

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 9

Monday, December 18, 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
9:33 a.m. before:

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

Permanent Court of Arbitration:

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

2 PRESIDENT NELSON: Before we start the proceedings, I
3 would like to read a statement.

4 The Tribunal has been informed of the concerns of the
5 parties regarding the time to be devoted to the examination and
6 cross-examination of Dr. Smith today. In order to accommodate
7 the parties' time requirements and permit Guyana to complete
8 its second round of oral pleading today, the Tribunal will
9 reduce the lunch period by one hour and resume at 1:30 p.m.
10 rather than the customary 2:30 p.m.

11 MR. REICHLER: Thank you very much, Mr. President, and
12 Members of the Tribunal. We greatly appreciate that
13 accommodation.

14 PRESIDENT NELSON: Thank you.

15 PROFESSOR GREENWOOD: Sorry, Mr. President, and
16 Suriname is very grateful for the Tribunal having dealt with
17 our concerns about this. My understanding is that the total
18 length of Guyana's presentation will still not exceed the
19 normal fixed time, but your accommodation gives time for the
20 cross-examination of Dr. Smith.

21 PRESIDENT NELSON: Thank you.

22 Well, can we now begin the oral hearings with
23 Professor Sands.

24 SECOND ROUND SUBMISSION BY COUNSEL FOR CLAIMANT

25 PROFESSOR SANDS: Good morning, Mr. President and

09:35:04 1 Members of the Tribunal. We hope you had a partially restful
2 weekend after our exertions over the last two weeks. I have
3 the privilege of opening Guyana's second round of oral
4 arguments, and in accordance with customary practice, we will
5 limit ourselves to proceeding by way of responding to what
6 Suriname has argued in the course of its first round, and
7 limiting ourselves, therefore, to the issues raised by counsel
8 for Suriname during the first round.

9 My submissions this morning will be in three parts,
10 and they will take us up to the coffee break. I will begin by
11 addressing a number of overarching issues. I will then turn to
12 the subject of jurisdiction and then move to the delimitation
13 of the territorial sea. I will be followed by my colleague,
14 Paul Reichler, who will address geographic issues and certain
15 legal issues relating to the delimitation of the areas beyond
16 the territorial sea. He will then be followed or in the midst
17 of his presentation will take place the examination and
18 cross-examination of Dr. Smith, and following that, Professor
19 Schrijver will, with your permission, take the floor and
20 address a number of legal issues on delimitation in areas
21 beyond the territorial sea, including the applicable law and
22 the practice of international courts and tribunals on
23 methodological issues and approaches.

24 Professor Schrijver will then be followed by Professor
25 Akhavan, who will deal with issues concerning the use of force

09:36:43 1 and the threatened use of force, and he will then be followed
2 with our concluding presentation by Sir Shridath Ramphal. And
3 I can confirm to our good friends on the other side of the
4 table that we will stick, we hope, well within the time that
5 was allotted to us. We envision no difficulty on that front.

6 So, let me begin with a number of overarching issues.
7 They are preliminary issues, and they frame the totality of the
8 case in our submission. We have listened very attentively to
9 counsel from Suriname, and for my part I do want to say I very
10 much appreciated all of the presentations, their quality, if
11 not necessarily their content, and very much appreciate also
12 the spirit in which these hearings have been carried out.

13 We could make a very large number of observations, and
14 I'm going to limit myself to just eight. And the main thrust
15 of these, and of all of our presentations today, is that we
16 believe this is the moment to assist the Tribunal in addressing
17 the issues that divide the parties and sorting out those few
18 remaining tricky issues that are on the table.

19 So, my starting point, point one--I shall make eight
20 points of introduction--is that the Tribunal should take note
21 of the areas of agreement between the parties. It's important
22 to start with that aspect, and it's always a helpful part of
23 any oral argument to begin to be able to identify with greater
24 clarity where the parties are not divided, and there are four
25 or five issues in which that has become evident.

09:38:33 1 The first issue is that we recognize and we accept
2 Suriname's confirmation that all of the continental land
3 territory around Point 61 belongs to Guyana, and in particular
4 that the 1799 Treaty cedes one bank of the river to what is now
5 Guyana. That is not an issue between the parties.

6 Secondly, we are grateful for Suriname's confirmation
7 that they agree with Professor Brownlie's point, although it's
8 difficult to see how they couldn't, on the nature of a boundary
9 line. The effect of the parties coming together on that point
10 is that it confirms Suriname's sovereignty, such as it is, is
11 exclusively in relation to the water. Suriname can have no
12 sovereignty or rights in relation to the west bank continental
13 land territory, and that's significant. It means that Suriname
14 is not a coastal state on the west bank, and that, of course,
15 means that Suriname cannot have any base points on the west
16 bank in accordance with the approach taken by the Law of the
17 Sea Convention. That, of course, has implications for the
18 drawing of a provisional equidistance line.

19 The third point is we recognize again, and gratefully
20 accept, Suriname's recognition that it is appropriate in
21 delimiting maritime spaces to begin first with the delimitation
22 of the territorial sea and then proceed to the delimitation of
23 the areas beyond. Suriname seems to have discarded the
24 position it adopted in its written pleadings and rejoined the
25 customary and established approach.

09:40:24 1 A fourth point concerns another point of agreement,
2 although in a slightly different sense. I think we both agree
3 on both sides of this room that the use of the words land
4 boundary terminus to describe Point 61 is infelicitous. Both
5 sides, in fact, have used it in their written pleadings. Point
6 61, or the 1936 Point--and they are the same place--is more
7 properly referred to as the northern terminal point mark; or,
8 put another way also taken from the Commissioners' 1936 report,
9 the mark at the northern terminal of the boundary. Of course,
10 the parties disagree as to the purpose of that point. I will
11 come back to that in due course.

12 And fifth and finally, we note the emergent
13 convergence, if I might put it, of the parties' position on
14 jurisdiction, and there does seem to have been a notable change
15 in Suriname's position on that issue. Again, I will come back
16 to that.

17 That is my first point, points of agreement. I turn
18 now to my second point: The parties have strikingly different
19 approaches when it comes to the methodology for the
20 delimitation. We say that we are seeking to follow an
21 objective approach, whereas Suriname prefers to follow a
22 subjective approach. We say that Guyana adopts the practice of
23 international courts and tribunals over the past couple of
24 decades, whereas Suriname invites you to turn away from that
25 practice.

09:42:15 1 Of course, we accept entirely that in matters such as
2 this it is not to be completely objective, but in assessing the
3 merits of any delimitation methodology, it is generally
4 accepted that a more objective approach, one that provides some
5 degree of certainty, is to be preferred. By abandoning the
6 provisional equidistance line as a starting point for the
7 methodology, Suriname sacrifices objectivity. The angle
8 bisector methodology it proposes is a subjective one, and it
9 invites this Tribunal to break with two decades of consistent
10 practice. And with respect, the consequences of that became
11 especially clear in Professor McRae's presentation on Saturday
12 morning. As the word bingo flashed onto the screens, the
13 surreality of the entire exercise became blindingly obvious.
14 The image and the word bingo symbolize Suriname's approach.

15 Later today we will come back to the manipulations
16 that Suriname engaged in to achieve the bingo result. For
17 present purposes, it's sufficient simply to state that all of
18 the difficulties inherent in that methodology, all of the
19 difficulties that arise with Suriname's approach can be avoided
20 simply by following the path of other international courts and
21 tribunals.

22 The fact that the two parties' provisional
23 equidistance line is more or less identical is of importance,
24 contrary to what Professor McRae said. That fact makes it
25 clear that that is the way to minimize the scope for mischief.

09:44:03 1 And as Mr. Colson readily accepted, equidistance also deals
2 with Suriname's concern about the so-called wraparound problem.

3 The reason why the parties' approach to delimitation
4 differs stems from the manner in which Suriname has dealt with
5 the legal authorities, but also, we say respectfully, the fact
6 that it has not perhaps had as much guidance or support of
7 expert opinion and evidence as it might have had, and this
8 leads me to my next point.

9 Point three deals with the lack of experts. Suriname
10 has tendered no expert opinion or evidence to support any of
11 its geographic arguments. The Tribunal will have noted the
12 use--the Tribunal will have noted that Suriname has not used
13 experts to support its geographic arguments, whereas Guyana
14 has. Suriname has no experts available to it. In fact, its
15 entire approach is unencumbered by the constraints, apparently,
16 of any expert advice or opinion. The composition of Suriname's
17 delegation is noteworthy. Is this the first time in modern
18 delimitation practice that a state would participate in a
19 three-week hearing on a maritime delimitation without an expert
20 hydrographer or geodesist on its delegation? The Tribunal
21 heard submissions over four days from Suriname, but they were
22 all lawyers' submissions with no backing whatsoever from any
23 expert support.

24 On our side we've had the strong support of
25 Dr. Carrera, who, of course, is known to many of you. He is an

09:45:45 1 expert. He is a geodesist. He is an elected member of the
2 United Nations Commission on the Limits of the Continental
3 Shelf. Sometimes I found him to be frankly rather troublesome
4 because he has constrained me in what I can say, as he has
5 constrained others on our delegation because he sought to
6 ensure, and he has ensured, that any submissions made by Guyana
7 are geographically and technically sound. But it's evident
8 from Suriname's arguments over the past few days that they have
9 had no such support, and no limits of reasonableness or
10 soundness have been placed on their arguments.

11 Their mantra is clear, and we have heard it all very
12 loudly: Anything but equidistance. We get the message. But
13 do they have any expert opinion to support their approach? It
14 appears not.

15 Guyana retained Dr. Robert Smith as an independent
16 expert and, of course, the Tribunal has appointed its expert,
17 Mr. Grey. Suriname has none on its delegation and has chosen
18 not to rely on any independent expert, and that, of course, is
19 Suriname's right, but it must surely know that the absence of
20 expert support for its approach is bound to raise the question:
21 Would anyone technically sound and expert provide independent
22 support for the approach that it has taken? There is no
23 evidence before the Tribunal to indicate that Suriname's
24 approach is backed by expertise from within or from without,
25 and in the absence of any such evidence, we submit the Tribunal

09:47:18 1 should proceed with the utmost caution in relation to any of
2 Suriname's arguments on geography.

3 It's against this background, Suriname's failure to
4 proffer any evidence to support its approach on geographic
5 grounds and the conclusions that it has arrived at that some
6 counsel for Suriname have launched a rather sustained attack on
7 the professionalism and the reliability of Dr. Smith, a
8 renowned international authority. For example, counsel for
9 Suriname attacks Guyana's arguments on proportionality, and I
10 quote, "The only evidence that Guyana has put forward to
11 support it, the only evidence of coastal lengths is Dr. Smith's
12 report." That's page 704 of the transcript, line 18. But at
13 least Guyana provided some evidence. Suriname has none for any
14 of its geographic arguments. Its arguments are mere
15 assertions, assertions made by lawyers unsupported by any
16 evidence. They are unsupported, we say, even by geographic
17 logic. Suriname has nothing by way of evidence on coastal
18 fronts, on relevant areas, on proportionality.

19 The absence of expert assistance has, on occasion,
20 been rather clear to us. You will recall Mr. Saunders in his
21 cross-examination of Dr. Smith when he asked whether Dr. Smith
22 had heard of the, "Berbice Headland." Dr. Smith said no.

23 Mr. Saunders seemed rather surprised, and I quote,
24 "You have never heard that?"

25 Dr. Smith said, "No." Mr. Saunders said, "Well, you

09:48:56 1 read the Suriname Rejoinder, didn't you?"

2 Dr. Smith replies, "I did."

3 Mr. Saunders says, "And you didn't see that referred
4 to as the Berbice Headland in the Rejoinder?"

5 Dr. Smith says, "If I saw it, it didn't register with
6 me."

7 Well, Dr. Smith's response isn't surprising. The
8 Berbice Headland is a fiction. It's a fiction invented at this
9 late stage of the case to support Suriname's new argument. The
10 words "Berbice Headland" do not appear in any of Suriname's
11 written pleadings. It is not mentioned in those terms. It is
12 a fiction entirely of Suriname's making to suit its arguments.
13 And Suriname, of course, has not introduced a single chart to
14 show the existence of a so-called Berbice Headland, no evidence
15 to support the evidence of a Berbice Headland. And, of course,
16 if Mr. Saunders had benefit of a geographer on his team, he or
17 she would have told him that none of the main geographic
18 gazetteers use the term Berbice Headland; and, in fact, there
19 cannot be a headland in that place because in general parlance,
20 the headland is the opposite of a bay. It is an area of land
21 surrounded by water on three sides.

22 If you Google "Berbice Headland," you will find zero
23 hits. The Sovereign Names Division on the U.S. Board on
24 Geographic Names has no reference to a Berbice Headland,
25 although it has many, many other headlands.

09:50:32 1 We invite the team from Suriname to produce a single
2 chart which uses the words "Berbice Headland" that was brought
3 into production before these proceedings begun. If they're
4 unable to find such a chart, we invite them to stop using that
5 formulation.

6 We accept entirely that Dr. Smith made a mistake in
7 the preparation of his table. He accepts that, and he's
8 provided a revised table. It hasn't been challenged. The
9 revised table doesn't materially alter his conclusions. That
10 should have been the end of the matter, but it was not, and the
11 innuendo continued and continued and continued. We find that
12 regrettable. We can only take it to mean that Suriname
13 entertains rather serious concerns about the impact of
14 Dr. Smith's report, and that's fine, but let us deal with the
15 merits of his arguments and not anything else. That is what
16 the Tribunal is entitled to expect.

