a shift in that line.²⁶

7.14 In applying the law to the facts, it is therefore appropriate to begin with the provisional equidistance line and then move on to consider special circumstances. In its Chapter 6 Suriname inverts the order. Guyana considers it most appropriate to proceed consistently with established practise.

II. The Parties Agree on the Location of the Provisional Equidistance Line for the Continental Shelf and EEZ

7.15 In Chapter 9 of its Memorial, Guyana set out the basis upon which the provisional equidistance line dividing the continental shelf and EEZ should be established. It described first how these efforts had been undertaken since the 1950s, leading to the identification of a historical equidistance line of approximately N34E.²⁷ The historical equidistance line had

²² See *supra* Chapter 3, paras. 3.10-3.15 and **Plate R2** (following page 38).

²³ Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11 (emphasis in original).

²⁴ SCM, p. 38, paras. 4.1-4.3.

²⁵ *Ibid.*, pp. 38-39, para. 4.3.

²⁶ *Ibid.*, pp. 44-45, para. 4.18.

²⁷ MG, pp. 110-118, paras. 9.9-9.25.

been prepared by Commander Kennedy, commencing in 1957, on the basis of Dutch chart 217 and British chart 1801. The Memorial then described the location of a modern provisional equidistance line on the basis of more current charts (the US NIMA chart).²⁸ The comparison of the historical equidistance line and the provisional equidistance line was depicted at Plate 41.²⁹ This showed that up to the 200-metre isobath there were no great differences between the various lines.

7.16 Despite its claim that equidistance “should not be used in this case,”³⁰ in Chapter 6 Suriname nevertheless identifies and depicts its own provisional equidistance line in the continental shelf and EEZ. Suriname explicitly recognises that equidistance is the starting-point for maritime delimitation in the absence of an agreement.³¹ It is “mindful” of the procedure employed by the ICJ and arbitral tribunals³² in accepting that equidistance is the appropriate starting point and acknowledges that this is the “standard practice in maritime boundary analysis by the International Court of Justice and arbitral tribunals.”³³

7.17 Suriname’s provisional equidistance line is shown at Figure 31 of the Counter-Memorial (following page 96). It is plain that Guyana and Suriname are in agreement as to the location of the provisional equidistance line. A comparison of Suriname Figure 31 and Guyana Plate 41 is set out at **Plate R8** (in Volume III only). This confirms the full extent of the Parties’ agreement as regards the drawing of a provisional equidistance line beyond the territorial sea (the minor differences between the Parties relate to the territorial sea).³⁴

7.18 The Parties’ agreement on the location of the provisional equidistance line for the continental shelf and the EEZ is significant for a number of reasons. First, it confirms that even if there were no agreement on the starting point for the delimitation of the territorial sea (which there is), the Parties are in perfect agreement on the location of the starting point for the delimitation of the continental shelf and EEZ; there can be no question of the Tribunal being deprived of jurisdiction to delimit the areas beyond the territorial sea.³⁵ Second, the Parties’ agreement on the provisional equidistance line for the continental shelf and the EEZ makes it clear that the coastlines in question present no material complications for the purposes of delimiting these areas. The fact that the Parties agree confirms that the absence of islands and low-tide elevation makes the delimitation process relatively straightforward. Third, the Parties’ agreement on the provisional equidistance line means that the Tribunal is not required to adjudicate any difference between the Parties, which should make its task less rather than more difficult. And fourth, the Parties’ agreement on the provisional equidistance line means that a key factor for determining whether the delimitation of the boundary leads to the achievement of an equitable solution (as required by Articles 74 and 83 of the 1982 Convention) is not in dispute.

²⁸ *Ibid.*, p. 118, paras. 9.26-9.28.

²⁹ *Ibid.*, Chapter 9, Plate 41 (following p. 118).

³⁰ SCM, p. 34, para 3.51.

³¹ *Ibid.*, p. 53, para. 4.42; p. 57, para. 4.57; p. 95, para. 6.13.

³² *Ibid.*, pp. 95-96, para. 6.14.

³³ *Ibid.*, p. 53, para. 4.42.

³⁴ *See supra* Chapter 6, paras. 6.13-6.14.

³⁵ *See supra* Chapter 2, paras. 2.42-2.46.

7.19 As described in Chapter 3, the Parties are not in perfect agreement on the location of the base-points that are used to plot a provisional equidistance line.³⁶ First, Suriname has placed an additional basepoint at Vissers Bank, 42 km east of the most easterly justifiable basepoint at Hermina Bank. The basepoint at Vissers Bank is not justified because it is based solely on a chart that has been prepared after the initiation of these proceedings; it is located almost four km out at sea on the basis of Dutch chart NL 2014 on which Suriname places principal reliance; and satellite imagery does not support the position of the low-tide coast at Vissers Bank that is depicted on Suriname's newly-created chart.³⁷ Second, Suriname has located its basepoint S1 on Guyana's coast. These two differences do not affect the location of the provisional equidistance line in the continental shelf and the EEZ. The purported basepoint at Vissers Bank does, however, significantly extend the length of Suriname's coastline, and appears to be intended to provide support for Suriname's claim that the provisional equidistance line would not achieve an equitable solution. This is addressed further below.

7.20 The Parties also do not agree on the characteristics and implications of the provisional equidistance line.³⁸ Suriname claims that the provisional equidistance line is too sensitive to "microgeographic" factors.³⁹ In support of this claim, Suriname divides the provisional equidistance line into three sections. According to Suriname, the first section extends to a point located approximately 90 nm from the start of the continental shelf, a little beyond the 200-metre isobath.⁴⁰ As shown in Plate 40 of Guyana's Memorial,⁴¹ the first segment of the equidistance line is remarkably close to Guyana's 34° historical equidistance line out to the 200-metre isobath. Yet, Suriname claims that the provisional equidistance line here produces a "cutoff effect" that is prejudicial to Suriname due to "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.⁴² As explained in Chapter 3, this is simply wrong. There are no convexities on either side of Point 61 that affect the direction of the provisional equidistance line in any part of the first section within the continental shelf and EEZ.⁴³ There is no cut-off of Suriname's "coastal projection."

7.21 Suriname's second section of the provisional equidistance line begins "shortly after it crosses the 200-metre depth contour, where it takes a sharp turn to the north."⁴⁴ Suriname correctly describes this as "the first pronounced change in direction of the provisional equidistance line,"⁴⁵ and recognises that it is caused by the effect of the convexity at Hermina

³⁶ See *supra* Chapter 3, paras. 3.19-3.21.

³⁷ See *supra* Chapter 3, para. 3.19.

³⁸ See *supra* Chapter 3, paras. 3.41 *et seq.*

³⁹ SCM, p. 98, para. 6.24.

⁴⁰ SCM, Chapter 6, Figure 32 (following p. 98).

⁴¹ MG, Plate 40 (following p. 116).

⁴² SCM, p. 97, para. 6.21.

⁴³ See *supra* Chapter 3, paras. 3.12-3.15. See also Report of Robert W. Smith (at pp. 4-5), *supra* Chapter 1, note 43.

⁴⁴ SCM, pp. 97-98, para. 6.22.

⁴⁵ *Ibid.*

Bank. However, Suriname understates the effect of Hermina Bank. As described in Chapter 3, the change in coastal direction from concavity to convexity at Hermina Bank affects the direction of the provisional equidistance line from the 200-metre isobath up to the 200 mile limit. The protrusion at Hermina Bank gives Suriname more than 4,000 km² of additional maritime area. Suriname's third section begins just as the provisional equidistance line "approaches the 200-nautical-mile limit."⁴⁶ Suriname claims that this segment veers "to the east to Suriname's disadvantage" as a result of basepoints located on "the protruding coast west of the Essequibo River in coastal areas claimed by Venezuela."⁴⁷ Suriname implies that these basepoints should be discounted. For the reasons set out in Chapter 3, the argument is without merit. The area in question does not protrude, and it is recognised under international law to be a part of Guyanese sovereign territory as a result of an arbitral award of 1899.⁴⁸

7.22 In sum, the Parties agree on the location of the provisional equidistance line in the continental shelf and EEZ, even if they are not in perfect agreement on the location of all basepoints. They are also bound to recognise that in the first section identified by Suriname the provisional equidistance line is located close to the historical equidistance line that dates back to the late 1950s; Suriname's claim that there is "no correspondence" between the two is wrong.⁴⁹ The significant departure from the historical equidistance line that occurs in the second section of the provisional equidistance line is a result of the irregularity that is Hermina Bank; and it produces a material benefit to Suriname that would -- if given effect by the Tribunal -- disadvantage Guyana and lead to an inequitable result.

III. The Geography and Relevant Circumstances Justify A Shift in the Provisional Equidistance Line to N34E

7.23 The Parties agree that once the Tribunal has identified the provisional equidistance line for the continental shelf and the EEZ, it must then determine whether the line would achieve an equitable solution having regard to the relevant circumstances. In *Cameroon v. Nigeria* the International Court recently summarised the approach as follows:

This method, which is very similar to the equidistance/special circumstances method applicable in the delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an "equitable result."⁵⁰

7.24 Guyana and Suriname disagree as to how this method is to be applied to the facts in the present case. In its Memorial, Guyana set out the basis for its claim that history and conduct are decisive factors justifying a shift away from the provisional equidistance line to the historical equidistance line of N34E to achieve an equitable solution.⁵¹ Guyana further

⁴⁶ *Ibid.*, p. 98, para. 6.23.

⁴⁷ *Ibid.*

⁴⁸ *See supra* Chapter 3, para. 3.24.

⁴⁹ SCM, pp. 95-96, para. 6.14.

⁵⁰ *Cameroon v. Nigeria*, 2002 I.C.J. 1, 135, para. 288.

