

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 8

Saturday, December 16, 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
9:30 a.m. before:

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

Permanent Court of Arbitration:

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

Tribunal Hydrographer:

MR. DAVID GRAY

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

2 PRESIDENT NELSON: I give the floor to Professor
3 McRae.

4 CONTINUED OPENING STATEMENT BY COUNSEL FOR RESPONDENT

5 PROFESSOR McRAE: Thank you, Mr. President.

6 Mr. President, Members of the Tribunal, this morning I
7 want to address you on the matters relating to the delimitation
8 method that I did not get to in my presentation on Thursday.
9 Then I want to look at why the 10-degree line is the
10 appropriate line in this case, and then I want to turn to
11 questions of proportionality.

12 In my previous presentation I described the
13 geographical concepts of maritime delimitation and how they
14 were relevant to this case. I pointed out that although the
15 coasts of the two parties are relatively unremarkable, there
16 are particular features on the coasts of both parties that have
17 an impact on their delimitation; and those features are, on the
18 Guyana side, the Berbice Headland and Devonshire Castle Flats,
19 and on the Suriname side, the recessed coasts or concavity to
20 the east of Turtle Bank, and then Hermina Bank.

21 I also pointed out that a key consideration in
22 assessing the geography of the area and determining its
23 relevance to delimitation is the orientation of the coasts in
24 relation to each other. Guyana's relevant coast faces
25 northeast, and Suriname's coast faces north. They intersect at

09:33:25 1 the mouth of the Corantijn River where, of course, there is a
2 change in coastal direction.

3 And further I mentioned that the fundamental error in
4 Guyana's perception of geography based on the report of
5 Dr. Smith is that Guyana finds a concavity when you combine the
6 coasts of Guyana and Suriname and then assumes that that
7 concavity still exists when you consider the coasts of Guyana
8 alone. And as a result of this misperception, Guyana argues
9 that the coast of Guyana is a concavity in relation to the
10 coast of Suriname, and this leads Guyana to the consequences
11 that the Berbice Headland is a feature at the back of the
12 concavity instead of a convexity on the coast of Guyana; and,
13 of course, the Berbice Headland would only be a concavity or
14 only be at the back of the concavity if, in fact, the boundary
15 between Suriname and Guyana was on the Coppename River, not on
16 the Corantijn River. But, of course, that would be an entirely
17 different case, and that would be on the assumption that the
18 land between the Coppename River and Guyana was Guyana and not
19 Suriname.

20 But I also demonstrated that when we come to the
21 construction of the equidistant line, the feature that
22 primarily affects the course of that line is the Berbice
23 Headland. It affects the line for a distance of 172 nautical
24 miles, and that, of course, is because of its location, right
25 beside the land boundary terminus. And the effect of a feature

09:35:08 1 that is close to the land boundary terminus continues
2 throughout the whole course of the line, even though it may be
3 mitigated or ameliorated by subsequent features. And drawing
4 from the language of the economists, I referred to that as path
5 dependency. The feature close to the land boundary terminus
6 sets the course of the line.

7 Other features that are further away from the land
8 boundary terminus have an effect, but they have an effect on a
9 line whose course is already set in a particular direction, and
10 we showed that the Berbice Headland has this precise effect on
11 the line. Hermina Bank affects on Suriname's coast, affects
12 the provisional equidistance line for a distance; and the total
13 distance I think it affects it is about 105 nautical miles, but
14 it affects a line whose course has been substantially
15 determined by the effect of the Berbice Headland. Berbice
16 Headland affects the first 172 nautical miles of the
17 provisional equidistant line. Hermina Bank affects the latter
18 part of the line.

19 And we also showed that these consequences could be
20 avoided if an alternative method was used. The angle bisector
21 avoids having a line respond to particular coastal features;
22 and an angle bisector, as I mentioned on Thursday, involves
23 drawing straight-line coastal fronts that represent the
24 generalized direction of the coasts and then bisecting the
25 angle formed by the intersection of those lines, and then

09:36:50 1 transferring that bisector to the land boundary terminus or
2 other starting point for the line.

3 Now, Mr. President, I would now like to turn to the
4 question of the appropriate method in the particular context of
5 this case, and I would suggest that there have been essentially
6 three methods suggested in this case. There is the Guyana
7 34-degree line, which I would say is based on no particular
8 method. Then there is the equidistance method on which the
9 provisional equidistant line was drawn. And the third is the
10 bisector method. Let me deal briefly with those, starting with
11 the 34-degree line.

12 Now, Guyana claims that the 34-degree line is what
13 they refer to as an historical equidistance line. In
14 Suriname's view, that claim is unsustainable. First, the
15 historical part of the claim is based on the fact that in the
16 1966 Marlborough House Discussions, Guyana's representatives
17 said that the boundary should be an equidistant line and it
18 should run from 33 to 34 degrees. And, of course, at that
19 time, the discussions were about a line that would go out to
20 the 200-meter isobath.

21 The equidistance part of the historical equidistance
22 claim is that it derives from a line drawn by Commander
23 Kennedy, but we have never actually seen a map with the line
24 actually drawn by Commander Kennedy. What we have seen are
25 maps on which Guyana has plotted the so-called Kennedy line.

09:38:34 1 And Mr. Colson, who will follow me, will show that the Guyana
2 line is not the Kennedy line. It is an average of the several
3 segments drawn by Commander Kennedy for a line that was
4 concluded in the 1961 proposal. What Guyana is claiming is
5 that the 34-degree line is a simplified form of the lines drawn
6 by Commander Kennedy, and so on that basis it has a claimed
7 relationship with equidistance.

8 But we would say that even that claim suggests more
9 than is warranted. The line in 1961 followed the 10-degree
10 line for a distance of 6 nautical miles and then sought to
11 follow equidistance to the 200-meter isobath. Guyana purports
12 to average the bearings of Commander Kennedy's line, but
13 ignores the six-mile 10-degree segment and ignores that the
14 averaging was of bearings of lines that differed in length.
15 The result is a line that is, in fact, unhinged from the 1961
16 proposal and from equidistance.

17 Simplified equidistance it may be called, but there
18 comes a point when simplification is no longer simplification.
19 It is, in fact, novation. It's a new line rather than a
20 simplified old line.

21 And secondly, as I mentioned, the equidistance portion
22 that Commander Kennedy was seeking to define was to go to the
23 200-meter isobath. What Guyana has done is extend the line
24 they called simplified equidistance on an azimuth of 34 degrees
25 out to 200 nautical miles, and the tenuous relationship that

09:40:23 1 the 34-degree line had with equidistance does not get any
2 better the further out the line goes. Quite the opposite. As
3 the line proceeds to 200 nautical miles, it becomes patent that
4 it is totally unrelated to equidistance.

5 Mr. President, Guyana's historical equidistance line
6 takes liberties with history. Drawing a line that is on an
7 average of the bearings of part of Commander Kennedy's lines,
8 part of Commander Kennedy's line--I better get my S's in
9 correct order there--then applying it to the whole line and
10 calling it the 33-34-degree line developed by Commander
11 Kennedy. And it takes liberties with equidistance, claiming a
12 line as an equidistance line which, for a certain limited
13 distance is near the equidistant line, but which, for the most
14 part, departs dramatically and extravagantly from equidistance.
15 A line that intersects an equidistance line only once
16 throughout its full extent is not an equidistance line,
17 historical or otherwise.

18 And we have puzzled to see whether there was any other
19 method that might explain the 34-degree line. We thought at
20 one stage, in fact, that the line since it's roughly
21 perpendicular to the general direction of the coast of Guyana
22 might suggest that Guyana had some notion of bisecting coastal
23 angles, and Guyana has responded that they actually had no idea
24 of that perpendicularity in mind, and indeed, that must be the
25 case.

09:42:05 1 For Guyana to achieve the 34-degree line by the
2 application of a bisector method, it would have to move its
3 coast out so the coastal front of Guyana would be on an azimuth
4 of 338 degrees. Indeed, if the 34-degree line was really an
5 equidistant line, Guyana's coasts would have to move out to a
6 similar point. The coast of Devonshire Castle Flats would have
7 to come seaward. And I will refrain from the refashioning
8 geography charge.

9 But there is a more substantive point here. If, in
10 order to justify the 34-degree line geographically Guyana's
11 coasts have to be moved northeastward, that means that the
12 34-degree line must run closer to Suriname than to Guyana. It
13 must run across Suriname's coastal front, and that, indeed, is
14 what has happened. The 34-degree line encroaches on or cuts
15 off the seaward projection of the coast of Suriname. The fact
16 that it is essentially perpendicular to Guyana's coast
17 indicates that, of necessity, it will cut off the coastal
18 projection from Suriname, but it leaves the Guyana coastal
19 projection essentially untouched.

20 Now, it's clear from this illustration how much of the
21 line is in front of the Suriname coast and how little of it is
22 in front of the Guyana coast. The projection of the coasts of
23 Guyana is essentially unimpeded, but the projection of the
24 coast of Suriname is truncated. Whatever the method by which
25 that line was drawn, such a line can make no contribution to an

09:43:55 1 equitable solution.

2 Now, as Mr. Colson demonstrated yesterday, the
3 34-degree line has no basis in the conduct of the parties. As
4 we have seen, it has no basis in the delimitation method, and
5 it clearly produces an inequitable result.

6 Let me turn, then, to the other method, equidistance
7 and the provisional equidistant line. Now, I think it's clear
8 by now why we find the provisional equidistant line not to be
9 the appropriate method for this case, and I won't spend a lot
10 of time on this, but just let me highlight a few points.

11 Because the Berbice Headland is close to the land
12 boundary terminus, as I've said, it sets the course of the
13 equidistant line because the coast initially recedes on the
14 Suriname side, the Berbice Headland has an even greater impact.
15 The reason that Hermina Bank has an impact on the line or the
16 impact that it does is because the Berbice Headland pushes the
17 line across to the east. If the Berbice Headland did not
18 exist, the impact of Hermina Bank on the provisional
19 equidistant line would have been minimal or nonexistent, or at
20 least its impact on the provisional equidistance line would
21 have been considerably to the west.

22 By the time that Devonshire Castle Flats is reached,
23 that feature is so far from the land boundary terminus that its
24 impact on the equidistant line can only be limited, even though
25 one might argue that it's more of the one more prominent

09:45:33 1 features in the area. In effect, Devonshire Castle Flats is
2 masked by the Berbice Headland.

3 What this shows, Mr. President, is that the
4 equidistant line in the present case has a high degree of
5 eccentricity. It responds significantly to particular features
6 even though, as we have said, the coasts of both parties are in
7 many respects quite unremarkable. And because the line is one
8 between adjacent States, the course of the line, as I've said,
9 is path-dependent. The first feature affects it, sets it on a
10 course from which it can never fully recover, and that is--that
11 effect is so much the greater when the feature here of the
12 Berbice Headland abuts the land boundary terminus.

13 And moreover, the provisional equidistant line suffers
14 from the same defect as the 34-degree line. It cuts off the
15 coast of Suriname to too great a degree. It pushes the line,
16 as we mentioned, across in front of the Suriname coast and
17 although Hermina Bank ameliorates it, it still remains more in
18 front of Suriname's coast than it does in front of Guyana's
19 coast. And such encroachment has been recognized in the
20 jurisprudence as justifying some alternative approach to
21 drawing the line.

22 Now, we recognize that cut-off cannot be eliminated
23 completely, but an equitable solution cannot be reached if one
24 party has to shoulder too much of the cut-off burden, and that
25 is what is happening to Suriname here.

09:47:06 1 Now, in dealing with the problem of cut-off and
2 encroachment, the alternative of adjusting or simplifying
3 equidistance is sometimes advocated, and tribunals have
4 occasionally adopted such an approach. For example, half
5 effect or reduced effect has sometimes been given to islands,
6 but such techniques have their place only where the adjustment
7 can be made cleanly without resulting in even more difficult
8 side effects. And we would suggest that in the present case
9 notions of half effect or reduced effect create as many
10 problems as they solve. The equidistance line, as we have
11 seen, is affected by three things: the Berbice Headland
12 combined with Suriname's recessed coast, Hermina Bank, and
13 Devonshire Castle Flats. Adjustment to any one has
14 implications for the others, and adjustments to others have
15 implications, further implications, themselves. Complication,
16 Mr. President, is not the road to achieving an equitable
17 solution.

18 The result, in our view, is one--is that the
19 appropriate method is one that avoids the problems of the
20 particular features and avoids the perilous task of trying to
21 tinker with adjustments here or modifications there, and that
22 is what leads us, we suggest, and should lead the Tribunal in
23 the direction of a bisector methodology.

24 So, then, let me briefly say a word about the bisector
25 method. As we pointed out, the angle bisector of the coastal

09:48:49 1 fronts of Suriname and Guyana produces a line running at an
2 orientation of 17 degrees, and it avoids many of the
3 difficulties that I have outlined. It is not a line that
4 responds to or is pushed or pulled by particular coastal
5 features. It's not a line that has to be tinkered with to
6 avoid inequity here or there. It's not a line that adversely
7 cuts off the coastal projection of one party in comparison with
8 the other. Take the words of the Chamber in the Gulf of Maine
9 case, such a line provides for an equal division of overlapping
10 areas.

11 Now, of course, if an angle bisector were to be the
12 appropriate method in this particular case, the question would
13 have to be considered where the azimuth of 17 degrees should
14 run from.

15 Now, as I pointed out earlier, the cases where angle
16 bisectors have been used have involved two operations, first to
17 determine the bisector; second, to determine where it's to be
18 located. And last Thursday I pointed out that in the Gulf of
19 Maine the boundary did not run from where the coasts
20 intersected. It ran from point A. In Tunisia-Libya the angle
21 bisector was derived from lines representing the Tunisian
22 coastal front and the outer line of the Kerkennah Islands. It
23 was then transformed to the end of the first segment of the
24 boundary.

25 Now, in the present case, as Professor Oxman has

09:50:25 1 demonstrated, the boundary runs as least as far as the outer
2 limit of the territorial sea, and that boundary is an agreed
3 boundary, and it's a 10-degree line. So, if a boundary was to
4 be determined on the basis of the bisector method, the
5 17-degree azimuth would have to start from the intersection of
6 the 10-degree line with the outer limit of the territorial sea.

