

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

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 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 4

Monday, December 11, 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:

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

2 PRESIDENT NELSON: Good morning. I give the floor to  
3 Mr. Reichler for Guyana.

4 MR. REICHLER: Thank you, Mr. President. Good morning  
5 to you, good morning Members of the Tribunal, and to our  
6 friends across the room. I hope you all enjoyed a pleasant  
7 weekend in Washington.

8 Today is the final day of Guyana's first-round  
9 presentations to you. We will begin with the testimony of the  
10 expert witness, Dr. Robert Smith. Following his direct  
11 examination, he will be available for cross-examination by our  
12 esteemed colleagues representing Suriname and, of course, for  
13 questions from the Tribunal.

14 After all the questioning of Dr. Smith has been  
15 completed and he has been excused by the Tribunal, we will  
16 resume with our presentations.

17 As outlined by my great friend and colleague, Sir  
18 Shridath Ramphal last Thursday when we began these proceedings,  
19 Guyana will today call upon Professor Payam Akhavan to address  
20 the subject of Suriname's unlawful use and threat of force  
21 against Guyana's licensee in June of 2000 in violation of the  
22 1982 Convention. And after Professor Akhavan, Sir Shridath  
23 will return to the podium to complete Guyana's first round with  
24 his address on Suriname's failure to make efforts to enter into  
25 provisional arrangements of a practical nature, also in



09:32:51 1 violation of the Convention.

2           We expect that Guyana's presentations today, including  
3 the direct examination of the expert witness, will collectively  
4 consume approximately three hours. Of course, we cannot speak  
5 to how much time will be used up in the cross-examination of  
6 Dr. Smith by Suriname's counsel or by questions posed to him by  
7 the Tribunal, but Guyana hopes that it will be possible to  
8 conclude the proceedings this afternoon well in advance of the  
9 agreed stopping time of 5:15 p.m. but, of course, whether this  
10 goal is accomplished will depend on factors beyond Guyana's  
11 control.

12           Before we call Dr. Smith to testify, I would like to  
13 briefly mention three points. First, at the conclusion of the  
14 hearings on Saturday, Mr. Saunders asked us for hard copies of  
15 one of the charts that we displayed on the screen during my  
16 concluding presentation on coastal geography and delimitation  
17 in the territorial sea and continental shelf and Exclusive  
18 Economic Zone. This is the chart that showed the effects of  
19 applying Suriname's proposed delimitation methodology to the  
20 case of Suriname's maritime boundary with French Guiana. This  
21 morning we presented copies of this chart to the Suriname  
22 delegation in response to Mr. Saunders's request, and we have  
23 consequently included the chart in your Judges' folder today at  
24 Tab 36.

25           Our practice has been to be selective in including

09:34:38 1 documents, maps, and charts in the judge's folders so as not to  
2 overburden you with paper. That is why we did not initially  
3 include this particular chart in your Judges' folder on  
4 Saturday. But since Suriname has requested it and we have  
5 supplied it to them, we felt it appropriate to provide a hard  
6 copy to the Tribunal as well.

7           The second point, again very briefly, is we have  
8 responded to Mr. Greenwood's request, also on Saturday, for  
9 somewhat smaller copies of the chart that's sitting here on the  
10 easel of the provisional equidistance line, and I hope the  
11 versions that we gave to Mr. Greenwood are satisfactory, but if  
12 he would like something even smaller or larger, all he need do  
13 is let us know, and we'll be happy to accommodate.

14           Third and final thing I want to mention before  
15 proceeding with the calling of the witness concerns our  
16 examination of the witness. As you know, Mr. President,  
17 Members of the Tribunal, the witness has already supplied a  
18 written report setting forth his observations and conclusions  
19 on the geographical circumstances of this case. It was  
20 included as Annex R1 to Guyana's Reply filed in early  
21 April 2006; and for your convenience, we have also included the  
22 experts' report in your Judges' folder at Tab 20. And as you  
23 will recall during my presentations on the geographical  
24 circumstances of this case both on Friday and on Saturday, I  
25 quoted amply from Dr. Smith's report, reading aloud a number of

09:36:31 1 the key passages.

2 For all of these reasons, we have decided that it is  
3 unnecessary at this point to conduct a lengthy or comprehensive  
4 direct examination of the witness. To do so would be to engage  
5 in much that would, again at this stage of the proceedings, be  
6 quite repetitive, frankly, and we do not wish to impose upon  
7 your time unnecessarily.

8 Accordingly, we will limit our direct examination to  
9 some of the most salient points addressed by Dr. Smith in his  
10 report. We do not expect the direction to take more than 35  
11 minutes or 40 minutes at most. But we want to make  
12 clear--Guyana wants to make clear, however, that the brevity of  
13 this direct examination is due solely to our desire to avoid  
14 repetition, given the fact that there is a rather extensive  
15 written report already in the record. The brevity of the  
16 examination is not a reflection of the importance that we  
17 attached his observations and opinions, which, as I've said,  
18 have been set forth in some detail. In fact, Guyana attributes  
19 a great importance to the contribution Dr. Smith has already  
20 made to this case and the further contribution that we  
21 anticipate he will make with his testimony.

22 Following our direct examination, it will be for the  
23 Suriname delegation to decide how much cross-examination to  
24 pursue and, of course, for the Tribunal to decide how much  
25 questioning of the witness to make on its own. Guyana is

09:38:14 1 amenable to whatever arrangements are suitable to the Tribunal.  
2 But Guyana is certainly very pleased to make this witness  
3 available for questioning both by our distinguished friends  
4 across the room and by the Tribunal.

5 So, at this time I will ask the Tribunal, with  
6 respect, to call Dr. Robert W. Smith to the witness stand.

7 PRESIDENT NELSON: Please bring him in.

8 Mr. Reichler, does he have the solemn declaration?

9 MR. REICHLER: I do not believe he has a copy. I  
10 thought that Mr. Daly was going to furnish it to him. Oh, you  
11 have it.

12 THE WITNESS: I have it.

13 MR. REICHLER: Mr. Daly has done his job in excellent  
14 fashion, as always.

15 PRESIDENT NELSON: Well, as I see here, the expert has  
16 to make the following solemn declaration.

17 You can continue, Dr. Smith.

18 ROBERT W. SMITH, CLAIMANT'S WITNESS, CALLED

19 THE WITNESS: I solemnly declare upon my honor and  
20 conscience that I will speak the truth, the whole truth, and  
21 nothing but the truth, and that my statement will be in  
22 accordance with my sincere belief.

23 PRESIDENT NELSON: Thank you.

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

25 DIRECT EXAMINATION

09:39:52 1 BY MR. REICHLER:

2 Q. Good morning, Dr. Smith.

3 A. Good morning.

4 Q. Would you please state your full name for the record.

5 A. Robert Wheeler Smith.

6 Q. And would you describe for the Tribunal your  
7 professional experience and background.

8 A. From 1975 until March of this year, I was a geographer  
9 in the U.S. Department of State. My first 12 years was with  
10 the Office of the Geographer, and the remaining years were  
11 with--as a geographer in the Office of Ocean Affairs.

12 Also, during the last several decades I've had the  
13 opportunity to teach. I taught courses pertaining to the  
14 political geography of the oceans at George Mason University,  
15 Georgetown University, and The Rhodes Academy in Greece.

16 MR. REICHLER: If I may, Mr. President, I notice that  
17 the witness does not have a glass on his table, if I may hand  
18 the witness this. I promise there is no secret writing on it.

19 BY MR. REICHLER:

20 Q. Dr. Smith, you had mentioned that you were employed at  
21 the U.S. Department of State from 1975 to March of this year.  
22 What has been your status since March of this year?

23 A. I retired from the State Department in March, and  
24 since then I have been a private consultant.

25 Q. What were your duties and responsibilities with the

09:41:23 1 U.S. Department of State?

2 A. My primary function was to be a geographic and  
3 technical expert, providing expertise towards the establishment  
4 and maintenance of U.S. maritime limits and boundaries. I  
5 also, between 1975 and my retirement, participated in the U.S.  
6 Interagency Baseline Committee, which was charged with  
7 maintaining the proper baseline for the United States from  
8 which to measure its territorial sea, and my primary function  
9 was to make sure these baselines were done in accordance to  
10 standards of international law.

11 Q. When you worked for the United States, did you  
12 participate in any maritime boundary negotiations with other  
13 states?

14 A. I did. Being a member of the State Department, I was  
15 part of the U.S. team in negotiations involving Canada, Mexico,  
16 Cuba, Venezuela, United Kingdom, Dominican Republic, Samoa,  
17 Tonga, former Soviet Union.

18 Q. Have you ever authored any publications dealing with  
19 the subject of maritime boundary delimitation?

20 A. I have. I have published several articles pertaining  
21 to maritime boundaries. During my employment at the State  
22 Department, I was the primary author of most of the "Limits in  
23 the Seas" series that was published by the State Department,  
24 and I was involved from the beginning with the American Society  
25 of International Law boundary project, and I was co-editor for

09:42:58 1 the last two volumes.

2 Q. Are you a lawyer?

3 A. No, I'm not.

4 Q. Did you prepare a report in this case?

5 A. I did. And it appears in the Annex to the Guyana  
6 Reply.

7 Q. Okay. That's Annex Number 1?

8 A. That's correct.

9 Q. Is your CV attached to your report?

10 A. It is.

11 Q. Does that accurately reflect your professional and  
12 educational background and your list of publications?

13 A. It does.

14 Q. In preparing your report, did you examine the  
15 coastlines of Guyana and Suriname?

16 A. I did.

17 Q. What maps or charts did you use?

18 A. At the time that I was doing my report, I did look at  
19 the maps that were used and cited by the Guyana Memorial and  
20 the Suriname Counter-Memorial.

21 Q. Okay. And since then, have you looked at any other  
22 maps or charts?

23 A. I have reviewed Guyana's Reply and Suriname's  
24 Rejoinder.

25 Q. Let me take you to your report, again at Tab 20 of the

09:44:13 1 Judges' folder or at Annex 1 of the Guyana Reply, and refer you  
2 particularly to a statement you made in paragraph four of your  
3 report. And I'm going to ask you about this statement--"An  
4 important geographic reality in this case is that there are no  
5 offshore features such as islands or low tide elevations that  
6 influence the drawing of an equidistance line. Nor are there  
7 any large peninsulas or protrusions from one of the coastlines  
8 that dramatically skew the course of an equidistant line."

9 Why did you describe these geographic realities as  
10 important?

11 A. When one looks for an appropriate maritime boundary  
12 delimitation methodology, one first develops a provisional  
13 equidistant line, and the calculation of equidistance involves  
14 using any and all appropriate geographical features, including  
15 offshore features of islands, rocks, low tide elevations, and  
16 any will be used in that calculation of an equidistant line.

17 And in looking at the particular relevant coastlines  
18 and offshore area in this case, I found no offshore features of  
19 islands, rocks, and low-tide elevations that would affect the  
20 equidistant lines, so the coastal configuration that is so  
21 important in establishing that provisional equidistant line.

22 Q. Did you construct a provisional equidistance line for  
23 the Guyana and Suriname maritime delimitation area?

24 A. I did not.

25 Q. Did you use one of the provisional equidistance lines



09:46:21 1 prepared by the parties?

2 A. I did. I used the one prepared by Suriname in its  
3 Counter-Memorial, primarily because it provided the information  
4 needed. It provided geographic coordinates of the relevant  
5 base points. It provided the geographic coordinates of the  
6 turning points of the provisional equidistant line itself.

7 Q. Do you consider Suriname's provisional equidistance  
8 line to be correctly drawn?

9 A. Technically, it seems to use the base points it has  
10 selected correctly.

11 Q. Do you have any reservations regarding the base points  
12 that Suriname used in drawing its provisional equidistance  
13 line?

14 A. I do. I have some observations on the first one, S1,  
15 and the last one, S14.

16 Q. Let us talk about these one at a time. With respect  
17 to base point S1, which should appear magically any second on  
18 the screen, what are your reservations or concerns about base  
19 point, Suriname's base point S1?

20 A. Well, it is my understanding that Suriname has  
21 sovereignty over the east bank of the Corantijn River and that  
22 Guyana has sovereignty over the west bank of the Corantijn  
23 River. The fact that S1 is placed on the west bank seems to me  
24 that's an inappropriate location of that point; that I would  
25 have placed S1 on the east bank. It would be just not correct

09:48:20 1 for Suriname to have a placement on Guyana territory.

2 Q. What effect does this base point S1 have on the  
3 provisional equidistance line?

4 A. It affects, I believe, the first six turning points of  
5 the equidistant line out to approximately 6 nautical miles.

6 Q. Does S1, does this base point affect a provisional  
7 equidistance line for any portion beyond 6 nautical miles from  
8 the coastline?

9 A. No, it does not.

10 Q. Okay. Let me ask you about the other base point that  
11 you feel is inappropriate or you testified is inappropriate,  
12 and that's Suriname's base point S14. Why do you consider this  
13 base point invalid?

14 A. S14 is the last base point used by Suriname. It is  
15 situated on Vissers Bank. When I was preparing my report last  
16 March, I did have the opportunity to look at the recently made  
17 2005 Dutch Chart, and it seemed to me at the time that the  
18 point at Vissers Bank was very much different than what the  
19 coastline had been depicted on in earlier charts.

20 So in my report I did use Vissers Bank, but I did put  
21 in a footnote that I held reservations that if, indeed, it  
22 seemed that Vissers Bank point was not appropriate, then the  
23 calculations would have to be redone.

24 Q. And did you come to believe at some point after your  
25 report that the point was inappropriate?

09:50:00 1       A.   Following the submission of my report, as I said, I  
2 did get to read the Guyana Reply, and I did read the report  
3 done by Dr. Rabenhorst in I believe it's the second Annex in  
4 Volume II of Guyana's Reply, and the data and evidence by  
5 Dr. Rabenhorst and the conclusions drawn by him seemed pretty  
6 convincing to me that suggested that, indeed, the point of S14  
7 was sitting in water and not on a valid coastal point.

8       Q.   Does this base point S14 have an effect on the  
9 provisional equidistance line?

10      A.   It has minimal effect. It affects the provisional  
11 equidistance line at about 199 miles off the coast and then for  
12 the last segment; and if one were not to use S14, the area  
13 displacement would be very minimal.

14      Q.   Let me refer you back to the language in your report,  
15 again at Tab 20 of the Judges' folder, and in this case let me  
16 refer you to paragraph 27.

17           And I will call your attention specifically to  
18 the--this language of yours, "Whereas all Guyana's controlling  
19 points are either within the concavity of the coast or at the  
20 beginning of it, Suriname's coastal points that influence the  
21 provisional equidistance line are situated both in the  
22 concavity and on its convex portion."

23           Of what significance is this?

24      A.   It's significant because it's Suriname that gets the  
25 advantage of developing a provisional equidistant line because

09:52:19 1 of the location of this convexity that one finds beginning at  
2 Hermina Bank. When the Hermina Bank few coastal points come  
3 into effect, it significantly pushes the provisional  
4 equidistant line back across into Guyana's maritime area.

5 Q. Have you examined what Suriname refers to as the three  
6 sections of its provisional equidistance line?

7 A. I have.

8 Q. Are the three sections depicted here on your screen?

9 A. Yes, they are.

10 Q. I will just point out for the Tribunal that this is a  
11 reproduction of Suriname's Figure 32 from the Suriname  
12 Counter-Memorial.

13 Bearing this three-segmented Suriname equidistant line  
14 in mind, let me refer you, please, to your report at paragraph  
15 32. And this time I will ask you to read your own words so I  
16 don't have to do it. If you could read the first sentence of  
17 paragraph 32.

18 A. "When one studies the coastlines in the vicinity of  
19 the land boundary terminus at the mouth of the Corantijn River,  
20 this first section of the provisional equidistance line shown  
21 as a red line on Figure 7 does not appear to be cutting across  
22 either side's coastal front, but looks to be dividing in a  
23 pretty fair manner the maritime jurisdiction that is projecting  
24 from both coastlines."

25 Q. What is your basis for saying that the first section

09:54:04 1 of the provisional equidistance line divides in a fair manner  
2 the maritime jurisdiction projecting from the two coastlines?

3 A. Well, in this part of the coastline, it appears to me  
4 that the Guyana coastline is generally facing  
5 northwest--northeast, excuse me--the Suriname coastline is  
6 facing northwest, and that the configuration of the coastline  
7 is pretty well-balanced, geographically balanced, in this area.

8 Q. Suriname argues that there is a headland on the Guyana  
9 coast that pushes the equidistance line towards Suriname  
10 unfairly in this first red section. Do you agree?

11 A. I disagree with that. Again, I see geographic parity  
12 in this area.

13 Q. In Suriname's Rejoinder, and particularly at paragraph  
14 3.191, they quote from one of your writings, and they quote you  
15 as commenting favorably on a diagram that Professor Jaenicke  
16 produced for the Federal Republic of Germany in the North Sea  
17 Continental Shelf Cases. And Suriname quotes you to the  
18 following effect: "As the headland of one state protrudes  
19 further seaward, the equidistance line diverts toward or  
20 encroaches upon the neighboring state."

21 Does this quoted statement represent your views?

22 A. It does. I believe there are situations, such as in  
23 the North Sea, where you have the Germany-Denmark situation and  
24 the Germany-Netherlands situation where headlands, coupled with  
25 the concavity of Germany, serves to the disadvantage to

09:56:10 1 Germany.

2 Q. Did those geographic circumstances or anything similar  
3 exist in the first section of the provisional equidistance line  
4 in this case?

5 A. I believe they do not.

6 Q. Suriname also argues there is a cluster of base points  
7 on Guyana's coast that pushes the equidistance line toward  
8 Suriname in Guyana's favor in the first section.

9 Do you agree with that statement?

10 A. I do not. I mean, it's clear that there are more  
11 Guyana base points than Suriname points in this area, but in  
12 the development of equidistance it is not necessarily the  
13 number of base points that's critical, but their location.

14 Q. And in terms of their location does that--in the first  
15 section of the equidistance line, does that skew the line one  
16 way or the other in this first section?

17 A. I do not believe so. Again, I do believe there is a  
18 geographic balance between the two coastlines here and that the  
19 provisional equidistant line appropriately reflects that  
20 balance.

21 Q. Let's move from the first section of Suriname's  
22 provisional equidistance line into the second section of the  
23 line, which on this screen is colored green. And with respect  
24 to the second section of the line, I would like to refer you to  
25 paragraph 33 of your report.

09:57:51 1           And again, I would prefer it if you could read your  
2 own words rather than have me read them and focussing on the  
3 first two sentences of paragraph 33.

4       A.   "Suriname labels as Section 2 that part of the  
5 provisional equidistance line that veers back in front of  
6 Guyana's northeastward coastal front shown as the green line on  
7 Figure 7. It is Guyana that is disadvantaged by the few  
8 coastal points on Suriname's convex portion of its coastline at  
9 Hermina Bank, S11 to 13. The difference between S11 and 13 is  
10 less than a mile."

11       Q.   Can you explain?

12       A.   This is the point I made earlier where--this is the  
13 point at Suriname's coastline that the coast which had been a  
14 long, sweeping concavity, turns into a convexity at Hermina  
15 Bank, and it's just these few coastal points very near each  
16 other that significantly push the provisional equidistant line  
17 back toward and in front of Guyana's coast.

18       Q.   How much of the provisional equidistance line is  
19 affected by these Suriname base points at Hermina Bank that you  
20 described as pushing the provisional equidistance line back  
21 towards and in front of Guyana's coast?

22       A.   These few base points affect the provisional  
23 equidistance point for about 105 nautical miles.

24       Q.   In your report, did you make an assessment of whether  
25 the equidistance line leads to an equitable solution based on

09:59:23 1 the configuration of the coastline?

2 A. I did.

3 Q. And what was your assessment?

4 A. My assessment after reviewing all this was the  
5 provisional equidistant line provides the basis for an  
6 equitable solution, but then an adjustment should be made to  
7 take into account this convexity found at Hermina Bank. And,  
8 in my opinion, it would be appropriate to take the trend of  
9 Section 1 of this provisional equidistant line and extend it to  
10 the 200-mile limit.

11 Q. Did you read Suriname's Rejoinder?

12 A. I did.

13 Q. Is there anything that you read in Suriname's  
14 Rejoinder or Annexes to cause you to change your opinion?

15 A. No.

16 Q. Are there any opinions or conclusions in your report  
17 that you now wish to change?

18 A. No, I stand by what I wrote in March.

19 Q. Suriname proposes to replace the provisional  
20 equidistance line by bisecting the angle that they say is  
21 formed by straight line coastal fronts that Suriname describes  
22 as, "generalized" or "simplified" versions of the actual  
23 coastlines of the two parties.

24 Do you have an opinion about this?

25 A. I do.



10:00:55 1 Q. And what is your opinion?

2 A. I believe that if you can use the real coast, why use  
3 a false facade in this situation.

4 Q. And do you believe that you can use the real coasts in  
5 this situation?

6 A. I do. The coastline of both Guyana and Suriname is  
7 simple, not complex, and so the real coastline should be used.

8 Q. I want to ask you about the methodology that Suriname  
9 has used in creating its straight-line coastal facades.

10 Do you have an opinion about that methodology?

11 A. I do. I think the methodology used by Suriname in  
12 creating these straight line coastal fronts is seriously  
13 flawed.

14 Q. Let's take a look at this chart which has already been  
15 shown to the Tribunal, and which is in the Judges' folders as  
16 one of the charts behind Tab 26 and ask you if you can tell us  
17 in what ways Suriname's description of the relevant coastlines  
18 is flawed, to use your words.

19 A. Well, they've created a single front line for each of  
20 the coastlines, for Guyana and Suriname. On the Guyana side, I  
21 view the flaw at both ends. On the southeast end it ends up in  
22 the water not attached to any point of land, particularly  
23 nowhere near the Point 61, and in the northwest it is at the  
24 southeast entrance to Essequibo River, and it falls short of  
25 the point that affects the Guyana 200-mile limit where it would

10:03:07 1 intersect the 200-mile limit as measured from Suriname.

2           On the Suriname side its furthest point is at an area  
3 near a feature called Warappa Bank, and again, this is an area  
4 that well exceeds to the east the point that affects the  
5 Suriname 200-mile limit that intersects Guyana's 200-mile  
6 limit. So these are the few reasons that I don't see any  
7 geographic logic as to how they developed these straight lines.

8           Q. You also wrote in paragraphs 51 and 52 of your  
9 report--I will give you a moment to find that--paragraphs 51  
10 and 52, you wrote, "Not only is Suriname's description of the  
11 relevant coastlines flawed in how it characterizes the coastal  
12 geography, but so is its projection of the coastal fronts  
13 seaward to create what is supposedly the area to be delimited  
14 in this case." Can you explain?

15          A. Yes. In addition to the coastal front issues that I  
16 just explained, Suriname has drawn perpendiculars to these  
17 coastal fronts and is essentially saying that the projection  
18 from maritime claims is just going out in one direction, and I  
19 don't believe that that is the case in creating maritime  
20 jurisdiction, but rather one goes out regularly from each point  
21 along the coastline, and then the outer limit is determined by  
22 tracing the outermost points along those limits in what has  
23 been called envelopes of arcs.

24          Q. Referring to paragraph 52 in particular, you say, "but  
25 then to conclude that a state's maritime entitlement only

10:05:16 1 projects in one direction, e.g., the perpendicular lines,  
2 plainly misrepresents reality. A maritime claim projects in  
3 all directions from the coastline."

4 Did you explain that?

5 A. Yes, pretty much the same idea that when one goes  
6 along the coastline, each coastline point goes out in all  
7 directions, goes out radially. It just does not go out in a  
8 single--one direction, and then one finds the salient, the  
9 outermost limit of all those points and creates the envelope of  
10 arcs to determine the outer limit.

11 Q. Are you aware of the way Guyana has determined the  
12 relevant maritime area?

13 A. I am.

14 Q. And what is your understanding of the way Guyana did  
15 it?

16 A. Guyana has taken all the base points along its  
17 coastline that has affected the provisional equidistant line  
18 and radially developed 200-mile arcs and they've done the same  
19 things on Suriname's coast. They've taken the coastline points  
20 that have affected the provisional equidistant line, drawn  
21 200-mile arcs from them, and in the overall area of overlap  
22 between those two sets of 200-mile arcs from Guyana and  
23 Suriname, that has the area to be delimited.

24 Q. I would like to call your attention to Guyana's Reply,  
25 and with the President's permission, I would like to be allowed

10:06:52 1 to hand the Reply to the witness. And in particular, if you  
2 could turn to Plate R10, which is opposite page 46.