17 There is no suggestion but that Dr. Smith's mistake
18 was anything but an honest mistake, and counsel for both sides
19 have made honest mistakes in the course of these proceedings.
20 Professor Greenwood rather generously referred you to a mistake
21 in Suriname's pleadings concerning the question of whether or
22 not China had or had not made a declaration. We accept that
23 for what it is: A good faith error, and nothing else.

24 But other mistakes were made by Professor Greenwood
25 which we say are rather more problematic and shed light on

09:51:54 1 their general approach, and that brings me to my point number
2 four: There is nothing particularly unique or special about
3 this case. Again, the fact is that Suriname would have
4 recognized that if it had had the benefit of independent
5 expertise. Every case is different, but contrary to the view
6 expressed by Professor Greenwood and some of his colleagues,
7 there is nothing exceptional about this one. The coasts and
8 the geography aren't exceptional. The parties are agreed on
9 that. Nor is this a first case involving the application of
10 UNCLOS rules to adjacent or lateral states, as Suriname has
11 repeatedly insisted. Last Wednesday, Professor Greenwood said
12 this, and I quote: "In the base of case of Barbados-Trinidad
13 and Tobago Tribunal, it was a dealing with a case between
14 opposite states."

15 Now, I was very struck by that claim, which was
16 obviously intended to distinguish that case from this one and
17 drive the Tribunal away from it. But, of course, you, the
18 Tribunal, will read that case rather carefully. And Mr. Grey
19 in particular is well aware of the approach taken by the
20 Tribunal in that case. He will also have seen if he was
21 present Professor Greenwood in action in that case since he was
22 counsel for Trinidad and Tobago.

23 On the 20th of October, 2005, on day three of the
24 hearings, this is how Professor Greenwood described the
25 geographical relation of the parties in that case, and I quote:

09:53:25 1 "The geographical relation of Trinidad and Tobago on the one
2 hand to Barbados on the other vis-a-vis the continental shelf
3 to be delimited is one of lateral rather than opposite coasts
4 in the Atlantic." That's day three, 20th of October, 2005,
5 page 90, lines 28 to 34.

6 Professor Greenwood is a very fine wordsmith, but
7 where is the substance? And you will appreciate against that
8 background why we have been a little bit skeptical when it is
9 his side that accuses Guyana of playing fast and loose with the
10 facts.

11 Equally you will appreciate why we found the critique
12 of Dr. Smith somewhat hollow. On the delimitation of the
13 continental shelf, the Barbados-Trinidad and Tobago Tribunal
14 proceeded on the basis that those two states were in large part
15 lateral or adjacent states. Lateral adjacency is another way
16 of using the term. The Tribunal in that case adopted--applied
17 the very same provisions with which you are concerned, Articles
18 74 and 83 of the Convention.

19 What did it do in that part of the delimitation in
20 which the two states were laterally adjacent? It drew a
21 provisional equidistance line and it delimited the boundary
22 with a perfect equidistance line for all but the very last part
23 of the delimitation. The Tribunal said that this approach, and
24 I quote, "ensures both the need for certainty and the
25 consideration of such circumstances that might be relevant for

09:54:48 1 an equitable solution."

2 Now, you can see the result on your screen now. This
3 is map five of the Award. The Tribunal followed all of the
4 turning points in that case, and it didn't create a simplified
5 equidistance line or a straight line. It declined to resort to
6 what it called any form of splitting the difference or other
7 mathematical approaches, or to use any ratio methodologies.
8 And in our submission this Tribunal should adopt the same
9 approach.

10 Now, if you look to that line on the far right-hand
11 side or thereabouts and look to the coasts, this is what
12 Professor Greenwood said in that hearing was the relationship,
13 and I quote, "To say that somebody standing at the far end of
14 that line was standing between the Barbados and Trinidad and
15 Tobago coasts is quite simply a nonsense," and we say his
16 submission to you last week that those two states are opposite
17 States for the purpose of delimitation is a nonsense.

18 On Saturday morning, Mr. Colson claimed that no
19 Tribunal had applied an equidistance line for adjacent states
20 except for a very short distance, and a little later Professor
21 Greenwood said the Cameroon-Nigeria case and the continental
22 shelf, and I quote, "stand alone as examples of an equidistance
23 line being applied to two adjacent states." It becomes pretty
24 clear why Suriname wants to steer a wide berth from that Award.

25 And it's also clear why Suriname has said nothing

09:56:17 1 about the judgment in Qatar-Bahrain. At paragraph 174 of its
2 judgment, the Court described the area to the north of those
3 two states as one where, and I quote, "The coast of the two
4 States are no longer opposite to each other, but are rather
5 comparable to adjacent coasts. The delimitation to be carried
6 out will be one between the continental shelf and Exclusive
7 Economic Zone belonging to each of the parties, areas in which
8 states have only sovereign rights and functional
9 jurisdictions."

10 Now, in that sector, the International Court of
11 Justice proceeded to draw a provisional equidistance line which
12 it then adjusted to take into account of a remote projection
13 off Bahrain's coast. And, of course, there is no such
14 equivalent remote projection in this case. There are no
15 comparable features, in fact.

16 And against this background, we say it cannot
17 plausibly be argued that there is anything particularly novel
18 or unique about this case. It cannot be said that the cases I
19 have just taken you to, Qatar-Bahrain, Barbados-Trinidad, are
20 not directly relevant, and it cannot be said that the
21 geographical circumstances of this case provide any reason for
22 departing from established international practice.

23 Which brings me to point five. We invite the Tribunal
24 to note Suriname's incoherent and selective approach to various
25 international authorities. This has caused it to eschew an

09:57:33 1 objective approach to delimitation and take us down the
2 subjective path of the angle bisector. Professor Greenwood set
3 out his submissions as to why the approaches taken by ICJ or
4 views of certain commentators was just wrong in the approach to
5 the provisional equidistance line, a point to which I'll
6 return.

7 By contrast, Mr. Colson seemed rather more comfortable
8 with the approach of the International Court of Justice when it
9 came to the issue of conduct, and at some length he took the
10 Tribunal through the details of great raft of ICJ case law on
11 that issue. He fully embraced the approach of the
12 International Court of Justice. So that's Suriname's approach.
13 You pick and choose the bits of the jurisprudence you like and
14 you discard the rest.

15 And they did the same with some of the judges from the
16 International Court of Justice. They did that with Judge
17 Guillaume, I'm sure you noticed. They like his views on the
18 limit of dispute settlement jurisdiction, so they rely on that,
19 but they don't like his views on the provisional equidistance
20 line, so they discard that. It's a very curious approach to
21 legal argument. Coherent it is not.

22 And that brings me to point six. We invite the
23 Tribunal to resist Suriname's invitation to abandon established
24 international practice. We say you must start with the
25 provisional equidistance line, and then decide whether it needs

09:58:50 1 to be adjusted to achieve an accountable solution. We say that
2 if this Tribunal accedes to Suriname's request, it will
3 introduce confusion and uncertainty into the law of
4 delimitation. I don't need to tell you, Mr. President, how
5 many maritime boundary negotiations are currently underway in
6 the Caribbean region and elsewhere. They proceed on the basis
7 of a settled jurisprudence. Suriname's approach would have
8 serious adverse effects for the system of dispute settlement.
9 It would signal that one approach would be taken before the
10 International Court of Justice, and another might be followed
11 before certain Annex VII Tribunals and possibly also the
12 International Tribunal for the Law of the Sea. That cannot be
13 a good thing for the coherence and unity of the legal order
14 created by UNCLOS.

15 Suriname would have you abandon the settled approach
16 and start with its rather more subjective methodology, this
17 despite the fact that no International Court or Tribunal has
18 started other than on the provisional equidistance line basis
19 for some 20 years. What does Suriname say about those who
20 adhere to the provisional equidistance line as a point of
21 departure? Professor Greenwood in his opening statement
22 suggested they got it wrong. Well, we don't believe that the
23 ICJ has got it wrong or that the Barbados-Trinidad and Tobago
24 Tribunal got it wrong or that those Tribunals would conclude
25 that the right approach in this case is an angle bisector

10:00:15 1 methodology. That was, we say, a bold claim. The
2 circumstances here are unexceptional; and if the Tribunal
3 follows Suriname's invitation, it would introduce a great deal
4 of uncertainty into a settled system.

5 Point seven, the Tribunal, we say, should decide the
6 issues of fact on the basis of the evidence before it, and
7 Suriname's claim largely lacks any supporting evidence.
8 Suriname makes a great number of assertions unsupported by
9 evidentiary material. Navigation in the western channel is a
10 perfect example. Professor Greenwood raised new issues about
11 drug running and drug smuggling. No evidence to support that.
12 They've introduced new evidence on the tidal effect, on the
13 effect of navigation of tidal streams. Where is the evidence
14 for that? Where does the South American Pilot indicate that
15 that tidal stream has any adverse effect for navigation or for
16 anything else? Bold assertion. No evidence whatsoever. The
17 Tribunal, we say, must stick to the evidence that is before it.

18 And point eight, Suriname lacks consistency in its
19 arguments. One of the recurring themes from Suriname has been
20 the refrain that Guyana is inconsistent and lacks credibility.
21 We find that charge rather surprising. We feel actually we
22 have been remarkably consistent if you follow through from our
23 Memorial to our Reply all the way through to our oral
24 arguments.

25 The major changes of direction have all come from

10:01:48 1 Suriname. Some these changes are very striking indeed. For
2 example, one of the big issues has been the question of whether
3 or not there has been an agreement on Point 61 and distinctly
4 on a 10-degree line in the territorial sea. In its written
5 pleadings, Suriname maintained there was no such agreement.
6 For example, paragraph 5.4 of its Memorandum on Preliminary
7 Objections: "Various issues concerning the land boundary and
8 the maritime boundary were regarded as open in 1966, and they
9 remain open today."

10 Paragraph 5.5, "there is no agreement on the land
11 boundary terminus." Paragraph 3.7, "the colonial powers did
12 not reach a legally binding agreement." Paragraph 3.10 in
13 relation to the Marlborough House talks, "the parties were in
14 disagreement on all relevant boundary issues."

15 No agreement.

16 Same thing in the Counter-Memorial, paragraph 4.60,
17 "there was no agreement between the colonial powers on anything
18 other than the west bank of the Corantijn River was the general
19 territorial boundary; there was no agreement between Guyana and
20 Suriname on any other specific boundary matter."

21 And in the Reply, paragraph 1.4, "the only binding
22 agreement between Guyana and Suriname defines the extent of
23 their respective territories is an Agreement of Cession made in
24 1799." The Rejoinder. I apologize. Paragraph 1.4.

25 So, we turned up as these hearings obviously expecting

10:03:17 1 that Suriname's position will be clear. There was no agreement
2 on a 10-degree line in any part of the sea. That's what they
3 argued in their written pleadings, even up to 3 miles. We've
4 been a bit surprised by the abrupt change of direction.
5 Perhaps this is because Suriname recognized the evident
6 weakness of its arguments on jurisdiction, and it wants to
7 salvage something from this case. If nothing else, give it 10
8 degrees for 3 miles, it seems to be saying.

9 In any event, they have done a remarkable U-turn. On
10 the 13th of December, Professor Greenwood referred to a
11 boundary in the territorial sea established by the concordance
12 of the parties. Professor Oxman the following day, the
13 10-degree line constitutes the territorial sea boundary. The
14 consistent and concerted behavior of the Netherlands and the
15 U.K. in their dealings with each other over many years
16 established the boundary whether by virtue of tacit or de facto
17 agreement on mutual recognition or acquiescence or estoppel.
18 That is completely different from what they argued in their
19 written pleadings.

20 Even here, counsel seems a little confused to the
21 extent of their newly discovered agreement, an agreement
22 discovered between the close on the Rejoinder and the opening
23 of their oral arguments. Mr. Colson certainly didn't subscribe
24 to the view that there was agreement on any part of the
25 continental shelf area beyond the three-mile territorial sea.

10:04:48 1 Here's what he said, and I quote: "We simply assert and
2 believe it to be true that there has been a dispute between the
3 parties for more than 40 years about this maritime boundary
4 problem and that the conduct of the parties simply reflects
5 that dispute."

6 So, the question is, does Suriname believe that there
7 was or was not an agreement on Point 61, and that there was or
8 was not an agreement on the 10-degree line? Guyana's position
9 has been constant. There has been 70 years of consistent
10 practice on Point 61, and that has given rise to binding
11 obligations under international law. There has been no such
12 agreement at any time in relation to the 10-degree line because
13 its rationale navigation had disappeared long before any
14 binding obligation had crystallized.

15 I will come back on to this in due course. What may
16 have happened for a few years in the late thirties and early
17 forties did not give rise to a legal binding obligation, and
18 Suriname has provided no authorities to support an opposite
19 conclusion.

20 So, let me turn now to the questions of jurisdiction.
21 It appears that this issue may not now cause the Tribunal too
22 great a difficulty, since the wind seems rather less present in
23 Suriname's sails. In May 2005, Suriname submitted its
24 Memorandum on Preliminary Objections. They went very far
25 indeed there. I refer you in particular to paragraphs 4.12 to

10:06:10 1 4.14. The gist of these paragraphs is that the mere existence
2 of a dispute as to the location of the land boundary terminus
3 is enough to deprive the Tribunal of jurisdiction over the
4 delimitation parts of this case.