7 But, Mr. President, even if the bisector method were
8 to be adopted as the method of delimitation in this case, there
9 are other factors that indicate that an equitable solution in
10 this case involves the continuation of the 10-degree line out
11 to 200 nautical miles.

12 Professor Oxman has explained the historical
13 provenance of the 10-degree line and why on the basis of
14 consistent and concerted behavior it was a line that divided
15 the jurisdiction of the parties through the territorial sea.
16 And when the issue of rights of the continental shelf arose,
17 the United Kingdom preferred to a move to an equidistance
18 method, Suriname continued to assert the appropriateness of a
19 10-degree line. For Suriname the logic of the 10-degree line
20 in the territorial sea extended to the continental shelf and
21 beyond. Now, let me explain the reasons for this.

22 In the Marlborough House Discussions, the Suriname
23 representative, Dr. Calor, argued that a maritime boundary had
24 to reflect the geographical circumstances of the region. It
25 was on this basis that Suriname rejected the equidistance

09:52:24 1 method. And so in the 1960s Suriname was stating the
2 requirements of delimitation that resonate with the
3 delimitation requirements of today: A boundary must reflect
4 and respond to the geography of the area.

5 And the Suriname delegation at Marlborough House
6 considered that the 10-degree line was a line that did conform
7 to the geographical reality. So, what was this geographic
8 reality that Suriname saw at that time? How would the
9 geography be viewed so that a 10-degree line would seem to be
10 the boundary that reflected that reality? Now, first, it is
11 clear that the parties view their geographical relationship as
12 one of two States side by side, Guyana to the west, Suriname to
13 the east, and that perception of the east-west alignment of the
14 two countries was noted by Guyana in its Memorial. And the
15 east-west relationship was reinforced by the fact that the
16 river defined the boundary between Guyana and Suriname, and
17 that river flowed north into the Atlantic Ocean.

18 And the boundary between the parties runs along the
19 low-water line on the western bank of the river. This somewhat
20 unique factor reinforced the idea that the boundaries should
21 continue from the western bank out into the sea. Suriname's
22 sovereignty over the river would be protected by the
23 continuation of such a boundary.

24 So, the geographic reality that Suriname saw in the
25 1960s was that the two countries were oriented side by side,

09:54:03 1 the boundary between them was at the western bank of a river
2 that flowed northwards as it reached the sea, and the 10-degree
3 line in the territorial sea reflected that coastal
4 relationship. And the continuation of that boundary throughout
5 the extent of the parties' maritime jurisdiction, which in the
6 1960s, of course, was then the legal limit of the outer limit
7 of the continental shelf, was simply a further reflection of
8 that geographical reality. The 10-degree line was, therefore,
9 a continuation in a constant direction of the parties'
10 perception of a land boundary, although it lay on the low-water
11 line on the western bank of the Corantijn River. It was
12 understood as proceeding northwards dividing this east-west
13 relationship of the two countries. The 10-degree line thus
14 responded to the geographic circumstances as Dr. Calor and as
15 Suriname perceived them. The 10-degree line divided an
16 east-west geographical relationship as understood between the
17 parties in a way that an equidistant line that responded to
18 particular coastal features and not the overall geographic
19 relationship could not.

20 Now, this sense of a northward thrust of the land and
21 the continuation of the land boundary along a 10-degree line
22 was not, in fact, an incorrect perception of the relationship
23 of the coasts of the two parties. Now it will not have escaped
24 the attention of the Tribunal that a good part of a second
25 segment of the provisional equidistance line runs on a bearing

09:55:33 1 of approximately 10 degrees. In fact, I think it's a bearing
2 actually of 11 degrees.

3 Now, of course, this can be seen purely as
4 happenstance, but it should be noted that the base points on
5 the coasts that govern the line at that stage are on the
6 Guyana's side on the Berbice Headland, and on the Suriname's
7 side on Hermina Bank, so that a line governed throughout its
8 whole coast solely by the Berbice Headland and solely by
9 Hermina Bank would be a line running roughly at 10 degrees. So
10 perhaps there is more than meets the eye to the comment of my
11 colleague Mr. Reichler last week when he said that the case
12 boils down to a headland on the Suriname side claimed by Guyana
13 as a distorting feature and a headland on the Guyana side
14 claimed by Suriname to be a distorting feature. Left to
15 themselves, these features lend weight to 10 degrees as an
16 appropriate direction for a line representing the northward
17 thrust of the geography.

18 Now, these various factors, Mr. President, give some
19 insight into why Suriname felt back at the time of the
20 Marlborough House Talks that the 10-degree line was the
21 appropriate boundary for the whole area of maritime
22 jurisdiction, and that explains why that position has been
23 supported consistently by Suriname since that time. Now, the
24 idea that a maritime boundary should be a continuation of the
25 land boundary is not unknown in state practice and also in the

09:57:06 1 jurisprudence. In Tunisia-Libya, the Court noted that the
2 prolongation of the general direction of the land boundary was
3 a relevant criterion to be taken into account in selecting a
4 method of delimitation, in that case, the perpendicular method.

5 Now, there were, of course, more than geographical
6 considerations involved in Suriname's concern about the
7 10-degree line, even though these too are linked to the
8 geography of the area, in particular the entrance to the
9 Corantijn River. The protection of navigation and of
10 navigation routes to the Corantijn River was, as Professor
11 Oxman pointed out, a fundamental concern. In the light of
12 these concerns, the 10-degree line was an imperative; but as
13 this illustration showed, this concern does not stop at
14 12 miles. Beyond the 12-mile territorial sea is the contiguous
15 zone, a zone whose express purpose is to permit a state to
16 ensure the proper application of its laws within its
17 territorial sea. If the outer limit of the territorial sea was
18 to abut on the maritime jurisdiction of another state, the
19 wrap-around effect that Professor Oxman described, then the
20 objective of protecting it against violation of the laws of the
21 coastal State would be undermined.

22 And there is a further factor that presses towards the
23 10-degree line as the equitable solution in this case. This is
24 the difference in the lengths of the relevant coasts of the
25 parties. Now, a difference in coastal lengths has been a

09:58:50 1 factor that has been taken into account in a variety of cases
2 including Gulf of Maine, Libya-Malta, Jan Mayen, and recently
3 Barbados-Trinidad and Tobago. And, of course, there is no
4 precise formula for determining what difference in length
5 should be considered, nor is there any set way in which the
6 difference in coastal lengths should be accommodated in the
7 drawing of the line. The way in which the line was adjusted in
8 the Gulf of Maine was quite different from the way the line was
9 adjusted in Jan Mayen.

10 As far as the extent of the difference is concerned,
11 generally tribunals have not been concerned with minor
12 differences. But the boundary between what is major and what
13 is minor has not been determined, and it seems that there is
14 some discretion for Tribunals to assess the geographical
15 situation before it and reach its own conclusions.

16 Now, in the present case, as we have pointed out,
17 measured according to the straight line coastal fronts
18 identified by Suriname, the relevant Guyana coast is 90 miles,
19 and the relevant Suriname coast is 140 miles, and that produces
20 a ratio of 1 to 1.56, well beyond the coastal ratio of 1 to
21 1.38 seen as justifying an adjustment in the Gulf of Maine
22 case.

23 But even if you extended the Guyana coast in the way I
24 mentioned in my presentation on Thursday, Guyana's coast would
25 be 120 nautical miles. That extension of the Guyana coast, as

10:00:27 1 you see on the screen, involves continuing Guyana's coastal
2 front to the west bank of the Essequibo River and then north to
3 Devonshire Castle Flats, and on that basis the coastal ratio
4 would be 1 to 1.17.

5 But under either calculation there is a significant
6 difference between the lengths of the relevant coasts of the
7 parties in this case, and that difference is in favor of
8 Suriname. That difference is something that deserves the
9 attention of the Tribunal and thus is a relevant factor in
10 determining that an adjustment to the 10-degree line is
11 warranted.

12 And the final consideration we would draw to the
13 attention of the Tribunal concerns the practical benefits of
14 continuing the 10-degree line as the maritime boundary, and
15 there are three of these practical benefits that I wish to
16 mention.

17 First, there is the matter of simplicity. The
18 straight-line boundary avoids the complications of a boundary
19 that changes directions several times. There is cartographic
20 simplicity, and there is administrative simplicity. As
21 Professor Oxman pointed out, both mariners and law enforcement
22 officials gain from the simplicity of a single line boundary.
23 While modern navigational techniques might reduce some of these
24 concerns, the fact is that this is an area of small craft
25 fishing vessels that are less likely to be working with such

10:02:03 1 technology. And so, as Professor Oxman suggested, law
2 enforcement would be enhanced by a single line boundary, and so
3 the ability of vessels to avoid violating the laws would also
4 be enhanced.

5 Second, the Tribunal has heard some discussion about
6 the potential for erosion and accretion. The mud banks that
7 form the coasts are constantly moving, it seems. The
8 Netherlands Hydrographic Service seems to think so. Guyana's
9 theory of the location of the 1936 point is based on
10 considerable erosion and accretion, but the point, however, is
11 that there is no need for the Tribunal to get into any of this.
12 A line based on equidistance needs some degree of certainty
13 about base points. A line based on an azimuth of 10 degrees
14 from the land boundary terminus does not depend upon base
15 points and base points that over years might come or go.

16 The 10-degree line simply avoids any accretion or
17 erosion problems in the future.

18 Third, and this is a much more delicate point, courts
19 and tribunals engaged in maritime delimitation have
20 historically sought to avoid anything that would implicate
21 third states. Locating a base point for a boundary on a point
22 that may lead a third state to protest should be avoided. The
23 10-degree line avoids that issue. It does not rest on base
24 points that can, for any reason, need to be questioned. It's a
25 line that avoids rather than creates problems.

10:03:42 1 Mr. President, let me turn now to the question of
2 proportionality. It is well accepted in maritime delimitation
3 that proportionality has a role to play in assessing whether a
4 particular delimitation achieves an equitable solution. The
5 origin of the idea goes back to the North Sea cases, where the
6 Court spoke of a need to ensure a reasonable degree of
7 proportionality between the coasts of the parties and the
8 seabed areas allocated to them; and that idea has led to tests
9 of proportionality that seek to compare the ratio between the
10 lengths of the coasts of the parties and then comparing that
11 ratio to the ratio of the sea areas accruing to them as the
12 result of the delimitation.

13 Now, in the present case we have stated that the
14 result that Suriname claims to be an equitable solution,
15 delimitation along the 10-degree line, meets the test of
16 proportionality; and in oral argument last week, Mr. Reichler
17 chided us for asserting a claim of proportionality but not
18 proving it. He then purported to show that Suriname's line did
19 not meet the test of proportionality that Guyana puts forward,
20 but that Guyana's line did meet these tests.

21 Mr. President, like claims to geography being
22 refashioned, claims that lines meet the favored proportionality
23 models of their proponent have become almost ritual in maritime
24 boundary advocacy, and the ability of counsel to show that
25 their lines meet the most exacting proportionality tests with

10:05:17 1 almost mathematical precision has become a high art of the
2 profession. And we saw an excellent practitioner of that art
3 last week, and to be sure, we will not disappoint Mr. Reichler
4 by staying aloof from the fray. We will show that our line
5 meets not just our test of proportionality, but also Guyana's
6 test of proportionality, as well.

7 But before doing that, we did note that in a reply to
8 a question from Professor Franck on Monday, Guyana's expert
9 Dr. Smith suggested that a way to get from equidistance to the
10 34-degree line was by comparing the ratios of lengths of
11 coastline with areas allocated to the parties through
12 delimitation. And with the greatest of respect, we believe
13 that what Dr. Smith said was wrong. A maritime boundary has to
14 be justified on the basis of law, not on the basis of some form
15 of allocation of shares in the area to be delimited. That
16 approach was rejected decisively in the North Sea cases, and
17 attempts to revive it have also been decisively rejected.
18 Tests of proportionality are for showing what is an equitable
19 solution, not for determining what share should be allocated
20 from one party to another.

21 Now, Guyana uses its appurtenant and relevant maritime
22 area methodology for the purpose of testing the proportionality
23 of lines of delimitation; but as we have pointed out, the
24 appurtenant and relevant area methodology is fundamentally
25 flawed, and as we have pointed out, it includes large areas

10:06:53 1 that are simply not relevant to this delimitation. It's for
2 that reason that courts and tribunals have preferred to test a
3 comparison of coastal lengths in areas allocated within a more
4 confined area.

5 Now, let me turn to the specific proportionality model
6 that Guyana put forward last Saturday. They were impressive,
7 particularly in the way the ratios between the coastal lengths
8 of the two States and the areas resulting were so close when it
9 came to Guyana's proposed 34-degree line. Perfection is hard
10 to come by and it's very hard to come by accident, but I'm sure
11 that it was readily apparent to the Tribunal that the key
12 variable in all of the tests of proportionality was coastal
13 length, and here nature was kind to Guyana, or at least those
14 who selected both the coastal length and the methodology for
15 determining coastal length were kind to Guyana.

16 But what this means is that if Guyana is wrong either
17 in the length of the coasts they selected or in the methodology
18 for measuring coasts, their proportionality models would start
19 to become unstuck; and, Mr. President, the glue was certainly
20 softening when it became clear that Guyana appeared to be
21 relying on Dr. Smith's figures that turned out to be hopelessly
22 wrong. What is clear is that if Guyana's relevant coastal
23 links were based on either Dr. Smith's original figures or his
24 revised figures, then they are riddled with errors.

25 But putting aside the arithmetic, a key factor in the

10:08:27 1 determination of the length of coasts by Guyana is the
2 assumption that the relevant coasts--that the coasts run from
3 the land boundary terminus to the last base point for the
4 measurement of the outer limits of the territorial sea. And,
5 of course, this is an approach that undoubtedly would be
6 favored by Guyana because they're thereby able to lengthen
7 their own coast and truncate Suriname's coast. And they
8 truncate Suriname's coast not just because of the use of
9 improper base point methodology, but also because Guyana has
10 eliminated one of Suriname's base points from the calculation,
11 and this is the base point at Vissers Bank.

12 So, Guyana's tests of proportionality are based on
13 coastal lengths derived from a methodology for determining
14 coastal lengths that is wrong, but then we would suggest that
15 Guyana misapplies its own methodology through the wrongful
16 elimination of base points on Suriname's coasts. But
17 notwithstanding these reservations, we thought we should test
18 our line through proportionality models put forward by Guyana
19 on the basis of our relevant coasts, and we did just that.

