

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

- - - - - x
 :
 In the Matter of Arbitration :
 Between: :
 :
 REPUBLIC OF GUYANA, :
 : Case No. 2004-4
 Claimant, :
 : PCA Reference GU-SU
 and :
 :
 REPUBLIC OF SURINAME, :
 :
 Respondent. :
 :
 - - - - - x Volume 2

Friday, December 8, 2006

Organization of American States
17th Street and Constitution Avenue, N.W.
Guerrero Conference Room, Second Floor
Washington, D.C.

The hearing in the above-entitled matter convened at
9:31 a.m. before:

- H.E. JUDGE L. DOLLIVER M. NELSON, President
- PROF. THOMAS M. FRANCK, Arbitrator
- DR. KAMAL HOSSAIN, Arbitrator
- PROF. IVAN SHEARER, Arbitrator
- PROF. HANS SMIT, Arbitrator

Permanent Court of Arbitration:

MR. BROOKS W. DALY, Registrar
MR. DANE RATLIFF

Tribunal Hydrographer:

MR. DAVID GRAY

Court Reporter:

MR. DAVID A. KASDAN, RDR-CRR
Worldwide Reporting, L.L.P.
529 14th Street, S.E.
Washington, D.C. 20003
(202) 544-1903
worldwide.reporting@verizon.net

APPEARANCES:

On behalf of the Claimant:

HON. S.R. INSANALLY, O.R., C.C.H., M.P.,
Minister of Foreign Affairs

HON. DOODNAUTH SINGH, S.C., M.P.,
Attorney General and Minister of Legal Affairs

AMBASSADOR ELISABETH HARPER,
Director General of the Ministry of Foreign
Affairs

MR. KEITH GEORGE,
Head, Frontiers Division, Ministry of Foreign
Affairs

AMBASSADOR BAYNEY KARRAN,
Ambassador of Guyana to the United States

MS. DEBORAH YAW,
First Secretary, Embassy of Guyana to the
United States of America

MR. FORBES JULY,
Second Secretary, Embassy of Guyana to the
United States

SIR SHRIDATH RAMPHAL, S.C.,
Co-Agent for Guyana

MR. PAUL S. REICHLER,
Co-Agent for Guyana; Attorney, Foley Hoag, L.L.P.

MR. PAYAM AKHAVAN,
Co-Agent for Guyana; Associate Professor, Faculty
of Law, McGill University

MR. PHILIPPE SANDS, Q.C.,
Professor of Law, University College
London; Barrister, Matrix Chambers

MR. NICO SCHRIJVER,
Professor of Public International Law, University
of Leiden

APPEARANCES: (Continued)

On behalf of the Claimant:

MR. GALO CARRERA,
Scientific/Technical Expert, Advisor to the
Government of Guyana

MR. LAWRENCE MARTIN
MR. ANDREW LOEWENSTEIN
MS. SARAH ALTSCHULLER
MS. NIENKE GROSSMAN
MS. CLARA BRILLEMBOURG
Foley Hoag, L.L.P.
1875 K Street, N.W.
Suite 800
Washington, D.C. 20006-1238
(202) 223-1200
saltschuller@foleyhoag.com

MS. BLINNE NI GHRALAIGH,
Barrister, Matrix Chambers

MR. SCOTT EDMONDS,
International Mapping Associates

MR. THOMAS FROGH,
International Mapping Associates

APPEARANCES:

On behalf of the Republic of Suriname:

HON. LYGIA L. I. KRAAG-KETELDIJK,
Minister of Foreign Affairs and Agent

MR. CAPRINO ALLENDY,
Deputy Speaker of the Parliament

MR. HENRY ILLES,
Ambassador of Suriname

MR. WINSTON JESSURUN,
Member of Parliament

MS. JENNIFER PINAS,
Ministry of Foreign Affairs

MR. KRISH NANDOE,
Ministry of Justice and Police

MR. HANS LIM A PO,
Co-Agent

MR. PAUL C. SAUNDERS,
Co-Agent, Counsel and Advocate

PROFESSOR CHRISTOPHER J. GREENWOOD, CMG, QC,
Counsel and Advocate

MR. STEPHEN S. MADSEN
MS. MICHELLE K. PARIKH
Cravath, Swaine & Moore, L.L.P.
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
(212) 474-1000
smadsen@cravath.com

MR. DAVID A. COLSON
MR. BRIAN J. VOHRER
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009
(202) 986-8089
dacolson@llgm.com

APPEARANCES: (Continued)

On behalf of the Republic of Suriname:

PROFESSOR SEAN D. MURPHY,
Counsel and Advocate

PROFESSOR BERNARD H. OXMAN,
Counsel and Advocate

PROFESSOR DONALD M. McRAE,
Counsel and Advocate

PROFESSOR ALFRED H.A. SOONS,
Counsel and Advocate

DR. ALEX OUDE ELFERINK,
Counsel and Advocate

MR. COALTER LATHROP,
Cartography Consultant

MR. DAVID SWANSON,
Cartography Consultant

MS. REBECCA R. SILBER,
Law Clerk, Cravath, Swaine & Moore, L.L.P.

C O N T E N T S

OPENING STATEMENTS	PAGE
ON BEHALF OF THE CLAIMANT:	
By Mr. Reichler	156
By Professor Schrijver	237
By Professor Sands	276

1 P R O C E E D I N G S

2 PRESIDENT NELSON: Good morning. We start off hearing
3 from Guyana. There is Mr. Reichler ready to make his
4 statement? Mr. Reichler, you have the floor.

5 MR. REICHLER: Thank you very much, Mr. President.

6 First of all, good morning to you and to your
7 colleagues on the Tribunal. It's a double privilege for me to
8 be here today. First, I'm honored to appear before such a
9 distinguished Tribunal of eminent persons, eminent jurists, and
10 second, I'm honored to be designated a speaker by the Republic
11 of Guyana.

12 I would like to begin this morning by responding to
13 the request with which the President left us last evening, and
14 to advise you that our hydrographers are ready, willing, and
15 able to meet with the Tribunal's expert at a time and place of
16 your convenience. We have reviewed the list in the document
17 that you gave us last night. We have already started working
18 on it, at least our hydrographers have already started working
19 on it, to prepare for the meeting with the distinguished
20 Mr. Grey.

21 They would be available, of course, at his convenience
22 and your convenience. We were going to propose, perhaps, that
23 they might meet tomorrow afternoon. We thought about how we
24 could accommodate your interest in having a prompt meeting, and
25 we thought it might be possible for us to reorganize our

09:33:43 1 presentations such that we finish in the mid-afternoon tomorrow
2 in tomorrow's session rather than at the end of the day so that
3 the hydrographers could meet tomorrow after the session.

4 Another possibility, of course, is Sunday, if Mr. Grey
5 is willing and able to work on Sunday. Our team is certainly
6 available to meet on Sunday. And, of course, it's not a
7 hearing day, so that could be a convenient day, but we are at
8 the pleasure of the Tribunal with this and, of course, we will
9 fully cooperate.

10 I do want to add one thing, and perhaps I should have
11 done it yesterday when I presented our team, and I do want to
12 introduce to you our hydrographers and cartographers, at least
13 the leading lights on our team. I want to start off with my
14 good friend and well-known, Dr. Galo Carrera, and down at the
15 end of the table who will be assisting me on my presentation
16 this morning on the geographical circumstance, the equally
17 well-known Scott Edmonds of International Mapping Associates,
18 and they are available at your pleasure and Mr. Gray's pleasure
19 to work together.

20 PRESIDENT NELSON: Thank you very much, Mr. Reichler.

21 MR. SAUNDERS: Good morning, Mr. President. On behalf
22 of the Republic of Suriname, we, too, are more than willing to
23 work with the expert hydrographer appointed by the Tribunal.
24 The problem that we have is that our hydrographer is the
25 Netherlands Hydrographic Service, and there is no one here from

09:35:42 1 the Netherlands Hydrographic Service. We have sent the
2 questions to the Netherlands and asked them to begin to work on
3 them. We could ask them to come to Washington to meet with
4 Mr. Grey and the hydrographer from the Republic of Guyana. I
5 think that will take a few days at best to accomplish.

6 So as I said, while we are more than willing to work
7 with the hydrographer to the Tribunal, it's logistically a
8 little difficult for us to do that. Perhaps there could be a
9 conference call at some point, maybe over the weekend, when the
10 parties able to discuss these issues by telephone; but if we
11 need to have them come to Washington, that will take a few
12 days. We are willing to do that, but just physically and
13 logistically, that takes some time, and the work is going to
14 have to be done in the Netherlands, in any event, to answer
15 most of the questions being asked by Mr. Grey.

16 MR. REICHLER: Sorry, Mr. President. I just want to
17 call to the Tribunal's attention to the fact that we are a bit
18 surprised that this is Suriname's position. According to the
19 list of attendees and delegation list that Suriname provided,
20 there is Coalter Lathrop, Sovereign Geographic, Inc., who is
21 sitting over there, and David Swanson of the David Swanson
22 Cartography. It would seem that we needn't delay for several
23 days or a week this important work for the Tribunal.

24 Of course, it could be supplemented if there is
25 something from the Netherlands Hydrographic Office to

09:37:59 1 contribute at some point, but I really don't see the reason why
2 the work would have to wait so long, given the very experienced
3 expertise. I know Mr. Lathrop, and he's at the same level, if
4 anyone is, of our Scott Edmonds, so I hardly see that Suriname
5 would be disadvantaged by his participation in this meeting.

6 MR. SAUNDERS: Mr. President, Mr. Lathrop is here. He
7 is primarily a cartographer, not a hydrographer. The questions
8 that Mr. Grey has asked are questions that require the
9 assistance of a hydrographer, not a cartographer. So, it would
10 be--I mean, Mr. Lathrop would have to interface with his
11 colleagues in the Netherlands to get the information. He
12 simply doesn't have most of it.

13 He's also working with us in preparing our
14 presentation which will begin next week. And if it is at all
15 possible, we would like to be able to have him continue to do
16 that work, at least until our presentation is completed,
17 because, as you may have seen, we saw this morning in the
18 material that we received from the Republic of Guyana in the
19 book a number of new charts that we had not seen before. I
20 have no objection to that. They are demonstrative exhibits.
21 We had an arrangement, we had an agreement that we would
22 exchange those exhibits on the morning of the day in which they
23 were to be used, and that has happened, but we are going to
24 have to be in a position to respond to those maps and charts,
25 and that is primarily the work that we had hoped that

09:40:01 1 Mr. Lathrop and his colleagues would be able to do so that we
2 would be able to present our case to the Tribunal in the
3 clearest possible way.

4 So, our hope is that he would be able to continue to
5 do that, at least until our case has been presented to the
6 Tribunal.

7 MR. REICHLER: If I just may add one word,
8 Mr. President, there is no great mystery about these questions.
9 We've already got them answered. It took our two people a
10 little bit of time last night and a little time this morning;
11 so the idea that this is going to be an enormous distraction
12 from preparation, we are in the middle of our presentation, and
13 we have been able to get the work done.

14 PRESIDENT NELSON: Thank you for showing a spirit of
15 cooperation from both parties in the sense that you are
16 prepared to work with Mr. Gray on this matter.

17 The question is: How soon can we start working? I
18 think given the sort of parting of the ways on this issue and
19 Guyana asserting that there is Lathrop and Swanson and that
20 there is sufficient expertise to deal with the matter, whereas,
21 on the other hand, the other party is asserting that you need a
22 specific hydrographer.

23 I have a suspicion that during the break I will meet
24 with the Tribunal and make a decision on the modus operandi.

25 Thank you, gentlemen.

09:42:18 1 MR. SAUNDERS: Thank you, Mr. President.

2 MR. REICHLER: Thank you, Mr. President.

3 OPENING STATEMENT BY COUNSEL FOR CLAIMANT

4 MR. REICHLER: The subject of my presentation today is
5 geography, particularly coastal geography, and more
6 particularly the coastal geography of Guyana and Suriname.

7 My purpose is twofold: To describe the coastal
8 geography of Guyana and Suriname and to consider the
9 implications this particular coastal geography has on
10 identifying the proper methodology for the delimitation of the
11 maritime boundary between Guyana and Suriname to a distance of
12 200 nautical miles.

13 Happily, the parties are in agreement. The coastal
14 geography is an important element in determining their maritime
15 boundary. Both Guyana and Suriname have stated explicitly that
16 coastal geography is of, "fundamental importance in the
17 delimitation of their maritime boundary." Guyana in its reply
18 at paragraph 3.1, Suriname in its Counter-Memorial, paragraph
19 2. 18.

20 Suriname goes even farther and states, "Suriname
21 submits that the present dispute can and should be resolved
22 exclusively on the basis of the coastal geography of the
23 delimitation area." Counter-Memorial paragraph 4. 19.

24 The parties are not only in agreement on the
25 fundamental importance of coastal geography in this case. They

09:44:26 1 are also in substantial agreement on the nature of that coastal
2 geography. With all of the written pleadings now submitted, it
3 appears that Guyana and Suriname have, in the end, presented
4 strikingly similar descriptions of the coastal geography.
5 Where they still disagree, however, is on what delimitation
6 methodology is called for by the particular coastal geography
7 in this case.

8 I shall begin by describing the coastal geography of
9 both Guyana and Suriname as set forth in the written pleadings
10 and the evidence that the parties have submitted in support. I
11 will beg your indulgence because I propose to do this in some
12 detail, given the fact that the parties have both said that
13 coastal geography is of fundamental importance in this case.

14 I shall then discuss the different conclusions that
15 each party draws from the coastal geography with regard to what
16 methodology for delimiting the maritime boundary is called for
17 by this particular coastal geography.

18 And more specifically, I will discuss that it is
19 Guyana's view that the geography here mandates that the correct
20 methodology to delimit the maritime boundary between Guyana and
21 Suriname is the provisional equidistance methodology, which
22 requires, first, the construction of a provisional equidistance
23 line, and second, adjustments to that line as may be required
24 by special or relevant circumstances to produce an equitable
25 result.

09:46:36 1 Putting it another way, there is nothing about the
2 geography of these coasts that mandates a departure from the
3 established approach, yet Suriname argues for an entirely
4 different methodology. Suriname asks the Tribunal to reject
5 the established provisional equidistance methodology and
6 substitute in its place a convoluted and highly subjective
7 delimitation procedure based on what it calls, and I quote,
8 "generalized coastal fronts in the form of single segment
9 straight lines," and so-called, and I quote, "angle bisectors."
10 There is entirely no basis for such an approach which, in
11 effect, seeks to refashion the coastal geography.

12 In describing the coastal geography of Guyana and
13 Suriname, I will begin by calling attention to the regional
14 setting in which this coastal geography exists. Let us take a
15 look at the regional setting on the screen, where you will see
16 an image drawn from Plate R3 from Guyana's Reply. Now, on the
17 screen is the first of a number of maps and charts that will be
18 displayed during my presentation this morning. I would suggest
19 that the best way to observe and appreciate these maps and
20 charts is by viewing them on the screen.

21 I will call your attention, however, to the fact that
22 we have included in the daily Judges' folder for today at Tab
23 26 a set of these maps and charts labeled 26(a) through 26(y).
24 There is a table of contents as well to help you identify them.
25 This will help you and enable you to revisit these maps and

09:49:17 1 charts, if you desire, after these hearings conclude. Of
2 course, it is up to you whether you want to refer to them today
3 during my presentation, but I suggest to you that you might
4 find it easier during the presentation to view the maps and
5 charts via the screen.

6 The map that is presently on the screen starts to the
7 left, to the west, to the left, along the Venezuela coastline
8 and continues to the southeast along Guyana's and then along
9 Suriname's coastline, and then it continues further to the
10 southeast past Suriname's boundary with French Guiana.

11 By extending beyond Suriname's border with French
12 Guiana and beyond Guyana's border with Venezuela, the map
13 provides a macrogeographic view of the coastline of northeast
14 South America where the Guyana and Suriname coastlines are
15 situated.

16 As you can see, this part of the South American coast
17 faces onto the Atlantic Ocean, and from Venezuela through
18 French Guiana, the general trend of the coastline is from
19 northwest to southeast.

20 The influential neighboring states are, for Guyana,
21 Suriname and Venezuela, of course, its neighbors on either
22 side. But also Trinidad and Tobago and Barbados. Barbados is
23 just out of the picture. For Suriname, the influential
24 neighboring states are only Guyana and French Guiana.

25 Now, what is depicted here portrays the influence of

09:51:29 1 Trinidad and Tobago and, to a lesser degree, Barbados, on the
2 maritime space adjacent to Guyana's coast. And what is shown
3 here is that the influence of Trinidad and Tobago and, to a
4 lesser degree, Barbados is such as to substantially compress
5 Guyana's maritime space. As a result of the influence of these
6 third states, Guyana's provisional equidistance boundary lines
7 converge as they approach the 200-nautical-mile EEZ limit. As
8 can easily be seen, the distance along its 200-mile line is
9 much less than the distance along its coast.

10 Now, the opposite is true for Suriname. Suriname's
11 two provisional equidistance lines with Guyana and French
12 Guiana, diverge as they approach the 200-mile limit. The
13 length along its 200-mile limit exceeds the length of its
14 coastline. Its maritime space is not compressed by the
15 influence of third states.

16 Now let us take a closer look at the coastlines of
17 Guyana and Suriname themselves. In doing so, I will make
18 reference to the report of Dr. Robert W. Smith, which is
19 annexed to Guyana's Reply as Annex 1. Dr. Smith's report is
20 also in your Judges' folder as one of our key documents at
21 Tab 20.

22 Guyana retained the services of Dr. Smith, an
23 independent geographical consultant, to supply an opinion on
24 the specific geographic circumstances of this case. I'm sure
25 that Dr. Smith, who recently completed a distinguished 30-year

09:53:48 1 career with the United States Department of State, is
2 well-known to you, and I know he's well-known to my good friend
3 on the other side of the room, Mr. Colson.

4 This is how Dr. Smith describes the coastline of
5 Guyana. As depicted on the screen, at paragraph 15 of his
6 report, "Guyana's coastline generally faces northeastward and
7 is relatively smooth." The coastline that defines the
8 Essequibo estuary, and you can find the Essequibo River and its
9 estuary in about the middle of Guyana just to the left or west
10 of Georgetown, the capital.

11 The coastline that defines the Essequibo estuary and
12 the mouth of the river is concave in that immediate area.
13 Without the presence of the islands in the mouth of the river,
14 the concavity would be more severe, but it is a concavity in a
15 microgeographic setting.

16 From the area of the Essequibo River and proceeding to
17 the southeast, the Guyana coastline begins a long and shallow
18 concavity that continues through the land boundary terminus
19 with Suriname and extends to the Coppename River. And you can
20 see where this red line defining and depicting the concavity
21 described by Dr. Smith, where this ends in the southeast is at
22 the Coppename River in Suriname.

23 Regarding the coastline of Suriname, which is also on
24 this screen, Dr. Smith states at paragraph 16 of his report
25 that Suriname's coastline has two distinct segments. "For the

09:56:07 1 western third of its coastline, from Point 61 to the Coppename
2 River, Suriname's coastline continues the broad concavity along
3 a smooth coastline described above that begins in Guyana. Then
4 Suriname's coastline becomes convex, as it arches seaward from
5 the Coppename River and continues towards the southeast."

6 This is depicted by the black arrow on the screen.

7 The parties are in substantial agreement over the
8 facts relating to coastal geography. Their overall
9 descriptions of it are very similar. Guyana describes the
10 coastal geography as, "unremarkable." Guyana Reply, paragraph
11 3.2.

12 There are no islands, peninsulas, or deep indentations
13 to be taken into account.

14 Suriname describes the coastal geography in the same
15 way. According to Suriname, "There are no major promontories,
16 islands, or other features that render those coastlines
17 extraordinary." That's at the Rejoinder, paragraph 3.183.

18 According to Suriname, "There are no offshore islands,
19 and the coastlines on either side of the land boundary
20 terminus, although not completely regular throughout their
21 course, do not contain features such as peninsulas, major bays,
22 island fringes, or other such configurations." As you can see
23 on this screen, this is from Suriname's Rejoinder paragraph
24 3.256.

25 Dr. Smith concurs with the parties. At paragraph four

09:58:25 1 of his report, he says, "An important geographic reality in
2 this case is that there are no offshore features, such as
3 islands or low tide elevations that influence the drawing of an
4 equidistance line. Nor are there any large peninsulas or
5 protrusions from one of the coastlines that dramatically skew
6 the course of an equidistance line."

7 Both parties have constructed provisional equidistance
8 lines, recognizing that this is a necessary first step in a
9 maritime delimitation case, as set forth in the applicable case
10 law which my friend and colleague, Professor Schrijver, will
11 discuss in the presentation following mine this afternoon.
12 According to Suriname, "In considering the delimitation method
13 to be applied in a given area, it is common practice to begin
14 with the equidistance line." That's at their Rejoinder,
15 paragraph 3.79.

16 Also according to Suriname, "Identification of a
17 provisional equidistance line as a first step in the process of
18 delimitation between the coasts of neighboring states is now
19 standard practice in maritime boundary analysis by the
20 International Court of Justice and Arbitral Tribunals." That's
21 at their Counter-Memorial paragraph 4.42.

22 We agree.

23 One fact which stands out in this case, maybe above
24 all the rest, is that the provisional equidistance lines drawn
25 by Suriname and Guyana are remarkably similar. Suriname

10:00:40 1 acknowledges this. "It should not come as a surprise that
2 competent geographers on the Suriname and Guyana teams have
3 constructed provisional equidistance lines that are similar."
4 That's at their Rejoinder, paragraph 3.208.

5 Well, whether surprising or not or unsurprising or
6 not, the similarity of the parties' respective provisional
7 equidistance lines is very important. Not least because it
8 makes the Tribunal's task a good bit easier. Two different
9 teams using different experts and different nautical charts
10 have constructed provisional equidistance lines that are almost
11 identical for almost all of their length out to 200 nautical
12 miles. This should give the Tribunal confidence in the
13 provisional equidistance line that the parties have developed.

14 Suriname's provisional equidistance line was depicted
15 in its Counter-Memorial at Figure 31, and this is Suriname's
16 own Figure 31, the construction of its provisional equidistance
17 line. Guyana's provisional equidistance line was depicted in
18 its Reply in Plate R3.

19 Now, what we have done to compare the two provisional
20 equidistance lines is to overlay one of these lines on top of
21 the other; that is, overlay Guyana's line on top of Suriname's
22 line, and this is the result on the screen before you.

23 At this scale, they actually look identical all the
24 way out to 200 nautical miles for all but the very first few
25 miles from the coast. In fact, they are almost, but not quite,

10:03:00 1 identical for all but a very, very small portion of the 200
2 nautical miles.

3 There is really only one segment along this entire
4 200-nautical-mile stretch where there is any noticeable
5 difference in the provisional equidistance lines presented by
6 the two parties. The only difference is well within the
7 territorial sea from the starting point for each of the two
8 lines out to a distance of approximately 6 nautical miles, but
9 not beyond. This difference between the two provisional
10 equidistance lines affects, according to Suriname, paragraph
11 3.211 of its Rejoinder, only 33 square kilometers of sea.

12 Yesterday, my good friend and colleague, Professor
13 Sands, accidentally referred to this area as comprising 33
14 square miles. He meant 33 square kilometers, as Suriname has
15 stated in its Rejoinder, and we accept their figure.

16 Thus, from approximately mile six all the way to mile
17 200, the provisional equidistance lines drawn by Guyana and
18 Suriname are, for all intents and purposes, identical. Even
19 where they are not, in the first 6 nautical miles from the
20 coast, the difference between the two lines affects only 33
21 square kilometers of sea.

22 The remarkable similarity of the two lines can be
23 explained by the similarity in the charts used by the parties,
24 and by the fact that as Suriname itself has said, the drawing
25 of a provisional equidistance line is, "an objective process."

10:05:16 1 Regarding the similarity in the charts used by the two
2 parties, Suriname has said, "In fact, Guyana's smaller-scale
3 U.S. charts are simply compilations of [The Netherlands and
4 United Kingdom] charts listed in Suriname's Counter-Memorial,
5 Volume 3, Annex 68," still quoting from Suriname. This is
6 clear from the source diagrams and source lists on [U.S.] NIMA
7 24370 and [U.S.] NIMA 24830. As such," still quoting, "the two
8 sets of charts used by the parties should not differ
9 significantly in their depiction of the low-water lines of
10 Suriname and Guyana." I have been quoting from Suriname's
11 Counter-Memorial, paragraph 6.15 at note 435.

12 Regarding the objectivity of the process for
13 constructing a provisional equidistance line, Suriname has
14 said, "The provisional equidistance line is the result of
15 mathematical method applied to geography." That's at the
16 Rejoinder at paragraph 3.203. And we agree.

17 We have created a large-scale chart showing the
18 provisional equidistance lines constructed and submitted to the
19 Tribunal by the two parties. The chart is on the easel to my
20 left. We invite the Members of the Tribunal, the distinguished
21 expert appointed by the Tribunal, Mr. Gray, our esteemed
22 colleagues on the Suriname side, and all present to take a look
23 at it when you have a chance. We will leave it standing during
24 our presentation.