5 Suriname has now adopted a rather more nuanced
6 approach reflecting perhaps a change in the composition of its
7 legal advisors, and this sends a rather clear signal to the
8 Tribunal. In her eloquent opening remarks, Suriname's
9 distinguished Foreign Minister was rather reticent on that
10 subject. It was left to Professor Greenwood to deal with the
11 issue, and he did so with circumspect brevity--we all noticed
12 that--in eight propositions. The parties remain divided, but
13 on the basis of what we heard, we are comfortable that there's
14 more than enough before this Tribunal to allow it to find a way
15 forward and proceed to delimit some or all of the maritime
16 boundary.

17 Our thinking on this subject has been much assisted by
18 these hearings, and in particular a clarification or perhaps it
19 was another change of position from Suriname, and a key
20 question we thought from Dr. Hossain. As to the clarification,
21 Suriname's acceptance that it has no continental land territory
22 in the vicinity of Point 61 is significant. It confirms that
23 an exercise in jurisdiction the Tribunal would not delimit as
24 between two areas of continental land boundary. It will merely
25 determine where the sea ends and the River Corantijn begins.

10:07:36 1 And contrary to the view expressed by Suriname, Guyana
2 does not believe that UNCLOS treats continental land territory
3 and internal waters in the same way. It does not. You will
4 have noticed that Professor Greenwood was not able to provide
5 any response to our point on the use of words in Article
6 298(1)(a)(i) of UNCLOS, and in particular the fact that it
7 refers to continental land territory but not internal waters.

8 Nor did Professor Greenwood provide any assistance to
9 the Tribunal on the various uses of the word internal waters
10 throughout the text of UNCLOS and that Convention's clear
11 intent to treat internal waters as a juridical concept that is
12 distinct from land territory. So, there is no question of the
13 Tribunal delimiting land territory in this case, or even being
14 asked to delimit the area between river and land. In the first
15 part of the delimitation, all that is being asked to do is
16 delimit the area between Guyana's territorial sea and
17 Suriname's river, and it's not even required to do that, to
18 take the language of our written pleadings if it decides to
19 start the delimitation a few miles out where the two parties'
20 provisional equidistance lines converge.

21 Dr. Hossain's question concerned the issue of the
22 relationship between the Tribunal's jurisdiction and the
23 merits, and that provided, we say, rather a helpful
24 clarification in this sense: It indicated that what the issue
25 boils down to is whether or not this Tribunal has jurisdiction

10:09:08 1 to determine the location of the point on the low-water mark
2 from which the delimitation of the territorial sea and areas
3 beyond is to be carried out. That's to say not to choose
4 precisely where to put it, but to exercise the power of choice.
5 They are distinct concepts. In other words, if there is a
6 dispute between the parties as to the location, can the
7 Tribunal resolve it?

8 Suriname's position previously was negative. You
9 can't do that. What they said was that so long as there was a
10 dispute, the Tribunal had no jurisdiction. It has now changed
11 tack. The answer to that question, according to Suriname, is,
12 yes, provided you place it at the intersection of the 10-degree
13 line and the low-water mark and nowhere else.

14 But this is a crucial change. Specifically, Suriname
15 now accepts that you have jurisdiction to resolve the dispute.
16 You have jurisdiction to ascertain whether the 1799 Agreement
17 coupled with the practice and conduct of the colonial powers
18 gave rise to an agreement to locate the starting point at the
19 intersection of the 10-degree line and the low-water mark.
20 Suriname now accepts that if the parties disagree on that
21 issue, you have the power to resolve it. That was the gist of
22 their argument. That is what they said.

23 Now, logically that is a major concession by Suriname,
24 and in fact, it's an abandonment of the position taken in the
25 Preliminary Objections' phase, but it is a concession that

10:10:35 1 necessarily means that if you have jurisdiction to place the
2 point at one location on the low-water mark, then you must have
3 jurisdiction to place it at another point on the low-water
4 mark. Suriname accepts now that you can resolve a dispute as
5 to the location or nonlocation of the starting point at a place
6 by examining agreements and conduct that arise outside of
7 UNCLOS, although it does seek to restrict the Tribunal's
8 jurisdiction, of course, to only finding in its favor.

9 However, if it accepts that, on what basis can
10 Suriname argue that you don't have jurisdiction to examine
11 other legal sources or other conduct which result in the
12 starting point being located at some point other than
13 Suriname's location of choice?

14 So, Guyana welcomes Suriname's clarification. Guyana
15 submits that this Tribunal has jurisdiction to place the
16 starting point in a number of places, at the place where the
17 10-degree line intersects the low-water mark or the point on
18 the low-water mark which is closest to Point 61, or at any
19 other location on the low-water mark which could plausibly be
20 decided by the Tribunal to be the place at which the river
21 meets the sea. Or the Tribunal has jurisdiction to start at
22 some distance out to sea. The 6 nautical miles was the area we
23 referred you to.

24 Let me turn to the arguments of Suriname as to why you
25 don't have jurisdiction to locate the starting point at a place

10:12:05 1 other than the intersection of the 10-degree line with the
2 low-water mark. Suriname says the Tribunal doesn't have
3 jurisdiction for two reasons. Firstly, the river and the land
4 are the same thing; and secondly, the Tribunal has no
5 jurisdiction over the land. It therefore follows the Tribunal
6 can have no jurisdiction over the river. We say their points
7 are wrong.

8 As to the first point, under UNCLOS, as I've said,
9 river and land are not the same. We heard nothing from
10 Suriname to explain its view as to why they are. As Professor
11 Greenwood put it, and I quote, "Rivers and lakes are equated to
12 land territory." This was a constant refrain from Suriname,
13 but there was never any explanation. There was never any
14 reference to Article 2(1) of UNCLOS, or Article 7(3) which
15 refers to the regime of internal waters, which appears to be
16 different from the regime of land territory which doesn't exist
17 under UNCLOS, or Article 8 or Article 10 or Article 18, Article
18 25, 27, 28, 30, 50, 86, 111, all of which deal with internal
19 waters.

20 Now, this was a point that was alluded to in a
21 question from you, Mr. President, to Professor Greenwood in
22 which you referred him to Articles 9, 10, 47, and Part 10 of
23 the Convention, and you asked whether a Tribunal would have
24 jurisdiction over a dispute concerning the application of those
25 provisions. Here is Professor Greenwood's answer to that

10:13:42 1 question, and I quote, "The Tribunal would have jurisdiction
2 over a dispute about the interpretation or the application or a
3 dispute about both in respect of, for example, Article 9,
4 Article 47, any of the Articles of the Convention. Any of the
5 Articles of the Convention, we don't dispute that."

6 Now, that answer is significant. With Professor
7 Greenwood's answer, Suriname accepts, for example, that if it
8 had drawn a baseline as a straight line across the mouth of the
9 River Corantijn under Article 9 and Guyana considered that it
10 had done so in a way that was not compatible with Article 9,
11 then a dispute would arise on the application of Article 9, and
12 it would fall within the jurisdiction of an Annex VII Tribunal.

13 If a dispute like that falls within the jurisdiction
14 of an Annex VII Tribunal, it is very difficult to see on what
15 basis Suriname can say this dispute doesn't fall within the
16 jurisdiction of this Tribunal. And this connects, of course,
17 to Suriname's second argument, to the effect that this Tribunal
18 doesn't have jurisdiction to address issues related to any
19 unsettled dispute concerning sovereignty over continental land
20 territory. Of course, we say there isn't such a dispute in
21 this case, and you don't equate river to continental land
22 territory, and, therefore, there is no real need for the
23 Tribunal to resolve the issue.

24 But crucially even if such a dispute did exist, if you
25 were to find that river equals land, which we say it does not,

10:15:07 1 then we say you could exercise jurisdiction. Professor
2 Greenwood said our argument was based, and I quote, "on a
3 fundamental misconception about the text, the purpose, and the
4 principles of the Law of the Sea Convention."

5 And in support of that assertion, he relied on a
6 rather ambiguous article by Professor Churchill, which doesn't
7 really go fully into the issues, and a passing reference to
8 Judge Guillaume's view, which was even briefer. This, of
9 course, is the good Judge Guillaume, rather than the bad Judge
10 Guillaume whose views they don't like.

11 Conversely, we say there is authority and clear legal
12 reasoning to support our argument. And I refer you in
13 particular to two texts. You will find the first one at Tab
14 41(a) of your folder. I'm not going to read--take you to it
15 now because we are short on time, but that is an article by
16 Professor Vukas, formerly Vice President of the International
17 Tribunal for the Law of the Sea, and he goes through an
18 analysis which looks at the ability of the Law of the Sea
19 dispute settlement system to deal with questions concerning
20 Article 1(2)(1), and he writes, "In order to be able to
21 interpret and apply this provision correctly, the following
22 questions need to be answered: A, What's the difference
23 between rocks and islands which are the subject of the first
24 two paragraphs of Article 1(2)(1). B, What's the basis for the
25 claim that a rock can or cannot sustain human habitation? And

10:16:34 1 C, Are there any fixed conditions for the conclusion that a
2 rock can sustain economic life of its own? "None of these
3 questions," he writes, "belong to the Law of the Sea, but they
4 are relevant to the right of the state to which the rocks
5 belong to control some sea areas off the coast of such small
6 islands." And then I emphasize what follows next. "The
7 relevance of those questions for the related Law of the Sea
8 problems can be compared with that of the land frontier between
9 two coastal states for the determination of the initial point
10 of their sea boundary delimitation."

11 And then, even more recently, actually just two
12 Thursdays ago, there is the view expressed by the current
13 President of the Law of the Sea Tribunal, President Judge
14 Rüdiger Wolfrum in a speech he gave on Thursday, the 8th of
15 December, 2006, at the United Nations General Assembly, and he
16 dealt squarely with the issue. You will find that at Tab
17 41(b). I will simply refer you now to paragraph seven of his
18 address, and I quote, "I should clearly state the competence of
19 the Tribunal or any other court or tribunal to deal with the
20 main claim that maritime delimitation be effected according to
21 Articles 15, 74, or 83 includes the associated question of
22 delimitation over land or islands. This approach is in line
23 with the principle of effectiveness and enables the
24 adjudicative body in question to truly fulfill its function.
25 Maritime boundaries cannot be determined in isolation without

10:18:07 1 reference to the territory. Moreover, several provisions of
2 the Convention deal with sovereignty and the interrelation
3 between land and sea. Accordingly, issues of sovereignty or
4 other rights over continental insular land territory which are
5 closely linked or ancillary to maritime delimitation concern
6 the interpretation or application of the Convention and
7 therefore fall within its scope. This may be further evidenced
8 by a reading a contraria of Article 298; namely, in the absence
9 of a declaration under that provision, a maritime delimitation
10 dispute, including the necessarily concurrent consideration of
11 any unsettled dispute concerning sovereignty or other rights
12 over continental or insular land territory is subject to the
13 compulsory jurisdiction of the Tribunal or any other court or
14 tribunal."

15 So, our view may be misconceived, but so then is
16 President Wolfrum's, and he had addressed that issue in more
17 detail a month or so earlier on the 23rd of October, 2006, in a
18 meeting with the legal advisors informally at the United
19 Nations.

20 There are others who have written in similar way, and
21 I refer you to the writings of former Judge Gudmundur
22 Eiriksson, International Tribunal for the Law of the Sea, 2000,
23 at page 113, and they provide strong support for Guyana's
24 argument as to the extensive jurisdiction of this Tribunal.

25 I have turned in part also to the Article 9 issue and

10:19:36 1 pointed out to you the inherent illogicality of the position
2 adopted by Suriname in relation to your competence or
3 jurisdiction to address disputes under Article 9, and we say
4 that provides compelling support also for our argument on
5 jurisdiction. And Suriname also addressed fleetingly the
6 question of the Tribunal's jurisdiction to effect a partial
7 delimitation. We say this was equally unpersuasive. Indeed,
8 we say it has simply failed to engage with the issues.

9 Professor Greenwood provided no response to the case
10 law we had drawn attention to, for example, which indicated
11 other circumstances in which an international court or tribunal
12 can effect a partial delimitation to avoid trespassing on the
13 rights of a third state. Professor Greenwood made just two
14 points. First, he said that our approach put the cart before
15 the horse. It assumed that drawing a provisional equidistance
16 line was the right way to go, and that couldn't be assumed. We
17 say that they are wrong on that, and if we were before the
18 International Court of Justice, or any other international
19 court or tribunal on the basis of the settled case law, that is
20 how such a court or tribunal would proceed. But even
21 Suriname's own methodology, the unprecedented angle bisector
22 that doesn't quite bisect, would allow this Tribunal to start
23 the delimitation 6 miles out.

24 Professor Greenwood's second point was no more
25 persuasive. He referred to other hypothetical points that

10:21:13 1 could be identified as the mouth of the river. Well, we don't
2 see that there's any need to proceed on the basis of
3 hypotheticals. Both parties start their processes at Point 61,
4 and they end up on the low-water mark less than 1 nautical mile
5 apart as to where to then draw the beginning part of the
6 territorial sea delimitation. They have drawn provisional
7 equidistance lines that are virtually identical. That
8 exercise, we say, provides a further compelling reason why you
9 go down the route of starting with a provisional equidistance
10 line.