⁵¹ MG, pp. 110-117, paras. 9.9-9.23.

argued that Suriname's proposed line of N10E would manifestly lead to an inequitable solution.⁵²

7.25 Suriname's response is set out in Chapter 6 of its Counter-Memorial. Suriname argues that the provisional equidistance line would lead to an inequitable solution having regard to the geography of the area in question. In short, Suriname argues that the provisional equidistance line is inequitable because it cuts off the extension of Suriname's coastal front into the sea as a result of the effect of minor coastal configurations and fails to take account of the relative length of the relevant coasts and the prolongation of the land boundary.⁵³

7.26 Suriname's case is premised on errors of law and fact. Although it claims that the Tribunal should resolve the dispute "exclusively on the basis of coastal geography,"⁵⁴ it seeks to have equidistance abandoned altogether in delimiting the continental shelf and the EEZ. That approach is wholly inconsistent with the applicable rules of international law, for the reasons set out above and in Chapter 5 of this Reply. As the International Court affirmed in *Qatar v. Bahrain* in 2001:

[s]pecial circumstances are those circumstances which might modify the result produced by an unqualified application of the equidistance principle. General international law, as it has developed through the case-law of the Court and arbitral jurisprudence, and through the work of the Third United Nations Conference on the Law of the Sea, has employed the concept of "relevant circumstances." This concept can be described as a fact necessary to be taken into account in the delimitation process.⁵⁵

The manner in which relevant circumstances -- including geographical circumstances -- are to be taken into account "as a fact" was summarised the following year by the International Court in *Cameroon v. Nigeria*:

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.*⁵⁶

These decisions confirm that relevant circumstances are a fact to take into account only after a provisional equidistance line has been established. It is not correct to start -- as Suriname does in Chapter 6 of its Counter-Memorial -- with geographical factors.

7.27 "Geographical peculiarities" can justify a shift on the provisional equidistance line, and coastal geography is of "fundamental importance" in the delimitation of their maritime boundary.⁵⁷ But in order to be taken into account, the geographical peculiarities must

⁵² *Ibid.*, pp. 119-120, paras. 9.32-9.33.

⁵³ SCM, pp. 99-100, paras. 6.27-6.35.

⁵⁴ *Ibid.*, p. 45, para. 4.19.

⁵⁵ *Qatar v. Bahrain*, 2001 I.C.J. 40, 109, para. 229 (citing *Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 62, para. 55).

⁵⁶ *Cameroon v. Nigeria*, 2002 I.C.J. 1, 138, para. 295 (emphasis added).

⁵⁷ SCM, p. 11, para. 2.18.

actually exist. Suriname's claim is based on non-existent geographical features, coupled with a failure to have regard to other geographical features (the irregularity that is Hermina Bank) that support a shift in Guyana's favour. There are no geographic (or other) grounds that could justify any shift of the provisional equidistance line in Suriname's favour. The claim for a 10° line based on geography is without any merit. It is not even arguable.

7.28 Guyana set out detailed arguments in response to Suriname's geographical claims in Chapter 3 of this Reply. The most salient feature of the coastal geography of Guyana and Suriname is that it is, for the most part, unremarkable. There are no islands or low-tide elevations to be taken into account, or other irregular or unusual geographic features that constitute "special circumstances" to warrant an adjustment of the provisional equidistance line in Suriname's favour. Suriname's geographical arguments are based on three propositions, each of which is wrong and unsupported by the evidence before the Tribunal:

- First, Suriname claims that Guyana's coastline is "convex" and that Suriname's is "concave;" the reality is that the shape of the coastlines is precisely the opposite to what Suriname claims, with Suriname having a limited convexity at Hermina Bank and Guyana having a general concavity;⁵⁸
- Second, Suriname claims that its coast is significantly "longer" ("50 percent longer") than Guyana's;⁵⁹ in fact, the whole of Guyana's coast measures 482 km in length whereas that of Suriname is only 384 km. As regards the relevant coastlines for the purposes of the delimitation (the distance between the easternmost and westernmost of the respective basepoints that control the direction of the provisional equidistance line) the relevant coast of Guyana is 215 km and that of Suriname is just 153 km;
- Third, Suriname claims that the maritime area appurtenant to Suriname's coast is "larger" than that appurtenant to Guyana's coast. Suriname's claim is wholly based on the error of fact upon which it relies in relation to the lengths of the Parties' relevant coastlines; once that error is corrected it becomes readily apparent that this assertion of Suriname also collapses.⁶⁰

7.29 To construct an argument that a provisional equidistance line would not achieve an equitable solution Suriname has had to "refashion" geography; it has done so by changing the shapes and lengths of the two States' coastlines. To do this, it has employed a range of inappropriate techniques. For example, in order to create an additional basepoint at Vissers Bank and lengthen its own relevant coastline Suriname has invoked a new chart (a June 2005 update of NL 2218) that has been prepared after these proceedings were initiated and that describes a geographic situation that is contradicted by the independent satellite imagery that Guyana has brought as evidence to the Tribunal and by the other cartographic evidence upon which Suriname itself relies.⁶¹ Further, it has cut off Guyana's territory beyond the

⁵⁸ *Ibid.*, p. 94, paras. 6.7-6.8; *see also supra* Chapter 3, paras. 3.10-3.15.

⁵⁹ SCM, p. 105, para. 6.58; *see also supra* Chapter 3, paras. 3.16-3.27.

⁶⁰ SCM, Chapter 3, Figure 33 (following p. 98); *see also supra* Chapter 3, paras. 3.28-3.34.

⁶¹ *See supra* Chapter 3, para. 3.19.

Essequibo River. These techniques are factually and legally artificial and do not withstand scrutiny. Suriname's arguments on geography are not sustainable. As described further below, its claim to inequity collapses without the artificial geographical foundations it has constructed.

7.30 What then are the relevant geographical circumstances? The following general points may be made, having regard to the detailed exposition provided in Chapter 3.

7.31 **First, the general configuration of the coasts is not special or unusual.** The natural geographical features of both coasts differ, but in general (and with the exception of the irregularity at Hermina Bank) they do not come within the scope of "special or unusual circumstances" as identified by the Court in the *North Sea Continental Shelf Cases*⁶² or the *Tunisia/Libya* case.⁶³ The claims of Suriname as to the concavity of Suriname's coast and the convexity of Guyana's coast are unsustainable, as **Plate R2** (following page 36), comparing these coasts with those in the *North Sea Continental Shelf Cases*, reveals. The relevant part of Guyana's coastline that determines its entitlement to its maritime zones is concave, not convex. Apart from the small interruption at Hermina Bank, there is no marked change in the direction of Suriname's coastline to change significantly the lateral adjacency of Guyana and Suriname in a way that favours either Party. The point was clearly recognised by the Dutch as far back as 1953:

The coastline of Surinam is fairly regular and flows in a direction of approximately 180° West between the Coppename and the Corantijn. On the other hand, the direction of the coastline from Demerara [in Guyana] is fairly irregular. From the Corantijn it runs in a direction North-North (illegible) and then turns North West.⁶⁴

Suriname's claim that the coastlines of Guyana and Suriname significantly change direction where they meet,⁶⁵ *i.e.*, at Point 61, is simply not credible.⁶⁶

7.32 **Second, there are no off-shore islands, rocks or other significant maritime features** that affect the delimitation of the boundary in favour of Suriname. The only irregular or peculiar geographic feature that has any effect on the direction of the provisional equidistance line and that should be discounted is Hermina Bank. Suriname recognises that "[the] change of direction [in the final 100 miles of the provisional equidistance line] is caused by the fact that the eastern headland of the Suriname concavity (Hermina Bank) begins to take effect on the line."⁶⁷ Suriname obtains more than 4,000 km² of continental shelf and EEZ that it would not have but for the coastal change from concavity to convexity

⁶² *North Sea Continental Shelf Cases*, 1969 I.C.J. 3, 53-54, para. 101.

⁶³ *Tunisia v. Libya*, 1982 I.C.J. 18, 75-76, paras. 103-104.

⁶⁴ Letter to the Governor of Suriname (13 February 1953), *supra* Chapter 1, note 9.

⁶⁵ SCM, pp. 93-94, para. 6.4.

⁶⁶ Report of Robert W. Smith (at p. 5), *supra* Chapter 1, note 43.

⁶⁷ SCM, p. 97, para. 6.22.

at Hermina Bank. Without that irregular convexity, the relatively constant course of the equidistance line would continue to the 200-mile limit.⁶⁸

7.33 **Third, the disparity between the coastal lengths of the Parties and the consequential size of the Parties' appurtenant maritime areas** favours Guyana. The details are set out in Chapter 3. Since arguments based upon proportionality or disproportion are important it is necessary that they be based on actual geographic realities.

7.34 **Fourth, the Parties agree that geological factors are of no material relevance.**⁶⁹ This common view is consistent with the decreased role of geological and geomorphological criteria in continental shelf/EEZ delimitation that is reflected in the caselaw, including the judgments of the ICJ in *Libya/Malta* and *Greenland/Jan Mayen* and the Court of Arbitration in the *Anglo-French* case. Submarine factors are to be totally ignored in the delimitation of the continental shelf and the EEZ. So even if there was a navigation channel in the area in question -- which there is not -- and even if there were evidence before the Tribunal that it had ever been utilised -- which there is also not -- these facts would be wholly irrelevant to the process of delimitation.

7.35 **Fifth, the prolongation of the Guyana-Suriname land boundary and natural prolongation of the land are not relevant geographical circumstances to be taken into account in maritime delimitation.** Recent international jurisprudence (particularly since the 1985 Judgment of the ICJ in *Libya/Malta*) acknowledges that, in view of the distance criterion of 200 nm introduced by the 1982 Convention for the exclusive economic zone, the traditional concept of natural prolongation has lost much of its relevance.⁷⁰ For purposes of both the delimitation of the continental shelf and the exclusive economic zone the rights are based on the straightforward criterion of the distance of 200 nm. Suriname invokes the *Tunisia/Libya* case to support its rather different approach. But in that case the course of the land boundary, proportionality and other issues were at stake. By contrast, in the present case the delimitation is relatively straightforward where there is an open sea and no islands.