25 Even at this large scale, the differences between the

10:07:16 1 two lines are extremely minor and very difficult to discern.

2 What strikes one is how remarkably similar the two lines are,
3 with the only noticeable difference occurring in the first
4 6 miles. Now--

5 ARBITRATOR SMIT: Can you point this out on the map?
6 It would help me.

7 MR. REICHLER: On this map? I would be happy to do
8 that, Professor Smit. And if you would like, I can go right up
9 there, or in the next sequence there will be a map that will
10 appear on your screen that will show this for you. So, I would
11 suggest we do that, and if that isn't satisfactory, we'll find
12 something that is satisfactory, I promise.

13 ARBITRATOR SMIT: Fine.

14 MR. REICHLER: Let's examine the two provisional
15 equidistance lines in more detail and get a better
16 understanding of how and why, to come to Professor Smit's
17 point, they differ in the first 6 nautical miles from the
18 coast.

19 Now, in constructing its provisional equidistance
20 line, Guyana followed the definition of equidistance in Article
21 15 of the 1982 Convention, which provides that the median line
22 is a, "line every point of which is equidistance from the
23 nearest points on the baselines from which the breadth of the
24 territorial sea of each of the two states is measured." As
25 baselines, Guyana followed Article V of the Convention which

10:08:58 1 states that, "The normal baseline for measuring the breadth of
2 the territorial sea is the low-water line along the coast."

3 Guyana relied on U.S. NIMA, now NGA, charts 24370 and
4 24380 because they are the only nautical charting series that
5 provides continuous large-scale coverage of the coastlines of
6 both parties. Suriname relied primarily on Dutch charts which
7 cover only a brief portion of Guyana's coastline and abruptly
8 stop at the Essequibo River.

9 However, as we already know, even though the parties
10 relied on different sets of charts, they produced virtually
11 identical equidistance lines. This is because, as Suriname
12 explained in its Rejoinder, the charts used by the parties did
13 not differ materially in their depiction of the low-water lines
14 of Suriname and Guyana. The rest, as Suriname said, is
15 applying an objective mathematical method to these low-water
16 lines.

17 Now, by this method, Guyana determined there were 16
18 base points along its coasts that controlled and directed the
19 equidistance line out to a distance of 200 nautical miles.
20 Suriname, using the same method but different charts that
21 varied slightly from Guyana's, placed 19 base points on
22 Guyana's coasts. Both maps on the screen are of Guyana's
23 coastline. The map on the left shows where Guyana placed its
24 16 base points. The map on the right shows where Suriname gave
25 Guyana 19 base points.

10:11:02 1 Significantly, the parties' different placement of
2 base points on Guyana's coast had no effect on the construction
3 of the equidistance line. In fact, the difference in number of
4 the base points for Guyana can be explained by the fact that in
5 three locations, Suriname gave Guyana one more base point than
6 Guyana claimed for itself. This upcoming map enlargement shows
7 what I mean. At Devonshire Castle Flats, where Guyana's
8 westernmost base point lies, Suriname gave Guyana two base
9 points, one more than Guyana gave itself. Since these points
10 are very close together, the effect on the equidistance line
11 was nil.

12 From Guyana's westernmost base point at Devonshire
13 Castle Flats to Point 61 at the boundary terminus in the east,
14 the distance is 215 kilometers, measured from point to point.

15 Now, on Suriname's coast, Guyana calculated that there
16 were 11 base points, placing them as shown on the screen.
17 Because these base points are very close to one another, we
18 have indicated the number of base points at particular
19 locations. That's why you don't see 11 base points on one and
20 14 on the other. But these two maps show the left--it's where
21 Guyana placed Suriname's base points--and to the right is where
22 Suriname placed Suriname's base points.

23 Now, as it turns out, Guyana, and I should mention if
24 I did not, that Guyana has 11 base points for Suriname.
25 Suriname has 14 base points for itself. Guyana and Suriname

10:13:09 1 agree on 11 of those 14 base points that Suriname claims,
2 including their precise locations. Of the three additional
3 base points claimed by Suriname, Guyana disputes two of them,
4 base points S14 and S1. Because Suriname is not entitled to
5 those base points for different reasons. We will look at these
6 in turn moving from east to west.

7 Now, S14 was placed by Suriname along a purported
8 low-water line at a place called Vissers Bank. In its Reply,
9 Guyana demonstrated that Suriname is not entitled to place a
10 base point at Vissers Bank. This is proven in some detail at
11 paragraph 3.19 of Guyana's Reply. And in Annex R2 to Guyana's
12 Reply, which is an expert report by Dr. Thomas Rabenhorst,
13 Professor of Cartographic Instruction at the University of
14 Maryland, so I will only summarize here the three independent
15 grounds for rejecting this base point S14.

16 First, the source of the extra base point at Vissers
17 Bank, which Suriname has labeled S14 is a June,
18 2005--June 2005--update of Dutch nautical chart 2218, prepared
19 by the Suriname Maritime Agency and first published after
20 Guyana had submitted its Memorial to the Tribunal in this case.
21 This late-arriving chart which appeared just in time for
22 Suriname to use it in its Counter-Memorial, contradicts all
23 other charts, including prior versions of the same Dutch chart
24 2218 on which Suriname continues to rely in this case for other
25 purposes.

10:15:33 1 And it contradicts all those other charts, including
2 prior versions of this chart itself, of 2218 itself, by
3 depicting the low-water line at Vissers Bank more than four
4 kilometers to the north of where every other chart, Dutch,
5 British and U.S. depict it. Guyana submits that the timing
6 alone disqualifies Suriname's newly created and entirely
7 different chart from use in this case.

8 Second, Suriname's new version of Dutch chart 2218 is
9 also disqualified by its patent inaccuracy in depicting a
10 nonexistent low-water line at Vissers Bank. Suriname relies
11 primarily on a different Dutch map, 2014, for the placement of
12 its other coastal base points that it used in constructing its
13 provisional equidistance line. This chart, 2014, which is
14 depicted on the screen, disproves the existence of a low tide
15 coast at Vissers Bank where Suriname has attempted to place its
16 base point S14. In fact, on Dutch chart 2014 the geographical
17 position of this base point is four kilometers out to sea, and
18 there is no evidence of a feature there that is above water at
19 low tide.

20 It is also worth noting that even on Suriname's newly
21 created version of Dutch chart 2218, the low-tide coast is
22 represented by a dashed line. It doesn't show here because
23 this is 2014, but on Suriname's new version of 2218, the
24 so-called low-tide coast at Vissers Bank is represented by a
25 dashed line, not a solid one. This is a well-known

10:18:01 1 cartographic symbol of uncertainty. The Suriname Maritime
2 Agency itself expresses doubts about the location of the
3 low-water line on its newly created chart, and as we can see,
4 with good reason.

5 Third, independent satellite imagery and depth
6 soundings conducted by the Suriname Maritime Agency itself
7 negate the existence of a low-tide coast as far north as where
8 Suriname placed it on the newly created chart. Dr. Rabenhorst
9 concluded, "After reviewing the 2005 edition of NL 2218 along
10 with other relevant charting and satellite imagery, there is,
11 in my opinion, no plausible explanation for the revised
12 placement of the low tide shoreline in the vicinity of Vissers
13 Bank. The absence of supporting data from earlier charts and
14 the lack of soundings to support the new location of the
15 low-tide coast lead to one conclusion: The position on the
16 low-tide coast on the 2005 edition of NL 2218 cannot be
17 accurate. The position of the low-tide coast on this new chart
18 is several kilometers north of where the cartographic evidence
19 would reasonably place it." That's in Annex 2 to Guyana's
20 Reply.

21 In its Rejoinder, Suriname does not make a serious
22 effort to respond to these criticisms of its newly created
23 chart, except to say at paragraph 3.217, that it continues to,
24 "stand behind the coastline depiction on that chart," and it
25 refers the Tribunal to its Annex SR43 to the Rejoinder. SR43

10:19:59 1 is an explanation by the hydrographer at the Suriname Ministry
2 of Defense as to how the new chart was prepared. It does not
3 help Suriname at all. It includes a most telling admission.
4 This is the explanation by Suriname's hydrographer at Annex 43
5 to its Rejoinder. "The exact location of the low-water line is
6 not known." Then how can they depict it at Vissers Bank? "The
7 safest (for the shipping) estimate based on available survey
8 data is visualized by a dashed line (in accordance with
9 International Hydrographic Organization (IHO) publication
10 M4/411.2 (inadequate survey data)). This resolves the dispute
11 about the purported base point S14 at Vissers Bank and allows
12 us to dispense with that point.

13 The last legitimate Surinamese base point to the east
14 is S13 at Hermina Bank. The length of Suriname's coastline
15 between Point 61 and base point S13 to the east is 153
16 kilometers.

17 We can move to the other, the second disputed
18 Surinamese base point, which Suriname calls S1. This is the
19 starting point for Suriname's provisional equidistance line,
20 and Suriname actually treats it as a base point both for itself
21 and for Guyana, so Suriname labels it S1 and G1.

22 There are two problems here. First, Guyana believes
23 that this point is not the correct starting point for the
24 provisional equidistance line, but I will come back to that in
25 a few moments.

10:22:20 1 Second, and the problem I will address here is that
2 Suriname cannot claim for itself a base point on a coast that
3 indisputably belongs to Guyana. As Professor Sands and
4 Professor Akhavan demonstrated yesterday, there has never been
5 a dispute over who has sovereignty over the west bank of the
6 Corantijn. This has always been recognized as belonging to
7 Guyana by the British, by the Dutch, and by the Surinamese
8 themselves.

9 Suriname has even admitted this in these proceedings.
10 It has repeatedly invoked the 1799 agreement of session between
11 the Governors of the Colonies of Berbice and Suriname, which
12 was discussed yesterday by my colleagues. I will only point
13 here to what Suriname said about it in its Rejoinder, at
14 paragraph 1.4, in its Rejoinder, its most recent pleading,
15 calling it a, "binding agreement between Guyana and Suriname
16 defining the extent of their respective territories."

17 Suriname's Rejoinder states, That Agreement provided
18 that the "West Sea Coast of the River Corentin, up to the
19 Devil's Creek, beside the West Bank of the said river, hitherto
20 considered belonging to the Government of the Colony of
21 Surinam, be declared and acknowledged henceforth to belong to
22 the Government of the Colony of Berbice." Thus, according to
23 Suriname, the "West Sea Coast of the River Corentin" belongs to
24 Guyana, as the successor to Berbice.

25 Guyana does not understand Suriname's statement

10:24:19 1 elsewhere in its Rejoinder at paragraph 3.215 that, quote,
2 Suriname is sovereign over both banks of the river. Suriname
3 provides no support for this statement at all, and it stands in
4 stark contrast to Suriname's position in this case and
5 historically. There is no evidence--no evidence--submitted in
6 this case, in the record of this case, that Suriname has
7 previously asserted a claim to sovereignty over the land west
8 of the river.

9 Perhaps this unfounded assertion is an extension of
10 Suriname's equally unfounded statement that Guyana, "implicitly
11 concedes Suriname's sovereignty over the low-water line on the
12 west bank of the river." You will find this referenced at the
13 Rejoinder, paragraphs 2.59 to 2.61.

14 Guyana has never conceded its sovereignty, implicitly
15 or explicitly, over any portion of the west coast of the river.
16 There is plainly no merit to Suriname's argument and no basis
17 for Suriname to place its own coastal base point on the west
18 coast of the river, a coast that Suriname has long acknowledged
19 and acknowledged again at paragraph 1.4 of the Rejoinder,
20 belongs to Guyana.

21 Coastal base points may only be placed on a coast;
22 that is, on land. They may not be placed on water. If
23 Suriname is sovereign over the river, that does not entitle it
24 to base points there, unless there is a closing line across the
25 river, which there is none in this case. There is no closing

10:26:27 1 line across the Corantijn River.

2 The river is in the water which, unclosed, does not
3 generate maritime entitlement. Nor may Suriname claim a base
4 point along the low-water line adjacent to Guyana's coast.
5 Yesterday, Professor Sands quoted from an authoritative text by
6 Professor Brownlie, my old colleague on the Nicaragua case in
7 the ICJ decided 20 years ago this year.

8 Now, if you're a friend of Ian's, as I am, you know he
9 would not be pleased by our calling him Professor Brownlie, but
10 even Mr. Brownlie is a very authoritative teacher of public
11 international law, and his text teaches us that the low-water
12 line as a boundary has no breadth or depth. It is not subject
13 to a claim of sovereignty.

14 Since Suriname may not claim a base point on the west
15 coast, on the river itself, or on the low-water line, the first
16 coastal base point that it can claim in the construction of an
17 equidistance line must lie along the east coast, the Surinamese
18 coast of the river. This is where Suriname has placed its base
19 point S2, and all of the rest of its base points through S14
20 lie to the east of that point.

21 We now return to the starting point for Suriname's
22 provisional equidistance line, and I thank Professor Smit for
23 his patience. I will now honor my promise and come back to the
24 comparison of the differences in the equidistance line.

25 We will focus--returning to the starting point, we

10:28:56 1 will see the difference in the two equidistance lines which
2 affects the first 6 nautical miles, and we will see that this
3 difference is attributable almost entirely to the different
4 starting points that the parties have chosen. Let's look at
5 the area where Guyana's and Suriname's provisional equidistance
6 lines differ materially from one from another in the first 6
7 nautical miles of the line. Can we have that projected,
8 please? Thank you.

9 Projected on the screen is a chart drawn from Plate
10 R19 of Guyana's Reply, which depicts the coastlines of Guyana
11 and Suriname at the mouth of the Corantijn River with the
12 respective equidistance lines of Guyana and Suriname
13 constructed out to the 12-nautical-mile limit of the
14 territorial sea. The solid black line is Guyana's provisional
15 equidistance line. The dashed blue line is Suriname's
16 provisional equidistance line.

17 What is readily apparent from that chart is how
18 similar, how almost perfectly congruent the two equidistance
19 lines are from here, just below the third turning point in
20 Guyana's equidistance line, all the way to and beyond the
21 12-nautical-mile limit of the territorial sea.

22 The point where the two equidistance lines meet and
23 virtually attach themselves to one another is located
24 approximately 6 nautical miles from the coasts of Guyana and
25 Suriname, and they remain virtually inseparable, not only to

10:30:35 1 the 12-nautical-mile territorial sea limit, but all the way to
2 the 200-nautical-mile EEZ limit.

3 The main reason for the difference between the two
4 equidistance lines in the first 6 nautical miles is that the
5 parties use different starting points for their provisional
6 equidistance lines. Both Suriname and Guyana use Point 61 in
7 the construction of their provisional equidistance lines. This
8 is a critical point. They both use Point 61 in the
9 construction of their provisional equidistance lines. Point 61
10 is very close to, but not exactly on, the low-water line. As
11 my colleagues Professor Sands and Dr. Akhavan have said before
12 me, Point 61 was deliberately selected as a place to mark the
13 boundary because it was on firmer terrain so that the marker
14 would be less likely to wash away.

15 Now, Guyana gets from Point 61 to the low-water line
16 by going the shortest distance to the low-water line. What is
17 depicted here is Guyana going from Point 61 to Point G1, the
18 starting point for its equidistance line via the shortest
19 distance. Suriname, by contrast, gets to the low-water line
20 starting from Point 61 by going on a 10-degree angle from Point
21 61, and that will be depicted momentarily.

22 Suriname's choice of a starting point for the
23 provisional equidistance line is not based on geography.
24 Suriname's starting point is not the closest point on the
25 low-water line to Point 61. Rather, Suriname's choice of a

10:32:32 1 starting point is based on its view of history and the conduct
2 of the parties. For Suriname, when the parties agreed to place
3 the land boundary marker at Point 61, they also agreed that the
4 maritime boundary would extend from Point 61 on an azimuth of
5 10 degrees to the three-nautical-mile limit of the territorial
6 sea. For Suriname, Point 61 and the 10-degree boundary in the
7 three-nautical-mile territorial sea are, "inextricably linked."

8 Guyana disputes this, but this is Suriname's
9 justification for getting from Point 61 to the low-water line
10 by means of a 10-degree line. As Professor Sands will
11 demonstrate this afternoon or tomorrow morning, when he
12 discusses delimitation in the territorial sea, the fixing of
13 the land boundary terminus at Point 61 and the observance of a
14 10-degree line from Point 61 for a distance of 3 nautical miles
15 in the territorial sea are separate and distinct from one
16 another. And while Point 61 has been regarded continuously for
17 70 years as a boundary terminus by all parties, the 10-degree
18 line was rejected by the United Kingdom in the early 1960s. It
19 was never accepted by Guyana after independence, and it was
20 never again regarded as a maritime boundary by the U.K. or
21 Guyana. Guyana's position is that there is no agreement on any
22 sort of a 10-degree line, not even up to 3 nautical miles.

23 In these circumstances, the proper method, the
24 geographical method to get from Point 61 to the low-water line
25 is by the shortest distance. This is what Guyana has done, and

10:34:26 1 Guyana submits that the proper starting point for the
2 equidistance line is on the low-water line at the shortest
3 distance from Point 61. The precise coordinates of this point
4 are set forth in Annex R16 of Guyana's Reply.

5 Now, to demonstrate just how short a distance it is
6 from Point 61 to the low-water line, Guyana has taken
7 photographs. As the Tribunal will recall, Point 61 was
8 designated by the Boundary Commissioners in 1936, who marked
9 the spot with a marker they inscribed as Marker A, Marker A,
10 Point 61.

11 According to the Boundary Commissioners' report, they
12 placed another marker, which they called Marker B, not very far
13 away. From Marker B to Marker A, they recorded a distance of
14 220-meters on an azimuth of 10 degrees east of true north.
15 This comes straight from the Boundary Commissioners' report.

16 Marker A has washed away in the 70 years since it was
17 laid, but Marker B still remains in place, although it is now
18 underground.

19 Projected on the screen are scenes of the recent
20 excavation of Marker B. The photo on the bottom is of Marker B
21 itself. The letter B and the year 1936 are plainly visible.
22 It is precisely where the Boundary Commissioners placed it 70
23 years ago, according to its current GPS coordinates and those
24 recorded in the Boundary Commissioners' report.

25 To get from Marker B to Marker A, which is the marker

10:36:45 1 that was placed by the Boundary Commissioners at Point 61,
2 Guyana followed their instructions scrupulously and measured
3 exactly 220-meters from Marker B along an azimuth of 10 degrees
4 east of true north.

5 These photos show the spot where Marker A was placed.
6 The spot is indicated in the sand, and you can see this better
7 in the picture that is lower and to the right. These photos
8 show the spot where Marker A was placed. The spot is indicated
9 in the sand by a thin red and white pole. Guyana took the
10 coordinates of this point after pacing or measuring 220 meters
11 from Marker B on an azimuth of 10 degrees east of true north.
12 Guyana took the coordinates where the red and white pole sticks
13 out of the sand, and they are exactly the coordinates given for
14 Point 61 by the Boundary Commissioners in their 1936 report.

15 These, then, are photos of Point 61.

16 Now, this is simply a blown-up version of one of the
17 previous photos. It is easier to see that the pole in the
18 foreground which marks Point 61 is very close to the water
19 line. In fact, it is located--

20 MR. GREENWOOD: Mr. President, I'm sorry to interrupt
21 my learned friend. These photographs are, of course, tendered
22 to you as demonstratives, not as evidence. They are many
23 months too late to be tendered as evidence. We did ask four
24 days ago by whom they were taken, when, and at what time of
25 day. We have yet to have an answer to that. It obviously

10:38:50 1 makes a considerable distance when one's starting to talk about
2 low-water lines.

3 MR. REICHLER: Well, Mr. Greenwood, with all respect,
4 if you hadn't interrupted me, you would have had the answer to
5 the question by now.

6 As I said, this is simply a blowup of one of the
7 previous photos. It is, as you said, easy to see that the
8 photo in the foreground which marks Point 61 is very close to
9 the water line. In fact, it is located in the intertidal zone
10 between the high and low-water lines. This can be discerned
11 from the wet sand on both the seaward and landward side of the
12 pole. The photo was taken by a member of our legal team,
13 Ms. Sarah Altschuller, on 25 August, 2004, between noon and
14 1:00 p.m.

15 The records for that date show that high tide occurred
16 at noon. As you can see, the sand on the landward side of
17 Point 61 is still wet.

18 There are actual two poles shown in this photo. As I
19 said, the one in the foreground is at Point 61. The other
20 photo is at the water line. It's on an azimuth of N10E, 10
21 degrees from Point 61. This shows the distance between Point
22 61 and the water line 10 degrees from Point 61 shortly after
23 high tide on 25 August, 2004.

24 Now, this photo is simply a blowup of the other photo
25 we previously showed of Marker A. This was taken within one

10:40:44 1 minute of the photo we just portrayed. Here, there are three
2 points indicated by annotations on the photo. In the middle is
3 the photo marking Point 61 shortly after high tide on 25
4 August, 2004.

5 To the right along the water line is a pole marking
6 the closest point to Point 61. It is on an azimuth of
7 approximately N34E, 34 degrees from Point 61. On the left is a
8 gentleman standing on the water line at a point that is in
9 N10E, 10 degrees from Point 61. From this photo it is easy to
10 see how close all of those points are to one another as of
11 25 August, 2004, between noon and 1:00 p.m.

12 Now, in its Preliminary Objections, Suriname included
13 a map, Figure 4, placing Point 61 right on the high-water line
14 as will be shown on the screen. Professor Sands used this same
15 chart in his presentation yesterday, and you can see at the
16 bottom what Suriname refers to as the 1936 Point, which is
17 referred to by Guyana as Point 61, placed right on the
18 high-water line.

19 In Guyana's Reply, there was a map, Plate R19, that
20 placed Point 61 just slightly inland from the high-water line.
21 As you can see, we now have Suriname's exhibit on the left and
22 Guyana's on the right. We have checked the coordinates and we
23 have determined that cartographically speaking, Suriname is
24 correct. In Plate R19, we used astronomical coordinates
25 instead of GPS WGS84 coordinates, and we placed these

10:43:05 1 astronomical coordinates on a WGS map. When our astronomical
2 map coordinates are converted to GPS, Point 61 ends up exactly
3 where Suriname placed it, on the high-water line.

4 The photos you just saw show that Point 61 is actually
5 even closer to the water than that. It is between the
6 high-water line and the low-water line in the intertidal zone.
7 Guyana--

8 MR. GREENWOOD: Mr. President, on that point I'm
9 afraid I really must object because that is trying to put in
10 something not as a demonstrative of what is already in Guyana's
11 arguments, but as evidence to contradict something that is in
12 Guyana's pleadings. We were sent these photographs only a few
13 days ago, despite the fact they were taken more than two years
14 back. Why were they not placed in Memorial or the Reply?

15 PRESIDENT NELSON: I would like you to bear in mind
16 the remark that has been made.

17 MR. REICHLER: Yes. Yes. Well, first of all, we did
18 provide these photographs as demonstratives more than a week
19 before the hearing began, and Suriname did not object. That's
20 in their letter of December 4th. They didn't object to our
21 using these photographs as demonstratives, and we leave it to
22 the judgment and discretion of the Tribunal what use to make of
23 them.

24 Secondly, the issue concerning--the issue concerning
25 these, the precise location of Point 61, is something that

10:45:03 1 Suriname raised in the Rejoinder, and as such, the photographs
2 at the time that we submitted the Memorial and the Reply were
3 not deemed to be necessary. We regret if any inconvenience was
4 caused by this. It was certainly no deliberate intent on the
5 part of Guyana to keep them from Suriname. In the preparation
6 for these hearings when we realized that they might be useful
7 as demonstratives, we immediately provided them to Suriname, as
8 I said, without objection.

9 MR. GREENWOOD: Mr. President, thank you. We did,
10 indeed, respond to Guyana, saying that we did not object to
11 their being used as demonstratives. My point is that they are
12 being tendered to you as evidence of something other than what
13 is in the record of the written argument, and, indeed, my
14 learned friend, Mr. Reichler, has just made that point quite
15 clear when he says very graciously if he leaves it to you to
16 decide what weight to give to them. If they were merely
17 demonstratives, that point would simply not arise.

18 Now, we don't object to their being used as
19 demonstratives. We, of course, reserved our right to put in
20 appropriate responsive material of our own.

21 As for the point that this could not have been
22 foreseen until the Rejoinder was read, I would have thought the
23 exact location of Point 61, given the importance which Guyana
24 attaches to that, would have been self-evident to them from the
25 very moment that they deposited their Request for Arbitration.

10:46:33 1 PRESIDENT NELSON: Thank you.

2 As I said before, this evidence was accepted--not
3 evidence, sorry. These photographs were accepted on the ground
4 that they would be used for demonstrative purposes and not as
5 bringing, as I said, not playing an evidential role. I would
6 like the agent or the representative of Guyana to bear this in
7 mind. But, of course, it's for the Tribunal to assess the
8 matter when it deals with the case to see whether, in fact, how
9 this has to be demonstrative, not bringing any new type of
10 evidence.