20 So, let me use the Guyana model, the
21 appurtenant/relevant area model, and we thought that we would
22 test our assumption that the model depends on whether you get
23 the coastal lengths right, and so we applied to that model the
24 coastal lengths identified by Suriname. And Suriname you
25 recall as I pointed out determined coastal lengths by

10:10:01 1 straight-line coastal fronts: 90 miles in the case of Guyana's
2 coast, 140 miles in Suriname's coast, and that's a ratio of 1
3 to 1.56. So we ran Guyana's model against the relevant coastal
4 ratio, and I should say before indicating the results, the
5 charts that are shown are Guyana's depiction, and it includes
6 on it a depiction of a boundary between French Guiana and
7 Suriname which, of course, we say does not exist, and is drawn
8 on a basis that simply has no foundation.

9 But in any event, we used these depictions.

10 So, we ran Guyana's model against the relevant coast.
11 First we tested the 34-degree line. Now that, to make it
12 clear, is our relevant coasts and their proportionality area.
13 Coastal ratio was 1 to 1.56. The areas allocated are 1 to
14 0.73. And that did not seem proportionate.

15 Next, we tested the 28-degree line, just as Guyana had
16 done. The result was a coastal ratio of 1 to 1.56, but the
17 areas allocated were in a ratio of 1 to 0.88, and that did not
18 seem proportionate, either.

19 Next we tested the provisional equidistant line. The
20 result, again, the coastal ratio of 1 to 1.56, and the areas
21 allocated in a ratio of 1 to 0.96. Still did not seem
22 proportionate.

23 Next we tested the 17-degree line, just as Guyana had
24 done. The result was a coastal ratio of 1 to 1.56, and the
25 area allocated a ratio of 1 to 1.25, and that seemed to be

10:11:56 1 getting much better.

2 And then finally we tested the 10-degree line as
3 Guyana had done. The result applying our coastal ratio to
4 their proportionality model, the coastal ratio of 1 to 1.56,
5 the ares allocated are in a ratio also of 1 to 1.56.

6 Mr. President, it's always a pleasure working for
7 people who prepare models, but they sometimes can't be
8 controlled.

9 ARBITRATOR FRANCK: Professor McRae, just trying to
10 follow your excellent presentation, it just seems to me that
11 the ratio that comes closest of the lines that you have drawn
12 using the Guyanese methods, but your baselines is, in fact, the
13 equidistance line. Am I misunderstanding that? The
14 equidistance line is a ratio of one to almost one. The others
15 are all off quite a bit.

16 PROFESSOR McRAE: The ratio, Professor Franck, at
17 coastal lengths are in a ratio of 1 to 1.56, so you're really
18 comparing not 1 to 1 but 1 to 1.56. So an area allocation that
19 is closest to 1 to 1.56 is what you're looking for, if you want
20 perfection.

21 So, 1 to 1 is still out of proportion when your
22 coastal relationship is not 1 to 1; your coastal relation is 1
23 to 1.56.

24 ARBITRATOR FRANCK: So, your ratio is to the coastal
25 front, but not to the actual area of overlap?

10:13:54 1 PROFESSOR McRAE: Well, the area of overlap would be
2 divided in a ratio if we take the 10-degree line which is the
3 one we have on screen. The ratio would be divided, the area
4 would be divided in precisely the same ratio as the coastal
5 length. And we are using Guyana's area to test
6 proportionality, but we are using our coastal lengths, and that
7 results in the 10-degree line being for reasons that simply
8 happened to be precisely the same.

9 ARBITRATOR FRANCK: Well, to a layperson, the
10 allocation of the seaward area to the landward coastal front
11 would suggest that the entire coast of Guyana would be compared
12 to the entire coast of Suriname. What was the procedure in the
13 North Sea case? Only a small portion of the coast?

14 PROFESSOR McRAE: Well, they talked about it generally
15 in the North Sea case about a reasonable degree of
16 proportionality. If you take the Gulf of Maine case where they
17 tested the proportionality, they tested the proportionality of
18 what they regarded as the relevant coasts, not the total coasts
19 of the countries. They simply took the coasts along the back
20 of Maine, the coasts down the side of the Nova Scotia and
21 looked at the coasts--and then along Massachusetts, looked at
22 the coasts that faced into the area to be delimited, and that
23 really gets back as Guyana's, as I mentioned, methodology
24 depends on their perception of the relevant coasts which are
25 not the full coasts of both countries. Our perception of the

10:15:26 1 relevant coasts is different, but it's still the relevant
2 coasts that should be used to determine the proportionality, we
3 think, not the total coasts of both countries.

4 ARBITRATOR FRANCK: And there is--you have no case
5 that actually involves a configuration like this that involves
6 relevant coasts being used as the ratio basis. The Gulf of
7 Maine was obviously a different kind of coastline.

8 PROFESSOR McRAE: Well, the configuration--it's
9 difficult to find coastlines that are precisely the same.
10 Every coastline, every area is somewhat different. What we've
11 tired to do is to take the approach and the methodology of one
12 and apply it to the other.

13 And while tribunals look at proportionality models and
14 parties present proportionality models, they generally don't
15 decide cases on the basis of proportionality models. They just
16 get a general impression of whether the result is equitable.
17 Does that answer?

18 ARBITRATOR FRANCK: Thank you very much.

19 PROFESSOR McRAE: Now, as I mentioned, we used our
20 relevant coasts, but we were also conscious of the criticism
21 that had been made of our depiction of the Guyana coastal front
22 because it stops at the east bank of the Essequibo River. And
23 since we had, as we pointed out, indicated that one could also
24 consider running the coastal front to the west bank of the
25 Essequibo River and northwards, then we thought we should try

10:17:01 1 the model again using the revised length of the coasts; that
2 is, a coastal length of 140 nautical miles for Suriname and 120
3 nautical miles for Guyana. And that is a coastal ratio of 1 to
4 1.17.

5 In testing lines against this ratio, again the
6 34-degree line with a coastal ratio of 1 to 1.17, the area
7 ratio is 1 to 0.73. Against the 28-degree line, which I will
8 have to locate because I don't have those figures in front of
9 me, the area ratio, the coastal ratio again is 1 to 1.17, and
10 the area ratio is 1 to 0.88. Against the provisional
11 equidistant line, again the coastal ratio of 1 to 1.17, and
12 area ratio of 1 to .096. The 17-degree line, coastal ratio of
13 1 to 1.17 and area ratio of 1 to 1.25.

14 And that gets fairly close in those ranges of being
15 proportionate.

16 But finally we tested the 10-degree line, and with a
17 coastal ratio of 1 to 1.17, area ratio of 1 to 1.56. Now,
18 clearly it is not as perfect as the other one we showed you,
19 but it generally fits within the range of what courts and
20 tribunals have regarded as proportionate.

21 Now, that is looking at the model that Guyana has put
22 forward, but it seemed in our view as we've mentioned, the area
23 that they were using was inappropriate, and a more confined
24 proportionality area would be more appropriate. So, again, we
25 tested the lines by reference to a more confined area, an area

10:19:08 1 that is defined by reference to the relevant area, an area that
2 in our view reflects more accurately the coastal projections of
3 the two States, and therefore provides a more realistic picture
4 of the maritime areas that accrued to each State as a result of
5 the delimitation; and that, in our view, give us--provides a
6 better basis for comparing the ratio of the lengths of the
7 relevant coasts.

8 Now, we defined the area as follows. We drew
9 perpendiculars to the coasts of both Guyana and Suriname. In
10 the case of Guyana, that is a 34-degree line. In the case of
11 Suriname, that is the 0-degree line. We then dropped
12 perpendiculars from the ends of those lines to the coasts of
13 Guyana and Suriname, and we enclosed that area, and we tested
14 the various lines within it. And I'm going to take you through
15 these lines again. I'm sorry for flicking through these
16 various slides, but it gives you the sense of the various
17 ratios, and we will provide you with a table at the end of all
18 of them. But on the basis of this model, if we look at the
19 34-degree line, we are looking at a coastal ratio again
20 of--based on Suriname's coastal fronts of 1 to 1.56 and an area
21 ratio of 1 to 0.48.

22 For the 28-degree line, again a coastal ratio of 1 to
23 1.56, this time an area ratio of 1 to 0.67. If we look at the
24 provisional equidistance line, coastal ratio of 1 to 1.56 that
25 produces an area ratio of 1 to 0.77. 17-degree line, coastal

10:21:07 1 ratio of 1 to 1.56, and area ratio of 1 to 1.18. And then if
2 we look at the 10-degree line, coastal ratio of 1 to 1.56, and
3 area ratio of 1 to 1.66.

4 But again, because of the criticism of the length of
5 the coastal front, we also applied it to the, if you would
6 like, alternative coastal front. The ratio of a 120 nautical
7 mile coast for Guyana and the 140 nautical mile coast for
8 Suriname. Again if we start with the 34-degree line, now we're
9 looking at a coastal ratio of 1 to 1.17, but still with the
10 34-degree line that produces an area ratio of 1 to 0.48. With
11 the 28-degree line, the coastal ratio again constant 1 to 1.17,
12 the area ratio here is 1 to 0.67. And if we try the
13 provisional equidistant line, again our coastal ratio of 1 to
14 1.17, this produces an area ratio of 1 to 0.77. If we look at
15 the 17-degree line, it actually ends up quite close, coastal
16 ratio of 1 to 1.17 and area ratio of 1 to 1.18.

17 And finally the 10-degree line produces--again our
18 coastal ratio is 1 to 1.17, and the area ratio is 1 to 1.66.
19 And we've set this out in a table so you that can see them all
20 together rather than having to look through each individual
21 slide.

22 Mr. President, we are not here to make extravagant
23 claims about proportionality. We believe that we have shown
24 that under either the proportionality model proposed by Guyana
25 or under the proportionality model we have put forward, when

10:23:11 1 you apply the appropriate relevant coasts, the 10-degree line
2 does meet the test of a reasonable degree of proportionality
3 between the lengths of the coasts and of the area resulting
4 from delimitation. And as I say, that applies whether you use
5 the shorter version of the coastal fronts, the 90-mile and 140
6 nautical mile, or the longer version of 120 and 140 nautical
7 mile. On either basis we believe the result is proportional.
8 In short, Mr. President, as I have set out, in Suriname's view
9 the 10-degree line achieves an equitable solution, and it meets
10 appropriate tests of proportionality.

11 Mr. President, that concludes my presentation, and
12 unless there are questions, I would ask you to call on my
13 colleague, Mr. Colson.

14 PRESIDENT NELSON: Thank, Professor McRae.

15 There is a question that I would like to pose. It's
16 mainly clarification. The product of your application of the
17 bisector principle is a 17-degree line.

18 PROFESSOR McRAE: Yes.

19 PRESIDENT NELSON: You may have explained this
20 already, but I would like to have light shed on it. The
21 relationship between the 17-degree line and the 10-degree line.

22 PROFESSOR McRAE: Thank you, Mr. President.

23 The 17-degree line is a line that would be produced if
24 you decided this case solely on the basis of the geography. We
25 believe that if the issue were solely geography, then the

10:24:54 1 appropriate method would be a bisector method, and that
2 produces a 17-degree line, given the coastal relationship. But
3 this is not a case where one can decide it simply on the basis
4 of geography because, as we have argued and has been
5 demonstrated by Professor Oxman and others, there is already
6 effectively consistent behavior that leads to the 10-degree
7 line being a boundary out to the limit of the territorial sea
8 at least, and so, therefore, if one--that makes 17 degrees
9 obviously not appropriate for the whole of the line because you
10 already have a 10-degree line out to a certain point.

11 If one then delimited for the rest of the way on the
12 basis of geographical considerations, in our view, you would
13 then have to bring the 17-line degree line out, as I mentioned
14 before, as in the Gulf of Maine you bisect the angle and then
15 apply it from the appropriate point. You'd have to bring it
16 out and run from 17 degrees at that point. However, we are not
17 making that case. We are making the case that the 10-degree
18 line should continue on its continuing azimuth out to the 200
19 nautical mile.

20 PRESIDENT NELSON: Thank you very much, Professor
21 McRae.

22 I now give the floor to Mr. David Colson.

23 MR. COLSON: Thank you.

24 Mr. President and Members of the Tribunal, it is an
25 honor to appear before you again. It is my intention to finish

10:26:53 1 my presentation very close to the coffee break, and if I might
2 be allowed a little leeway if I need another three or four
3 minutes, I would hope that could be arranged, and then
4 Professor Greenwood will take the floor after the coffee break
5 and will conclude Suriname's presentation for the day.

6 I want to deal with three themes which are central to
7 the maritime boundary part of Suriname's case. The first--and
8 this is a basic point--is that the parties in this case have
9 agreed that this Tribunal should determine a single maritime
10 boundary out to the 200-mile limit. The single maritime
11 boundary concept arises out of state practice, and it is based
12 on two practical legal considerations. The first of these
13 legal considerations is that in many cases, the jurisdiction
14 that is claimed by one state is not the same as the
15 jurisdiction claimed by another state. This was perhaps more
16 true 30 years ago when many states had claimed 200-mile zones,
17 but they did not yet recognize the Exclusive Economic Zone, and
18 it is during this period that the single maritime boundary
19 became part of state practice.

20 And now, for instance, one state may claim an EEZ, and
21 yet another neighbor might only claim a fishing zone, yet it
22 reserves the right some day to claim an EEZ. And further, both
23 states may recognize that someday under international law, the
24 jurisdictions that are available in the 200-mile zone might
25 change, and thus the single maritime boundary concept allows

10:29:13 1 those states to agree that there is but one line in their
2 relationship that will serve as the single maritime boundary
3 for all jurisdictional purposes now and in the future.

4 The second practical reason arises from the point that
5 was touched upon by Professor Oxman, and unless a boundary is
6 precisely equidistant from two countries, the legal
7 characteristics of the zone on one side of the boundary will be
8 different from those on the other side of the boundary at least
9 in two important locales. One of these is the locale where the
10 territorial sea relationship transcends to a relationship
11 between the two Exclusive Economic Zones, and the other is the
12 place where the EEZ relationship transcends to a relationship
13 between the Exclusive Economic Zone and the high seas or outer
14 continental shelf beyond.