7.36 **Sixth, there are no other relevant geographical circumstances.** Suriname argues for account to be taken of the effects of coastal erosion and accretion.⁷¹ Yet, it provides no evidence in support of its argument and identifies not a single case to support its claim. On the basis of the evidence before the Court, it appears clear that the equidistance line has remained relatively stable for a long period. This is apparent from a comparison of the exercises carried out by Commander Kennedy in 1957 (leading to the historical equidistance line) and the exercise carried out by both Parties in this case (leading to a common location of the provisional equidistance line). It is the similarities rather than the differences that are most striking.

7.37 **Finally, there are no security or navigational interests that can be identified as relevant geographical (or other) factors.** There is no evidence before the Tribunal to establish that navigation was ever a factor in any area beyond three miles from Point 61 (and even in that limited respect the evidence provided by Suriname indicates that navigation

⁶⁸ Report of Robert W. Smith (at p. 9), *supra* Chapter 1, note 43.

⁶⁹ SCM, p. 7, para. 2.6; MG, p. 89, para. 7.35.

⁷⁰ *Libya v. Malta*, 1985 I.C.J. 13, 35, para. 39.

⁷¹ SCM, p. 100, para. 6.35.

within the three-mile territorial sea was hypothetical and taken account only on a provisional basis). There is no authority whatsoever for the proposition that hypothetical navigational interests at the entrance of a river can have any relevance for a delimitation of the EEZ or continental shelf. Yet, Suriname claims that an alleged “river valley” or “navigation channel” at the mouth of the Corentyne River and extending seaward along an azimuth of N10E should define the maritime boundary between the two States on the grounds that it produces a more “equitable” delimitation.⁷² This claim has no merit.

IV. History and the Conduct of the Parties are Relevant Circumstances that Support a 34° Line

7.38 In its Memorial, Guyana relied on history and the conduct of the Parties as relevant circumstances that justified a shift in the provisional equidistance line to the 34° line.⁷³ In its Counter-Memorial, Suriname has sought to discount the entire history of the British and Dutch efforts commencing in the 1950s to delimit the continental shelf on the basis of the equidistance principle that was adopted in the 1958 Geneva Convention. Suriname has also sought to downplay the conduct of the Parties in granting oil concessions on the continental shelf, as well as other actions that have respected the historical equidistance line. The newly available materials from the restricted Dutch archive confirm the agreement of the former colonial powers as to the propriety of using an equidistance line to grant oil concessions. Suriname goes so far as to argue that conduct is a relevant circumstance for the purposes of delimiting areas beyond the territorial sea only when it is sufficient to meet the strict requirements of a tacit agreement.⁷⁴ According to Suriname: “The conduct of the parties is relevant only if it is *mutual, sustained, consistent and unequivocal* in indicating the intention of both parties to accept a particular line for a particular purpose. Otherwise the conduct of the parties must be disregarded.”⁷⁵

7.39 Guyana has responded in detail to these misconceived factual and legal arguments in Chapter 4 of this Reply, and also in those parts of Chapter 6 of the Reply that address the role of conduct in delimiting the territorial sea. In the latter Chapter, Guyana has shown that even Suriname’s excessively high threshold for taking account of history and conduct is met in relation to the role of Point 61 as the starting point for the delimitation of maritime areas.

7.40 In Chapter 4, Guyana directed the Tribunal to the caselaw that disproves Suriname’s arguments on the rules of international law as to the relevance of history and conduct in the process of delimitation. The approach relied upon by Guyana -- the correct approach -- is reflected in the Judgment of the ICJ in *Tunisia/Libya*, where the Court indicated that it “must take into account whatever indicia are available of the lines or lines which the Parties themselves may have considered equitable or acted upon as such....”⁷⁶

⁷² *Ibid.*, pp. 101-102, paras. 6.37-6.40.

⁷³ MG, p. 120, paras. 9.34 *et seq.*

⁷⁴ *See, e.g.*, SCM, pp. 51-52, paras. 4.37-4.38.

⁷⁵ *Ibid.*, p. 52, para. 4.40 (emphasis added).

⁷⁶ *Tunisia v. Libya*, 1982 ICJ 18, 84, para. 118. Suriname misstates the point of the *Tunisia/Libya* case. For example, it refers to “the standard laid down in *Tunisia/Libya*” as “requiring evidence of an express or tacit agreement.” SCM, p. 81, para. 5.45. Yet, as the citation in text makes clear, the ICJ expressly disavowed a finding of tacit agreement and estoppel.

7.41 In Chapter 4, Guyana demonstrated that history and the conduct of the Parties is a relevant circumstance for the delimitation of the continental shelf and the EEZ for three reasons. First, it establishes the beliefs of the Parties as to the method of maritime delimitation that best ensures an equitable result.

7.42 The second reason that conduct is important is that it shows that no Party -- including Suriname or the Netherlands -- has ever regarded delimitation of the continental shelf or EEZ by a 10° line as meeting the requirements of equidistance or as achieving an equitable result.⁷⁷ It is clear that until the mid-1960s, Suriname's 10° claim was made only in respect of a three mile territorial sea. There is no evidence before the Tribunal that a 10° line was claimed for the continental shelf. Against the background of the new rule established in 1958 by the Geneva Convention imposing an equidistance requirement, it becomes clear that 10° was not considered by the Dutch government as being arguable as a special circumstance to avoid equidistance. The newly available materials from the restricted Dutch archive confirm that the Dutch government did not consider a 10° line to be justifiable for a continental shelf delimitation.⁷⁸ The fact that the Dutch Prime Minister did not refer in his 1975 letter to a 10° line to delimit the continental shelf confirms that the Dutch view remained consistent.⁷⁹

7.43 The conduct of the Parties is significant for a third reason: it confirms that the actions of the United Kingdom, the Netherlands, Guyana and Suriname indicate that they regarded as equitable the delimitation produced by the historical equidistance line claimed by Guyana. The Dutch *Aide Memoire* of 6 August 1958 proposed the delimitation of the continental shelf by an equidistance line on the grounds that this would be "acceptable" and "desirable,"⁸⁰ any other line would have been unacceptable and undesirable, and also inequitable. Guyana's position has been consistent since independence. The Tribunal need look no further than the approach set forth by Guyana's Solicitor General -- Mohamed Shahabuddeen -- at the Marlborough House talks in 1966, when he invoked "applicable principles of general international law" (including Article 6(1) of the 1958 Geneva Convention on the Continental Shelf) in support of "a line running generally at 33°-34° east of true North..."⁸¹ Against this background, as shown in Chapter 4, both Parties awarded oil concessions that consistently respected the historical equidistance line.⁸² The fact that Suriname awarded oil concessions respecting a 33° line after 1982 is especially significant, and it is understandable that Suriname would be defensive on conduct that undermines its central argument. It is difficult to see how it could now be appropriate to ignore that conduct, as Suriname seeks, given that the Tribunal must achieve an equitable solution.

7.44 In sum, the historical background and the conduct of the Parties is a relevant circumstance that assists in achieving an equitable solution. That conduct sought to give

⁷⁷ See *supra* Chapter 4, paras. 4.12-4.22.

⁷⁸ See, e.g., Memorandum from Mr. E.O. Baron van Boetzelaer on Border arrangement Surinam/British Guyana (19 November 1965), *supra* Chapter 1, note 16; Memorandum from Legal Affairs to Minister regarding Delimitation of the Continental Shelf (27 June 1966), *supra* Chapter 1, note 11.

⁷⁹ See *supra* Chapter 4, paras. 4.21-4.22.

⁸⁰ MG, pp. 26-27, para. 3.32. See also *Aide Memoire* from the Netherlands to the United Kingdom (6 August 1958), *supra* Chapter 4, note 22.

⁸¹ Marlborough House Minutes (at p. 6), *supra* Chapter 1, note 36.

⁸² See *supra* Chapter 4, para. 4.33 *et seq.*

effect to the obligations of the United Kingdom and the Netherlands under the 1958 Convention, so that it would be wholly inappropriate to fail to take it into account or give it appropriate effect. Regardless of their formal legal positions and the absence of an agreement (tacit or otherwise), Guyana and Suriname understood that a delimitation of the continental shelf and the EEZ by means of the 34° historical equidistance line would be equitable. It is self-evident that their conduct is inconsistent with the belief that a 10° line could under any circumstances achieve an equitable solution.

V. Guyana's 34° Line Would Achieve an Equitable Result and Suriname's 10° Line Would Not

7.45 The Parties agree on the location of the provisional equidistance line and they agree also that the applicable law under the 1982 Convention requires the Tribunal to take account of relevant circumstances to justify a shift in the provisional equidistance line to achieve an equitable solution. They disagree on what constitutes an equitable solution in the circumstances of this case. In its Memorial, Guyana set forth the basis for its submissions that the provisional equidistance line would not achieve an equitable solution because it would fail to take account of the history and conduct of the Parties over a period of forty years, and that the applicable law requires a shift towards the historical equidistance line of N34E that has been relied upon by Guyana since it achieved independence.⁸³

7.46 Suriname has responded in Chapter 6 of its Counter-Memorial. In short, it argues that the provisional equidistance would not achieve an equitable solution because that line “fails to divide the area of overlapping coastal front extensions in an equitable manner.”⁸⁴ That is the full extent of Suriname's argument. It is based upon an entirely artificial construction whereby Suriname has drawn two straight lines (one each for Suriname and Guyana) and projected coastal fronts from those two lines arbitrarily and in only one direction. The exercise is depicted at Figure 33 of the Counter-Memorial, reproduced herein at **Plate R1** (following page 34). Guyana will not here repeat the detailed exposition in Chapters 3 and 5 of this Reply which show that the exercise that has been carried out by Suriname has no basis in fact or in the practise of international courts and tribunals that are charged with delimiting maritime areas beyond the territorial sea, or that the applicable law does not, as Suriname claims,⁸⁵ “require ... that there be an equal division of the area of overlap.”⁸⁶ Nor will Guyana here dwell on the fact that the two lines prepared by Suriname do not meet, do not follow the actual direction of the coast, have been artificially shortened and constitute straight baselines that do not meet the requirements of the 1982 Convention.