3 Do you have enough copies of that?

4 Does this Plate reflect your understanding of how  
5 Guyana determined the relevant maritime area?

6 A. Yes. It probably gives a better description than how  
7 I just verbalized it, but in Map A the areas shown in green is  
8 that area of the 200-mile limits drawn from all the coastal  
9 points on Guyana that affect the provisional equidistant line.  
10 Map B, the area in red shows that area that is projected  
11 200 miles from the Suriname coastal points that affect the  
12 provisional equidistant line.

13 And then, finally, on Map C, the area that's shaded in  
14 blue shows the area of overlap of the Guyana and Suriname  
15 200-mile limits projected from those key coastal points.

16 Q. And it's this area of overlap that Guyana refers to as  
17 the relevant maritime area?

18 A. That's correct.

19 Q. Now that you have explained it, what is your opinion  
20 of it?

21 A. I feel the approach taken by Guyana is an appropriate  
22 one, correct.

23 Q. And you feel that this is a correct way to describe,  
24 define, develop the relevant maritime area in this case?

25 A. That's correct, and the area which later on when you

10:09:04 1 project the provisional equidistant line, you would test the  
2 ratio of the areas going to both sides and compare them against  
3 the coastline ratio.

4 Q. You can put that away now so I didn't to want distract  
5 you with it.

6 You mentioned the coastline ratio, and I would like to  
7 come to that question of coastal lengths next. Can you please  
8 refer to your report, paragraph 49.

9 Can you explain the significance of this table that  
10 you created here.

11 A. This table was created to provide several  
12 methodologies of showing what the relevant coastlines would be  
13 on each side, and I would like to take this opportunity just to  
14 mention that I made an error in this table in terms of mixing  
15 different length units. I mistakenly have some of these  
16 numbers representing nautical miles and some numbers  
17 representing kilometers. For that I apologize, but I have  
18 corrected it, and I believe in a moment you will see a new  
19 table.

20 Q. There it is.

21 Let me ask you if you can take a look at the document  
22 that just appeared on the screen. Can you tell us what this  
23 is.

24 Is this the corrected table?

25 A. It includes the corrected table, and if I may, I could

10:10:52 1 tell what each of these tables is all about.

2 Q. Well, I would appreciate that, but I just, for ease of  
3 the Tribunal's labor, you have this on the screen. It is also  
4 in the Judges' folder for today. What tab is it at, Sarah?  
5 It's in the witness bundle for today. It's Tab 37(e), so at  
6 your convenience you can follow it on the screen or at Tab  
7 37(e). I will be asking the witness some questions about it,  
8 which is why I point all this out.

9 Again, it's at 37(e) or on the screen.

10 Can you describe what this is or explain what this is,  
11 Dr. Smith?

12 A. The top table is the reproduction of the table that  
13 appears in my report, and that is the one that's in error, so  
14 you should no longer focus on the top table.

15 Q. Can I just stop you for a second, Dr. Smith? I just  
16 want to make sure that we have the right documents.

17 Can we go ahead? Okay.

18 I'm sorry, why don't you start over again and tell us  
19 about the document.

20 A. This document shows three different tables. The top  
21 table is that one which is reproduced from my report, and that  
22 is the one that is in error that mixes distance units with  
23 nautical miles and kilometers, so you should totally from now  
24 on ignore the top table.

25 The middle table is the corrected table that should

10:13:03 1 have gone into my report that shows the numbers all in  
2 kilometers.

3           And then finally the bottom table is the same  
4 approach, which I will discuss in a moment of the three  
5 different methodologies of measuring coastline length, but now  
6 I have ignored the Vissers Bank point that Suriname uses and I  
7 take Suriname's coastline only out to Hermina Bank.

8       Q.    So, in the bottom table, you had measured coastal  
9 length eliminating base point S14 at Vissers Bank.

10       A.   That's correct. Following my report and as I  
11 mentioned earlier reading further in Dr. Rabenhorst's report,  
12 I'm unconvinced that there is a valid base point at S14, so  
13 I've ignored that portion of the Suriname coast.

14       Q.    What is the importance of the lengths of the relevant  
15 coastline? Why did you go to all this trouble to calculate the  
16 lengths of the relevant coastlines by these different  
17 methodologies?

18       A.    Well, I believe it's part of one key test that one can  
19 do to test the appropriateness of a given delimitation  
20 methodology, such as the provisional equidistant line. Knowing  
21 the ratio between the two countries on their relevant  
22 coastlines and comparing them to the area ratio that's divided  
23 by the provisional equidistant line can give you a sense of  
24 whether it leads to an equitable solution.

25       Q.    How did you determine in your measurement of the lines

10:14:51 1 that you consider the relevant coastline, how did you determine  
2 the starting point and ending points of those lines?

3 A. I started all the points at the land boundary terminus  
4 at Point 61, and on the Guyana and on the Suriname side I went  
5 out to that last point that affected the 200-mile limit where  
6 they would intersect.

7 Q. And why did you consider that portion of coastline of  
8 Guyana and Suriname to be the relevant coastline?

9 A. Well, the development of a relevant coastline is not  
10 clear science. There are people that will perhaps disagree on  
11 what coastlines should be used, but it seemed to me to make  
12 geographic logic, given the fact that this Tribunal is being  
13 asked to delimit the boundary out to 200 miles, that one should  
14 use the coastline to the point that establishes that most  
15 salient, that most outer limit of the 200-mile limit where it  
16 intersects with its neighboring state.

17 Q. Now, having determined what portion of the coastline  
18 of Guyana and Suriname, respectively, of course, is relevant,  
19 how did you go about measuring those lengths of coastline?

20 A. Well, I believe there are three possible ways that one  
21 could develop this relevant coastline. First--and I will be  
22 looking to the bottom table as I discuss this--is that  
23 single-line coastal front going from the final point on the  
24 coastline that affects the 200-mile limit back to Point 61, and  
25 for that Guyana would have 213 kilometers to Suriname's 152 for



10:16:38 1 a coastline ratio of 1.40 to 1.

2 Q. You're looking at the bottom chart?

3 A. I'm looking at the bottom table as I discuss these  
4 numbers.

5 Q. And why are you looking at the bottom table?

6 A. Again, this reflects my belief now that there is not a  
7 valid point on Vissers Bank, and so that's why these numbers  
8 would differ from what I did last March for my report. The  
9 second method that one could follow would be to connect by  
10 straight lines the controlling base points that affect the  
11 provisional equidistant line, and for Guyana this measurement  
12 is not too different from the single coastal front of 215  
13 kilometers, and Suriname's is very close as well, 153, that you  
14 get a ratio in Guyana's favor of 1.41 to 1.

15 And the third way, and this would be my preference  
16 given the simplicity of the coastlines involved would be to  
17 measure the relevant coastlines along the low-water line and  
18 any river closing lines, and this approach gives Guyana 264  
19 kilometers of relevant coast line to Suriname's 155, so this  
20 would give a ratio in Guyana's benefit to 1.70 to 1.

21 So, clearly any of these three methods that you would  
22 use do give the advantage to Guyana in the coastline ratio, and  
23 the range would be 1.40 to 1.70.

24 Q. And of these three coastal ratios that you have  
25 calculated, which one do you consider to be the most

10:18:14 1 appropriate for use in this case?

2 A. Again, I would prefer the third one, using the  
3 low-water line that gives the 1.70 to 1 coastline ratio.

4 Q. In rendering your report as well as the opinions you  
5 have expressed today, have you examined anything besides the  
6 coastal geography in this case?

7 A. No, I have not.

8 Q. Have you taken into account the conduct of the parties  
9 over any period of time in rendering your report or opinions?

10 A. I have not.

11 Q. Specifically, have you taken into consideration any  
12 negotiations over boundaries that the parties might have held  
13 or the colonial predecessors might have held at any time?

14 A. I have not.

15 Q. Have you taken into account the conduct of the parties  
16 with respect to oil concessions or fisheries practices or any  
17 type of conduct-related behavior?

18 A. I have not.

19 Q. All of the opinions in your report and that you have  
20 given today are based exclusively on coastal geography?

21 A. That is correct.

22 Q. Just to conclude, last few questions, have you reached  
23 any overall conclusions about the provisional equidistance line  
24 in light of the particular coastal geography that is present  
25 here?

10:19:43 1           A.    I have.  I do believe that the provisional equidistant  
2 line provides the basis towards an equitable solution, and I  
3 also believe that an adjustment should be made to take into  
4 account the convexity at Suriname's coastline at Hermina Bank,  
5 and I believe an appropriate adjustment would be to take  
6 Section 1 of the current provisional equidistant line and  
7 extend that trend out to the 200-mile limit.

8           Q.    Have you compared the coastal length ratios that you  
9 have calculated with the way the provisional equidistance line  
10 or this extension line of the first section of the provisional  
11 equidistance line would divide the relevant maritime space?

12          A.    I have.  The unadjusted provisional equidistant line  
13 virtually divides the area one-to-one.  I believe it's like  
14 1.04 to 1 in Guyana's favor.  And if you adjust it in a way  
15 that I have just described, taking the first section of the  
16 provisional equidistant line and extend it to the 200-mile  
17 limit, which essentially is approximately 28 degrees, it comes  
18 out to approximately a 1.14 to 1 ratio in Guyana's favor.  So,  
19 while it still hasn't reached the 1.70 to 1 coastline ratio in  
20 Guyana's favor, it's certainly going in the correct direction.

21          Q.    Thank you very much, Dr. Smith.

22               MR. REICHLER:  That concludes our direct examination  
23 of the witness.

24               PRESIDENT NELSON:  Thank you, Mr. Reichler.

25               Now I give the floor to the Republic of Suriname to

10:21:39 1 cross-examine the witness.

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

3 Mr. President, we do have some binders, some  
4 cross-examination binders to distribute to the Tribunal and to  
5 the members of the delegation from the Republic of Guyana.

6 CROSS-EXAMINATION

7 MR. SAUNDERS: May I proceed, Mr. President?

8 PRESIDENT NELSON: Yes, you can.

9 MR. SAUNDERS: Thank you very much.

10 BY MR. SAUNDERS:

11 Q. Good morning, Dr. Smith.

12 A. Good morning.

13 Q. You just told us a moment ago that, when you prepared  
14 your report, you had read the Guyana Memorial and the Suriname  
15 Counter-Memorial?

16 A. That's correct.

17 Q. And you also told us that you decided to use the  
18 provisional equidistance line drawn by Suriname?

19 A. Correct.

20 Q. You couldn't have used the provisional equidistance  
21 line drawn by Guyana, could you have?

22 A. No.

23 Q. Because they didn't draw one in their Memorial, did  
24 they?

25 A. Correct.

10:24:44 1 Q. Dr. Smith, I would like to ask you some questions  
2 about the chart that you just told us about a few moments ago;  
3 and although you told us to ignore the chart that was in your  
4 report, I would like to ask you a few questions about that, if  
5 I might.

6 You have told us in your direct examination that your  
7 chart sets forth three possible methodologies for determining  
8 the length of the relevant coastline?

9 A. Correct.

10 Q. And you have told us that you actually prefer one of  
11 those three?

12 A. Correct.

13 Q. And that was the method that used the low-water line?

14 A. Correct.

15 Q. Guyana didn't use that in its Reply, did it?

16 A. I don't believe so.

17 Q. All right. If we could put up on the chart Tab 1,  
18 please.

19 Now, Dr. Smith, Tab 1 is the chart that originally  
20 appeared in your report; correct?

21 A. Correct.

22 Q. And you have told us that you made a mistake, that you  
23 confused miles and kilometers?

24 A. Correct.

25 Q. Now, I have highlighted on Tab 1, footnote 41, in

10:26:16 1 which you said that all of the calculations that you did in  
2 this chart were based upon coastal points provided by Suriname,  
3 including the one on Vissers Bank?

4 A. Correct.

5 Q. So, in preparing this chart, you used the coastal  
6 point provided by Suriname at Vissers Bank; right?

7 A. Correct.

8 Q. And that's how you drew these coastal lengths?

9 A. Correct.

10 Q. Thank you.

11 MR. REICHLER: Excuse me, Mr. President, I believe the  
12 witness started to give an explanation and then was cut off.

13 MR. SAUNDERS: I apologize. You are absolutely right,  
14 and I apologize. I thought he had finished, and I absolutely  
15 apologize for that.

16 BY MR. SAUNDERS:

17 Q. If I cut you off in any way, Dr. Smith, please tell  
18 me, and I'll--

19 A. Yes, thank you.

20 I just wanted to add that I did put the caveat in on  
21 the Vissers Bank point that I was somewhat skeptical on the  
22 validity of it at that point, but until further knowledge I was  
23 going to use it for my report.

24 Q. Well, Dr. Smith, isn't it correct that the chart that  
25 you used in your original report did not include Vissers Bank?

10:27:36 1 A. I don't think I understand the question.

2 Q. All right.

3 A. Chart meaning this table--

4 Q. Yes.

5 A. --or chart meaning the nautical chart?

6 Q. I'm sorry. This table, Table 49 in your report.

7 A. Did use Vissers Bank for the report.

8 Q. You did?

9 A. Yes.

10 Q. All right. Let me ask you if you could please turn to

11 Tab 2 in your book.

12 Now, Tab 2 is a page from the Guyana Reply. Do you

13 recognize that?

14 A. Yes.

15 Q. All right. And in paragraph 3.20 of the Guyana Reply,

16 Guyana states, "Without a base point at Vissers Bank, the

17 length of Suriname's relevant coastline is 153 kilometers

18 compared to 215 kilometers for Guyana."

19 Do you see that?

20 A. Yes, I do.

21 Q. Does that say to you that in doing the calculations

22 set forth in the Guyana Reply, whoever did that calculation did

23 not use the base point at Vissers Bank; correct?

24 A. Could I perhaps see the figures that I used in the

25 corrected table? I know I mixed the nautical miles and

10:28:57 1 kilometers in my original table.

2 Q. Sure. I was going to get to that in just a minute.

3 If you look at Tab 3 in your book.

4 A. Okay.

5 Q. Now, isn't it correct, Dr. Smith, that whoever did the  
6 calculations set forth in the Guyana Reply did not use Vissers  
7 Bank?

8 A. Well, one thing I don't see on this table is--excuse  
9 me, I'm sorry.

10 Yes, I believe in the Guyana Reply they did not use  
11 Vissers Bank.

12 Q. All right. If you would look back at Tab 2, please,  
13 and let me direct your attention again to the first sentence of  
14 paragraph 3.20 of the Guyana Reply, which reads, "Without a  
15 base point at Vissers Bank, the length of Suriname's relevant  
16 coastline is 153 kilometers as compared to 215 kilometers for  
17 Guyana."

18 Do you see that?

19 A. Yes, I do.

20 Q. And that was done without using Vissers Bank; correct?  
21 That's what it says?

22 A. That's correct, um-hmm.

23 Q. Now, if you look back at Tab 1, you see in your first  
24 version of this table under Roman II, "Controlling Point  
25 Coastal Fronts," you have Guyana 215 miles, Suriname 153 miles.



10:31:03 1 Do you see that?

2 A. Correct.

3 Q. And you told us that that should have been kilometers?

4 A. Some were kilometers. I mixed them so, I mean, there  
5 are figures that are kilometers. Others were nautical miles.

6 Q. Well, which ones are these?

7 A. The 153, I believe, is in kilometers, and I believe  
8 the 215 is as well.

9 Q. In your original chart they were in kilometers and not  
10 miles?

11 A. I believe the Guyana one is kilometers. I can't  
12 recall exactly which of these numbers were the kilometers and  
13 the nautical miles.

14 Q. All right. It's labeled "miles"; correct?

15 A. Correct. The whole table is labeled "miles."

16 Q. And there is no doubt in your mind that in the Reply  
17 Guyana used kilometers; right? That's what they say?

18 A. I believe they do, yes. I mean, I was not part of  
19 writing the Reply, but if that's what they said, yes, they used  
20 kilometers.

21 Q. Which one is correct?

22 A. Excuse me?

23 Q. Which one is correct?

24 A. Well, whatever they stated in the Reply was their  
25 calculations and their writings, not mine.

10:32:25 1 Q. They purported to be based upon your report, did they  
2 not?

3 A. I am not sure what all they drew from my report and  
4 what they did not draw from my report for the Reply.

5 Q. All right. Don't you think it's somewhat coincidental  
6 that in the Reply Guyana would get 215 kilometers and 153  
7 kilometers, whereas you in your report dated March 21 had  
8 215 miles and 153 miles? Don't you think that's a little bit  
9 coincidental?

10 A. Well, again, clearly, I think this shows the error  
11 that I made in mixing, in putting the word miles in my top of  
12 the table.

13 Q. All right. But let's talk about the second piece of  
14 this, the use of Vissers Bank. You performed these  
15 calculations using Vissers Bank; correct?

16 A. For the report, yes.

17 Q. Yes. So, these numbers reflect the use of the Vissers  
18 Bank base point?

19 A. Correct.

20 Q. Whereas in the Guyana Reply, Tab 2, Guyana comes up  
21 with the very same numbers compared to your Roman numeral II,  
22 the very same numbers.

23 Do you see that?

24 A. Correct.

25 Q. 215 and 153.

10:33:51 1 Do you see that?

2 A. Correct.

3 Q. And they did not use Vissers Bank?

4 A. I can't answer that.

5 Q. You can't explain that to us?

6 A. No.

7 Q. Did you actually prepare the table that's set forth in  
8 your report at paragraph 49?

9 A. I did.

10 Q. Did you do the calculations yourself?

11 A. I did them with people backing up and giving me a  
12 verification.

13 Q. What people backed them up and gave you verification?

14 A. I believe the geodesicists on the Guyana team may have,  
15 you know, taken the points along the affecting equidistant line  
16 coastline and run them through equations.

17 Q. Was it your idea to do Table 49?

18 A. Yes, it was.

19 Q. All right. Now, if you would look at Tab 3 again,  
20 please.

21 This is your corrected table?

22 A. That's correct.

23 Q. When did you realize that there was an error in your  
24 report?

25 A. I believe I realized it when I was preparing for this

10:35:20 1 testimony.

2 Q. And when was that?

3 A. Probably in the last several weeks.

4 Q. You realized there was an error in the last several  
5 weeks? How did that come to your attention?

6 A. As I was reviewing my report.

7 Q. Well, how could you tell from looking at your table  
8 that there was an error in it?

9 A. I think it was just one of those times where the  
10 numbers just didn't appear right.

11 Q. Did you compare those to the Guyana Reply at that  
12 time?

13 A. It's very possible I could have.

14 Q. Did somebody call to your attention that there was a  
15 discrepancy between the Reply and your report?

16 A. No, I caught this error on my own.

17 Q. You did.

18 If you look at Roman numeral II on your corrected  
19 table, controlling point coastal front, do you see that, sir?

20 A. Yes.

21 Q. You calculate a ratio to the Guyana-Suriname coastline  
22 lengths?

23 A. Yes.

24 Q. You see that?

25 That ratio changes from the ratio that was in your

10:36:18 1 original report of 1.41 to 1 to a ratio of 1.10 to 1.

2 Do you see that, sir?

3 A. Yes, I do.

4 Q. All right. Now, you have told us in your direct  
5 testimony that you think even this is not correct because this  
6 uses Vissers Bank. Did I understand that correctly?

7 A. Correct.

8 Q. And you think we should not use Vissers Bank?

9 A. Correct.

10 Q. And when did you come to that conclusion?

11 A. I came to that conclusion earlier on. As I noted when  
12 I was writing my report, I was somewhat skeptical of the  
13 validity of that point based on looking at the Dutch Chart, but  
14 then once I read Dr. Rabenhorst's report that's found in the  
15 Annex to the Guyana Reply, I became even more convinced that it  
16 was very questionable.

17 Q. So, you came to that conclusion when? Several weeks  
18 ago?

19 A. No, I came to that conclusion probably soon after I  
20 read the Reply, which probably would have been late April, May  
21 sometime.

22 Q. So, you came to the conclusion in April or May that it  
23 was not correct to use Vissers Bank?

24 A. Correct.

25 Q. I take it that you submitted a corrected report at

10:37:28 1 that time?

2 A. I did not.

3 Q. Why not?

4 A. I was not asked to.

5 Q. Oh.

6 Did you communicate to anybody that you had reached  
7 the conclusion that it was not correct to use Vissers Bank?

8 A. I am sure I probably had some sort of communication  
9 with the Guyana team at that point.

10 Q. But you didn't think that you had a continuing  
11 obligation to supplement your report if your conclusions  
12 changed?

13 A. Well, I think at that point I knew I was going to be  
14 giving testimony on the same subject, so one, I didn't think it  
15 was my role to make that decision.

16 Q. All right, sir. You worked for the State Department  
17 up until March of this year; is that correct?

18 A. Correct.

19 Q. And your report is dated March 21st.

20 A. Correct.

21 Q. When did you start working on your report?

22 A. March 4th.

23 Q. So, you prepared your entire report between March 4th  
24 and March 21st?

25 A. That's correct.

10:38:34 1 Q. Including doing all these calculations?

2 A. Correct.

3 Q. And did you submit your report to counsel for Guyana  
4 in draft?

5 A. I'm sure I had a draft or two before it hit final,  
6 yes.

7 Q. And when did you have the first draft?

8 A. I don't recall in any specifics, but I guess it would  
9 be a week or two after I started it. Probably a week.

10 Q. So, you did the entire report at least in the first  
11 draft form in a week?

12 A. Yes. I had no other day job.

13 Q. And did counsel for Guyana make any comments or  
14 suggestions to you after reading the draft?

15 A. I'm sure I had discussions with the Guyana team, yes.

16 Q. Did they suggest any changes to you?

17 A. I can't recall. I think we talked about the entire  
18 situation in general terms and may have revised based on  
19 discussions.

20 Q. Well, going back to this table that we just looked at  
21 a moment ago that's still on the screen, you cannot explain how  
22 it is that in the Guyana Reply they had the corrected numbers,  
23 whereas in your report you had the erroneous numbers?

24 A. I could only say that I was doing the report  
25 independent of them writing their Reply, so it doesn't surprise

10:40:12 1 me that things like this do happen when you're dealing with  
2 lots of numbers in cases like this, so I can't explain. It was  
3 just an error on my part.

4 Q. This table wasn't given to you by anybody from the  
5 Guyana delegation, was it?

6 A. No, I did this table myself.

7 Q. You did all the calculations yourself?

8 A. Again, I may have had some backup in checking, but  
9 again the final--I ended up I'm sure with numbers. I tend to  
10 deal with both nautical miles as well as kilometers in lots of  
11 my reports, so I'm expecting that it was just one of those  
12 unfortunate mixing and matching numbers incorrectly on a final  
13 table.

14 Q. Now, you said that at the time you wrote your  
15 Reply--I'm sorry, your report in this two-week period, you had  
16 read the Memorial and the Counter-Memorial?

17 A. Correct.

18 Q. In your report, you never mention the 34-degree line?

19 A. That's correct.

20 Q. Why not?

21 A. Well, while I was aware of it, I stayed clear of kind  
22 of the historical element of this case.

23 Q. You were retained just to do work as a geographer;  
24 correct?

25 A. Yes. I specifically was asked to do an analysis of



10:41:35 1 what the coastline, the effect of the coastline on maritime  
2 boundary delimitation, so that was my focus.

3 Q. Well, you were asked to do more than that, were you  
4 not? You were asked to evaluate the fairness.

5 A. Right. I was asked to analyze all aspects of the  
6 coastline as it may pertain to a provisional equidistant line.

7 Q. You were asked to evaluate whether or not the  
8 provisional equidistance line fairly delimited the coast,  
9 delimited the maritime--

10 A. Well, whether the provisional equidistant line would  
11 lead to an equitable solution.

12 Q. That's what you were asked to do?

13 A. In the context of the coastline evaluation, yes.

14 Q. All right. Is that a matter of geography?

15 A. The section that I was asked to do, I believe it was.

16 Q. Well, you state in paragraph one of your report that  
17 the question is posed, I take it to you, as to whether or not  
18 the coastlines of either Guyana or Suriname give an unfair  
19 advantage in the calculation of a boundary based on the  
20 equidistance methodology; correct?

21 A. Correct.

22 Q. That's the question you were asked.

23 A. Correct.

24 Q. Was that a question of geography?

25 A. I think there is a rather major geographic component

10:43:26 1 in that, yes.