15 For instance, a 10-degree line boundary that delimits
16 the territorial sea of Guyana and Suriname will reach the
17 12-mile limit measured from Suriname's coast before it reaches
18 the 12-mile limit measured from Guyana's coast. This is the
19 wraparound problem that Professor Oxman spoke of. The single
20 maritime boundary concept avoids the wraparound problem that
21 might otherwise result. And these practical advantages of the
22 single maritime boundary have been recognized by courts and
23 tribunals and have led to this concept being followed in state
24 practice. It will be for the parties in this case to address
25 the wraparound or the gray zone problem that results at the

10:31:43 1 seaward end of the line to be established by the Tribunal where
2 the EEZ of one state will wrap around the EEZ of the other
3 state, as will happen in the event that the Tribunal adopts
4 either Suriname's 10-degree line position or Guyana's 34-degree
5 line position.

6 The only way the wraparound or the gray zone problem
7 may be avoided, of course, is if the Tribunal's line ends where
8 the 200-mile limits measured from Guyana's coasts and from
9 Suriname's coasts intersect.

10 Now, bound up in this is the important consideration
11 that follows from the fact that this is a delimitation between
12 two adjacent States. A review of the case law shows that
13 equidistance lines are very rare in cases between adjacent
14 States. In the cases we see what happens in the situation of
15 adjacent States. No equidistance lines in the North Sea
16 except, of course, in the previously agreed areas close to the
17 coast. None in Libya-Tunisia, none in Gulf of Maine, none in
18 Guinea-Guinea-Bissau, and Guinea-Bissau-Senegal, if you want to
19 include that one. The only case between adjacent states where
20 the equidistance line has been used is Cameroon-Nigeria, where
21 it was used in one short segment of that boundary award. That
22 segment is only about 13 miles long, and it was developed from
23 the two controlling headlands, the east point and the west
24 point at the mouth of the estuary of the Cross and Akiyafi, and
25 thus, in fact, it constituted a perpendicular to the general

10:34:00 1 direction of the coast in that environment.

2 It's also necessary to consider the principle of
3 nonencroachment. Guyana has questioned the vitality of this
4 principle in its pleadings. The principle of nonencroachment,
5 however, is applicable to this case, as it is in all cases. It
6 is an equitable principle, and its basic attribute is to raise
7 the question whether a proposed line of delimitation passes too
8 close to the coast of one of the concerned states.

9 Now, this conclusion is clearly reflected in the
10 seminal writings of Judge Aréchaga which I briefly referred to
11 yesterday. And if I could take you for a moment to the books
12 today to Tab J1 in the book, we have placed in the book a
13 number of paragraphs from the part from the opinion, the
14 separate opinion, that Judge Aréchaga authored in
15 Libya-Tunisia. We have included the totality of Part II of
16 that separate opinion, which is entitled, "The Concept of
17 Natural Prolongation." It runs from paragraphs 37 to 64 and
18 Part III, which is entitled, "The Equitable Principle of
19 Nonencroachment," and it runs from paragraphs 65 to 76. This
20 is Tab J1.

21 Judge Aréchaga's discussion of the relationship of
22 natural prolongation and nonencroachment in this separate
23 opinion cannot be improved upon, and I would like to just read
24 from a few of the paragraphs in that separate opinion which you
25 have before you. And I would like to turn your attention, if I

10:36:34 1 might, to paragraph 58. And in this paragraph Judge Aréchaga
2 now is beginning to discuss what the Court said about natural
3 prolongation at paragraph 44 of its judgment in the North Sea
4 case. And this is what Judge Aréchaga says at paragraphs 58
5 and 59. And this is under the title of the real meaning of
6 natural prolongation in the '69 judgment.

7 "This statement makes it quite clear that, for the
8 Court, 'natural prolongation' is a concept divorced from any
9 geomorphological or any geological requirement and that it
10 merely expresses the continuation or extension seawards of each
11 state's coastal front. It means that the continuation of the
12 territory into and under the sea has to be based on the actual
13 coastline as defined by the land frontiers of the states in
14 question, since it is from the actual coastline of each state
15 that the land territory continues to into and under the sea.
16 Consequently, the basic corollary of 'natural prolongation' is
17 the need to avoid the 'cutting off' of areas 'situated directly
18 before that front.' For this reason, the Court referred in
19 paragraph 95," again referring to the North Sea judgment, "to
20 the fact of the appurtenance of the shelf to the countries in
21 front of whose coastline it lies, and in paragraph 58 it
22 reiterated that a lateral equidistance line often leaves to one
23 of the states concerned areas that are a 'natural prolongation'
24 of the territory of the other."

25 "Thus, the meaning attributed to the expression

10:39:01 1 'natural prolongation' in the 1969 judgment, when properly
2 analyzed, is that it signifies the continuation or extension of
3 the coastal front of the territory of every coastal state into
4 and under the sea."

5 And at the end of that paragraph he goes on to say,
6 and 'the most natural prolongation' is that which continues or
7 extends more directly into the sea and is not 'cut off' by the
8 extension or prolongation of the coastal front of another
9 state. From this meaning of 'natural prolongation,' results
10 the corresponding principle which both parties in this case,"
11 meaning Libya-Tunisia, "have recognized to be the other side of
12 the coin," the other side of the coin, "of the principle of
13 'natural prolongation' being the principle of nonencroachment,
14 a fundamental principle of equity to be examined later."

15 And when it comes to that later, I would like to bring
16 you to paragraph 69, and now we are talking--he is talking of
17 the equitable principle of nonencroachment, and paragraph 69
18 falls under the heading the correct interpretation of the
19 principle, the principle of nonencroachment. "The solution of
20 this disagreement," and he is here expressing the disagreement
21 between the parties in that case, "is to be found in the
22 meaning which is to be attributed to the correlative notion of
23 'natural prolongation.' If, as stated above, the Court used
24 this expression to describe the continuation of the coastal
25 front of every coastal state, and not with a geological or

10:41:21 1 geomorphological meaning, then the 'nonencroachment' in front
2 of and close to the coasts of a state is the correct
3 interpretation of the principle. It is true that there may be
4 geographical configurations in which a boundary line cannot
5 avoid 'cutting across' the coastal front of one state or both,
6 but the principle of nonencroachment, being an equitable
7 principle, is not a rigid one. It admits a corrective element,
8 which is the factor of distance from the coast. If the
9 above-described geographical situation occurs," namely
10 nonencroachment, "then the 'cutting off' effect should be
11 allowed to take place at a point as far as possible--as far as
12 possible--to go, seawards, from the coastal front of the
13 affected state."

14 I just to want draw your attention very briefly to one
15 more paragraph in this section, and it is paragraph 75, and
16 that paragraph begins with the words: "Encroachment is
17 particularly to be avoided when a proposed boundary line brings
18 a foreign state too close to the main ports of the other," and
19 I would simply submit that that reasoning would apply to the
20 mouth and the approaches to a boundary river.

21 Now, Guyana contends that the principle of
22 nonencroachment must be reinterpreted or even set aside because
23 of the distance principle which Guyana promotes. It promotes
24 the notion that distance has replaced natural prolongation.
25 Professor McRae has shown that this does not help much because

10:43:55 1 all it implies is that delimitations are to be done by
2 equidistance lines. Natural prolongation and nonencroachment,
3 both geographical concepts, have not been replaced by the
4 200-mile limit.

5 Following Gulf of Maine where Canada made the same
6 argument now made by Guyana, an argument that we saw did not
7 convince the Chamber in Gulf of Maine, Canada then entered into
8 an arbitration with France concerning the boundary with St.
9 Pierre and Miquelon. That was a case pertaining to the single
10 maritime boundary. It was a single maritime boundary that
11 would govern all forms of jurisdiction. The President of that
12 Tribunal was Judge Aréchaga.

13 Now, we, unfortunately, do not have the pleadings in
14 that case. They have never been made public, but it is quite
15 evident from the Award of the Tribunal that Canada presented a
16 case quite differently from the one that it had done in the
17 Gulf of Maine. It presented a case based on coastal fronts,
18 frontal projections, perpendicular projections. The judgment
19 says paragraph 59, "For coasts project frontally in the
20 direction in which they face, as has been recognized by
21 judicial opinion." Now, it is true that particular quote from
22 paragraph 59 of that award comes from the section of that award
23 where the Tribunal is recounting Canada's arguments, but if you
24 look at that award, where the Tribunal is going through its own
25 analysis, which is paragraphs 66 to 74, you will see the words

10:45:58 1 frontal projection, encroachment, and cut-off used over and
2 over again.

3 The principle that the single maritime boundary must
4 respect the relationship between the coasts of the parties and
5 the maritime areas in front of those coasts remains applicable
6 in the delimitation of the 200-mile zone. It cannot be
7 otherwise.

8 Now, I come to my second theme, and that relates to
9 the perspective of those who dealt with this issue in the
10 1960s. I don't wish to argue that Suriname's negotiators were
11 prescient, however, they did understand the basic principle of
12 natural prolongation long ago. Suriname formulated a position
13 that is founded in the basic geographical circumstances, the
14 geographical relationship between Suriname and Guyana, a
15 relationship of the neighboring coasts to the sea and the
16 direction of the land boundary as it reaches the sea along the
17 left bank of the Corantijn River. Suriname does not make a
18 thalweg argument. It doesn't make a navigable channel in the
19 continental shelf argument. It is an argument that makes the
20 case that an extension of the land boundary into the sea is a
21 criterion that must be taken into account in this situation,
22 and when it is taken into account, it justifies a boundary that
23 extends along the 10-degree line to the 200-mile limit. This
24 is a position that is formulated in geographical circumstances,
25 and it is based in the history of the relationship.

10:47:56 1 Guyana in this case has put forward the argument that
2 Suriname was somehow less sophisticated in these matters than
3 the authorities in London and The Hague. Aside from the fact
4 that the argument is somewhat demeaning, it also sidesteps the
5 fact that the Netherlands' view of these matters failed before
6 the Court. There can be no doubt that London and The Hague
7 were taken by surprise by the North Sea Continental Shelf Case
8 judgment. The U.K., of course, was not party to those
9 proceedings, but no country to that time had invested more into
10 promoting equidistance around the world than had the United
11 Kingdom. That's not to say that the U.K.'s efforts--not to say
12 anything negative about those efforts. It's only to point out
13 that the U.K. was embarked upon a very self-interested and
14 global approach designed to instill equidistance into virtually
15 all boundary situations. And that approach, what was
16 rationalized and supported by all of the fine lawyering that
17 can be brought to bear in the United Kingdom was influenced
18 heavily by two things: One was the fact that the equidistance
19 line served the United Kingdom very well around the British
20 Isles; and the second was that all throughout its widespread
21 colonial empire in the 1950s, the U.K. was confronting one
22 maritime boundary problem after another, and thus nice, neat
23 equidistant line solutions would serve its purposes in those
24 situations very nicely without the need for distinction and
25 rationalization between one locale and another. The world did

10:50:10 1 not agree with the United Kingdom, nor did it agree with the
2 Netherlands. When the U.K. began talking about equidistance in
3 the Suriname-Guyana situation in the 1950s, it had nothing to
4 do with the geographical circumstances of Suriname and Guyana.
5 In the record we see no analysis of the relationship of the
6 relevant coasts and the effect that an equidistance line might
7 have on the projection of those coasts into the sea. All one
8 sees is the concern expressed that the charts aren't good
9 enough, so that the cartographers cannot have confidence in the
10 equidistance line that they might be drawing. There is nothing
11 here about fairness or equity. It is all about the mechanical
12 application of a geometrical method to a nautical chart, and it
13 was all part of the U.K.'s worldwide campaign on behalf of the
14 equidistance method.

15 While Suriname divorced itself from the Netherlands
16 maritime boundary attitudes in the early 1960s, if not in the
17 late 1950s, Guyana inherited the British attitudes when it
18 gained its independence in 1966. Guyana, however, never really
19 seems to have understood the Kennedy approach to equidistance.
20 It has never appreciated that the U.K.'s abandonment of the
21 10-degree line in its 1965 Treaty proposal was a negotiating
22 response to the Dutch proposal of 1962. And once it became
23 clear that international law did not support the British
24 conception of Article 6.2 of the Continental Shelf Convention,
25 Guyana never sought to accommodate that reality into its

10:52:15 1 position.

2 Now, this leads to my last theme, which is derived
3 from the fact that both parties in this case have presented a
4 single line from the low-water mark to the 200-mile limit.
5 That approach is consistent with the practice of many other
6 South American states with respect to lateral boundaries. It
7 has much to commend it in terms of administrative simplicity
8 and the avoidance of future disputes. We recognized, however,
9 that Guyana suggested a two-step approach in its written and
10 oral pleadings, and Suriname, in response, acknowledged earlier
11 this week that different legal and factual considerations may
12 be more pertinent in one area than another, and accordingly, it
13 is now possible that the Tribunal could decide to establish a
14 territorial sea boundary along the 10-degree bearing and then
15 turn to the question of the direction of the boundary of the
16 EEZ and the continental shelf to the 200-mile limit.

17 Now, concerning the extended boundary beyond the
18 territorial sea, the 1961 British proposal, in that proposal
19 Commander Kennedy set out his conception of an equidistance
20 line that extended to the 200-meter isobath. I want to
21 emphasize that, 200-meter isobath, not the 200-hundred mile
22 limit. This is the only relatively precise description of an
23 equidistance line that we have by either the United Kingdom or
24 Guyana until Guyana finally set out its version of the
25 provisional equidistance line in its Reply. Commander Kennedy

10:54:15 1 never talked about a 34-degree line. Commander Kennedy never
2 talked about averaging the bearings of the equidistance line.
3 And Commander Kennedy only worked out to the 200-meter isobath.

4 Commander Kennedy's equidistance line was described by
5 bearings and distances, not by coordinates. In 1961 he said a
6 10-degree line for 6 miles, and here, of course, he was
7 applying the agreement of the parties for the territorial sea,
8 and then 33 degrees for 35 miles, 38 degrees for 28 miles, and
9 28 degrees to the 200-meter isobath. This is a rough and
10 approximate procedure, but perhaps appropriate in the
11 circumstances in which he worked. Thus, Commander Kennedy
12 envisioned a boundary that extended along the 10-degree line
13 for 6 miles, and then apparently in his view it connected over
14 in some fashion to the equidistance line.