7.47 Suriname argues on its unfounded assumptions that the provisional equidistance line is inequitable. By contrast, and relying on the same unprecedented artifices, Suriname claims (for example, in SCM, para. 6.60) that the 10° line is equitable because it achieves “an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap.” To support that conclusion it relies on the single authority of the ICJ Chamber in the *Gulf of Maine Case* and on the inappropriate techniques that have been identified in this Reply; *i.e.*, refashioning geography by shifting

⁸³ MG, p. 120, paras. 9.34 *et seq.*

⁸⁴ SCM, p. 99, para. 6.27.

⁸⁵ *Ibid.*, p. 99, para. 6.30.

⁸⁶ *See supra* Chapter 3, paras. 3.10 *et seq.*; Chapter 5, paras. 5.24 *et seq.*

coastal directions and lengths, moving or creating inappropriate baselines, projecting coastlines seaward in only one direction, and allocating appurtenant maritime areas where none exist. It also claims: navigational factors justify a 10° line (notwithstanding the fact that it has not provided any evidence that there has ever been any navigation along the 10° line in any areas beyond three miles or that within the three-mile zone the navigational issue was ever anything other than hypothetical),⁸⁷ the prolongation of the land boundary is a relevant circumstance (notwithstanding that it has not been able to provide a single authority to justify this unprecedented proposition in respect of any case analogous to the present one),⁸⁸ and the lengths of the relevant coasts are a relevant circumstance that favours Suriname (notwithstanding the fact that a proper assessment indicates that the relevant coast of Suriname is shorter than that of Guyana and its argument here provides support for a shift of the provisional equidistance line in favour of Guyana).⁸⁹

7.48 Suriname's arguments are based on artificial constructs without the benefit of legal precedent or authority. They have had the merit, however, of causing Guyana to look more carefully at the geographical circumstances. As a result, Guyana considers that a shift away from the provisional equidistance line to a line of N34E would achieve an equitable solution on the basis of history and conduct and also on the basis of the actual geographical circumstances that pertain (and in particular the need to remove the consequences of the geographical irregularity that is presented by Hermina Bank). Guyana submits that this conclusion is justified on the basis that: (1) it is the only proper means for giving effect to Suriname's argument on the need to divide appurtenant areas equitably; (2) it provides the best means of avoiding any inappropriate cut-off of the extension of coastal fronts; (3) it gives appropriate effect to history and the conduct of the parties; and (4) it is consistent with agreements on maritime delimitation on the Atlantic coast between other South American countries.

A. *The Equitable Division of Appurtenant Maritime Areas*

7.49 Suriname's approach to appurtenant and relevant maritime areas is arbitrary. Figure 33 of the Counter-Memorial (reproduced at **Plate R1**) makes this clear.⁹⁰ It is based on erroneous coastlines that have been artificially shortened (in the case of Guyana) and lengthened (in the case of Suriname). It makes use of straight-baseline façades that have a distorting effect. It alters the direction of Guyana's coastline. And without justification it projects the coastal façades only in one direction (*i.e.*, straight ahead along lines perpendicular to the coast) rather than in all seaward directions to encompass all of the appurtenant maritime space within 200 nm of the coastline. Guyana rejects Suriname's approach. But as Guyana has shown in Chapter 3, if Suriname's approach were to be taken on the basis of the actual lengths and directions of the fitted coastal façades, then it results in a larger appurtenant maritime area for Guyana than for Suriname, and points to the equitableness of the line of N34E. This is illustrated in Map C of **Plate R18** (following page 56). Thus, even using Suriname's general approach, the N34E line divides the relevant

⁸⁷ SCM, pp. 103-104, paras. 6.50-6.53 (rebutted *supra* Chapter 6, paras. 6.35-6.43).

⁸⁸ *Ibid.*, pp. 104-105, paras. 6.54-6.57.

⁸⁹ *Ibid.*, pp. 105-106, paras. 6.58-6.60 (rebutted *supra* Chapter 3, paras. 3.16 *et seq.*).

⁹⁰ See *supra* Chapter 3, paras. 3.28 *et seq.*

maritime area in very close proportion to the lengths of their relevant coastlines: 1.52 to 1 (relevant maritime area) as compared with 1.40 to 1 (lengths of coastlines).

7.50 There is a better way to define the appurtenant and relevant maritime areas in this case. As described in Chapter 3, the appurtenant maritime area is that which results from projecting the relevant coastline seaward for 200 nm in *all* directions, not just straight ahead along perpendicular lines. This area is best derived by means of extending an envelope of 200 nm arcs in all seaward directions from each Party's relevant coastline. The resulting area thus includes *all* maritime space within 200 nm of the relevant coastlines, a result which is not achieved by Suriname's method of extending the coastlines only in one direction along perpendicular lines. As applied to the present case, the appurtenant and relevant maritime areas produced by an envelope of 200 nm arcs are depicted in **Plate R10** (following page 46). Maps A and B depict the appurtenant maritime areas of Guyana and Suriname, showing that Guyana has an area of 245,746 km², that Suriname has an area of 225,173 km². Map C shows the maritime area relevant to this delimitation. The maritime area relevant to the delimitation is that which is: (1) part of the appurtenant maritime area of one of the Parties; (2) within 200 nm of the relevant coastline of *both* Parties; and (3) not within the boundary of any third State. **Plate R18** (following page 56) shows how the relevant maritime area is divided by the N34E line. As demonstrated in Map A, the N34E line divides this area in almost the identical proportion as the ratio of the Parties' relevant coastlines: 1.39 to 1 (division of the relevant maritime area) and 1.40 to 1 (lengths of the relevant coastlines).

7.51 By contrast, the provisional equidistance line divides the relevant maritime area in a way that is not proportional to the lengths of the Parties' relevant coastlines, and which is inequitable to Guyana. This is shown in **Plate R12** (following page 48), in both Maps A (based on an envelope of 200 nm arcs) and Map B (based on perpendicular lines and straightened coastal façades).

7.52 On either of the approaches the result is that the actual geography of the relevant area shows that the provisional equidistance line is inequitable to Guyana, not Suriname, and that the N34E line is equitable to both Parties. This justifies a shift of the provisional equidistance line to the historical equidistance line.

B. The N34E Line Equitably Avoids Cut-Off or Encroachment of Coastal Fronts

7.53 Suriname claims that its line of N10E achieves the most equitable solution by avoiding any cut-off. In fact, as **Plate R17** (following page 56) shows, the most equitable solution is provided by Guyana's proposed line of N34E, which divides the relevant maritime area equitably and avoids the cut-off resulting from the effects on the delimitation of the second section of the provisional equidistance line due to the convex irregularity that is Hermina Bank. The division of maritime space produced by Suriname's proposed 10° line is patently inequitable. As shown in **Plate R17**, it gives 60% of the relevant maritime area to Suriname despite Guyana's longer coastline and larger area of appurtenance.

7.54 As Guyana explained in Chapter 5, the *North Sea Continental Shelf* Judgment on which Suriname relies did not recognise any absolute right to a frontal projection.⁹¹ Suriname is not entitled to rely on an absolute right to a projection of its coastal front any more than is Guyana, and cannot properly make use of straight lines and bisectors and perpendiculars that find no support in the international caselaw.⁹² Many delimitation disputes arise precisely because there may be an overlap between such projections. In this case, the historical equidistance line achieves an equitable solution because it applies a more precise approach that reflects the meeting point of coastal fronts.

7.55 Equally, as Guyana has already explained, there is no principle of non-encroachment in international law.⁹³ As an equitable principle, its effect is neither absolute nor applicable without particular regard to the geographical facts of the case at hand. The historical equidistance line achieves an equitable solution by leaving “as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.”⁹⁴ It is clear from **Plates R17** and **R18** that on this basis the line of N10E does not achieve an equitable solution as compared with N34E.

C. History and Conduct Confirm that the Line of N34E Achieves an Equitable Solution

7.56 Suriname seeks to disregard history and conduct because it recognises that they point decisively to a solution based upon equidistance and the historical equidistance line relied upon by Guyana since 1966. There is no need to here repeat what has been set out in the Memorial and in this Reply. To ignore history and conduct is to contribute to an inequitable solution.

⁹¹ See *supra* Chapter 5, para. 5.38

⁹² *Ibid.*

⁹³ See *supra* Chapter 5, paras. 5.42 *et seq.*

⁹⁴ *North Sea Continental Shelf*, 1969 I.C.J. 3, 54, para. 101(C)(1).

*D. The Historical Equidistance Line of N34E is Consistent with
Delimitation Agreements in the Region*

7.57 The equidistance approach is consistent with regional practice, and to depart from it in favour of the line of N10E would undermine the expectations of States and thereby not lead to an equitable solution. As described in Chapter 3, equidistance has been given effect in numerous agreements delimiting the continental shelf of States on the Atlantic Coast of South America.⁹⁵ In this regard, the provisional agreement between French Guiana and Suriname is especially pertinent. It is difficult to see how Suriname's application of equidistance on one maritime boundary and its total abandonment on the other could be said to lead to an equitable solution.

VI. Conclusion

7.58 In delimiting the continental shelf and the EEZ, it is appropriate to keep in mind the fundamental principles of law reflected in the 1982 Convention that the Tribunal is called upon to apply. These indicate that:

- (1) the Tribunal is not to apportion maritime areas by reference to general considerations of equity;
- (2) the Tribunal may not correct the effects of history and geography by distributing territorial or jurisdictional maritime zones in favour of states that claim to be "geographically disadvantaged";
- (3) the Tribunal may not refashion the geographical situation of the Parties; and
- (4) the Tribunal should take into account history and conduct in delimiting maritime spaces as indicia of what line or lines the Parties themselves may regard as equitable.