2 Q. But there are other components in that as well, aren't  
3 there, like legal components?

4 A. I'm sure there are.

5 Q. You're not a lawyer, are you?

6 A. That's correct.

7 Q. And you weren't purporting to give a legal opinion in  
8 this report, were you?

9 A. No, I was not.

10 Q. Now, counsel asked you about relevant coastlines. I  
11 would like to ask you a few questions about relevant  
12 coastlines.

13 What is the purpose of drawing a relevant coastline?

14 A. Drawing a relevant coastline is part of the testing  
15 for whether the provisional equidistant line or any other line  
16 that may be proposed for a maritime delimitation may lead to an  
17 equitable solution.

18 Q. All right. So, it's not necessary to have determined  
19 first the methodology that one is going to use to delimit a  
20 maritime boundary before determining a relevant coastline,  
21 is it?

22 A. No. You could determine the relevant coastline at any  
23 part of the process.

24 Q. So, you don't have to have an equidistance line in  
25 order to determine a relevant coastline?

10:45:07 1 A. Not necessarily.

2 Q. The relevant coastline wouldn't change, would it,  
3 depending upon the methodology that one uses to delimit the  
4 maritime area?

5 A. That's unclear. I mean, my specific task at hand was  
6 to first develop that provisional equidistant line and then to  
7 test it. And in so being it was my conclusion that the way  
8 that I developed the relevant coastline was very proper.

9 Q. Well, you were only testing the appropriateness of the  
10 equidistance line; right?

11 A. That was the task posed to me.

12 Q. Right. You weren't trying to develop a relevant  
13 coastline that could be used for other methodologies?

14 A. I was focused on the provisional equidistant line.

15 Q. If you were focusing on a different methodology, would  
16 your relevant coastline be the same or would it be different?

17 A. That's hard for me to answer that right now. I think  
18 I would have to be seeing the specific situation at hand.

19 Q. All right. But you would agree that it is not  
20 necessary to have the methodology determined in advance before  
21 one determines a relevant coastline; correct?

22 A. I'm not sure you could say that point-blank. I think  
23 you have to kind of look at the full situation to go forward in  
24 both creating the possible boundary methodology as well as  
25 looking at the coastlines.

10:46:48 1 Q. All right. Let me show you paragraph 46 of your  
2 report. This is Tab 13. You say in that paragraph, "In this  
3 case, since it is the provisional equidistance line that is  
4 being analyzed for its appropriateness, it would seem  
5 reasonable that the last controlling coastal point on each  
6 state's coastline would provide an appropriate end point."

7 Do you see that, sir?

8 A. Yes, I do.

9 Q. So, there you're saying that if you wanted to assess  
10 the appropriateness of the provisional equidistance line, it's  
11 appropriate to include all of the equidistance base points in  
12 your relevant coastline; correct?

13 A. At least out to the final point, yes.

14 Q. At least out to 200 nautical miles?

15 A. Right.

16 Q. But if you wanted to assess a different methodology,  
17 you wouldn't have to do that necessarily, would you?

18 A. I don't think I can say point-blank no to that answer.  
19 Again, I would have to look at the situation.

20 Q. All right. Now, let me show you a paragraph from  
21 Guyana's Reply. This is Tab 14. "Guyana considers the  
22 relevant coastline for each party to be the length of coast  
23 that lies between the outermost points along the coastal  
24 baseline that control the direction of the provisional  
25 equidistance line to a distance of 200 nautical miles."

10:48:36 1 Do you see that, sir?

2 A. I do.

3 Q. And they cite--one of the things they cite for that  
4 proposition is your report; right?

5 A. I guess so.

6 Q. That's not exactly what you said in your report,  
7 is it?

8 A. I don't think--it's not a verbatim quote, but--

9 Q. What you said in your report was that if you were  
10 going to assess the appropriateness of the provisional  
11 equidistance line, then it's appropriate to include all of the  
12 base points in the relevant coastline; correct? Isn't that  
13 what you said?

14 A. I think the quote that you just took from the Tab 13  
15 says the last controlling coastal point.

16 Q. Yes.

17 A. But what you just asked me was all of the controlling  
18 points.

19 Q. I stand corrected. The last controlling base point.

20 A. Correct.

21 Q. All of them up to the last controlling base point, out  
22 to 200 nautical miles?

23 A. Well, if I could just kind of veer off a second.

24 Q. Sure.

25 A. That table that discusses the coastal length, I did

10:49:36 1 use three methodologies, but they all started at the last  
2 controlling point, but I'm kind of hearing you suggest that you  
3 are always using all the controlling points along the same  
4 coastline. That may not always be the case depending on how  
5 you calculate the coastal front, but you're always going to  
6 start or end, depending on your perception at that last  
7 controlling point that affects the 200-mile mark.

8 Q. Now, I take it that at the time you wrote your report  
9 you could not have been aware of the decision of the Annex VII  
10 Tribunal in the Barbados-Trinidad and Tobago arbitration;  
11 right?

12 A. That's correct. I was not aware of that.

13 Q. Have you read that?

14 A. I cannot say that I have read it in its entirety. I  
15 have read parts of it.

16 Q. Have you read at least what that Tribunal said about  
17 the use of base points in constructing relevant coastlines?

18 A. I believe I have.

19 Q. Tab 15.

20 And did you read the section that is highlighted in  
21 Tab 15 which I will read for the record, "But relevant coastal  
22 frontages are not strictly a function of the location of base  
23 points, because the influence of coastlines upon delimitation  
24 results not from the mathematical ratios discussed above or  
25 from their contribution of base points to the drawing of an

10:51:36 1 equidistance line, but from their significance in attaining an  
2 equitable and reasonable outcome, which is a much broader  
3 consideration."

4 Do you see, that sir?

5 MR. REICHLER: Excuse me, I just wonder if you could  
6 advise us what paragraph of the award it is.

7 MR. SAUNDERS: Absolutely. That is from--it's from  
8 paragraph 329 of the Award in the Barbados-Trinidad and Tobago  
9 Annex VII arbitration.

10 BY MR. SAUNDERS:

11 Q. Do you agree with that proposition, Dr. Smith?

12 A. I'm not sure I do. I think it has to be read in the  
13 context of the boundary situation at hand for the  
14 Barbados-Trinidad and Tobago situation, and I don't think it  
15 necessarily has broad application to all situations when one is  
16 creating a provisional equidistant line.

17 Q. Do you agree with the proposition that equidistance  
18 alone will in many circumstances not ensure an equitable result  
19 in the light of the peculiarities of each specific case?

20 A. I think there are certainly cases in the world where  
21 an equidistant line does not end up with an equitable solution.

22 Q. You're aware of some of those cases, are you not?

23 A. Yes.

24 Q. In fact, you worked on one of those cases, didn't you?

25 A. Painfully so, yes.

10:53:19 1 Q. And you took the position in that case that an angle  
2 bisector was an appropriate method of delimitation, did you  
3 not?

4 A. I don't know if we would have--I do not believe we  
5 cast it in that phraseology.

6 Q. Well, how did you cast it?

7 A. I mean, those were the words used by the Court in  
8 their decision. I mean, we were after the Northeast Channel.  
9 We threw everything but the kitchen sink at them to show them  
10 that everything on Georges Bank should be the United States, so  
11 I would not cast the situation the way you just posed the  
12 question.

13 Q. The chamber in the Gulf of Maine case which is what we  
14 are talking about, did, in fact, describe it that way, did it  
15 not?

16 A. For the first segment it did. It was their way of  
17 simplifying a very complex situation.

18 Q. And they described it as an angle bisector approach?

19 A. For the first section of that boundary.

20 Q. Right. All right. Now, in your report you referred  
21 to a Point 61 as the land boundary terminus?

22 A. Correct.

23 Q. Is it correct that a land boundary terminus has to be  
24 on the low-water line?

25 A. I can't say point-blank. I'm sure there are certain



10:54:55 1 situations around the world where there may not be a low-water  
2 line per se.

3 Q. Can you think of any?

4 A. Offhand, no.

5 Q. Have you heard of the concept of low-water springs?

6 A. I may have heard about it, but I don't think I could  
7 define it.

8 Q. You don't know what it is?

9 A. No.

10 Q. All right. What is a low-water line?

11 A. A low-water line is that line that dries when it is at  
12 low tide and which covers at high tide, and there's different  
13 ways that countries measure low-water lines.

14 Q. And is it correct that low-water lines are typically  
15 displayed on nautical charts?

16 A. Depending on the scale, yes or no.

17 Q. Well, in this case, are the low-water lines depicted  
18 on nautical charts?

19 A. I believe on most of the charts that were used in this  
20 case they are of such a scale that they do show a low-water  
21 line.

22 Q. If I could ask you to turn to Tab 23 in your book.

23 Now, Mr. President and Dr. Smith, on the left-hand  
24 side of Tab 23 is Plate 36 from Guyana's submission, and on the  
25 right-hand side it's the same chart, but we've cleaned it up a

10:56:24 1 little bit so that it would be easier to look at. We changed  
2 the colors a little bit, but as you can see from the  
3 comparison, do you see that, Dr. Smith?

4 A. I do.

5 Q. It's essentially the same chart without the lines  
6 drawn on it, and it's made a little bit easier to follow.

7 Do you see that?

8 A. Right. There's a couple of sections that has been cut  
9 off as well.

10 Q. Right.

11 Now, what I would like to direct your attention to, on  
12 the left-hand side--actually, there is an easier chart. If you  
13 look at Tab 24, what I would like to direct your attention to,  
14 if I might, is the left-hand side of the chart I'm going to  
15 point--I think Matt is using the mouse pointer, to the  
16 left-hand side of that chart, and to that symbol that I'm  
17 pointing at right there.

18 Do you see that, sir?

19 A. The sunken ship or the number?

20 Q. I was going to ask you what the symbol represented and  
21 you anticipated my question. What does it represent?

22 A. If you are looking at the black feature, that would  
23 tell me that there is a ship that unfortunately came a little  
24 too close to the coast.

25 Q. All right. And that chart shows that the ship is on

10:57:48 1 the low-water line?

2 A. Partly on the low-water line and partly into the water  
3 itself.

4 Q. Right on the edge of the low-water line?

5 A. Right, straddling it.

6 Q. All right. If you would look at Tab 25, please.

7 Have you ever seen that before?

8 A. I don't know if I have seen this particular photo, but  
9 I know it came with several photos of this little--

10 Q. All right. Just for the record, Tab 25 in this book  
11 is Tab 32 in Guyana's daily Judges' folder. This is one of the  
12 photographs that was shown to the Tribunal last week.

13 Do you see that, sir?

14 A. Excuse me?

15 Q. This is one of the photographs that was shown to the  
16 Tribunal last week.

17 A. I will take your word for it.

18 Q. All right. And on that photograph you see Point 61  
19 pointing to a pole in the sand.

20 A. Correct.

21 Q. And in the distance a mark that says N 10-degree east?

22 A. I see that.

23 Q. I think those were placed on the chart by counsel for  
24 Guyana; but in any event, I take it that is the same Point 61,  
25 if that, indeed, represents Point 61 that was referred to in

10:59:29 1 your report?

2 A. I would make that assumption as well.

3 Q. As being on the land boundary terminus; right?

4 A. Correct.

5 Q. Now, you see in the distance there, on the left-hand  
6 side there is an automobile?

7 A. Correct.

8 Q. And in the distance there is a black mark on the  
9 horizon?

10 A. Yes.

11 Q. What do you think that is?

12 A. Well, without knowing much more, I would say it was  
13 probably a ship of some sort.

14 Q. Well, we have blown that up. If you look at Tab 26,  
15 does that look like the shipwreck that is shown on the nautical  
16 charts?

17 A. I certainly could not testify to that.

18 Q. All right. But it is about in the same location where  
19 the shipwreck is described in the nautical chart, Tab 24, is  
20 it not?

21 MR. REICHLER: Excuse me, he's asking the witness to  
22 make a guess as to where this is in relation to another point?  
23 He doesn't even know what this is a photo of. This wasn't  
24 taken by the witness. The witness--it hasn't been established  
25 that he's been there. Why is the witness being asked to

11:00:48 1 speculate about what is in the photo and where it might be? It  
2 seems to me to be improper questioning, Mr. President.

3 MR. SAUNDERS: If I might have a little latitude, I  
4 think that I will tie all of this together in just a moment,  
5 Mr. President.

6 MR. REICHLER: If Mr. Saunders knows what this is and  
7 he wants to testify about it, we have no objection to him doing  
8 that, but I don't see why he needs to badger the witness about  
9 it.

10 MR. SAUNDERS: Well, I first take great offense at the  
11 notion that I'm badgering this witness. I'm not doing anything  
12 of the sort. This photograph was presented to this Tribunal  
13 last week. This Tribunal was told that the pole in the  
14 foreground represents Point 61. That's what we were told. And  
15 this witness has written a report in which he described Point  
16 61 as the land boundary terminus.

17 He's also told this Tribunal that, according to his  
18 reading of the nautical charts put into this record by Guyana,  
19 there was a shipwreck on the low-water line. I don't know  
20 whether this shipwreck is the one that's depicted on this  
21 photograph or not. I didn't take the photograph. What I was  
22 asking the witness to assume is that--and this is purely an  
23 assumption--I want him to assume that the ship that is  
24 displayed in the photograph is, in fact, the shipwreck that is  
25 displayed on the nautical charts submitted by Guyana. Guyana

11:02:26 1 submitted these charts and this photograph, not us. I think  
2 it's appropriate to ask this witness--I'm simply going to ask  
3 him a geographical question when I get to the end of this.  
4 It's up to the Tribunal to determine whether or not the  
5 photograph accurately depicts the scene or not, or whether the  
6 nautical chart is accurate or not, but the nautical chart does  
7 show a shipwreck in the approximate location as the ship that  
8 is displayed in Guyana's own photograph. I don't think there  
9 can be any doubt that that is, in fact, the shipwreck.

10 PRESIDENT NELSON: Thank you, Mr. Saunders.

11 Before you go on, I just would like to make the point  
12 that the function of this expert witness is to deal with his  
13 report and questions on report, and it's not to be assumed that  
14 he knows much about what has been depicted here, so I would  
15 like you to bear that in mind.

16 MR. SAUNDERS: Yes. Thank you.

17 BY MR. SAUNDERS:

18 Q. Now, Dr. Smith, assuming--assuming--hypothetically  
19 that the black mark in the horizon of the photograph that was  
20 submitted by Guyana as Tab 32 in the daily Judges' folder is,  
21 in fact, the shipwreck that is shown on Guyana's chart, Plate  
22 36. Just assume that hypothetically. Are you with me so far?

23 A. I'm with you.

24 Q. All right. Is it possible for you to determine how  
25 far it is from Point 61 to the shipwreck which the chart shows

11:04:18 1 to be on the low-water line?

2 A. No.

3 Q. Can you give us an approximation?

4 A. No. There is no geo referencing on this photo. I  
5 would be kind of...

6 Q. All right. If you look at Tab 24, if you looked at  
7 the entire map, could you tell how far the shipwreck is from,  
8 let's say, for example, from the little piece of water that's  
9 depicted on the left-hand side of the Guyana coastline, that  
10 little inlet? Can you tell how far the shipwreck is from  
11 there?

12 A. If you gave me the entire chart where I could see  
13 latitudes and give me some dividers, I could make a fairly good  
14 estimate.

15 Q. All right. We could do that.

16 Do you have a rough estimate, sitting here today, as  
17 to how far that might be?

18 A. No. I have to admit I haven't studied this chart to  
19 know what the scale is or what the distances would be.

20 Q. Could it be more than two kilometers?

21 A. I don't know.

22 Q. Could it be three kilometers?

23 A. I don't know.

24 MR. SAUNDERS: Mr. President, this is probably an  
25 appropriate time to take a midmorning break. I don't have too

11:05:45 1 much more with Dr. Smith, but I think I'd like to take a break,  
2 if that is acceptable, and I'm going to finish with him very  
3 shortly after the break.

4 PRESIDENT NELSON: Fine.

5 Before we start, I have just been reminded that the  
6 witness is under testimony, and he should not discuss the case  
7 with anyone.

8 We will resume this cross-examination after the coffee  
9 break. Fifteen minutes.

10 (Brief recess.)

11 PRESIDENT NELSON: We will now continue with the  
12 cross-examination.

13 MR. SAUNDERS: Thank you, Mr. President.

14 BY MR. SAUNDERS:

15 Q. Dr. Smith, could you look back at Tab 1 in your book,  
16 please. The Tab 1 is the original version of the table that  
17 was set forth in paragraph 49 of your report.

18 Do you see that?

19 A. I do.

20 Q. And you told us during your direct examination that  
21 you discovered that there was an error in that chart and you  
22 corrected it, and Guyana's counsel has given the Tribunal a  
23 corrected version of that chart, which is in Tab 37(e) of the  
24 Judges' folder for this morning.

25 A. Correct.



11:27:38 1 Q. And you told us that the error that you discovered was  
2 that you had sometimes confused kilometers and miles?

3 A. Kilometers and nautical miles, yes.

4 Q. Kilometers and nautical miles?

5 A. Right.

6 Q. If you would look at Tab 2 in your book, and it might  
7 be just as easy for the Members of the Tribunal to look at  
8 Tab 37(e) in the Judges' folder given to you by Guyana because  
9 that's the corrected table that I'm going to ask the witness  
10 about. I'm sorry, Tab 3. Tab 3.

11 Do you have that?

12 A. I do.

13 Q. Now, in the original table, under Roman numeral II,  
14 the coastline depicted using controlling point coastal front,  
15 you showed that Guyana--the length of Guyana's relevant coast  
16 was approximately 215 miles; correct? In the original table.

17 A. Right. I had labeled the table miles, and I had the  
18 Figure 215, correct.

19 Q. All right. And then you show that the length of  
20 Suriname's relevant coast using this methodology was 153 miles;  
21 correct?

22 A. Correct.

23 Q. Now, in the corrected table, you show that the length  
24 of Guyana's coast is 215 kilometers.

25 A. Correct.

11:29:27 1 Q. And that the length of Suriname's coast is 195  
2 kilometers?

3 A. Correct.

4 Q. So, does the 195 represent converting nautical miles  
5 to kilometers?

6 A. I don't--I think the main issue was conversion, but I  
7 can't say that it was the only error here, but I think it was.

8 Q. Well, if you were to convert nautical miles to  
9 kilometers, wouldn't the number be significantly greater than  
10 195?

11 A. I don't recall. I mean, I don't have my conversion.

12 Q. Well, what did you do?

13 A. Well, I had a conversion factor at that point, I mean,  
14 a table, but again, I believe that the only error--I can't  
15 reconstruct it entirely, but I believe the error was  
16 conversion, but there may have been a placement error as well,  
17 but I believe it was the conversion issue.

18 Q. Well, how are we to know what the other error was, if  
19 there was one?

20 A. Well, I mean, I don't know what the conversion is  
21 right now. Are you able to tell me what 153 miles...

22 Q. Well, unfortunately, Dr. Smith, you are the expert  
23 geographer, and I'm just a lawyer.

24 A. Right. I don't have the tables here, but I believe it  
25 was a conversion issue.

11:30:51 1 Q. Would you agree with me that if one were to convert  
2 nautical miles to kilometers, the number would be greater than  
3 195?

4 A. I couldn't tell you right now, no.

5 Q. You can't tell us, all right.

6 If you look at the same chart, now I'm referring again  
7 to the corrected chart that was submitted to the Tribunal as  
8 Tab 37(e) in the Judges' folder by Guyana, under--

9 MR. SAUNDERS: Is it possible for us to put that back  
10 up on the screen, Scott, the one that you used this morning?  
11 That might be easier.

12 Thank you, Mr. President.

13 BY MR. SAUNDERS:

14 Q. All right. If you look at that table, the original  
15 table shows on the--under the low-water line, river closing  
16 line row under Roman numeral III, do you see that? In the  
17 original report, paragraph 49, you showed that the length of  
18 the Guyana coastline was 246 miles, and the length of the  
19 Suriname coastline was 167 miles, using that methodology.

20 Do you see that?

21 A. Correct.

22 Q. Now, in the corrected table, which is the table in the  
23 middle of the page from Tab 37(e), do you see that?

24 A. Yes.

25 Q. You show that for Guyana the length of the coastline

11:32:58 1 remains the same, 264 kilometers.

2 Do you see that?

3 A. When you say remain the same--

4 Q. Same as it was in the original report, 246--I'm sorry,  
5 I misspoke. 264 kilometers for Guyana in the corrected report,  
6 and 246 kilometers for Guyana in the original report.

7 A. Correct.

8 Q. You see that?

9 A. Yes.

10 Q. That's not a conversion from miles to kilometers, is  
11 it?

12 A. At this point I would say, yes, but I would have to  
13 kind of go back to my notes to confirm that.

14 Q. Well, the number would have to be significantly  
15 greater than 264 if it was a conversion of miles to kilometers,  
16 wouldn't it?

17 A. I can't answer that right now.

18 Q. All right. And similarly for Suriname in that table,  
19 you have gone from 167 in the original report to 202 in the  
20 corrected table.

21 A. Yes, I see that.

22 Q. Is that a conversion from miles or nautical miles to  
23 kilometers?

24 A. At this point I'm going to say yes, but I would have  
25 to go back to my notes to confirm that.

11:34:19 1 Q. Wouldn't it have to be greater than 202 if that's what  
2 it was?

3 A. I can't answer that right now.

4 Q. All right. Now, your first methodology that you  
5 described there, the single-line coastal front methodology.

6 A. Yes.

7 Q. That's one of three methodologies that you say could  
8 be used to create a relevant coastline; right?

9 A. Correct.

10 Q. And you say that in your report?

11 A. Right.

12 Q. And you draw or you refer to a chart that shows all  
13 three methodologies?

14 A. Correct.

15 Q. And that chart is--we have reproduced it at Tab 5.  
16 Do you have that?

17 A. I do.

18 Q. That's your chart. That's the chart to which you  
19 referred in your report; right?

20 A. Correct.

21 Q. Did you draw these lines?

22 A. No, they were done for me.

23 Q. Taking the information in your report?

24 A. Yes.

25 Q. And who drew them?

11:35:35 1 A. Members of the Guyana team.

2 Q. All right. But do you believe that these lines  
3 on--they're set forth in Tab 5, which are actually Figure 10 in  
4 your expert report, do you believe that those lines accurately  
5 depict what you were intending to depict in your report?

6 A. I believe they do, yes.

7 Q. That is, the three different methodologies?

8 A. Right.

9 Q. It's going to be very hard to see, and I'm going to  
10 show the Tribunal one of these that's a little bit easier to  
11 see, but before I do that, it's hard to see on this chart, but  
12 there are basically three lines that have been drawn on this  
13 chart on the Guyana and Suriname coast.

14 Do you see that?

15 A. I do.

16 Q. The one in red, the straight line, corresponds to your  
17 first methodology, which is the single-line coastal front?

18 A. Correct.

19 Q. And the somewhat straight but not entirely straight  
20 line that we can see peeking out on the right-hand side and  
21 again on the left-hand side where I'm pointing, that's the  
22 controlling point coastal front line, is it not?

23 A. That is correct.

24 Q. And third, the line that follows--appears to follow  
25 the coastline--hard to see on this--I take it that's the line

11:37:10 1 that represents the low-water line?

2 A. Correct.

3 Q. All right. What I want to do is ask you a question  
4 about one of those, and it's the single-line coastal front  
5 methodology, the first of your three possibilities.

6 A. Okay.

7 Q. And for the ease of the Tribunal--I hope this works--I  
8 have asked someone on our team to highlight that red line  
9 that's behind Tab 6. This is meant to be nothing more than  
10 your Plate 10, Figure 10, with the single-line coast front  
11 highlighted in brighter or darker red.

12 Do you see that?

13 A. Yes, I do.

14 Q. Have we done it approximately correctly?

15 A. It looks pretty good.

16 Q. All right. Now, if you look at that line and only  
17 that line, do you see whether any portion of the Guyana coast  
18 sticks out in a seaward direction from that line?

19 A. There is a portion of Guyana's coast that is seaward  
20 from that red line, yes.

21 Q. And I'm pointing to an area the southwestern corner of  
22 that red line that looks like it's a semicircle or a curved  
23 line. Is that the part that you're referring to?

24 A. It is.

25 Q. Is that the part that is sometimes referred to as the

11:39:02 1 Berbice Headland?