15 Now, Guyana's position, as Professor McRae just noted,
16 which is said to be based on Commander Kennedy's methodology,
17 demonstrably is not. First, Guyana seeks a one-segment line
18 from the 1936 Point to the 200-mile limit, which is not the
19 200-meter isobath.

20 Second, Guyana abandons the 10-degree line altogether.

21 Third, if Commander Kennedy had been asked to provide
22 the average bearing, if Commander Kennedy had been asked to
23 provide the average bearing of the equidistance line, even his
24 line, he would have considered the length of each line segment
25 before he got into averaging the bearings.

10:56:33 1 Let me try to explain this averaging. There is a
2 difference between averaging two numbers and averaging the
3 length of two lines. If I ask anyone in this room to average
4 the numbers two and four, we would all add two and four to make
5 six. We would divide six by two, and we would get three, and
6 we would all do that the same way. But if we are trying to
7 average two lines, we have to go into a more complicated
8 procedure where we take into account the length of those lines.
9 We might remember back, perhaps it was in our algebra classes
10 or trigonometry classes, where we were taught about this, it
11 was in a process, it was called vector analysis, and probably
12 some of us might not have done that so well, but that is,
13 indeed, what one has to do if you are going to average links of
14 lines. For instance, a line, just think of this with me for a
15 minute, a line that follows 30 degrees for 2 miles, and then it
16 is connected to a line that is 60 degrees for a hundred miles
17 is not a line that follows 45 degrees for 102 miles. You can't
18 take the 30 and the 60 and put them together and average them
19 and call them 45. The reason is that the length of that line
20 that is 100 miles long overwhelms. It has to be given a weight
21 in this process. It has to be given--it dominates a line. If
22 we walked a hundred miles at one bearing, we would almost be
23 doing the same bearing as that 60-degree line for a hundred
24 miles. It would be 59 or 58. It wouldn't be 45.
25 Now, this is what's happened with Guyana's position.

10:59:11 1 Guyana has, and the gentlemen in this room did not do this.

2 This happened back in 1966 somewhere along the way. Guyana
3 just averages the numbers 33, 38, and 28 that are in the
4 Kennedy proposal, and it gets 34.

5 Now, when I average those numbers I get 33, but that's
6 sort of immaterial. And if you put 10 into that, if you
7 average 10 and 33 and 38 and 28, you will get 27 and a quarter,
8 but if you want a one-segment equidistance line, a one-segment
9 equidistance line that runs from the 1936 Point to the 200-mile
10 limit, which appears to be what Guyana really wants, it can't
11 stay with simple arithmetic. It's got to go into taking
12 account of the various segments of the equidistance line that
13 it promotes. And it has not done that. It has not resorted to
14 the trigonometric processes that you have to go through you if
15 are going to average the lengths of line segments.

16 And it also--and I tried to point this out--Commander
17 Kennedy did not work to the 200-mile limit. He worked only to
18 the 200-meter isobath.

19 Guyana's procedure is so obviously improper, it's hard
20 to imagine where it came from. Certainly Commander Kennedy, if
21 he were here, I believe he would be embarrassed to be
22 associated with it. If he were here and one were to ask him to
23 identify the average bearing of the equidistance line, he would
24 say, Look, there are basically two ways to do this. If you're
25 interested in the average bearing of the equidistance line, you

11:01:33 1 can identify the various line segments that the equidistance
2 line is made up of throughout its length, give them a weight
3 depending on the length of each segment, and then create one
4 weighted average bearing through a process of vector analysis,
5 a trigonometric or algebraic process. He would tell you about
6 that.

7 Or he might tell you, there is really a simpler
8 method. If you know the starting point and the ending point,
9 all you need to do is run the straight line that connects those
10 two points. In the world of geodesy, there may be a small
11 difference between those answers, but the single segment
12 straight line to the intersection of the 200-mile arcs at the
13 200-mile limit is the ultimate averaged equidistance line,
14 which, in this case, would run at about 22 or 23 degrees.

15 Now, Guyana hasn't done that. Guyana just took what
16 equidistance gave it in the near shore segment, where it gets a
17 big push from that Berbice Headland that you have heard so much
18 about that causes the equidistance line to cut across the
19 coastal front of Suriname, just as Judge Aréchaga said it
20 would, and then Guyana just keeps that line going and going and
21 going.

22 Now, Guyana's counsel will say, Suriname is not one to
23 talk here. Suriname just keeps its 10-degree line going and
24 going and going, too. But there are key differences. The
25 major one is that the 10-degree line creates an equitable

11:03:34 1 solution. The 34-degree line does not. The 34-degree line has
2 no roots. You cannot even find them in the proper application
3 of the equidistance method. The 10-degree line has a root, and
4 it's rooted in the coastal geography, the geographical
5 relationship, the extension of the land boundary into the sea,
6 the history of the relationship between the parties. The
7 34-degree line does not divide the area of overlapping coastal
8 front projections equitably. It takes all of that area for
9 Guyana. Suriname's 10-degree line does not do it. It doesn't
10 take all of the area that is in front of Suriname's coastal
11 front, its northward-facing coastal front. The angle bisector
12 takes account of the relevant circumstances and the relevant
13 coasts and, to the extent possible, leaves as much as possible
14 of that area to each party.

15 The equidistance line gets this wrong so often in
16 adjacent state situations because it ignores the basic coastal
17 relationships, and it does so in this case as it becomes
18 preoccupied with the effect of minor configurations which cause
19 the equidistance line to swing out too close to the coasts of
20 one of the states. The angle bisector method does not do that.
21 It's not affected by incidental coastal features. It is a line
22 of constant bearing, but it can be adjusted. It can be
23 adjusted as was seen in Libya-Tunisia, where an angle bisector
24 method was adjusted. It was even used in the Gulf of Maine
25 where it was adjusted.

11:05:27 1 In this case, the angle bisector method divides the
2 area of overlapping coastal front projections equally, and when
3 it is applied to the end of the territorial sea boundary, and
4 then adjusted to take account of the direction of the land
5 boundary, it will reflect the principles of natural
6 prolongation and nonencroachment and create an equitable
7 solution.

8 Mr. President, Members of the Tribunal, that completes
9 this presentation. It is a few minutes past time for the
10 coffee break, and I would hope that after the break you would
11 call on Professor Greenwood.

12 PRESIDENT NELSON: We have a question.

13 ARBITRATOR FRANCK: Mr. Colson, in trying to relate
14 your analysis to these maps, it seems to me that no matter
15 where you draw the line, whether it's 10 degrees or 7 degrees
16 or 28 degrees or 34 degrees east, it will still inevitably
17 encroach on the coastline of one of the parties. That is,
18 there is no way, given the configuration of the coast and the
19 fact of overlapping claims, there is no way you can avoid some
20 degree of encroachment. The 10-degree line, for example, as
21 drawn on the map that you have given us, the proportionality
22 map, would require traffic to the Guyana coast to go around a
23 considerable bend in what would normally be the straightest
24 line from the Atlantic Ocean to the Guyana coast.

25 So, if it's inevitable in this kind of configuration

11:07:26 1 that the line is bound to have some kind of cut-off effect,
2 then what is the special merit of either the 10-degree line or
3 the 17-degree line? Is it that you're protecting the mouth of
4 the river? Is that what it is?

5 MR. COLSON: I think we see in the final paragraph
6 that I noted from Judge Aréchaga, and if you wish to read
7 further into that passage, you will see that he was concerned
8 about the way that the lines came that were drawn, that were
9 proposed by the parties in that case that were how they came
10 too close to the major ports of the states concerned. I would
11 submit that the same kind of concern applies here to a mouth of
12 a river that goes into the interior that is a mouth of the
13 river that belongs to a sovereign of Suriname.

14 The angle--the cut-off, and I would agree with you, in
15 an adjacent state situation, you cannot avoid the cut-off
16 effect. We are not saying that you can avoid that. We are
17 saying that as Gulf of Maine said, you need, as the Tribunal
18 needs to look at what you think the cut-off effect and at least
19 if you would follow the words of the Gulf of Maine, you would
20 say that you divide that area equally. That's what the Gulf of
21 Maine Chamber said. We are saying the 17-degree line, when you
22 look at the coastal fronts of the two states, that the angle
23 bisector method will reflect--will equally divide the area of
24 overlap. That's what your 17-degree line gets you.

25 Now, the 10-degree bearing line, as it was agreed in

11:09:38 1 the European period, I would submit there was an understanding
2 that the territorial sea of Guyana would not reach into the
3 approaches to the river. It is Suriname's river. And
4 therefore, we think that following the 10-degree line out to
5 the end of the territorial sea, and as Professor McRae said,
6 then considering as a second segment how one appreciates the
7 coastal relationships between the two parties which is the, in
8 our view, the 17-degree line accomplishes that in a way that
9 divides the coastal front and produces an equal cut-off, shall
10 we say, of the coasts of both states, that that line would
11 produce an equitable solution, if there was no other
12 circumstance to be considered. The other circumstances that we
13 say should be considered is the direction of the land boundary,
14 which has always been considered as a potential special
15 circumstance or equitable criteria, and we would say that that
16 justifies an adjustment of the 17-degree line to the 10-degree
17 line.

18 I hope I have answered the question.

19 ARBITRATOR FRANCK: Thank you.

20 ARBITRATOR SMIT: Mr. Colson, do I understand
21 correctly that your position is that if the 34-degree line is
22 corrected as it should be that you end up with the 21-22-degree
23 line?

24 MR. COLSON: Yes. Our criticism--we have heard from
25 Guyana that their position is rooted in the historical

11:11:38 1 equidistance line that was promoted by Commander Kennedy, and
2 then somewhere along the way they divorced themselves from
3 exactly what Commander Kennedy had done, and they started
4 simply averaging numbers of bearings, and they got 34 instead
5 of 33, which I think if you simply do the math, you will see
6 it's 33, but they didn't wait. Nobody created a weighted
7 average, the average equidistance line. They didn't do the
8 vector analysis. If do you a proper vector analysis on the
9 average on the equidistance line segments, whether you do it in
10 a complex technical way, your technical expert could do it for
11 you, in a complex way the various segments of the equidistance
12 line, weight them, do a vector analysis, you will get a line of
13 about 22 degrees. You can do it in a complex way or you can
14 simply identify the straight line from the starting point to
15 the ending point. It will be the average equidistance line.

16 ARBITRATOR SMIT: Thank you.

17 PRESIDENT NELSON: Thank you very much, Mr. Colson.

18 We will resume this hearing at 11:30.

19 (Brief recess.)

20 PRESIDENT NELSON: I give the floor now to Professor
21 Greenwood.

22 PROFESSOR GREENWOOD: Thank you very much,
23 Mr. President.

24 Mr. President, sir, at the beginning of this case we
25 set out what were the issues between the parties and what we

11:37:03 1 would endeavor to show with respect to each of them. It's time
2 for a stock-taking, and that's what I will endeavor to do this
3 morning, although I will not emulate Mr. Colson's achievement
4 in explaining the concept of vector analysis.

5 If we begin with jurisdiction, Suriname maintains its
6 position that this Tribunal has no jurisdiction over Guyana's
7 claim the way that Guyana has formulated it. The reason is
8 that this claim would require it to determine the location of a
9 part of the land boundary, and the location of the land
10 boundary is a matter of the interpretation and application of
11 the 1799 Agreement and of other dealings between the parties.
12 It is not a matter of the interpretation and application of the
13 Law of the Sea Convention.

14 I put my arguments on that in some detail in the first
15 day of our opening round, and I don't propose to say anything
16 more about them now because the more important point is that
17 Suriname has shown that there is a basis on which the Tribunal
18 can decide this case in the exercise of its jurisdiction under
19 Article 288 of the Convention, and it can do it without having
20 to decide questions which fall outside that jurisdiction, and
21 without any artificiality or strained interpretation of the
22 provisions of the Convention.

23 Now, that basis is one which is firmly rooted in the
24 history of the way in which the two countries, both before and
25 after independence, have approached the whole subject of the

11:38:32 1 boundary, and it's the agreement and the conduct which
2 established the territorial sea boundary between them along the
3 10-degree line. Once it is realized that there is this
4 established boundary between the parties in the territorial
5 sea, then the jurisdictional problem can fall away in relation
6 to the boundary claims--the jurisdictional issues in relation
7 to submissions 3 and 4 are entirely separate--because it then
8 becomes possible for this Tribunal to delimit the maritime
9 boundary taking account of the established boundary in the
10 territorial sea and working from the furthest point of that
11 established boundary. Now, the fact that this is possible
12 makes it all the more bizarre that it's Guyana, the Claimant,
13 in these proceedings which is trying to deny the existence of
14 that maritime boundary, and all the more bizarre that it is
15 Guyana whose approach has thrown the issue of jurisdiction in
16 these proceedings into doubt.

17 Now, we thought carefully about Professor Smit's
18 question on the first day, and in the end, our submission is
19 that this oddity need not make any difference to the Tribunal.
20 In the exercise of its compétence de la compétence--if I can
21 bear to say the words in French rather than in simple
22 English--under Article 288(4) of the Convention, if the
23 Tribunal concludes on careful examination of the facts and the
24 relevant legal arguments that there is before it a dispute
25 which falls within Article 288(1) and which can be decided

11:40:04 1 without the need to decide a separate dispute which is outside
2 the jurisdiction of the Tribunal, then in the end it matters
3 not that the Claimant has failed to see this. So, that leads
4 me on to the second of the key issues between the parties which
5 is the starting point in respect of maritime delimitation, if
6 this Tribunal concludes that it has jurisdiction.

7 Now, Mr. President, on this question of the starting
8 point, we submit that Guyana's case has quite simply fallen
9 apart. They came in here just over a week ago telling the
10 Tribunal that Point 61 was the answer to everything. Point 61,
11 or the 1936 point, whichever one prefers, was the starting
12 point of the maritime boundary and the terminus of the land
13 boundary.

14 Now, what we have shown is that that cannot possibly
15 be the case. First of all, the 1936 Point isn't on the
16 low-water line, and the low-water line is the most landward
17 place from which any maritime boundary can start, as Article 5
18 of the Law of the Sea Convention makes clear.

19 Indeed, not only is the 1936 Point not on the
20 low-water line, it isn't a point on either of the land or the
21 maritime boundary between the two States, and that's now become
22 clear in terms of the factual position, and it's become clear
23 as a matter of common ground on law between the parties because
24 it's my learned friends' position--and it's ours--that the 1936
25 Point stands there surrounded on all sides entirely by the land

11:41:39 1 territory of Guyana. That makes it completely impossible as a
2 starting point for maritime delimitation. A reference point,
3 perhaps; a starting point, certainly not.

