

## CHAPTER 2

### POINTS OF AGREEMENT AND DISAGREEMENT

2.1. This Chapter sets out in summary form main points of agreement and disagreement between the Parties.

#### I. Points of Agreement

##### A. The Tribunal Will Determine a Single Maritime Boundary

2.2. Suriname and Guyana agree that the Tribunal should establish a single maritime boundary. This is called for by Guyana's Submission 1 and elsewhere in its Memorial.<sup>14</sup> Suriname agrees. Chapter 4 of this Counter-Memorial addresses the implications of this agreement of the Parties. The single maritime boundary to be determined by the Tribunal will serve as a boundary between the Parties applicable to all forms of sovereignty, sovereign rights and jurisdiction that either Party may exercise in maritime areas in accordance with international law.

##### B. The Single Maritime Boundary Will Stop at a Point Where It First Reaches the 200-Nautical-Mile Limit Measured from the Baseline of One of the Parties

2.3. Suriname and Guyana agree that the single maritime boundary to be determined by the Tribunal shall extend "for a distance of 200 nautical miles."<sup>15</sup> This is the position expressed in Guyana's Submission 1 and elsewhere in Guyana's Memorial.<sup>16</sup>

2.4. Suriname agrees with this position and understands it to mean the following: that the Tribunal will stop the single maritime boundary line that it determines at the exact point where that line first reaches the 200-nautical-mile limit measured from the baseline of one of the Parties. This means that the Tribunal will not address in any way the rights of either Party beyond that point, which may pertain to an area within 200 nautical miles of the baseline of one Party but not the other Party or to a potential claim established by either country in accordance with Part VI of the 1982 Law of the Sea Convention.

2.5. Suriname takes note of Guyana's several references to a reservation of its rights in this regard.<sup>17</sup> Suriname records and maintains a corresponding reservation of its position.<sup>18</sup> Suriname further notes that as of this time there have been no discussions between the Parties pertaining to the outer limit of the continental shelf and such bilateral delimitation as may be required; there have been no consultations regarding any submission to the Commission on the

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<sup>14</sup> See, e.g., MG, p. 135. Guyana Submission 1; para. 7.30, p. 87.

<sup>15</sup> MG, p. 135. Guyana Submission 1.

<sup>16</sup> See, e.g., *ibid*; para. 1.13, p. 5 ("to a point located at a distance of 200 miles from Point 61").

<sup>17</sup> MG, para. 7.1, p. 77; para. 7.24, p. 85; para. 9.1, p. 107.

<sup>18</sup> In this regard, Suriname expressly indicates its reservation to the assertion at paragraph 2.13 of Guyana's Memorial to the effect that Suriname's only outer continental shelf boundaries may be with Guyana and French Guiana.

Limits of the Continental Shelf about the outer limits of the continental shelf for this area;<sup>19</sup> and neither Party has made a submission to the Commission. Accordingly, the conditions of Article 283 of the Convention, requiring the Parties to exchange views before having recourse to the procedures of Part XV of the Convention, have not been satisfied insofar as the outer limits of the continental shelf and such bilateral delimitation as may be required are concerned.

### **C. Geological Circumstances Are Not Relevant**

2.6. Suriname agrees with Guyana's statement that "geological factors are of no material relevance for this case."<sup>20</sup> Guyana quotes with approval the statement of the International Court of Justice in the *Libya/Malta* case to the effect that "there is no reason to ascribe any role to geological or geophysical factors" in delimitations within a 200-nautical-mile range from the coast.<sup>21</sup> Suriname agrees that this is a correct statement of the law insofar as it pertains to delimitations within the 200-nautical-mile zone.<sup>22</sup>

### **D. The Relevant Coasts Are Adjacent, and They Meet at a Point at Which the General Direction of the Coast Changes**

2.7. Guyana describes the geographic setting as follows:

The coastlines of Guyana and Suriname have an adjacent geographical relationship. The coastlines meet at the boundary terminus ... and together form a wide and irregular concavity.<sup>23</sup>

Suriname agrees that the coastlines of Guyana and Suriname are adjacent. Furthermore, Suriname understands Guyana's reference to "a wide and irregular concavity" to be a recognition of the fact that the relevant coastlines of Suriname and Guyana have a different general direction.