2 A. I've never used that, but I believe it's adjacent to  
3 the Berbice River.

4 Q. And you've heard it referred to as the Berbice  
5 Headland?

6 A. No.

7 Q. You have never heard that?

8 A. No.

9 Q. Well, you read the Suriname Rejoinder, did you not?

10 A. I did.

11 Q. And you didn't see that referred to as the Berbice  
12 Headland in that Rejoinder?

13 A. If I saw it, it didn't register with me.

14 Q. Well, whatever it's called, that little area right  
15 there that I'm pointing to is the only area on the Guyana coast  
16 that is seaward of the straight line that you drew; right?

17 A. Correct. At this scale, I think that you're correct.

18 Q. And by contrast, on the Suriname coastline there is a  
19 very, very small piece just to the right of the mouth of the  
20 Corantijn that appears to me to be seaward of the line that you  
21 drew, but that's all; correct?

22 A. I think you're correct.

23 Q. The Hermina Bank is not seaward of that line, is it?

24 A. At this scale, I cannot see. I mean, there is a  
25 section of the Suriname coast that you just pointed out that's



11:40:25 1 seaward, but I cannot see others. There may be another portion  
2 of the bank near Vissers Bank.

3 Q. Do you want to look at your original chart? It's Tab  
4 5 in your book.

5 A. Well, the scale is not much better to give an  
6 indication, but you appear to be right in your assessment.

7 Q. That the Hermina Bank is not seaward of the straight  
8 line that you drew; correct?

9 A. That I can see here, no.

10 Q. Now, in your report you talk about the effect of  
11 erosion and accretion; correct?

12 A. Correct.

13 Q. And you say that the coastal change from erosion and  
14 accretion is usually minimal on an annual basis.

15 A. Correct.

16 Q. And let me just put that up on the screen as Tab 28.  
17 Do you see that, sir?

18 A. I do.

19 Q. Now, when you made that statement, were you talking  
20 about the erosion and accretion on the Guyana and Suriname  
21 coasts, or were you simply making a general statement?

22 A. I was making a general statement basically responding  
23 to statements made by Suriname in its Counter-Memorial.

24 Q. But you didn't perform a study of the erosion and  
25 accretion on the Suriname or Guyana coast, did you?

11:42:07 1 A. I did not.

2 Q. You didn't see any such study, did you?

3 A. I did not.

4 Q. You weren't told about any such study, were you?

5 A. I was not.

6 Q. Now, is it correct that a relatively small erosion or  
7 accretion, if it occurs close to the provisional equidistance  
8 line, would have a greater effect than a similar erosion or  
9 accretion that occurred at a distance from the provisional  
10 equidistance line?

11 A. When you're talking about distance to the equidistant  
12 line, you are saying that this erosion is quite associated with  
13 the mainland area of Suriname or Guyana. It's tough to say  
14 that because it all depends on the configuration of the  
15 coastline as to what particular part will be effective and not  
16 be effective.

17 Q. Well, I'm simply asking you whether as a matter of  
18 geography if there is erosion or accretion that is close to the  
19 equidistance line, that would have a greater effect on the  
20 provisional equidistance line than a similar erosion or  
21 accretion that is at a distance from the equidistance line;  
22 correct?

23 A. I don't know if I could make that statement because  
24 again, I'm going to go back to my thought that the erosion and  
25 accretion element will be so minimal as to probably have a

11:43:48 1 minimal effect regardless of where on the coastline it is  
2 found.

3 Q. All right. Let me ask you to look back at the  
4 photograph that I showed you earlier.

5 A. What tab was that?

6 Q. It's Tab 25.

7 Now I want to ask you to assume certain facts  
8 hypothetically. I want to ask you to assume hypothetically  
9 that the pole in the foreground is at Point 61.

10 A. Okay.

11 Q. I want to ask you to assume hypothetically that when  
12 Point 61 was originally determined, it was 215 meters from the  
13 low-water line.

14 A. Okay.

15 Q. And I want to ask you to assume hypothetically that  
16 the shipwreck shown in the distance on the horizon is today on  
17 the low-water line. Do you have those three assumptions in  
18 mind?

19 A. I do.

20 Q. Would you agree with me, sir, that if those  
21 assumptions are correct, there has been a significant  
22 accretion?

23 MR. REICHLER: Excuse me. Normally, when posing  
24 hypotheticals there has to be some basis, some evidentiary  
25 basis for posing the hypothetical. There certainly is an

11:45:41 1 evidentiary basis for assuming that that pole marks Point 61,  
2 and there is as well in the Boundary Commissioners' report for  
3 assuming the distance between Point 61 and the low-water line  
4 in 1936. But this continual belaboring of the point of  
5 shipwreck, we don't even know that that is a shipwreck. It may  
6 just be a ship. Unless Mr. Saunders wants to introduce  
7 evidence to tell us what that is, to make an assumption about  
8 what that is and whether it corresponds to a figure on a  
9 particular chart, and then to make assumptions about what  
10 distance it is and whether it's on a low-water line or  
11 something else, it seems to me that this is--it goes beyond the  
12 hypothetical to the--well, it goes beyond the hypothetical,  
13 let's just say that.

14 MR. SAUNDERS: Shall I respond?

15 PRESIDENT NELSON: Of course.

16 MR. SAUNDERS: The evidence to which I refer the  
17 Tribunal at this time--and there is going to be additional  
18 evidence during our case--the evidence to which I refer the  
19 Tribunal at this time is Plate 36, Guyana's Plate 36. If you  
20 look at Tab 23 in the book that I gave you, Plate 36 was from  
21 Guyana's submission, and the witness told us this morning,  
22 without actually prompting from me, as you may remember, when I  
23 showed him that symbol, he said, oh, that's a shipwreck, and I  
24 said you anticipated my next question.

25 He told us that what was displayed on the chart

11:47:47 1 submitted by Guyana was a shipwreck. We have cleaned that up  
2 so that it's clearer on Tab 24, but he told us that his reading  
3 of the chart submitted by Guyana was that there was a  
4 shipwreck, and if you look at these charts and work your way  
5 through them, you can see that it's slightly to the west of the  
6 10-degree line. That's what I'm asking the witness to assume.  
7 I'm asking the witness to assume that there is, in fact, a  
8 shipwreck there and that it is, in fact, on the low-water line.  
9 And all I'm asking the witness to do was to assume that those  
10 are correct, and I'm asking the witness whether or not if those  
11 three hypothetical facts are correct, there has been  
12 significant accretion in the coastline. That's my question,  
13 Mr. President.

14 THE WITNESS: Am I to answer?

15 PRESIDENT NELSON: Yes.

16 THE WITNESS: Even taking your three assumptions, I  
17 don't know if I can jump to the conclusion you're asking  
18 because low-water lines are not consistent along the whole  
19 area. I mean, as you can see from your chart on Tab 23, the  
20 low-water line goes in and out. So, I cannot answer whether or  
21 not it's the same low-water line that you ended your statement  
22 with.

23 BY MR. SAUNDERS:

24 Q. But if it is, would you agree with me that there has  
25 been significant accretion?

11:49:22 1       A.    I don't think I can agree under those hypotheticals.  
2    There are just too many unknowns because you gave me a figure  
3    of so many meters.

4       Q.    I'm asking you to assume that that is correct.  I'm  
5    not asking you whether it is, in fact, correct.  I'm simply  
6    asking you to assume that it's correct.  We will have other  
7    evidence, and there is other evidence in the record that I'm  
8    not asking about.  I'm simply asking you to assume that those  
9    three facts are correct.

10       A.    But you're asking me--was it 215 meters that you  
11    mentioned?

12       Q.    Yes.

13       A.    Went off in that particular direction toward the ship.

14       Q.    I'm asking to you assume that Point 61 was originally  
15    determined to be 215 meters landward of the low-water line.  
16    That's all I'm asking to you assume.  You don't know whether  
17    that's correct.  You don't have to know whether that's correct.

18       A.    What I don't know is correct is whether that 215  
19    meters was in the direction that you are asking me to assume.

20       Q.    I'm asking you to assume that it was between Point 61  
21    and the low-water line.

22       A.    Then I would have to conclude that I cannot conclude  
23    whether accretion has occurred.

24       Q.    Let me ask you to assume that it's on an azimuth of 10  
25    degrees.

11:50:37 1 A. I don't think there is enough on this photo or things  
2 you have told me to be able to make that judgment of accretion.

3 Q. I'm sorry. Let me make sure that I have that  
4 question. If that's your answer, that's your answer, and the  
5 Tribunal can assess it. I'm asking you to assume that what was  
6 shown as Point 61 on that photograph was originally determined  
7 to be 215 meters landward of the low-water line on an azimuth  
8 of 10 degrees. Are you with me so far?

9 A. I'm with you.

10 Q. Assume that that's correct.

11 I want you also to assume that the shipwreck that is  
12 shown on the nautical charts and appears to be shown in the  
13 photograph is on the low-water line.

14 Are you with me so far?

15 A. I am, but I'm seeing a disconnect coming up here.

16 Q. I haven't asked you a question yet, but I would love  
17 to hear what the disconnect is.

18 A. No, go right ahead. I apologize.

19 Q. Is it correct that if those facts are true, there has  
20 been significant accretion on the coastline?

21 A. I'm sorry, but I can't make that conclusion with those  
22 givens.

23 Q. All right. I'm going to pass on, Mr. President.

24 ARBITRATOR SMIT: Why don't you ask him why not?

25 BY MR. SAUNDERS:

11:52:09 1 Q. Why not?

2 A. Well, the disconnect that I'm hearing with the givens  
3 is you are first taking me out to a 10-degree azimuth to a  
4 low-water line. Then you're also telling me that the ship is  
5 on the low-water line. They clearly could be on different  
6 parts of the low-water line that's clearly a different distance  
7 from that pole, and that's where I'm not able to make my  
8 conclusion.

9 Q. Well, you might go back and look at the nautical  
10 chart?

11 A. Tab, what number again? Tab 23?

12 Q. It's Tab 23.

13 We can't tell from this chart, but I'm asking you to  
14 assume that if that's a shipwreck and if it's on the low-water  
15 line, it's in the general direction of 10 degrees. We have  
16 other charts that show that, but you don't need to do that.  
17 Just assume that, that the shipwreck is in the general  
18 direction of 10 degrees, a 10-degree azimuth.

19 A. You're making me take quite a leap in my assumption  
20 here.

21 Q. Yes, I am. Please. Just stick with my assumptions.  
22 If they're not correct, counsel will point that out.

23 A. All right.

24 Q. If those assumptions are correct, wouldn't you agree  
25 with me there that there has been significant accretion in the



11:53:35 1 coastline?

2 A. I'm sorry, I still can't make that conclusion.

3 Q. And to take Professor Smit's question, why not?

4 A. Again, I don't know the distances that are present on  
5 this chart here and whether or not this--well, again, you have  
6 made me assume that the ship is in the 10-degree direction,  
7 which it doesn't appear to be in the photo, but it's just too  
8 many assumptions for me, I guess, with my scientific kind of  
9 background to make that jump.

10 Q. But that's not the minimal accretion or erosion that  
11 you were referring to in your report, is it?

12 A. Again, I'm kind of lost as to what my basis is for the  
13 accretion level.

14 Q. All right. I'm going to move on to a different  
15 subject.

16 In your report, you talk about macrogeography.

17 A. Correct.

18 Q. And you describe on a macrogeographic level various  
19 South American boundaries, maritime boundaries?

20 A. Right. It was discussed a little bit differently from  
21 the macro, but, yes, I did discuss boundaries.

22 Q. And you say in your report that in general terms,  
23 equidistance was the method chosen by those South American  
24 countries to which you referred as the method of choice to  
25 delimit their maritime boundaries?

11:55:02 1 A. Correct.

2 Q. And you referred to a conclusion drawn by Judge  
3 Aréchaga in this book?

4 A. Correct. Well, in the American Society book.

5 Q. Did you read that book?

6 A. A good portion of it.

7 Q. And did you look at the maps in that book?

8 A. I did.

9 Q. Did you look at the maps in connection with preparing  
10 your report?

11 A. I did.

12 Q. You did?

13 A. Yes.

14 Q. So, you looked at the maps first and then you wrote  
15 your report?

16 A. I believe that was the sequence.

17 Q. Tab 35 is the portion of your report that I'm asking  
18 you about.

19 Do you see that, sir?

20 A. I do.

21 Q. And there you say--you list some countries, and you  
22 say equidistance clearly has been the method of choice by these  
23 countries.

24 A. Correct.

25 Q. I'm not going to take the time to ask you about all of

11:56:05 1 them, but I want to ask you about one of them, and that's  
2 Brazil and Uruguay.

3 A. Okay.

4 Q. Would you look at Tab 36.

5 Do you have that?

6 A. I do.

7 Q. Now, Tab 36 was taken from the book in which the  
8 Aréchaga material that you quoted was contained?

9 A. Right.

10 Q. Is that one of the maps that you looked at before you  
11 wrote your report?

12 A. Yes.

13 Q. And you can see from that map that the actual boundary  
14 between Brazil and Uruguay is not, in fact, an equidistance  
15 line; right?

16 A. It's not a true equidistant line, correct.

17 Q. That's not a true equidistant line then?

18 A. Correct.

19 Q. You did not say that in your report, did you?

20 A. I did not. I believe I said it was the intent of the  
21 people negotiating that it represented an equidistant line or  
22 based on an equidistant line.

23 Q. Have you ever heard of a publication called "Limits in  
24 the Seas"?

25 A. It's familiar.

11:57:25 1 Q. It's very familiar, isn't it?

2 A. Correct.

3 Q. You wrote it, did you not?

4 A. Not all the studies, but the majority of them.

5 Q. While you were in the State Department?

6 A. Correct.

7 Q. That's a U.S. Government publication?

8 A. Correct.

9 Q. And you refer to it in your resume. If you look at  
10 Tab 37, you say, "Throughout my State Department career, I  
11 oversaw and was the principal author of the State Department's  
12 "Limits in the Seas" studies, in which analyses is given on the  
13 state practice of maritime claims and boundaries."

14 A. Correct.

15 Q. So, you were the principal author of your studies,  
16 according to your resume at least?

17 A. Correct.

18 Q. Now, in the course of doing your work in the State  
19 Department and writing these reports, did you ever have  
20 occasion to analyze the boundary between Brazil and Uruguay?

21 A. Yes, it is one of the studies, I believe.

22 Q. And is that one of the documents that you looked at  
23 before preparing your report in this case?

24 A. I believe it was.

25 Q. All right. Let me ask you to look at Tab 39 in your

11:58:45 1 book. Tab 38, I'm sorry. This is an excerpt from "Limits in  
2 the Seas," Number 123, on the subject of Uruguay's maritime  
3 claims.

4 Do you see that, sir?

5 A. Yes.

6 Q. Do you see there that you wrote that the boundary  
7 between Brazil and Uruguay is not equidistant to the two  
8 coasts?

9 A. That's correct.

10 Q. So, you looked at this before you wrote your report in  
11 which you said it was?

12 A. Well, I believe I said it was based on equidistance.  
13 I think if you look at the actual way that Brazil and Uruguay  
14 developed it, they ignored a promontory of Uruguay in their  
15 calculation of their line, so it was--it is true that it's not  
16 a true equidistant line.

17 Q. So the statement in your report that equidistance has  
18 been the method of choice by these countries is not literally  
19 correct?

20 A. Well, I think I'm following in the same analysis that  
21 Judge Aréchaga used in his analysis of all three of the other  
22 Brazilian boundaries in that the provisional equidistance lines  
23 did provide the basis for the eventual line, and oftentimes the  
24 true equidistant line will not be the final line, but the line  
25 will be based on equidistance.

12:00:26 1 Q. Well, the line in the Brazil-Uruguay case was a  
2 simplified straight line.

3 A. Right. And as I said, I believe the negotiators--and  
4 if one looks at the Aréchaga write-up of the Brazil-Uruguay  
5 negotiations, and I believe he had more source material than I  
6 when I did my "Limits in the Seas," he knew more of what the  
7 negotiators took into account, and he said that they purposely  
8 ignored a rather significant geographic feature on Uruguay's  
9 coast.

10 Q. Well, the line that they ultimately came up with is a  
11 perpendicular line, isn't it? Perpendicular to the coastline?

12 A. I think it was their intent that that was based on the  
13 equidistance method. It was not the actual true equidistant  
14 line, no.

15 Q. All right. Let me ask you this question: If we have  
16 two adjacent states, and if they're trying to delimit a  
17 maritime boundary between the two, it's an equidistance line,  
18 let's assume, and if there is a large promontory or headland on  
19 one of the coastlines that is close to the equidistance line,  
20 and on the other coastline there is a similar promontory of  
21 similar size that is far away from the equidistance line, which  
22 one of the two is going to have a greater effect on the  
23 equidistance line?

24 A. Well, without seeing a specific chart of the  
25 situation, it's tough to give a definite answer, but I would

12:02:26 1 suspect that the one that may be encountered in the course of  
2 the coastline may have the more significant impact than the one  
3 that's encountered way at the end.

4 Q. The one that's closer to the equidistance line would  
5 have a greater effect than the one that's further away; is  
6 that--

7 A. When you say, "closer to the equidistant line," you  
8 mean closer to where the land boundary terminus starts and  
9 begins?

10 Q. Yes, yes.

11 A. Again, without seeing the specifics, I would probably  
12 say that nearer one.

13 Q. All right. It's probably the nearer one, but you're  
14 not sure?

15 A. I would have to look at the overall situation of the  
16 coastline.

17 Q. All right. Well, let's give you a very simplified  
18 coastline that we can hope to deal with. If you look at Tab  
19 41, that's about as simple as I could make it. You see there  
20 are two states, A and B, each with absolutely horizontal  
21 coastline?

22 A. Correct.

23 Q. And the dotted line at the bottom is the land  
24 boundary, meant to be the land boundary?

25 A. Okay.

12:03:30 1 Q. And the vertical line in the middle would be an  
2 equidistance line or a perpendicular; correct?

3 A. Correct.

4 Q. It would be the same; right?

5 A. Right.

6 Q. Or an angle bisector. There is no angle, so the angle  
7 bisector would be right down the middle; right?

8 A. Right.

9 Q. I guess it's angled at 180-degrees.

10 But it would be right down the middle, a straight  
11 line; right?

12 A. Correct.

13 Q. Are you with me so far?

14 A. I'm with you.

15 Q. Now, let's assume that we have two I will call them  
16 headlands, but we have two coastal configurations that are  
17 exactly the same size, but that they are not at the same  
18 distance from the equidistance line.

19 Are you with me?

20 A. Um-hmm.

21 Q. I tried to draw that on Tab 42.

22 Do you see that? And I have drawn these two  
23 semicircular nodules.

24 Do you see that?

25 One of them abuts the equidistance line and one of



12:04:43 1 them is at some distance away. They are meant to be exactly  
2 the same size.

3 Are you with me so far?

4 A. I'm with you.

5 Q. Which one of those has a greater effect on the  
6 equidistance line?

7 A. Well, my initial instinct would be the one on State A  
8 would begin the--would first affect the equidistant line out  
9 to, again, I don't have a distance scale here--

10 Q. There is no distance scale.

11 A. --until the one on State B would affect it partway  
12 into, and then send it back towards State A.

13 Without providing kind of the resulting test of what I  
14 went through in my paper of relevant coastline length ratios  
15 and how it might impact, I can't make a point-blank judgment,  
16 because the one on the right on State B, if that arrow, for  
17 example, is sitting 2 miles off the coast, the one on the  
18 right-hand side would affect it more significantly further out  
19 to the coast. It's kind of a difficult one to know to give a  
20 good answer without the scale of the chart in front of me.

21 Q. But is there any doubt in your mind that the headland  
22 closer to the equidistance line would have a greater effect  
23 early on in the equidistance line than the headland in State B?

24 A. Well, I think the key to your question right there is  
25 your words "early on."

12:06:02 1 Q. Yes.

2 A. Certainly the one in State A would affect it first.  
3 Whether or not it would have the greater overall impact, I  
4 cannot give that you answer, given what's in front of me.

5 Q. You need to know scale and distances and things like  
6 that?

7 A. Right.

8 Q. But as a general proposition, the one in State A  
9 affects the equidistance line first?

10 A. Correct.

11 Q. And I have tried to draw that. If you look at Tab 43,  
12 you see the equidistance line is pushed somewhat to the right,  
13 and this is meant to be--not meant to be mathematically exact,  
14 but to illustrate a general proposition.

15 A. Okay.

16 Q. Are you with me?

17 A. I'm with you.

18 Q. And so, the effect of the headland on State A closest  
19 to the equidistance line would push the equidistance line over  
20 towards State B; correct?

21 A. Correct.

22 Q. And that's what is depicted on Tab 43 of the binder?

23 A. That looks like a fair rendition of what it looks  
24 like.

25 Q. Thank you.

12:07:07 1                   And then in Tab 44, I have tried to illustrate the  
2 effect on the equidistance line of the headland in State B that  
3 is further away from the equidistance line.

4                   Do you see that?

5           A.    I do.

6           Q.    And that pushes the equidistance line back toward the  
7 center.

8                   Do you see that?

9           A.    Right.

10          Q.    Is that a fair and accurate representation as to what  
11 would happen under these circumstances in real life?

12          A.    I will say it looks like it's what the likely  
13 configuration would look like.

14          Q.    Thank you very much.

15               MR. SAUNDERS:  Mr. President, I have no further  
16 questions.

17               PRESIDENT NELSON:  Thank you very much, Mr. Saunders.  
18 Mr. Reichler?

19               MR. REICHLER:  We have no need for any further  
20 questions of the witness, Mr. President.

21                               QUESTIONS FROM THE TRIBUNAL

22               ARBITRATOR FRANCK:  Dr. Smith, I think it would be  
23 helpful if you could explain again to this Tribunal the basis  
24 for getting--for bridging, if there is a basis for bridging,  
25 your development of the provisional equidistance line at

12:08:41 1 28-degrees, and the argument we have heard in favor of a  
2 straight extension of the 34-degree line, which has been the  
3 basis of the argument being made by Guyana.

4 THE WITNESS: How I would get from 28 degree to 34  
5 degrees as an appropriate line?

6 ARBITRATOR FRANCK: Well, you don't necessarily have  
7 to get there. I just wanted you to elucidate the two lines and  
8 what the bridging principle is.

9 THE WITNESS: I'm not quite sure I understand  
10 bridging, but in terms of testing whether any of those lines  
11 would be appropriate, be it the 28-degree line or the 34-degree  
12 line, I think I would go back to the comparison of the relevant  
13 coastlines that I developed and the one of my preference being  
14 along the low-water line and river closing lines, it came out  
15 to a 1.7 to 1 ratio between Guyana and Suriname, and then  
16 comparing that to the area allocation that results from the  
17 division in the relevant area of either the 28-degree line or  
18 the 34-degree line, and the 28-degree line, I believe, ends up  
19 1.14 to 1. The 34-degree line, I believe, ends up 1.38 to 1,  
20 so those numbers, although they don't quite reach the 1.7, are  
21 clearly going in the correct direction from the basically 1 to  
22 1 that the provisional equidistant line that's unaltered gives  
23 you.

24 So, I think I would use the test of coastline ratio to  
25 the area ratio in the relevant area to see which of those lines

12:10:22 1 might be more appropriate.

2 ARBITRATOR SMIT: It seems to me from that description  
3 there is no distinction between the 28 and the 34 line, whereas  
4 there is a major distinction in terms of geography?

5 THE WITNESS: Well, distinction meaning 1.14 to 1.38,  
6 I guess it's a matter of scale that--I mean, there have been  
7 ratios worldwide that are greatly more disparate than that. I  
8 mean, clearly we are in the ballpark from a worldwide scale  
9 right off the bat when one talks about the difference between  
10 1.14 to 1.38. But given that you're incrementally jumping  
11 rather large numbers within that one point something, I think  
12 it does give more credibility to an altered line from the  
13 provisional equidistant line.

14 PRESIDENT NELSON: Thank you. I give the floor to  
15 Mr. Shearer.

16 ARBITRATOR SHEARER: Thank you. Just a brief  
17 question. If I could just take you back to that photograph we  
18 saw of what we were asked to assume was a wreck off the coast,  
19 and--

20 MR. SAUNDERS: Excuse me, Professor Shearer, shall we  
21 put that back on up the screen?

22 ARBITRATOR SHEARER: Yes, by all means.

23 You were invited to say whether or not that was  
24 evidence of some form of accretion. But I just wanted to ask  
25 you a question about where do you understand the low-water mark

12:11:58 1 to be in general terms, not necessarily here because you are  
2 not told at what time of the day and so on this photograph was  
3 taken. But in general terms, is the low-water mark where if  
4 one was walking from the land to the sea one first started to  
5 get one's feet wet at low water, or where an incautiously  
6 navigated vessel might run aground? What is the low-water mark  
7 in your understanding as a marine geographer in general terms?