11 That takes me to the third and final part of my
12 presentation this morning. The delimitation of the territorial
13 sea. The parties are agreed on some important points. They
14 agree on the location of Point 61. They agree that Point 61 is
15 the northern terminal point mark, but not the land terminus
16 boundary. They agree that Point 61 is very close to the land
17 terminus boundary, which is to be located on the low-water
18 mark. And they agree that Point 61 is to be taken as the
19 starting point in the process of delimiting the territorial
20 sea, even if it isn't the actual starting point for the line of
21 delimitation.

22 But on other matters they disagree, and it's to those
23 points of disagreement that I will now turn. The Tribunal has
24 to answer four questions. They're questions of fact. They are
25 questions that have to be decided on the basis of the evidence

10:22:52 1 before this Tribunal. The questions are, first, what's the
2 function of Point 61? Second, what was the original rationale
3 for the change from a 28-degree line to the 10-degree line?
4 Third, how do you get from Point 61 to the place on the
5 low-water mark from which the line of delimitation is to be
6 drawn? And fourth, in what direction or directions is the line
7 to be drawn from that starting point?

8 Just before I get to these questions, there are two
9 other matters to mention. The first is that in the written
10 pleadings, Suriname approached the delimitation by treating the
11 territorial sea in the areas beyond as a single whole.
12 Articles 15, 74, and 83 of UNCLOS were simply melded together.
13 They have abandoned that position, and we are grateful for
14 that.

15 The second matter is that both parties have proceeded
16 on the basis that right up to 1978, by which time both their
17 laws had changed, the territorial sea was the area up to 3
18 miles from the parties' coasts, and the area from three to
19 12 miles was being treated in all the exchanges as part of the
20 continental shelf delimitation. The evidence clearly
21 establishes that in the period up to the Marlborough House
22 Talks and following those talks, and during those talks, when
23 the parties were addressing the delimitation of the continental
24 shelf, they were talking about the area beyond 3 miles from
25 either side's low-water mark from which the territorial sea was

10:24:44 1 measured.

2 So, let me turn now to the four questions. Firstly,
3 what is the function, the nature of Point 61, and that was a
4 question to which Professor Shearer referred our attention. We
5 said that contrary to Suriname's repeated claims, Point 61
6 itself was never intended to be a directional point. The
7 marker at "A" at Point 61 is intended to mark the point where
8 the river meets the sea. It had precise coordinates, and it
9 represented, and I quote, "the northern terminal point mark of
10 the boundary between Suriname and British Guiana" as the title
11 to the report and its content make clear. That was the main
12 task of the Boundary Commissioners. Only marker "B" was a
13 directional marker, and the record makes it crystal clear that
14 the pillars were not placed solely for maritime delimitation,
15 as Professor Greenwood asserted.

16 Second question: What was the original rationale for
17 the move from the 28-degree line to the 10-degree line? The
18 parties agree that originally the direction of the line was to
19 be 28 degrees, and that understanding governed for
20 approximately five years. They agree that it was changed only
21 in 1936. So, what was the rationale for the change from 28
22 degrees to 10 degrees? That question is an important one
23 because it determines the extent to which the 10-degree line
24 could be maintained after the 1950s, and whether it's
25 appropriate to extend it in any particular direction from three

10:26:30 1 to 12 miles. Guyana says the 10-degree line was chosen for one
2 purpose only: To leave the navigation channel in the same
3 territory. Our position is based on the evidence before the
4 Tribunal. Suriname has gradually extended that rationale from
5 the initial navigational channel to what it refers to as the
6 approaches, quote-unquote, to the original navigational channel
7 and then to cover law enforcement, drug running, and even, as
8 it put it, the avoidance of British or Guyanese sovereignty
9 anywhere east of the 10-degree line. But Suriname has put no
10 evidence before the Tribunal to support the argument for this
11 evolving rationale.

12 The 1936 report was signed by Major Phipps, Vice
13 Admiral Kayser, and I quote now the document that you will see
14 on your screen.

15 The Netherlands Commissioner considered it was
16 essential that the continuation of the boundary in the
17 territorial waters should leave the navigational channel in the
18 same territory throughout its length. Other difficulties would
19 arise over lighting and buoys, et cetera.

20 This is, in fact, the reason, and the only reason, for
21 the change in direction of a three-mile line.

22 So, having fixed the location at Point 61, the
23 objective was to leave the navigation channel in the same
24 territory throughout its length. They were concerned here only
25 with the so-called western channel along the west bank of the

10:28:06 1 river. So two issues arise. What was the navigation channel
2 they had in mind and what was its length? Well, let's proceed
3 on the basis of the raw material.

4 You will see on your screen now Chart 222, the
5 original 1928 chart. It doesn't show a defined navigation
6 channel along a 10-degree line. That would be over there. It
7 does not exist. Nor does it show any--there are no buoys.
8 There is no lighting. There is nothing else in that area, so,
9 at that point there was not an established navigational
10 channel.

11 Now, let's look to the 1946 version of that chart.
12 That's now on your screen. And I must just here just point out
13 that this document I only discovered this morning is not in the
14 Annexes, but is a document that is available in the public
15 domain and has been in our files for some time, but I only saw
16 it yesterday. It was obtained by Professor Schrijver from the
17 Dutch Hydrographic Office, so it is publicly available, and
18 we've had an exchange with the other side on this issue.

19 PROFESSOR GREENWOOD: Mr. President, I'm sorry to
20 interrupt my learned friend. May I just say that we do accept
21 that this document can be put in. We would find it helpful,
22 given the short time span available, that if the Guyanese team
23 has a large-scale version of this chart, we would be very
24 grateful if they would give us a copy of that.

25 PROFESSOR SANDS: We, of course, undertake to make it

10:29:41 1 available to you, and we will, of course, make copies available
2 to the Tribunal as well.

3 Professor Greenwood only has about 18 hours less with
4 this chart than I have because I only looked at it in detail
5 yesterday. It turns out it's rather an important chart. I
6 wouldn't so far as to say it's a smoking gun, but you will see
7 that on the chart there is a single line that is there located
8 over there and which shows something which might approximate to
9 a 10-degree line, but it's divided into two sections. There is
10 a section down here and then there is another section up there.

11 And I must say I had seen this chart, and it was only
12 over the weekend that I honed in with the benefit of computers
13 and looked very carefully at what the words are actually
14 located over there.

15 If you go in more closely, you can see the navigation
16 channel. It's the area that is buoyed. In red circles, you
17 can see the four buoys. The area beyond is not buoyed, and I
18 assume that is what Suriname refers to as the area of
19 approaches to the channel, but that area is not buoyed, and it
20 is not lit or otherwise marked in any way.

21 The distance between the four buoys, from number one
22 at the bottom to number four the top is about 3 miles, and next
23 to it you will see another line which says the 3-mile limit
24 approximating the navigation channel which we've marked in
25 blue, blue showing the area in and around the buoys. That is

10:31:23 1 the buoyed area.

2 Before we leave this chart, and we say this must have
3 been the full extent of the navigational channel that
4 Messrs. Kayser and Phipps were concerned with. But before we
5 leave the chart, it's worth looking closely at the handwritten
6 notes to the left of the four buoys, over here. And what it
7 says and I rely here on Professor Schrijver because my Dutch is
8 very poor, nonexistent actually, no buoys present. "See letter
9 9232/3/H 12 July 1949."

10 Now, we haven't seen that letter, but what we say is
11 these words are very important. In fact, this chart is very
12 important, and we invite to you look at it very carefully.
13 It's important because it provides evidence of two things. By
14 1949, any navigational channel on the west bank that might have
15 been used was no longer being buoyed. And secondly, by that
16 time, the Dutch authorities were aware of that. There is no
17 evidence, no charts before the Tribunal to show that the
18 navigational channel was buoyed or in use at any time after
19 1949. That is nearly 60 years ago.

20 Now, while we were preparing this chart yesterday, I
21 asked our cartographers to go in on the line. I wanted to see
22 what that writing was and to see whether we could work out what
23 that writing was. Well, if you go up to the writing now very,
24 very closely, you will notice some things that you can only
25 see--could you go back on the previous--the areas that are

10:33:06 1 highlighted are scribblings, and it turns out that under a
2 microscope you notice that the line was removed. It's
3 scratched out. There is no navigational channel. And then if
4 you home in on those words over here, and I'm extremely
5 grateful to my friend Nico Schrijver who spent many hours
6 overnight trying to decipher these words and work out what they
7 means, you will see what it says. I'm just wondering actually
8 if I can invite Professor Schrijver to read out what it says
9 and translate it because my Dutch is not very good.

10 ARBITRATOR SMIT: Can he first say the Dutch?

11 PROFESSOR SANDS: That's what I'm going to ask him to
12 do, and you will understand why there is a confusion.

13 PROFESSOR SCHRIJVER: With your permission,
14 Mr. President, I will be happy to do so because, indeed, it is
15 a difficult word for non-Dutch-speaking people that comes close
16 to the well-known test with Scheveningen, but here it reads
17 "schoorsteenen voor 190°.5," and we have been rather puzzled by
18 these words and it took us a long time to read it carefully,
19 but "schoorsteenen" means chimneys, so what are chimneys
20 referred to in the middle of the navigation channel? It turns
21 out that it refers to a kind of guiding line for navigation,
22 obviously now no longer relevant because it has been crossed
23 out. Chimneys on the coast, chimneys of a plantation as a kind
24 of point of orientation, but the chimneys are no longer there
25 or the navigational line is no longer relevant, and therefore,

10:35:02 1 it has been crossed out by the Dutch naval authorities. We
2 obtained this map. It is in the public domain, but we obtained
3 it from the Royal Dutch Navy, and Guyana paid for it.

4 PROFESSOR SANDS: So, what we say is this is rather
5 significant, and we think this is key to explaining this part
6 of the case. We think the story now is rather clear. There
7 was a navigational channel, and the navigational channel that
8 Phipps and Kayser had in mind was the area around between the
9 four buoys. That navigation channel ceased to have any
10 function at some point in the mid to late 1940s. The buoys had
11 gone by 1949. The line had gone at the same time. It is
12 scratched out.

13 There is no other chart produced by the Dutch
14 authorities after this 1946 chart which is in evidence before
15 the Tribunal which shows a navigational channel. And we think
16 this explains something else we were puzzled about. Why do
17 none of the Dutch documents refer to a navigational channel?
18 In the 1950s, there is no argument between the Dutch and the
19 British about navigation in that area. There is no argument in
20 the 1960s, and you remember at Marlborough House Suriname
21 abandoned the navigational channel argument. We think the
22 answer is clear. There has not been a navigational channel in
23 that area perhaps for approximately 60 years, and we think that
24 this map and the material before the Tribunal confirms clearly
25 that any claim to special circumstances disappears.

10:36:43 1 Now, on the screen you will now see the 1946 chart
2 superimposed onto the modern Dutch Chart 2228.

3 PROFESSOR GREENWOOD: Mr. President, again I'm sorry
4 to interrupt my learned friend, before we leave the 1949 map--

5 PROFESSOR SANDS: 46.

6 PROFESSOR GREENWOOD: --before we leave the map you
7 have just shown, the Dutch Chart, would Guyana be kind enough
8 to let us know in due course when they bought this copy from
9 The Royal Dutch Navy, how long it's been available?

10 PROFESSOR SANDS: We will, of course, provide that,
11 and we'll try to do that immediately after--well, after the
12 coffee break or after the lunch break because I think Professor
13 Schrijver was the person who was involved in the transaction.

14 Now, on the screen you can see that the 1946 chart is
15 superimposed onto the modern Dutch Chart 2228. We placed Point
16 61 on that chart. There you have Point 61, using geodetic
17 coordinates rather than astronomic coordinates. You can see
18 the proximity of the buoyed area to Point 61. Could you put
19 the buoyed area on?

20 Do we have a capacity to home in on it to show where
21 it is? That's the buoyed area over there. Those are the four
22 buoys over there. I can hardly see them from here
23 superimposed.

24 And if you now see the lines that are drawn from Point
25 61, a 10-degree line and a 28-degree line, you will see over

10:38:17 1 here why there was a concern of the 28-degree line hitting that
2 buoyed area, and that explains to us why the move took place.
3 It was intended to avoid hitting any of those buoys or crossing
4 the northernmost reaches of that navigational channel. That
5 was the full objective of Kayser and Phipps in 1936, to avoid
6 interfering with the channel which may then have existed but
7 has long fallen into disservice.

8 Now we say this is of crucial importance because we
9 say that there is no binding agreement on the 10-degree line
10 for any distance. The conduct of the colonial powers did not
11 give rise to any binding obligations in relation to the
12 10-degree line. And, of course, until last week, Suriname
13 agreed on that issue, as I have made clear.

14 The absence of agreement is also clear from the oil
15 concessions. The original California oil concession which was
16 granted by Guyana in 1958, started at Point 61, but it goes
17 well eastwards of the 10-degree line in the territorial sea.
18 And from 3 miles out it follows 32 degrees, and the Shell
19 concession is broadly the same.

20 The fact that concessions were granted by British
21 Guiana and authorized by the U.K. is plainly inconsistent with
22 any agreement on a 10-degree line, and the fact that Suriname's
23 first concession to Colmar in 1958 just goes to the western
24 limit without specifying the 10-degree line or anywhere else,
25 also indicates that there cannot have been an agreement on any

10:39:47 1 part of a 10-degree line even within 3 miles at that time.