11 MR. REICHLER: Yes, and that is our understanding,
12 Mr. President and Members of the Tribunal. And, in fact, they
13 are demonstrative only because all of this land, everything to
14 the west of the low-water line, everything to the west of the
15 river belongs to Guyana in any event. It's not necessary to
16 prove who owns what in terms of the depiction of Point 61.
17 Everything that is on the west coast is Guyana's, in any event,
18 and that's why we consider these demonstrative. But again, the
19 issue has been raised. You've heard from both sides. We don't
20 need to belabor any further.

21 PRESIDENT NELSON: Thank you.

22 MR. REICHLER: In any event, to the extent that the
23 Tribunal would consider it useful or helpful, Guyana
24 respectfully invites the Tribunal and its hydrographic expert
25 to visit the site, if it feels this would be helpful.

10:48:23 1 And, of course, Guyana extends a warm welcome to its
2 sovereign territory for our colleagues in the Surinamese
3 delegation if they wish to accompany the Tribunal on a site
4 visit to Guyana.

5 Professor Sands will return to the issue of the proper
6 drawing of the equidistance line in the territorial sea when he
7 makes his presentation on the delimitation of the maritime
8 boundary in the territorial sea. But it should be plain that
9 in the first 6 nautical miles, Guyana's provisional
10 equidistance line is correctly drawn, and Suriname's is not.
11 Suriname has started its line from the wrong point on the
12 Guyana coast, and it has incorrectly given itself a coastal
13 base point on the west bank of the Corantijn River over which
14 Guyana and not Suriname is sovereign.

15 Guyana thus respectfully submits that as between the
16 two provisional equidistance lines, the Tribunal should accept
17 Guyana's and not Suriname's.

18 ARBITRATOR FRANCK: Mr. Reichler?

19 MR. REICHLER: Yes.

20 ARBITRATOR FRANCK: Could I just ask you on a point of
21 clarification, you indicate that the hypothetical line between
22 points A and B is 10 degrees east. Is that a recognition of
23 the 1799 line or does it relate to the claim that is based on
24 that line?

25 MR. REICHLER: No, there is no 1799 line. The 1799

10:50:41 1 Agreement of Cession made it clear that all of the west coast,
2 all of the west coast, all of the land right up to where the
3 waters of the Corantijn River starts belong to Berbice, which
4 is predecessor to Guyana, so it's not in relation to the 1799
5 agreement.

6 In the 1936 report of the Boundary Commissioners, they
7 placed Marker A at precise coordinates, and those are the
8 coordinates depicted by the pole in the photograph. Then as a
9 way to reference Marker A and Point 61, which they considered
10 the terminus, the northern terminus, they placed Marker B
11 further inland, 220 meters on an angle, 190 degrees from Marker
12 A to Marker B, but from Marker B to Marker A, it's 10 degrees,
13 as a way of having security; that if anything happened to
14 Marker A, Marker B was in a more secure location.

15 Now, at the time--at the time--in 1936, in addition to
16 marking what we call Point 61 as the northern terminus of the
17 boundary between British Guiana and Suriname, they also--and
18 this is in their report--decided upon a maritime boundary up to
19 3 nautical miles in the territorial sea which would follow an
20 azimuth of N10E.

21 So, if you take Marker B and have an imaginary line,
22 if you will, between Marker B and then Marker A, which is
23 closer to the water, Suriname places it right at the high-water
24 line, and we will accept that. And then you continue that
25 10-degree line out for 3 miles in the territorial sea. That is

10:53:13 1 where, as of 1936, the U.K. and the Netherlands understood that
2 the maritime boundary would be on an azimuth of 10 degrees up
3 to 3 miles in the territorial sea. And that is the reason that
4 Suriname--they can speak for themselves, but I think they would
5 agree with me that that is why they place the starting point
6 for their equidistance line by extending that 10-degree line
7 right to the low-water line and starting their maritime
8 delimitation from there.

9 Now, the difference between the parties, which
10 Professor Sands will address in two presentations down the road
11 from mine, will be to demonstrate, as we did in our pleadings,
12 that the agreement on Point 61 as the boundary terminus has
13 been recognized continuously, unequivocally by both parties in
14 all of their conduct and public statements for 70 years,
15 whereas the 10-degree line extending up to 3 nautical miles in
16 the territorial sea was never accepted by Guyana after
17 independence and, indeed, was rejected by the U.K. at some
18 point prior thereto. So, in Guyana's view, it doesn't have the
19 same status as the agreement on Point 61.

20 But that is the reason, and it comes straight out of
21 the Boundary Commissioners' report of 1936, that there is a
22 10-degree direction between Marker B and Marker A.

23 ARBITRATOR SMIT: So, it is admitted that in 1936
24 there was that agreement?

25 MR. REICHLER: Well, I don't know what you're asking

10:55:08 1 me to admit to.

2 ARBITRATOR SMIT: The agreement using that northeast
3 10-degree line to demarcate the maritime boundary.

4 MR. REICHLER: Well, I think I ought to be precise in
5 my language, and the way that I would phrase it is, in the
6 agreement that was reached in 1936 was that Point 61 or what
7 Suriname calls the 1936 Point--we agree on what the coordinates
8 of that point are--was the northern terminus of the boundary
9 between Guyana and Suriname. In the report, and in the draft
10 Treaty in 1939 Guyana--

11 ARBITRATOR SMIT: I concentrate on what was agreed
12 upon in 1936.

13 MR. REICHLER: Yes, and I--well, yes.

14 ARBITRATOR SMIT: I understood you to say that there
15 was an agreement in 1936, but it had been subsequently
16 repudiated, or not honored?

17 MR. REICHLER: I'm not disagreeing with you. I think
18 it's important to be precise. I would rather put it in my own
19 words, that's all, but in substance, we are not far apart.
20 What I'm saying is that in 1936, the Boundary Commissioners, in
21 addition to marking the northern terminus of the boundary at
22 the place we call Point 61, they also established a maritime
23 boundary to a limit of 3 nautical miles in the territorial sea
24 along a 10-degree line.

25 Now, let me continue. That was based on the

10:56:46 1 understanding--I'm getting into Professor Sands's territory
2 here, but I do need to do this to answer your question fully.
3 That 10-degree line was based on the supposition that there was
4 a westward navigation channel in the Corantijn River, and it
5 was represented that the 10-degree line would follow that
6 channel, and therefore allow Dutch navigational administration
7 over that channel.

8 As it turned out, there was no such channel, or at
9 least it fell out of use, if it ever existed, within some short
10 period of time after 1936, and on that basis the British,
11 before the independence of Guyana, rejected it and said we
12 don't agree that there is a 10-degree maritime boundary even
13 out to 3 nautical miles.

14 I hope I have answered your question.

15 ARBITRATOR SMIT: Thank you.

16 MR. REICHLER: Now, as I've indicated, Guyana
17 respectfully submits that as between the two provisional
18 equidistance lines, the Tribunal should accept Guyana's and
19 reject Suriname's because Suriname has chosen the wrong
20 starting point. The starting point should be the point on the
21 low-water line closest to Point 61 and because Suriname has
22 improperly given itself a base point on the Guyana coast.

23 I would suggest, since it is now approaching 11:00,
24 that this might be a proper time for a midmorning coffee break.
25 Obviously I'm at your will, Mr. President. If you would like

10:58:40 1 me to continue, I will. If not, we can take a break here.

2 PRESIDENT NELSON: Thank you, Mr. Reichler.

3 I think you have a good idea. I think we should take
4 a break now and then start at 11:15. Thank you very much,
5 Mr. Reichler.

6 (Brief recess.)

7 PRESIDENT NELSON: Mr. Reichler, you can continue.

8 MR. REICHLER: Thank you, Mr. President, Members of
9 the Tribunal.

10 I appreciate your patient indulgence as I went through
11 the fundamentals of the coastal geography, and I'm sure you
12 have had more entertainment by other subjects other than
13 coastal base points and the low-water lines, but I think it's--

14 ARBITRATOR SMIT: Why are you so sure?

15 MR. REICHLER: Well, thank you.

16 But in any event, I felt it was important to begin
17 with the fundamentals. This, after all, is based on geography.
18 And now I can get to the disputed issues.

19 Suriname claims that it is unfairly disadvantaged by
20 the provisional equidistance line. Suriname claims that even
21 its own provisional equidistance line is unfair. But, instead
22 of proposing to adjust the provisional equidistance line to
23 achieve an equitable solution, as is standard practice,
24 Suriname wants to abandon it entirely, and discard the
25 provisional equidistance methodology altogether. It wants to

11:23:37 1 replace the equidistance approach with what it calls the,
2 "angle bisector methodology."

3 There is no basis in geography or in law, as my
4 colleagues who speak after me will show, to support Suriname's
5 argument. Suriname is not a geographically disadvantaged state
6 like, for example, Germany in the North Sea case where
7 equidistance boundaries were shown to be inequitable to
8 Germany. Suriname started out in its Counter-Memorial
9 comparing itself to Germany in the North Sea case. This is at
10 paragraph 6. 33 of the Counter-Memorial. "The overall
11 convexity of Guyana's coast relative to the coast of Suriname
12 is a classic example of how the provisional equidistance line
13 is influenced by protruding coastal features in an adjacent
14 state situation. If a convexity on one side is not balanced by
15 a corresponding convexity on the other side, it will push the
16 provisional equidistance line across the coastal front of the
17 other state, cutting it off from the area in front of its
18 coast. That is the lesson of the North Sea Continental Shelf
19 case, and it is present here." That is how Suriname described
20 itself in the Counter-Memorial.

21 Now, Guyana demonstrated I believe, I submit quite
22 convincingly in its Reply, paragraph 3.10, that the situation
23 present in the North Sea Continental Shelf Case is not present
24 here.

25 Now, in the case of what was then the Federal Republic

11:25:32 1 of Germany, its entire coastline, its entire coastline was
2 deeply concave compared to that of its neighbors, Netherlands
3 and Denmark. As a result, provisional equidistance lines used
4 for both boundaries converged a relatively short distance in
5 front of Germany's coastline as illustrated on the screen.

6 By contrast, as we have already seen, provisional
7 equidistance lines used for both of Suriname's maritime
8 boundaries diverge, creating no cutoff of any area in front of
9 Suriname's coast.

10 Furthermore, it is just simply wrong. It's wrong--for
11 Suriname to argue that Guyana's coastline is convex while
12 Suriname's coastline is concave. As shown in Plate R3 from the
13 Reply, the portion of Guyana's coastline that contributes to
14 the provisional equidistance line is concave, not convex.
15 These light blue guidelines show which points along the coast
16 of Guyana and Suriname contribute to the provisional
17 equidistance line. As you can see, all of the baselines along
18 Guyana's coast that affect the provisional equidistance line
19 are located on or behind the concave coastal facade that traces
20 the true configuration of Guyana's coastline, and that
21 concavity continues across the border along Suriname's coast
22 until it reaches the mouth of the Coppename River, where it
23 suddenly turns convex, shortly before base points S11 to 13,
24 which are positioned less than a mile apart from one another on
25 Hermina Bank, the last points on the Suriname coast that

11:27:22 1 contribute to the provisional equidistance line.

2 So, Suriname was wrong to say in its Counter-Memorial
3 that it was disadvantaged by a convexity along Guyana's coast
4 that was not matched by one along Suriname's coast. In fact,
5 the opposite is true. There is a convexity along Suriname's
6 coast at Hermina Bank that is not matched by anything on
7 Guyana's coast, which is entirely concave insofar as the
8 construction of the provisional equidistance line is concerned.

9 Now, Dr. Smith points this out very clearly at
10 paragraph five of his report at Tab 20. "Whereas Suriname
11 implies that the coastlines in this case should cause one to be
12 wary of the equidistance method, it is actually Suriname's
13 coastline that may be judged to skew the equidistance line in
14 its favor. It is part of Suriname's coastline from a point
15 near the mouth of the Coppename River in an area named Hermina
16 Bank to the Maroni River at the land boundary terminus with
17 French Guiana that is convex relative to the other parts of the
18 coastline in the boundary region. Only a couple of base points
19 in this area of Suriname's coast affect a relatively long
20 segment of the equidistance line. This convexity pushes the
21 direction of the equidistance line back towards Guyana's
22 coast."

23 Dr. Smith concludes at paragraph 20, "Suriname's
24 coastline configuration places it at an advantage against
25 Guyana when an equidistance line is created."

11:29:04 1 Now, in its Rejoinder, Suriname changed its position
2 and it agreed with Guyana that its coastline is not deeply
3 concave or like Germany's in the North Sea cases. This is at
4 paragraph 3.176 of the Rejoinder. In fact, Suriname went even
5 farther. It denied that it ever said anything to the contrary.
6 According to the Rejoinder, "At no place did Suriname imply
7 that its coast overall was deeply concave and squeezed between
8 two neighboring coasts like the Federal Republic of Germany in
9 the North Sea Continental Shelf cases."

10 Now, Guyana need not debate with Suriname about the
11 difference or contradiction between where Suriname started from
12 in the Counter-Memorial, like Germany, and where it finished in
13 the Rejoinder, not like Germany. Guyana is satisfied that
14 Suriname finished where it did, with a coastline that is not
15 deeply concave or like Germany's.

16 To leave no doubt that this is Suriname's final word
17 on the matter, the Rejoinder clearly states at paragraph 3.65
18 in unequivocal terms, "Suriname is not a geographically
19 disadvantaged state within the meaning of the 1982 Convention.
20 It makes no argument to that effect." We are agreed on that
21 point.

22 Suriname defeats its own argument as to the alleged
23 unfairness of the provisional equidistance line. We have
24 already seen what Suriname has said about the coastal
25 geography, admitting that it is unremarkable as a whole, and

11:30:51 1 that Suriname itself is not a geographically disadvantaged
2 state. Here is what Suriname says in its Rejoinder about the
3 equidistance methodology and its application when the coastal
4 geography is as unremarkable as it is here. "Equidistance is a
5 commonly used delimitation method in uncomplicated geographical
6 situations." That's the Rejoinder, paragraph 3.201. According
7 to Suriname, the ICJ, and Arbitral Tribunals, "have found it
8 convenient as a matter of procedure to examine the provisional
9 equidistance line as a first step to determine an equitable
10 maritime boundary. The provisional equidistance line is the
11 result of mathematical method applied to geography. As such,
12 it is objective, but as noted long ago, that does not mean that
13 it will create an equitable result." Rejoinder 3.203.

14 Suriname also says, "If there is agreement on the base
15 points, construction of the provisional equidistance line is a
16 relatively simple cartographic exercise. On the other hand,
17 the bisector method requires an initial determination of
18 simplified representations of the neighboring coasts."
19 Rejoinder at 3.239.

20 It's notable that these are Suriname's statements.
21 Guyana agrees with all of them. And specifically, Guyana
22 agrees that the equidistance methodology, one, is appropriately
23 and commonly applied in uncomplicated geographical situations
24 like the present case. Two, equidistance methodology is
25 completely objective. As Suriname says, it is, "a mathematical

11:32:44 1 method applied to geography, whereas the angle bisector
2 approach requires, first, that the natural coastlines of the
3 two states be refashioned as single segment straight lines so
4 that they become, to quote Suriname, "simplified
5 representations of the neighboring coasts."

6 Third, Guyana agrees with Suriname that the
7 provisional equidistance line does not always guarantee an
8 equitable result. That is why the provisional equidistance
9 line is a point of departure, subject to adjustment as required
10 by special or relevant circumstances to achieve an equitable
11 solution.

12 When the provisional equidistance line does not, on
13 its own, create an equitable solution, the consequence of that
14 is to make adjustments to the provisional equidistance line
15 that are required to achieve an equitable solution. Not to
16 abandon the equidistance methodology or the provisional
17 equidistance line altogether, and certainly not to substitute
18 an entirely unorthodox and highly subjective methodology in its
19 place.

20 Still, Suriname attempts to dispense with the
21 provisional equidistance line on the ground that it is unfairly
22 disadvantaged by that line. To support its argument, Suriname
23 divides the provisional equidistance line into three segments.
24 Suriname complains that the line is unfair to it within the
25 first segment and, to a lesser degree, within the third

11:34:18 1 segment.

2 Guyana disagrees. Guyana claims that the provisional
3 equidistance line is nowhere unfair to Suriname. To the
4 contrary, as Guyana demonstrated in its Reply, the provisional
5 equidistance line is unfair only to Guyana.

6 Let's examine these three segments of the provisional
7 equidistance line as defined by Suriname. We start with what
8 Suriname calls the first segment of the equidistance line, and
9 here again, this is Guyana's portrayal of the line. The first
10 segment of the line, first segment as described by Suriname
11 extends seaward from the starting point on Guyana's coast for a
12 distance of a little more than 90 miles, 90 nautical miles.
13 And we will show here, this is the first segment, according to
14 the way Suriname has defined it.

15 Suriname complains that the line is inequitable in
16 this segment because of the presence or alleged presence of a
17 number of Guyanese base points along what Suriname calls a,
18 "headland on the Guyanese coast," a short distance from the
19 starting point of the line. Suriname claims that a, "cluster
20 of base points" along this, "headland" has a disproportionate
21 effect on the direction of the line, and Suriname claims
22 specifically that it pushes the line significantly in the
23 direction of Suriname creating an unfair cutoff on Suriname's
24 maritime space.

25 Now, in the Rejoinder, at paragraphs 3.185 to 3.188.

11:36:10 1 Suriname alleges that there is a so-called convexity along
2 Guyana's coast which it claims is, "out of alignment with the
3 general direction of Guyana's coast," and a concavity along
4 Suriname's coast which is, "out of alignment with the general
5 direction of Suriname's coast." Out of alignment. These are
6 coastlines, not wheels on a car. They can't be out of
7 alignment. Out of alignment with what? Is Suriname saying
8 that Mother Nature made a mistake? Is Suriname trying to
9 realign or refashion the coastal geography to correct nature's
10 error? The case law makes it clear that international courts
11 and tribunals must not refashion geography, but must take it as
12 nature created it.

13 Now, Guyana disagrees, of course, with Suriname's
14 effort to refashion geography, but not only is it impermissible
15 to refashion coastal geography, there is also no need for it in
16 this case. In fact, there is no headland or protrusion of land
17 along the Guyana coast, and therefore there is nothing in the
18 natural coastal geography that produces a disproportionate
19 effect on the equidistance line or a cutoff of Suriname's
20 maritime space. I would refer the Tribunal to the Reply at
21 paragraph 3.45.

22 Dr. Smith examined this section of the provisional
23 equidistance line and found no cutoff effect on Suriname. That
24 is at paragraph 32 of his report.

25 We can go to the next projection.

11:38:00 1 Suriname attempts to refute Dr. Smith's conclusion
2 that there is no headland on the Guyana coast and no cutoff
3 effect of Suriname's maritime space in the first segment of the
4 equidistance line by reproducing as its Figure 7 in the
5 Rejoinder a diagram that was created by Professor Jaenicke for
6 the FRG in the North Sea case.

7 And this diagram which Suriname correctly describes
8 shows how a coastal headland can significantly shift the
9 direction of a provisional equidistance line to the detriment
10 of a state that does not have a headland to offset that of its
11 neighbor. Suriname argues that there is such a headland as
12 depicted in the Jaenicke diagram on Guyana's coast, just west
13 of the mouth of the river, which they say is not offset by any
14 feature on Suriname's coast, so they argue, "That configuration
15 has the same influence on the equidistance line in this case as
16 shown on Professor Jaenicke's headland diagram which the Court
17 noted." I'm quoting from Rejoinder at paragraph 3.192.

18 Suriname is wrong. Actually, Professor Jaenicke's
19 diagram proves exactly the opposite of what Suriname says. It
20 proves conclusively that there is no headland or other feature
21 on the Guyana coast that distorts the provisional equidistance
22 line or otherwise moves it eastward to Suriname's disadvantage.
23 We start off with the provisional equidistance line, first
24 segment, as drawn on Plate R3, and again, we focus on what
25 Suriname calls the first segment.

11:40:09 1 To test this line against the Jaenicke diagram and
2 find out if, like the line in Professor Jaenicke's diagram, it
3 is influenced by a headland on the Guyana coast, we simply tilt
4 the map to the west so that instead of running from northwest
5 to southeast, the coastline runs approximately from west to
6 east like the "X" axis in the Jaenicke diagram.

7 The "X" axis on the chart is a replica of that on the
8 Jaenicke diagram.

9 Now, we can superimpose the Jaenicke diagram next to
10 the map and see if the provisional equidistance line is
11 influenced by a coastal headland on the Guyana side. If there
12 is a headland on Guyana's coast near to the mouth of the river
13 that affects the first segment of the equidistance line, then
14 the equidistance line should show the same curvature as one of
15 the headland influence lines in the Jaenicke diagram.

16 Instead, what we see is a provisional equidistance
17 line that runs almost perfectly straight through its first
18 segment. We see this more clearly when we superimpose
19 Professor Jaenicke's "Y" axis on the map.

20 The comparison is even clearer when we take Professor
21 Jaenicke's headland-induced curvature from his diagram and
22 place it on the map. Professor Jaenicke's diagram confirms
23 that the coastal geography produces no distorting effects on
24 the line in the first segment. There is no basis for
25 Suriname's complaint that the provisional equidistance line is

11:42:13 1 geographically inequitable in the first segment, and it is on
2 Professor Jaenicke's diagram that Suriname bases its argument.

3 This diagram shows not only that there is no headland
4 on the Guyana coast that distorts the provisional equidistance
5 line in its first segment; it also shows that the provisional
6 equidistance line is not affected by a so-called cluster of
7 base points along Guyana's coast that Suriname calls attention
8 to. Suriname's argument is misconceived. The number of base
9 points or whether they are clustered does not unduly affect the
10 course of a provisional equidistance line. There is no
11 advantage to one side or the other in having more or fewer base
12 points. What matters is the location of the base points.

13 Quite often, a single base point that is well
14 positioned from the standpoint of a coastal state can offset a
15 large number of closely positioned base points, a cluster, if
16 you will, belonging to an adjacent state.

17 In this chart, you can see how a small number of base
18 points on Suriname's east bank completely offset a larger
19 number of base points clustered together on Guyana's west bank.
20 Notwithstanding Guyana's greater number of base points, the
21 equidistance line is not pushed back towards Suriname. In
22 fact, Suriname's fewer points actually push the equidistance
23 line slightly toward Guyana and off its nearly perfect bearing
24 of N28 east. The important factor is not how many base points
25 there are or whether they are clustered together, but where on

11:44:08 1 the coast they're located. Here, the location of Suriname's
2 base points is such as to offset the larger number of Guyana's
3 base points on the opposite coast.

4 As they say in real estate, the value of a property
5 boils down to three things: Location, location, and location.
6 The same is true with base points.

7 We have already seen that notwithstanding the
8 disparity in the number of coastal base points, the
9 equidistance line in the first segment does not adversely
10 affect Suriname. In the second and third segments of the
11 equidistance line, again Suriname, we are accepting their
12 definition which--how many segments there are and what they
13 are, but in the second and third segments, which I will now
14 come to, we will see how only a couple of well placed
15 Surinamese base points not only offset, but overwhelm a larger
16 number of base points on the Guyana coast and push the
17 equidistance line significantly and unfairly in the direction
18 of Guyana to Guyana's very serious disadvantage.

19 Here are the second and third segments of the
20 equidistance line, according to Suriname, comprising the last
21 100 to 110 nautical miles out to the 200-nautical-mile limit.

22 For Suriname, the second segment is much longer than
23 the third comprising between 90 and 95 miles compared to the
24 remainder, which is for Suriname the third segment.

25 Looking at this chart, it is easy to see what happens

11:46:06 1 to the provisional equidistance line in the second and third
2 segments. Starting at the beginning of the second segment and
3 continuing through the end of the third all the way to the
4 200-nautical-mile limit, the equidistance line shifts
5 dramatically to the west, to Suriname's advantage and Guyana's
6 disadvantage.

7 The effects of this shift in the equidistance line are
8 even more visible when the first segment of the equidistance
9 line, which is practically a straight line from shortly in
10 front of the coast of Guyana and Suriname all the way to a
11 point that is more than 90 miles out to sea, is extended the
12 remainder of the way to the 200-nautical-mile limit.

13 Suriname measured the trajectory of the first segment
14 of the equidistance line at the Rejoinder paragraph 3.185. And
15 they measured it as corresponding to a straight line with an
16 azimuth of N28 east. What you see on the screen is a
17 continuation of that 28-degree line to the 200-nautical-mile
18 EEZ limit, and a highlighting of the maritime space that
19 Suriname gains at Guyana's expense by virtue of the undue
20 influence that the convex headland at Hermina Bank exerts on
21 the course of the provisional equidistance line. You can see
22 from the guidelines stemming from Hermina Bank where the black
23 arrow is that it is those--they are those base points right
24 there at Hermina Bank that control, from Suriname's standpoint,
25 the entire second and third segment of the equidistance line.

11:47:52 1 Suriname cannot credibly complain of that second
2 segment, certainly cannot find anything here that is
3 disadvantageous to it. And it makes only the mildest objection
4 to the third segment, which I will come to in a few moments.