8 THE WITNESS: Well, the low-water line or low-water  
9 mark, you would have to know the tidal datum of a given area,  
10 and coastal states spend years developing that, and usually  
11 there is a 19-year cycle to develop the low-water line.

12 I would need to know in this particular area at what  
13 time of day in that particular day does the tidal datum reach  
14 the low-water line. Again, since assumptions were being made  
15 all over the place this morning, let me make the assumption  
16 that the photograph here does depict the low-water line for  
17 this particular day, so the low-water mark would be that  
18 portion where you see that gentleman bent over, which would be  
19 where what would now be kind of wet mud, wet sand, is now  
20 touching the water.

21 And as you proceed, what you can see this photo as  
22 water, the edge of where that water is hitting the wet sand  
23 would be that low-water mark if, indeed, this were noontime and  
24 you know from the national hydrographic service of that country  
25 that noon on whatever date that was, that was going to be low

12:13:44 1 water, because the next day it's going to be 12:05 that you're  
2 going to hit low water, the next day it may be 12:10. So, low  
3 water is found at different times each day, but at that point  
4 that's low water, it would be where that water is just now  
5 hitting the wet sand.

6 ARBITRATOR SHEARER: Thank you.

7 PRESIDENT NELSON: Thank you.

8 ARBITRATOR SMIT: May I ask a question?

9 Dr. Smith, you said in that case that you were  
10 involved you threw in everything and the kitchen sink in order  
11 to reach, I suppose, what this treaty calls an equitable  
12 solution?

13 THE WITNESS: The United States, whenever you go  
14 before a Court, you're not quite sure what the telling argument  
15 is going to be that's going to win that case in the Judges'  
16 mind, but the United States, when we went forward in the Gulf  
17 of Maine case, we felt very strongly that Georges Bank area  
18 provided the political boundary for many reasons. In the  
19 Northeast Channel that defined Georges Bank was an ecological  
20 boundary. It was a boundary based on what the conduct of the  
21 parties did throughout the years.

22 Well, the Court took all that in, and we probably  
23 educated the world on Georges Bank more in those few years of  
24 us putting our case together and Canada putting the case  
25 together than anyone knew before then, but the judgment by the

12:15:14 1 chamber of the Court came down and basically said geography,  
2 the two-dimensional coastline, was the telling thing to look  
3 at. They didn't to want look at geology. They didn't want to  
4 look at ecology. But when I say we threw in the kitchen sink,  
5 we did it with a very valid purpose because we felt very  
6 strongly that the arguments we made were very valid, and, of  
7 course, the judgment thought otherwise.

8 ARBITRATOR SMIT: And these things that you threw in  
9 included your perception of what would be a reasonable  
10 apportionment of the natural resources?

11 THE WITNESS: I believe so. I mean, we put together a  
12 whole series of arguments based on resources, the ecology,  
13 hydrography, geology, geomorphology, every ology you could  
14 think of we drew from experts, and it all came down to us truly  
15 believing that the Northeast Channel defined Georges bank that  
16 rightly should fall under sole U.S. jurisdiction.

17 ARBITRATOR SMIT: Every ology you could think of.  
18 Theology, too?

19 THE WITNESS: I suspect we may have thrown that in,  
20 too. I don't know.

21 ARBITRATOR SMIT: Thank you.

22 PRESIDENT NELSON: We have now a half an hour before  
23 lunch. What does Mr. Reichler want to do?

24 MR. REICHLER: I think I can read Mr. President's  
25 mind. Perhaps it would be a good time to take an early lunch



12:16:41 1 break, and then resume at whatever time the Tribunal fixes, and  
2 we have two presentations, and we will certainly be able to  
3 complete them well before the appointed termination time.

4 PRESIDENT NELSON: Yes. I think we should break now  
5 and return at 2:00. Thank you very much.

6 MR. REICHLER: Thank you.

7 (Witness steps down.)

8 (Whereupon, at 12:17 p.m., the hearing was adjourned  
9 until 2:00 p.m., the same day.)

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12:17:15 1

## AFTERNOON SESSION

2 PRESIDENT NELSON: We could start with Dr. Akhavan,  
3 Professor Akhavan, sorry.

4 CONTINUED OPENING STATEMENT BY COUNSEL FOR CLAIMANT

5 PROFESSOR AKHAVAN: Mr. President, distinguished  
6 Members of the Tribunal, esteemed colleagues in the Surinamese  
7 delegation, it's my privilege to address the Republic of  
8 Guyana's submissions on Suriname's unlawful threat and use of  
9 force arising out of the maritime dispute before the Tribunal.  
10 I will be referring during the course of my presentation to  
11 certain documents, some of which will be found in Tab 38 of  
12 your folder.

13 I will begin by emphasizing the importance of this  
14 claim to Guyana. In his opening address on December 7th,  
15 Foreign Minister Insanally explained that Guyana's decision to  
16 initiate these proceedings was the result of Suriname's  
17 recourse to force on June 3rd, 2000. This act of military  
18 coercion against Guyana undermined peaceful and friendly  
19 relations among neighboring states, and to quote Minister  
20 Insanally from his opening address, "inflicted serious and  
21 continuing damage to Guyana's economic development prospects."

22 It is for this reason that Guyana attaches great  
23 importance to vindicating the principle of peaceful dispute  
24 settlement before this Tribunal. This is imperative both to  
25 address past wrongs and to ensure that such conduct does not

14:04:41 1 continue to afflict relations between two neighboring states in  
2 the future.

3           The forceful expulsion of the CGX rig in June 2000  
4 occurred at a time when several means of peaceful dispute  
5 settlement were within Suriname's reach. It occurred at a time  
6 when Guyana had called for immediate high-level negotiations,  
7 and at a time when it had the option of pursuing other  
8 effective procedures such as mediation, conciliation, the good  
9 offices of CARICOM, the OAS, the United Nations, and not least,  
10 compulsory arbitration under the 1982 Convention.

11           By electing to submit this dispute to the Tribunal in  
12 February 2004, Guyana availed the parties of the Part XV  
13 compulsory procedures that were equally available to Suriname  
14 in May and June 2000, if not earlier. This proceeding is,  
15 itself, an expression of Guyana's commitment to its obligation  
16 to pursue peaceful means of dispute settlement under Article  
17 279 of the Convention. Indeed, the very exercise of  
18 jurisdiction by this Tribunal vindicates the principle that  
19 disputes, including those concerning maritime boundaries,  
20 should be resolved without recourse to armed force. And it is  
21 for that very reason, Mr. President, that we call upon the  
22 Tribunal to uphold this fundamental principle of international  
23 law.

24           To borrow the famous phrase of the Canadian  
25 philosopher Marshall McLuhan here, "the medium is the message."

14:06:44 1           Guyana's written pleadings on Suriname's unlawful  
2 threat and use of force are set forth in Chapters 5 and 10 of  
3 the Memorial and further elaborated in Chapter 8 of its Reply.  
4 I will begin my presentation by addressing the facts before the  
5 Tribunal followed by a discussion of the applicable law, and  
6 then I will consider Suriname's arguments and justification of  
7 its conduct.

8           There are three simple points that I wish to emphasize  
9 before the Tribunal. First, the affirmative obligation to  
10 settle disputes by all available peaceful means, and the  
11 specific obligation to refrain from threats or use of force is  
12 a very strict and very exact standard under general  
13 international law, and even more strict and exacting under the  
14 1982 Convention where compulsory procedures are immediately  
15 available to States Parties.

16           The second point is that Suriname's acts of military  
17 coercion against Guyana in a maritime boundary dispute, acts  
18 which it readily admits in its own pleadings, that such acts  
19 are a manifest violation of this strict and exacting standard.

20           Third, as a direct result of Suriname's unlawful  
21 conduct, Guyana has suffered significant damages, and offshore  
22 development of its hydrocarbon resources has been effectively  
23 terminated for the past six years.

24           Guyana's factual assertions are based on a  
25 considerable documentary record, including Diplomatic Notes,

14:08:40 1 U.S. Embassy cables, press releases, in addition to statements  
2 by two members of the rig crew. In its Preliminary Objections  
3 and Counter-Memorial, Suriname did not submit any evidence on  
4 this issue. The sole exception--the sole exception--was a  
5 political statement made by President Wijdenbosch at a  
6 July 2000 CARICOM conference, and that statement is quoted in  
7 Suriname's Counter-Memorial at paragraph 8.17.

8           It was only at the Rejoinder phase when Suriname for  
9 the first time decided to include six witness statements, one  
10 by a Foreign Ministry official, and five by military officials  
11 that were involved in the June 3rd operation. This is Guyana's  
12 first opportunity to address these statements.

13           But as I will explain, these statements not only  
14 confirm Guyana's essential factual assertions, but rather they  
15 also provide further details that go to demonstrating the scale  
16 and gravity of this incident.

17           The first factual aspect relates to Guyana's  
18 authorization of exploratory drilling by CGX Energy. The CGX  
19 License was issued in 1998. It was highly publicized, and  
20 Suriname was aware of its issuance, but did not protest. I  
21 refer the Tribunal to the statement of Mr. Newell Dennison at  
22 Guyana's Memorial, Volume 4, Annex 178, paragraph three.

23           Between April 22nd, 1999 and May 26, 2000, Suriname  
24 was specifically aware of, and consented to, CGX seismic  
25 activities at the 34-degree line. I refer you to the statement

14:10:50 1 of David Purcell, Guyana's Memorial Volume 4, Annex 185,  
2 paragraph four, and to the statement of Mr. Dennison at Annex  
3 178, paragraph four.

4           Based on these seismic tests, CGX publicly declared in  
5 August of 1999, several months prior to the rig incident, that  
6 Eagle, which was a location on the seabed selected by promising  
7 seismic data, CGX declared in August of 1999 that Eagle was a  
8 drillable target. In April 2000, it issued a press release  
9 concerning the drilling operation. That press release  
10 which--I'm sorry, that target which I referred to as Eagle is  
11 contained in Tab 38(a) of your folders. The Eagle target was  
12 in close proximity to the Abary-I which was drilled under  
13 Guyanese license by Royal Dutch Shell in December of 1974.  
14 This is from Plate 42 of Volume 5 of Guyana's Memorial. And  
15 the Abary-I well as discussed by Professor Schrijver in his  
16 presentation on the continental shelf was drilled with the full  
17 knowledge of Suriname.

18           I refer you also to the affidavit of Clement Pollydore  
19 at Volume 4, Annex 177 of Guyana's Memorial at paragraph eight,  
20 which indicates that the only officials present on the rig were  
21 Guyanese officials, and that there was no doubt that the well  
22 was being drilled under a Guyanese License.

23           The April 2000 CGX press release specifically noted  
24 that Eagle target is, "located 10 kilometers from the Shell  
25 Abary I well drilled in 1974." This is at Annex 158 of

14:12:56 1 Guyana's Memorial. Thus, in authorizing CGX to drill an  
2 exploratory well, Guyana acted in good faith reliance on a  
3 long-standing status quo and modus vivendi with Suriname. Most  
4 notably in close proximity of the Abary-I well.

5 In view of this unrebutted evidence, Suriname's  
6 assertion that the drilling of the well was, to quote  
7 Suriname's Counter-Memorial at paragraph 7.20 that the drilling  
8 of this well was, "designed to change the status quo and  
9 complete a fait accompli" has no credibility, nor is there any  
10 factual basis for Suriname's contention that Guyana's  
11 submission is inadmissible because Guyana did not act in good  
12 faith and lacks clean hands, to quote the Preliminary  
13 Objections at page 45.

14 Furthermore, and most important for our purposes, as I  
15 will explain, the real issue is not Guyana's authorization of  
16 exploratory drilling. The real issue before the Tribunal is  
17 Suriname's recourse to armed force where peaceful alternatives  
18 were readily available. And it is to this factual aspect of  
19 the case that I now turn.

20 The second factual aspect which I wish to emphasize  
21 concerns Suriname's ample notice and ample opportunity to  
22 pursue peaceful means of dispute settlement. Information on  
23 CGX's drilling plan was available in the public domain as early  
24 as August 10th, 1999, at which time a press release noted that,  
25 and this press release is at Annex 158 of Guyana's Memorial.

14:14:55 1 It noted that "in addition to Horseshoe West, we expect Eagle  
2 to be a drillable target." August of 1999 public notice.

3 Subsequent public notices from September 13th and  
4 November 1st indicated that Eagle was, "the best target," and  
5 that it would be drilled first. This is at Annex 158 of  
6 Guyana's Memorial.

7 Suriname's witness statements such as that of the Air  
8 Force Navy Commander Lieutenant-Colonel de Mees, indicate that  
9 officials had easy access to information and to quote de Mees's  
10 statement at Annex 17, paragraph 3, that there was easy access  
11 to information, "on CGX and its plans from the Internet."

12 There is also no explanation whatsoever as to how in  
13 the highly vigilant oil industry officials of Suriname's state  
14 oil company could possibly have been unaware of these drilling  
15 plans several months in advance. Suriname's own witness  
16 statements indicate that the Staatsolie Director, Mr. Eddie  
17 Jharap, was clearly aware of the locations of the planned  
18 drillings based on the CGX Web site. Once again I refer the  
19 Tribunal to the statement of Mr. de Mees, which is Annex 17 of  
20 Suriname's Rejoinder at paragraph six.

21 And it is noteworthy that Suriname does not include a  
22 witness statement from Mr. Jharap as to this advanced notice  
23 and advanced knowledge.

24 Despite this prior knowledge, it was not until 11 May,  
25 2000, that Suriname first protested against the CGX activities



14:16:37 1 in a Note Verbale that preemptively demanded an immediate  
2 termination of such activities. There was no prior  
3 consultation, no invitation to negotiate. There was only a  
4 demand, and it would soon become apparent that it was a demand  
5 backed by military force.

6 In response to these statements, on June 2nd, 2000,  
7 the day before the Surinamese Navy's forceful expulsion of the  
8 CGX rig, Guyana submitted a Note Verbale indicating that it  
9 remains favorably disposed to engage in a dialogue either at  
10 the bilateral or multilateral levels and invited Suriname to  
11 send a high-level delegation to Georgetown within 24 hours to  
12 commence dialogue. This Note Verbale is contained at Tab 38(b)  
13 of your folders.

14 The United States Embassy in Guyana noted this high  
15 profile diplomatic initiative in a cable. That cable is found  
16 at Annex 53 of Guyana's Memorial; it states as follows: "At a  
17 press conference the afternoon of June 2nd, Guyanese Foreign  
18 Minister Clement Rohee accompanied by Armed Forces Chief of  
19 Staff, Acting Chief of Police, and the Geology and Mines  
20 Commissioner announced that Guyana had invited a Surinamese  
21 delegation to visit Georgetown. Minister Rohee said he  
22 expected Suriname to agree to such a meeting."

23 Suriname's Rejoinder completely ignores this  
24 diplomatic overture. It states simply at paragraph 4.43 that  
25 "On June 2nd, President Wijdenbosch told President Jagdeo that

14:18:21 1 if Guyana did not halt the exploratory drilling, Suriname would  
2 be forced to take action to protect its territory." The sole  
3 basis, the sole basis for this assertion is the statement of  
4 Mr. Ali Mohammed, Permanent Secretary of the Surinamese Foreign  
5 Ministry, who merely states that he was told by someone else  
6 that the two Presidents had spoken by telephone on the morning  
7 of June 2nd, and that presumably President Wijdenbosch had  
8 warned President Jagdeo, though he admits in his statement  
9 that, "the details of this telephone conversation are unknown  
10 to me." This is at Suriname's Rejoinder, Annex 15.

11 Furthermore, based on the statement of Colonel Sedney,  
12 which is at Suriname's Rejoinder, Annex 21, at paragraph eight,  
13 he recalls his statement recalling what he had heard from  
14 others is the basis for Suriname's assertion that, "President  
15 Jagdeo ignored President Wijdenbosch's request." This is at  
16 Suriname's Rejoinder at paragraph 4.43.

17 Now, this is a very serious assertion to make against  
18 the President of Guyana, and such hearsay evidence, we submit,  
19 is clearly contradicted by the publicly available statement of  
20 Guyanese President Jagdeo. This statement, which is available  
21 at Tab 38(c) of your folders, is a statement that was made on  
22 June the 8th, just five days after the incident, at a media  
23 conference, and President Jagdeo explains his version of the  
24 events thus: "I received a telephone call from my colleague  
25 President Wijdenbosch. After a cordial exchange of views, we

14:20:17 1 agreed that the issue should be resolved urgently, and that our  
2 Foreign Ministers should be in immediate contact."

3 Guyana immediately dispatched a diplomatic note  
4 inviting Suriname to meet within 24 hours, and I've referred to  
5 that note previously.

6 Now, in contrast to Suriname's hearsay statements,  
7 President Jagdeo's direct statement should leave no doubt as to  
8 the nature of his communication with President Wijdenbosch on  
9 the morning of June 2nd, just about 24 hours before the CGX  
10 incident. It's also peculiar that Mr. Ali Mohammed would  
11 volunteer information in his statement about which he is  
12 unaware. He states in paragraph eight of his statement in  
13 Annex 15 of the Rejoinder, he says, "I'm not aware whether on 2  
14 June our Ambassador in Guyana received a Diplomatic Note from  
15 Guyana inviting us to send a delegation to Guyana within 24  
16 hours." Rather curious that a witness statement would testify  
17 as to a fact about which the witness is unaware.

18 In any event, there is no credibility to this  
19 statement. How could the Permanent Secretary of the Foreign  
20 Ministry have been oblivious to the June 2nd Guyanese Note  
21 Verbale in light of President Wijdenbosch's call to President  
22 Jagdeo and the press conference of the same day in Georgetown.  
23 There was ample notice and ample opportunity for peaceful means  
24 of dispute settlement had Suriname accepted Guyana's invitation  
25 to hold immediate high-level negotiations.

14:22:04 1           And in view of President Wijdenbosch's statements  
2    assuring President Jagdeo that he was willing to negotiate,  
3    Suriname's recourse to a military solution just a few hours  
4    later becomes all the more worthy of reproach.

5           Even if Suriname was of the view that immediate  
6    ministerial level negotiations with Guyana would be futile and  
7    that time was of the essence in preventing the exploratory  
8    drilling, it had the option on an urgent basis to request ITLOS  
9    to prescribe provisional measures preserving its rights. Such  
10   measures could have been prescribed expeditiously within a  
11   two-week period pending the establishment of an Annex VII  
12   Tribunal to resolve the maritime boundary dispute. Article  
13   290, paragraph five of the Convention, as the Members of the  
14   Tribunal will be well aware, was adopted specifically to ensure  
15   that provisional measures will be available promptly when  
16   needed.

17           Suriname provides no explanation as to why it did not  
18   pursue compulsory procedures under the Convention. It merely  
19   states conclusively in its Rejoinder at paragraph 4.28 that  
20   Guyana's suggestion is not realistic. That is the only  
21   explanation offered by Suriname, Guyana's suggestion is not  
22   realistic. But this is contradicted by Suriname's own evidence  
23   which demonstrates that the Surinamese Attorney General and  
24   Foreign Ministry were specifically consulted on legal aspects  
25   of the dispute. Mr. Ali Mohammed's statement indicates at

14:23:48 1 paragraph five that Suriname was aware of the intended drilling  
2 from at least early May 2000, and that--this is at paragraph  
3 nine--the procedure for the military operation had been  
4 discussed with the Attorney General, Mrs. Rosenblatt.  
5 Paragraph nine of Mr. Ali Mohammed's statement. The statements  
6 of both Lieutenant-Colonel de Mees and Colonel Sedney indicates  
7 that the military high command received a briefing from the  
8 head of the Department of International and Legal Affairs at  
9 the Ministry of Foreign Affairs, concerning Suriname's,  
10 "international legal position," and, "legal aspects of the  
11 matter." This is at Rejoinder Annex 17, paragraph six, and  
12 Rejoinder at Annex 21, paragraph four.

13           If Suriname seriously wanted to pursue peaceful but  
14 compulsory procedures, its Attorney General and Foreign Affairs  
15 Ministry had at least one month, at least one month--to request  
16 legally binding provisional measures against Guyana before  
17 ITLOS. Nowhere does Suriname explain why this was unrealistic  
18 or why it was never considered. Perhaps Suriname would have  
19 pursued this peaceful procedure if it believed that its  
20 10-degree maritime boundary would be vindicated by an Annex VII  
21 Tribunal. Perhaps Suriname's exceptional attempts to defeat  
22 the jurisdiction of this Tribunal itself speaks to why the  
23 military option would have been more attractive under the  
24 circumstances.

25           The problem clearly was not that Suriname had

14:25:31 1 inadequate notice or inadequate opportunity to pursue peaceful  
2 means of dispute settlement. Rather, the problem was that a  
3 show of force was more politically opportune. As set forth in  
4 Guyana's submissions, the decision to use force was made in the  
5 context of elections in Suriname. The statement of the  
6 Surinamese diplomat Dr. Werners, which is at Annex 48 of  
7 Guyana's Memorial, as well as U.S. Embassy cables, which are at  
8 Annex 52 of Guyana's Memorial, and Suriname's own witness  
9 statements, in particular that of Colonel Sedney, Rejoinder  
10 Annex 21 paragraphs five and eight, all of these statements  
11 confirm that the CGX operation has suddenly become, to quote  
12 Colonel Sedney, a "hot political issue" with--and this is from  
13 the U.S. Embassy cable--"a nationalist component that could  
14 turn it into a serious bilateral dispute."

15           In light of the evidence, we respectfully submit,  
16 there is no credibility to the contention that the decision to  
17 drill an exploratory well left Suriname with no choice but to  
18 dispatch vessels employed for maritime law enforcement to the  
19 area. It's also evident that the decision to use force was  
20 not, as Suriname asserts, a mere law enforcement measure or  
21 police action against a random ship on the seas. It was,  
22 rather, a measure of military coercion, planned and executed by  
23 the military high command at the behest of Suriname's President  
24 and aimed directly at Guyana.

25           Soon after Suriname's May 11 Note Verbale, the

14:27:20 1 military high command became intensively engaged in what they  
2 perceived as a threat to Suriname's sovereignty. I refer the  
3 Tribunal to Suriname's Rejoinder Annex 21, paragraph three,  
4 statement of Colonel Sedney and the statement of  
5 Lieutenant-Colonel de Mees, Annex 17, paragraph five.

6 In this context, the Minister of Defense, the  
7 Commander-in-Chief of the Armed Forces, the head of the  
8 intelligence service, were requested to attend meetings with  
9 President Wijdenbosch. This is indicated in the statement of  
10 Mr. Ali Mohammed, Rejoinder Annex 15, paragraph five. The  
11 entire military high command of Suriname was involved several  
12 weeks in advance in preparation for this military operation.

13 Suriname has chosen not to present the minutes of  
14 these meetings to the Tribunal, but the context and nature of  
15 Suriname's witness statements don't leave much doubt about its  
16 willingness to use force against Guyana. These statements  
17 indicate clearly that in a meeting with the Surinamese Defense  
18 Minister, President Wijdenbosch, and I quote, "gave the armed  
19 forces instructions to prepare for action," because  
20 infringements on, "Surinamese sovereignty would have to be  
21 prevented." This is reflected in the statement of Sedney,  
22 Rejoinder Annex 21 at paragraph eight, and also in the  
23 statement of Lieutenant-Colonel de Mees, Rejoinder Annex 17,  
24 paragraph 11. The armed forces were given instructions to  
25 prepare for action by the President.

14:29:08 1           In response, the Surinamese Commander-in-Chief  
2       convened a meeting of the armed forces command to discuss, "the  
3       strategic and operational aspects," of the mission. This is at  
4       Annex 21, paragraph 10 of the Rejoinder, statement of Sedney,  
5       all from Suriname's own statements. At this meeting, the armed  
6       forces command decided that two of Suriname's three naval  
7       vessels would be deployed and that they would be supplied with  
8       weapons. And the Commander of the Navy and Air Force states in  
9       his statement that the vessels left on their mission only  
10      after, "I satisfied myself of the fact that the vessels were  
11      equipped for the job." This is at Rejoinder Annex 17,  
12      paragraph 13.

13           His statement indicates furthermore that the  
14      operational commander of the mission, a certain Major Jones,  
15      whose statement is also included in Suriname's Annexes, was  
16      especially selected for the operation because of his combat  
17      experience, "leading operations during the interior war," and  
18      his authority with the men. This is the admission of  
19      Lieutenant-Colonel de Mees, Rejoinder Annex 17, paragraph 12.