4 Secondly, Mr. President, it's plain from the
5 historical record that the 1936 Point was never intended to be
6 the terminus of the land boundary. It was only ever
7 constructed as a means by which a maritime boundary which had
8 already been determined could be delimited. Guyana has got the
9 whole question back to front, Mr. President. It's not a case
10 of a maritime boundary being tagged on to an agreed terminus of
11 a land boundary. It's a case where the marker, or I should say
12 markers which were set up on the land were put there in order
13 to give effect to an agreement about the maritime boundary.
14 That's why marker "A" and marker "B" were placed in the
15 positions in which they were placed, on a 10-degree bearing,
16 and that's why their presence there was marked by building a
17 wooden beacon expressly described by both parties as being
18 visible from the sea. That's what the 1936 Point was all
19 about. It was about the marking of a maritime boundary in the
20 territorial sea.

21 And thirdly, Mr. President, the suggestion that
22 Suriname recognized the 1936 Point as anything other than the
23 reference point from which the maritime boundary was calculated
24 has been shown to be completely specious. It's based on
25 quoting documents wholly out of context, a good example of that

11:43:25 1 being the Netherlands's letter to the International Law
2 Commission in 1953, which, when you look at it, is plainly
3 about the territorial sea and nothing else because that was
4 what the ILC had asked about. And in some cases I have to say
5 it's based on mutilating the way in which documents put
6 themselves, the way in which the document expresses itself in
7 such a way as to make a complete nonsense out of what is being
8 said, and we gave one example of that in our Rejoinder and I
9 repeated it in our opening submissions four days ago.

10 The simple reality that emerges without any doubt
11 whatever from the historical record is that Suriname and,
12 before it, the Kingdom of the Netherlands have consistently
13 treated the 1936 Point as the reference point for the
14 territorial sea boundary on the 10-degree line. Nothing more
15 and nothing less.

16 So, let's turn, then, to the third of the issues
17 between the parties, which is the location of the established
18 boundary in the territorial sea. Now, Suriname has shown--and
19 it is no longer, I say, seriously contested by Guyana--that for
20 at least 30 years the authorities in Georgetown, London,
21 Paramaribo and The Hague treated the boundary between the
22 territorial seas of the two countries as a line on an azimuth
23 of 10 degrees from the point where the 10-degree line drawn
24 from the 1936 markers intersected the line of low-water
25 springs.

11:45:00 1 Mr. President, if I might just make sure there is no
2 confusion, no obscurity about the term "low-water springs,"
3 low-water springs is what is shown as low water on the nautical
4 charts. I haven't actually brought one of those charts along
5 for this morning's presentation, but if you remember the maps
6 that I showed you in my opening presentation, there was an area
7 colored green to the seaward side of the main landmass. The
8 landmass up to the high-water line was colored in a pale brown
9 or beige. The greenish area is the area which is under water
10 at high tide. Now, the low-water springs is the lowest
11 low-water point, not reached every day of the year by any
12 means, as we saw from the tide tables on the day that the
13 photographs were taken by Mr. Reichler's colleague. The low
14 water on that day was some 71 centimeters above low-water
15 springs.

16 But it's low-water springs that matters,
17 Mr. President, because Article 5 of the Convention makes clear
18 that the normal base points from which the territorial sea and,
19 therefore, all other maritime spaces have to be measured, is
20 what is shown as the low water line on the charts adopted by
21 the coastal State. And on those charts--and the differences
22 between the British, Dutch, and American charts are minor for
23 these purposes--on those charts it is low-water springs which
24 is shown as the low-water line, and that, we say, is where the
25 territorial sea boundary invariably starts.

11:46:43 1 Now, it's that 10-degree boundary in the territorial
2 sea which the Dutch described as the settled boundary in their
3 1953 letter to the International Law Commission, and which the
4 British authorities in Georgetown described as the existing
5 boundary in the 1961 correspondence. That's the correspondence
6 that you will find behind--in a number of places. It's Tab A
7 or rather I should say "bundle A" within the first part of the
8 Judges' folders at Tab 12, which is the letter from the British
9 Governor in Georgetown to his Surinamese counterpart; and then
10 Tabs 39 and 40, the two earlier letters which Mr. Reichler very
11 helpfully provided for us at the weekend. If one reads those
12 three items of correspondence--one has to read them in the
13 sequence 39, 40, and then 12--it is plain, when you get to
14 letter 12, what is being talked about; namely, the existing
15 territorial sea boundary. There is no other purpose in that
16 correspondence at all, no other purpose in building a new
17 marker on a 10-degree azimuth from marker "B", or certainly it
18 would be 190-degree azimuth, but you know what I mean. If you
19 drew a line from the new marker through the old marker "B"
20 through where the old marker "A" had been, it will be on a
21 10-degree bearing out to sea.

22 Now, why was that chosen? It was chosen for the very
23 good reason that as Commander Kennedy, one of the most
24 perceptive hydrographers of his time, recognized a generation
25 later, Dutch sovereignty over the river was the governing

11:48:25 1 principle, and Dutch sovereignty over the River Corantijn meant
2 that both States agreed that the Netherlands or Suriname later
3 on would be the only country to exercise sovereign power over
4 the two approaches to the river. The principle that the Dutch
5 had exclusive control and exclusive responsibility because this
6 is, by no means a case of two colonial powers bickering over
7 both of them wanting the two channels. There was just as much
8 interest in 1936 and then again thereafter over who was going
9 to pay for anything that had to be done in the two channels,
10 who was going to be responsible for it. They even had to refer
11 the question of building the beacon to London and The Hague so
12 the costs could be sorted out there. The principle was clear,
13 Mr. President: The only state that would have sovereign power
14 east of the 10-degree line in the approaches to the river would
15 be the Netherlands.

16 Now, that had two consequences. It meant, first of
17 all, that Dutch territorial waters would extend westwards to
18 the 10-degree line; but secondly, and just as importantly,
19 British territorial waters would not extend to the east. They
20 were already sensitive to the wraparound issue that Professor
21 Oxman was showing you. And it's noticeable that, in the
22 British proposals of 1961, they are quite clear that it is the
23 furthest limit of the British territorial sea at the time which
24 is decisive. And again, Professor Oxman, in his presentation
25 two days ago, made that very clear.

11:50:07 1 Now, there is, of course, a question that remains
2 about what is the extent of that 10-degree line today, how far
3 out does it reach, and I will come to that in just a moment,
4 but it is important to understand what we believe to be
5 Guyana's position in respect of this 10-degree line. They
6 don't now seriously contest--and indeed how could they--that
7 this boundary was accepted and established between the two
8 parties before the Second World War and continued to be treated
9 as the boundary between them through the 1940s, 1950s, and into
10 the 1960s. It's only on the eve of independence that the
11 British propose a different boundary, and they never say that
12 that is the existing boundary between the two countries. In
13 the light of letters like Sir Ralph Grey's letter to his
14 Surinamese counterpart, how could they have taken such a
15 position?

16 Now, Guyana's argument in response to that is that the
17 rationale for this 10-degree line was a navigable western
18 channel in the River Corantijn, and that rationale has
19 disappeared and the boundary disappears with it. Now,
20 Mr. President, that's the most extraordinary proposition: A
21 boundary established for 30 years disappears when one of the
22 parties decides that the rationale for it is no longer there.
23 One only has to state the proposition to realize how profoundly
24 destabilizing that would be as a general proposition of law.

25 But let's look at Guyana's arguments in a little bit

11:51:46 1 more detail. They first of all say, as a matter of fact, there
2 is no navigation in the western channel worth speaking of; and
3 secondly, as a matter of law, that has the consequence of
4 putting an end to the 10-degree boundary agreed between the
5 parties. Well, first of all, that proposition is wrong as a
6 matter of fact. There is no question whatever that there is a
7 western channel. One can see here from the 1999 chart--I
8 haven't, by the way, produced copies of the handful of
9 demonstratives I'm going to use. They all are already in the
10 bundle from the previous days. This one is Tab E(14) in
11 Professor Oxman's presentation.

12 There is the British 1999 chart, and there you can see
13 the western channel clearly marked and the 10-degree line
14 running roughly parallel with it. You understand perfectly the
15 logic that lay behind it. So, it's not in doubt that the
16 western channel is there, and it shows up on all the other
17 charts as well. The question is whether anybody uses it, or
18 rather that's the question that Guyana puts before you, and it
19 suggests that, first of all, in 1963 the British Governor took
20 the view that it was only the most local craft that use the
21 western channel. Seagoing craft use the east channel instead.

22 And then this is Mr. Fitz Jim's evidence. Now,
23 Mr. Fitz Jim's evidence was invoked by Guyana, rather
24 surprisingly, as supportive of their proposition. It doesn't
25 support anything of the kind, and nor, quite frankly, does Sir

11:53:19 1 Ralph Grey's letter, because first of all there is absolutely
2 no reason why the navigation of the channel by local craft or,
3 as Mr. Fitz Jim puts it in his witness statement, "smaller
4 craft." There is no reason at all why that is not an important
5 concern in navigation matters. Indeed, if one skips the two
6 generations, from 1936 to the present day, and asks what sort
7 of concerns do modern governments have, well, one concern a
8 modern government in this part of the world would have is with
9 drug smuggling, and the western channel, unbeaconed and
10 accessible to smaller craft, is likely to be particularly
11 attractive to anyone who wishes to smuggle drugs in that area.

12 So, what, in fact, the evidence shows is that there is
13 traffic in the western channel; Fitz Jim's witness statement is
14 uncontroverted on that point. Grey's letter recognizes the
15 presence of navigation in the western channel. But there is
16 more to it than that, Mr. President. It's not simply a
17 question of counting the number of ships using the channel at
18 the moment. There weren't ships using the channel in large
19 numbers in 1936, either. It was the potential resource which
20 the western channel represents which is every bit as important.
21 As Commander Kennedy pointed out, the eastern channel could
22 silt up over time. Dutch sovereignty, Surinamese sovereignty,
23 over the River Corantijn necessarily implies the right to
24 control both channels, and to have the sole responsibility for
25 access to those channels.

11:54:57 1 So, that's the factual weakness in my learned friends'
2 case. There is also a fatal legal flaw in it. First of all,
3 there is, in reality, no basis for the suggestion that the
4 1936-39 Agreement on the maritime boundary itself contained
5 some implied provision allowing either party to pull out. In
6 the event that it transpired, the western channel wasn't very
7 important. The suggestion by Professor Sands that the
8 agreement was always on the basis that this would be subject to
9 change in the future simply does not stand up to analysis.

10 Major Phipps did indeed say that it was possible that
11 the governments might choose to do something else at that time
12 when they were looking at the recommendations he and Admiral
13 Kayser had made, but he also made it clear that there couldn't
14 be any question of going back on 10 degrees without the consent
15 of the Dutch. There was absolutely nothing in the agreement
16 between the parties to suggest that the United Kingdom or later
17 on Guyana could withdrawal unilaterally. And as for the
18 suggestion that there might be a general principle of law
19 allowing a State to withdraw from a boundary agreement because
20 of fundamental change of circumstances, that's so patently
21 wrong that the other side hasn't even dared to put it on the
22 table directly. They just hinted at it and skated around it.
23 The International Court of Justice in the Aegean Case, the
24 relevant provisions for fundamental change in the Vienna
25 Convention on the Law of Treaties could not be clearer on this

11:56:27 1 point. Fundamental change of circumstances is never a basis
2 for upsetting an existing boundary, land or maritime.

3 Moreover, as Professor Oxman has shown, the logic of
4 Surinamese control over the western channel remains as potent
5 today as it was in the 1930s. Look at the diagram which shows
6 the currents southwest and northerly, that one going into the
7 eastern channel, that one coming from the western channel. A
8 boundary line that went west of that 10-degree line would
9 invariably cut off, encroach upon control over the western
10 channel approaches.

11 Just contemplate for a moment an incident like this.
12 A Surinamese patrol boat detects a small craft that it thinks
13 is smuggling drugs. It pursues it out of the mouth of the
14 Corantijn. In the event that the boundary line came west of 34
15 degrees, it would be into Guyanese territorial waters in a
16 matter of moments, precisely the kind of problem in a modern
17 context that Major Phipps and Vice Admiral Kayser were
18 concerned about at the time.

19 That's also the reason or one of the reasons, I should
20 say, why the 10-degree boundary has to be taken to extend to
21 the limit of the territorial sea as it is today, and not simply
22 to the limit as it was recognized by the British and the Dutch
23 in the 1930s.

24 Now, there are two reasons that established that
25 proposition. The first is a general one. The concept of the

11:58:00 1 territorial sea has evolved. References to the territorial sea
2 in international agreements are generally taken to have evolved
3 with it, and Professor Oxman gave the example of the Chicago
4 Convention. It would cause chaos if the Chicago Convention
5 were to be interpreted today as applying only to a 3-mile
6 territorial sea and not to the full 12, on the basis that the
7 territorial sea was only recognized as extending to 3 miles
8 when the Chicago Convention was negotiated in 1944. And again
9 the Aegean Case in the International Court is a good example of
10 the International Court rejecting precisely such an argument.

11 But there is also a practical concern in relation to
12 this particular boundary. It goes back to the fact that one of
13 the concerns in 1936-39 and then repeated in the correspondence
14 with Commander Kennedy, for example, in the 1950s and early
15 1960s is that it wasn't simply a matter of how far Dutch
16 sovereignty would extend, but rather the principle that British
17 Guyanese sovereignty would not go east of that 10-degree line.
18 Now, so long as there was nothing but high seas further out to
19 sea, there was no other State which could exercise any form of
20 control over these approaches, but once you allow the
21 neighboring State's boundary to creep around there, whether by
22 wraparound or by the determination that the territorial sea
23 referred to in the agreement in the 1930s is somehow stuck,
24 frozen in a 3-mile aspic. As soon as do you either of those
25 things, you defeat the purpose of that particular agreement.