2 Suriname, of course, now changes its tack and argues there was
3 agreement on a 10-degree line, and we find it hard to see how
4 the Tribunal could give any credence or coherence to so late a
5 change in argument.

6 At this point, it's also worth mentioning one other
7 aspect on which Suriname has not dwelled. The question of
8 navigation in the mouth of the river has also to be seen
9 against the context of the United Kingdom and Guyana's historic
10 navigation and use rights within the river. Every drafter of
11 any treaty that has been put forward by the parties recognizes
12 the United Kingdom and then Guyana and the nationals had rights
13 in the Corantijn River, so the question of control at the mouth
14 of the river on which so much emphasis was placed rather fades
15 away.

16 Let me turn then to the third issue, the starting
17 point. How do you get from Point 61 to the place on the
18 low-water mark from which the line of delimitation is to be
19 drawn? Suriname argues that the right way to get there is to
20 follow the 10-degree line. Guyana submits that's not correct.
21 Originally the direction from Point 61 was intended to be along
22 a 28-degree line, and the change to 10 degrees was intended to
23 address the limited navigational requirements to which I have
24 referred. Very limited navigational requirements. That
25 navigational justification had disappeared, we had previously

10:41:08 1 said, in the early 1950s, but it's clear from the map you have
2 just seen that it had disappeared by the late 1940s. There
3 were no buoys in the area.

4 There was consistent and concordant practice on Point
5 61, but there was not on the 10-degree line or on the direction
6 of the maritime boundary. On that issue there was no
7 agreement. So, we say the best way to get from Point 61 to the
8 low-water mark is to follow the route that gets you there most
9 directly.

10 Suriname argues that our approach which leads to base
11 point G1 and that the line from Point 61 to base point G1 is a
12 line which has no basis in law, conduct, or anything else. It
13 just happens to be nearby. And it invites the Tribunal to
14 disregard base point G1 for that reason, and we say they're
15 wrong.

16 To explain why we say they are wrong, it's useful
17 again to go back to the history. History is important. How
18 did Kayser and Phipps identify Point 61? To illustrate this,
19 we're working again with Dutch Chart 2228, which Suriname has
20 also used; however, we've made some important corrections to
21 that chart which Suriname did not make. It requires the use of
22 geodetic coordinates rather than astronomic coordinates, and
23 the charts to which Professor Greenwood referred you last week,
24 erroneously and I'm sure inadvertently and innocently, were
25 based on astronomic coordinates, not geodetic coordinates.

10:42:35 1 The report of the Boundary Commissioners on the
2 inauguration of the mark at the northern terminal of the
3 boundary is the best place to start, and we say that this
4 report demonstrates the Boundary Commissioners themselves used
5 the very same principle of proximity or contiguity to locate
6 marker "A" in relation to the low-water mark. If you recall,
7 paragraph two of that report explains that when Commissioners
8 charted the coordinates agreed upon for the marker, it was
9 found at that point, the coordinates for the original location
10 of what was proposed to be Point 61, was actually in the sea,
11 so the Commissioners explained they therefore continued along
12 the same latitude until they hit land, but there the land was
13 found to be most unsuitable for the construction of the pillar.

14 In other words, they went to the point most
15 approximate until they found a suitable place. They looked
16 around in that location to find the most suitable position for
17 erecting a concrete pillar. This is the place that we now know
18 as Point 61. Now, on your screens you will see a close-up of
19 the map around Point 61, and that's on that Dutch chart, but
20 corrected to use the right coordinates, and this is a point I
21 think that is of importance, in particular, for your expert.

22 Now, you will see depicted a red spot. That's the
23 point where the British and Dutch Governments had agreed the
24 northern terminal mark should be placed with coordinates. That
25 was the place, the dot on the right, that was found by the

10:44:06 1 Commissioners to be underwater.

2 And now, we will enter a third dot, which is base
3 point G1 as determined by Guyana, and you will see that it is
4 right next to the original place. In fact, it's far more
5 proximate to the original place. What Guyana has done mirrors
6 in reverse exactly what was done by the Boundary Commissioners.
7 Just as the Commissioners placed marker "A" at the closest
8 stable point on the land to the low-water line, so too has
9 Guyana determined that G1 as being that point which is the
10 closest point on the low-water point to where marker "A" once
11 stood at Point 61, and I have just been passed a note which
12 explains I was wrong in saying that this is the Dutch Chart
13 corrected. It is the NIMA Chart 24380 using geodetic points.
14 I apologize for that.

15 But the crucial point is that contrary to Suriname's
16 assertion, Guyana's base point G1 is, in fact, supported by the
17 historical record and by the actual conduct of the Boundary
18 Commissioners in fixing the original Point 61. In fact, it's
19 almost exactly on the spot determined in 1936 as being the
20 northern terminal point of the boundary between Suriname and
21 Guyana. It is the point at which the river meets the sea.

22 Point G1 follows a line from Point 61. Point G1 is a
23 distance of less than 1 nautical mile from Suriname's proposed
24 starting point. Guyana submits there is no material difference
25 between the two locations. You have got on the right the

10:45:44 1 original location, then Guyana's location, and then Suriname's
2 location. They're all extremely close together. No material
3 difference.

4 Our point, point G1, is rather closer to the original
5 location identified by the Commissioners. In the
6 circumstances, however, Guyana would not object and cannot
7 object to either of the two locations being utilized by the
8 Tribunal, provided--provided, of course--that neither location
9 could be said to result from the putting into effect of a
10 nonexistent agreement on a 10-degree line. Now, that map is in
11 your folders at Tab 41(g).

12 So, let me turn to the fourth question: In what
13 direction is the line to be drawn from the starting point? The
14 two parties were in sharp disagreement. Guyana submits that
15 within the territorial sea the lines should begin at G1 and
16 follow a line of 34 degrees for a distance of 12 miles. That
17 direction follows what we've called the historical equidistance
18 line based on the computations of Commander Kennedy. We note
19 that Suriname has not challenged the manner in which Commander
20 Kennedy carried out his exercise. What Suriname did say
21 through Mr. Colson was that Guyana-averaged 34-degree line was
22 flawed. We say that charge doesn't withstand scrutiny. On the
23 screen, you will see British chart 1801, which may well have
24 been the chart Commander Kennedy used. The black line is the
25 line Commander Kennedy could have drawn taking a 10-degree line

10:47:14 1 up to 3 miles and from which at the time would have been
2 continental shelf following an equidistance line. In blue is
3 the actual equidistance line from the starting point, and in
4 red is Guyana's 34-degree line.

5 Suriname adopts a different approach. It draws a
6 10-degree line from Point 61 to the low-water mark and then a
7 10-degree line up to the three-mile limit of Guyana's
8 territorial sea and then on to Guyana's 12-mile limit.
9 Suriname justifies the 10-degree line on two bases arising from
10 Article 15. It doesn't claim historic title. We say that
11 provides the answer to the question put by Professor Shearer
12 since historic title would be the pure *uti possidetis* argument,
13 so Surinam doesn't rely on *uti possidetis*, a subject on which
14 Professor Greenwood and I and I daresay also Mr. Colson have
15 probably rather similar views. Now, that is significant
16 because it indicates that Suriname doesn't acquire any rights
17 in historic title that existed at the moment Guyana achieved
18 independence in 1966 or at the moment Suriname achieved
19 independence in 1975.

20 Suriname claims first a boundary established by
21 agreement, whether *de facto* or *tacit* or by acquiescence or by
22 *estoppel* and, in fact, anything else Professor Oxman might find
23 in his kitchen sink, which is obviously a very large kitchen
24 sink, much larger than anything we would have in London, and
25 their second argument is special circumstances of navigation.

10:48:43 1 And you'll notice they've rather downgraded the special
2 circumstances of navigation, and we can understand, we think,
3 why. The evidence doesn't sustain a navigational special
4 circumstances.

5 Let me first deal with the 10-degree line. This is a
6 new argument. You won't find it, the 10-degree line, by
7 agreement. It's a new argument, and you won't find it in
8 Suriname's written pleadings. It's a novelty presented by
9 Professor Oxman. It was a very careful argument, and he didn't
10 seek to argue that there was any agreement beyond 3 miles.
11 Suriname is perfectly entitled to change its arguments,
12 although the credibility of those new arguments will be hard to
13 sustain when you look at the materials I directed you to in its
14 actual written pleadings. We say that material confirms the
15 agreement there was no agreement on the 10-degree line even
16 within 3 miles. It has provided no arguments to support a
17 claim based on acquiescence or estoppel, and we simply don't
18 see how on the material presented before it the Tribunal can
19 proceed on that basis.

20 There was, of course, in 1966 no agreement at the
21 Marlborough House Talks on the location of the maritime
22 boundary line. And that record shows that there was
23 significant agreement, and it is not contrary to what
24 Dr. Elferink suggested, showing the existence of the agreement
25 up to a three-mile limit. The record that is in evidence and

10:50:06 1 put there by the parties makes that very clear.

2 In the written pleadings there is, therefore,
3 concordance between the parties on the 10-degree line. There
4 was no agreement, even up to 3 miles, and we maintained that
5 that is the correct position.

6 The second argument is the argument on special
7 circumstances of navigation, and I have already dealt with this
8 in large part when I explained what the intention of
9 Messrs. Kayser and Phipps was in 1936. It was, and I quote,
10 "to leave the navigational channel in the same territory
11 throughout its length." In 1936, and indeed right up until
12 1977 to 1978, the territorial sea limit was 3 miles, so that
13 objective has to be understood within the context of what
14 international and national law permitted at the time. We say
15 that by the 1950s it had become clear, firstly, there was no
16 longer a recognized navigational channel along the western
17 bank. Indeed, that was the situation by the late 1940s; and
18 secondly, that there was no buoying or other navigational
19 control in that notional channel. You recall the handwritten
20 description in 1949, "no buoys present."

21 What's the evidence before the Tribunal? Suriname
22 relies on the navigational special circumstances, so the burden
23 is on Suriname to produce the evidence in support of that
24 claim, and it has produced none. It has produced no chart that
25 showed any marked navigational channel on the west bank of the

10:51:27 1 Corantijn produced after 1946, that's more than 60 years ago.
2 It has produced no chart to show that buoys or other
3 navigational aides have been placed there by the Dutch or the
4 Surinamese at any time since 1936. The 1946 chart doesn't
5 indicate when those four buoys were placed there, but the
6 evidence shows that by 1949, they was gone.

7 It has produced no evidence to show that any vessels
8 of any significance have recently used or, indeed, have ever
9 used the western channel. All you have is the statement of
10 Mr. Fitz Jim. He says the written channel has never been
11 beaconsed. He doesn't say that the western channel has ever
12 been buoyed. He doesn't say that Suriname or the Netherlands
13 have ever exercised any navigational control over any western
14 channel. He does say that other vessels, i.e., non-seagoing,
15 were often using the western channel, but it seems common
16 ground that these could only have been rather small river-based
17 local vessels, and the evidence before the Tribunal--and this
18 is probably the most important point at all, shows--shows that
19 those vessels did not need any navigational assistance to be
20 able to use that part of the river. It was not buoyed, and
21 there was no need for any buoying.

22 So, in short, Suriname has no evidence whatsoever to
23 show that the issue of lighting or buoys has any relevance to
24 anything that happens along the western bank, or that it's had
25 any relevance since the late 1930s. Suriname could have

10:52:55 1 introduced affidavits from people establishing the proposition
2 that it seeks to support. It has failed to do so.

3 Suriname seems acutely aware of its own difficulties.
4 Professor Greenwood went on at length about the need to ensure
5 the enforcement of drug rules by a single authority. He
6 focused largely on the issue of drugs, but all of that was mere
7 assertion. No evidence to support any of it. Professor
8 Greenwood and Professor Oxman also made much of their newfound
9 "tidal springs" argument, and like so much, you will find no
10 reference to that in Suriname's written pleadings. The
11 argument is based entirely on a single document, the third
12 edition of the South American Pilot. That refers to tidal
13 springs and states that in the rainy season the outgoing
14 streams attain rates from 3 to 3.5 km, and its influence is
15 felt 10 or 12 miles offshore. It also says that the edge of
16 the stream is marked by discolored water.

17 Well, whatever influence that tidal stream may have,
18 it plainly doesn't affect navigation in any sort of adverse or
19 material way. If it did, there would be navigational aids, or
20 there would be buoys, or there would be something else. But
21 there is none of that. The claim to navigation as a special
22 circumstances is totally devoid of any evidentiary support.

23 Now, it's true that there may have been in the late
24 1930s a navigational aspiration, but aspiration is not a
25 special circumstance. Whatever aspiration there may have been,

10:54:24 1 by the late 1940s, it had been extinguished. And as Commander
2 Phipps made clear, the 10-degree line was not set in stone. If
3 circumstances changed, so could the direction of the line.
4 That was explicitly envisaged. There was no written agreement
5 on the maritime boundary. As Suriname argued in its written
6 pleadings, there was no other agreement on the maritime
7 boundary, so the issue of fundamental change of circumstances
8 simply doesn't arise.

9 Nevertheless, Suriname argues that the fundamental
10 changes of circumstances argument cannot apply to boundary
11 agreements, and it cites the 1969 Vienna Convention and
12 paragraph 85 of the ICJ's Aegean Sea judgment. The 1969
13 Convention, of course, only applies to treaties. There is no
14 treaty here. The ICJ in the Aegean Sea was dealing with an
15 altogether different situation, and it spoke explicitly on the
16 need to draw precise lines. Its words were at paragraph 88,
17 85. The need to draw the exact line or lines where the
18 extension in space of the sovereign power and rights of Greece
19 meet those of Turkey. In those circumstance, where those lines
20 have been drawn, then fundamental change of circumstances could
21 not be invoked. There are no such lines in this case. So,
22 they have no authorities to support their proposition.