20           Furthermore, in order to achieve an element of  
21      surprise, the Surinamese naval vessels agreed to keep a radio  
22      silence until arrival at the location. This was a direct  
23      statement from Captain Bhola, Rejoinder Annex 16, paragraph  
24      four.

25           In order to remove any doubt, any doubt about the



14:30:49 1 gravity of this operation, Lieutenant-Colonel de Mees told the  
2 naval forces, and this is from paragraph 13 of his statement at  
3 Rejoinder Annex 17, he indicated that, "the first shot would be  
4 the start of a war." These are clearly the hallmarks of a  
5 military operation and not a mere law enforcement operation  
6 against a random ship on the seas.

7           Shortly after midnight on June 3rd, 2000, a few hours  
8 after President Wijdenbosch had seemingly accepted President  
9 Jagdeo's invitation to high-level talks, two Surinamese Navy  
10 vessels arrived in the CGX concession area. The Surinamese Air  
11 Force had already buzzed the rig earlier that day. The  
12 gunboats established contact with the C.E. THORNTON, an oil rig  
13 belonging to Reading and Bate's that had been retained by CGX  
14 Energy, together with two service vessels, the GULF FLEET 55  
15 and the TERRY TIDE. There is completely consistency--complete  
16 consistency--between Guyana's and Suriname's witnesses as to  
17 the statements made by the Navy gunboats to these vessels. The  
18 Navy repeatedly issued what the Rig Supervisor Edward  
19 Netterville, whose statement is at Tab 38(d) of your folders,  
20 what Edward Netterville considered to be a threat of force.  
21 The threat was that if the rig did not leave within 12 hours,  
22 "the consequences will be yours." This is paragraph six of  
23 Mr. Netterville's statement to which I will return shortly in  
24 greater detail.

25           Graham Barber, whose statement is at Tab 38(e) of your

14:32:51 1 folder, who was Reading and Bate's area manager aboard the rig  
2 heard the exact same threat. Suriname's witness statements  
3 also consistently declare that the Operation Commander, Major  
4 Jones, who was specifically selected for this mission because  
5 of his combat experience, as indicated earlier, that he stated  
6 that if the rig did not leave within 12 hours, the consequences  
7 will be theirs. This is from the Bhola statement at Rejoinder  
8 Annex 16, the Galong statement, Rejoinder Annex 19, the Jones  
9 statement, Rejoinder Annex 20. All of them are entirely  
10 consistent on the utterance of this statement.

11           The sole difference between Guyana and Suriname in  
12 this regard is the interpretation of this settled fact.  
13 Suriname, at paragraph 4.53 of its Rejoinder, characterizes  
14 Major Jones's statements as, "minimal persuasion," or  
15 encouragement in other places in his pleadings, and argues at  
16 paragraph 4.51 of its Rejoinder that the meaning of the  
17 warning given to the master of the drilling rig that the  
18 consequences will be yours is exaggerated by Guyana. This  
19 warning did not constitute a threat to use force.

20           Now, the question before the Tribunal is whether there  
21 was good reason, whether there was good reason--to consider  
22 this statement as to the consequences as a threat of force  
23 rather than mere minimal persuasion as suggested by Suriname.  
24 Guyana bases its factual assertions on the affidavits of  
25 Messrs. Netterville and Barber. Unlike Suriname's military

14:34:41 1 officers, Messrs. Netterville and Barber are disinterested  
2 witnesses. They are not employees of the Guyanese government.  
3 They are not members of the Guyanese armed forces. At the  
4 relevant time, Mr. Netterville had 43 years of experience in  
5 the marine and oil industry, having served aboard oil rigs  
6 throughout the world. This is indicated in Netterville's  
7 statement at paragraph two.

8 Similarly, Mr. Barber had 28 years of experience  
9 aboard oil rigs, also indicated at paragraph two of his  
10 statement. Their disinterested testimony as to whether there  
11 was good reason to consider the Navy's statement as a threat of  
12 force should be given considerably more weight, we submit, than  
13 the statement of the Surinamese military officials who actually  
14 were engaged in the military operation and made that threat.

15 Mr. Netterville explains in his own words how he  
16 interpreted the Surinamese Navy's statements. I turn you to  
17 his statement, which as I explain is in Tab 38(d) of your  
18 folder. He says as follows. "I understood this to mean that  
19 if the C. E. THORNTON and its support vessels did not leave the  
20 area within 12 years, the gunboats would be unconstrained to  
21 use armed force against the rig and its service vessels. I  
22 took the Surinamese Navy's threat seriously, as did the other  
23 persons in authority aboard the rig. Faced with the prospect  
24 of military force being used against the rig and its service  
25 vessels, we determined that for the safety of the vessels and

14:36:22 1 crew, we had no alternative other than complying with  
2 Suriname's order."

3 He concludes that during his 43 years aboard oil rigs,  
4 "I have never experienced, nor heard of any similar instance in  
5 which a rig has been evicted from its work site by the threat  
6 of armed force."

7 Similarly, the statement of Graham Barber states that  
8 "The Suriname Navy repeated its threat several times and that  
9 during this exchange, many among the crew of the C.E. THORNTON  
10 were visibly nervous. I particularly recall the rig's radio  
11 operator pacing in a highly agitated state." This, once again,  
12 is at Tab 38(e) of your folder. He also concludes that, "Based  
13 upon my 30 years of experience in the industry, I have never  
14 experienced, nor even heard of, a drilling rig being expelled  
15 while conducting exploratory activities by the threat of armed  
16 force."

17 Suriname does not rebut these two highly credible  
18 statements as to whether it was reasonable to perceive the  
19 Navy's conduct and statement as a threat. It simply maintains  
20 that the affidavits of Messrs. Netterville and Barber, "should  
21 be read with much caution." This is at paragraph 4.55 of the  
22 Rejoinder. And the basis for their claim that these statements  
23 should be read with caution is because their recollection of  
24 certain irrelevant details differed from that of Suriname's  
25 witnesses. In particular, Suriname's military officials claim

14:38:11 1 that after the rig complied with its threats, it was given 24  
2 rather than 12 hours to leave. Mr. Netterville states at  
3 paragraph nine of his statement that, "The need to meet  
4 Suriname's 12-hour deadline required the C.E. THORNTON to  
5 travel with its legs extended 278 feet into the water. This  
6 was unusual and dangerous and placed the rig and its crew at  
7 risk."

8 But Suriname, in claiming that Mr. Netterville's  
9 statement is inaccurate because of it speaks of 12 rather than  
10 24 hours, disregards the contradictory statement of its own  
11 President--of its own President--at the July 2000 CARICOM  
12 conference, made in the immediate aftermath of the expulsion in  
13 2000. And the statement of the President, which is at Annex 5  
14 of Suriname's Counter-Memorial, states that the Surinamese Navy  
15 "allowed the rig 12 hours to leave the area, which is what  
16 happened." So, one has to reconcile Suriname's own witness  
17 statements from their military officials with that of President  
18 Wijdenbosch.

19 Despite the clear ultimatum of the Navy, which  
20 Suriname does not dispute, and despite the plain and ordinary  
21 meaning of the statement in a coercive context and despite the  
22 statements of Guyana's highly credible witnesses as to the  
23 reasonable apprehension of imminent lethal force, Suriname  
24 insists there was no threat of force involved in this incident.  
25 Suriname's main contention in this regard is that the boats

14:39:57 1 "could not have used force to expel the rig. Those two small  
2 fiberglass patrol boats did not display any armament and, in  
3 fact, had none. The crews only had personal weapons, and each  
4 boat carried one automatic rifle." This is at paragraph 4.45  
5 of the Rejoinder.

6 Later on, at paragraph 4.52 of the Rejoinder, the  
7 passing reference to the so-called automatic rifle is dropped  
8 altogether from the pleadings. There is simply a statement  
9 that the Surinamese patrol--can we go on to the next slide,  
10 please. The statement is that the Surinamese patrol boats used  
11 for the operation did not even have the ability to use force.  
12 "Their crew carried only light personal weapons." Only light  
13 personal weapons.

14 Now, this assertion is clearly contradicted by  
15 Suriname's own witness statements. The statement of Captain  
16 Bhola, who was the commander of the P02 patrol boats states at  
17 paragraph two, "The vessel was supplied with personal weapons  
18 for the crew and a group weapon MAG." I will return to that  
19 designation shortly.

20 The statement of Captain Galong, who was commander of  
21 the other patrol boat, P03, provides further clues as to the  
22 nature of these supposedly innocuous light personal weapons.  
23 He states that "the crew carried only personal weapons and a  
24 group weapon, machine gun, was on board, a MAG 7.62-millimeter  
25 machine gun."

14:41:54 1            Now, this is the first clue that what are being called  
2 light personal weapons are actually 7.62 millimeter machine  
3 guns. I took the liberty of consulting the web site of the  
4 so-called mag weapons manufacturer, which is Fabrique National  
5 de Herstal of Belgium, and it's apparent from this quick search  
6 that the manufacturer would be disappointed by the description  
7 of his best selling MAG 7.62-millimeter machine gun as a mere  
8 light personal weapon that can do no serious harm.

9            If you turn to Tab 38(f) of your folder, you will see  
10 the manufacturer's claim that the FN Herstal MAG "has  
11 continuously proven itself in combat operations and is widely  
12 recognized as the world's most reliable and versatile general  
13 purpose machine gun." It indicates furthermore that this  
14 machine gun is "optimal for intensive supporting fire, fire  
15 against light fortifications and buildings, long-range  
16 interdiction aerial fire and that the 7.62-millimeter NATO  
17 rounds are accurate effective up to 2000 meters, provide  
18 excellent penetration, and that armor piercing rounds are  
19 available." This is all from the web site of the manufacturer.

20            To complete everything, there is also an indication  
21 that "the cyclic rate of fire is 650 to 1000 rounds per  
22 minute."

23            A quick Internet search also shows that this combat  
24 weapon was used, among other places, in the Falklands-Malvinas  
25 wars and the 1999 Gulf War and the 2003 invasion of Iraq.

14:43:41 1            Now, the depictions by the manufacturer of what  
2            Suriname calls a light weapon are also instructive. And with  
3            your permission, I reproduced one of them here, and of course  
4            it may be presumed that the mounted version of this weapon,  
5            which is what Suriname had on its Navy boats, is even more  
6            powerful and menacing. The case, I suppose, of the smoking  
7            gun, but in this case without any smoke.

8            So, we see here what Suriname refers to as an  
9            innocuous light personal weapon is a serious combat weapon used  
10           in serious military operations by advanced armies and clearly a  
11           weapon with the potential to inflict lethal harm.

12           There is no requirement, Mr. President, for Suriname  
13           to deploy an aircraft carrier or frigate or destroyer to sink  
14           the CGX rig with a submarine torpedo. The 7.62-millimeter  
15           machine guns were the heaviest weapons available to Suriname.  
16           This was indicated by Captain Galong's statement, Rejoinder  
17           Annex 19, at paragraph two, where he says that the Navy boats  
18           were not yet armed with grenade launchers, and it's very clear  
19           that these formidable machine guns had the desired effect of  
20           threatening the CGX crew with fear of imminent lethal harm.

21           It is also remarkable that Suriname does not explain  
22           anywhere in its pleadings what this threat actually meant as  
23           opposed to what it could hypothetically have meant in a  
24           make-believe world. In one of the high points of Suriname's  
25           rather imaginative pleadings, there is an assertion, this is at



14:45:56 1 paragraph 4.53 of the Rejoinder, the assertion is that the  
2 consequences alluded to by Captain Jones "could have been of  
3 various natures, including a further diplomatic protest note,  
4 including invocation of state responsibility." The Tribunal,  
5 Mr. President, is asked to believe that the Navy gunboats were  
6 threatening the CGX crew with a Note Verbale.

7 All of the witness statement, including that of  
8 Captain Bhola, Captain Galong and Major Jones are silent as to  
9 what this threat was ultimately meant to convey or how it would  
10 be reasonably perceived by those against whom it was made.  
11 Statements from the highest ranking military commanders like  
12 Lieutenant-Colonel de Mees indicate that if the rig refused to  
13 leave, there would be a request for further instructions but  
14 not that use of military force was ruled out. At the statement  
15 of de Mees, paragraph 11, Rejoinder Annex 17, we find the  
16 following statement. "If the platform would comply with this  
17 order right away, then the mission was accomplished. If,  
18 however, the platform would not comply with this order, the  
19 operational commander should ask headquarters, the  
20 Commander-in-Chief, for further instructions."

21 It is inconceivable, we respectfully submit, that  
22 after a month of planning by the highest levels of the armed  
23 forces in Suriname, that Suriname did not have a preexisting  
24 plan to use force if the rig refused to leave. The fact that  
25 this would have required final approval from the

14:47:37 1 Commander-in-Chief or the President does not change the  
2 responsibility of Suriname. On the contrary, it demonstrates  
3 that the policy of resorting to force was deliberate and  
4 premeditated.

5 After daybreak on June 3rd, Guyana responded to  
6 Suriname's actions. First, Guyana clearly considered this to  
7 be a hostile and coercive act against the Guyanese state.

8 Second, Guyana did not respond by threatening force,  
9 but continued to call for peaceful dispute settlement. The  
10 June 3rd public statement which is at--referred at paragraph  
11 10.18 of Guyana's Memorial noted the, "serious damage  
12 Suriname's intimidatory acts had inflicted on good neighborly  
13 relations, but that Guyana stands ready to engage the  
14 Government of Suriname in a frank exchange of views and in a  
15 spirit of good neighborliness, urges the Government of Suriname  
16 to desist from committing further hostile activities."

17 Unfortunately, Suriname's hostile actions did not end  
18 there. Again in the midst of ongoing negotiations after the  
19 CGX incident, Suriname sent a series of threatening notes to  
20 Guyana's other licensees. These are set forth in our  
21 Memorandum at s paragraph 10.20 and 10.21. For example, on  
22 August 8, 2000, a letter from Staatsolie's Director, Mr. Eddie  
23 Jharap to Esso Exploration and Production Guyana Limited at  
24 Annex 173 of the Memorial states that, "You may have taken  
25 notice of the developments with respect to the proposed

14:49:24 1 drilling activities of CGX last June," in a clear reference, to  
2 Suriname's willingness to use force against Guyana's licensees.

3           After receiving a similar warning from Suriname, Maxus  
4 Oil Company, another licensee, indicated to Guyana's Geology  
5 and Mines Commission on November 10, 2000, that, "the effect of  
6 the recent Suriname action on CGX precluded it from attempting  
7 to drill."

8           Suriname dismisses these threats at paragraph 7.15 of  
9 its Counter-Memorial as "informative reminders," but there can  
10 be no doubt as to the chilling effect of the CGX incident and  
11 how these so-called informative reminders would be reasonably  
12 perceived by Guyana's other licensees. Mr. Netterville states  
13 at paragraph 11 of his statement, "There would be great  
14 difficulty in persuading any crew to return to the disputed  
15 maritime area due to the aggressive nature of the Surinamese  
16 threat." Similarly, Mr. Barber states at paragraph seven of  
17 his statement, "I would not return to the disputed area unless  
18 there was an agreement guaranteeing that Suriname would not  
19 threaten us again with military force. I believe that no other  
20 marine contractor would operate in a disputed maritime region  
21 between Guyana and Suriname, unless such an agreement was in  
22 place."

23           And should any doubt remain as to Suriname's hostile  
24 intentions, its punitive policy against Guyana is demonstrated  
25 by the fact that it even pressured Guyana's licensees not to

14:51:02 1 conduct exploratory activities in areas not claimed by  
2 Suriname.

3 I turn the Tribunal's attention to Annex 174 of  
4 Guyana's Memorial, which contains a Staatsolie newsletter of  
5 June 2004, which indicates that, and I quote, "In the week  
6 prior to the signing of the production sharing contract with  
7 Staatsolie, Repsol YPF gave Staatsolie a written guarantee that  
8 they would not conduct any activities in the Georgetown Block."

9 Now, Repsol YPF is also Guyana's licensee in the  
10 Georgetown Block. And it would be noted that most of the  
11 Georgetown Block lies outside of Suriname's 10-degree line.

12 In effect, Suriname's recourse to military force has  
13 effectively terminated all offshore exploration and denied  
14 Guyana the much needed benefits of the development of its  
15 hydrocarbon resources.

16 In conclusion on the facts, as a direct result of  
17 Suriname's recourse to force, Guyana has suffered considerable  
18 damages, including, but not limited, to the loss of much needed  
19 licensing revenues and foreign investment in the development of  
20 its offshore hydrocarbon resources. As set forth in Guyana's  
21 Memorial at paragraphs 10.24 to 10.33, these damages are in an  
22 amount of no less than U.S. \$33,851,776.

23 With the Tribunal's permission, I will turn to the  
24 applicable law. With respect to the applicable law, the  
25 Members of the Tribunal are well aware that the Convention's

14:52:59 1 legislative history indicates that the compulsory procedures  
2 under Part XV were painstakingly negotiated and adopted. They  
3 constitute an essential pillar of the Convention, and were  
4 intended precisely to provide an effective peaceful alternative  
5 to military coercion. The ready availability of these  
6 procedures perhaps explains why, as I shall discuss, the  
7 obligation of peaceful dispute settlement under Article 279 of  
8 the Convention, is even more exacting under the Convention than  
9 it is under the U.N. Charter. Article 279 of the Convention  
10 states that States Parties shall settle any dispute between  
11 them concerning the interpretation or application of this  
12 Convention by peaceful means in accordance with Article 2(3) of  
13 the charter of the U.N., and to this end shall seek a solution  
14 by the means indicated in Article 33(1) of the charter.

15           Now, it's self-evident that the claim concerning use  
16 of force against Guyana's licensees arises directly from the  
17 maritime boundary dispute between Guyana and Suriname, and  
18 therefore that it concerns the interpretation or application of  
19 the Convention.

20           As noted by Professor Bruno Simma, now of course judge  
21 at the International Court of Justice, as indicated by the  
22 Simma Commentary on the U.N. Charter and this is at page 587,  
23 "The text of Article 33(1) of the charter states even more  
24 clearly than Article 2(3) that the parties are subject to a  
25 legally binding obligation to seek a peaceful solution. The

14:54:38 1 text makes clear that mere passivity does not meet the  
2 requirements of Article 33(1). The parties are explicitly  
3 enjoined to deploy active efforts with a view to settling the  
4 dispute existing between them. Thus, it becomes clear," the  
5 Commentary concludes, "that the obligation of peaceful  
6 settlement is not subsumed by the prohibition of the use of  
7 force, but possesses a specific substance of its own."

8           Now, the reference in Article 279 of the Convention to  
9 Article 33(1) of the charter is only to the means referred in  
10 the provision, such as negotiation, inquiry, mediation,  
11 conciliation, and arbitration, and not to the provision as a  
12 whole. As noted by the Nordquist commentary on UNCLOS at page  
13 18, paragraph 279.3, this was done in order to avoid the  
14 restriction in that provision, meaning to say Article 33(1),  
15 that only disputes the continuance of which is likely to  
16 endanger the maintenance of peace and security are subject to  
17 subject to settlement. "Under Article 279 of the Convention,  
18 any dispute concerning the interpretation or application of the  
19 Convention should be settled by peaceful means, whether or not  
20 it endangers peace." Article 279, therefore, envisages an even  
21 more exacting obligation than Article 33(1) of the U.N.  
22 charter.

23           The 1970 Declaration on Principles of International  
24 Law Concerning Friendly Relations and Cooperation Among  
25 States--that's a mouthful--General Assembly Resolution 2625,

14:56:22 1 indicates that in principle the parties to a dispute are under  
2 an obligation to exhaust the means referred to in Article  
3 33(1), and the relevant provision of the declaration states  
4 that "the parties to a dispute have the duty in the event of  
5 failure to reach a solution by any one of the above peaceful  
6 means to continue to seek a settlement of the dispute by other  
7 peaceful means agreed upon by them."

8           Furthermore, the Manila declaration on the peaceful  
9 settlement of international disputes, General Assembly  
10 Resolution 37/10 of 15 November 1982, states in Article VII  
11 that, "Neither the existence of a dispute nor the failure of a  
12 procedure of peaceful settlement of disputes shall permit the  
13 use of force or threat of force by any of the states' parties  
14 to the dispute."

15           Against these exacting standards, there can be no  
16 doubt that Suriname did not actively pursue peaceful dispute  
17 settlement procedures that were reasonably available, and that  
18 even if it had resorted to such procedures and failed, which it  
19 did not, that it was still not justified in resorting to armed  
20 force.

21           Furthermore, Guyana respectfully submits that because  
22 Article 279 is, once again, to quote the Simma Commentary, "not  
23 subsumed by the prohibition of the use of force, but possesses  
24 a specific substance of its own" that the Tribunal need not  
25 conclude that Suriname's conduct amounted to use of force in

14:58:05 1 order to find that it has violated its obligation to settle  
2 this dispute by peaceful means.

3           Now, Article 279 also encompasses the general  
4 principle of international law as embodied in Article 2(4) of  
5 the U.N. Charter, in accordance with which states should not  
6 resort to the use or threat of the use of force as a way of  
7 settling their disputes. Article 2(4) of the U.N. Charter  
8 provides that all members shall refrain in their international  
9 relations from the threat or use of force against the  
10 territorial integrity or political independence of any state or  
11 in any other manner inconsistent with the purposes of the U.N.

12           The Declaration on Friendly Relations interprets  
13 Article 2(4) to encompass the, "duty to refrain from the threat  
14 or use of force to violate the existing international  
15 boundaries of another state or as a means of solving  
16 international disputes, including territorial disputes and  
17 problems concerning frontiers of states." Reference is made to  
18 paragraph 10.5 of Guyana's Memorial where this aspect of the  
19 Declaration is cited.

20           In the Nicaragua case, the International Court of  
21 Justice held that this declaration reflects *opinio juris* as to  
22 customary international law on use of force, and specifically  
23 referred to the foregoing provision on frontier incidents as a  
24 prohibited use of force. This is recognized at paragraph 191  
25 of the merits judgment of the Nicaragua case.



14:59:45 1           The Court has further recognized paragraph 190 that  
2 this prohibition is part of jus cogens.

3           Article 301 of UNCLOS incorporates this general  
4 principle in terms of the peaceful uses of the seas and  
5 provides as follows: "In exercising their rights and  
6 performing their duties under this Convention, states parties  
7 shall refrain from any threat or use of force--any threat or  
8 use of force--against the territorial integrity or political  
9 independence of any state or in any other manner inconsistent  
10 with the principles of international law embodied in the U.N.  
11 Charter."

12           Now, it should be noted that unlike Article 2(4) of  
13 the Charter, Article 301 of the UNCLOS prevents not merely the  
14 threat or use of force as stipulated under Article 2(4) of the  
15 Charter, but that it prohibits any threat or use of force. So,  
16 accordingly, its terms, once again, are even more exacting than  
17 the already strict prohibition contained in Article 2(4) of the  
18 Charter.

19           It should also be noted that in its Rejoinder,  
20 Suriname--this is at paragraph 4.6 of the  
21 Rejoinder--acknowledges that "under the U.N. Charter and  
22 customary international law, the use of force is prohibited  
23 except in self-defense or as authorized by the Security Council  
24 of the U.N., and parties are required to settle their  
25 international disputes by peaceful means." Accordingly, this

15:01:16 1 is an admission that if Suriname's recourse to force against  
2 Guyana's licensee falls within Article 2(4) of the U.N. Charter  
3 as a threat or use of force, Suriname would be acting in  
4 violation of that provision, unless it could establish that it  
5 was acting in self-defense. Since Article 51 conditions  
6 self-defense on an armed attack, there is no doubt that this  
7 justification would not apply to the CGX incident.

8           Now, the plain language of Article of Article 2(4) is  
9 not confined to actual use of force but extends to a mere  
10 threat of force. Ian Brownlie explains in his book  
11 "International Law and the Use of Force by States" published in  
12 1963 at page 364, that, "A threat of force consists in an  
13 express or implied promise by a government of a resort to force  
14 conditional on nonacceptance of certain demands of that  
15 government."

16           Now, the Nuclear Weapons Advisory Opinion of the  
17 International Court of Justice further clarifies that, and this  
18 is at paragraph 47 the opinion, "If the envisaged use of force  
19 itself unlawful, the stated readiness to use it would be a  
20 threat prohibited under Article 2, paragraph four. Thus, it  
21 would be illegal for a state to threaten force to secure  
22 territory from another state, or to cause it to follow or not  
23 follow certain political or economic paths."