5 The problem in the third and second segments of the
6 provisional equidistance lines is that in these sections, the
7 line is very unfair to Guyana. This part of the provisional
8 equidistance line is inequitable because it is
9 disproportionately impacted and distorted westward for more
10 than the last hundred miles out to the 200-mile limit by a
11 coastal anomaly on the Surinamese coast: The distinct and
12 prominent headland at Hermina Bank. Focusing on this headland
13 at Hermina Bank, Dr. Smith observed at paragraph five of his
14 report, "Only a couple of base points in the area of Suriname's
15 coast affect a relatively long segment of the equidistance
16 line. This convexity pushes the direction of the equidistance
17 line back towards Guyana's coast," and he concluded, "It is
18 actually Suriname's coastline that may be judged to skew the
19 equidistance line in its favor."

20 There is nothing on the Guyana coast to neutralize the
21 disproportionate and distorting effects that the Hermina Bank
22 convexity exerts on the provisional equidistance line because
23 all of Guyana's base points lie along the concave portion of
24 its coast. As Dr. Smith points out, paragraph 29 of his
25 report, "For Guyana, all its controlling coastal points are

11:49:36 1 either at the start of the concave coastline or along the
2 coastline itself. On Suriname's side, S1 to 10 are within the
3 concave coastline, and then S11 to 14 are situated on the
4 convex portion of the coastline relevant to this delimitation."

5 Then Dr. Smith says, paragraph 33 of his report, "It
6 is Guyana that is disadvantaged by the few coastal points on
7 Suriname's convex portion of its coastline at Hermina Bank,"
8 S11 to 13. And he points out that the difference between S11
9 and S13 is less than a mile. "These three coastal points
10 influence approximately 91 miles of the provisional equidistant
11 line. ...Only the impact of Guyana's coastline at Devonshire
12 Castle Flats [the westernmost coastal base points] [allow] the
13 equidistance line to turn back somewhat to the northeast for
14 the final 16 miles in what Suriname labels as Section 3"
15 ...before reaching the 200-mile limit."

16 Dr. Smith's observations about the effects of the
17 headland or coastal convexity at Hermina Bank on the Suriname
18 coast are confirmed by the teaching of the expert relied on by
19 Suriname, Professor Jaenicke. Projected on the screen are the
20 second and third segments of the provisional equidistance line.
21 The map has been tilted to the west again so that the red line
22 tracing the coastal concavity is balanced along the "X" axis of
23 the Jaenicke diagram. Since we are now checking for a headland
24 on the Suriname coast, we have to flip over Professor
25 Jaenicke's diagram so that the headland-induced lines on the

11:51:30 1 diagram are pushed to the west rather than to the east.

2 When we juxtaposed the Jaenicke diagram so the
3 headland is assumed to be on the eastern or Suriname side of
4 the Corantijn River as in Hermina Bank, we can see just how
5 strong a headland effect is exerted by Hermina Bank. What
6 Professor Jaenicke's diagram shows is that there is a
7 distorting and disproportionate effect of a headland on the
8 Suriname coast at Hermina Bank, which affects the provisional
9 equidistance line in a manner that is very disadvantageous and
10 very unfair to Guyana throughout the entire second and third
11 segments of the line, from a point that begins a little more
12 than 90 nautical miles seaward of Point 61 and extends for more
13 than a hundred miles out to the 200-nautical-mile limit.

14 But for this lone headland on the Surinamese coast at
15 Hermina Bank, the provisional equidistance line takes a
16 relatively straight course along an azimuth of N28E as
17 calculated by Suriname.

18 What is significant here is that both parties argue,
19 both parties argue that there is an anomalous headland along
20 the coast of the other party which pushes the provisional
21 equidistance line off its relatively straight course, and
22 renders the line inequitable. Both argue that.

23 For Guyana, this means that the provisional
24 equidistance line should be adjusted in the second and third
25 segments to eliminate the distorting effect of the headland at

11:53:36 1 Hermina Bank. For Suriname, it means the equidistance line
2 should be jettisoned entirely in favor of an altogether
3 different methodology because in the first segment it, "should
4 not be pushed out by the protruding incidental features of
5 Guyana's coast or drawn in towards Suriname by the recessed
6 features of Suriname's coast." That is the Rejoinder at
7 paragraph 3.27.

8 Factually where the parties differ is over which one
9 of them has the headland that distorts and renders inequitable
10 the provisional equidistance line. One of them does, they
11 agree on that. What they don't agree on is which one has it.
12 For Suriname, it's Guyana that has a distorting headland at the
13 mouth of the Corantijn, but there is no evidence to support
14 this contention, and Suriname's own evidence, the Jaenicke
15 diagram, refutes it.

16 For Guyana, it is Suriname that has a distorting
17 headland at Hermina Bank, such that to use the language of
18 Suriname in its Rejoinder, the equidistance line is, "pushed
19 out by the protruding incidental feature," in this case of
20 Suriname's coast at Hermina Bank, and, "drawn in toward Guyana,
21 by the recessed features of, in this case, Guyana's coast," and
22 Suriname's own evidence, the Jaenicke diagram, confirms that
23 this is, in fact, the case here; that the headland is at
24 Hermina Bank, and that the party that is unfairly treated by
25 the provisional equidistance line is Guyana, not Suriname.

11:55:27 1 Now, in fact, Suriname expressly admits that Hermina
2 Bank is a headland and that it pushes the equidistance line to
3 the west in Suriname's favor. This is at the Counter-Memorial,
4 paragraph 6.22, where they say that the second segment of the
5 provisional equidistance line, quoting now, "starts shortly
6 after it crosses the 200-meter depth contour," that's roughly
7 90 to 95 miles from Point 61, quoting, "where it takes a sharp
8 turn to the north." This is the first pronounced change in
9 direction of the provisional equidistance line. I am quoting
10 from Suriname's Counter-Memorial, although I could be quoting
11 from one of Guyana's pleadings. This is the first pronounced
12 change in direction of the provisional equidistance line. The
13 change of direction is caused by the fact that the eastern
14 headland of the Surinamese concavity, Hermina Bank, begins to
15 take effect on the line.

16 Here, Suriname itself acknowledges that Hermina Bank
17 is a headland, and that where it begins to take effect on the
18 line it causes a, "sharp turn to the north." Guyana,
19 therefore, submits that an equitable solution requires the
20 elimination of the distorting and inequitable effects of the
21 protruding incidental feature along Suriname's coasts at
22 Hermina Bank.

23 Suriname claims that the third segment of the
24 equidistance line, which is approximately 10 to 15 nautical
25 miles long, is disadvantageous to it because Guyana's last two

11:57:20 1 coastal base points at Devonshire Castle Flats are located on a
2 so-called protrusion west of the Essequibo River that pushes
3 the line back towards the east disproportionately, and because
4 these base points are on land claimed by Venezuela. Again,
5 Suriname is just wrong.

6 First, Guyana's two base points at Devonshire Castle
7 Flats are not located on a protrusion. They occur precisely
8 the point where the Guyana coastline begins to form a general
9 concavity that extends all the way across the boundary with
10 Suriname to the Coppename River.

11 Suriname tries to hide this cartographically by what
12 is known as the edge of the map effect. Actually, Suriname
13 does this with just about all of its maps. They cut off
14 Guyana's coast just west of the Essequibo River, so that the
15 length and general direction of the Guyana coastline are not
16 visible.

17 Here is a good example. This is Figure 31 from the
18 Counter-Memorial. It illustrates the edge of the map effect
19 that Suriname has tried to achieve. You can see here that the
20 map is cut off just at the Essequibo River.

21 Now, it's easier to see that the general concavity
22 that starts in Guyana just west of the Essequibo River and
23 extends eastward across the Guyana and Suriname boundary all
24 the way to the Coppename River, and it's easy to see that this
25 begins at Devonshire Castle Flats where you have Guyana's

11:59:12 1 westernmost coastal base points. As Dr. Smith observed,
2 paragraph 29, the coastal base points at Devonshire Castle
3 Flats are, "at the start of the concave coastline." They are
4 not situated on a protrusion, as Suriname alleges.

5 Second, as Guyana has pointed out, it is indisputably
6 sovereign over the portion of its coast west of the Essequibo
7 River, based on, among other things, a final binding and
8 unimpeachable arbitral award that Venezuela accepted for more
9 than 60 years. Suriname argued in its Counter-Memorial that
10 because Venezuela subsequently asserted a claim that the
11 arbitral award should be disregarded, the Tribunal cannot
12 regard the coastline west of the Essequibo River as belonging
13 to Guyana. This is not a tenable argument.

14 And Suriname appears to have acknowledged that by
15 relegating it to a single innocuous footnote in its Rejoinder.
16 The coastline and the land behind it have been continuously
17 occupied by Guyana and the United Kingdom for centuries. The
18 entire international community, including Suriname, as a member
19 of CARICOM and the OAS, recognizes this coastline as belonging
20 to Guyana.

21 In any event, the effect of the two Guyana base points
22 at Devonshire Castle Flats on the provisional equidistance line
23 is completely overshadowed by the Surinamese base points at
24 Hermina Bank, as can be seen on the chart. At most, the two
25 Guyana base points slightly, very slightly, reduced the undue

12:00:56 1 influence of Suriname's base points at Hermina Bank. Because
2 the effects of Hermina Bank are stronger than those of Guyana's
3 base points at Devonshire Castle Flats, the equidistance line
4 still disadvantages Guyana in its third segment, although a
5 very little bit less so because of Devonshire Castle Flats.
6 There is nothing unfair to Suriname in the third segment of the
7 equidistance line. Again, the only unfairness is to Guyana,
8 and it is a direct result of the influence of Hermina Bank.

9 I can now draw some conclusions from this analysis of
10 the equitableness of the provisional equidistance line.

11 First, none of the three segments of the equidistance
12 line is unfair or disadvantageous to Suriname. Therefore, the
13 line as a whole cannot be unfair to Suriname. Yet on the basis
14 of the line's purported unfairness, Suriname asks the Tribunal
15 to abandon the line and the entire equidistance methodology
16 altogether. There is no geographical, logical, or legal basis
17 for the Tribunal to do so.

18 Suriname complains that the provisional equidistance
19 line is hostage to microgeography. If by this Suriname means
20 it's an accurate reflection of all of the natural geographical
21 features, well, that's true. But there is no problem with this
22 when there are no irregular or difficult geographical features
23 along the coastline of either party. As Dr. Smith points out,
24 paragraph 47, when the entire coastline that controls the
25 equidistance line is used for both states, this is hardly

12:02:42 1 microgeography.

2 And, of course, it is Suriname that benefits by this
3 approach, not Guyana, because of Hermina Bank.

4 It is Guyana's position, which my colleagues and I
5 will later show to be consistent with the case law, that the
6 provisional equidistance line should be adopted by the Tribunal
7 as the point of departure for the delimitation in this case,
8 and that it should be adjusted in order to achieve an equitable
9 solution. As we have demonstrated, the provisional
10 equidistance line is not in any way unfair to Suriname. It is
11 unfair only to Guyana because of the distorting effects of the
12 coastal headland at Hermina Bank, and the equitable solution to
13 this problem would include redirecting the line to eliminate
14 the disproportionate effects of this feature.

15 Dr. Smith's concluding paragraph in his report,
16 paragraph 54, at Tab 20, says, "In the Guyana-Suriname
17 situation, if the equidistance methodology is used, it would be
18 Guyana, not Suriname, that would be disadvantaged. The
19 coastline has a broad concave sweep that incorporates the
20 coastlines of both states. Suriname has an area of convexity
21 where the few coastal points have a significant impact on
22 influencing the direction of almost half the length of the
23 equidistance line in Suriname's favor and to the disadvantage
24 of Guyana. To best reflect a northeastward facing coastlines
25 in this region of South America and to discount Suriname's

12:04:10 1 convex coastline as a pivotal point in the calculation of the
2 provisional equidistance lines, the direction of the
3 provisional equidistance line depicted in Section 1 should be
4 continued seaward, as depicted on the screen."

5 Guyana will come back to its this point in its
6 presentation on the continental shelf and Exclusive Economic
7 Zone tomorrow, and it will demonstrate that to achieve an
8 equitable solution, the provisional equidistance line should be
9 adjusted not to 28 degrees but to 34 degrees, based on relevant
10 circumstances, including historical and conduct-related
11 factors, as well as geographical ones.

12 I will now address Suriname's angle bisector approach.
13 Although it is Guyana and not Suriname that is unfairly
14 disadvantaged by the provisional equidistance line, Guyana
15 states this is not a reason for throwing out the provisional
16 equidistance line or abandoning the equidistance methodology
17 altogether as Suriname proposes. Consistent with the
18 geographical circumstances of this case and the applicable ICJ
19 and arbitral precedents that my colleagues and I will discuss
20 later, the correct approach here is to start with the
21 provisional equidistance line and then make adjustments to it
22 as required in order to achieve an equitable solution. There
23 is no geographical basis for departing from this
24 well-established practice, and there is certainly no rational
25 basis for replacing this approach with the alternative that

12:06:05 1 Suriname is proposing, which consists of artificially
2 straightened coastlines and so-called angle bisectors.
3 Suriname's proposed delimitation methodology is simply
4 indefensible. It seeks to refashion geography.

5 Now, Suriname proposed its angle bisector approach in
6 its Counter-Memorial. In our Reply, Guyana analyzed the
7 approach and its various components, and demonstrated that it
8 is contrived, convoluted, entirely subjective, and completely
9 inappropriate to the geographical circumstances of this case.

10 The methodology that Suriname employs is depicted in
11 Figure 53 of its Counter-Memorial. Suriname takes what it
12 arbitrarily defines as the relevant coastlines, transmutes them
13 into straight-line coastal facades and then divides the
14 maritime area pertinent to Guyana and Suriname by bisecting the
15 angle that is purportedly formed at the point where the
16 straightened coastlines of Guyana and Suriname supposedly meet,
17 but actually do not. The figure is on the screen. That's
18 Suriname's figure.

19 Let us examine more closely the treatment that
20 Suriname has given to this coastal geography step by step.
21 Let's start by looking at what Suriname calls the relevant
22 coastlines.

23 The first problem with Suriname's so-called relevant
24 coastlines is that they are entirely arbitrary. To begin with,
25 their definition of relevant coastlines is completely circular.

12:07:54 1 For Suriname, "The relevant coastlines are those that face the
2 area to be delimited," but the area to be delimited, according
3 to Suriname, is defined as the area that is encompassed by the
4 projection seaward of the relevant coastlines. In other words,
5 you can't determine the relevant coastlines without first
6 knowing what the area to be delimited is, but you can't know
7 what that area is without first knowing what the relevant
8 coastlines are.

9 But even if we overlook the circularity of Suriname's
10 logic, and even if we give them the benefit of the doubt and
11 hypothesize a maritime area to be delimited that is not as
12 theirs is, purely a function of the relevant coastline, we
13 still confront the problem of how to determine what portion of
14 the coastline actually faces this area. Suriname appears to
15 make this determination subjectively and arbitrarily. They
16 have not explained what method they used to determine which
17 portion of their own and Guyana's coastline face the area to be
18 delimited and which do not. They appear to have done it solely
19 by the entirely unscientific method of eyeballing their maps.
20 If they, in fact, employed a more cartographically or
21 mathematically sound method for depicting their quote-unquote
22 facing coastlines, they haven't told us about it yet.

23 The circular, subjective, and arbitrary way Suriname
24 defines the relevant coast permits it to declare relevant any
25 portion of the coast that suits its argument. By branding some

12:09:53 1 portions of the coastline relevant and others not, Suriname has
2 arbitrarily lengthened its own coastline and shortened
3 Guyana's, as we shall see.

4 Now on the chart, the same chart which in gold shows
5 these straightened coastlines which Suriname considers the
6 relevant coastlines, we have superimposed from one of Guyana's
7 charts Guyana's definition of the relevant coastlines which are
8 the portions of the coastline between the outermost coastal
9 base points, in Guyana's case between Devonshire Castle Flats
10 and Point 61. In Suriname's case between Point 61 and S13 at
11 Hermina Bank.

12 It is apparent that applying its own self-styled
13 definition of relevant coastline, Suriname has given itself a
14 relevant coastline that extends far to the east, far beyond the
15 last base point used in constructing the provisional
16 equidistance line. As shown in this figure, their relevant
17 coastline extends all the way to a place called Warappa Bank.

18 What makes Suriname's arbitrary extension of its own
19 coastline even more objectionable is that Suriname did not
20 apply the same criteria to its depiction of what it calls
21 Guyana's relevant coastline. As shown on the chart, while
22 Suriname significantly extended its own coastline, it
23 substantially shortened Guyana's. Guyana's coastline on this
24 chart--this is Suriname's chart--is cut off before the
25 Essequibo River. That's 51 kilometers short of the last

12:11:55 1 coastal base points at Devonshire Castle Flats that influenced
2 the provisional equidistance line.

3 Of course, this is difficult to tell from Figure 33,
4 Suriname's figure, which is another example of their artful use
5 of the edge of the map effect.

6 Again, half of Guyana's coastline has been lopped off.
7 To present this picture, Suriname has to terminate Guyana's
8 coastline at the Essequibo River. Otherwise, the coastline
9 would be off the map coverage.

10 So, this is clearer when we do this, when we
11 superimpose Suriname's truncated version of the coastlines on a
12 complete picture of the coastline, and you can see that
13 Suriname wants to hide Guyana's true coastline from the
14 Tribunal because it completely undermines the premise on which
15 they have constructed these artificial coastlines. If Warappa
16 Bank in the east faces the maritime area, then, by parity of
17 reasoning, an extensive portion of Guyana's coast northwest of
18 the mouth of the Essequibo does as well. Suriname knows it.
19 The only way to prevent it is to crop it out of the picture.

20 Is the coastline northwest of the Essequibo not facing
21 the delimitation area? If eyeballing is the scientific method
22 used by Suriname to determine the limits of a facing coastline,
23 then it would appear to the naked eye that Guyana's facing
24 coastline extends well west of the Essequibo River. By what
25 method or criteria has Suriname determined that its coastline

12:13:47 1 faces the maritime area all the way to Warappa Bank but that no
2 part of Guyana's coastline, let alone beyond the Essequibo
3 River, even to the east of the Essequibo River, faces this
4 area. They don't provide any explanation, and Guyana submits
5 there is none. None, that is, beyond what is an obvious
6 contrivance to make it appear that Suriname has the longer
7 coastline.

8 Now, apart from artificially changing the lengths of
9 the parties' coastline, Suriname has also, and just as
10 arbitrarily, changed their shapes and directions. The natural
11 coastlines are not straight lines. So, by straightening them,
12 Suriname has inevitably distorted them. It's changed both
13 their shape and their direction.

14 In Suriname's case, the straightened coastline that it
15 gives itself ignores the concavity along the coast from the
16 Corantijn River, the boundary, to the Coppename River. Now, in
17 their pleadings they repeatedly refer to this portion of
18 coastline as recessed or concave in a way that supposedly
19 impacts negatively for them on the provisional equidistance
20 line. If it's that recessed how could it accurately be
21 represented by a straight line?

22 In Guyana's case, the way Suriname has changed the
23 direction of Guyana's coastline is even more pronounced and
24 even more arbitrary. The straight line that purportedly
25 represents Guyana's coast does not even track Guyana's

12:15:32 1 coastline, but it starts in the southeast. It starts in the
2 southeast several miles out to sea. This, Guyana's--the
3 southeast end point of the coastal facade that Suriname has
4 given to Guyana is 20 kilometers off the coast. It's barely
5 inside the territorial sea.

6 But the other end point that defines the coastal front
7 line that Suriname has constructed for Guyana is just as
8 inappropriate. We go back to a longer view, and we reveal the
9 entire coast line, and we see what happens when this coastal
10 front is extended by the dashed line.

11 These visuals show what Suriname has tried to achieve
12 again by the edge of the map effect. This shows you what the
13 coastal front line attributed to Guyana would look like if the
14 part of Guyana line west of the Essequibo River were not hidden
15 from your view. Of course they had to cut off Guyana at the
16 Essequibo River. If they hadn't, the arbitrariness of the
17 so-called Guyana coastal front would have been even more
18 apparent than it already is. As Dr. Smith put it in his
19 report, paragraph 44 at Tab 20, "Suriname appears to have
20 arbitrarily chosen both termini of Guyana's coastal front
21 line."

22 Scott?

23 Moreover, this series of distortions is so convoluted
24 that Suriname's angle bisector bisects an angle that doesn't
25 exist because under Suriname's approach, the straightened

12:18:01 1 coastal facades do not meet at Point 61, and therefore they
2 don't form an angle there.

3 This is where the two coastal front lines prepared by
4 Suriname actually meet, at a point along the Suriname coast
5 that is actually 25 kilometers east of Point 61. If there is
6 an angle to be bisected, that's where it is, down on Suriname's
7 coast, not at Point 61. But Guyana is not recommending that
8 because there is no geographical reason in this case to abandon
9 the provisional equidistance methodology, and certainly no
10 reason to adopt this so-called angle bisector approach. There
11 is especially no reason to abandon the equidistance methodology
12 when the two parties are in broad agreement on almost all of
13 the coastal base points and on the provisional equidistance
14 line itself.

15 Now, Suriname claims that its angle bisector approach
16 yields a line, a maritime boundary line of 17-degrees. That is
17 on an azimuth of N17E from Point 61. But Suriname nowhere in
18 any of its pleadings depicts the actual bisection of this
19 so-called angle. I repeat, nowhere in its written pleadings or
20 annexes does Suriname depict--does it show you a 17-degree line
21 as an angle bisector emanating out of this so-called angle. As
22 aggressive as Suriname is in inventing this convoluted and
23 unprecedented methodology for maritime delimitation, even it
24 doesn't have the audacity to try to actually bisect a
25 nonexistent angle. If a picture says a thousand words, here is

12:20:05 1 a nonpicture that says 10,000.

2 Suriname completes its whole set of written pleadings
3 without depicting the bisection of the angle that is the
4 centerpiece of its angle bisector methodology. It doesn't
5 require a Ph.D. in either geometry or hydrography to understand
6 that you can't bisect an angle if there is no angle. As
7 Gertrude Stein once said about the City of Oakland, California,
8 "There is no 'there' there."

9 With all of these flaws which Guyana pointed out in
10 its Reply, in paragraphs 3.7 and 3.33 in particular, it's not
11 surprising that Suriname did not reproduce its Figure 33 in the
12 Rejoinder. To be sure, the Rejoinder maintains Suriname's
13 argument for a angle bisector approach based on a straight-line
14 version of the parties' coastlines, but it included no maps,
15 charts, or figures depicting any straightened coastlines, much
16 less depicting any bisected angles. Suriname clearly didn't
17 want to call further visual attention to the contradictions and
18 fallacies that Guyana exposed in its Reply.

19 I will finish by the lunch break.

20 Now, while the Rejoinder does nothing to rehabilitate
21 Suriname's discredited argument in favor of an angle bisector
22 approach, based on straightened coastal front lines, it does
23 something else and takes a different approach. And this is
24 very significant. The Rejoinder switches ground and attempts
25 to defend the angle bisector approach based on the grounds that

12:22:22 1 it results in a, quote, median line. That is, an equidistance
2 line. In other words, after all is said and done, Suriname's
3 position is that an equitable maritime delimitation between
4 Suriname and Guyana should be achieved by means of an
5 equidistance line.

6 And Suriname argues in the Rejoinder that the best way
7 to draw the equidistance line is as an angle bisector. Now, I
8 don't really expect you to believe what I just said, so I'm
9 going to read you from Suriname's Rejoinder, and I hope you
10 will after that.

11 Here, paragraph 3.194. "Suriname believes that the
12 angle bisector method should be employed, which, in fact, is
13 simply the median line between two generalized representations
14 of the coastal fronts of the parties."

15 Here is another one. Paragraph 2.239 on the
16 rejoinder. "If there is agreement on the base points,
17 construction of the provisional equidistance line is a
18 relatively simple cartographic exercise. On the other hand,
19 the bisector method requires an initial determination of
20 simplified representations of the neighboring coasts. The
21 bisector method splits the angle formed by those
22 representations, and thus reflects the median line between the
23 two adjacent neighboring coastal fronts."

24 In light of Suriname's statements in the Rejoinder,
25 the parties' differences over methodology have really been

12:24:25 1 reduced to this, whether the equidistance line should be
2 developed based on the actual coastal geography of the Guyana
3 and Suriname coastlines, the actual coastal geography, as
4 nature created them, which is Guyana's position, or whether the
5 equidistance lines should be drawn based on what Suriname
6 refers to as, "generalized representations" or, "simplified
7 representations of those coastlines as straight-line coastal
8 fronts."

9 It's Guyana's position that in the geographical
10 circumstances of this case, the provisional equidistance line
11 should be based on the actual coastal geography of Guyana and
12 Suriname and not on generalized or simplified representations
13 of it. Projected on the screen once again is an overlay with
14 Guyana's provisional equidistance line from Plate R3 on top of
15 Suriname's provisional equidistance line from Figure 31. It's
16 really the same image as you have displayed on the easel.

17 Like the larger scale map standing on the easel, this
18 demonstrates again how strikingly similar the parties'
19 respective provisional equidistance lines are to one another.
20 There are compelling reasons why the Tribunal should adopt the
21 provisional equidistance line that is based on the actual
22 coastal geography as nature created it and as depicted on the
23 screen and along the wall rather than one that is based on a
24 generalized or a simplified representation of that geography.