11:59:41 1 So, that's why we submit that there is an established
2 boundary between the territorial sea of Guyana and that of
3 Suriname along the 10-degree line. We submit that that
4 boundary extends today to the furthest extent of Guyana's
5 territorial sea; in other words, 12 miles from the coast of
6 Guyana. That boundary reflects both historical agreement and
7 the contemporary realities of responsibility for navigation and
8 law enforcement. And because the purpose of the contiguous
9 zone is to enable the coastal State to carry out its law
10 enforcement role, we say that the territorial sea boundary must
11 today be taken to extend to the furthest limit of the Guyana's
12 contiguous zone as well. Again, Professor Oxman set out our
13 case on that.

14 Let me turn from that to how one gets from the edge of
15 that established boundary to the 200-mile line. I must make it
16 clear, we are not suggesting, as Guyana appeared to be
17 suggesting about its 34-degree line of one stage, that there is
18 an agreed boundary to 200 miles along the 10-degree line. The
19 agreed boundary, we say, exists in the territorial sea and, by
20 logical extension, in the contiguous zone.

21 Now, if one went back to the period of the late 1950s
22 and looked at the situation in relation to the boundary further
23 out from the territorial sea and contiguous zone, two features
24 of the discussion would have been very striking immediately.
25 If any of us were able to be transported back in time or if

12:01:18 1 transport back in time is possible, I'm not sure that my own
2 choice of place to be taken to would be the 1950s negotiations
3 over the territorial sea and continental shelf boundary in this
4 part of the world, but if we were to be transported back in
5 time to the late 1950s, the first thing that would immediately
6 strike any of us is that the discussions between the officials
7 in the governments concerned were being carried out against a
8 backdrop of the newly negotiated Article 6(2) of the
9 Continental Shelf Convention and the assumption in its
10 interpretation at the time that that laid down an equidistance
11 rule with very little scope for modification other than by
12 agreement between the parties, and it was on that basis of law
13 that the parties conducted their discussions. The second
14 fundamental difference is that when they talked about the
15 continental shelf--and they didn't, of course, talk about the
16 economic zone at all--they were talking about a continental
17 shelf out to the 200-meter isobath and not much further out to
18 200 miles from the base points.

19 Now, we make no secret of the fact that during the
20 late fifties and early sixties, there were a number of
21 proposals put on the table for an agreed settlement which would
22 have included an equidistance boundary out to the 200-meter
23 isobath, although the starting point of that boundary was
24 somewhat more difficult. Certainly, the British proposal of
25 1961 would have taken it from a 10-degree line out to 6 miles

12:02:52 1 and then cutting across to equidistance, although how it cut
2 across wasn't entirely clear.

3 Now, those proposals were there, but they were there
4 as part and parcel of proposals on an overall boundary
5 settlement of all of the boundary issues between the two
6 countries, and they were there in the context of an Article
7 6(2) equidistance-dominated view of the law on the continental
8 shelf. The fact is that neither State committed itself because
9 they weren't able to agree on an overall boundary settlement.
10 The fact that they contemplated an equidistance line in the
11 1950s and early 1960s is frankly neither here nor there. They
12 didn't agree to it. And what this Tribunal will have to do, if
13 it decides that it has jurisdiction in this case, is to decide
14 where a boundary lies where there hasn't been agreement, but
15 applying not the law of Article 6(2), but the new law in
16 Articles 74 and 83 of the Law of the Sea Convention.

17 And however much skill goes in to trying to show that,
18 in reality, Articles 74 and 83 merely reproduce the old test in
19 its most rigid British interpretation laid down in Article 6 of
20 the Continental Shelf Convention, it simply won't stand the
21 test of history, of logic, or of textual construction.
22 Articles 74 and 83 don't mention equidistance. What they say
23 is that there is a duty to achieve an equitable solution in
24 accord with international law.

25 Now, Mr. President, our submission is that, after

12:04:38 1 listening to Professor Oxman--and I have to say it's difficult
2 to imagine anyone who could be counsel in this case who could
3 speak of this matter with greater authority than he did--there
4 really can be no doubt at all that the Law of the Sea
5 Convention was intended to be a break from the past, and in
6 particular a break from the straight-jacket of equidistance.

7 So, it is a particular irony that Guyana has spent
8 four days in this hearing telling that you the straight-jacket
9 has been put back, perhaps with a little bit of loosening at
10 the fastenings here and there. We have the spectacle of one
11 developing country telling another developing country that the
12 campaign that the developing world as a whole waged for more
13 than a decade against the old equidistance approach triumphed
14 by States like the United Kingdom was lost after all, even
15 though it appeared so clearly to have been won. Mr. President,
16 we say that simply cannot be the case. It's a travesty of the
17 truth, and it's based on isolated and misunderstood dicta in
18 cases which, for the most part, weren't governed by the Law of
19 the Sea Convention anyway.

20 Moreover, if one actually looks at those cases and one
21 looks, for example, at the passages set out in Professor
22 Oxman's table of what was said about equidistance, perhaps even
23 more pertinently one looks at what Mr. Colson said this morning
24 about equidistance not being chosen as the boundary in any of
25 the leading cases on maritime delimitation between adjacent

12:06:16 1 States, only in a small sector of the Cameroon-Nigeria case and
2 in an area where there was an agreement in the North Sea
3 Continental Shelf Case, those two cases stand alone as examples
4 of an equidistance line being applied between two adjacent
5 States.

6 And, of course, it's not just the jurisprudence of
7 courts and tribunals that one has to have regard to here. As
8 Professor Oxman showed when he did that magnificent tour around
9 the coast of South America, a tour by boundaries based on the
10 work done by Judge de Aréchaga, equidistance hasn't been the
11 method selected on agreed delimitations on this continent,
12 either. The practice which Judge de Aréchaga wrote up drew
13 from the same well as the judgments which he gave.

14 Now, what Suriname has shown, we say, is the
15 following: First of all, the Convention has not done precisely
16 what its parties set out to reject; namely, reinstate
17 equidistance as the governing principle. It is sometimes said,
18 Mr. President, particularly by common lawyers that equality is
19 equity, but Mr. President, equidistance is not equality, and it
20 certainly isn't equity, and it was never intended to be equity,
21 either. Again, a glance at the maps which Professor McRae
22 showed this morning make that perfectly clear.

23 Secondly, we say that equidistance may--may--in an
24 appropriate case be one of the methods by which an equitable
25 solution can be achieved, and in some cases it may provide a

12:07:56 1 useful starting point, but it's quite wrong to deduce from
2 those two propositions that there is any kind of presumption in
3 favor of equidistance or even any rule that delimitation must
4 start from an equidistance line. The Law of the Sea
5 Convention, Mr. President--and I fear this places a heavy
6 burden on you and your colleagues, but the Law of the Sea
7 Convention requires a great deal more of an Annex VII Tribunal
8 than the performance of a little cosmetic surgery on an
9 equidistance line. It's a lot more than the little nip here
10 and the little tuck there that my learned friends on the other
11 side of the room have been suggesting to you.

12 And thirdly, Mr. President, we say that the reality is
13 that there are various different methods by which the goal of
14 an equitable solution may be realized. The law in the Law of
15 the Sea Convention does not mandate the invariable use of any
16 one method. Rather, the methods of delimitation, including
17 equidistance, including angle bisectors, including
18 perpendiculars, are the tools in a tribunal's toolbag, and like
19 a good workman, a tribunal picks the tool that's best suited to
20 the job in hand, the job that has to be performed.

21 So, that means we have to look very closely at what
22 the job is in this particular case. Now, the nature of that
23 job is determined very much by the geography within which the
24 line has to be drawn, and here what Professor McRae has shown
25 is that the overarching principle is that geography is not in

12:09:31 1 itself fair or unfair. It is simply one of the facts of life.
2 It's the law that applies criteria of fairness, not the
3 geography itself.

4 And here in the first map is the overall geography of
5 the region in question, and you can see the relatively
6 unremarkable nature of the coast. In fact, an ordinary map of
7 this kind illustrates the angle of the current mouth of the
8 Corantijn River perhaps more clearly than anything else can do.

9 The second principle is that one has to start by
10 determining the relevant coasts, and by that it is meant those
11 coasts which abut the area to be delimited, not those that face
12 in a different direction.

13 Thirdly, there is no predetermined method of
14 delimitation. The identification of the relevant coasts cannot
15 be a matter of application of one of the methods. For example,
16 the use of the base points for an equidistance line in order to
17 determine the extent of the relevant coasts is an entirely
18 self-referencing method. You prove the use of utility of
19 equidistance by using equidistance first in order to determine
20 what is the question to be answered. It's a wonderful tool for
21 the Professor or for the examiner--I have made some use of it
22 in seminars myself--but it's not, with respect, the way to
23 approach maritime boundary delimitation. And it has, of
24 course, been expressly rejected in the only other Annex VII
25 case to look at this issue. It was rejected in terms in the

12:11:07 1 Barbados-Trinidad and Tobago arbitration.

2 Fourthly, Mr. President, once the relevant coasts have
3 been identified, it's necessary to consider their general
4 direction, their projection, and their length.

5 And fifthly, it's important to avoid or to at least
6 minimize the cut-off of the actual prolongation.

7 Mr. President, in the earlier session this morning, Professor
8 Franck asked of Professor McRae, I think it was, or it might
9 have been Mr. Colson, the question about encroachment.

10 Inevitably, between adjacent States, any boundary, unless their
11 coastline is absolutely flat, in any case between adjacent
12 States, a maritime boundary is going to involve a degree of
13 encroachment, but we say that there is a very clearly
14 established principle, part of the factors to weigh in
15 achieving an equitable solution, that you minimize encroachment
16 as much as possible. And in particular there--there is the
17 wrong chart with which to illustrate this, but we won't try to
18 go back--the notion of encroachment upon the very approaches to
19 a river of this kind, or one of the strategic rivers of the
20 area, that is a particularly important principle, and it is one
21 that is completely ignored both by the 34-degree line and by
22 the use of the provisional equidistance line.

23 Now, only when you have followed those five
24 geographical criteria can you then move on to select the method
25 or methods of delimitation to be applied, and if we apply those

12:12:37 1 principles to the present case, we see that, first of all, the
2 relevant coasts are the coasts of Suriname from the mouth of
3 the Corantijn River to the Warappa Bank, the point at which the
4 coast begins to turn and face in a more southeasterly
5 direction; and in the case of Guyana, from the mouth of the
6 Corantijn up to the Essequibo River, before it turns and faces
7 in a due east instead of a northeast direction at Devonshire
8 Castle Flats; although, as my learned friend Professor McRae
9 has shown, it is, in fact, possible to justify the boundary
10 line that Suriname is suggesting, even if one includes this
11 area here as part of the relevant coast, although to do so, in
12 our view, would be contrary to the approach taken by all
13 previous Tribunals.

14 The next point I just want to draw attention to is
15 again one of the Professor McRae's charts. I should say that
16 all of these charts of Professor McRae's come from bundle F(2).
17 This particular one is F(2) slide 21. The one I showed earlier
18 was F(2) slide 11, but they're all there in Professor McRae's
19 bundle of slides. But if one looks closely enough at the
20 coast--and unfortunately, one needs a really large-scale map to
21 see this with any clarity--you have a convexity at Devonshire
22 Castle Flats, another one there. That one, Professor Sands
23 smiled at me broadly when we put this slide up the first time
24 because he clearly can't see the convexity there. There is a
25 good reason for that. None of the Guyanese side will see this

12:14:14 1 terribly clearly because they spent so long looking at the map
2 upside down inverted in various ways with half of the countries
3 removed by sleight of Mr. Edmonds's skills.

4 And then you have the third, perhaps the most marked
5 convexity of the lot there at the Berbice Headland. You have a
6 concavity at this point, on the Suriname coast, and a convexity
7 there, albeit a small one compared to Berbice or Devonshire
8 Castle Flats.

9 Now, the result is that the relevant--I said the
10 relevant coasts project northeast in one case and north in the
11 other. It's just useful to look again at this slide. This is
12 Professor McRae's F(2) slide 26. You can see there the general
13 projection. And I don't think there is much dispute about
14 that. Dr. Smith, for example, confirmed in evidence that point
15 that the Surinamese coast faced north.

16 The two coastal fronts thus form an angle, and the
17 Corantijn is a hinge in that angle, as the Foreign Minister
18 said in her opening address. The Berbice Headland gives a
19 classic example of the Jaenicke effect, unless if you stand the
20 map on the head or stand yourself on the head and look at the
21 map the ordinary way up. The skill with which the Jaenicke
22 effect was removed even from the Jaenicke diagram must raise as
23 one of the great examples of forensic alchemy ever put before a
24 tribunal.

25 In these circumstances, an angle bisector is a far

12:15:43 1 more appropriate method than equidistance. It makes use of the
2 general coastal directions rather than being subordinated to
3 individual features. And as Professor McRae has shown, this
4 gives a line at an angle of 17 degrees, but we say that that
5 line should be adjusted to take account of the factors
6 Professor McRae has just explained, which give a line of 10
7 degrees. Now, the same line applies in the territorial sea,
8 but as Professor McRae explained, the rationale there is
9 different.

10 Now, let us compare that approach with the one offered
11 to you by Guyana. Guyana, it would appear, is no longer
12 suggesting that the 34-degree line has any basis in agreement
13 between the parties. It is no longer suggesting that there is
14 a modus vivendi along the 34-degree line of the parties,
15 although it was with some difficulty working out quite what
16 veils the dancer was discarding. Those two are very definitely
17 lying on the floor, judging by the submissions we were offered
18 in the first four days of the hearing.

19 And, in effect, the conduct as a special-circumstance
20 argument has fallen away. Perhaps the veil was pulled a little
21 roughly away from the dancer rather than being shed voluntarily
22 when Mr. Colson showed you yesterday, that if one actually
23 looks at the practice of the two parties, far from sustaining a
24 34-degree line, there is probably more practice by Suriname in
25 the disputed area than there is in the way of an assertion of

12:17:11 1 authority by Guyana.

2 The second point about Guyana's case is that it's
3 based very heavily intellectually on drawing from the
4 methodology of Commander Kennedy in the early 1960s, but again
5 as Mr. Colson has shown you, the Kennedy methodology doesn't
6 come anywhere near sustaining a 34-degree line. Commander
7 Kennedy who I presume has now long since died is rotating in
8 his grave, I would imagine, at the way in which his approach is
9 being misused in the course of this hearing.