7.59 Having regard to these principles, the Tribunal is bound to bear in mind that since the late 1950s British Guiana and Guyana have delimited their continental shelf with Suriname by reference to a historical equidistance line generally following the line of N34E, up to the 200-metre isobath. That line has also been followed in a large number of oil concessions and in other State activity. Over the past 20 years, in Guyana's petroleum legislation and in the awarding of oil concessions by both Guyana and Suriname, the historical equidistance line has been extended up to the 200 nm limit of the continental shelf and EEZ. The Netherlands never objected to the historical equidistance line, and the newly available material from the Dutch archives confirms that it consistently supported a delimitation based on equidistance. Until May 2000, Suriname had never manifested an objection to the historical equidistance line as applied by Guyana, up to the 200-metre isobath or beyond, or to its practice in relation thereto. In fact, Suriname largely respected the historical equidistance line in the issuance of its own oil concessions, both before and after the 1982 Convention. For these reasons alone, it would be inequitable for any other line of delimitation to be applied. Geography is a relevant circumstance, and it supports a shift of the provisional equidistance line to the historical equidistance line. The convexity of Hermina Bank is an irregular feature of the coastline that should be discounted in order to achieve an equitable solution. Suriname's

⁹⁵ See *supra* Chapter 3, para. 3.50; Report of Robert W. Smith (at pp. 3-4), *supra* Chapter 1, note 43.

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geographical arguments are based on an imaginary coastline buttressed by an absence of authorities. Guyana submits that, in accordance with the requirements of Articles 74 and 83 of the 1982 Convention, the delimitation of the continental shelf and exclusive economic zone should follow a single maritime boundary; it should commence 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 N34E up to the 200-mile limit to a point located at 8° 54' 01.7" N; 55° 11' 07.4" W.

CHAPTER 8

SURINAME'S UNLAWFUL THREAT AND USE OF FORCE AGAINST GUYANA

8.1 This Chapter sets forth Guyana's response to Suriname's submissions on the threat and use of force against Guyana's licencees CGX Energy, Esso E & P Guyana and Maxus in violation of its obligation to settle disputes by peaceful means under Articles 74(3), 83(3) and 279 of the 1982 Convention, the UN Charter and general international law.

8.2 Suriname does not deny its use of force against Guyana's licencees. Nor does it address the possibility that it should have first considered peaceful alternatives to the use of force. Rather, it seeks to justify the use of force as a measure to maintain the *status quo*¹ and seeks to minimise its gravity by characterising the steps it took as a "police action."² In effect, Suriname's position is that a territorial dispute *ipso facto* justifies recourse to force, even against peaceful action by a neighbouring State in a disputed area.

8.3 As discussed more fully below, the exploratory activities undertaken by Guyana's licencee were fully consistent with the *status quo*. Suriname does not deny that for nearly forty years Guyana conducted extensive exploratory activity within the area bounded by the 10° and 34° lines, including seismic testing and the drilling of an exploratory well in close proximity to the area in which CGX intended to drill. Further, even assuming that the CGX activity was contrary to the *status quo*, Suriname was still not justified in resorting to force when peaceful alternatives were available. The mechanisms under the 1982 Convention are intended for disputes of this nature.

8.4 Section I of this Chapter discusses the *status quo* as it existed in June 2000; section 2 addresses Suriname's assertion that its recourse to force was a valid response to Guyana's authorisation of exploratory drilling in a disputed area; sections 3 and 4 discuss Suriname's recourse to force in light of the twin requirements of "necessity and proportionality," respectively; and section 5 refutes Suriname's assertions that Guyana suffered no loss and therefore is not entitled to any reparations.

I. Guyana's Exploratory Activities and the Status Quo

8.5 Suriname's chief argument to excuse its use of force against Guyana's licencee, CGX, is to assert that the drilling of an exploratory well was "designed to change the *status quo* and create a *fait accompli*."³ Suriname considers this alone justified the use of force. Momentarily setting aside the invalidity of this argument as a legal matter, the truth is that it was Suriname that broke with the Parties' past conduct. As discussed in Guyana's Memorial (and not denied in the Counter-Memorial), Guyana had consistently conducted exploratory activities in the area bounded by the 10° and 34° lines since at least 1958, all without protest from Suriname.⁴ As depicted in Plate 13 of the Memorial, Guyana's licencees have conducted extensive and repeated seismic testing all the way up to the N34E historical

¹ SCM, p. 109, para. 7.11.

² SPO, p. 41, para. 6.37.

³ SCM, p. 111, para. 7.20.

⁴ MG, p. 47, para. 4.21 *et seq.*

equidistance line.⁵ In 1974, under licence from Guyana, Shell drilled an exploratory well at a location known as Abary-I, well within the area between the N10E and N34E lines.⁶ Indeed, the location at which CGX was preparing to drill was just 10 km from the spot of the original Abary-I well.⁷ There was no objection from Suriname in 1974, which admits knowledge of the drilling.⁸ Throughout this same period, Suriname did not conduct any meaningful exploratory activities in that area.⁹ Thus, although Suriname formally maintained a claim to the 10° line, the Parties' actual conduct reflected a consistent pattern of exploratory activity by Guyana -- and only Guyana -- combined with non-objection by Suriname. Prior to June 2000, Guyana thus had a well-grounded expectation that exploratory activity could continue without intervention by Suriname. As of June 2000, Guyana could not reasonably have expected that Suriname would respond as it did.

8.6 In keeping with its argument that Guyana was attempting to change the *status quo* and create a "*fait accompli*," Suriname contends that "a decision was made to modify the CGX work program initially agreed upon, to accelerate the drilling of a well from year four into year two and to drill that well deliberately in the disputed area without notice to or consultation with Suriname."¹⁰ Evidently, Suriname views CGX's actions as part of a conspiracy to advance Guyana's maritime boundary claims. The truth is more mundane. The decision to accelerate the drilling of an exploratory well was based solely on the positive indications obtained from seismic data and the preference of CGX investors to carry out drilling operations on the optimal target.¹¹ Suriname's claim that it did not have notice is similarly baseless. On 10 April 2000, CGX issued a general press release that it had contracted the *C.E. Thornton* jack-up drilling rig to drill exploratory wells at offshore sites

⁵ Composite of Seismic Activity Licensed by Guyana and Suriname. See MG, Vol. V, Plate 13.

⁶ MG, pp. 48-49, para. 4.25.

⁷ *Ibid.*, p. 48, para. 4.25; p. 67, para. 5.9 (giving coordinates of Abary-I well and CGX drilling site, respectively); see also CGX Press Release (10 April 2000). MG, Vol. III, Annex 158.

⁸ SCM, p. 71, para. 5.23. Although it knows it cannot say so directly, Suriname not so subtly tries to imply that the Abary-I well was drilled pursuant to licence from Suriname as much as from Guyana based on the fact that Shell had a 50% interest in a licence from Suriname covering the same area. *Ibid.* In fact, however, as Guyana stated in its Memorial (and the Counter-Memorial does not deny), the well was drilled pursuant to licence from Guyana alone. MG, p. 48, para. 4.25. Indeed, a representative of Guyana's Ministry of Energy and Mines was on board the rig to observe the drilling and protect Guyana's interests. *Ibid.* No Surinamese personnel were present.

⁹ See *supra* Chapter 4, para. 4.38.

¹⁰ SCM, p. 109, para. 7.11.

¹¹ On 10 August 1999, CGX announced that Guyana had approved its work program "which includes the original commitment to process and interpret its new seismic data, and most importantly, to accelerate the drilling of two exploration wells on its concession." CGX Press Release (10 August 1999). See MG, Vol. III, Annex 158. Furthermore, CGX indicated that "[i]n addition to Horseshoe West, we expect Eagle to be a drillable target," and that the company needed to raise \$US10 million for the two exploratory wells. *Ibid.* On 13 September 1999, CGX announced that the initial results of the new seismic survey "have returned positive results over CGX's Eagle target offshore Guyana" and that the interpretation of the data "has doubled our probability of an oil discovery at Eagle to 20% from 9.5%." CGX Energy Release (13 September 1999). See MG, Vol. III, Annex 158. Although Horseshoe West had been one of the initial targets, based on the high-quality new seismic data and the fact that "investor reaction to the proposed Horseshoe West program has been disappointing," CGX announced on 1 November 1999 that "the market has clearly indicated that it wants to see our best target, Eagle, drilled first" and that "CGX will accordingly focus its initial exploration on the Eagle and Wishbone turbidite fans, rather than its stratigraphic unconformity targets, Horseshoe East and West." CGX Press Release (1 November 1999). See MG, Vol. III, Annex 158.

known as Eagle and Wishbone West, expressly noting that the Eagle target “is located 10 km from the Shell Abary #1 well drilled in 1974, that tested significant gas in the mud logs and 34.7 API crude from a thin formation of similar age to our target at Eagle.”¹² CGX’s plans were publicised to the world, including Suriname, well in advance of the rig’s entry into the area between the 10° and 34° lines.

8.7 The record suggests that the real reason June 2000 marked a break in the *status quo* was not a conspiracy between Guyana and CGX but rather the exigencies of electoral politics in Suriname. As noted in Guyana’s Memorial, reports from Guyana’s Ambassador in Paramaribo and the account of a former Surinamese diplomat indicate that the drilling of an exploratory well by Guyana’s licensee only became a matter of concern to Surinamese authorities in May 2000 when opposition parties made the CGX concession a political issue in the impending elections.¹³ Thus, the use of force against the CGX rig is best understood against the background of the temptation to use the boundary issue as a domestic political rallying point.