24           "The notions of threat and use of force under Article  
25 2(4) of the Charter stand together in the sense that if the use

15:03:04 1 of force itself in a given case is illegal, for whatever  
2 reason, the threat to use such force will likewise be illegal.  
3 In short, if it is to be lawful, the declared readiness of a  
4 state to use force must be a use of force that is in conformity  
5 with the Charter."

6 Now, as to the scope of the term force, Article 2(4)  
7 prohibits not only aggression or large-scaled armed attacks,  
8 but use of force in general is prohibited. In the Nicaragua  
9 case at paragraph 191, the International Court of Justice held  
10 that it is necessary to distinguish between what the Court  
11 calls the most grave forms of the use of force, those  
12 constituting an armed attack within the meaning of Article 51,  
13 from other "less grave forms." Clearly, use of force does not  
14 have to amount to an armed attack or act of aggression in order  
15 to fall within the purview of Article 2(4). In this respect,  
16 Suriname's argument at its Rejoinder at paragraph 4.63 that  
17 Guyana is "expanding the scope of the jus ad bellum to a point  
18 of absurdity," is completely misleading because force is a much  
19 broader concept in international law than that encompassed by  
20 jus ad bellum. In the Nicaragua case, furthermore, the Court  
21 specifically referred to the prohibition on use of force in the  
22 Declaration on Friendly Relations with respect to territorial  
23 disputes and problems concerning frontiers of states as falling  
24 within the less grave forms of the use of force contemplated by  
25 Article 2(4) of the Charter.

15:04:51 1           Furthermore, the Court distinguished between an armed  
2    attack amounting to aggression and a mere frontier incident.  
3    The Court uses the term "a mere frontier incident," implying  
4    that the latter also falls within the scope of Article 2(4)'s  
5    broad prohibition against use of force.

6           Suriname relies on the Fisheries Jurisdiction Case to  
7    argue that what it describes as law enforcement measures do not  
8    qualify as armed force, but this authority is wholly irrelevant  
9    to the present case.

10           First, that case concerned enforcement measures  
11    against fishing vessels on the high seas and not the use of  
12    force directly arising from a maritime dispute between two  
13    sovereign states.

14           Second, that case solely concerned interpretation of  
15    Canada's reservation to the Court's jurisdiction with respect  
16    to disputes arising out of or concerning the conservation and  
17    management measures taken by Canada and the enforcement of such  
18    measures.

19           And paragraph 62 of that judgment in which the Court  
20    declines to exercise jurisdiction finds that the scope of the  
21    awards of the reservation excludes not only disputes whose  
22    immediate subject matter is the measures in question and their  
23    enforcement, but also those concerning such measures and more  
24    generally those having their origin in those measures.

25           So, it's very clear that this precedent is irrelevant

15:06:26 1 because the Court was not purporting to define the meaning of  
2 the term armed force, but was simply attempting to define the  
3 scope of Canada's reservation to the Court's jurisdiction. And  
4 as we know very well from the jurisprudence of the Court, the  
5 Court will always interpret such reservations strictly in order  
6 to give effect to the intention of the state involved.

7           And to the extent that the Court's jurisprudence needs  
8 to be ascertained, the earlier Nicaragua case clearly indicates  
9 that border incidents qualify as use of armed force.

10           Against the well established and strict prohibition  
11 against threats of force, Suriname's conduct, even if it is  
12 merely a border incident, constitutes a violation of  
13 international law. This is an additional basis for liability  
14 over and above Suriname's failure to affirmatively pursue  
15 peaceful dispute settlement procedures.

16           Now, Suriname's response to Guyana's case, we  
17 respectfully submit, is wholly inadequate. First, I will  
18 address the contention that Guyana's submission on use of  
19 force--I will address first the contention that our submission  
20 on use of force is inadmissible because Guyana lacks clean  
21 hands. As set forth previously, there is no factual basis  
22 whatsoever for this claim. Furthermore, there is not a single  
23 persuasive authority for the proposition that the clean-hands  
24 doctrine is a bar to admissibility. Suriname's Rejoinder  
25 indicates at paragraph 2.102 that, "The strongest affirmation

15:08:01 1 of the clean-hands doctrine is found in a dissenting opinion of  
2 Judge Schwebel in the Nicaragua case." It concludes at  
3 paragraph 2.106 that "the Court does not reject the clean-hands  
4 doctrine and, indeed, maintains a position of openness towards  
5 future invocation of the doctrine."

6           This is hardly a solid basis for its legal position.  
7 An examination of Judge Schwebel's own views, furthermore,  
8 makes clear based on a quotation from Halsbury's laws of  
9 England and other similar principles of Roman law, that clean  
10 hands goes to denying equitable relief to a plaintiff and not  
11 to admissibility. And this is at Suriname's Rejoinder, Annex  
12 35, the article by the dissenting opinion of Judge Schwebel in  
13 the Nicaragua case. These arguments on admissibility are  
14 recycled as an argument in the merits in Suriname's Rejoinder  
15 where it maintains that its use of force was a lawful  
16 countermeasure because Guyana acted unlawfully in authorizing  
17 exploratory drilling. This position is set forth in paragraphs  
18 4.69 to 4.73 of the Rejoinder. Suriname contends that should  
19 the Tribunal find that Suriname's acts were contrary to  
20 international obligations owed to Guyana, those actions were  
21 lawful countermeasures in response to Guyana's prior unlawful  
22 act of attempting to authorize unilaterally exploring drilling  
23 in a disputed area of the continental shelf. Paragraph 4.69.

24           And it is, indeed, remarkable--remarkable--that  
25 Suriname relies on the International Law Commission's Draft

15:09:48 1 Articles on State Responsibility in support of this position.  
2 Suriname refers to Article 22 of the ILC draft which addresses  
3 countermeasures, but completely disregards Article 50 of the  
4 same draft on "obligations not affected by countermeasures."  
5 Article 50, paragraph 1(a), specifically provides that  
6 "countermeasures shall not affect the obligation to refrain  
7 from the threat or use of force as embodied in the Charter of  
8 the U.N." Article 50, paragraph 2(a), further stipulates that a  
9 state taking countermeasures "is not relieved from fulfilling  
10 its obligations under any dispute-settlement procedure  
11 applicable between it and the responsible state."

12 By claiming, as it does, that it was justified in  
13 using force as a countermeasure, Suriname is, in effect,  
14 admitting its responsibility for an internationally wrongful  
15 act. In any event, notwithstanding the illegality of such  
16 countermeasures, there is no basis for the assertion that  
17 Guyana acted unlawfully in the first place. In support of this  
18 proposition, Suriname relies on the interpretation of Article  
19 83(3) of the Convention by Professors Churchill and Lowe in  
20 their Third Edition of "Laws of the Sea" published in 1999.  
21 This is in Suriname's Rejoinder, paragraph 4.16, note 525.

22 These distinguished commentators state that the  
23 obligation to make every effort to enter into provisional  
24 arrangements of a practical nature, which my esteemed colleague  
25 Sir Shridath will further address, and not to jeopardize or

15:11:42 1 hamper the reaching of a final agreement under Article 83(3),  
2 suggests that neither party should take any action in the area  
3 subject to delimitation, such as engaging in exploratory  
4 drilling for oil or gas which might be regarded as prejudicial  
5 by the other party.

6           But Suriname fails to mention that in support of this  
7 statement in the Churchill and Lowe book, the authors cite  
8 another book by Churchill and Ulfstein, "Marine Management in  
9 Disputed Areas, the case of the Barents Sea" published in 1992,  
10 which appears as a footnote in the portion of the Churchill  
11 Lowe book that Suriname has cited. And the authors in that  
12 work state as follows: "It can be argued that to drill in a  
13 disputed area of continental shelf subject to limitation  
14 negotiations is a breach of good faith because it is an action  
15 which may be regarded as trying to prejudice the outcome of the  
16 negotiation." This is at pages 85 to 86 of the Churchill and  
17 Ulfstein book.

18           They go on to observe, that "if there is such a  
19 principle, there is some difficulty in ascertaining its  
20 temporal application. At some stage, if agreement cannot be  
21 reached," the authors write, "the obligation to negotiate must  
22 lapse. This would imply that the obligation not to drill in a  
23 disputed area would also lapse." This is at page 86. This  
24 describes exactly the situation in regard to the  
25 Guyana-Suriname maritime boundary in the continental shelf. In



15:13:23 1 view of its history, with which the Tribunal is now familiar,  
2 it is unreasonable to suggest that Suriname could bar Guyana  
3 from engaging in exploratory drilling well within an  
4 equidistance line. To accept Suriname's approach would amount  
5 to a right of indefinite veto against Guyana.

6 Suriname further contends that the joining by Guyana  
7 of questions of state responsibility and territorial title is  
8 highly irregular and inappropriate. In making this assertion,  
9 Suriname disregards the elementary rule set forth in Article I  
10 of the ILC draft articles that every internationally wrongful  
11 act of a state entails the international responsibility of that  
12 state. It's very clear that Article 279 imposes an obligation  
13 on states' parties that is independent of the laws applicable  
14 to maritime boundary delimitation and other obligations under  
15 the Convention. To argue otherwise would mean that a boundary  
16 dispute, ipso facto, justifies recourse to armed force.

17 In this respect, Suriname's reliance on the  
18 Cameroon-Nigeria case is misplaced. In that case, the Court  
19 did not enunciate a general principle that state responsibility  
20 is irrelevant in boundary disputes, as Suriname would suggest,  
21 but limited itself solely to the relief sought by Cameroon. It  
22 held at paragraph 319 that in the circumstances of the case,  
23 "in the circumstances of the case, by the very fact of the  
24 present judgment and the evacuation of the Cameroonian  
25 territory occupied by Nigeria, the injuries suffered by

15:15:16 1 Cameroon by reason of the occupation of its territory, will, in  
2 all events have been sufficiently addressed."

3           Furthermore, Judge Higgins which Suriname invokes  
4 elsewhere for the proposition that you cannot join state  
5 responsibility to a territorial dispute, Judge Higgins  
6 clarifies exactly why the Court didn't make any findings on  
7 state responsibility for either Cameroon or Nigeria. The  
8 answer is very simple: Lack of evidence. Lack of evidence,  
9 and nothing more. And I quote here from Rosalyn Higgins'  
10 article "Issues of State Responsibility Before the ICJ," which  
11 is in that book entitled, "Issues of State Responsibility  
12 Before International Judicial Institutions," edited by Malgosia  
13 Fitzmaurice and Dan Sarooshi. This is the Clifford Chance  
14 lectures, Volume 7 published in 2004. At page nine of that  
15 book, Judge Higgins states as follows: "For the Court it was  
16 clear that title to Bakassi belonged to Cameroon, but the  
17 evidence presented by Cameroon did not allow the Court to form  
18 a clear and precise picture of the sequence of events on the  
19 ground in Bakassi. Accordingly, the Court rejected Cameroon's  
20 claims on responsibility. The responsibility counterclaims by  
21 Nigeria in relation to Bakassi were rejected for comparable  
22 reasons."

23           Thus, this case does not stand for the proposition  
24 that Suriname makes. Moreover, in contrast to Cameroon versus  
25 Nigeria the facts in the present case provide a very clear and

15:16:57 1 very precise picture of the June 3rd incident, and are  
2 essentially uncontested by Suriname.

3           In conclusion, Mr. President, distinguished Members of  
4 the Tribunal, it is our respectful submission that by resorting  
5 to threats of force against Guyana in relation to a maritime  
6 boundary dispute, Suriname has acted in violation of Article  
7 279 of the Convention. It has violated its affirmative duty to  
8 pursue and exhaust all available means of peaceful dispute  
9 settlement.

10           Additionally, it has violated its obligation to  
11 refrain from any threat or use of force, including in relation  
12 to boundary disputes. Suriname's conduct has undermined  
13 peaceful and neighborly relations with Guyana and directly  
14 resulted in significant damages to Guyana's economic  
15 development. It should not be lost on all concerned that the  
16 exercise of jurisdiction by this Tribunal is itself a powerful  
17 vindication of the principle of peaceful dispute settlement,  
18 and it is in that spirit that Guyana has initiated these  
19 proceedings.

20           The great lengths that Suriname has gone to in  
21 opposing the Tribunal's jurisdiction in certain respects is the  
22 flip side of its earlier willingness to use force. And the  
23 significance of a finding that Suriname's threats of force are  
24 unlawful must be considered not only in relation to past  
25 events, but also as a preventive measure since the prospect of

15:19:00 1 such force is a continuing concern in future relations between  
2 two neighboring states. It is because the Tribunal itself is a  
3 viable alternative to military coercion, we respectfully  
4 submit, that it should now uphold the elementary prohibition  
5 against force in resolving maritime boundary disputes.

6 I thank the Tribunal for its indulgence. That  
7 concludes my presentation.

8 PRESIDENT NELSON: Thank you, Dr. Akhavan. Just  
9 before you leave, I was a bit concerned with a statement you  
10 made with citing a footnote in Churchill and Lowe, "obligations  
11 to negotiate must lapse." That's a far-reaching statement. Do  
12 you support it, and how long should it remain in abeyance?

13 PROFESSOR AKHAVAN: That is a very insightful  
14 question, Mr. President.

15 The point here is that in the circumstances which  
16 prevail here where in 1958 the Netherlands accepted that the  
17 equidistance principle applies to the continental shelf, and we  
18 know that somewhere from 1965 onwards there was a change in  
19 position to go for broke, to quote the statement of Dr. Essed,  
20 that the policy of Suriname, as my esteemed colleague Sir  
21 Shridath will explain, has been one of filibuster, to  
22 essentially hold the maritime boundary hostage for other  
23 unrelated purposes. In those circumstances, the obligation to  
24 negotiate in good faith on the part of Guyana must at some  
25 point give way to Guyana's right, acting in good faith based on

15:20:58 1 the principle of equidistance to develop its offshore  
2 resources, and I believe that the exception which the Ullrich  
3 and Churchill article contemplates is exactly that sort of  
4 exception. So long as two parties have reasonable positions,  
5 they have a reasonable dispute, one should not engage in  
6 unilateral drilling to prejudice of the other's rights. That  
7 is self-evident. But if after 40 years of filibuster one of  
8 the parties drills a well in close proximity to another well  
9 which it has previously drilled with the other side's  
10 knowledge, then surely that cannot be unreasonable, given the  
11 object and purpose of the requirement of negotiating in good  
12 faith.

13 So, I would respectfully submit that, yes, the  
14 author's position is entirely correct, and certainly it applies  
15 to the exceptional facts of this case.

16 PRESIDENT NELSON: Thank you very much.

17 Mr. Reichler?

18 MR. REICHLER: Mr. President, we have one more  
19 speaker, Sir Shridath Ramphal. We estimate his presentation  
20 will take slightly under one hour. This might be an  
21 appropriate time for the afternoon tea or coffee break, as you  
22 will.

23 PRESIDENT NELSON: Thank you, Mr. Reichler.

24 We will resume in 15 minutes after the break.

25 (Brief recess.)

15:24:31 1           PRESIDENT NELSON: I give the floor to Sir Shridath  
2 Ramphal.

3           SIR SHRIDATH RAMPHAL: Thank you, Mr. President.

4           Mr. President, Members of the Tribunal, when I  
5 addressed you at the opening of Guyana's case last Thursday, I  
6 indicated that it would be an occasion of honor for me to be  
7 closing our initial presentations, and that in doing so, as I  
8 am now, I would present our arguments on Suriname's failure to  
9 make every effort to enter into provisional arrangements of a  
10 practical nature, and not to jeopardize or hamper a reaching of  
11 that final agreement.

12           In those overview remarks at the beginning, I also  
13 drew attention to the fact that one of the truly important  
14 respects in which UNCLOS in 1982 broke new ground was in the  
15 matter of the settlement of maritime disputes, what it  
16 described as disputes between parties to the Convention  
17 concerning the interpretation or application of the Convention.

18           Part XV of the Convention, Articles 279 to 299, is  
19 actually captioned "Settlement of Disputes." Its very first  
20 provision, Article 279, bears the heading "Obligation to Settle  
21 Disputes by Peaceful Means." My colleague, Professor Akhavan,  
22 has addressed the Tribunal on the matter of peaceful means.  
23 The emphasis I place here is on that very first word of Part  
24 XV, "obligation." The whole edifice of the dispute-settlement  
25 mechanism of UNCLOS is built, we submit, upon that founding

15:45:04 1 principle of obligation. In relation to the settlement of  
2 maritime disputes, the Convention imposes on States Parties to  
3 it binding legal obligations.

4           And the first of those obligations to is settle such  
5 disputes by peaceful means and, to this end, to seek a solution  
6 by the means indicated in Article 33(1) of the Charter of the  
7 United Nations. But, says Suriname, though only in its  
8 Rejoinder, Guyana's submission three must also fail because it  
9 does not concern any dispute about the interpretation or  
10 application of the 1982 Convention, and so falls outside the  
11 jurisdiction of the Tribunal. Later in paragraph 49, page 126,  
12 of its Rejoinder, the Rejoinder moves from the abstruse to the  
13 absurd, when it asserts, and I quote, "Guyana, however, has  
14 failed to demonstrate that, prior to June 2000, it informed  
15 Suriname in any way that it believed the two nations were at  
16 odds over the interpretation or application of the 1982  
17 Convention." That is to say, Guyana does not assert that prior  
18 to June 2000 that it believed that a dispute existed;  
19 consequently, Guyana has not asserted any violation of Article  
20 279.

21           And, Mr. President, Members of the Tribunal, as if to  
22 demonstrate the absurdity of its argument, and to do so a  
23 little beyond belief, it adds in a footnote, footnote 517 on  
24 the same page, and I quote, "Had Guyana informed Suriname prior  
25 to June 2000 that Articles 74 and 83 of the 1982 Convention

15:47:38 1 required Suriname to enter into an agreement regarding the  
2 delimitation of the EEZ and continental shelf, and had Suriname  
3 responded that no such obligation exists, then a dispute  
4 clearly would have arisen regarding the interpretation or  
5 application of the 1982 Convention, but Guyana and Suriname  
6 never took such positions."

7           In short, according to Suriname, the door to the  
8 Convention's dispute-settlement provisions opens not in  
9 response to the reality of dispute, but only on the utterance  
10 of magic words "vouchsafed only to legal advisors." When it is  
11 recalled that the very first of these provisions relates to the  
12 non-use of force in the settlement of maritime disputes, it  
13 becomes clear how dangerously far from the purposes of the 1982  
14 Convention such arid legalism can take us. Guyana invites the  
15 Tribunal to assert that the portals of Part XV of UNCLOS are  
16 not barred by the kind of encryption that Suriname conjures up.

17           And, of course, Article 279 is not the whole story of  
18 obligation imposed by UNCLOS on States Parties to the  
19 Convention, who are in dispute regarding their maritime  
20 boundaries. In the context of the boundary and the Exclusive  
21 Economic Zone and the continental shelf, Articles 73 and 84  
22 respectively both reinforce and build out Article 279's  
23 obligations. The Convention recognizes that dispute settlement  
24 may not be attainable immediately. Negotiation could be used  
25 by one party to keep the dispute alive rather than to end it.



15:50:12 1 More to the point, negotiation could be misused to lock down an  
2 area in dispute in any resource development, adding injury to  
3 development to the escalating tensions of an unresolved  
4 dispute.

5           So, UNCLOS went the further mile, went the further  
6 mile in the matter of obligation. It imposed a specific  
7 obligation on the parties regarding their behavior, and I  
8 quote, "pending agreement under the Convention." This was new.  
9 But not surprising, given the ambition of UNCLOS to usher in a  
10 new regime for the world seas, a more stable order, promoting  
11 greater use and better management of ocean resources, and  
12 generating harmony and goodwill among states that would have no  
13 longer to eye each other suspiciously over conflicting claims.  
14 To quote the Preamble to the Convention, a legal order for the  
15 seas and oceans which will promote, inter alia, the peaceful  
16 uses of the seas and oceans, and the equitable and efficient  
17 utilization of their resources, bearing in mind, as the  
18 Preamble asserts, in particular the special interests and needs  
19 of developing countries.

20           In a sense, the Convention could have been addressing  
21 Suriname and Guyana, addressing them directly, and saying to  
22 them in relation to the delimitation dispute concerning their  
23 economic zones, in the words of Article 74(3), "Pending  
24 agreement as provided for in paragraph (1), you shall, in a  
25 spirit of understanding and cooperation, make every effort to

15:52:39 1 enter into provisional arrangements of a practical nature and,  
2 during this transitional period, not to jeopardize or hamper  
3 the reaching of that final agreement." "Shall make every  
4 effort": The language of legal obligation, not of pious  
5 exhortation, an obligation of conduct.

6           And Article 83(3) is to the same effect in relation to  
7 the disputes concerning the delimitation of the continental  
8 shelf, and again the language of obligation, "the parties shall  
9 make every effort," a legal obligation to try to agree on  
10 provisional measures, like the joint development which Guyana  
11 proposed as far back as 1989, eleven years before Suriname's  
12 resort to force, and which Guyana continued to propose right up  
13 to the resort to Annex VII procedures in 2004, fifteen years of  
14 making every effort to enter into provisional arrangements of a  
15 practical nature, efforts which Suriname by one stratagem or  
16 another persisted in frustrating.

17           Suriname will presumably contend that in doing so, it  
18 too was making an effort, but to what end? Certainly not with  
19 the view to agreeing to provisional arrangements of a practical  
20 nature in the shared maritime space. Of course, making the  
21 effort does not mean achieving success. What is required is  
22 conduct, not result. It takes two to tango to the tune of  
23 provisional arrangements. But that is why Articles 74 and 83  
24 call for the spirit of understanding and cooperation from the  
25 parties. Suriname's pleadings--I refer to their Rejoinder,

15:55:20 1 paragraph 5.11 at page 149--Suriname's pleadings do dismiss all  
2 of the requirements of Articles 74 and 83 as mere exhortation.  
3 And in truth, pursuing the metaphor of a tango, Suriname  
4 insisted for over a decade on being a wallflower, at times not  
5 even coming to the ball.

6 In fact, Suriname did everything it could to avoid any  
7 settlement of the maritime dispute, acting in direct  
8 contradiction of every intent of UNCLOS. Until finally  
9 confronted with Guyana's resort to Annex VII Tribunal, and even  
10 then, as these proceedings confirm, its strategy has been, its  
11 strategy is, to persist in avoidance.

12 But Suriname has gone even further. Not only does it  
13 deny that it failed to fulfill its obligations under Articles  
14 74 and 83, but also it asserts that it did make every effort to  
15 enter into provisional arrangements of a practical nature with  
16 Guyana, and that, in fact, it was Guyana that failed to make  
17 such an effort. It actually invites the Tribunal--I quote from  
18 2(d) of Suriname's submissions on page 152 of their  
19 Rejoinder--it invites the Tribunal to find and declare that  
20 Guyana breached its obligations to Suriname under Articles  
21 74(3) and 83(3) of the Law of the Sea Convention, by not making  
22 every effort to enter into provisional arrangements of a  
23 practical nature.

24 Mr. President, Members of the Tribunal, there are  
25 surely limits to how blatantly the facts can be distorted, even

15:57:47 1 as a tactic of inventing self-canceling allegations. So, what  
2 is the truth? After all, this is a matter of fact, not of  
3 asseveration. Chapter 9 of Guyana's Reply is entitled  
4 "Suriname's Failure to Make Efforts to Reach Either a  
5 Provisional or a Final Agreement." Its several paragraphs,  
6 paragraphs 9.1 to 9.13 particularly, its several paragraphs  
7 catalog what it describes as a constant and consistent pattern  
8 of Surinamese behavior that forestalled both the provisional  
9 and the final agreement. It was a pattern that extended from  
10 the 1980s right through and beyond into the 1990s. I invite  
11 the Tribunal's particular attention to those paragraphs. And  
12 an objective assessment of the facts they chronicle unmask, we  
13 submit, Suriname's pretensions, and exposes a consistent  
14 pattern of behavior that forestalled both the provisional and  
15 the final agreement as those facts set out.

16           The operative theme of Suriname's response to Guyana's  
17 third submission regarding provisional arrangements of a  
18 practical nature is to portray Suriname as faithful to the  
19 parties' undertakings at both the 1989 summit between  
20 Presidents Hoyte and Shankar, and the 1991 Memorandum of  
21 Understanding which we have been referring to as the MOU that  
22 followed it. Suriname asserts, for example, the model of the  
23 1989-91 modus vivendi and MOU is Suriname's position.  
24 Elsewhere, it hails the 1989-91 understandings as models of  
25 balance and practicality.