## **II. Points of Disagreement**

### **A. Can the Land Boundary Terminus Be Determined by Establishing a Closing Line Across the Mouth of the Corantijn River?**

2.8. Guyana has argued that the Tribunal can use Article 9 of the Law of the Sea Convention to establish the land boundary terminus between Suriname and Guyana at the mouth of the Corantijn. Guyana has suggested to the Tribunal:

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<sup>19</sup> To meet the requirements of the Rules of Procedure of the Commission on the Limits of the Continental Shelf, such consultations are called for before a state makes its submission to the CLCS. See Article 46 and Annex I to the Rules of Procedure (issued as Doc. CLCS/40 of 2 July 2004), available at [http://www.un.org/Depts/los/clcs\\_new/commission\\_documents.htm#Rules%20of%20Procedure](http://www.un.org/Depts/los/clcs_new/commission_documents.htm#Rules%20of%20Procedure).

<sup>20</sup> MG, para. 7.35, p. 89. In this same sentence Guyana also says that "geographic" factors are of no material relevance. If that is truly Guyana's position and not an error, Suriname strongly disagrees.

<sup>21</sup> *Id.* (quoting Case Concerning the Continental Shelf, Judgment (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 35, para. 39).

<sup>22</sup> Suriname reserves its position as to the legal considerations that may apply in delimitations of the continental shelf beyond 200 nautical miles from the coast.

<sup>23</sup> MG, para. 2.7, p. 8.

if there is no agreement [on the land boundary terminus] you are fully able to use Article 9 to reach that agreement, and that is a matter which falls plainly within the jurisdiction of this Tribunal.<sup>24</sup>

Suriname does not agree with that view. In its Memorandum on Preliminary Objections, Suriname indicated that the equidistance lines it presented in Figure 4 of the Memorandum “are without prejudice to the right of Suriname to establish a closing line in the Corantijn *after* the northern terminus of the land boundary with Guyana is established.”<sup>25</sup> Suriname still believes that this is the proper order in which to address these matters. First the land boundary terminus has to be established and only afterwards can a river closing line be established.

2.9. In asking the Tribunal to apply Article 9 of the Law of the Sea Convention, Guyana is necessarily asking the Tribunal to do either of two things. First, Guyana may be asking the Tribunal to set aside the law applicable to the determination of the terminus of the land boundary between Suriname and Guyana, which includes an agreement between the governors of the colonies of Suriname and Berbice<sup>26</sup> concluded almost two centuries before the adoption of the Law of the Sea Convention and to apply a provision of the Law of the Sea Convention instead to determine this point. As Suriname’s Preliminary Objections make clear, a tribunal constituted under Part XV of the Convention does not have the power to decide such territorial questions, and there is nothing in the drafting history of Article 9 of the Law of the Sea Convention to suggest that Article 9 should be interpreted as a provision to be used to establish the land boundary between adjacent states. Second, and even more curiously, Guyana may be suggesting that the Tribunal determine a closing line that will provide the starting point of the maritime boundary but leave the location of the land boundary terminus undecided. Such an approach would constitute an irreparable prejudice to the determination of the terminus of the land boundary. Clearly, the starting point of the maritime boundary cannot be different from the terminus of the land boundary. Otherwise, part of the baseline of one state would extend beyond the maritime boundary with the other state. Such a result would be wholly at variance with the basic principle that the land dominates the sea.

2.10. Suriname also rejects Guyana’s assertion that Article 9 is applicable to the mouth of the Corantijn River. Suriname holds that it is not Article 9 of the Law of the Sea Convention that is applicable to the Corantijn, but the Convention’s Article 10. As can be noted, Article 9 refers to one type of river, namely a river that “flows directly into the sea.” The French text of Article 9 is more specific on this point as it provides that it applies in a case where a river “se jette dans la mer sans former d’estuaire.” The Corantijn River at its mouth forms an estuary, making Article 9 of the Convention inapplicable. In such cases, Article 10 of the Convention on bays is the applicable provision.<sup>27</sup>

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<sup>24</sup> Uncorrected Transcript of Hearing on Need for a Hearing on Suriname’s Preliminary Objections at lines 17-19, p. 34 (Day Two; Friday, 8 July 2005).

<sup>25</sup> SPO, para. 2.20 n. 48, p. 11 (emphasis added).

<sup>26</sup> See SPO, para. 2.1, p. 5; see also MG, para. 2.18 n. 14, p. 10; MG, Vol. II, Annex 2.