23 There was never any agreement on a 10-degree line even
24 up to 3 miles, and there are no special navigational
25 circumstances on which Suriname can now rely.

10:55:49 1 There is one related matter which I need to address.
2 We don't see how the Tribunal could possibly conclude that
3 there was an agreement between the British and the Dutch on a
4 10-degree line even up to 3 miles on the basis of the material,
5 the arguments and the evidence before it. For the purposes of
6 argument, however, let us assume that the Tribunal might find
7 such an agreement. Suriname argues that this would allow the
8 Tribunal to then extend the 10-degree line beyond 3 miles all
9 the way up to the 12-mile limit of Guyana's territorial sea,
10 and they seem to argue this extension somehow takes place
11 automatically as the rules of international law evolve, so the
12 putative agreement grew in terms of the length of the line.

13 Now, there are a huge number of problems with this
14 argument, and we noted that Professor Smit seemed especially
15 focused on this aspect as he put essentially the same question
16 to Dr. Elferink, Professor Greenwood, and Professor Oxman, and
17 all three of them struggled to give an answer.

18 Let me refer to Professor Oxman's response. His logic
19 seems to require first, three steps. First, he says the draft
20 treaties between the British and the Dutch didn't specify any
21 limit in distance. Second, in the absence of any express
22 limit, the boundary applies up to the limits claimed by the
23 parties at any given time in accordance with international law.
24 And third, by the 1950s, the rules of international law were
25 already evolving in support of 6 miles and possibly even

10:57:16 1 12 miles.

2 Now, this is a heroic argument, if I might say, and it
3 reminds me of a rather famous Monty Python sketch about a dead
4 parrot in which a pet shop owner tries to sell an incredulous
5 customer a very obviously dead pet, the famous Norwegian blue,
6 in case anyone is an ornithologist.

7 Professor Oxman's argument could properly be referred
8 to as the dead parrot argument, so improbable are its
9 prospects. He is running a deceased argument in our
10 submission, because the one thing he didn't look at was what
11 the British and the Dutch actually did as a matter of law in
12 the 1950s, in the 1960s, and the 1970s. And the situation is
13 remarkably clear. You see it even in some of the documents
14 referred to by counsel for Suriname. Professor Oxman took you
15 to the Santa Domingo Declaration of 9th of June, 1972. He
16 didn't address the relevance of that declaration for the
17 territorial sea, and it has a provision on a 12-mile
18 territorial sea and the right to adopt one. Guyana attended
19 that conference, but it declined to sign the document, and
20 Suriname didn't even attend, nor did the Dutch.

21 As regards the U.K., it adopted a three-mile limit in
22 the 1878 Territorial Waters Jurisdiction Act, and this applied
23 to British Guiana. The limit remained in place until 1987,
24 when it was extended to 12 miles. There can be, therefore, no
25 question but that in 1936 the United Kingdom could not have

10:58:49 1 envisaged any navigational channel rights extending beyond 3
2 miles, and that situation continued in the 1950s, the 1960s and
3 the 1970s. Only in 1978 did Guyana extend to 12 miles. There
4 is therefore no way--no way--in which the territorial sea limit
5 could somehow migrate from 3 miles to 12 miles before Guyana
6 achieved independence; and as Mr. Colson made clear, the
7 British and the Dutch were in dispute over the area within 3
8 miles, and in your Judges' folders you have got the relevant
9 extracts from Halsbury's Laws of England for the entire period
10 in question.

11 What about the Netherlands? The situation is equally
12 clear, and we have set your material out in your Judges'
13 folder, and you will now find it on the screen. At Table A
14 shows Dutch official sources, and I will refer you here simply
15 to one or two sources just to confirm also that the Netherlands
16 didn't change its position until also in the 1980s. This is at
17 Tab 41(d).

18 And at Table A, on the right-hand side you find the
19 unofficial translation by Professor Schrijver of the original
20 Dutch, and you find the official documents. 1961, a document,
21 a report of the Kingdom delegation of the Netherlands to the
22 Law of the Sea Conference: "The only breadth recognized by
23 international law for the territorial sea is one of 3 miles.
24 No single country can be compelled to recognize a larger zone."

25 And then if you go down below to 1995, a report from a

11:00:26 1 session in the Dutch parliamentary Chamber, at the bottom hand,
2 a reference to the act of 9th of January, 1995, which extends
3 the territorial sea from three to 12 miles, "the Territorial
4 Sea of the Netherlands was extended to 12 nautical miles
5 through the act of 1985." So how you can possibly argue the
6 Netherlands allowed 12 miles in any period in the fifties,
7 sixties, seventies or previous to 1985 is, to be honest, beyond
8 me.

9 At Table B, we have gone to the leading academic
10 texts, and one might just start in 1967 with Professor
11 Francois, former member of the International Law Commission,
12 special rapporteur on the work on the Law of the Sea,
13 especially Great Britain and the United States of America, and
14 the Netherlands wanted to keep the three-mile limit, so how the
15 British could accidentally have sort of sleepwalked into a
16 12-mile limit in that period, or the Dutch, is entirely unclear
17 to us. And you go down the authorities, Professor Tammes,
18 Professor then Judge Kooijmans, Professors Bossuyt and Wouters
19 and then at the bottom Professors Soons and Elferink, and you
20 see that everyone accepts the change for the Netherlands took
21 place in 1985. We say, with great respect, Professor Oxman's
22 argument is simply unarguable.

23 That leaves just a couple of outstanding matters.
24 First is the question of the Arbitral Award of 31st of July,
25 1989 between Guinea-Bissau and Senegal, and obviously I've not

11:01:58 1 been as clear as I hoped to have been, so I'm going to try
2 again. That Award is not authority for anything that supports
3 Suriname. The case concerned an exchange of letters of 1960
4 between France and Portugal that fixed their maritime
5 boundaries. The 1969 agreement provided, and I quote, "As far
6 as the outer limit of the territorial sea, the boundary shall
7 consist of a straight line of 240 degrees. As regards the
8 contiguous zones and the delimitation shall be constituted by
9 the prolongation in a straight line in the same direction of
10 the boundary of the territorial sea."

11 So the question for the Tribunal is whether that 1960
12 agreement had the force of law between Guinea-Bissau and
13 Senegal. The Tribunal said it did. Then the Tribunal had to
14 address the question of whether the agreement encompassed an
15 Exclusive Economic Zone, and the Tribunal ruled that it did not
16 because that was not a legal concept in 1960, and the agreement
17 had to be interpreted in the light of the law in force at the
18 date of its conclusion. The Tribunal said nothing about the
19 breadth of the territorial sea. It did address the question of
20 the breadth of the continental shelf, and the Tribunal ruled
21 that the definition of the continental shelf in the 1960s
22 included what it called a dynamic criterion; namely the
23 exploitability of the continental shelf, and so it concluded
24 that the 1969 agreement delimits the continental shelf between
25 the parties over the whole extent of that maritime space as

11:03:26 1 defined at present, but that was based on the finding of the
2 criterion of exploitability. The Tribunal said nothing about
3 the breadth of the territorial sea and said nothing either way
4 about whether the territorial sea regime had a dynamic
5 conception, which it appears not to have.

6 And the differences with this case are very clear. In
7 that case there was a written agreement. In this case there is
8 not. Those parties did not have a dispute as to the direction
9 of the boundary within or beyond a three-mile limit. In this
10 case we do.

11 So, I make no more of that Award than to say that it
12 provides no assistance whatsoever to Suriname. Given the facts
13 of this case and the positions adopted by the British and the
14 Dutch on the limits of the territorial sea, there is no
15 possible basis for some sort of automatic extension from 3
16 miles to 12 miles.

17 Second point is the so-called wraparound issue. This
18 was referred to by Professor Oxman and Mr. Colson. It's a
19 complete red herring. There is no evidence before the Tribunal
20 to show that the absence of an agreed boundary has in any way
21 affected local navigation or law enforcement. There is no
22 evidence before the Tribunal to support the claim that a
23 wraparound problem would have any adverse consequences for
24 local vessels or for law enforcement. The fact that Suriname
25 raised the issue provides a further reason, we would say, for

11:04:41 1 adopting the historical equidistance line. A provisional
2 equidistance line also shows that there is no wraparound
3 problem at the 200-mile limit, if you follow it, including all
4 of its turning points.

5 So, in the absence of agreement as to the boundary,
6 the parties agree that the Tribunal has to follow Article 15 of
7 UNCLOS. That requires--requires--an equidistance line to be
8 drawn which can then be altered to take account of special
9 circumstances. There are no special circumstances that
10 Suriname can rely on. Guyana invokes as a special circumstance
11 its reliance on historic equidistance line. In the territorial
12 sea, the equidistance line, a historic equidistance line, is
13 less favorable to Guyana than the modern provisional
14 equidistance line, which you can see here. The 34-degree line
15 is in red, and the provisional equidistance line right up to
16 the territorial sea are in blue in Suriname's case, and black
17 in Guyana's case. So Guyana is worse off with the historic
18 equidistance line, but we say that is nevertheless the right
19 line having regard to the conduct of the parties over the
20 entire period, and that is the line we say that ought to be
21 adopted. If you don't adopt that line, then you are bound to
22 take the provisional equidistance line, and there are no
23 criteria apart from the one that we have referred to,
24 historical conduct, to justify a shift.

25 Mr. President, Members of the Tribunal, I have dealt

11:06:09 1 with a great deal of material in a relatively short amount of
2 time, and I'm grateful to you for your patience, as I have
3 charged through a great amount of this material. I've tried to
4 deal with what from my part of the case are the principal
5 outstanding issues that you face; and to the extent I have not
6 addressed a particular issue, that shouldn't be taken as a
7 concession. In preparing my presentation, I have been
8 particularly struck by the extent to which Suriname has changed
9 its arguments. Comparing Suriname's written pleadings with its
10 oral arguments on jurisdictional and territorial sea issues is
11 a most instructive exercise, and we say that the main limbs of
12 its original argument have gone, and the main limbs of its
13 original argument have gone because it recognizes it is in dire
14 difficulty on the question of jurisdiction. It reminds me of a
15 scene in another Monty Python film. Professor Greenwood likes
16 Gilbert and Sullivan, I like Monty Python. It's a film called
17 "Monty Python and the Holy Grail," and it's a scene which many
18 of us know and love when King Arthur comes across the Black
19 Knight. The Black Knight is barring passage over a tiny
20 breadth bridge, over a small stream for reasons which are
21 entirely unknown. The script describes the Black Knight in the
22 following way: "Although supremely skilled in swordplay, he
23 suffers from unchecked overconfidence and a staunch refusal to
24 ever give up." King Arthur seeks to persuade the Black Knight
25 to join him in a joint enterprise, and that request is

11:07:57 1 rebuffed, a fight ensues, and one by one famously, King Arthur
2 cuts off each of the Black Knight's limbs. It sounds rather
3 more ghoulish than it is. My young children consider this to
4 be the very best scene of any film that has ever been made.

5 Like the Black Knight, the main limbs of Suriname's
6 original case are pretty much gone. It's more or less
7 abandoned its arguments on jurisdiction. It's changed tack
8 completely on whether by 1960s there was agreement on a
9 10-degree line in the territorial sea. The argument on the
10 irrelevance of the conduct of the colonial powers has fallen
11 away, at least in large parts, and it's adopted an entirely new
12 argument in favor of a 10-degree line in the territorial sea.

13 Now, Suriname is perfectly entitled to create new
14 arguments, but we say these are no more meritorious than those
15 that were left behind, abandoned, in its written pleadings, and
16 the position to us does seem pretty clear. The Tribunal has
17 jurisdiction to determine the location of the delimitation
18 starting point on the low-water line. Suriname did not succeed
19 to any agreement on the 10-degree line delimiting any part of
20 the territorial sea. There are no reasons not to start with an
21 equidistance line in the territorial sea, and then adjust it to
22 give effect to special circumstances which, on that part of the
23 delimitation, go against Guyana.

24 And the claim to Suriname to 10 degrees beyond 3 miles
25 is simply unarguable. The right line for the territorial sea,

11:09:44 1 the one we asked the Tribunal to delimit, is the 34-degree
2 line, from the low-water mark through to the 12-mile limit.
3 All of the main limbs of Suriname's original argument are gone.
4 Guyana's approach has been absolutely constant on the law and
5 on the facts, but for Suriname, rather like the Black Knight,
6 it now seems to be all over the place.

7 I'm grateful to you for your patient attention. After
8 the coffee break, which, with your permission we will now move
9 to, Mr. Reichler will address you, and after him it will be
10 Professor Schrijver.

11 I would just like to take one opportunity to thank not
12 only the Tribunal and our opponents on the other side, but also
13 those many members of our team who have not had an opportunity
14 to take the floor and who have helped really very marvelously
15 over the last three weeks in particular, but over the past
16 three years in the preparation of this case and Guyana's
17 arguments.

18 Thank you very much.

19 PRESIDENT NELSON: Thank you very much, Professor
20 Sands.

21 We are running late. We shall resume these hearings
22 at 11:25.

23 (Brief recess.)