8.8 This understanding of events is confirmed by a dispatch from the Embassy of the United States of America in Paramaribo, which was paying close attention because the crews of the vessels involved included close to 100 American citizens. In reference to the unfavourable political situation of then-incumbent President Wijdenbosch, the U.S. Embassy noted that the CGX rig’s activities:

gives the Wijdenbosch camp something other than its defeat on which to focus. It also could provide the winning new front coalition with a topic to divert attention from any problems they are having in agreeing to candidates for the top Government positions. The issue has a nationalistic component that could turn it into a serious bilateral dispute.¹⁴

8.9 The contemporaneous Guyanese, Surinamese and U.S. accounts of the circumstances surrounding the CGX incident all point to a single reason for Suriname’s choice to use that moment to act aggressively. A show of force was politically opportune, even if it was an unnecessary and provocative act with potentially serious consequences for Suriname’s otherwise peaceful relations with Guyana.

II. Suriname’s Use of Force and the Obligation to Settle Disputes by Peaceful Means

8.10 Irrespective of whether Guyana’s or Suriname’s actions altered the *status quo*, Suriname’s conduct still violated international law and the obligation to resolve disputes peacefully. The mere existence of a formal disagreement as to where a boundary might lie cannot override the fundamental obligation to settle disputes by peaceful means and to refrain from the use of force.

8.11 The UN Charter provides that “every State has the duty to refrain from the threat or use of force ... as a means of solving international disputes, *including territorial disputes and*

¹² CGX Press Release (10 April 2000). See MG, Vol. III, Annex 158.

¹³ MG, p. 63-64, para. 5.3.

¹⁴ Cable 00 Paramaribo 456 from the United States Embassy in Paramaribo, Suriname to the United States Secretary of State (1 June 2000). See MG, Vol. II, Annex 52.

*problems concerning frontiers of States.*¹⁵ Notwithstanding this unambiguous prohibition, Suriname seeks to persuade the Tribunal that: “Disagreement about the application of legal principles relating to the course to be taken by a maritime boundary yet to be established is not the basis for international responsibility. Nor are acts taken to maintain the *status quo* in a disputed area in response to acts designed to change the *status quo* and create a *fait accompli*.”¹⁶ Guyana submits that it is self-evident that a disputed boundary does not fall outside the general obligation to resolve international disputes by peaceful means. In this respect, the *Jus Ad Bellum Partial Award* (Dec. 19, 2005) of the Eritrea-Ethiopia Claims Commission is especially pertinent. The Commission held that Eritrea had acted in violation of Article 2(4) of the UN Charter when it used force to assert its claim to disputed territory, even though the Eritrea-Ethiopia Boundary Commission ultimately awarded the territory in question to Eritrea. The Commission emphasised that “the practice of States and the writings of eminent publicists show that self-defense cannot be invoked to settle territorial disputes” and that “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.”¹⁷

8.12 Curiously, even as Suriname attempts to excuse its threat and use of force as a means to restore the *status quo*, it appears elsewhere to understand the illegality of its actions. At paragraph 5.79 of the Counter-Memorial, for instance, Suriname states: “The peaceful resolution of disputes requires that states act with restraint.”¹⁸ In the same paragraph, it also admits: “Restraint is the policy that is required by the duty of Articles 74(3) and 83(3) of the Convention ‘not to jeopardize or hamper the reaching of the final agreement’”¹⁹ Thus, according to Suriname’s own view of the law, its threat and use of force against CGX cannot be reconciled with the recognised duty to “act with restraint.”

III. The “Necessity” of Suriname’s Use of Force

8.13 As set out in Guyana’s Memorial, no matter how it is characterised, the use of force is subject to the conditions of “necessity and proportionality.”²⁰ Suriname claims that the decision to drill an exploratory well “left Suriname no choice but to dispatch vessels employed for maritime law enforcement to the area.”²¹ But nowhere does it explain why it had “no choice.” Nowhere does it discuss whether it even explored the possibility of settling the dispute by peaceful means, let alone exhausted that possibility. Article 279 of the 1982 Convention and Article 33(1) of the UN Charter both require that parties exhaust peaceful means of dispute settlement including “negotiation, enquiry, mediation, conciliation,

¹⁵ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (Oct. 24, 1970) (emphasis added) (*reprinted in* 9 I.L.M. 1292).

¹⁶ SCM, p. 111, para. 7.20.

¹⁷ *Eritrea v. Ethiopia*, Eritrea/Ethiopia Cl. Comm’n, Partial Award, Jus Ad Bellum, pp. 3-4, para. 10 (19 December 2005) (emphasis added) (available at <http://www.pca-cpa.org/ENGLISH/RPC/EECC/FINAL%20ET%20JAB.pdf>).

¹⁸ SCM, p. 89, para. 5.79.

¹⁹ *Ibid.*

²⁰ MG, p. 127, para. 10.7.

²¹ SCM, p. 109, para. 7.12.

arbitration, judicial settlement, resort to regional agencies or arrangements.” All such means were available to Suriname throughout the period in question. Indeed, it is conspicuous that Suriname never responded to Guyana’s offer of a high-level meeting within 24 hours.²²

8.14 Nor can Suriname claim that the mere drilling of an exploratory well threatened it with imminent injury of an irreparable nature that required an immediate military response.²³ The CGX rig was only engaged in exploratory activity. It was not a permanent installation for the extraction of resources, and Suriname knew that the rig would leave as soon as it finished drilling the exploratory well, just as the Shell rig had done in 1974. No permanent effects would remain. Consequently, it cannot be said that Suriname’s use of force was “the only means of safeguarding an essential interest of [Suriname] against a grave and imminent peril”²⁴ as required by international law.

IV. The “Proportionality” of Suriname’s Use of Force

8.15 In addition to being unnecessary, Suriname’s actions were wholly disproportionate to any ostensible threat the CGX rig posed to its interests. The evidence Guyana submitted with its Memorial underscores the gravity of the incident. The Surinamese navy repeatedly warned the rig to “leave the area in 12 hours” or “the consequences will be yours.”²⁵ These are not warnings made in the context of a “law enforcement measure.” The implications were unmistakable. For instance, Mr. Edward Netterville, a highly experienced rig operator, testified: “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.”²⁶ The U.S. Embassy in Guyana viewed the matter equally seriously. A dispatch indicates that as a result of Suriname’s warnings, “CGX decided, due to concerns about the safety of the rig’s workers, to suspend operations and move to undisputed waters” and that the “Embassy military liaison officer (MLO) was in direct contact by Inmarsat [satellite telephone] with the [...] captain on the rig during the early hours of June 3.”²⁷

8.16 In this connection, it must be noted that the Surinamese navy’s non-negotiable 12-hour time frame for the rig to leave the area was dangerously insufficient and put the rig and its crew in serious jeopardy. In his statement, Mr. Netterville explains that:

The need to meet Suriname’s 12 hour deadline required the *C.E. Thornton* to travel with its legs extended 278 feet into the water. This was unusual and dangerous and placed the rig and its crew at risk because moving a rig with its legs deep into the water risks striking obstacles on the ocean floor. Moreover, the danger caused by forcing the rig to leave so rapidly was

²² MG, pp. 66-67, paras. 5.7-5.9.

²³ Even if there were a need for swift action, under Article 290(5) of the 1982 Convention, ITLOS could have prescribed provisional measures within two weeks of Suriname’s request.

²⁴ MG, p. 127, para. 10.9 & note 8.

²⁵ Affidavit of Edward Netterville, former Rig Supervisor on the *C.E. Thornton*. See MG, Vol. IV, Annex 175.

²⁶ *Ibid.*

²⁷ Cable 00 Georgetown 544 from the United States Embassy in Georgetown, Guyana, to the United States Secretary of State (5 June 2000), *supra* note 14.

compounded by the fact that the rig's legs needed critical repairs. However, the Surinamese ordered the rig to leave the Eagle site without delay, which did not give us time to repair the legs.²⁸

8.17 This reality stands in stark contrast to Suriname's characterisation of events: "The commander of one of those [navy] vessels then, in accordance with his instructions and standard maritime practices, directed the captain of the drill ship to leave the area. ...[T]his all happened in a professional and non-threatening way."²⁹ The evidence before the Tribunal does not support that claim. The only document Suriname offers to rebut Guyana's sworn evidence concerning the circumstances of Suriname's use of force against CGX is a political statement by President Wijdenbosch at a CARICOM Conference in July 2000 in which the Surinamese President suggested that the rig was merely "requested" to leave the area, that the crew "was willing to comply with the request" and that the Surinamese navy "allowed the rig 12 hours to leave the area."³⁰ Suriname has introduced no evidence of any witness to counter that put forward by Guyana. The general, unsubstantiated statement of Suriname is self-evidently insufficient to overcome the weight of the sworn evidence Guyana has submitted.

8.18 Nor can Suriname hide behind the fact that "[t]here were no personal injuries or property damage."³¹ Although thankfully true, it is not relevant to the assessment of whether Suriname's use of force was proportionate or not. Suriname's warning made it clear that it would use lethal force against a civilian rig with some 100 individuals on board. Had CGX not heeded the warning, or had it proven physically impossible to vacate the rig (the feet of which had already attached to the ocean floor) within the short time frame mandated by Suriname, grave personal injuries and property damage could have resulted. Suriname cannot rely on the prudence of Guyana and its licensee to absolve itself from international responsibility for unnecessary and disproportionate acts of military coercion, including the threatened use of force.

²⁸ Affidavit of Edward Netteville, *supra* note 25.

²⁹ SCM, p. 109, para. 7.12.

³⁰ *Ibid.*, p. 110, para. 7.12 & Annex 5.

³¹ *Ibid.*, p. 112, para. 7.23.