<sup>27</sup> It is well understood in the application of the law of the sea that when the mouth of a river forms an estuary the rules pertaining to the closing lines of bays are the applicable rules to be applied to the closing line of the river concerned. See *The Law of the Sea, Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, Office for Ocean Affairs and the Law of the Sea, United Nations, para. 62, United Nations Publication, Sales No. E.88.V.5 (1989).

2.11. Article 10 of the 1982 Law of the Sea Convention places a restriction on the drawing of closing lines that is not applicable in the case of Article 9. Article 10(1) provides that “[t]his article relates only to bays the coasts of which belong to a single State.” This requirement is met by the Corantijn River. The low-water line of its west bank is part of the territory of Suriname. However, the northward extent of the low-water line along the western bank of the Corantijn River thus far has not been established, as there is no agreement between Suriname and Guyana on the northern terminus of the land boundary. Thus, just as is the case with respect to Article 9 of the Convention, before the law of the sea question of drawing a closing line under Article 10 can be addressed, the determination of the extent of the land boundary requires the interpretation and application of other legal rules that are outside of the Law of the Sea Convention.<sup>28</sup>

**B. Does the Absence of Agreement on the Land Boundary Terminus Preclude a Maritime Delimitation by the Tribunal?**

2.12. Suriname holds that in the case of adjacent states the application of the law of maritime delimitation is always dependent upon the location of the land boundary terminus.<sup>29</sup> The absence of agreement on the terminus of the land boundary makes it impossible for the Tribunal to delimit any maritime boundary at all, much less one that achieves any method of an equitable solution in light of the relevant circumstances, in particular the relevant geographical circumstances.

2.13. Guyana has also argued that the Tribunal can find a point at sea where two equidistance lines meet and begin its delimitation from there. Such an argument is easily refuted. The location of such a point on an equidistance line cannot be known prior to the determination of the land boundary terminus. Adopting a point on an equidistance line from which delimitation could begin would prejudice the future delimitation of the landward part of the maritime boundary when the terminus of the land boundary is later established, as the point would necessarily become part of the maritime boundary. Even more important, the approach Guyana suggests would force the Tribunal to adopt a specific method of delimitation — the equidistance method — to the exclusion of other methods and would in turn, make it impossible for the Tribunal to make a full and balanced assessment of the maritime delimitation issue before it. In this way, the method of delimitation would drive the delimitation process, when under maritime delimitation law, it is the requirement to achieve an equitable solution that drives the delimitation process, including the selection of practical methods to achieve such a solution. Therefore, in Suriname’s view, the absence of a definite land boundary terminus as the starting point for the maritime delimitation prevents the Tribunal from effecting a maritime delimitation in accordance with Articles 74 and 83 of the Law of the Sea Convention.

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<sup>28</sup> Although Article 10 of the Law of the Sea Convention cannot be applied in the absence of agreement on the land boundary terminus, it is possible to construct a hypothetical closing line across the mouth of the Corantijn. As is shown in the figure contained in SCM, Annex 67, the western anchoring point of such a closing line lies considerably to the north and the west of the 1936 Point. See SCM, Vol. III, Annex 67. *Ex abundanti cautela* it should be noted that this western anchoring point does not offer up a potential land boundary terminus, which as has been pointed out cannot be determined by application of Article 10.

<sup>29</sup> SPO, para. 2.21, p. 12.

### C. Is the Territorial Sea Boundary Established?

2.14. The Parties are in fundamental disagreement concerning the territorial sea boundary. Suriname's position is that if the land boundary terminus was established at the 1936 Point, so too was the territorial sea boundary established at a 10° bearing to the limit of territorial waters. Guyana concedes that proposition, at least until the early 1960s. However, Guyana argues that relevant factual considerations that were taken into account in the establishment of the 10° Line may no longer be present and that consequently it is now free to disavow the 10° Line.<sup>30</sup> Even if Guyana's factual premise were true — and it is not — Guyana's legal position is contrary to a fundamental norm of customary international law enshrined in the Vienna Convention on the Law of Treaties.<sup>31</sup> Changing circumstances do not provide a basis for a party to disavow a boundary agreement.<sup>32</sup>

### D. What Is the Course of the Single Maritime Boundary?

2.15. Suriname's position is that the single maritime boundary follows the 10° Line. Guyana argues it follows the 34° line. This places approximately 31,600 square kilometers in dispute between the Parties to the 200-nautical-mile limit. Figure 1 demonstrates the area in dispute that must be decided by the Tribunal's delimitation.<sup>33</sup>

### E. Did the Colonial Powers Reach an Agreement Binding on the Parties Concerning the Boundary on the Continental Shelf?