25 First, it has become axiomatic that international

12:26:24 1 courts and tribunals must not refashion geography but take it
2 as nature created it. There is no question that a,
3 "generalized," or, "simplified representation," is not a
4 depiction of the coastal geography as nature created it. It is
5 not the real thing. It is a distortion of the real thing. How
6 much of a distortion depends on the method used for creating
7 the generalized or simplified representation, but it is always
8 a distortion of the natural reality. In this case, the
9 distortion produced by Suriname's simplified representation of
10 the coastal geography is egregious.

11 Second, there is no dispute as to how a provisional
12 equidistance line is to be drawn, and Guyana and Suriname have
13 employed the same mathematical and cartographic methodology to
14 draw their respective lines. The only differences resulting
15 from a disagreement on the placement of the starting point, and
16 Suriname's use of that point as one of its own base points,
17 even though it is located on the Guyana coast.

18 By contrast, there is enormous opportunity for
19 mischief in the angle bisector approach, and limitless grounds
20 for disagreement with respect to the segment of the coastline
21 to be used as the relevant coastline and the measurement of its
22 length, the rendering of it as a straight line, the direction
23 attributed to it, and the assumptions to be drawn about a
24 hypothetical bisector when the end points of the two coastal
25 facades do not even meet.

12:28:07 1 Third, as Suriname itself acknowledges, the
2 equidistance methodology is objective. It is, "the application
3 of mathematics to geography," and it is a, "simple cartographic
4 exercise." Those are Suriname's words. Suriname's angle
5 bisector approach is none of these. As they say in the
6 Rejoinder, 3.239, "The bisector method requires an initial
7 determination of simplified representations of the neighboring
8 coasts." The representations of the neighboring coasts may be
9 simplified, but Suriname's method of achieving these
10 representations is torturous, thoroughly subjective, and
11 patently inspired by the desired result rather than the actual
12 geographic circumstances.

13 Fourth, there is no need in this case to simplify the
14 neighboring coasts. Both parties agree that they are
15 unremarkable, generally regular, and that there are no islands,
16 peninsulas, promontories, rocky outcroppings, or low tide
17 elevations to take into account.

18 What is the justification for simplifying a coastline
19 that Suriname itself agrees is already so regular and so
20 unremarkable, that is so simple by nature, that no manmade
21 simplification is required? Suriname makes a bold and
22 conclusory statement, Rejoinder paragraph 3.171, without citing
23 any authorities, precedents, or other support for this
24 statement, from Suriname, "Viewing the relevant coasts as
25 simplified straight lines both with respect to the direction of

12:29:57 1 those coasts and as to their length is usually helpful in
2 evaluating the geographic circumstances associated with the
3 coasts of neighboring countries and identifying an appropriate
4 delimitation method, particularly when those countries are
5 adjacent neighboring states." Usually helpful. Viewing the
6 relevant coasts as simplified straight lines is usually
7 helpful? Helpful to whom? And how can this be usually helpful
8 when transforming the relevant coasts into straight lines has
9 only been done once, in the Gulf of Maine case, and that was 20
10 years ago.

11 This is not the Gulf of Maine case. It is not
12 remotely like the Gulf of Maine case. The geographical
13 circumstances are poles apart. This is clear, very clear, from
14 comparing the coastlines of Guyana and Suriname with those of
15 United States and Canada in the Gulf of Maine. Here once again
16 is the Guyana-Suriname coast highlighted, and here is the U.S.
17 Canada coast in the Gulf of Maine.

18 Now, the enormous differences between the two sets of
19 coastlines are readily apparent from these two maps, but to
20 make a better comparison, we need to reposition them so that
21 they're both facing in the same direction. So, we turn the
22 Gulf of Maine around so that it's facing the north, and then we
23 overlay it on Guyana's coast. Guyana's coast is depicted here
24 by the--Guyana-Suriname coastline, sorry, is the yellow line,
25 the red is the coastline in the Gulf of Maine.

12:32:03 1 Now, this overlay speaks very loudly. The
2 superimposed coastlines, by the way, are at the same scale.
3 This is the same scale. The coastlines of the U.S. and Canada
4 in the Gulf of Maine are extremely irregular, with a
5 multiplicity of deep indentations, rocky outcroppings, fringe
6 islands, over some of which sovereignty is disputed, not to
7 mention the fact that the coasts of those states are especially
8 complicated because they're adjacent in some part and opposite
9 in others. They bear no resemblance to the coastlines of
10 Guyana and Suriname, which both Guyana and Suriname agree are,
11 "unremarkable, relatively smooth, devoid of major promontories,
12 island fringes, peninsulas, major bays," or, as Suriname put
13 it, "any features that render those coastlines extraordinary."
14 I refer you to the Rejoinder at paragraph 3.183.

15 Referring to the coastlines at issue in the Gulf of
16 Maine case, I quote Suriname again. Counter-Memorial,
17 paragraph 6.38, Suriname itself says with respect to the
18 coastlines in the Gulf of Maine, "Those coasts are much more
19 irregular than those here."

20 Agreed.

21 My colleagues and I will return to the Gulf of Maine
22 case later in our presentation when we discuss the applicable
23 law and the precedents established by prior maritime boundary
24 cases before the ICJ and Arbitral Tribunals. It suffices to
25 say for now that given the enormous disparity in the coastal

12:33:56 1 geography of the Gulf of Maine case and the present case
2 between Guyana and Suriname, the Gulf of Maine case provides no
3 support in these geographic circumstances for the use of an
4 angle bisector approach rather than an equidistance approach.

5 Suriname itself provides one of the very best
6 arguments against its own angle bisector approach, at least as
7 Suriname has applied it to the particular geographical
8 circumstances in this case. Here is another excerpt from
9 Suriname's Rejoinder, paragraph 3.230. "In geographical
10 circumstances, such as that between Guyana and Suriname, where
11 the respective and relevant coasts of the parties meet and form
12 an angle"--meet and form an angle--"the angle bisector method,
13 when properly applied"--when properly applied--"will result in
14 a single segment boundary that approximates a simplified
15 equidistance line"--approximates a simplified equidistance
16 line--"just as so happens when a perpendicular to the general
17 direction of the coast is used."

18 Let's see how they fare against their own test.
19 First, the angle bisector approach, according to Suriname's own
20 criteria, cannot be applied here because the artificially
21 rendered straight line coastlines do not, "meet and form an
22 angle." They don't even come close to meeting and forming an
23 angle. They miss each other by a very wide margin. At their
24 end points they are 20 kilometers apart. There is no angle to
25 be bisected.

12:35:59 1 Second, the boundary that is formed by the angle
2 bisector in this case, assuming that there was an angle that
3 could be bisected, which, according to Suriname, is a 17-degree
4 line, does not--does not--"approximate a simplified
5 equidistance line," which is the test that Suriname said is the
6 test to be applied.

7 Projected on the screen is Suriname's Figure 11 in the
8 Rejoinder. It shows Suriname's rendition of the provisional
9 equidistance line and the 17-degree line. Note that the
10 17-degree line is presented, but not as a bisector of an angle.
11 Just a 17-degree line coming out of Point 61.

12 But what's important here is Suriname's statement that
13 the test--the test--when properly applied, the angle bisector
14 approach will produce a delimitation line that closely
15 approximates a simplified equidistance line.

16 Well, there is a huge disparity between the
17 provisional equidistance line in this case and Suriname
18 17-degree line. As Suriname itself has written, the azimuth of
19 the provisional equidistance line, at least in its first
20 segment, which comprises almost half of the entire line, is
21 28-degrees. That's a far cry from 17 degrees. The area
22 between these two lines is more than 10,000 square kilometers.
23 The exact number, at least as close as we could calculate based
24 on using Suriname's charts, 10,662 square kilometers, all of
25 which would go to Suriname if the 17-degree line were treated

12:38:01 1 as an equidistance line instead of the real equidistance line.

2 Since Suriname states that, "When properly applied,
3 the angle bisector approach approximates a simplified
4 equidistance line," we can only include that if the so-called
5 angle bisector turns out to be 17 degrees, as Suriname
6 contends, the methodology has not been properly applied,
7 according to Suriname's own terms.

8 I now come to my concluding remarks.

9 Both parties agree that coastal geography--coastal
10 geography--is the foundation stone by which this delimitation
11 is to be effected. They also agree that the choice of
12 delimitation methodology is dependent on the coastal geography;
13 that the particular coastal geographical circumstances of this
14 case should determine which delimitation methodology should be
15 used.

16 They agree as well--I have quoted Suriname to this
17 effect earlier--that the delimitation methodology must begin
18 with the construction of a provisional equidistance line or
19 median line, and that this line should be adjusted to take
20 account of applicable special or relevant circumstances, if
21 any, in order to achieve an equitable solution.

22 After the Rejoinder, they offered two different
23 versions of an equidistance or median line. Guyana's
24 equidistance line is based on the actual coastal geography to
25 which it has applied what Suriname accepts is an objective

12:39:56 1 mathematical and cartographic procedure, the same procedure
2 that has been established by repeated decisions of the ICJ and
3 Arbitral Tribunals and that has been accepted by the
4 international community as reflected in state practice.

5 Suriname agrees, with minor deviations only in the
6 first 6 miles of the entire 200-mile equidistance line, that
7 the provisional equidistance line presented by Guyana is an
8 accurate depiction of the equidistance line derived by applying
9 the standard mathematical procedure to the actual coastal
10 geography.

11 Suriname contends, however, that in the circumstances
12 of this case, the equidistance line should not be constructed
13 based on the actual coastal geography, but on the basis of
14 "generalized" or "simplified representations"--I'm quoting--of
15 the coastal geography, and on this basis, Suriname creates
16 straight-line coastal fronts to represent the coastlines of the
17 parties, and it constructs an angled bisector to serve as a
18 provisional equidistance or median line.

19 The straightened coastlines that Suriname has
20 developed may properly be described as simplified
21 representations insofar as straight lines are, by definition,
22 simpler than natural coastlines. But they cannot properly be
23 described as accurate representations of the Guyana and
24 Suriname coastlines. As between simplified and accurate,
25 Suriname invites the Tribunal to select simplification, while

12:41:36 1 Guyana invites the Tribunal to choose accuracy, especially
2 here, where the parties are in agreement that the coastlines
3 are unremarkable; that is, they are already simple and
4 uncomplicated and do not require artificial manipulation.

5 Guyana asks, when the real thing is available, why
6 replace it with a counterfeit? The real thing is the
7 provisional equidistance line based on the actual coastal
8 geography and the standard mathematical calculations. The
9 actual coastal geography in this case is very straightforward,
10 not complex, but simple and perfectly suited to the
11 construction of a provisional equidistance line by the standard
12 objective mathematical method that does not leave room for
13 subjective or arbitrary judgments, generalizations, or
14 simplifications. The angle bisector method is a counterfeit,
15 and it is not even a good counterfeit. It is replete with
16 subjective arbitrary judgments and internal contradictions and,
17 as a concept, it is plainly open to partisan manipulation.

18 Of course, both parties recognize that the provisional
19 equidistance line, however it is constructed, does not in and
20 of itself guarantee an equitable solution. Both Guyana and
21 Suriname propose adjustments to the provisional equidistance
22 line to account for special and relevant circumstances. This
23 is not a reason to cast aside the provisional equidistance line
24 constructed by the standard objective method based on actual
25 coastal geography, and certainly it is not a reason to replace

12:43:24 1 this procedure for constructing the provisional equidistance
2 line with what Suriname has proposed. Rather, the
3 circumstances call for the Tribunal to effect the delimitation
4 in this case by constructing the provisional equidistance line
5 as Guyana has done here, and then considering whether an
6 equitable solution requires any adjustments to the line based
7 on relevant circumstances. This should not be a difficult
8 choice for the Tribunal.

9 Guyana, therefore, submits that the provisional
10 equidistance methodology must be employed in the particular
11 geographical circumstances that are present here, that a
12 provisional equidistance line must be drawn, that the
13 provisional equidistance line drawn by Guyana is the more
14 accurate of the two lines submitted by the parties, and that
15 the provisional equidistance line must be adjusted in order to
16 achieve an equitable solution. In our presentations to follow
17 where we discuss the delimitation in the territorial sea and
18 the delimitation in the continental shelf and EEZ, Guyana will
19 demonstrate that an equitable solution requires an adjustment
20 of the provisional equidistance line to a line of 34 degrees
21 from Point 61 to the 200-nautical-mile EEZ limit. We will show
22 that the circumstances that require this adjustment are both
23 geographical, including the need to adjust the provisional
24 equidistance line to compensate for the disproportionate and
25 distorting effects of Suriname's coastal convexity at Hermina

12:45:04 1 Bank, and historical, including the conduct of the parties for
2 the past half century or more.

3 But before we address delimitation of the territorial
4 sea and continental shelf-EEZ, and commencing immediately after
5 the lunch break, with the Tribunal's indulgence, my good friend
6 and distinguished colleague, Professor Nico Schrijver of the
7 University of Leiden, will present an overview of the law
8 applicable to these delimitations. I'm very respectful of
9 Professor Smit's comment, and I agree with him in his assertion
10 of national pride that the Dutch are outstanding when it comes
11 to constructing on the water, but we have a Dutchman here on
12 our team that the entire Guyana team believes walks on water,
13 and he will address you next.

14 Thank you for your attention, and enjoy your lunch.

15 ARBITRATOR SMIT: Some of my students might think that
16 I do, too.

17 MR. REICHLER: And I'm not one to dissent from that.

18 PRESIDENT NELSON: Thank you very much.

19 These hearings will be resumed at 2:30 this afternoon.
20 Thank you.

21 (Whereupon, at 12:46 p.m., the hearing was adjourned
22 until 2:30 p.m., the same day.)

23

24

25

12:46:30 1

AFTERNOON SESSION

2 PRESIDENT NELSON: May we continue the hearing this
3 afternoon.

4 Professor Schrijver.

5 PROFESSOR SCHRIJVER: Mr. President, Members of the
6 Tribunal, could I briefly introduce myself. My name is Nico
7 Schrijver, and it is a great honor and pleasure to appear
8 before your distinguished Tribunal, and I do so on behalf of
9 the Government of Guyana.

10 I also would like to greet and to pay my respects to
11 my colleagues, and if I may say so, my friends on the team of
12 Suriname.

13 It's my privilege to introduce the principles and
14 rules of international law applicable to the maritime
15 delimitation in this particular dispute.

16 Mr. President, the purpose of my intervention is to
17 demonstrate that Guyana's case is squarely based on the
18 international law, both Treaty law and the international
19 judicial and arbitral decisions.

20 Article 293 of the 1982 Convention vests the Tribunal
21 with the task "of applying this Convention and other rules of
22 international law not incompatible with this Convention."

23 Without any doubt, Mr. President, this is a
24 significant task for various reasons. First, the dispute at
25 stake straddles through all relevant maritime zones in which a

14:32:32 1 coastal state is entitled to exercise sovereign rights. These
2 includes the territorial sea, the continental shelf, and the
3 Exclusive Economic Zone. As stated previously, Guyana and
4 Suriname do not seek a delimitation in any area beyond 200
5 nautical miles from the baselines of Guyana and Suriname.
6 Whenever I refer, by the way, Mr. President, to miles in this
7 presentation, I mean nautical miles. Hence, the dispute
8 between Guyana and Suriname, first of all, touches upon Part II
9 of the Convention relating to the territorial sea; Part V
10 relating to the Exclusive Economic Zone; and Part VI relating
11 to the continental shelf.

12 Second, Part XV is, of course, extremely relevant, the
13 part on international dispute settlement as well as its Annexes
14 as far as relevant to our case. The provisions of this
15 elaborate scheme of international dispute settlement reflects
16 the basic aim of the Convention; namely, to prevent disputes,
17 and should they nevertheless occur, to settle them peacefully.

18 And could I quote from the recent statement of
19 President Higgins at the tenth anniversary meeting of the
20 International Tribunal for the Law of the Sea on 29
21 September 2006. You can find the President's speech in the
22 Judges' folder under Tab 18, and there at page 2 President
23 Higgins states, and I quote, "Disputes about entitlement to the
24 use of the ocean or the delimitation of a maritime zone are not
25 always peaceful and can cause high tensions, often regional.

14:34:46 1 They can create bitter political relations or be perceived as
2 threatening ways of life that have existed for centuries."

3 And Judge Higgins continues to say, "Sometimes a
4 judicial institution can, in providing an impartial
5 pronouncement on the underlying issues, diffuse these high
6 tensions."

7 Mr. President, Members of the Tribunal, that is
8 exactly what Guyana is seeking from these proceedings.

9 And the third reason why your task is such an
10 important one is that Article 293 of the Convention mandates
11 your Tribunal to apply both the 1982 Convention and other rules
12 of international law not incompatible with UNCLOS. This
13 includes the rules relating to maritime delimitation prior to
14 the emergence of the principles and rules of the 1982
15 Convention, and in this case history is impartial.

16 The outline of my presentation--you have it already on
17 the screen, but a somewhat more detailed outline can also be
18 found under Tab 25 of your folder. In the first part of my
19 presentation, I propose to distinguish three relevant periods
20 of time for purposes of identifying the principles and rules of
21 international law which should be applied to maritime
22 delimitation. They are, first of all, the law prior to 1958,
23 prior to the year in which the first United Nations Conference
24 on the Law of the Sea adopted relevant legal instruments.
25 Second, the law which applies, more or less, during the period

14:36:51 1 1958 to 1982, and the third period is, of course, the period in
2 which the 1982 Convention was being applied and up to 2004,
3 when Guyana filed its application for international dispute
4 settlement under the terms of this 1982 Convention.

5 Obviously, these three periods cannot be strictly
6 distinguished, but overlap since the 1958 conventions were, in
7 part, based upon long prevailing customary international law,
8 while some modern trends recognized in the '82 Convention
9 emerged and applied already in the late seventies.

10 In the second part of my presentation, I would like to
11 discuss the status of the equidistance line in international
12 law, and I will do so with particular reference to
13 international judicial and arbitral practice.

14 Then, finally, in the third and last part, I will
15 provide some conclusions emanating from my presentation.

16 Mr. President, in addressing the period before 1958,
17 it is, first of all, relevant to recall that by now efforts to
18 delimit the maritime space off the coasts of Guyana and
19 Suriname span a period of 70 years. As reviewed in some detail
20 by my colleagues, the work of the Boundary Commission in the
21 1930s is, in particular, relevant. As regards the point of
22 departure for the maritime boundary, an agreement was reached
23 that this was to be Point 61, also known as the 1936 Point.

24 Ever since, the parties have been in agreement on
25 this. Until very recently, Suriname sought to question it as

14:39:09 1 part of its ill-founded strategy to deny your Tribunal the
2 competence to establish jurisdiction in this particular case.

3 Here I do not need to add anything to the words of
4 Professor Philippe Sands and Professor Payam Akhavan on this
5 issue, who argued in a most convincing way that there is no
6 doubt that your Tribunal is vested with jurisdiction to hear
7 the merits of the case. As part of my task to overview the
8 applicable international law, I just recall the applicability
9 of the key principle of acquiescence. This case would make
10 history if your Tribunal were to neglect a consistent practice
11 on the side of both Suriname and Guyana, as well as their
12 colonial predecessor states during a period of nearly seven
13 decades to take Point 61 as the starting point for any maritime
14 delimitation. It was not an issue when Great Britain and the
15 Netherlands sought to establish a comprehensive boundary in
16 1939. It was not an issue during the further efforts to reach
17 agreement on a boundary Treaty during the period 1949-1957.
18 And equally, when the issue of the delimitation of the
19 continental shelf emerged and the matter of equidistance came
20 into play, it was not an issue that whatever maritime
21 delimitations would be agreed upon, Point 61 would be the point
22 of departure.

23 Thus, in the Dutch Aide Memoire of 1958, no other
24 point is being proposed. No relevant map of that period shows
25 anything else than these geographical coordinates.

14:41:17 1 Apart from an interesting but brief intermezzo in the
2 early sixties of the Dutch willing to concede that the boundary
3 ran through the River Corantijn rather than along the left
4 bank, all subsequent draft treaties built upon Point 61 as the
5 final land terminus from where the maritime delimitation was to
6 take off.

7 Similarly, the terminus of the land boundary at Point
8 61 was not an issue when Guyana had attained its independence
9 in 1966, and when the Marlborough House Talks took place.

10 And when the Dutch Prime Minister Joop den Uyl, upon
11 request of Prime Minister Henk Arron of Suriname, and the Den
12 Uyl letter is reproduced in Tab 4 of your folder, when this
13 former Prime Minister of the Netherlands described the contours
14 of the territory of newly independent Suriname in 1975, he
15 stated that Suriname's boundary with Guyana follows the
16 low-water line on the left bank on the Corantijn River, and I
17 quote, "up to the point where the river bank changes into the
18 coastline." A point which had been well established as we
19 could see during the proceedings of today and yesterday, a
20 point well established by the 1936 Boundary Commission.

21 Now, the conduct of the parties as reflected in the
22 enactment of maritime boundary laws in 1977 for Guyana, and
23 1978 for Suriname, was in full accord with this, and so was
24 the enactment of petroleum laws and the practice of oil
25 concessions granted by Guyana and Suriname. So was the

14:43:20 1 exercise of fisheries jurisdiction and all the law enforcement
2 activities by the two parties during the period following the
3 adoption of their maritime laws until the year 2005. Then
4 Suriname suddenly, after nearly 70 years, sought to question
5 this.

6 Turning now to the law governing maritime delimitation
7 before 1958, we should first of all note that the prevailing
8 Law of the Sea was not codified. As we know, efforts in
9 context of the League of Nations failed. This agreement
10 continued in particular on the maximum breadth of the
11 territorial sea and the methods of the delimitation of the
12 territorial waters of adjacent or opposite states.

13 In the earliest 20th century a practice emerged among
14 many states to replace gradually the customary cannon shot rule
15 by territorial waters of mostly three and exceptionally 4 or 6
16 miles. This cannon shot rule was coined by Cornelius van
17 Byncershoeck in his book, "De Dominio Maris," first published
18 in 1702. And by the way, van Byncershoeck is a compatriot of
19 mine from my home region. He was based at the former
20 University of Franeker, at the time one of the greatest
21 universities in the Netherlands, if not in Europe, but,
22 unfortunately, this University of Franeker was closed by
23 Napoleon in 1811, and to open its doors never again, at least
24 until now.

25 It's relevant to note that from the late 19th Century,

14:45:33 1 both Great Britain and the Netherlands adhered to the 3-mile,
2 the 3 nautical mile territorial sea. Any agreement around 1936
3 on the limitation of the territorial sea was, by definition, up
4 to a maximum of 3 nautical miles, and this remains the practice
5 of these two countries well into the late 1970s. Delimitation
6 was essentially a matter of negotiation between adjacent or
7 opposite states. Often the method of equidistance was applied
8 next to historical circumstances.

9 Mr. President, Members of the Tribunal, it is well
10 recorded in our written pleadings how the concept of the
11 continental shelf came to the scene in the late 1940s and early
12 1950s. As regards Guyana, the United Kingdom adopted the
13 British Guyana Order in Council in 1954 enacting an Alteration
14 of Boundaries to include the contiguous continental shelf.

15 The Kingdom of the Netherlands never enacted
16 explicitly continental shelf legislation, but it took the view
17 that a continental shelf, ab initio and ipso facto accrues to a
18 coastal state, a point of view which was in line with the later
19 1958 Convention on the continental shelf, and also endorsed by
20 the International Court of Justice in the North Sea Continental
21 Shelf cases and later, of course, also included in the 1982
22 Convention as well.

23 Now, as to the 1958 law, building on the seven-year
24 preparatory work of the International Law Commission, a
25 diplomatic conference in Geneva reached agreement on the

14:47:45 1 adoption of the four main Law of the Sea conventions, including
2 one on the territorial sea and the contiguous zone and another
3 on the continental shelf.

4 As regards the territorial sea, the Convention
5 codified to a large extent customary international law.
6 However, the exact maximum breadth of the territorial sea
7 remained a bone of contention, a bone of contention which could
8 also not be resolved by the second United Nations Conference on
9 the Law of the Sea which took place in 1960. This did not hold
10 a number of increasing coastal states, particularly in Latin
11 America, from asserting claims to territorial seas of a
12 considerably larger breadth than the traditional three or
13 perhaps 4 or 6 miles.

14 However, it should be noted that the United Kingdom
15 and the Kingdom of the Netherlands maintained the 3 nautical
16 mile territorial sea, and both for their territories in Europe
17 as well as for their overseas territories.

18 A significant new development in this 1958 Convention
19 on the Territorial Sea and the Contiguous Zone was the
20 insertion of Article 12 on the delimitation of the territorial
21 sea. Of course, while recording that delimitation may be
22 effected by agreement, it stipulates that failing agreement,
23 the principle of equidistance should be observed, with
24 exceptions provided in case a state has historic title of
25 certain waters or where so-called "special circumstances" are

14:49:45 1 at stake.

2 Both the United Kingdom and the Netherlands signed and
3 ratified the Territorial Sea Convention. In 1960 for the U.K.,
4 in 1966 for the Netherlands. Thus, this Article 12 came to
5 play a significant role in the efforts by the United Kingdom
6 and the Netherlands to reach agreement on a maritime boundary
7 in the sixties, before Guyana and Suriname achieved their
8 independence in 1966 and 1975, respectively.