V. Guyana's Injuries and Entitlement to Reparations

8.19 As set forth in Chapter 10 of the Memorial, Suriname's unlawful conduct has resulted in material and non-material damage to Guyana. Suriname's conduct ended all exploration in the affected maritime area. Guyana has suffered substantial injuries through the loss of foreign investment in offshore exploration for hydrocarbon resources, the related benefits of such capital inflow, and the loss of licensing fees and other related sources of income from the issuance of licences for offshore exploratory activities, as well as the foregone benefits of the development of Guyana's offshore resources. The unwillingness of CGX, as well as Esso and Maxus, to conduct further exploration is the direct result of Suriname's recourse to force and its credible threats to take similar action in the future. Suriname has even pressured Repsol YPF -- which holds licences from both Suriname and Guyana -- to refrain from exploration throughout Guyana's Georgetown block, most of which lies outside the area bounded by the 10° and 34° lines.³² Consequently, Suriname is internationally responsible for violating its obligation to settle disputes by peaceful means under the 1982 Convention, the UN Charter and general international law, and is under an obligation to make reparation to Guyana in an amount *no less than* U.S. \$33,851,776. Consistent with the Second Submission in its Memorial, Guyana reserves the right to define the full *quantum* of damages at a subsequent phase of these proceedings.

³² *Staatsolie and Repsol YPF sign Production Sharing Agreement - A responsible partner for Suriname*, Newsletter (June 2004). ("Repsol YPF gave -- partially due to the commotion caused [by the maritime boundary dispute] -- Staatsolie a written guarantee that they would not conduct any activities in the Georgetown Block."). See MG, Vol. IV, Annex 174.

Reply of Guyana

CHAPTER 9

SURINAME'S FAILURE TO MAKE EFFORTS TO REACH EITHER
A PROVISIONAL OR FINAL AGREEMENT

9.1 Guyana's Memorial demonstrated that Suriname frustrated "every effort to enter into provisional arrangements of a practical nature" with regard to the maritime boundary and "hamper[ed] the reaching of a final agreement" in contravention of its obligations under Articles 74(3) and 83(3) of the 1982 Convention. Suriname's Counter-Memorial responds in the only way it can -- by turning the facts inside out. Suriname claims that, rather than obstructing agreement, it actively participated in good faith negotiations with an open mind. Indeed, both Suriname's Preliminary Objections and its Counter-Memorial attempt to portray Guyana as the Party that blocked attempts to arrive at an agreed solution. An objective assessment of the facts unmasks Suriname's distortions and exposes a consistent pattern of Surinamese behaviour that forestalled both a provisional and a final agreement.

I. Suriname Thwarted Negotiations on the Maritime Boundary Throughout the 1990s

9.2 The operative theme of Suriname's response to Guyana's Third Submission is to portray Suriname as faithful to the Parties' undertakings both at the 1989 summit between Presidents Hoyte and Shankar and in the 1991 Memorandum of Understanding (MOU). Suriname asserts, for example: "The model of the 1989/1991 *modus vivendi* and MOU is Suriname's position.¹ Elsewhere, it hails the 1989/1991 understandings as models of "balance" and "practicality."² These claims stand in flagrant contradiction to Suriname's behaviour at the time of these events and subsequently. In truth, Suriname implicitly and explicitly rejected the understandings that had been reached in 1989 and 1991. As Guyana set out in the Memorial (and Suriname nowhere denies), Suriname never ratified the 1991 MOU and it never became effective under Surinamese law.³ Lest Suriname attempt to dismiss this fact as a mere "technicality," Guyana notes that in subsequent dealings between the two States, Suriname's Foreign Minister expressly disavowed the MOU as having "no validity" precisely because it had never been ratified.⁴ Indeed, the record suggests that displeasure with the MOU caused considerable political tension in Paramaribo and led directly to the dismissal of the officials responsible for signing it.⁵ It is thus hypocritical for Suriname to claim now before the Tribunal that it always embraced the 1989/1991 undertakings when the evidence shows that it rejected their validity at the very time when cooperation might have done some good.

9.3 Suriname's behaviour on the ground after the 1989 Presidential summit and the 1991 MOU further contradicts its supposed support for these understandings. Contrary to the

¹ SCM, p. 123, para. 8.15.

² *Ibid.*, p. 123, para. 8.14; *see also ibid.*, p. 119, para. 8.2.

³ MG, p. 55, para. 4.36 ("Nor did Suriname ratify the Memorandum of Understanding. Accordingly, it never became binding or effective under Suriname law.").

⁴ Cable 94 Georgetown 2405 from the United States Embassy in Georgetown, Guyana to the United States Secretary of State (21 July 1994) ("Mungra responded that the MOU had no validity because it had never been approved by the Surinamese Parliament."). *See* RG, Vol. II, Annex R11.

⁵ *Ibid.* (reporting that "[signing the MOU] was the reason the President was removed from office and Ambassador Collada recalled").

Counter-Memorial's assertion, it was always Guyana that was anxious to press ahead on discussing modalities for the joint utilisation of the area between the 10° and 34° lines,⁶ and it was always Suriname that found an excuse to delay and to put the issue off to another day. Even on those infrequent occasions when Guyana was successful in arranging face-to-face meetings, they invariably turned into exercises in futility. In contradiction of the facts, Suriname claims that "Suriname and Guyana made progress in those meetings."⁷ The assertion is patently untrue. Every time the Parties met, Suriname offered a new reason to delay any progress.

9.4 Following closely on the heels of the 1989 Presidential summit, for instance, representatives of Guyana's Natural Resources Agency (GNRA) flew to Paramaribo to meet with Staatsolie personnel in February 1990. Notwithstanding the Presidents' agreement that "representatives of the Agencies responsible for Petroleum Development within the two countries should agree on modalities,"⁸ GNRA officials showed up only to find that the Staatsolie representatives were "unprepared."⁹ According to a contemporaneous memorandum: "This is the second time that we have come to Suriname only to be told that STAATSOLIE is not aware of the reasons we are here. ... We will definitely have to involve the Surinamese politicians in the future or else we will again waste our time."¹⁰

9.5 When Guyanese officials realized they were getting nowhere with their Surinamese counterparts, they went back to President Hoyte and asked him to contact President Shankar to "reaffirm their previous agreement in order to ensure that agreement is adhered to by Surinamese officials."¹¹ As of May 1990, however, GNRA officials reported that "Guyana was still awaiting word from Suriname to resume discussions concerning the marine area of overlap."¹² In 1991, GNRA tried again, this time asking President Hoyte to see if he could revive discussions with Suriname's new President, Johannes Kraag.¹³ When the two Presidents met in February that year, they specifically sought to obviate the problems that had

⁶ In communications after the Hoyte-Shankar talks, for example, Barton Scotland, Deputy Chairman of GNRA, urged Guyanese officials to "keep the momentum" and noted that "there is an urgent need for action by Guyana on this matter." Barton Scotland, A Note on Cooperation in Petroleum Matters with Suriname (26 August 1989). See RG, Vol. II, Annex R4. See also Letter from Barton Scotland, Deputy Chairman of the Guyana Natural Resources Agency, to Executive Chairman of the Guyana Natural Resources Agency (17 October 1989). RG, Vol. II, Annex R5.

⁷ SPO, pp. 36-37, para. 6.25.

⁸ Agreed Minutes, signed by Foreign Minister Rashleigh Jackson of Guyana and Foreign Minister Edwin Sedoc of Suriname (25 August 1989). See MG, Vol. II, Annex 71.

⁹ Letter from Brian Sucre, Director of Petroleum at the Guyana Natural Resources Agency to Deputy Chairman, Guyana Natural Resources Agency (23 February 1990) [hereinafter "Letter from Brian Sucre (23 February 1990)"], see RG, Vol. II, Annex R6; see also Memorandum by Guyana Natural Resources Agency, Notes on Meetings with Mr. R. Bergval, Deputy Director, Exploration and Drilling, Staatsolie, Suriname, 22-23 February 1990 (23 February 1990), see MG, Vol. III, Annex 151.

¹⁰ Letter from Brian Sucre (23 February 1990), *supra* note 9.

¹¹ Minute by Winston King, Executive Chairman at the Guyana Natural Resources Agency (9 March 1990). See RG, Vol. II, Annex R7.

¹² Agreed Minutes signed by Barton Scotland, Guyana Natural Resources Agency, and Georges Elias, signing for Ruben Yang, Suriname Ministry of Natural Resources (17 May 1990). See RG, Vol. II, Annex R17. See also Minute by Barton Scotland, Guyana Natural Resources Agency (21 May 1990). RG, Vol. II, Annex R8.

¹³ Background Memorandum for President Desmond Hoyte prepared by Guyana Natural Resources Agency (5 February 1991). See MG, Vol. II, Annex 73.

plagued prior meetings by agreeing that “a team from the appropriate agency in Suriname, *armed with full authority to settle the issue*, would visit Guyana during the month of February this year to conclude discussions on the modalities for the treatment of natural resources in the area of overlap between Guyana and Suriname.”¹⁴

9.6 Yet, when representatives from GNRA and Staatsolie met in Georgetown later in February 1991, Staatsolie once again claimed a lack of authority to negotiate any agreement for the actual utilisation of the maritime resources in the area between the 10° and 34° lines.¹⁵ The subsequent negotiations were therefore of limited scope. They resulted only in the 1991 MOU, which was little more than an agreement to agree, pursuant to which the Parties decided that representatives of both governments would meet within 30 days to fix modalities for joint utilisation. But even that proved too much for Suriname. The Surinamese officials responsible for the MOU were soon removed from office and, as acknowledged in Suriname’s Preliminary Objections,¹⁶ Suriname never got around to sending a delegation to Guyana despite repeated invitations.

9.7 The same pattern continued throughout the mid-1990s. Notwithstanding Suriname’s express rejection of the 1991 MOU in 1994, Guyana continued to press for dialogue. But Suriname again created reasons to delay.¹⁷ When the Parties held the inaugural meeting of their National Border Commissions in May 1995, for example, Guyanese officials were greeted with a statement by the Chairman of Suriname’s Border Commission (and former President), Mr. Ramdal Misier, that “the offshore area was not a subject for discussion.”¹⁸ Mr. Misier’s opening remarks focused entirely upon the New River Triangle and while nominally endorsing a spirit of “cooperation and not confrontation,” he emphasised that Suriname was “not prepared or authorized” to discuss the boundary on the continental shelf.¹⁹ Curiously, the Counter-Memorial invokes this 1995 Boundary Commission meeting as a good example of the Parties’ mutual efforts “to resolve the full scope of their boundary problems.”²⁰ Guyana is forced to agree; it is a good example. As happened every other time the Parties met to discuss boundary issues, Guyana came prepared to discuss the area between the 10° and 34° lines, but Suriname declared the issue off limits.