2.16. Guyana claims that the early attraction to the equidistance method of the United Kingdom and the Netherlands Governments almost 50 years ago in connection with the 1958 United Nations Conference on the Law of the Sea is binding on the Parties today.<sup>34</sup> 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. The courtship was short-lived, however. The Netherlands Government disavowed the equidistance line for the continental shelf boundary in its formal proposal of 1962<sup>35</sup> and also in its 1966 diplomatic statement of position prior to Guyana's independence.<sup>36</sup> Furthermore, even at the

<sup>30</sup> MG, para. 8.20, p. 96; *see also* para. 3.45, p. 32; para. 9.33, p. 119. For further discussion, see Chapter 3 below.

<sup>31</sup> Vienna Convention on the Law of Treaties, *adopted* 22 May 1969, 1155 U.N.T.S. 331.

<sup>32</sup> Article 62(2) of the Vienna Convention on the Law of Treaties provides: “[a] fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary.” The boundaries of the world would be in a constant state of flux if the rule were otherwise. This matter is discussed further at Chapter 4, Section III below.

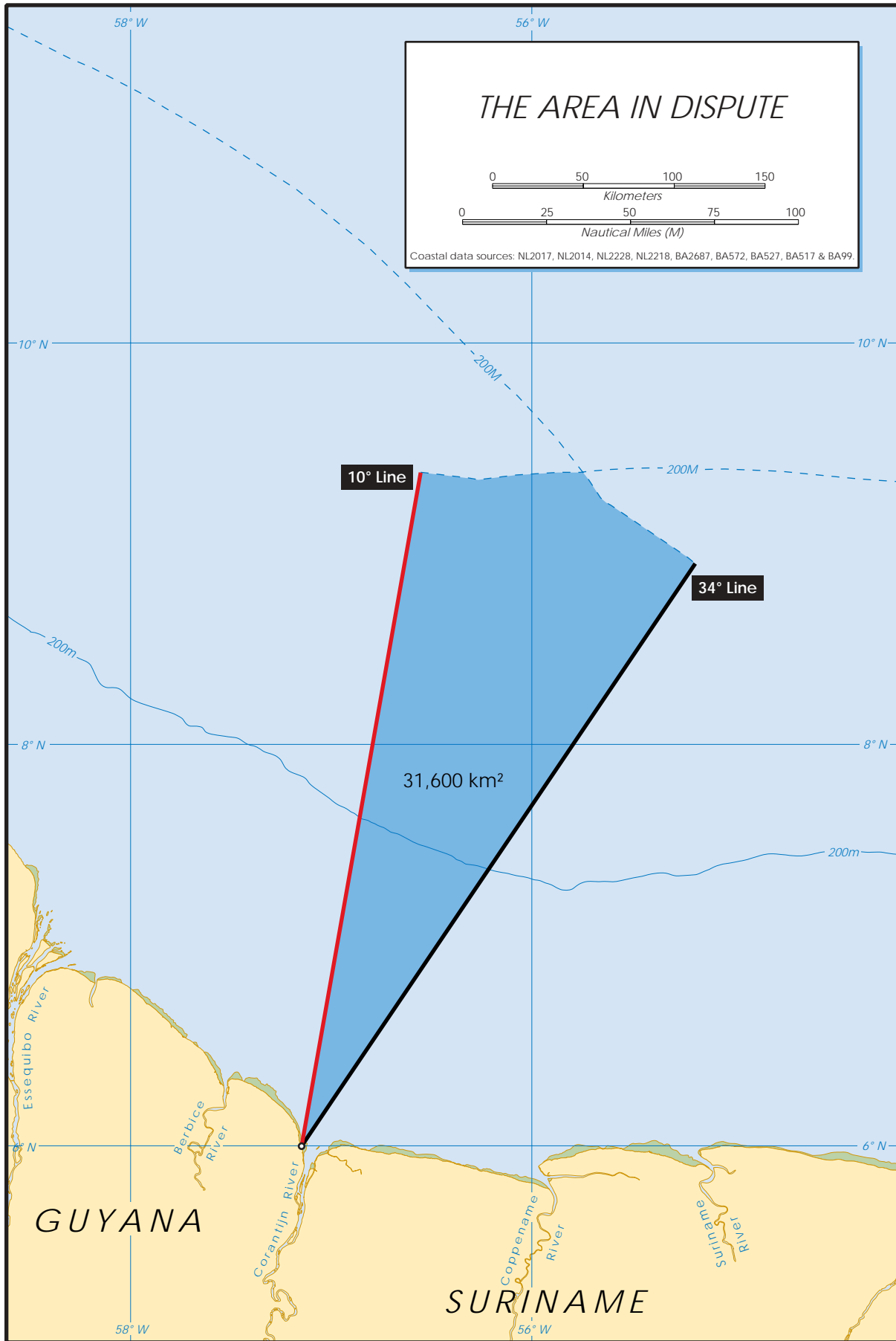
<sup>33</sup> References to “Figure \_\_\_” refer to Figures contained in this Counter-Memorial, unless otherwise indicated.