10 The reality is that if you apply the Kennedy
11 methodology--and I must make clear, we don't say you should.
12 We say that Kennedy methodology is not sufficient to provide an
13 equitable solution here, but if you do apply it, what you get
14 is not a 34-degree line. It's not even a 28-degree line. It's
15 more like a 22 or 22-and-a-half degree line.

16 The third element of Guyana's reasoning is based very
17 heavily on the notion of equidistance, but the equidistance
18 reasoning is faulty at two levels. It's faulty because, first
19 of all, international law today does not give the priority to
20 equidistance that Guyana's counsel have been suggesting; and
21 secondly, the line they have put forward is not an equidistance
22 line anyway. One does not make a line into an equidistance
23 line just by calling it an equidistance line, however many
24 times one does it, and perhaps over the weekend, if I can't get
25 out, I will go through the transcript and see how many times

12:18:45 1 the phrase "historic equidistance line" crossed the lips of my
2 learned friends. That doesn't make it historic. It doesn't
3 make it an equidistance line any more than my saying to the
4 world every morning "I am slim" is going to get rid of the
5 weight problem that has bedeviled me for some years.

6 Moreover, the approach--

7 (Cellphone rings and pause.)

8 PROFESSOR GREENWOOD: Mr. President, when I used the
9 fan dancer analogy in the earlier submission, I never had it in
10 mind that I would have a musical accompaniment, but I'm
11 grateful for whatever help is given.

12 Now, my learned friends recognize they have got to say
13 something about an equitable solution. Their answer is to pay
14 lip service to it, and nor in the direction of equitable
15 solutions that they give is a wholly misconceived application
16 of the proportionality principle. It's misconceived, first of
17 all, because the proportionality principle tells you nothing at
18 all unless you first of all define the relevant coasts
19 correctly, and they haven't.

20 Secondly, the proportionality principle doesn't work
21 if you get your sums wrong, which their expert has.

22 Thirdly, the proportionality principle isn't, in fact,
23 given the degree of importance in the case law that Guyana asks
24 you to attribute to it. As Professor McRae has shown, the
25 reality of the proportionality principle is that it heavily

12:20:17 1 favors the solution advanced by Suriname. It does nothing
2 whatever to favor the solution advanced by Guyana.

3 And lastly, we have no attempt whatever to explain
4 away why the equidistance approach which Guyana is urging on
5 this Tribunal has not been used elsewhere in boundary
6 delimitations between adjacent States in South America, and why
7 it is not the method which has been employed in adjacent state
8 delimitations by courts and tribunals.

9 Mr. President, that concludes what I want to say about
10 summarizing the maritime boundary part of the case. Let me
11 just make a few brief remarks in closing about submissions 3
12 and 4 in Guyana's case.

13 Now, I said in opening that we would show that
14 Guyana's claim was outside the jurisdiction of the Tribunal,
15 that it was inadmissible and that it was wholly unmeritorious,
16 and Professor Murphy's careful and thorough dissection of
17 Guyana's arguments yesterday afternoon achieved all of those
18 things. For all the sound and fury coming from the other side
19 about the CGX incident, what is actually plain is the
20 following: First, Guyana did not think that at the time that
21 what it now portrays as a violation of UNCLOS was even worth
22 mentioning as a violation of the Convention. It didn't protest
23 a violation of the Convention once, as Professor Murphy has
24 shown, and the requirements of prior negotiation about which
25 Guyana has been so dismissive at this hearing are not mere

12:21:54 1 formalities. They are part of the jurisdictional requirements
2 of an Annex VII Tribunal. They have always been treated as
3 such in the earlier cases, and we say that they cannot be
4 simply airbrushed away the way that my learned friends are
5 seeking to do.

6 Now, my learned friend Professor Murphy said in
7 response to a question from Professor Smit that no previous
8 Tribunal has denied jurisdiction because these conditions had
9 not been satisfied--that's plainly the case--but if one looks
10 at each and every one of the cases that has considered this, in
11 each case the Tribunal's reasoning only makes sense on the
12 premise that if they had found there had not been the required
13 negotiations, then they would have held that there was no
14 jurisdiction. Every single analysis--and Professor Murphy went
15 through them with great care--bears that out. It's plainly
16 treated as a jurisdictional threshold.

17 Moreover, Guyana cannot get away from the
18 jurisdictional problem, that what it is complaining about is a
19 coastal State's exercise of its sovereign rights over the
20 nonliving resources of the continental shelf, and that is a
21 matter clearly carved out from Part XV by Section 3 of that
22 part of the Convention.

23 The second point that becomes quite clear in relation
24 to the merits of submission 3 is that Professor Akhavan's
25 reference to, and I quote, "colorful and imaginative

12:23:31 1 submissions," comes very much to mind. The Tribunal may very
2 well consider that it stretches the imagination, perhaps even
3 beggars belief to suggest that an incident in which a coastal
4 patrol boat mounting no weapon approaches an oil rig more than
5 20 times its size, at night, and asks it to leave a disputed
6 area, an incident in which no weapon was produced, let alone
7 being fired, that that is a use of force, Mr. President, but
8 that's how it's pleaded. It's pleaded as a use of force, not
9 as a threat of force, in Guyana's Memorial. And that,
10 incidentally, is where the claim has to be formulated according
11 to Rule 9(b) of the Rules of Procedure.

12 As pleaded, the claim doesn't simply stretch the
13 imagination. It wrecks it. And even if it's reformulated as a
14 claim for a threat of force, it is entirely without merit.
15 Again, Professor Murphy has taken the scalpel to it so
16 thoroughly there is only one thing I need to say, and it's as
17 much a question to counsel for Guyana as anything else: How
18 could asking someone to cooperate while telling them you have
19 no intention of harming them, how, pray, can that amount to a
20 threat of force? If it can, Mr. President, then the reality is
21 that every incident that takes place every day in which a
22 fishery protection vessel, or patrols checking on drug
23 smuggling or illegal immigration, intercept a vessel, require
24 it to stop, maybe even arrest the ship or arrest the crew,
25 every single one of those incidents--and Guyana has told us

12:25:17 1 that its own patrol boats carry out patrolling functions in the
2 disputed area in relation to fisheries, for example, every
3 single one of those would constitute a threat to use force, and
4 therefore presumably a violation of Article 2(4) of the
5 Charter. It really is too silly for words.

6 Lastly, Mr. President, submission number 4. Now,
7 during its first round, Guyana said very little about our
8 responses in the Counter-Memorial and the Rejoinder to this
9 particular submission. Perhaps we'll hear more from them about
10 it on Monday, but I doubt it. What Professor Murphy showed
11 yesterday is that Articles 74(3) and 83(3) do not impose an
12 obligation to agree, but only an obligation to negotiate in
13 good faith to try and achieve not necessarily a binding
14 agreement, but arrangements of a practical and provisional
15 character. Now, that's a very far cry from Guyana's position
16 which, with great respect, seems to be that if you don't give
17 us what we want, you are violating your obligation under
18 Articles 74 and 83 of the Law of the Sea Convention.

19 And what the record shows, without a shadow of a
20 doubt, is that Suriname did negotiate in good faith. It did
21 attempt to agree upon provisional agreements of a practical
22 nature. Perhaps the most powerful indication of that which
23 Professor Murphy explained yesterday was that it was
24 Guyana--not Suriname, but Guyana--which rejected the practical
25 arrangements put forward by the Prime Minister of Jamaica in

12:26:51 1 his role as a neutral facilitator, and it was Guyana, not
2 Suriname, which refused to share data or to halt drilling in
3 the disputed area. And it is for that reason that Suriname has
4 made its own claim for declarations that Guyana has violated
5 Suriname's rights under Articles 74(3) and 83(3), first by
6 authorizing drilling in the disputed area, which is clearly
7 contrary to the text of the Convention; and secondly, by
8 failing to make the required effort itself to enter into
9 practical provisional arrangements. These are submissions 2(c)
10 and 2(d) in our Counter-Memorial repeated in the Rejoinder.

11 Now, I have thought about the question again that
12 Professor Smit asked yesterday of Professor Murphy about
13 declaratory relief. Our answer to that is that declaratory
14 relief is the normal form of relief in interstate proceedings,
15 where the claim is for a wrong done direct to the State as
16 opposed to a wrong done to one of its nationals whose interest
17 that State is seeking to protect. I haven't overnight been
18 able to take the authorities out, but I would be more than
19 happy to if the Tribunal would like to see them, but one can
20 trace it right the way back, as Professor Christine Gray does
21 in her book on Judicial Remedies in International Law to cases
22 like the Carthage and Manouba just before the First World War,
23 where even a claim for token damages was rejected on the basis
24 that declaratory relief was the proper--indeed, the only--form
25 of relief in a case of that kind.

12:28:18 1 Well, Mr. President, that is our case, but before I
2 sit down, we say that that case raises some fundamental
3 questions for our friends from Guyana which they have so far
4 failed to answer or, in many cases, failed even to address, and
5 I would just like to sum up a few of them before I finish.

6 On the maritime boundary claim, first of all, their
7 submission number 2, first of all, is Guyana still saying that
8 Point 61 is the terminus of the land boundary? And on what
9 basis does it say that a land boundary can terminate at a spot
10 which is not on the low-water line, or even on the land
11 boundary, but surrounded entirely by its own territory? It's
12 time Guyana came off the fence and answered that question.

13 Secondly, if Guyana now says that the terminus is on
14 the low-water line, how does it identify the point on the
15 low-water line? Is there any authority--judicial, arbitral,
16 academic, in state practice--for the proposition that the
17 Tribunal can simply take the shortest route to the low-water
18 line?

19 Thirdly, Mr. President, given that Guyana has agreed
20 that there was a 10-degree boundary in the territorial sea by
21 the start of the Second World War, what precisely is the legal
22 basis on which it is said that Guyana was entitled to depart
23 from it?

24 Fourthly, Mr. President, how is a presumption or a
25 preference of equidistance written back into Articles 74 and 83

12:29:46 1 of UNCLOS when the negotiating history makes clear that the
2 intention of the parties was the opposite?

3 Fifthly, what is the legal authority for the
4 proposition that the base points for measuring a provisional
5 equidistance line dictate the length of the relevant coasts,
6 even if equidistance is not to be the method of delimitation
7 used?

8 Sixthly, what were the as-yet undisclosed errors for
9 which Dr. Smith had to correct his calculations in paragraph 49
10 of his report, and how were these errors made?

11 Seventhly, why is it that in not a single case between
12 adjacent States has the equidistance line been chosen by the
13 Tribunal as the method of delimitation for more than a short
14 segment of the line?

15 Eighth, how can a coastal feature that is located next
16 to the land boundary terminus, the Berbice Headland, have less
17 impact on the provisional equidistance line than a similar
18 feature that is located much further away?

19 And lastly, what is now said to be the basis for the
20 34-degree line? Is it history, is it geography, or is it
21 purely aspirational, Mr. President?

22 That's on the maritime boundary, and we look forward
23 to hearing Guyana's answers to these questions later on in the
24 hearings.

25 Now, what about submissions 3 and 4? Well, first of

12:31:15 1 all, how can Guyana maintain that submission number 3 is
2 properly before the Tribunal, given its manifest failure to
3 satisfy the Part XV requirements or the general principles on
4 admissibility, or in the case of the threat to use force the
5 Tribunal's own Rules of Procedure?

6 Secondly, is Guyana now claiming that the CGX incident
7 involved the actual use of force, or is its case entirely about
8 threat of force? It shilly-shallied between the two in its
9 first round.

10 Thirdly, if the claim is for use of force, what
11 exactly are the acts that amounted to a use of force in this
12 case? It would not only be of interest to this Tribunal. I
13 suspect it would be a matter of real importance for the future.

14 Fourthly, if the claim is for a threat of force, on
15 what basis did the words used amount to such a threat? And how
16 did the conduct of the Suriname Navy differ from law
17 enforcement operations conducted on a daily basis by all
18 coastal States?

19 Fifthly, why did the proposals made by the Prime
20 Minister of Jamaica in his role as an independent facilitator
21 not a result in arrangements between the parties?

22 And lastly, why was it that the President of Guyana
23 noted with satisfaction in 2002 that the talks between his
24 Surinamese counterparts and himself had made progress towards
25 creating an atmosphere conducive to constructive discussions

12:32:48 1 both on the border issues and on provisional arrangements of a
2 practical nature, the very phrase, Mr. President, that is used
3 in Article 74(3) and Article 83(3) of the Law of the Sea
4 Convention? How can it be that satisfactory progress was made
5 on that in 2002, and yet this claim for a failure on the part
6 of Suriname to negotiate in good faith is put forward before
7 this Tribunal today?

8 Mr. President, in closing Guyana's case on Monday of
9 this week, Sir Shridath Ramphal spoke with all of the eloquence
10 we have come to expect of him, of the principle enshrined in
11 the charter of the U.N. and on the Convention on the Law of the
12 Sea that international disputes shall be settled by peaceful
13 means in accordance with the principles of justice and
14 international law, and he said that in coming to this Tribunal,
15 Guyana--and I will quote him directly--"seeks no more, but
16 knows that both Guyana and Suriname will receive at your hands
17 no less."

18 Mr. President, I shall not attempt to match Sir
19 Shridath's eloquence, but I do join him in the expression of
20 confidence that both parties can expect to receive justice in
21 accordance with international law at your hands. But the
22 rejection of bad claims, of unfounded claims, of unmeritorious
23 claims and of claims that are exorbitant as to jurisdiction is
24 just as much a part of justice as the vindication of good
25 claims.

12:34:20 1 Mr. President, it is our submission in this case that
2 justice and law require that Guyana's claims, to the extent
3 that they may be held to fall within your jurisdiction at all,
4 be dismissed; that the maritime boundary between the parties be
5 held to follow the line set out by Suriname in its pleadings;
6 and that the declaratory relief sought by Suriname, in
7 vindication of its rights under Articles 74(3) and 83(3) of the
8 Law of the Sea Convention, be granted.

9 Mr. President, that concludes Suriname's case for the
10 opening round of these hearings.

11 PRESIDENT NELSON: Thank you very much, Professor
12 Greenwood.

13 And I think we will break for the weekend, and I wish
14 you all again a pleasant weekend or, possibly, a pleasant
15 Sunday. Thank you very much.

16 (Whereupon, at 12:34 p.m., the hearing was adjourned
17 until 9:30 a.m., Monday, December 18, 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.

DAVID A. KASDAN