16:00:16 1           The trouble is that these forensic claims of 2006 are  
2 in direct contradiction of Suriname's behavior at the time of  
3 the events themselves, and, indeed, subsequently. In reality,  
4 both implicitly and explicitly, Suriname rejected the  
5 undertakings that had been reached in the Hoyte/Shankar summit  
6 in 1989 and in the MOU of 1991. As set out in Guyana's  
7 Memorial--and Suriname nowhere denies this--Suriname never  
8 ratified the 1991 MOU, and it never really became effective  
9 under Surinamese law.

10           And this was not a mere technicality. In subsequent  
11 dealings between the two States, Suriname's Foreign Minister at  
12 that time expressly disavowed the MOU as having no validity,  
13 precisely because it had never been ratified. Indeed, the  
14 record suggests the displeasure with the MOU caused  
15 considerable political tension in Paramaribo and led directly  
16 to the dismissal of the officials who were responsible for  
17 signing it. This much has emerged from the recently  
18 declassified report from the U.S. Embassy in Georgetown to the  
19 State Department on the 21st of July 1994, set out for the  
20 Tribunal in Volume II of Guyana's Reply at Annex 2. Suriname  
21 again nowhere denies this account, yet it claims now before the  
22 Tribunal that it always embraced the 1989-91 undertakings when  
23 the evidence shows that it rejected their validity at the very  
24 time when cooperation might, indeed, have done some good.  
25 Understanding and cooperation were so far from Suriname's

16:02:42 1 strategic posture that those seeming to adopt it were banished  
2 from the negotiating scene.

3           For over 15 years, between 1989 and 2004, it was  
4 always Guyana that was anxious to press ahead on discussing  
5 modalities for the joint utilization of the area between 10 and  
6 34 degrees, and it was always Suriname that found an excuse to  
7 delay, put the issue off for another day, as it continues to do  
8 now. Even on those infrequent occasions when Guyana was  
9 successful in arranging face-to-face meetings, they invariably  
10 turned into exercises in futility. Suriname claims that  
11 Suriname and Guyana made progress in those meetings, but they  
12 avoid the balance sheet of negative returns which their  
13 strategy of filibuster ensured.

14           Following closely on the heels of the 1989  
15 Presidential summit, representatives of Guyana's natural  
16 resource agency, the GNRA, flew to Paramaribo to meet the  
17 Staatsolie personnel in February 1990, just after the summit.  
18 Notwithstanding the Presidents' agreement that, I quote, "The  
19 representatives of the agencies responsible for petroleum  
20 development within the two countries should agree on modalities  
21 for joint development," Guyana officials showed up only to find  
22 that the Staatsolie representatives were "unprepared."

23           As Guyana's Director of Petroleum recorded at the time  
24 in a letter to the Deputy Chairman of the GNRA, set out for the  
25 Tribunal at Annex 6, Volume II of Guyana's Reply, this is what

16:05:11 1 Mr. Brian Sucre wrote on his return to Georgetown from  
2 Paramaribo. His memorandum is at Tab 39(a) in your folder and  
3 on the screen. "This is the second time," he says, "that we  
4 have come to Suriname only to be told that Staatsolie is not  
5 aware of the reasons we are here. I do not think that this is  
6 true. I feel that Mr. Jharap wants a specific instruction from  
7 his Minister to discuss the issues, and also it is a stalling  
8 point for them in their dealings with PECTEN. We will  
9 definitely have to involve the Surinamese politicians in the  
10 future or else we will be wasting our time." Guyana was, in  
11 fact, to waste a good many years after that.

12           This was on the 23rd of February 1990. The  
13 Hoyte/Shankar summit had been in August of the previous year,  
14 the agreed minutes of which were recorded, as set out for the  
15 Tribunal at Annex 71 of Volume II of Guyana's Memorial in Tab  
16 39(c) of your folders and referred to on the slides. The two  
17 sides agreed--remember, this is at Presidential level--the two  
18 sides agreed that, pending settlement of the border question,  
19 the representatives of the agencies responsible for petroleum  
20 development within the two countries should agree on modalities  
21 which would ensure that the opportunities available within the  
22 said area can be jointly utilized by the two countries.

23           Sixteen years later, Suriname's Counter-Memorial in  
24 these proceedings says, "The model of the 1989-91 modus vivendi  
25 and MOU is Suriname's position." Yet, six months after the

16:07:38 1 summit, Staatsolie didn't know why Guyana's representatives  
2 responsible for petroleum development had come, and that was  
3 the second--that was the second--futile visit. Any wonder  
4 Mr. Sucre was at his wits' end. Clearly, there was a  
5 disconnect between what the Surinamese President agreed at the  
6 summit and what Surinamese officials were or were not  
7 instructed to do, but the not doing is what is really  
8 important, and the intent behind not doing.

9           Suriname was simply not making every effort. It was,  
10 indeed, not making any effort. What followed from 1989 to 2004  
11 was a continuous filibuster from Suriname. Guyana never could  
12 get Suriname engaged on the modalities of provisional  
13 arrangements of a practical nature, pending settlement of the  
14 maritime dispute, far less, of course, on the settlement of the  
15 boundary. They could not even get a meeting arranged, as set  
16 out in the Guyana's Memorial at paragraph 4.34 on page 54,  
17 again nowhere denied by Suriname, in February 1991, GNRA  
18 informed President Hoyte that it, and I quote, "has been unable  
19 to obtain from Staatsolie a date for another meeting to  
20 conclude the discussions, and the Ministry of Foreign Affairs,  
21 through the Guyana embassy in Suriname as well as directly  
22 through the Suriname Foreign Ministry, has similarly been  
23 unsuccessful in obtaining a date for settlement of this  
24 matter." And that was only settling a date for a meeting to  
25 discuss the maritime issue. Even talks about talks Suriname



16:10:08 1 evaded. When Guyanese officials realized they were getting  
2 nowhere with their Surinamese counterparts, they went back to  
3 President Hoyte and asked him to contact President Shankar to  
4 reaffirm their previous agreement in order to ensure that an  
5 agreement was adhered to by Surinamese officials. I refer you  
6 to Guyana's Memorial Volume I at paragraph 4.34, Volume II at  
7 Annex 73, and Volume III at Annex 152.

8           Still, GNRA officials still continued to report that  
9 Guyana was still awaiting word from Suriname to resume  
10 discussions concerning the marine area of overlap. Early in  
11 1991, GNRA tried again, this time asking President Hoyte to see  
12 if he could revive discussions with Suriname's new President  
13 Johannes Kraag. When the two presidents did meet a short while  
14 later in February of that year, Guyana specifically sought to  
15 obviate the problems that had plagued prior meetings, by  
16 securing agreement, and I quote, "that the team from the  
17 appropriate agency in Suriname, armed with the full authority  
18 to settle the issue, would visit Guyana during the month of  
19 February this year to conclude discussions on the modalities  
20 for the treatment of natural resources in the area of overlap  
21 between Guyana and Suriname." I refer you to Guyana's Memorial  
22 at Volume I at para 4.34 and footnote 116.

23           Yet, when representatives from GNRA and Staatsolie met  
24 in Georgetown later in February of 1991, Staatsolie once again  
25 claimed lack of authority to negotiate any agreement for the

16:12:28 1 actual utilization of the maritime resources in the areas  
2 between 10 degrees and 34 degrees. The subsequent negotiations  
3 were therefore of very limited scope. They resulted only in  
4 the 1991 MOU, which was little more than an agreement to agree  
5 pursuant to which the parties decided that representatives of  
6 both governments would meet within 30 days to fix modalities  
7 for joint utilization.

8 But even that proved too much for Suriname. The two  
9 Surinamese officials responsible for the MOU, as we have seen,  
10 were soon removed from office. And as acknowledged in  
11 Suriname's Preliminary Objections memorandum, Suriname never  
12 got around to sending a delegation to Guyana, despite repeated  
13 invitations.

14 The very same pattern continued through the mid 1990s.  
15 Notwithstanding Suriname's express rejection of the 1991 MOU,  
16 in 1994, Guyana continued to press for dialogue, but Suriname  
17 again created reasons to delay. When the parties held the  
18 inaugural meeting of their National Border Commissions in  
19 May 1995, for example, Guyanese officials were greeted with a  
20 statement by the chairman of Suriname's Border Commission, a  
21 former President of Suriname, the late Mr. Ramdat Misier, that,  
22 and I quote, "the offshore area was not a subject for  
23 discussion."

24 Mr. Misier's opening remarks focused entirely upon the  
25 New River Triangle, and while nominally endorsing a spirit of

16:14:40 1 cooperation and not of confrontation, he emphasized, rather  
2 letting the cat out of the bag, that Suriname was not prepared  
3 or authorized to discuss the boundary on the continental shelf.  
4 See Guyana's Reply Volume I at paragraph 9.7 and Volume II at  
5 Annex R15.

6 Curiously--curiously--Suriname invokes the same 1995  
7 Border Commission meeting as an example of the parties' mutual  
8 efforts to resolve the full scope of their boundary problems.  
9 It is an example, indeed, given Minister Misier's opening  
10 declaration that the offshore area is not a subject for  
11 discussion. A good example of Suriname's refusal--it really  
12 was more than mere failure--Suriname's refusal to engage in any  
13 efforts to settle the maritime dispute or to enter into  
14 provisional arrangements pending settlement. As happened every  
15 other time, the parties met to discuss boundary issues. Guyana  
16 came prepared to discuss the area between the 10 degrees and  
17 34-degree lines, but Suriname declared the issue offlimits.

18 By August 1998, Suriname had ratified UNCLOS. Would  
19 anything change? Of course not. Because it was not the  
20 absence of ratification that was inducing intransigence in  
21 relation to maritime delimitation. It is doubtful if Suriname  
22 even reflected on the matter of its legal obligations under  
23 international law. Had it done so, it would surely not have  
24 returned the Caribbean to a sea in which armed ships held sway.  
25 But having done so, would this posture in relation to the

16:17:07 1 maritime boundary or provisional arrangements pending  
2 settlement, would they change?

3           Guyana protested, of course, the use force by Suriname  
4 in June 2000, as Professor Akhavan has described to you just  
5 now, and it called attention to the desecration of the  
6 Caribbean which that resort to force entailed. But even in  
7 complaint, it adhered to its proposal for provisional  
8 arrangements pending settlement. It did so in President  
9 Jagdeo's statements to the Caribbean Summit at Canouan. It did  
10 so in the facilitation process led by the Prime Minister of  
11 Jamaica, and it continued to do so bilaterally specifically at  
12 the meeting of the Joint Technical Committee held in Paramaribo  
13 from the 17th to the 19th of June, the Committee established by  
14 the special CARICOM Ministerial Meeting in Port of Spain which  
15 met, I remind you, within three days of Suriname's resort to  
16 force. At that meeting, Guyana tabled proposals providing,  
17 inter alia, that the area in dispute be designated a special  
18 area for the Sustainable Development of Guyana and Suriname,  
19 and that a mixed Suriname-Guyana authority be appointed to  
20 manage it. I refer you to Volume II in Guyana's Memorial at  
21 Annex 83 as set out at Tab 39(d) of your folder, and, of  
22 course, to the language in the slide.

23           Suriname was not interested in the proposal. The  
24 nonfulfillment of Suriname's obligations under UNCLOS  
25 continued. Early in 2002, 18 months after the use of force,

16:19:24 1 but with a new government in Suriname, Guyana's President made  
2 an official visit to Suriname. At its end, President Jagdeo  
3 and President Venetiaan issued a joint declaration. Its text  
4 is set out in Volume II of Suriname's Counter-Memorial at Annex  
5 8, also in Tab 39(e) of your folder, and I refer you to the  
6 slide. It was a wide-ranging declaration as between  
7 neighboring countries.

8 Right towards its end are the following paragraphs  
9 which are on the screen: "The two presidents noted with  
10 satisfaction the progress made by the third meeting of the  
11 Suriname and Guyana Border Commissions, held in Paramaribo on  
12 the 17th of January 2002, towards creating an atmosphere  
13 conducive to constructive discussions both on the border issues  
14 and on provisional arrangements of a practical nature. In view  
15 of the importance of the matter, they expect the Commissions to  
16 exchange suggestions in a timely fashion before their next  
17 meeting."

18 And then, "At the request of President Jagdeo"--and  
19 bear in mind this is a communique--"the issue of joint  
20 exploration for hydrocarbon resources was discussed, and the  
21 President took a decision to request the Border Commissions to  
22 look at best practices and modalities that could assist the  
23 governments in the making of a decision regarding an eventual  
24 joint exploration." It was very, very careful language. And  
25 the very caution told the story. The satisfaction they could

16:21:35 1 eek out was only in relation to creating an atmosphere  
2 conducive to discussions, and when it came to concrete  
3 arrangements, the declaration had to make it clear that  
4 discussion of the issue of joint exploration was at the request  
5 of Guyana. If the communique had to speak of joint  
6 development, Suriname was making it clear that this was not of  
7 its doing.

8 Pursuant to the joint declaration of the Presidents,  
9 at a May 2002 meeting of the subcommittee of the Joint Border  
10 Commissions--see Volume II of Guyana's Memorial, Annex  
11 85--Guyana actually offered a concept paper outlining possible  
12 modalities for joint development, including sharing of net  
13 revenue. The Surinamese delegation refused even to discuss the  
14 paper because, in its view, the concepts mentioned fell outside  
15 Suriname's narrow interpretation of the subcommittee's mandate.  
16 Guyana tried to encourage Suriname to consider the paper again  
17 the next year, in 2003, but Suriname again refused even to  
18 consider it.

19 Nothing had really changed. Minister Misier had been  
20 forthright beyond his time. For Suriname, the offshore area  
21 was not a subject for discussion. Ultimately, of course, it  
22 was this pattern of refusing to engage in serious negotiations  
23 that compelled Guyana in February 2004 to have recourse to the  
24 Annex VII procedures of the 1982 Convention, a testimony, of  
25 course, to the value of those procedures in saving parties in

16:23:54 1 dispute from eternal disputation.

2           The historical record, we submit, makes it clear, that  
3 at all times it was Guyana that pressed for the parties to  
4 enter into provisional arrangements of a practical nature, and  
5 it was Suriname with studied resolve that failed to make any  
6 effort in the spirit of understanding and cooperation to enter  
7 into provisional arrangements of a practical nature with  
8 Guyana, pending the reaching of a final agreement. Over the  
9 whole period after the filing of Guyana's claim, Suriname was  
10 living out Dr. Frank Essed's petulant assertion to the Kingdom  
11 Government in The Hague 35 years earlier in which, as Professor  
12 Schrijver illustrated on Saturday, "we are going for broke. It  
13 is all or nothing." And, of course, the maritime space was  
14 nothing.

15           For all these reasons, Mr. President, Members of the  
16 Tribunal, this Tribunal has an opportunity to confirm that  
17 Articles 74(3) and 83(3) of the 1982 Convention imposed  
18 obligations that are real and must be given effect, that  
19 Suriname has failed to live up to its obligations under those  
20 Articles. Though, not surprisingly, Suriname would rather not  
21 have to face these truths or to face such a conclusion, so  
22 again evasion. In the language of paragraphs 54 and 55 of its  
23 Rejoinder, Suriname says, and I quote: "In its Reply, Guyana  
24 refers to a whole series of events which have occurred from the  
25 1980s up until 1996, in support of its arguments that Suriname

16:26:27 1 did not engage in best efforts to achieve interim arrangements.  
2 All of those events are irrelevant when deciding whether  
3 Guyana's submission four should be upheld. Accordingly, in  
4 this Chapter, Suriname will deal solely with events that  
5 occurred after the 8th of August 1998." The 8th of August 1998  
6 is the thirtieth day after Suriname ratified the 1982  
7 Convention on the 9th of July 1998, which it had signed on the  
8 10th of December 1982 in Jamaica, along with Guyana, at the  
9 final session of the conference on the Law of the Sea.  
10 Suriname argues, in effect, that in considering whether it has  
11 discharged its obligations under the Convention, the Tribunal  
12 must pay no attention to events, including its behavior, before  
13 that date.

14 Now, of course, Guyana does not contest that, as a  
15 matter of international law, an act of a State does not  
16 constitute a breach of an international obligation, unless the  
17 State is bound by the obligation in question at the time the  
18 act occurs. But Suriname's proposition of irrelevance goes a  
19 good deal further, and Guyana invites the Tribunal to reject  
20 that self-serving extension. Suriname's behavior subsequent to  
21 the 8th of August 1998 is indisputably relevant to the  
22 allegation that it failed to make every effort to enter into  
23 provisional arrangements of a practical nature in the spirit of  
24 understanding and cooperation, and Guyana argues that there is  
25 enough on the record regarding such behavior in the six years



16:28:51 1 between the 8th of August 1998 and the 26th of February 2004,  
2 when Guyana filed its complaint, to support the complaint of  
3 Suriname's violation of its obligations under Articles 74 and  
4 83 of UNCLOS.

5           But it is also Guyana's contention that Suriname's  
6 behavior in this same matter before that date, which  
7 demonstrates a consistent pattern of negative conduct or  
8 behavior, is relevant to the interpretation of Suriname's  
9 post-1998 conduct, which Suriname, of course, contends is  
10 innocent. It was not innocent. It was simply a continuation  
11 of Suriname's refusal to consider any proposal for the  
12 delimitation of the maritime boundary, refusal so succinctly  
13 characterized, as we have seen, by the chairman of Suriname's  
14 Border Commission, a former President of Suriname in May 1995,  
15 that the offshore area was not a subject for discussion. It  
16 was not then, it was not after 1998. It was all one, after, as  
17 before, ratification. There was no spirit of cooperation or  
18 understanding. There was no effort to enter into provisional  
19 arrangements of a practical nature pending agreement on the  
20 maritime boundary. They were not matters for discussion, but  
21 they remained matters of legal obligation, obligation  
22 unfulfilled, but, of course, ultimately serious and damaging  
23 consequences for Guyana, and for much more besides.

24           So far I have talked essentially about Suriname's  
25 obligations under Articles 74(3) and 83(3) of the Convention to

16:31:13 1 make every effort to enter into provisional arrangements of a  
2 practical nature, pending the final maritime delimitation  
3 agreement, but there was another basic obligation under those  
4 Articles of the Convention, and that is, during the  
5 transitional period, pending that final agreement, and I quote,  
6 "not to jeopardize or hamper the reaching of the final  
7 agreement." It is Guyana's contention that Suriname's studied  
8 refusal to make any effort to enter into provisional  
9 arrangements of a practical nature both jeopardized and  
10 hampered the reaching of the final agreement. What their  
11 strategy of keeping the offshore area not a subject for  
12 discussion amounted to was keeping the maritime boundary  
13 dispute alive. Preserving the dispute, not moving it in the  
14 direction of final agreement, it was directly jeopardizing the  
15 prospect of reaching a final agreement on maritime  
16 delimitation. It was directly hampering the reaching of that  
17 final agreement. Suriname's negative tactics vitiated the very  
18 concept of a transitional period contemplated by Articles 74  
19 and 83, as, of course, they were designed to do.

20           Mr. President, Members of the Tribunal, just imagine,  
21 just imagine what might have happened even as late as 2002,  
22 even after Suriname's resort to force had the decision of  
23 Presidents Jagdeo and Venetiaan on the 29th of January 2002  
24 that the respective Border Commission should exchange  
25 suggestions in a timely fashion both on the border issue and on

16:33:26 1 provisional arrangements of a practical nature, a clear  
2 allusion to the Convention, just imagine if that decision had  
3 been implemented, rather than have its implementation thwarted  
4 by Suriname's tactics of nonnegotiation of the offshore area?  
5 What might have happened had Guyana's Concept Paper on possible  
6 modalities for cooperation in the area of hydrocarbon  
7 exploration, including sharing on the basis of net revenue,  
8 partial integration, joint development? Had this even been  
9 considered by Suriname rather than rejected out of hand as  
10 being outside the mandate of the Border Commissions'  
11 subcommittee, evasion again. What might have happened was what  
12 UNCLOS contemplated on the basis of prevailing spirits of  
13 understanding and cooperation. As it was, Suriname's refusal  
14 to even discuss such provisional arrangements jeopardized and  
15 hampered the reaching of a final agreement on the delimitation  
16 of the maritime boundary.

17 Suriname's manifold violations of UNCLOS, its failure  
18 to fulfill its obligations under Articles 74(3) and 83(3) have,  
19 as I have said, and others before me, caused Guyana material  
20 damage for which I submit this Tribunal must hold Suriname  
21 accountable.

22 That really brings to a close, Mr. President, Members  
23 of the Tribunal, the specific presentations which Guyana wishes  
24 to make to you in this first round of the oral hearing. I  
25 formally place before you the submissions Guyana has made in

16:35:35 1 these proceedings as set out in Chapter 10 of Guyana's Reply at  
2 page 153. There remains only one general observation for me to  
3 make to the Tribunal.

4           A very long future stretches ahead of the people of  
5 Suriname and Guyana, a future within the family of the  
6 Caribbean Community, and with the shared identity of the  
7 Guianas which history, no less than geography, has impressed  
8 upon us. Next year, when the Tribunal's award is given, the  
9 world will be marking with shame the bicentenary of the  
10 abolition of the slave trade. It was that crime against  
11 humanity, as we today acknowledge it, through which colonial  
12 powers carved out Guyana and Suriname from the wild Guiana  
13 coast for imperial gain. They are gone. They are gone from  
14 the scene, but the legacy of slavery and indenture which was to  
15 follow it remains part of the heritage of Guyana and Suriname,  
16 a heritage which I have tried to show also binds their people.  
17 That unrelenting sea from which slave labor wrested Guyana and  
18 Suriname can, through your delimitation of the maritime  
19 boundary between them, be further tamed, tamed because your  
20 award can usher in a new era of understanding and cooperation,  
21 and of joint release from poverty and underdevelopment.

22           Your award can fulfill the expectation of the framers  
23 of UNCLOS, for the equitable and efficient utilization of an  
24 important part of the maritime space of Suriname and Guyana now  
25 depends on this Tribunal drawing the line of delimitation

16:38:10 1 between them. Without that maritime delimitation, those  
2 resources which, in present conditions are world resources,  
3 too, those resources will remain unutilized. Without that  
4 maritime delimitation, uncertainty, disorder, and tension will  
5 reign over Guyana and Suriname's maritime zones, the very  
6 dangers which UNCLOS sought to relieve all countries from.  
7 Compliance with your award to which Guyana is pledged can allow  
8 both countries to put a not always worthy past behind them. In  
9 so doing, they would honor the ancestors whose sacrifices made  
10 that future possible.

11 I close our presentations, therefore, with some words  
12 spoken recently by the current President of the International  
13 Tribunal on the Law of the Sea, Judge Rudiger Wolfrum. At the  
14 ceremony to commemorate the tenth anniversary of ITLOS--you,  
15 yourself, Mr. President, were there--Judge Wolfrum ended his  
16 statement by quoting the words of the first President of the  
17 Tribunal, Judge Thomas Mensah, on the occasion of the  
18 inauguration of the Tribunal, an occasion at which, of course,  
19 by definition, Mr. President, you were also present. President  
20 Mensah ended that inaugural speech with these words: "We shall  
21 do whatever lies in our power to ensure that this Tribunal will  
22 be one of the custodians of that principle enshrined in the  
23 Charter of the United Nations and in the Convention of the Law  
24 of the Sea that international disputes shall be settled by  
25 peaceful means in accordance with the principles of justice and

16:40:35 1 international law. We cannot promise more, but we promise no  
2 less.

3 Mr. President, Members of the Tribunal, if I may  
4 respectfully borrow President Mensah's sentiments and his  
5 syntax, in this proceeding, Guyana seeks no more, but knows  
6 that both Guyana and Suriname will receive at your hands no  
7 less.

8 On behalf of my colleagues and myself, who have had  
9 the privilege to address you over the last four working days,  
10 and to whom you have given so patient a hearing, I thank you,  
11 President and Members of the Tribunal, most warmly and most  
12 humbly. Thank you very much.

13 PRESIDENT NELSON: Thank you very much, Sir Shridath  
14 Ramphal.

15 As you are well aware, the Tribunal will not be  
16 meeting tomorrow. These oral hearings will resume on  
17 Wednesday, the 13th of December. Thank you very much. The  
18 hearing is adjourned.

19 (Whereupon, at 4:42 p.m., the hearing was adjourned  
20 until 9:30 a.m., Wednesday, December 13, 2006.)

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## 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.

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DAVID A. KASDAN