24 PRESIDENT NELSON: I now give the floor to
25 Mr. Reichler.

11:31:30 1 MR. REICHLER: Thank you very much, Mr. President.

2 Good morning to you. Good morning, Members of the Tribunal.

3 It is my role today to respond to Suriname's first
4 round arguments on geography, but before I do, I feel it is
5 necessary to make some prefatory remarks. During their four
6 days of presentation, Suriname's counsel made some serious
7 charges against me. Professor McRae accused me of being
8 eloquent. As if that weren't enough, he called me a master of
9 the art. And even Professor Greenwood couldn't resist in
10 perhaps the unkindest cut of all, he referred to me as learned.
11 I shall neither forget nor forgive him for that, but I ask the
12 Tribunal to take careful note of what they said about me.
13 After these obviously untrue statements can they have any
14 credibility at all?

15 Today, to avoid further charges of this kind, I shall
16 strive to avoid eloquence. This time there will be no art, no
17 humor, no satire, alas, no Gertrude Stein, and definitely no
18 Monty Python.

19 A few slides, but no sophisticated graphics. This
20 time there will be nothing but facts and law. Straight talk,
21 that's all.

22 Citations to the evidence and
23 precise--precise--quotations of Suriname itself, from its
24 written pleadings and from the statements of its counsel at
25 these proceedings. I shall now begin.

11:33:46 1 Guyana's approach to geography has been to follow the
2 law and to follow it scrupulously. I am not referring to the
3 law as it was understood prior to or during the year 1982 or at
4 the time of the Gulf of Maine case shortly afterwards. I am
5 referring to the law of maritime delimitation as it stands
6 today. The result of a living evolutionary process over the
7 past 20 years, as so aptly described by my esteemed colleague
8 and friend, Professor Schrijver, and before him by Judge
9 Guillaume in his landmark speech on the law of maritime
10 boundary delimitation, which he gave before the Sixth Committee
11 of the General Assembly of the United Nations in October 2001.

12 The law today is very clear, although it wasn't always
13 so. Counsel for Suriname continually and repeatedly tried to
14 take us back to those muddled days of yesteryear when the law
15 was not so clear, to the negotiations leading up to the
16 adoption of the 1982 Convention, to the Tunisia-Libya case, and
17 most of all to the Gulf of Maine case. They all but ignored
18 many of the cases since the Gulf of Maine case was decided 20
19 years ago. They mentioned some of the recent cases but had
20 little to say about them because they do not help Suriname's
21 argument against the equidistance methodology. They barely
22 mentioned Qatar-Bahrain. They were very defensive about
23 Nigeria-Cameroon, and they tried to rewrite the Award in
24 Barbados-Trinidad and Tobago. But they cannot change the law
25 as it stands now, nor can they keep it hidden from the

11:36:00 1 Tribunal.

2 There is no one in this room who knows maritime
3 delimitation law as well as you, Mr. President, except perhaps
4 for the gentlemen sitting at the head table with you. None of
5 you needs to be educated by either side in this case, and you
6 know that the law today requires us to follow a two-step
7 process, first to construct a provisional equidistance line,
8 and second, to determine whether that line leads to an
9 equitable solution or whether adjustments should be made in
10 light of relevant circumstances to achieve an equitable
11 solution.

12 To be sure, the equidistance methodology is not
13 mandated. If it does not produce an equitable solution, an
14 different methodology may be employed because the goal is
15 always an equitable solution. But as the Barbados-Trinidad and
16 Tobago Tribunal stated, "The need to avoid subjective
17 determinations requires that the method used start with a
18 measure of certainty that equidistance positively ensures,
19 subject to its subsequent correction if justified. A different
20 method would require a well-founded justification." Paragraph
21 306. This has been Guyana's approach. We have followed the
22 two-step process set out not only in Barbados-Trinidad, but
23 among other cases in Qatar-Bahrain, Nigeria-Cameroon, and Jan
24 Mayen before it. We have developed a provisional equidistance
25 line which, as we have shown, is virtually identical to

11:37:53 1 Suriname's, and we have carefully examined the coastal
2 geography to determine whether that line should be adjusted in
3 light of relevant geographical circumstances to achieve an
4 equitable solution. Recognizing our limitations as lawyers, we
5 engaged the services of a well respected geographical expert,
6 Dr. Robert Smith, who has submitted a report on the geographic
7 consequences of the provisional equidistance line and on the
8 relevant geographic circumstances that could justify an
9 adjustment to that line.

10 Suriname's counsel have criticized us for taking this
11 approach. They suggest that we should have first examined the
12 coastal geography and then determined which delimitation
13 methodology best suits the geographical circumstances of this
14 case. Professor McRae in particular told us we should have
15 done what Suriname did, first determine the relevant coasts,
16 then the coastal fronts, then the coastal projections, and then
17 the relevant maritime area before making an assessment of
18 whether the equidistance methodology or some other methodology
19 like angle bisectors is most appropriate for this case.

20 It is not for me to argue with Professor McRae over
21 theory, although if I were to do so, I would find much to
22 criticize in his theory; but this case is not about theory.
23 It's about the law, and Professor McRae's theory, whatever its
24 merits or demerits, runs directly contrary to the law.

25 Now, there is a good deal of tension between

11:39:47 1 Dr. McRae's position, as he expressed it in these oral
2 hearings, and the positions Suriname itself took in its written
3 pleadings, most notably in its Counter-Memorial at paragraph
4 4.42, where Suriname, wrote, "Identification of a provisional
5 equidistance line as a first step in the process of
6 delimitation between the coasts of neighboring states is now
7 standard practice in maritime boundary analysis by the
8 International Court of Justice and Arbitral Tribunals."

9 Dr. McRae is obviously conscious of this tension, and
10 he seeks to reduce it by arguing that the provisional
11 equidistance line is entitled to no special status, that it is
12 a mere hypothesis, nothing more. He cites for this proposition
13 the Barbados-Trinidad Award. And it is true that at page 242,
14 or paragraph 242 of the Award, the Tribunal uses the word
15 hypothesis in describing the provisional equidistance line, but
16 Professor McRae did not make reference to that Tribunal's
17 discussion of the provisional equidistance line in the
18 paragraphs that followed. Here is exactly what the Tribunal
19 said, and I hope that this Tribunal will forgive me for reading
20 a lengthy quotation, but this is after all the latest word from
21 international courts and tribunals on the subject. I will be
22 reading from paragraphs 304 and 306 of the Award.

23 304: "As noted above, the equidistance/relevant
24 circumstances method is the method normally applied by
25 international courts and tribunals in the determination of a

11:41:43 1 maritime boundary. The two-step approach described in
2 paragraph 242 above results in the drawing of a provisional
3 equidistance line and the consideration of a subsequent
4 adjustment, a process the ICJ explained as follows. The most
5 logical and widely practiced approach--most logical and widely
6 practiced approach--is first to draw provisionally an
7 equidistance line and then to consider whether that line must
8 be adjusted in light of the existence of special
9 circumstances." Quoting from the Qatar-Bahrain case at
10 paragraph 176.

11 Now, the Barbados-Trinidad Award goes on at paragraph
12 306: "The Tribunal notes that while no method of delimitation
13 can be considered of and by itself compulsory, and no court or
14 tribunal has so held, the need to avoid subjective
15 determinations requires that the method used start with a
16 measure of certainty that equidistance positively ensures
17 subject to its subsequent correction if justified. A different
18 method would require a well-founded justification, and neither
19 of the parties has asked for an alternative method." As a
20 domestic tribunal applying international law has explained,
21 quoting here, "In the context of opposite coasts and laterally
22 adjacent coasts as well, it has become normal to begin by
23 considering the equidistance line and possible adjustments and
24 to adopt some other method of delimitation only if the
25 circumstances justify it." The Tribunal was quoting there from

11:43:37 1 the Newfoundland versus Nova Scotia case at paragraph 2.28.

2 Professor McRae is, of course, very familiar with the
3 Newfoundland-Nova Scotia Award, having served as counsel for
4 Newfoundland and Labrador in that case. So he falls back to
5 what he considers perhaps more defensible ground. And I
6 shouldn't single out Professor McRae in this regard. We heard
7 the same thing from Professor Greenwood and Professor Oxman,
8 and that is that while the equidistance methodology is
9 certainly applicable to opposite state situations, it is
10 rarely, if ever, appropriate to the case of adjacent States.

11 Well, the Barbados-Trinidad Tribunal had something to
12 say about this argument too at paragraph 315 of its Award.
13 "The Tribunal notes moreover that the applicable law under
14 UNCLOS is the same in either case. Articles 74 and 83 do not
15 distinguish between opposite and adjacent coasts. It follows
16 that there is no justification to approach the process of
17 delimitation from the perspective of a distinction between
18 opposite and adjacent coasts and apply different criteria to
19 each." No justification to approach the process of
20 delimitation from a perspective of a distinction between
21 opposite and adjacent coasts.

22 Following the two-step process set out by the ICJ and
23 the Barbados-Trinidad Arbitral Tribunal, both Guyana and
24 Suriname submitted their respective provisional equidistance
25 lines. As I have said, they are virtually identical with the

11:45:36 1 only difference occurring in the first 6 miles because of the
2 different starting points on the Guyana coast that the parties
3 use.

4 Proceeding to the next step, Guyana examined the
5 coastal geography of the two states and engaged the services of
6 Dr. Smith for this purpose. Suriname, too, examined the
7 coastal geography. While the parties have different views on
8 some aspects of it, to which I will come in a few moments, they
9 are in complete agreement--complete agreement--on this
10 fundamental point as expressed by Suriname in its Rejoinder,
11 "There are no major promontories, islands, or other features
12 that render those coastlines extraordinary." That's paragraph
13 3.183 of the Rejoinder.

14 Quote from Suriname, "There are no offshore islands,
15 and the coastlines on either side of the land boundary
16 terminus, although not completely regular throughout their
17 course, do not contain features such as peninsulas, major bays,
18 island fringes, or other such configurations." On either side
19 of the land boundary terminus they do not contain features such
20 as peninsulas, major bays, island fringes, or other such
21 configurations. That is at paragraph 3.256 at the Rejoinder.

22 Guyana agrees with Suriname's description of the
23 coastal geography in this regard, and Guyana submits that this
24 agreed description of the coastal geography fully supports the
25 application of the equidistance methodology to this case and no

11:47:33 1 other.

2 Both parties have described the coastlines in this
3 case as "unremarkable. Professor McRae used the same term to
4 describe the coastlines last week, "unremarkable." However, he
5 identified three coastal features that stand out from the
6 general configuration of the coast and exert a disproportionate
7 effect on the provisional equidistance line. That there are
8 only three such features on a combined relevant coastline that
9 measures 260 nautical miles, using Suriname's figures, is
10 itself confirmation that the coasts are, indeed, unremarkable.
11 According to Professor McRae the equidistance line is affected
12 by three things. This is at page 1168, lines 10 to 13 of the
13 transcript. Which he identifies as Hermina Bank on Suriname's
14 coast, Devonshire Castle Flats on Guyana's coast, and what he
15 calls the Berbice Headland on Guyana's coast.

16 On the existence and effects of two of these three
17 features, Guyana and Suriname are in total agreement. These
18 are Hermina Bank on Suriname's coast and Devonshire Castle
19 Flats on Guyana's coast.

20 I spent some time on Hermina Bank in my first-round
21 presentation, so I don't propose to spend much on it now. I
22 will merely recall for the Tribunal that Suriname
23 admits--Suriname admits--that Hermina Bank is a headland and
24 that it pushes the equidistance line to the west in Suriname's
25 favor in the second section of the line. Here are Suriname's

11:49:38 1 words. The second section of the line, "starts shortly after
2 it crosses the 200-meter depth contour, where it takes a sharp
3 turn to the north. This is the first pronounced change in
4 direction of the provisional equidistance line." The first
5 pronounced change in the direction of the provisional
6 equidistance line. "The change of direction is caused by the
7 fact that the eastern headland of the Surinamese concavity,
8 Hermina Bank, begins to take effect on the line." This is from
9 Suriname's Counter-Memorial, paragraph 6.22.

10 Last week Professor McRae very helpfully told us
11 precisely how sharply Hermina Bank causes the equidistance line
12 to change direction. He said that the entire first section of
13 the equidistance line before Hermina Bank affects it, that
14 first section which runs for, according to him, 112 nautical
15 miles, consists of a straight line along an azimuth of N28
16 east. That's 28 degrees. The second section of the line,
17 which begins when Hermina Bank kicks in, follows not a straight
18 path but a parabolic one along a generalized bearing of 13
19 degrees. That is the direction of the line is changed when
20 Hermina Bank kicks in from 28 degrees to 13 degrees, and it has
21 changed from a straight line to a parabola.

22 And it does this--Hermina Bank affects the line--these
23 are Professor McRae's figures--for about 105 nautical miles.
24 That's at transcript 1161, lines 13 to 14. Now, that is quite
25 a large effect for just a couple of base points located less

11:51:45 1 than a mile from one another on the only protrusion along
2 Suriname's coast. Professor McRae described this feature as
3 follows. "Beyond the Coppename River, the coast and the mud
4 bank associated with it bulges in the opposite
5 direction--bulges in the opposite direction--from the preceding
6 coast and this is, of course, Hermina Bank." This is his
7 description of it. That's from page 912 line 24 to 913, line
8 one.