9 The Netherlands adhered consistently to the
10 equidistance line also in its dispute with Germany with respect
11 to the Ems Dollard region.

12 I now turn to the regulation of the maritime area
13 beyond the territorial sea, an issue which, as a matter of
14 course, had not yet been addressed by the Boundary Commission
15 of Great Britain and the Netherlands in the thirties. Next to
16 the Territorial Sea Convention, the conclusion of a Continental
17 Shelf Convention in 1958 marked considerable progress in the
18 development of the Law of the Sea. Apart from defining the
19 legal concept of the continental shelf and identifying the
20 sovereign rights of coastal states over their continental
21 shelves, a substantive provision was included in Article 6. As
22 a basic rule, it records delimitation of the continental shelf
23 by agreement, but failing agreement, also this 1958 Convention
24 unequivocally endorses the equidistance rule, unless special
25 circumstances require another boundary line.

14:51:54 1 Both the United Kingdom and the Netherlands became
2 parties to this Continental Shelf Convention. U.K. in 1964 and
3 the Netherlands in 1966. As evidenced from the materials which
4 we retrieved when the Dutch archives, there was no indication
5 at all that these two countries sought to establish other
6 principles and rules for the delimitation of the continental
7 shelf adjacent to Guyana and Suriname.

8 Similarly, upon achieving their independence, both
9 Guyana and Suriname continued to rely on key elements of the
10 1958 Law of the Sea conventions, while they also, of course,
11 sought to control, so to extend their control over the sea and
12 its marine resources in line with the spirit at that juncture.
13 Thus, Guyana promulgated a Maritime Boundaries Act in 1977.
14 The text is included in Annex 99, Volume 3 of the Memorial
15 submitted by Guyana. And Part I of the Act extended the limit
16 of the territorial sea up to 12 nautical miles. While the Act
17 established also a principle a 200-mile continental shelf in
18 Part II as well as a 200 nautical mile fisheries zone in
19 Part IV.

20 The President of Guyana was mandated to establish an
21 Exclusive Economic Zone beyond the territorial sea as well.
22 And as regards the delimitation of maritime spaces, Guyana's
23 act squarely establishes the equidistance rule in this 1977
24 act, unless by agreement the parties would decide otherwise.

25 On its turn, Suriname enacted maritime legislation in

14:54:10 1 1978. I refer you to the text which is included at various
2 places in the written pleadings, of course, by the team of
3 Suriname, but as far as Guyana is concerned, I refer you to
4 Annex 104, Volume 3 of the Memorial of Guyana.

5 Let me first establish the fact that until 1978, the
6 delimitation of the maritime area beyond 3 nautical miles for
7 Suriname was also governed by Article 6 of the 1958 Continental
8 Shelf Convention; that is to say, by the equidistance rule. On
9 14 April 1978, Suriname established through its act a 12-mile
10 territorial sea, and Suriname also proclaimed a 200 nautical
11 mile economic zone in its law concerning the extension of the
12 territorial sea and the establishment of a contiguous economic
13 zone.

14 It is notable that the Surinamese law did not provide
15 for a continental shelf, perhaps in line with the Dutch
16 tradition not to proclaim the shelf since it accrues
17 automatically to a coastal state.

18 An interesting Explanatory Memorandum by the
19 Government of Suriname referred to the relevance of the four
20 Geneva Conventions in which, I quote from the memorandum, and
21 by the way you can find that in Annex 103, Volume 3 of the
22 Memorial of Guyana. I quote from the memorandum that, "the
23 most important rules of international law with regard to the
24 Law of the Sea were codified," and as the Memorandum states, as
25 this 1978 memorandum states, this pertains to the following

14:56:23 1 four multilateral treaties to which Suriname was a party as
2 part of the Kingdom of the Netherlands, and there is some
3 specific reference to the Territorial Sea Convention and to the
4 Convention on the continental shelf.

5 Obviously, this assessment of the state of the law
6 includes the delimitation Articles in the Territorial Sea and
7 Continental Shelf Conventions, respectively.

8 We can thus conclude that at the time as far as this
9 period under review is concerned--that is, the period between
10 1958 and 1982--both the Netherlands and Suriname were in full
11 agreement on the applicability of the equidistance line in the
12 territorial sea as well as in the area beyond the 3 nautical
13 miles, beyond later on the 12 nautical miles.

14 Turning now to the third period under review, of
15 course I note, first of all, that in 1982 the Third Conference
16 on the Law of the Sea adopted the comprehensive new Law of the
17 Sea Convention as aimed for, and one of its principle aims said
18 right at the outset, and Sir Shridath Ramphal has quoted it in
19 his opening words, that is to promote the peaceful uses of the
20 seas and the oceans, and for this particular aim, the
21 Convention includes the elaborate scheme for the settlement of
22 disputes arising from the interpretation and application of the
23 Convention.

24 My colleague Philippe Sands introduced yesterday
25 already in some detail Part XV to you, and for reasons of time

14:58:33 1 there is no need for me to repeat it. Both Guyana and Suriname
2 are parties to the Convention. Guyana, since 1993, Suriname
3 since 1998. And as my friend Philippe discussed with you
4 yesterday, both states did so without submitting any
5 declarations restricting jurisdiction under Part XV. The
6 delimitation of the territorial sea is to be based on the
7 principle of equidistance under the Convention, subject, if
8 necessary, to adaptation resulting from historic title or
9 "special circumstances." As a matter of fact, and also as
10 acknowledged by the International Court of Justice in its
11 decision in Qatar-Bahrain, there are no substantive differences
12 between Article 12 of the 1958 Convention on the Territorial
13 Sea and this Article 15 of the 1982 Convention.

14 Let me move beyond the area of the territorial sea.
15 Then we can note, first of all, that Part VI of the Convention
16 introduces a revised and extended continental shelf regime,
17 although the Convention, also, of course, reproduces essential
18 characteristics of the 1958 regime with respect to a coastal
19 state's rights of the continental shelf.

20 The new elements of the '82 Convention relate to the
21 breadth of the continental shelf and to the method of
22 delimitation. Article 76 abandons the open-ended
23 exploitability criterion of the 1958 Convention. It provides
24 that in principle every coastal state has a 200 nautical mile
25 continental shelf, while the geographically favored broad

15:00:57 1 margin states may extend it further, in accordance with
2 strictly defined criteria.

3 As stated before, Guyana reserves its rights to seek a
4 delimitation of its continental shelf beyond 200 nautical miles
5 from the baselines of Guyana and Suriname in accordance with
6 Article 76(4), but it does not seek so, and neither does
7 Suriname in the context of these proceedings.

8 Mr. President, as can be inferred from among other
9 instruments, the maritime legislation of both Guyana and
10 Suriname in '77, '78 of the last century, in the light of the
11 claims to establish a 200 nautical mile Exclusive Economic
12 Zone, they preceded the conclusion of the Convention in '82.
13 This was recognized by the Court in the Continental Shelf case
14 between Tunisia and Libya in which the Court, before the
15 conclusion of the Third Conference on the Law of the Sea
16 already stated, and I quote from this 1980 judgment that, "the
17 concept of the Exclusive Economic Zone may be regarded as part
18 of modern international law." This section can be found in ICJ
19 Reports, 1980, at page 33.

20 Such claims are now also legalized in Part V of the
21 1982 Convention and governed by its rules. The Convention
22 defines the Exclusive Economic Zone as, I quote, "an area
23 beyond and adjacent to the territorial sea which shall not
24 extend beyond 200 nautical miles from the baselines from which
25 the press of the territorial sea is measured."

15:03:06 1 The principles and rules governing the delimitation of
2 the continental shelf and the Exclusive Economic Zone are
3 essentially the same under the '82 Convention. They are
4 included for the continental shelf in Article 83(1), and for
5 the Exclusive Economic Zone in Article 74(1). They stipulate
6 that delimitation of these maritime zones be effected by
7 agreement on the basis of international law as referred to in
8 well-known Article 38 the Statute of the International Court of
9 Justice. Hence, this includes Treaty law, customary
10 international law, and international judicial and arbitral
11 decisions. And the ultimate aim of the delimitation as stated
12 in these two relevant Articles is, I quote, "to achieve an
13 equitable solution." And the identical, the further identical
14 paragraph two of these two Articles, 83 and 74, provides, and
15 is also fully applicable to our case, and I quote, "if no
16 agreement--if no agreement--can be reached within a reasonable
17 period of time, the states concerned shall resort to the
18 procedures provided for in Part XV." Shall resort, mandatory
19 language. You have to make use of the procedures provided for
20 in Part XV, should you not be able to reach agreement within a
21 reasonable period.

22 Mr. President, Members of the Tribunal, I now proceed
23 to the second part of my presentation, and that relates in more
24 general terms to the status of the equidistance line in
25 international law, and I would like to do so with special

15:05:29 1 reference to the international judicial, and arbitral practice.

2 Now, as stated in Article 38 of the Statute of the
3 ICJ, the applicable law in international dispute settlement can
4 also be derived from judicial decisions, judicial decisions as
5 a subsidiary means for the interpretation of these rules. And
6 this applies equally to the body of case law from the
7 International Court of Justice and from international Arbitral
8 Tribunals. Your Tribunal is charged with the duty under
9 Article 293 of the Convention, the 1982 Convention, to apply
10 such rules, as long as they are not incompatible with the Law
11 of the Sea Convention.

12 As regards the status of the equidistance line in
13 international case law, any observer can note considerable
14 shifts in the evolution of the law, and the evolution of the
15 law concerning maritime delimitation. However, as I will
16 demonstrate at the end of my presentation, clear rules have now
17 settled down. In order to prove this, I have to respect your
18 Tribunal's indulgence for taking you through a considerable
19 body of case law, evolving case law, with which you may be
20 mostly familiar. For that reason, I propose to project only
21 the relevant sections on the screen, and you can find copies of
22 these projections also in your folder under Tab 27.

23 Obviously, the starting point of any consideration is
24 the ICJ's judgment in the North Sea Continental Shelf cases of
25 1969, where the Court asked to indicate the principles that

15:07:55 1 were to govern the delimitation of the continental shelves of
2 Denmark, Germany, and the Netherlands. Without, however,
3 having to determine the actual boundary in that case, the Court
4 observed that the use of the equidistance method is not
5 obligatory for the delimitation of the areas concerned in the
6 present proceedings, and you can find that in paragraph 82, and
7 that the parties were under no obligation to apply either the
8 1958 Convention or the equidistance method as a mandatory rule
9 of customary law, which is not, paragraph 83.

10 The Court added that the essential reason why the
11 equidistance method is not to be regarded as a rule of law is
12 that if it were to be compulsorily applied in all situations,
13 this would not be consonant with certain basic legal notions
14 which have from the beginning reflected the opinio juris in the
15 matter of delimitation, so the Court was making its way to what
16 became known as the equitable principles here.

17 Now, in order to understand the reasoning of the Court
18 in the North Sea Continental Shelf case, of course, you have to
19 consider the circumstances of the case. First of all, Germany
20 was not party to the 1958 Convention, as opposed to the
21 Netherlands and the United Kingdom. It was not bound by
22 Article 6 prescribing the equidistance rule.

23 And secondly, under the equidistance principle, the
24 concavity of the coastline of the Federal Republic of Germany
25 and the adjacent states, Denmark and the Netherlands, would

15:10:05 1 have resulted in Germany being allotted just a very small part
2 of the North Sea shelf. In order to avoid that, what we have
3 here, the map as it is in the Court proceedings, and you can
4 see here a very small area Germany would get under the
5 equidistance rule. In order to avoid that, the Court rejected
6 in this particular case the principle of equidistance and
7 rather held that the delimitation was to be based on the
8 application of equitable principles in light of all relevant
9 circumstances.

10 Now, this implied that at the time there were possibly
11 two competing standards, a treaty-based rule of equidistance
12 reflected in Article 6 of the 1958 Continental Shelf
13 Convention; and second, the emerging perhaps customary
14 international law of equitable principles, whatever it may
15 mean.

16 In the Anglo-French Continental Shelf Delimitation,
17 which came to a close in 1977 and 1978, the Arbitral Tribunal,
18 however, expressed the view that this Article 6 of the
19 Continental Shelf Convention in effect provides for a single
20 rule. After noting that Article 6 makes the application of the
21 equidistance principle a matter of Treaty obligations for
22 parties to the 1958 Continental Shelf Convention, the Tribunal
23 then added, and I quote, "The combined character of the
24 equidistance-special circumstances rule means that the
25 obligation to apply the equidistance principle is always one

15:12:09 1 qualified by the condition unless another boundary line is
2 justified by special circumstances." End of the quote from
3 paragraph 70 of the Award.

4 The Tribunal explained that, and I quote, "The role of
5 the special circumstances condition in Article 6 of the 1958
6 Convention is to ensure an equitable delimitation and the
7 combined, "equidistance-special circumstances rule, in effect,
8 gives particular expression to a general norm that, failing
9 agreement, the boundary between states abutting on the same
10 continental shelf is to be determined by equitable principles."

11 In conclusion, this meant that whilst equidistance
12 was, of course, not to be discarded, at that time it was
13 perceived not to have special status. It was to be understood
14 as a useful method of delimitation, nothing more, but also
15 nothing less.

16 Once again, the circumstances of the case explain the
17 Tribunal's conclusion. In contrast to the North Sea
18 Continental Shelf cases, here the Tribunal was bound to apply
19 Article 6 of the Geneva Continental Shelf Conventions since
20 both the U.K. and France had ratified it, and that was in the
21 wake of the North Sea Continental Shelf decision.

22 Well, various judgments and arbitral awards in the
23 1980s emphasized the rule of equity. Admittedly, sometimes
24 somewhat at the expense of the status of the equidistance
25 principle. Thus in Tunisia-Libya case of '82, the

15:14:13 1 International Court of Justice taking into account the history,
2 the drafting history of Article 83 of the Draft Convention on
3 the Law of the Sea, adopted the conclusion that equidistance
4 may be applied if it leads to an equitable solution.

5 Subsequently, in the Gulf of Maine case of 1984, and
6 in the Libya-Malta case of 1985, the Court in essence repeated
7 its stance from the Tunisia-Libya case, and the same goes for
8 the Guinea/Guinea-Bissau award of 1985, where the Arbitral
9 Tribunal noted that, and I quote, "The equidistance method is
10 just one among many, and there is no obligation to use it or to
11 give it priority, even though it is recognized as having a
12 certain intrinsic value because of its scientific character and
13 the relative ease with which it can be applied. The method of
14 delimitation to be used can have no other purpose than to
15 divide maritime areas into territories pertaining to different
16 states while doing everything possible to apply objective
17 factors offering the possibility of arriving at an equitable
18 results." End of this quotation of the Award of the Tribunal
19 in Guinea/Guinea Bissau in 1985.

20 Now, the historical circumstances of these cases may
21 explain the allegedly somewhat negative attitude towards
22 equidistance. In the Tunisia-Libya case, at least as far as
23 the first sector is concerned, the Gulf of Maine, in the first
24 and third segments, and the Guinea/Guinea Bissau cases, the ICJ
25 and the Arbitral Tribunal, respectively, were deciding these

15:16:44 1 cases in the wake of the Third Conference on the Law of the Sea
2 which adopted the, if I may say so, not very meaningful
3 compromise that the delimitation of the continental shelf and
4 the EEC is to be effected by agreement on the basis of
5 international law in order to achieve an equitable solution, a
6 phrase taken from these Articles 74 and 83 of the '82
7 Convention to which I have referred you earlier.

8 As observed by Evans in his 2006 solid textbook, these
9 cases were just too close in time to the Third United Nations
10 Conference on the Law of the Sea to shake off what he
11 identifies as the ideological hostility to equidistance. On
12 the other hand, I may add that it should not be overlooked that
13 the International Court of Justice nevertheless went on to use
14 the equidistance line as a provisional starting point in the
15 Gulf of Maine, namely in the second sector, and also in parts
16 of the Libya-Malta cases where it had to delimit opposite
17 coasts, so it was still fully on the table, but as one method.

18 Now, it could be well argued that the turning point,
19 the turning point, Mr. President, regarding the use of the
20 equidistance came with the ICJ's decision in the Jan Mayen case
21 of 1993, rejecting on the earlier decision of the Anglo/French
22 case of 1977 to which I referred you, the ICJ first of all
23 observed, and it is on the screen, I believe, and I'm quoting
24 from paragraph 46: "If the equidistance-special circumstances
25 rule of the 1958 Convention is, in the light of this 1977

15:19:06 1 decision, namely in the Anglo/French case, is to be regarded as
2 expressing a general norm based on the equitable principles, it
3 must be difficult to find any material difference--at any rate
4 in regard to the delimitation between opposite coasts--between
5 the effect of Article 6 and the effect of the customary rule
6 which also requires a delimitation based upon equitable
7 principles." End of the quote from paragraph 46.

8 The Court then noted that, although it had considered
9 in previous cases the provisional drawing of an equidistance
10 line was not necessarily or obligatory, it had nevertheless
11 found it in the Gulf of Maine and in the Libya-Malta cases
12 entirely appropriate to begin with such a provisional line, and
13 this led the Court in this Jan Mayen case to conclude that, and
14 I quote from paragraph 51 of the ICJ decision, "Even if it were
15 appropriate to apply customary law concerning the continental
16 shelf as developed in the decided cases, it is in accord with
17 precedents to begin with the median line as a provisional line,
18 and then to ask whether special circumstances require any
19 adjustment or shifting of that line."

20 And the Court in the Jan Mayen case was also ready to
21 observe that, and I quote from paragraph 64, "Prima facie, a
22 median line delimitation between opposite coasts results in
23 general in an equitable solution, particularly if the coasts in
24 question are nearly parallel."

25 And then it continues in paragraph 65, and I will just

15:21:23 1 take a small part of it, "It is, of course, this prima facie
2 equitable character which constitutes the reason why the
3 equidistance method endorsed by Article 6 of the 1958
4 Convention has played an important part in the practice of
5 states, and the application of that method to delimitations
6 between opposite coasts produce in most geographical
7 circumstances an equitable result."

8 This is the view of the International Court of Justice
9 in this very important Jan Mayen case of 1993. Obviously, this
10 decision, this turning point in the Jan Mayen case heavily
11 influenced the Court's reasoning in subsequent cases, and
12 Guyana submits that it is now the dominant doctrine well over a
13 dozen years. Thus, in the Qatar-Bahrain case of 2001, the
14 Court endorsing its decision in the Jan Mayen case, noted that,
15 and I quote from paragraph 230, "that for the delimitation of
16 the maritime zones beyond the 12-mile zone, the Court will
17 first provisionally draw an equidistance line and then consider
18 whether there are circumstances which must lead to an
19 adjustment of that line." That is nowadays more or less the
20 party line of any international court or any Arbitral Tribunal
21 dealing with these matters.

22 And the Court also made an important pronouncement as
23 regards the similarity between the delimitation of the
24 territorial sea on the one hand and the EC continental shelf on
25 the other, respectively.

15:23:38 1 Thus, once again from Qatar-Bahrain, and I quote, "The
2 Court further notes that the equidistance/special circumstances
3 rule which is applicable in particular to the delimitation of
4 the territorial sea and the equitable principles/relevant
5 circumstances rule, as it has been developed since 1958 in case
6 law and state practice with regard to the delimitation of the
7 continental shelf and the Exclusive Economic Zone, are closely
8 interrelated--are closely interrelated." End of quote from
9 Qatar-Bahrain.

10 And most recently, the Court repeated this stance in
11 Cameroon-Nigeria in the case of 2002 where the Court had stated
12 that it has said on various occasions to have made clear what
13 the applicable criteria principles and rules of delimitation
14 are when a line covering several zones of coincidental
15 jurisdictions is to be determined, and the Court goes on to
16 state, "They are expressed in the so-called equitable
17 principles/relevant circumstances method, and this method," and
18 I provided some emphasis here, "this method which is very
19 similar to the equidistance/special circumstances method
20 applicable in delimitation of the territorial sea, involves
21 first drawing an equidistance line, then considering whether
22 there are other factors calling for the adjustment or shifting
23 of that line in order to achieve an equitable result." End of
24 quote of this most recent and latest judgment of the
25 International Court of Justice on the particular issue of

15:25:48 1 maritime delimitation.

2 And in this Cameroon-Nigeria judgment, the Court then
3 cites extensive parts of Jan Mayen and the Qatar-Bahrain
4 judgments, and you can find that in paragraphs 288 up to 290 of
5 the Cameroon-Nigeria judgment. Obviously, I will not bother
6 your Tribunal with merely repeating these important findings
7 which, by now, are more or less the standard sentences in any
8 maritime delimitation.

9 What I would like to add, however, Mr. President, is
10 that the Court made a notable step further in its application
11 of the equidistance principle in the Qatar-Bahrain and the
12 Cameroon-Nigeria cases. A brief look at the circumstances of
13 the cases shows that unlike in the Jan Mayen case, the coastal
14 configuration in Qatar-Bahrain required the delimitation
15 between opposite coasts, but that is the southern sector as it
16 is referred to in the judgment, but also adjacent coasts that
17 is referred to as the northern sector in the judgment, whereas
18 the coastal configuration of Cameroon-Nigeria required the
19 delimitation of predominantly adjacent coasts on this side of
20 West Africa.

21 Apparently, the Court did not consider the coastal
22 configuration in Qatar-Bahrain, for example, a problem and
23 expressly accepted the applicability of equidistance also to
24 the delimitation regarding adjacent coasts in the northern
25 sector. And really, this marks notable progress,

15:28:04 1 Cameroon-Nigeria and Qatar-Bahrain, in the evolution of the law
2 of maritime delimitation. Arbitral Tribunals soon followed
3 suit. It can now, therefore, be concluded that in the track of
4 Jan Mayen, in the track of the turning point in international
5 jurisprudence in 1993, the equidistance line has become
6 accepted as a starting point--that's the least what you can
7 say--as the starting point of any maritime delimitation. Also
8 in arbitral awards.

9 Let me mention a few. In the Eritrea-Yemen case of
10 1999, the Arbitral Tribunal observed, and I quote from
11 paragraph 131, "It is a generally accepted view, as is
12 evidenced in both the writings of commentators and in the
13 jurisprudence, that between coasts that are opposite to each
14 other, the median or equidistance line normally provides an
15 equitable boundary in accordance with the requirements of the
16 Convention, and in particular those of its Articles 74 and 83
17 which respectively provide for the equitable delimitation of
18 the EEZ and of the continental shelf between states with
19 opposite or adjacent coasts." That was 1999, Eritrea-Yemen.

20 Recently, to move to another award of an important
21 Arbitration Tribunal, I would like to refer you to the case
22 Barbados versus Trinidad and Tobago. We could not yet include
23 it in our written pleadings since the Award, as you know, is
24 only from this year. The Tribunal in the Barbados versus
25 Trinidad and Tobago case stated that the determination of the

15:30:14 1 line of delimitation normally follows a two-step approach.

2 It's important to quote from paragraph 242, where the Tribunal
3 provides that, "First, a provisional line of equidistance is
4 posited as a hypothesis and a practical starting point. While
5 a convenient starting point, equidistance alone will in many
6 circumstances not ensure an equitable result in the light of
7 the peculiarities of each specific case. Hence, the second
8 step accordingly requires the examination of this provisional
9 line in the light of relevant circumstances, which are
10 case-specific so as to determine whether it is necessary to
11 adjust the provisional equidistance line in order to achieve an
12 equitable result. And this approach is usually referred to as
13 the equidistance/relevant circumstances principle, and very
14 important. Certainty is thus combined with the need for an
15 equitable result."

16 And the Tribunal, Mr. President and Members of the
17 Tribunal, provides the reason for this. Noting in paragraph
18 306, and I quote, "While no method of delimitation can be
19 considered of and by itself compulsory, and no Court or
20 Tribunal has so held, the need to avoid subjective
21 determinations requires that the method used start with a
22 measure of certainty--with a measure of certainty--that
23 equidistance positively ensures, subject to, of course, to its
24 subsequent correction, if justified."

25 To sum up, ever since the International Court of

15:32:26 1 Justice's decision in the Jan Mayen case in 1993, the principle
2 of equidistance has been fully rehabilitated into the toolbox
3 of maritime delimitation, and has become once again a key
4 principle. Equidistance has become a convenient starting point
5 which can be used in situations of both opposite and adjacent
6 coasts which, of course, corrected in the light of relevant
7 circumstances, will also lead to an equitable result.

8 This conclusion as to the firm status of the
9 equidistance line in the contemporary international law of
10 maritime delimitation, as evidenced in particular in
11 international case law in all these international judicial and
12 arbitral decisions, this conclusion contrasts sharply with the
13 approach advocated by our friends from Suriname. Suriname
14 seeks to abandon the equidistance line methodology altogether
15 in favor of a very subjective, very arbitrary use of
16 straight-line coastal fronts and angle bisectors. Our
17 Co-Agent, Mr. Paul Reichler, spoke at length on this morning,
18 so I will not repeat it.