<sup>34</sup> For example, Guyana states: “the parties were in agreement on the principle that the delimitation of the continental shelf should be effected on the basis of equidistance.” MG, para. 3.51, p. 36. Guyana does, however, acknowledge that the Netherlands and the United Kingdom “were not able to conclude a formal agreement on the delimitation of their adjacent maritime boundaries.” MG, para. 1.4, p. 1.

<sup>35</sup> *See*, SPO, paras. 3.5-3.6, p. 14. The text of the full proposal is at MG, Vol. III, Annex 91. Article 4 of that proposal affirmed the 10° Line position.

<sup>36</sup> SPO, para. 3.6, p. 14. This diplomatic statement dated 3 February 1966 is at MG, Vol. II, Annex 68. It provides *inter alia*: “that the sea-boundary between Surinam and British Guiana should run from the West bank (left bank) of the Corentyne at its mouth, across the territorial sea and the continental shelf with a bearing 10° East of the true North.”

Figure 1



technical level there was never any agreement on where the equidistance line would run. Commander Kennedy's various possible equidistance lines, referred to in Guyana's Memorial, were all unilateral British undertakings that were not done in concert with the Netherlands' Hydrographic Office.<sup>37</sup> The single maritime boundary beyond the territorial sea between Suriname and Guyana was never decided, either as to its delimitation method or otherwise.

#### **F. Are the Parties Bound by the 1958 Geneva Conventions?**

2.17. At paragraph 7.29 of its Memorial, Guyana asserts: "[b]oth States are also bound by the 1958 Geneva Conventions, by reason of the participation of the United Kingdom and the Netherlands."<sup>38</sup> Suriname disagrees. Even if the Parties had become party to the 1958 Geneva Conventions upon independence from, respectively, the United Kingdom and the Netherlands, which they did not,<sup>39</sup> it is clear by virtue of Article 311(1) of the 1982 Law of the Sea Convention that the present Convention governs the legal relationship between the Parties, not any of the 1958 Geneva Conventions.<sup>40</sup>

#### **G. What Is the Role of the Conduct of the Parties as a Relevant Circumstance in the International Law of Maritime Boundary Delimitation?**

2.18. Suriname's position on the applicable law is set out in Chapter 4. It is grounded in the established jurisprudence of the International Court of Justice and arbitral tribunals. That jurisprudence makes clear, on the one hand, the fundamental importance of coastal geography as a relevant circumstance and, on the other hand, the limited role of the conduct of the parties as a relevant circumstance. Guyana, to the contrary, turns the international law of maritime boundary delimitation on its head by giving a dominant role to state conduct.<sup>41</sup> Furthermore, Guyana misdescribes both its own conduct and that of Suriname, and the events to which Guyana attempts to give legal significance largely relate to negotiating positions taken in failed negotiations between the colonial powers and its own unilateral conduct associated with its contracts with oil companies. International law does not give pride of place to the conduct of the parties as a relevant circumstance, nor have unconsummated negotiating positions or unilateral actions of the type referred to by Guyana been found to be legally relevant in the application of the international law of maritime boundary delimitation.

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<sup>37</sup> Commander R.H. Kennedy, a member of the British Admiralty and a British delegate to the 1958 Continental Shelf Convention, participated in calculating several possible equidistance lines. However, all of Commander Kennedy's work was in the form of proposals to be made to the Netherlands Government. See Chapter 3 below. There is no evidence that the British and Dutch Hydrographic offices reached common agreement at the technical level on the equidistance line at any time.

<sup>38</sup> MG, para. 7.29, p. 86.