9.8 Confronted with this history showing that Guyana’s persistent efforts to start negotiations were met with stone-walling, Suriname accuses Guyana of being the Party that thwarted implementation of the 1989/1991 understandings. With respect to the 1989 understanding between Presidents Hoyte and Shankar, Suriname’s principal line of argument is to complain about Guyana’s issuance of two exploration licences to Petrel in the following

¹⁴ Joint Press Statement issued after meeting held between Johannes Kraag, President of the Republic of Suriname, and Desmond Hoyte, President of the Co-operative Republic of Guyana (7 February 1991). See RG, Vol. II, Annex R14.

¹⁵ Brief Report on Visit by Staatsolie Representative to Guyana Natural Resources Agency to Discuss Modalities for Area of Overlap (27 February 1991) (emphasis added). See MG, Vol. III, Annex 154.

¹⁶ SPO, pp. 37-38, para. 6.28.

¹⁷ MG, p. 55, para. 4.36.

¹⁸ Report on the Inaugural Meeting of the Border Commissions of Guyana and Suriname (17-18 May 1995). See RG, Vol. II, Annex R15.

¹⁹ *Ibid.*

²⁰ SPO, p. 40, para. 6.31.

months.²¹ The complaint misses the point. The 1989 understanding provided only that the Parties “should agree on modalities which would ensure that the opportunities available within the said area can be jointly *utilised*....”²² Yet, the Petrel concessions were limited only to “exploratory activities;”²³ no extraction activities were either contemplated or undertaken. There is no inconsistency between the activities of Guyana and the commitment of the 1989 understanding on the joint “utilisation” of the area between the 10° and 34° lines.

9.9 Suriname’s arguments about Guyana’s “breach” of the 1991 MOU are even farther off the mark. As noted, Suriname expressly disavowed the MOU in its subsequent dealings with Guyana. It is thus in no position to complain that Guyana took Suriname’s rejection of the MOU seriously and proceeded to conduct itself accordingly. After Suriname failed to follow through on the MOU, Guyana simply resumed what had become the Parties’ joint custom of using the historical equidistance line as the dividing line between their respective concession areas.

II. Suriname Failed To Make Serious Efforts to Negotiate After the CGX Incident

9.10 The Counter-Memorial is particularly strident in its attacks on Guyana with respect to events after the CGX incident in July 2000.²⁴ As Suriname would have it, Guyana stood obstinately in the way of a return to “the mutually beneficial cooperation that characterized the 1989 *modus vivendi*.”²⁵ Given the fact that Suriname had stood in the way of any cooperation throughout the 1990s, the hollowness of this claim is obvious. The facts show once again that Guyana’s persistent efforts to reach compromise were met with intransigence on the part of Suriname.

9.11 Suriname’s Counter-Memorial harps on the fact that Guyana refused to turn over the CGX agreement to Suriname before the Parties had agreed even in principle on the modalities for the joint exploration and utilisation of the area between the 10° and 34° lines.²⁶ The truth is different from what Suriname suggests, as the evidence shows. Guyana gave Suriname considerable amounts of information concerning its licencees, including CGX.²⁷ Nevertheless, given Suriname’s failure to engage meaningfully on the subject throughout the 1990s, Guyana was reluctant to disclose all the terms and conditions of the agreement, or the agreement itself, without explicit assurances from Suriname that it was committed to moving

²¹ See, e.g., *ibid.*, p. 36, para. 6.22.

²² Agreed Minutes, signed by Foreign Minister Rashleigh Jackson of Guyana and Foreign Minister Edwin Sedoc of Suriname (25 August 1989), *supra* note 8 (emphasis added).

²³ *Ibid.*, p. 53, para. 4.32.

²⁴ See generally SCM, Chapter 8. The circumstances of Suriname’s illegal use of force are detailed in Chapter 8 of this Reply.

²⁵ *Ibid.*, pp. 120-121, para. 8.7. Even as it attacks Guyana’s purported obstinacy, Suriname acknowledges that Guyana made numerous proposals for negotiations on the area of overlap, including putting boundary negotiations on a fast track; the designation of the area of overlap as a “Special Area for the Sustainable Development of Guyana and Suriname;” and the creation of a Mixed Guyana/Suriname Authority to manage the area. *Ibid.*, p. 120, para. 8.6; Main Points, Guyana/Suriname Discussions, Paramaribo, June 17-18, 2000 (18 June 2000). See MG, Vol. II, Annex 83.

²⁶ SCM, pp. 119-122, paras. 8.4, 8.6, 8.9-8.10.

²⁷ Minutes of the Fifth Joint Meeting of the Guyana/Suriname Border Commissions, Ministry of Foreign Affairs, March 10, 2003 (24 March 2003). See MG, Vol. II, Annex 88.

forward in a productive manner on delimitation of the boundary, or at least on an interim joint utilisation agreement. Thus, Guyana was -- as it told Suriname over and over again -- willing to provide the additional information Suriname requested within the context of agreed-upon modalities for joint exploration and utilisation of the area.²⁸

9.12 Suriname also makes much of the fact that the draft Memorandum of Understanding Guyana presented to Suriname at the 6 June 2000 Joint Ministerial Meeting proposed that the Parties respect existing concessions in the area between the 10° and 34° lines. According to the Counter-Memorial, Guyana was trying to present Suriname with a *fait accompli* and “offered Suriname nothing of value in return.”²⁹ In reality, however, Guyana’s approach envisioned a sharing of any and all profits with Suriname, including from Guyana’s existing concessions. Although Guyana proposed that the rights of existing *licencees* such as CGX be respected, it proposed dividing the benefits of those concessions with Suriname. Indeed, it was only within a framework in which a “mixed authority” would be established to “manage” the area that Guyana proposed that “the rights granted to the Company [*i.e.*, CGX] should be fully respected.”³⁰

9.13 At all times, Guyana was thus amenable to sharing the potential benefits of exploration and development with Suriname, provided only that Suriname commit itself to discussing in good faith the modalities pursuant to which that sharing could occur. The evidence is clear on this. Yet, as always, Suriname steadfastly refused to engage in meaningful discussions. At a May 2002 meeting of the Subcommittee of the joint Border Commission, for example, Guyana offered a concept paper outlining certain modalities, including sharing of net revenue and joint development. The Surinamese delegation refused even to discuss the paper because, in its view, the concepts mentioned fell outside Suriname’s narrow interpretation of the Subcommittee’s mandate.³¹ Guyana encouraged Suriname to consider the paper again the next year, in 2003, but Suriname again refused even to consider it.³² Ultimately, it was this pattern of refusing to engage in serious negotiations that compelled Guyana in February 2004 to invoke the dispute resolution provisions of the 1982 Convention and seek the intervention of this Tribunal.

²⁸ In fact, Suriname wanted much more than the CGX agreement. It also wanted all the seismic and other “petroleum geological and geophysical data” Guyana had acquired over the years. Report of the Subcommittee of the Joint Guyana/Suriname Border Commissions (25 July 2002). See MG, Vol. II, Annex 86.

²⁹ SCM, pp. 119-120, para. 8.4.

³⁰ Main Points, Guyana/Suriname Discussions, Paramaribo, June 17-18, 2000 (18 June 2000), *supra* note 25, at pp. 1-2.

³¹ The Subcommittee’s mandate, agreed to at Guyana’s initiative during a meeting between Presidents Bharrat Jagdeo of Guyana and Ronald Venetiaan of Suriname, was “to look at best practices and modalities that could assist the Governments in the taking of a joint decision regarding an eventual joint exploration.” Agreed Minutes of Meetings of the Subcommittee of the Guyana-Suriname Border Commission Held in Georgetown, Guyana, at the Ministry of Foreign Affairs, (31 May 2002). See MG, Vol. II, Annex 85. The Counter-Memorial contends that the “main stumbling block” at this session was Guyana’s refusal to “show its cards” with respect to CGX. SCM, pp. 121-122, para. 8.9. An objective reading of the record exposes the emptiness of Suriname’s statement. Report of the Subcommittee of the Joint Guyana/Suriname Border Commissions (25 July 2002). See MG, Vol. II, Annex 86 (containing agreed statement that “[t]he Sub-committee could not find common ground in relation to the interpretation of its mandate”).

³² Minutes of the Fifth Joint Meeting of the Guyana/Suriname Border Commissions, Ministry of Foreign Affairs, March 10, 2003 (24 March 2003). See MG, Vol. II, Annex 88.

Reply of Guyana

9.14 The historical record makes it clear that at all times it was Guyana that pressed for the Parties to “enter into provisional arrangements of a practical nature,” and it was Suriname that found a reason to avoid agreement. For this reason, the Tribunal should adjudge and declare that Suriname has failed to live up to its obligations under Articles 74(3) and 83(3) of the 1982 Convention.

CHAPTER 10

SUBMISSIONS

10.1 Having regard to the considerations set forth in this Reply and in Guyana's Memorial and, in particular, the evidence put to the Arbitral Tribunal, and having regard to the Submissions set forth by Suriname in Chapter 9 of its Counter-Memorial

May it please the Arbitral Tribunal to 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.



Samuel Rudolph Insanally
Agent of the Republic of Guyana
1 April 2006

Reply of Guyana

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- The Johns Hopkins University Applied Physics Laboratory, Calculations of Lines, Points, and Areas Related to the Coasts and Off-shore Areas of Guyana and Suriname (March 2006)R3

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- Information and Observations Submitted by Governments Regarding the Question of the Delimitation of the Territorial Sea of Two Adjacent States, *Yearbook of the International Law Commission Yearbook 1953*, Vol. II, Doc. A/CN.4/71 and Add. 1-2, 82-83 (1959)R9
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