19 Mr. President, Members of the Tribunal, as Guyana will
20 explain later in these proceedings, this method was followed
21 only once; namely, in just the first section of the Gulf of
22 Maine delimitation. And the geographical circumstances could
23 simply not be more different. As you can see, we have seen it
24 also this morning at different projections, but as you can see,
25 at a glance, this coastal situation in the Gulf of Maine is

15:34:52 1 bountiful of all kind of special, relevant, maritime features,
2 geographical features. This contrasts, of course, very sharply
3 with the rather simple geography in front of the coasts of
4 Guyana and Suriname, which most of us have called unremarkable.
5 This finding of Guyana as to the rehabilitated status of the
6 equidistance line in maritime delimitation is very much
7 confirmed in the astute assessment, Judge Guillaume, at that
8 time the President of the International Court of Justice gave
9 in his annual speech as President to the Sixth Legal Committee
10 of the General Assembly of the United Nations on 31
11 October 2001. In this speech, and a copy of it can be found in
12 your folder under Tab 17, of course in the English version for
13 those proceedings, and I hope Judge Guillaume will forgive me
14 sooner or later, Judge Guillaume meticulously described how
15 after a long time of development the Court nowadays employs
16 similar rules for the delimitation of territorial seas, the
17 continental shelf, and the Exclusive Economic Zone.

18 And as regards the territorial sea, the principle of
19 equidistance is, of course, plainly laid down in Article 15 of
20 the 1982 Convention which provides for the equidistance/special
21 circumstances principle.

22 Judge Guillaume confirmed that for the purpose of
23 applying this principle under Article 15 of the '82 Convention,
24 that you proceed in two stages, first, drawing the equidistance
25 line; second, identifying any special circumstances as

15:37:17 1 stipulated in Article 15 of the '82 Convention. And as regards
2 the delimitation of the continental shelf and the Exclusive
3 Economic Zone, Guyana's assessment on the evolution of the law
4 of maritime delimitation proves to be very much supported by
5 Judge Guillaume.

6 Judge Guillaume discussed how the Court initially
7 inclines towards delimitation of the shelf in accordance with
8 equitable principles, and as he puts it, taking into account
9 all relevant circumstances.

10 Indeed, Judge Guillaume referred like Guyana just did
11 to the North Sea Continental Shelf case, to the case between
12 Tunisia and Libya, as well as, of course, to Article 74 and 83
13 of the 1982 Convention, which provide for, I quote, "states to
14 effect delimitation by agreement on the basis of international
15 law in order to achieve an equitable solution."

16 Subsequently, Judge Guillaume observed, and you can
17 find that at page five of his speech under Tab 17 in your
18 folder, the page numbering is provided at the right-hand top of
19 the speech, and then at page five, three paragraphs from the
20 bottom, Judge Guillaume states, "At that stage, case law and
21 Treaty law had become so unpredictable that there was extensive
22 debate within the doctrine on whether there still existed a law
23 of delimitation or whether in the name of equity we were not
24 ending up with arbitrary solutions."

25 Judge Guillaume continues, "Sensitive to these

15:39:35 1 criticisms in subsequent years, the Court proceeded to develop
2 its case law in the direction of greater certainty," and Judge
3 Guillaume stated unequivocally that the Courts had gradually
4 established a case law which he calls now authoritative and
5 predictable.

6 Now, what does that entail, Mr. President and Members
7 of the Tribunal, in the view of the former President of the
8 International Court of Justice? Judge Guillaume stated that,
9 and I quote, "Equidistance was reinstated as a provisional line
10 open to possible correction in order to achieve equitable
11 results." You could find that at page five, the last sentence
12 of the penultimate paragraph. Judge Guillaume referred to the
13 continental shelf case between Libya and Malta, to the maritime
14 delimitation in the area between Greenland and Jan Mayen in the
15 case between Denmark and Norway in which the Court effected a
16 single delimitation line for the continental shelf and the
17 fishing zone. And thus President Guillaume concludes that
18 after a period of what he called uncertainty, now the law on
19 maritime delimitations was, I quote, "completely
20 reunified--completely reunified." You can find that phrase at
21 page six at the start of the second paragraph. Page six, start
22 of the second paragraph. Where he uses the term completely
23 reunified whether it be for the territorial sea, the
24 continental shelf or the fishing zone. In the Court's view, an
25 equitable result can first be achieved by first identifying the

15:41:40 1 equidistance line and then correcting that line to take into
2 account of special circumstances or relevant factors.

3 As regards the latter two, it should be noted that he
4 reports that in the Court's view the special circumstances or
5 relevant factors are both essentially geographical in nature.
6 Judge Guillaume also stated that it follows from the case
7 between Qatar and Bahrain that such findings apply in cases of
8 adjacent coasts as well as opposite coasts.

9 Mr. President, Members of the Tribunal, Guyana
10 subscribes to this assessment of Judge Guillaume. Since he
11 made this speech as President in 2001, these rules have been
12 clearly endorsed in the case between Cameroon and Nigeria in
13 2002 and, of course, in the case between Barbados versus
14 Trinidad and Tobago in 2006. Therefore, Judge Guillaume's
15 statement that the legal rule is now clear was fully justified
16 as was his conclusion that, and I quote, "The law of maritime
17 delimitations by means of these developments in the Court's
18 case law has reached a new level, a new level of unity and
19 certainty whilst conserving the necessary flexibility." You
20 can find that important phrase at the bottom of page six. And
21 upon this basis, the Court could in a case between Qatar and
22 Bahrain arrive at a conclusion that the equidistance/special
23 circumstances rule applicable to the delimitation of the
24 territorial sea, hence the equitable principles relevant
25 circumstances rule as it has developed since '58 in case law

15:43:51 1 and state practice with regard to the delimitation of the
2 continental shelf and the Exclusive Economic Zone are closely
3 interrelated, and that was the reason that he stated we have
4 now reached a new level of unity and certainty whilst
5 conserving the necessary flexibility.

6 Mr. President, Members of the Tribunal, probably this
7 Tribunal will want to think carefully before upsetting
8 flexibility and certainty in this important field of
9 international law as well as of international relations.

10 Mr. President and Members of the Tribunal, I come to
11 some conclusions, and I think I will be able to finish just on
12 time for our tea break. I will list four conclusions. The
13 first is that until the late 1970s, 3 miles, 3 nautical miles
14 were the limit of the territorial sea of both Guyana and
15 Suriname to be delimited upon the basis of equidistance taking
16 into account special circumstances. It means that the 1936
17 agreement on boundary delimitation and subsequent talks both
18 between the Netherlands and Great Britain, and subsequently
19 between Suriname and Guyana related only--only--to a 3 nautical
20 mile territorial sea.

21 Second, the prevailing rule in all three periods under
22 review in Guyana's representation, that is the period before
23 1958, the period between 1958 and 1982, after 1982, in all
24 these three periods, the equidistance principle is the rule for
25 the delimitation of the territorial sea as evidenced by Article

15:46:03 1 12 of the '58 Convention on the Territorial Sea and the
2 Contiguous Zone, and Article 15 of the 1982 Convention.

3 My third conclusion, for the delimitation of the
4 continental shelf and Exclusive Economic Zone, the applicable
5 law is now in essence the same. From the 1960s on, the United
6 Kingdom and the Kingdom of the Netherlands sought to delimit
7 the maritime area beyond 3 nautical miles by reference to the
8 rule of the 1958 Convention on the continental shelf. They
9 failed to do so, as we know, and therefore we are here, and
10 now, in order to achieve an equitable result, as indeed
11 stipulated by Articles 74 and 83 of the '82 Convention, your
12 Tribunal is vested with this important task, and the applicable
13 law suggests unequivocally that you do so by drawing an
14 equidistance line first and subsequently see whether it has to
15 be corrected for so-called relevant circumstances.

16 My fourth conclusion, as it is authoritatively and
17 decisively in the evolution of the international judicial and
18 arbitral decisions which I have discussed with you at some
19 length, the doctrines of equidistance/special circumstances
20 with respect to the territorial sea and the equitable
21 principles/relevant circumstances with respect to the
22 continental shelf and the exclusive economic zone are closely
23 related, and in essence the same. And this suggests that a
24 single maritime boundary applies, for all relevant maritime
25 zones. That is to say the territorial sea, the continental

15:48:19 1 shelf, and the Exclusive Economic Zone.

2 Mr. President, in Guyana's subsequent presentations on
3 the territorial sea, and on the continental shelf and the
4 Exclusive Economic Zone, Guyana will provide further proof that
5 its case rests firmly upon the relevant principles and rules of
6 international law, principles and rules of international law as
7 included in various multilateral legal instruments, most
8 notably the 1982 Convention, but also as evidenced in an
9 extensive body of international and arbitral decisions.

10 Mr. President, members of the Tribunal, thank you for
11 your kind attention. This concludes my intervention on
12 applicable law and the status of the equidistance line in
13 international law, and perhaps this is a convenient moment for
14 you to do what you think is wise for us to do.

15 PRESIDENT NELSON: Before you would leave, I would
16 just like to make a modest inquiry.

17 Mr. Reichler said this morning that the Gulf of Maine
18 was 20 years old. I have here as the law now stands, under
19 what circumstances, if any, can a coastal state be justified in
20 completely abandoning the equidistance method, even as a
21 starting point, jettisoning entirely the application of the
22 equidistance line?

23 PROFESSOR SCHRIJVER: I cannot imagine, it is, of
24 course, just a matter of fact that the judgment is 20 years
25 old, and I referred you to more recent case law with Jan Mayen

15:50:29 1 as the turning point, but my direct reply to your question is
2 in no circumstance.

3 PRESIDENT NELSON: Thank you very much.

4 PROFESSOR SCHRIJVER: Thank you for your question,
5 Mr. President.

6 ARBITRATOR SMIT: Mr. Schrijver, am I correct in
7 assuming that the EEZ Convention omits the equidistance
8 principle and relies only on equitable consideration?

9 PROFESSOR SCHRIJVER: The Exclusive Economic Zone is a
10 relatively new concept in international law introduced in the
11 mid-seventies upon African initiative, codified in the '82
12 Convention in Part V, and, indeed, sir, that we have for the
13 delimitation the principle of equitable--of the ultimate aim
14 should be to achieve equitable results, but as I have tried to
15 review with you during the last more than dozen years, from
16 1993 on, we know much better what is meant by the term to
17 achieve an equitable solution; namely, that is based on both
18 the equidistance line method first, and second, a correction
19 for, in this case, relevant circumstances.

20 ARBITRATOR SMIT: That leads to my next question.
21 What are these equitable principles? Everything depends on
22 what these principles are in relation to the equidistance
23 principle, if it's there; right?

24 Now, you have not told us much about the equitable
25 principle.

15:52:15 1 PROFESSOR SCHRIJVER: I would be very happy to do so,
2 but it will take a long lecture going back to Roman and Greek
3 times what is meant by the principle of equity.

4 But what I find very interesting, Professor Smit, is
5 that basically in recent international case law, the veil, if I
6 may say so, with due respect, the veil of equity has been
7 lifted, and basically equity means, first of all, the principle
8 of the equidistance line, corrected if necessary in view of
9 special circumstances, relevant circumstances for respectively
10 the territorial sea and the continental shelf and Exclusive
11 Economic Zone by equitable principles. But I cannot agree more
12 with you, Professor Smit, that it's very difficult to determine
13 what is meant by the principle of equity, and from that point
14 of view, it is only logical that through the evolution of
15 international case law, as President Guillaume stated, that we
16 have now more certainty, we have more unity because there is a
17 consistent interpretation of more than 12 years what we mean by
18 it.

19 ARBITRATOR HOSSAIN: I think just following the logic
20 of what you're saying is that you take the equidistance line as
21 the starting point, but then there is also a correction or
22 adjustment. Now, what would be the kinds of circumstances in a
23 particular case which would justify adjustment or correction?
24 What words are used?

25 Again, I think the guidance we get from the case law

15:53:59 1 is that in each specific case you have to be sensitive to the
2 peculiarities of the situation, but then I presume you will be
3 addressing us on that, I mean someone will follow you, and I
4 suppose on both sides you would be saying in which way the
5 correction will be. Each one of you is trying to correct in a
6 different direction, and so obviously trying to be as
7 persuasive as you can to say that we should correct it in the
8 direction that you would like us to correct it.

9 PROFESSOR SCHRIJVER: Thank you very much for your
10 question, Dr. Hossain.

11 Indeed, these questions will be addressed in the
12 presentations to come, but in general terms, of course, we will
13 pay a lot of attention to the so-called historical equidistance
14 line, one.

15 And two, perhaps it's the obvious starting point, the
16 question is, are there any islands? Are there any reefs? Are
17 there any special coastal configurations? Well, we still have
18 the map here, so I don't have to provide you with the answer as
19 far as that is concerned.

20 Thank you, Mr. Hossain.

21 PRESIDENT NELSON: Thank you very much, Mr. Schrijver.

22 PROFESSOR SCHRIJVER: Thank you, Mr. President.

23 PRESIDENT NELSON: We are running 10 minutes late, so
24 we will make the necessary adjustment. The session is
25 adjourned, or the hearing.

15:56:58 1 (Brief recess.)

2 PRESIDENT NELSON: We will begin with Professor
3 Philippe Sands.

4 PROFESSOR SANDS: Thank you very much, sir.

5 It falls to me to begin today with the presentation on
6 behalf of Guyana on the delimitation of the territorial sea,
7 and that's the subject that I propose to address for the rest
8 of this afternoon, expecting to break at around 5:15, and then
9 I will continue tomorrow morning for probably no more than
10 one-and-a-half hours maximum, and then we will move on to
11 another issue. It's been the end of a long day, and I'm sure
12 everyone will be looking forward to the recently announced rum
13 tasting that we understand is taking place downstairs shortly
14 after I finished, so it gives you an incentive to manage to
15 survive until 5:15.

16 I'm not sure that it's my invitation to extend, but we
17 understand it is a general invitation that has been extended to
18 everyone who is in this room by the Secretary-General of the
19 OAS, and it takes place, as I understand it, at 6:00 p.m.
20 downstairs. Hard to miss, I suspect.

21 In dealing with the territorial sea issues, it's
22 important right at the outset to recognize--and Professor
23 Schrijver, I think, was very clear in pointing this out--that
24 when we are talking on the delimitation of the territorial sea,
25 we are dealing with two distinct periods of time: Everything

16:16:30 1 that happened pre-1978 and everything that happened post-1978.
2 Until 1978 or thereabouts, both Guyana and Suriname treated the
3 territorial sea as extending only up to 3 miles. The extension
4 to 12 miles only occurred for both states by 1978.

5 And I want to mention this at the outset because it
6 will be clear, but easy to forget, as I have forgotten
7 sometimes when I go into the documents and I'm going to take
8 the liberty of taking you through some of the historical
9 material this afternoon and tomorrow, that when the British and
10 the Dutch, for example, were talking about the continental
11 shelf delimitation in the late 1950s and in the early 1960s,
12 they were referring to the area beyond 3 miles. So, many of
13 the documents to which I will take you are apparently
14 addressing a subject that I'm not supposed to be dealing with
15 today, but since the two States were dealing with the area
16 beyond 3 nautical miles, they were, in fact, dealing with the
17 subject that I'm addressing. So, I'm highlighting that at the
18 outset to avoid a confusion that might arise in your minds.

19 We have already made, I think, abundantly clear that
20 for our purposes the starting point for the delimitation is
21 Point 61, and Suriname agrees that if the Tribunal has
22 jurisdiction to determine this matter at all, the starting
23 point is, indeed, Point 61, or the 1936 Point. So, on that
24 aspect, assuming this Tribunal has jurisdiction, there is
25 agreement between the parties. It's what happens after that in

16:18:27 1 which a disagreement or two emerges.

2 Guyana submits, in summary, that the Tribunal should
3 delimit the territorial sea as a first and distinct step from
4 the delimitation of the continental shelf and the Exclusive
5 Economic Zone, in accordance with established practice, and
6 that that delimitation should follow a line of N34 east to the
7 outer limit of 12 miles from the low-water mark at the point
8 closest to Point 61. This is what Guyana has called throughout
9 its written pleadings the "historical equidistance line," a
10 historical equidistance line initially calculated under the
11 auspices and direction of the redoubtable Commander Kennedy
12 starting in the late 1950s. And I propose to take you through
13 some of the key documents to explain how he and the United
14 Kingdom Government reached that historical equidistance line.
15 And they did so, of course, as I said, for our purposes in the
16 distance from 3 nautical miles to 12 nautical miles.

17 That historical equidistance line has been followed by
18 Guyana ever since it has been an independent state,
19 uninterruptedly and without deviation. Curiously, in the
20 modern territorial sea up to 12 miles, the historical
21 equidistance line for which we argue is more favorable to
22 Suriname than it is to Guyana in relation to that area because
23 a provisional equidistance line, as we shall see, is less
24 favorable to Suriname than it is to us.

25 For its part--and, of course, Suriname will present its

16:20:44 1 own arguments, but we understand their submissions to be that
2 the territorial sea delimitation--the first 12 miles, so to
3 speak, in modern parlance--should not be subject to a separate
4 step of delimitation, but rather should be delimited as part of
5 a single process dealing with the whole 200 miles in one fell
6 swoop. They do not devote in either of their pleadings, for
7 example, a Chapter to the delimitation of the territorial sea,
8 and nowhere do they address very fully Article 15 of the 1982
9 Convention. Their approach seems to be that when you're
10 delimiting a single maritime boundary, you merge Articles 15,
11 74, and 83 into a single unbroken process. Of course, that is
12 an approach that no other international Court or Tribunal has
13 ever followed, and I shall come back and say a bit more about
14 that in due course.

15 Adopting that approach, they would then follow
16 throughout from Point 61 up to a point on the low-water mark
17 for a distance then of 12 nautical miles, a line of 10 degrees
18 north to east through the territorial sea and, of course, then
19 beyond.

20 Suriname does not claim this as an equidistance line.
21 Suriname does not claim this as historic title. The only
22 justification for the line that is advanced by Suriname is what
23 one might call "historical potential navigational
24 requirements--historical potential navigational requirements."
25 It is not, we say, a line that is capable of being established

16:22:59 1 for any part of its distance at any part of the territorial
2 sea. In short, Suriname has departed from all established
3 international practice in seeking to persuade you in the
4 appropriate delimitation of the territorial sea.

5 Now, before I get into some of the historical material
6 and the application of the law, I think it's useful early on to
7 give some visual history of what has actually occurred, in part
8 because it is late in the day and this somehow makes the
9 presentation a little easier. On the screen in front of you,
10 you now see, without any delimitations or other markings, the
11 area which falls within the waters to be delimited as modern
12 territorial sea up to 12 miles, on the left-hand side Guyana,
13 and on the right-hand side Suriname, and there Point 61. This
14 is a map with which you are now very familiar, of course, and
15 Point 61 is shown in the place on the modern NIMA charts,
16 subject to the points about coordinates which was mentioned
17 earlier to day to which we shall return in due course as
18 determined by the Boundary Commissioners.

19 And you can superimpose on that the modern 3-mile
20 limit using modern charts giving you the indication of
21 distances, and here you now see that 3-mile territorial sea.
22 That is the territorial sea approximately--it's based on modern
23 charts rather than charts that were available back in the early
24 1930s--that is the territorial sea that the Commissioners would
25 have had in mind, and the two States would have had in mind,

16:25:08 1 when they made their decisions in 1936 on the fixing of Point
2 61.

3 The next line you will see in orange or gold,
4 depending on the quality of your screen, is the 28-degree line.
5 This is the line that represents the maritime boundary line
6 initially proposed by the Netherlands and supported by the
7 United Kingdom in the period between 1931 until 1936, and it
8 extends for 3 miles--and that may not be entirely accurate on
9 the original historical charts, but for present purposes,
10 illustrative purposes, we have taken it to a modern 3-mile
11 limit to explain what was envisaged, that 3-mile limit being
12 the outer limit of the territorial sea then recognized. So,
13 that is what the British and the Dutch Governments would have
14 expected their agreement to have resulted in when Point 61 was
15 adopted.

16 Now, the course of that line was altered in
17 circumstances to which allusion has already been made and which
18 I will return in due course, on the proposal of the Netherlands
19 to run at an angle of 10 degrees, and that is the purple line
20 that you can now see.

21 Now, from Point 61 to the modern 3-mile limit is, in
22 fact, somewhat more than 3 miles, so it is likely that that
23 10-degree line would not have run the full length of the
24 distance that you there see. It would have run for a distance
25 of somewhat less, probably, than that which now exists. But,

16:27:18 1 for illustrative purposes, it's sufficient to show the extent
2 of the departure between the 28-degree line and the 10-degree
3 line.

4 Now, the course of that line was altered on the basis
5 of an initiative by the Dutch Commissioner to keep the
6 navigational channel on the west coast subject to
7 administration by a single State, the Dutch State. That was
8 the rationale in 1936 for the change of direction. And that
9 line, the line of 10 degrees, was followed up until the early
10 1960s, at which point Commander Kennedy was engaged in charting
11 the equidistance line between the two countries for the area
12 beyond 3 miles, and his colleagues in various British
13 Government departments became aware of the fact that there was
14 no material navigation in those waters, so that the rationale
15 for a line along 10 degrees disappeared. And as I will explain
16 the process shortly--and it's in our pleadings--the line that
17 was then computed was an equidistance line on the basis of
18 various charts then available, and you can see that in red, and
19 that is the 34-degree line.

20 Now, as we will see, Commander Kennedy went through
21 the very difficult task in those days without modern technology
22 of trying to work out what the equidistance was line was, and
23 the 34-degree line, in essence, is the average of the various
24 different lines he came up with using different charts, and
25 that is the basis for what we call the "historical equidistance

16:29:33 1 line" that applied up until that time.

2 Now, that was the situation right up until the late
3 1970s. Anything beyond 3 miles, when it was the subject of
4 discussion or negotiation between the British and the Dutch, or
5 between the Guyanese and the Dutch, and then ultimately between
6 the Guyanese and the Surinamese, which pertained to an area
7 beyond 3 miles, was treated as negotiation on continental
8 shelf, not on negotiation on territorial sea. The situation
9 only changed in the late 1970s, when the 12-mile territorial
10 sea limit was adopted both by Guyana and Suriname. You could
11 see depicted on the charts what 12 miles then looks like.

12 But, of course, in relation to the line 10 degrees in
13 purple on the far left, the navigational rationale, which was
14 relied upon in 1936, really did not extend--well, we say it
15 didn't apply at that time because there was no navigation in
16 that area, and I'm going to say more about that in due course,
17 but it certainly didn't extend beyond 3 miles. Nevertheless,
18 the Netherlands simply took its 10-degree line from 3 miles and
19 extended it up to 12 miles in relation to the territorial sea.

20 The red line, the 34-degree line, is the line which
21 Guyana has relied upon ever since it was independent and, since
22 1977, has treated that up to 12 miles as the outer limits of
23 its territorial sea. Suriname has never objected before these
24 proceedings to the use of that line by way of Diplomatic Note
25 or protest, and it was a line which inspired a great number of

16:31:53 1 Guyana's oil concession agreements. On no occasion did
2 Suriname object to the use of that line in relation to those
3 particular concessions.

4 So, Guyana asks the Tribunal to recognize the
5 historical equidistance line computed by Commander Kennedy and
6 his colleagues as the equidistance line which should be
7 followed in the territorial sea in this case. Guyana has,
8 however, gone through the exercise in accordance with the
9 requirements of established international law described to you
10 by Professor Schrijver of plotting a provisional equidistance
11 line on the basis of the now more precise data that was not
12 available to Commander Kennedy in late 1950s or the early
13 1960s, and you can see there in black the Guyana provisional
14 equidistance line which you will see is more favorable to
15 Suriname than--sorry, more favorable to Guyana than the
16 historical equidistance line which Guyana has relied upon and
17 continues to rely upon.

18 And Suriname now in these proceedings has plotted its
19 provisional equidistance line, and you can see--and this is a
20 line with which I'm sure you're very familiar--the broken light
21 blue line which starts at Point 61 hits on the 10-degree line
22 and then cuts across with a connector to the same provisional
23 equidistance line that Guyana has drawn, and this final
24 document is available in your folders at Tab 28(n).

25 And I also just, while this plate is on the screen,

16:34:00 1 correct a point that was made yesterday, and I think it may
2 have already been corrected. I said the area in dispute
3 between the parties--that is to say, the area between the two
4 provisional equidistance lines--was, in fact, very small, and I
5 referred to a figure of 33 square nautical miles. I was wrong,
6 not in the number, but in the value. The area is even smaller.
7 It is 33 square kilometers, and 33 square kilometers amounts to
8 9.6 nautical miles.

9 There is, of course, another major point of difference
10 between the parties. Suriname submits that if there is no
11 formal agreement on the northern boundary at Point 61 and the
12 drawing of a 10-degree line into the territorial sea, then the
13 Tribunal cannot delimit or resolve the dispute in accordance
14 with Article 15. For reasons that we have already explained,
15 Guyana disagrees, and in our view, this Tribunal is fully
16 competent to delimit that line. Guyana finds it remarkable
17 that Suriname's position is that this Tribunal only has
18 jurisdiction to delimit the territorial sea and areas beyond,
19 if the Tribunal accepts Suriname's entire claim to a boundary
20 line of 10 degrees. In our submission, there are no bars to
21 the exercise of delimitation starting at Point 61.