<sup>39</sup> See database *Multilateral Treaties Deposited with the Secretary-General* (last update 19 October 2005), Part I, Chapter XXI, §1, § 4 (available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/bible.asp>).

<sup>40</sup> Article 311(1) provides: "[t]his Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958."

<sup>41</sup> Guyana states: "[i]nternational jurisprudence confirms that history and the conduct of the parties is of great relevance in delimiting maritime boundaries." MG, para. 3.2, p. 13. Guyana's single citation for this overstated proposition is to the *Tunisia/Libya* case, which is discussed in Chapter 5 below. *Id.* at para. 3.2 n.1, p. 13.

## **H. Are the Maritime Boundary Positions of Suriname or Guyana Taken Against Third Countries Relevant in This Case?**

2.19. Guyana argues that the position taken by Suriname in maritime boundary negotiations with French Guiana has some relevance to this case.<sup>42</sup> Several points may be made in response to Guyana's argument.

2.20. First, there is no maritime boundary agreement in force between Suriname and France with respect to French Guiana. Even if there were, however, it would be totally irrelevant to these proceedings. The case between Guyana and Suriname takes place in a different geographic locale and the relevant considerations are notably different.

2.21. Guyana's arguments are reminiscent of arguments advanced by both Norway and Denmark in the *Jan Mayen* case.<sup>43</sup> There, Norway argued that Denmark could not deny the application of the equidistance method in the matter before the Court because Denmark had accepted and applied equidistance in other boundaries with Norway and in certain legislative acts. The Court was clear in saying that Denmark's various actions pertaining to other geographic areas did not commit Denmark to follow the equidistance approach as between Greenland and Jan Mayen:

The use of the median line in the Agreement relating to the delimitation between Norway and the Faroe Islands does not support the Norwegian interpretation of the 1976 Danish Act on fishery zones; nor does it commit Denmark to a median line boundary in a quite different area.<sup>44</sup>

2.22. Conversely, Denmark tried to pin down Norway by reference to its practice with regard to Bear Island and Iceland. The Court said:

By invoking against Norway the Agreements of 1980 and 1981, Denmark is seeking to obtain by judicial means equality of treatment with Iceland. It is understandable that Denmark should seek such equality of treatment. But in the context of relations governed by treaties, it is always for the parties concerned to decide, by agreement, in what conditions their mutual relations can best be balanced. In the particular case of maritime delimitation, international law does not prescribe, with a view to reaching an equitable solution, the adoption of a single method for the delimitation of the maritime spaces on all sides of an island, or for the whole of the coastal front of a particular State, rather than, if desired, varying systems of delimitation for the various parts of the coast.<sup>45</sup>

2.23. Accordingly, what may or may not be the case between Suriname and French Guiana is irrelevant to these proceedings.

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<sup>42</sup> MG, para. 2.15, p. 9; para. 3.50, p. 36; para. 4.14, p. 43; para. 8.55, p. 105.

<sup>43</sup> Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway), Judgment, I.C.J. Reports 1993, p. 38.

<sup>44</sup> *Id.* at p. 55, para. 37.

<sup>45</sup> *Id.* at pp. 76-77, para. 86.



**I. Is There a *Modus Vivendi* with Respect to the 34° Line? Is There a *Modus Vivendi* with Respect to the Area of Overlapping Claims?**

2.24. The Parties have entirely different positions as to whether there is a *modus vivendi* in this case. Guyana asserts that oil concession limits have been aligned since 1966 and that the alignment constitutes “a broad understanding – a *modus vivendi* – as to the location of the maritime boundary.”<sup>46</sup> Elsewhere it says: “[a]lthough efforts since 1966 to achieve a formal boundary treaty did not bear fruit, the actions of Guyana and Suriname — in particular with respect to concessions, exploration and drilling for oil — reinforced the understanding that there was a *modus vivendi* around a historical equidistance line of N34E.”<sup>47</sup> Suriname disagrees. There is no such broad understanding concerning the location of the maritime boundary.