22 But if this Tribunal were to find otherwise, and we
23 would say that would be a finding conclusion, there is no
24 reason why it cannot delimit from the point at which the
25 parties' provisional equidistance lines converge, and I can

16:35:58 1 give you now, as I think I undertook to do with the very
2 precise figures, that is at a distance of 6.3 nautical miles
3 from Point 61--6.3 nautical miles from Point 61--and I can give
4 you also the precise coordinates of that point which have been
5 supplied to me by Dr. Carrera, and they are 6 degrees 4 minutes
6 and 51 seconds north latitude--6 degrees 4 minutes 51 seconds
7 north latitude--and 57 degrees 3 minutes 37 seconds west
8 longitude. That is the point of convergence.

9 The general legal background to the law of maritime
10 delimitation has been rather fully dealt with in our written
11 pleadings and in Chapter 7 in particular of our Memorial, but
12 we deal with the delimitation of the territorial sea which, in
13 our own view, is entitled to its own treatment in a separate
14 chapter. It has also been addressed by Professor Schrijver
15 this morning. My submissions this afternoon and tomorrow
16 morning are concerned solely with the application of the law to
17 the delimitation of the area that I have just shown on the
18 screen up to and not beyond 12 miles.

19 Suriname, as I mentioned, has chosen not to devote any
20 specific chapters to the territorial sea. It is a topic that
21 is touched on in chapters of general application, and I have to
22 say if they intended to make our task more difficult in working
23 out what their arguments were on territorial sea, they
24 certainly succeeded because you have to spend an awful lot of
25 time going through the various chapters to find the little

16:37:50 1 sections that deal with the territorial sea. They are there,
2 and they are there and addressed in a perfectly legitimate way,
3 but for the counsel who is looking for the chapter entitled
4 "Territorial Sea" or the Arbitrator who is looking for that
5 chapter, you will not find it because it is not there.

6 We find it also very striking that Suriname has really
7 not addressed Article 15 of UNCLOS. There are, I think, just
8 two references to it in the Counter-Memorial and perhaps a
9 couple more in the Rejoinder, and we would ask the question:
10 What is it about Article 15 that causes Suriname to want to
11 take such a distance from its provisions? The answer to that
12 question must surely be a recognition of the reality that the
13 clear equidistance rule set out in Article 15 is less than
14 helpful to their case. We set out our arguments in full. They
15 are not responded to in the pleadings in relation to the
16 Article 15 parts of the argument.

17 I'm going to divide my presentation into three parts.
18 I'm going to start the rest of today with the historical
19 background and efforts to delimit in the area up to the modern
20 12-mile territorial sea. I will then move on to the legal
21 framework, and then describe Guyana's approach, and then fourth
22 part conclude with Suriname's approach to delimitation of the
23 territorial sea. So, let me turn now to the historical
24 background.

25 Guyana considers that the history is important for a

16:39:55 1 number of reasons. This Tribunal is not the first entity to be
2 charged with seeking to delimit the waters that I'm concerned
3 with. The effort to delimit the areas up to 12 miles is one
4 that has gone on for more than 50 years, and it has gone on on
5 all sides with the assistance of a great number of extremely
6 distinguished individuals, and we think it's particularly
7 useful to go through the historical material to get a sense of
8 how those individuals sought to grapple with some of the issues
9 that this Tribunal also will have to grapple with.

10 The International Court of Justice in the
11 Tunisia-Libya case made it clear, speaking in the context of
12 continental shelf delimitation, but that, of course, is equally
13 pertinent here, that an International Tribunal must take into
14 account whatever indicia are available of lines which the
15 parties may have considered. It's 1982 ICJ Reports at
16 paragraph 118. Efforts to delimit the spaces I'm concerned
17 with today go back more than 70 years, and essentially they can
18 be divided into three periods: The period between 1930 and
19 1966; the period between 1966 and 1975, between an independent
20 Guyana and the Netherlands; and between 1975 and the present
21 day, between Guyana and the then-independent Suriname.

22 Our submission is that the conduct of the parties over
23 those seven decades is of central importance, and it has to be
24 taken into account in the delimitation, and it may itself
25 constitute a special circumstance which can justify a shift

16:41:52 1 from the median line which is imposed by Article 15. And
2 conduct that is relevant relates to four aspects, in our
3 submission: Firstly, the starting point for delimitation;
4 secondly, conduct in relation to the breadth of the territorial
5 sea; thirdly, conduct in relation to baselines and base points;
6 and fourthly, conduct in relation to the course of the maritime
7 boundary.

8 On the first of those issues, the starting point for
9 delimitation, a great deal has already been said on this, and I
10 refer you to yesterday's submissions by Professor Akhavan as
11 well as Chapter 6 of our Memorial and Chapter 2 of our Reply.
12 The conduct of the parties demonstrates that Point 61 has been
13 consistently regarded as the starting point for delimitation of
14 the maritime boundary by Guyana and Suriname since 1936. That,
15 we say, is established on the historical record and on the
16 evidence before it.

17 The Tribunal has no evidence before it that Suriname
18 has ever departed from reliance on Point 61 as the starting
19 point for the maritime delimitation. Throughout its period of
20 independence, which is now nearly 30 years, it has always
21 treated the starting point for maritime delimitation as Point
22 61, and in my presentation on jurisdiction, I provided you
23 numerous examples to that effect. I would refer you back to
24 those arguments.

25 Suriname, of course, now says in its reply that Point

16:43:35 1 61 cannot be the starting point because it is, and I quote,
2 located landward of the low-water line, end of quote. By now,
3 the Tribunal is very fully aware of the circumstances in which
4 Point 61 was identified. As Suriname has said, there is no
5 dispute on the fact, merely difference of approach to how you
6 interpret them.

7 In particular, there was in 1936 a need to find a
8 point where a marker could be placed without being washed away.
9 That was a crucial difficulty in difficult circumstances for
10 both countries. It may not be as difficult today, and
11 different approaches may be taken today having regard to modern
12 technologies and other efforts, but in 1936 there were very
13 real difficulties and the marker was placed at a point which
14 were believed to be 215 meters from the low-water mark, but
15 probably, as we shall see, on the high-water mark. It may be
16 that today it is no further. It's been very further to compute
17 this even on the basis of the charts that are available today.
18 Precision is awfully difficult because the area is subject to
19 some considerable change.

20 The available charts, but the historical charts and
21 the modern charts differ as to the precise contours and
22 locations of the low-water mark in that area, but the key
23 point--and you have seen the photographs that were on the
24 screen this morning--make it absolutely clear that Point 61 is
25 literally located in the intertidal zone as a point in which it

16:45:07 1 is on a daily basis, we say, under water at some point of the
2 day. If it's not on the low-water mark, it is very close to
3 the low-water mark, and Point 61 is, and always has been, the
4 starting point for the drawing of the maritime boundary.

5 If it's not right on the low-water mark, the parties
6 depart as to how you get to the low-water mark, but whether you
7 take Guyana's approach, go to the closest point or whether you
8 take Suriname's approach, follow the 10-degree line, you are
9 talking about miniscule distances, and distances which would
10 not, for the reasons I explained yesterday, involve this
11 Tribunal in any consideration of an unsettled dispute
12 concerning rights over continental land territory because, as I
13 explained, Guyana has sovereignty over all of the land
14 territory in question. The Tribunal will be determining
15 nothing more than whether the body of water seaward of the
16 low-water mark is territorial sea or territorial sea of
17 Suriname, or river. There is no land territory in issue.

18 Let me turn to the second topic on which conduct is
19 important: The breadth of the territorial sea. This has been
20 fully addressed by Professor Schrijver. I don't intend to
21 repeat what he has said. The crucial point is that, until
22 1978, the territorial sea was just 3 miles, so even assuming
23 against our own case and on Suriname's best possible case, if
24 there was an agreement between the United Kingdom and the
25 Netherlands, whichever had legal effect, it could not go beyond

16:46:55 1 3 miles. That is the full extent of any such agreement. The
2 United Kingdom, as I will show, abandoned the 10-degree line in
3 the early 1960s because there was no navigation in that area,
4 and the justification for the 10-degree line collapsed. The
5 simple point is, that by the time 1978 came along, by the time
6 the territorial sea extended from 3 miles to 12 miles, the
7 United Kingdom had not accepted a 10-degree line at that place,
8 certainly not beyond 3 nautical miles, and Guyana had certainly
9 ever accepted it. So, if there was such an agreement, the
10 distance is of the territorial sea and the relevant dates
11 become extremely important. There are no circumstances in
12 which a 3-mile territorial sea along the 10-degree line could
13 have been extended to 12 miles.

14 Putting it another way, Suriname, in effect, would be
15 the beneficiary of the failure of the two States to enter into
16 a formal written agreement on the 3-mile territorial sea that
17 they sought to delimit in the 1950s and the 1960s, and the
18 failure to reach an agreement would lead to what we say is the
19 rather perverse result, that by absence of agreement,
20 Suriname's territorial claim to a 10-degree line would extend
21 automatically upon its adoption of its domestic legislation
22 from 3 miles to 12 miles. That cannot be right, in logic or in
23 law.

24 On the question of baselines, the third issue on which
25 conduct is important, that has been rather fully addressed by

16:48:36 1 my colleague, Mr. Reichler, and I don't intend, therefore, to
2 return to it. Suffice it to say, that for all intents and
3 purposes, both parties have agreed consistently that the
4 low-water mark is the point at which baselines are to be set
5 and from which the measurement of the maritime spaces is to be
6 established. So, it's not an issue on which there is material
7 difference between the parties.

8 Just on the topic of the baselines, I want to say
9 something about the use of charts, since this will become
10 important in the coming period. You have seen that the two
11 sides rely on charts from different provenances, and this is
12 going to come up also in the historical material that I'm going
13 to take you to.

14 The Guyanese Maritime Boundaries Act of 1977 invites
15 the government to identify which nautical charts are to be
16 used. The Government of Guyana has not produced a nautical
17 chart depicting its coastlines. The largest scale British
18 chart for the region, BA517, Sixth Edition, has a very small
19 scale of 1 to 1.5 million, which is generally not considered to
20 be suitable for the delineation of baselines, especially where
21 larger scale charts are available.

22 On the Surinamese side, the Explanatory Memorandum
23 which accompanied its 1978 law provides that Dutch Chart 2017,
24 which was prepared in 1970 on the basis of Dutch Chart 217 with
25 a scale of 1 to 750,000 serves as the official chart for the

16:50:20 1 purpose of establishing its normal baselines for the
2 measurement of territorial sea breadth.

3 In relation to modern charts, the most accurate
4 large-scale charts showing the low-water lines of Guyana and
5 Suriname are two U.S. NIMA charts, numbers 24370 of 31st
6 August 1985, and 24380 of 6th of March 1999. These charts are
7 larger-scaled than the British Charts 517 and Dutch Chart 2017,
8 scale of 1 to 300,000. But one of the things we will see
9 constantly is, depending on which charts you use, you get
10 slightly different results, variations on a common theme.

11 Turn to the fourth issue in relation to conduct, and
12 that is the course of the maritime boundary. There was, as I
13 said--and has already been mentioned by Professor Akhavan
14 yesterday--initial agreement from 1931 to 1936 on a 28-degree
15 line. That was the orange line on the Plate that went up on
16 the screen. And from 1936 to the early 1960s, it was a general
17 practice supportive of a 10-degree line up to, and not beyond,
18 3 miles. At that time, in fact in the late 1950s under the
19 direction of Commander Kennedy, there began to be on the
20 British side efforts to identify an equidistance line on the
21 basis of the charts then prevailing. And ultimately about
22 1963, 1964, Commander Kennedy came up, if you would like, with
23 a composite equidistance line of 34 degrees beyond the 3-mile
24 zone. In 1965, the United Kingdom abandoned the 10-degree line
25 in the absence of navigational justifications, and it adopted

16:52:33 1 in effect the 34-degree line all the way through, and Guyana
2 has followed that ever since.

3 What is the relationship between Point 61 and the
4 10-degree line? We say it is not established in combination,
5 and the point and the line are not independent or inextricably
6 linked. Suriname's acceptance of Point 61, the northern
7 boundary terminal, was not conditional upon the acceptance of
8 the 10-degree line as the territorial sea boundary. There is
9 no evidence before the Tribunal, the functioning of Point 61 as
10 the northern terminal boundary or Suriname's acceptance of it
11 was dependent on acceptance of the 10-degree line proposed
12 initially by the Dutch as the territorial sea boundary.

13 Suriname has sought to characterize Guyana's position
14 in various ways, but we do not accept that characterization,
15 that it is our argument that Point 61 and the 10-degree line
16 were established as a single act, a position we say is not
17 supported by the historical record. Point 61 and the 10-degree
18 line were determined independently.

19 Just going through this step by step, in 1931, the
20 United Kingdom and Netherlands Governments decided on the
21 boundary line in the sea at 28 degrees, before they determined
22 the location of the land boundary. The Boundary Commission
23 then came up with its report, and that report gives priority to
24 the terminal. There is no reference to the maritime boundary
25 in the title of the report. The report deals only in its title

16:54:50 1 with the terminal. And it was only after the land boundary had
2 been definitively--sorry, that the boundary terminal had been
3 definitively set that the question of the angle of the line of
4 delimitation in the maritime boundary was raised. We say that
5 is recognized in Suriname's Counter-Memorial at paragraphs 3.7
6 and 3.8.

7 So, Point 61 and the 10-degree line are not
8 inextricably linked, nor have they been treated as such by the
9 parties or their colonial predecessors. Suriname has continued
10 to regard Point 61 as the land boundary terminus, even since
11 the rejection by Guyana of the 10-degree line as the maritime
12 boundary, when it came into existence as an independent state.
13 The British Government agreed to the proposal to change the
14 28-degree line in the territorial sea to a 10-degree line, but
15 they did so on the explicit basis that it would be
16 comparatively simple to change the direction of the boundary
17 delimitation, but not the land terminal boundary at a later
18 date, should circumstances warrant. But you could find in
19 Annex 14 of the Surinamese Counter-Memorial a document which is
20 a letter from the head of the Boundary Settlement Commission in
21 Paramaribo to the Secretary of State for the Colonies in The
22 Hague. This is a letter dated 20th of June 1937, so about a
23 year after Point 61 was determined.

24 I quote from that letter in a translation that comes
25 from the original Dutch. I quote: "Since this will appear

16:57:08 1 from the report, the Joint Commission is proposing a departure
2 from the original instructions of the boundary markers referred
3 to in the report only the concrete block indicating the
4 boundary terminus has been erected for the present. The other
5 markers and the beacons visible from the sea will be erected as
6 soon as both governments have given their approval to our
7 proposals." Now, that is an interesting document because it
8 confirms that the setting of the terminal point is not
9 dependent upon the direction of the line. It is independent.

10 The circumstances that gave rise to the change from 28
11 degrees to 10 degrees were exclusively navigational. And as I
12 said, British Government took the view if those circumstances
13 changed, the direction of the line could be changed, but not
14 the terminal point.

15 Those changing circumstances became apparent to the
16 British Government in the early 1960s. When it became very
17 clear that the so-called Western Navigational Channel in the
18 Corantijn River was no longer being utilized if, indeed, it had
19 ever been utilized. I just pause there to say Suriname has
20 provided no evidence to show that the western channel was ever
21 used on any significant scale. There was one affidavit from
22 one individual, but when it's read very carefully, we say it
23 rather supports our case rather than Suriname's case.

24 And so, on that basis in the early 1960s, the British
25 Government decisively and clearly rejected the 10-degree line,

16:58:50 1 even within the zone of 3 nautical miles, but the British
2 Government continued to treat Point 61 as the terminal boundary
3 in the north, as it has continued to do so to the present day.

4 The crucial point for these purposes is that by the
5 time the two States extended their territorial seas from 3 to
6 12 miles, there was plainly no agreement on a 10-degree line.
7 It had gone. We say that the evidence before the Tribunal does
8 not indicate linkage between the two, even up to the 3-mile
9 limit, that Suriname has failed to supply proof of the mutual
10 adoption of Point 61 as the land boundary terminus was
11 conditioned on an acceptance of the 10-degree line. The
12 documentary evidence before you makes clear--and we say
13 Suriname has, in effect, conceded--the parties have always
14 treated Point 61 as the northern boundary terminal,
15 notwithstanding their clear disagreement as to Suriname's claim
16 of a 10-degree line for any distance.

17 Now, to take you to some of the historical material,
18 if you could go to document 24(g) in the Judges' folder,
19 document 24(g) is an Aide Memoire from the Netherlands
20 Legation, dated 4th of August 1931 in London. And I apologize
21 that I am going to take you through quite a few historical
22 documents, but we hope that you will find that a useful
23 exercise.

24 Can I just say about the historical documents, you
25 will read a great deal of material in it. Some of it will be

17:01:02 1 supportive of our case and some of it will be seen to be
2 interpreted by the other side as being supportive of its case,
3 and we are entirely comfortable with that. We think that the
4 historical record is important, that the Tribunal should look
5 at it carefully, and we invite you to do so, and we hope to
6 treat the historical material in an appropriate and balanced
7 way.

8 Now, the bottom of the first page of that document you
9 will see from the Netherlands legation at the bottom, little
10 paragraph two, "on the bank of the river the frontier will be,
11 A, the high-water mark for the lower course of the Corantijn up
12 to the mouth of the Kabalebo, i.e. that part of the Corantijn
13 the tide is noticeable."

14 Now, at that point, 1931, the Dutch were not treating
15 the low-water mark as the frontier point. They were proposing
16 the high-water mark. That, of course, is the position that
17 subsequently changed. If you go over the page, you get an
18 explanation as to why that is, and the reason we say the
19 explanation is important is that it confirms that Dutch
20 sovereignty is limited to the water and not to any of the land.
21 Quote about a third of the way down, "In the event of a choice
22 between the high-water mark and the low-water mark for this
23 part of the river"--and that's the part of the river we are
24 concerned with--"the high-water mark should preferably be
25 adopted." It was a suggestion. It wasn't a requirement. "For

17:02:38 1 police purposes, the low-water mark does not furnish a
2 practical front, as it happens that the low-water mark shows
3 movements, sometimes a difference of a hundred meters or more.
4 With the high-water mark it would be uncertain up to which
5 point the competence of the policy would extend at high tide."
6 The same would apply with reference to the exercise of other
7 acts of sovereignty.

8 In other words, it was clearly recognized that
9 sovereignty was related to the water and did not go any point
10 beyond, and that's been a position that has been constantly
11 adopted by the Dutch Government and never until these
12 proceedings departed from by the Government of Suriname.

13 And then at the bottom you will see paragraph three,
14 at the mouth of the Corantijn, the frontier will be from a
15 point 6 degrees north and 25 seconds latitude north, and 57 and
16 8 minutes 10 seconds latitude west in a direction pointing to
17 the right 28 degrees, north 28 degrees east to the point where
18 this line meets the outer limit of the territorial waters, and
19 from there in an easterly direction following the outer limit
20 of the territorial waters. And that is the initial proposal
21 for the 28 degree line by the Dutch. But, of course, only up
22 to the territorial waters that have been contained which would
23 just be 3 miles. So, that is a helpful document indicating the
24 starting point to what was to become a lengthy process, and the
25 British Government accepted the proposal for the 28-degree line

17:04:11 1 on that basis.

2 Subsequently, the Dutch Government proposed a change
3 of direction, that the line should run parallel to the
4 westernmost of the Corantijn's navigation channels at an angle
5 of 10 degrees from Point 61 up to the 3-mile limit of the
6 territorial sea.

7 If I could take you now to document 24(d), a couple of
8 documents back, 24(d), this is a document from the British
9 Guiana-Brazil Boundary Commission signed by Major Phipps, the
10 Chief British Commissioner, and dated 9th of July 1936. And if
11 you go to the bottom of page four of that document--four pages
12 in, they are marked on page numbers in the center top of the
13 page--he explains the circumstances for the change. At the
14 right at the bottom of the page, paragraph 10, "With regard to
15 the northern terminal of the boundary between Suriname and
16 French Guiana, we have now fixed this point with the
17 Netherlands Commission. It was found, however, that the
18 bearing of 28 degrees from the cite selected from the northern
19 terminal pillar would intersect the line of the navigational
20 channel which is on a bearing of about 10 degrees east. I did
21 not know of any specific reasons why the boundaries should
22 continue out to sea on a bearing of 28 degrees, and therefore
23 in order to avoid international complications"--and I
24 emphasize--"about buoying of the channel, we have placed the
25 direction pillar so that it indicates the boundary on a bearing

17:06:18 1 of 10 degrees east, i.e. parallel to the line of the channel.
2 I trust that this amendment will meet with your approval. If
3 there was any particular reasons for the bearing of 28 degrees,
4 it's a comparatively simple matter to rebuild the direction
5 pillar to indicate this bearing instead of the 10 degrees east
6 bearing. It would, however, be necessary to refer the matter
7 to the Netherlands Government first presumably as the
8 Netherlands Commissioner was very insistent that it was of
9 vital importance from navigational point of view to have all
10 the buoys under one control." The point I emphasize there is
11 that the rationale for the change was navigational. There was
12 no other basis for the change that took place there.

13 And just over the page, I just refer you to the final
14 paragraph, the letter paragraph 13, "In my opinion, British
15 Guiana loses nothing by the alteration of the bearing from 28
16 degrees to 10 degrees, except a small area of extremely shallow
17 water which becomes a low isolated bank of mud or sand at the
18 lowest spring tides only." Well, it's a typical British
19 understatement, but the point is an important one. The idea
20 that somehow this modest change taken to support the buoying of
21 a navigational channel under the control of a single State
22 should extend beyond the 3 miles they plainly envisaged in
23 1936, first up to 12 miles, and then somehow for reasons
24 unexplained up to 200 miles, is plainly absurd, and this
25 document, we say, makes abundantly clear what the intention was

17:08:18 1 in 1936.

2 It's also clear that the 10-degree line did not
3 represent a median or equidistance line. Commander Kennedy
4 makes that very clear, and it's been consistent and has never,
5 I think, been challenged by the other side. The willingness of
6 the United Kingdom to accede to the request was, as the
7 language says in that text, solely to avoid international
8 complications about the buoying of the channel. And
9 significantly, it was plainly provisional, not in doubt with
10 the character. As the British Boundary Commissioner said--and
11 he chose his words very carefully--these were individuals who
12 were civil servants of the most senior level who used their
13 formulations with great care. If any reason arose to adopt a
14 different bearing, it would be a comparatively simple matter to
15 rebuild the directional pillar, not intended to be a permanent
16 change.

17 Now, the fact is, about 25 years, both sides seemed
18 happy to live with that 10-degree line up to the 3-mile limit,
19 and it features in a number of treaties.

20 In the 1950s, as Professor Schrijver explained,
21 consideration began to be given to the codification or
22 development of the law in the area beyond 3 miles in the
23 context of principles prepared under the auspices of the United
24 Nations International Law Commission. And in 1957, on the
25 basis of the work of the International Law Commission and the

17:10:19 1 efforts leading ultimately to the adoption to the 1958
2 Conventions, the British Government and the Dutch Government
3 began the process of seeking to identify an equidistance line
4 between them, but it is clear that in those discussions the
5 equidistance line from which they sought agreement was from
6 3 miles--not 12 miles, but 3 miles. The fact that the United
7 Kingdom participated consistently in negotiations with their
8 Dutch partners on the identification of an equidistance line in
9 the continental shelf completely removes any remaining argument
10 that the United Kingdom ever accepted 10 degrees up to
11 12 miles. There was no support for that proposition
12 whatsoever.

13 And, of course, the work of the 1950s and the reason
14 for the efforts of the Dutch and the British to seek a
15 delimitation was firstly a general move towards the recognition
16 of a coastal state sovereign rights over an area beyond
17 3 miles; and secondly, the receipt by the British authorities
18 in Guyana of an application from the California Oil Company to
19 allow it to explore for oil off the coast of British Guiana,
20 and those were the two catalytic events that led to the
21 detailed negotiations that then took place.

22 Mr. President, Members of the Tribunal, I'm proposing
23 in the next stage of my presentation to go into some of the
24 documents that deal with the way in which the British
25 Government tried to calculate an equidistance line, but I

17:12:07 1 wonder whether this is a good time to pause since I have got
2 about 10 documents that I want to take you to, and it strikes
3 me as more practical to deal with them in one fell swoop, so to
4 speak.

5 PRESIDENT NELSON: Yes, I think after a long day it
6 may be an idea to do just what you suggested.

7 Thank you very much for your intervention, and I would
8 like to read out the hearing schedule for tomorrow. You will
9 remember that this morning we raised the issue of a sort of
10 group of experts meeting. 9 December 2006, 9:30 to 11 hearing;
11 11 to 11:15 coffee break; 11:15 to 12:45 hearing; 12:45 to 2:00
12 lunch; 2:00 to 15:30 hearing; and from 15:30 there will be a
13 preliminary meeting of hydrographers that has been arranged.

14 Thank you very much. The meeting is adjourned.

15 (Whereupon, at 5:11 p.m., the hearing was adjourned
16 until 9:30 a.m. the following day.)

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN, RDR-CRR