2.25. One may ask a straightforward question. If the oil concession practice had been aligned since independence, as Guyana argues, why is it that, as reported in Guyana’s Memorial,<sup>48</sup> the Presidents of Suriname and Guyana in 1989 agreed to a *modus vivendi* concerning the area of overlapping claims (defined in the 1991 MOU as the area between the 10° Line and the 30° line then claimed by Guyana)?<sup>49</sup> Guyana admits there was a 1989 Presidential understanding and a 1991 MOU,<sup>50</sup> but it incorrectly portrays those understandings as Suriname’s acknowledgment that Guyana could have a free hand in the area concerned. That rationalization is flatly wrong and perverse. It emanates only from the imagination of Guyana’s counsel. The truth is there was a 1989 *modus vivendi* designed to benefit both Parties in the area of overlapping claims. Guyana breached that understanding when it authorized its concessionaire CGX to drill in the disputed area.

**J. Did the 3 June 2000 Incident Occur in Disputed Waters?**

2.26. Guyana’s Submission 2 relates to Guyana’s authorization to its CGX concession holder to drill at the location of 7° 19’ 37” N, 56° 33’ 36” W and Suriname’s reaction thereto. Guyana says this location is “within the sovereign territory of Guyana”<sup>51</sup> or is in an area “over which Guyana exercises lawful jurisdiction.”<sup>52</sup> Suriname’s position is that the drill ship tried to drill a well on Suriname’s continental shelf without its authorization. There can be no doubt that the location at which the 3 June 2000 incident occurred is within the area of overlapping maritime boundary claims, as shown on Figure 2.

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<sup>46</sup> MG, para. 4.1, p. 37. Chapter 5 of this Counter-Memorial shows that there is not a shred of truth to this assertion of Guyana.

<sup>47</sup> MG, para. 4.5, p. 38.

<sup>48</sup> MG, para. 4.32, p. 53; para. 4.35, pp. 54-55.

<sup>49</sup> In its Memorial, Guyana claims that the 30° figure in the MOU is an error, but there is no support for that claim.

MG, para. 4.35 n.119, p. 55.

<sup>50</sup> See MG, Chapter 4, Section V, Parts E-F, pp. 53-55.

<sup>51</sup> MG, p. 135. Guyana Submission 2.

<sup>52</sup> *Ibid.*

### **K. Which Country Was Responsible for the 3 June 2000 Incident?**

2.27. Guyana's Memorial portrays Guyana as an aggrieved party and asserts that Suriname acted unlawfully in instructing Guyana's drill ship to leave the disputed maritime area in June 2000. Suriname believes that Guyana has the story backwards. Guyana authorized a drilling operation in a known area of overlapping claims, thus deliberately trying to create facts on the ground to enhance its boundary position. That was an unlawful act in violation of its duty "not to jeopardize or hamper a reaching of the final agreement."<sup>53</sup> It constituted an escalation of the maritime boundary dispute between the Parties by several orders of magnitude. Suriname acted to protect its interests and preserve the *status quo* and it did so with restraint and without injury to persons or property. It is Guyana that is fully responsible for that incident and it is Guyana that engaged in an internationally wrongful act in this regard, not Suriname. This question is addressed further in Chapter 7.

### **L. Which Country Was Responsible for the Parties' Failure to Enter into Provisional Measures of a Practical Nature Prior to Guyana's Institution of These Proceedings?**

2.28. Since the 3 June 2000 CGX incident, there have been several negotiating efforts to try to institute a provisional arrangement of a practical nature that would allow initiatives to proceed in the area of overlapping claims pending a maritime boundary settlement. Guyana blames Suriname for the failure to reach agreement in this regard and goes so far as to call for reparations. Yet, Guyana's own evidence set out in the Annexes to its Memorial demonstrates the rigid position of Guyana in those negotiations that would require Suriname to accept the validity of Guyana's oil concessions throughout most of the area of overlapping claims.<sup>54</sup> It is Guyana's unreasonableness that has made it impossible to agree and implement a provisional arrangement, not any hesitation by Suriname to negotiate an interim arrangement that would be equitable and non-prejudicial to the interests and positions of the Parties. This question is addressed further in Chapter 8.

### **M. Should the Tribunal Uphold Suriname's Preliminary Objections?**

2.29. Finally, it is obvious that the Parties are in disagreement on this fundamental question. Lest there be any doubt, Suriname wishes to be clear that it maintains its Preliminary Objections filed 23 May 2005 and that in accordance with the Tribunal's Order No. 2, those Preliminary Objections must be addressed first. Only if the Tribunal rejects the Preliminary Objections can the merits be addressed.

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<sup>53</sup> Articles 74(3) and 83(3) of the 1982 Law of the Sea Convention.

<sup>54</sup> See SPO, Chapter 6, Section IV, pp. 42-44.

Figure 2