9 He also said--this is Professor McRae I'm
10 quoting--"Now that Hermina Bank is convex in relation to the
11 recessed Suriname coast to the west is not in dispute, that it
12 has an impact on the provisional equidistance line is common
13 ground between the parties." Page 966, line 7 to 10.

14 As the Tribunal already knows, Dr. Smith, in his
15 report, concluded with respect to Hermina Bank that, "Only a
16 couple of base points in this area of Suriname's coast affect a
17 relatively long segment of the equidistance line. This
18 convexity pushes the direction of the equidistance line back
19 toward Guyana's coast. It is actually Suriname's coastline
20 that may be judged to skew the equidistance line in its favor."
21 Paragraph five of Dr. Smith's report which is Annex 1 to
22 Guyana's Reply.

23 According to Professor McRae, "A good part of what
24 Dr. Smith says about Hermina Bank is actually unexceptional."
25 Page 966, lines 14, 15 of the transcript.

11:53:40 1 The other feature about which the parties are in
2 general agreement is Devonshire Castle Flats on the Guyana
3 coast. The Tribunal may recall that Devonshire Castle Flats is
4 the outermost coastal base point for Guyana or, that is to say,
5 the westernmost coastal base point, and it lies just across
6 just west of the Essequibo River. When I say the outermost
7 coastal base point, I mean, of course, in reference to the
8 determination of the provisional equidistance line.

9 Last week, Professor McRae said that Devonshire Castle
10 Flats, "is so far from the land boundary terminus that its
11 impact on the equidistance line can only be limited." That's
12 at page 1166, lines 22 to 25. Guyana agrees. In fact, the
13 parties agree that the impact of Devonshire Castle Flats is not
14 felt until the third and final section of the provisional
15 equidistance line which is quite small in comparison to the
16 other two sections, and its effect, the effect of Devonshire
17 Castle Flats in this relatively small third section of the
18 equidistance line, its effect is to serve as a counterweight to
19 Hermina Bank on the Suriname coast, which affects the
20 provisional equidistance line not only in the second section,
21 where it has its major impact, but also in the third section
22 all the way out to the 200-mile limit of the EEZ.

23 Now, Hermina Bank--really throughout the second
24 section, Hermina Bank has had a free ride, so to speak, because
25 there are no countervailing features on the Guyana coast to

11:55:33 1 neutralize or even reduce its effect, shifting the line from a
2 straight line 28 degrees to a parabola with an average bearing
3 of 13 degrees or along a general bearing of 13 degrees. That's
4 why we have the azimuth of 28 degrees in the first section and
5 then, as I said, the parabola along the bearing of the 13
6 degrees in the second section when Hermina Bank sets in.

7 But in the third section, again according to Professor
8 McRae, the third section where Devonshire Castle Flats and
9 Hermina Bank offset each other, according to Professor McRae,
10 the line becomes relatively straight again, and its azimuth is
11 27 degrees, again reflecting the mutually offsetting impacts of
12 Hermina Bank and Devonshire Castle Flats, Hermina Bank on the
13 Suriname side and Devonshire Castle Flats on the Guyana side.

14 Now, Professor McRae's very helpful calculations
15 demonstrate that the coasts of Guyana and Suriname are in
16 virtual equipoise at an equidistance line of 28 degrees or even
17 27 degrees; and that this balance is only interrupted and the
18 line is set off its relatively almost entirely constant course
19 of 27 to 28 degrees by the influence and disproportionate
20 impact of Hermina Bank in the second section because it is a
21 very strong impact, and there is nothing in that Guyana coast
22 in that second section of between 90 and a hundred miles that
23 offsets, reduces, or minimizes this unchallenged effect of
24 Hermina Bank.

25 We then come to, at last, the three features

11:57:35 1 identified by Suriname as disturbing an otherwise unremarkable
2 coastal configuration, and this is the only one as to which the
3 parties are in disagreement. This is the so-called Berbice
4 Headland on Guyana's coast just west of the mouth of the
5 Corantijn River. Guyana's position, as Professor Sands made
6 clear this morning, is that the so-called Berbice Headland is a
7 complete and utter fiction. There is no such place. There is
8 no headland on Guyana's coast in this region. And there is
9 nothing on Guyana's coast to distort the provisional
10 equidistance line. This position is fully supported by
11 Dr. Smith's report. He said that there is no headland; that
12 there is, instead, geographic parity between the Guyana and
13 Suriname coasts in this area, and that the provisional
14 equidistance line in its first section divides the maritime
15 space fairly between the two parties. There is no evidence in
16 this record to contradict Dr. Smith. There is only the
17 argument made by Professor McRae.

18 And I suggest that the Tribunal would be well-advised
19 to hold Professor McRae to his own standards. He said that
20 Dr. Smith is a geographer, not a lawyer, and as such he is not
21 qualified to render a legal opinion. Guyana agrees. But by
22 the same token, Professor McRae is a lawyer, not a geographer,
23 and he is not entitled to be treated as an expert on geography.
24 And if he wishes to act as a geographer, then he should give
25 sworn testimony, not argument, and he should subject himself to

12:00:01 1 our cross-examination under oath the same way Dr. Smith is
2 subjected to cross-examination.

3 Let me address first this topic of nomenclature.
4 There is no such place as the Berbice Headland. Until
5 Professor McRae thought it up, there was no reference in this
6 case to a Berbice Headland. My friend and colleague,
7 Mr. Saunders, whom I might say is probably the most outstanding
8 lawyer I have gone up against in my 33 years of legal practice,
9 I want to tell you that, and it's what I honestly feel, my
10 friend, Mr. Saunders, said in his cross-examination of
11 Dr. Smith last week that the term was used in Suriname's
12 Rejoinder. He misspoke. We looked, and we couldn't find it
13 there. Nor was the term used in Suriname's Counter-Memorial.
14 "Berbice Headland" is a term that was invented for these oral
15 proceedings.

16 Now, Professor McRae was careful to say that there was
17 no real place called the Berbice Headland, but he used the term
18 dozens of times in his presentation, and all of the maps and
19 charts he displayed bore the legend "Berbice Headland" in the
20 same color and the same typeface as legal features like Hermina
21 Bank, Turtle Bank, Warappa Bank, Devonshire Castle Flats, and
22 others. The subliminal message was quite clear.

23 Let us now look at a map of the area. There is no
24 headland here. As Professor Sands pointed out, a headland is
25 surrounded on three sides by water. There is no such feature

12:02:30 1 along Guyana's coast anywhere in this vicinity. What is here
2 is a rounded off section of the coastline at the river mouth.
3 It is convex, and so is the riverbank on the opposite side, the
4 Suriname side. This area is called Turtle Bank. This is a
5 real place, and it has a real name, Turtle Bank.

6 As Guyana pointed out in its written pleadings, when
7 rivers empty into the sea, their banks generally flare out in a
8 convex manner until they merge into the general direction of
9 the coastline. This occurs not only at the mouth on the
10 Corantijn on both sides, the Guyana and the Suriname side, but
11 at the mouths of all the other rivers along the Guyana and
12 Suriname coasts. There is nothing unusual here at the mouth of
13 the River Corantijn. There are no protrusions here on either
14 the Guyana or Suriname bank. The coasts of the two states
15 mirror each other. They are in equipoise. There is geographic
16 parity, to use Dr. Smith's words.

17 Now, this is demonstrated by the trajectory of the
18 equidistance line in its first section. As Suriname has
19 acknowledged, the equidistance line--and this is key--the
20 equidistance line is a straight line in this section running
21 along an azimuth of 28 degrees for more than a hundred miles.
22 As the line emerges from the mouth of the Corantijn and over
23 this hundred nautical mile distance, it is composed of 19
24 separate turning points. That means 19 separate places where
25 it could potentially change direction due to the push or pull

12:04:39 1 of features along the coasts of either party.

2 But this large number of turning points align
3 themselves along a nearly perfect bearing of N28E, 28 degrees.
4 The fact that the equidistance line is a straight line in this
5 section demonstrates it is proof positive that the controlling
6 base points on the Suriname and Guyana coasts completely offset
7 one another, that they are in equilibrium. Neither coastline
8 exerts any more influence on the line than the other coastline.
9 That is why the equidistance line is straight.

10 Now, if there were actually a headland or other
11 protruding feature on one side of the river but not the other,
12 the turning points affected by that feature would begin to
13 display the parabolic curve predicted by and depicted on the
14 now famous Jaenicke diagram. The fact that there is no curve
15 in the line--and when I'm talking about the line, I'm talking
16 about up to here, this is where the first segment, the first
17 section ends, so it's all the way here down to the starting
18 point. Above this section, and we will come to that later,
19 above this turning point right here is where the second section
20 begins, but from here down is the first section.

21 By the way, these divisions into three sections are
22 Suriname's. Guyana is merely following Suriname's
23 characterizations and divisions into sections of the
24 equidistance line.

25 Now, the fact that there is no curve in the line, as I

12:06:38 1 said, demonstrates that there is no Jaenicke effect or
2 distortion, that there is no headland on either side of the
3 river, and that there is a near-perfect equality of influence
4 and weight, that the base points, respectively, of Guyana and
5 Suriname exhibit on the equidistance line. This can be seen
6 probably a little better on the chart that's now on display.

7 Now, we can ignore for present purposes the very first
8 segment of the line because that is not really part of an
9 equidistance line, as Suriname rightly pointed out. This
10 highlighted section is a connector line to get from the
11 starting point on Guyana's coast to the beginning of the
12 equidistance line because since Suriname has no base points on
13 Guyana's side of the river, you need a connector line to get
14 from the Guyana coast to the first turning point of the
15 equidistance line.

16 Now, I'm not very good at handling this laser pointer,
17 and I apologize for my lack of dexterity here, but notice how
18 Suriname's first base points that affect the equidistance line
19 are on this rounded arched coast. This is Turtle Bank. It's a
20 rounded crest. Notice how these base points right here, and if
21 you take a look at this first base point and you follow the
22 guidelines that are used in constructing the equidistance line,
23 Mr. Grey obviously is more familiar than I with what I'm
24 talking about here, you see this first base point right here is
25 controlling the equidistance line, if you look at the

12:08:27 1 guidelines, from here down. And notice how this base point
2 right here more than holds its own against a greater number of
3 base points on the Guyana side. What's actually happening here
4 is this base point right here is pushing the equidistance line
5 to the west. Here it is not perfectly straight. Perfectly
6 straight would be more on this side. This base point right
7 here is actually outmuscling, punching above its weight, and
8 the Guyanese are big fans of boxing, so I hope you understand
9 my terminology here, but this little guy over here is punching
10 way above his weight, and he is pushing the equidistance line
11 toward Guyana despite a greater number, the so-called cluster
12 of base points here.

13 And the same is really true here. You have a base
14 point here on this rounded crest, and it's controlling the
15 line, you can see, from here to here. Again, there are few
16 more base points on the Guyana side, but if you look, you will
17 see that this line is actually bent toward Guyana.

18 Now, we are not complaining about that. We will treat
19 it as a straight line. What we are seeing here is a perfect
20 equipoise. These base points at Turtle Bay are neutralizing,
21 are offsetting in perfect equilibrium the base points over here
22 which, as you can see, are not along the headland.

23 Now, this is the first 30 miles we go out to about 30
24 nautical miles here and you see what--is that the 30-mile
25 point? Here it is. This is the first 30 miles. You see it's

12:10:16 1 all being controlled first by these base points and then over
2 here. Again there is another rounded crest here on the
3 Suriname coast, I don't know whether we call this Turtle Bank
4 or Turtle Bank East or whatever, but you have got the same
5 effect here. And you notice it's still along the 6-degree
6 parallel of latitude. Nothing is recessed over here. And this
7 little cluster, tiny cluster of base points is actually
8 controlling the equidistance line from here up to here, and you
9 can see right at this point it really does become truly
10 straight.

11 Again, you can just see this clearly, especially the
12 map in front of you how these base points are controlling this
13 part of the line, and here are their counterparts over here.
14 Again, equipoise. Straight line. They are balancing each
15 other.

16 Now, from mile 30 to the end of the first section of
17 the line--now you can see that here--and the end of the first
18 section line is right here, as I've indicated before, that's
19 about 100 miles out. But from mile 30 to here, distance of
20 about 70 miles, the equidistance line is almost perfectly
21 straight, again reflecting an equal and opposite influence of
22 the Guyana and Suriname base points. Now you have these base
23 points over here enter the picture just below the six-degree
24 latitude, and you have a couple of base points over here, but
25 again straight line. They offset each other, they

12:11:52 1 counterbalance each other, they neutralize each other, they
2 have geographic parity.

3 Now, up here we are--Scott has put the red arrow.
4 This is the end of the first section of the line, and you can
5 see that from here up we follow the guidelines, and here is
6 Hermina Bank. Again, this is what Suriname calls the headland
7 on the mud bank where the coast changes direction. It now
8 faces instead of north or northeast, it faces to the northwest,
9 called it a bulge, a headland, but it's Hermina Bank, and
10 that's a real place. We didn't invent names on these maps.
11 These are the real names.

12 And Hermina Bank starts to take effect right here.

13 And you can begin to see here, this is the very
14 beginning, but you can notice that instead of continuing out
15 along this azimuth, it's starting to push it back west.

16 Now, if we went through the second section, which I
17 feel there is no need to because we've already discussed it
18 both this morning and last week, you would see the parabolic
19 effect and how it shifts from 28 to 13 degrees, to use
20 Professor McRae's figures, and that is all because of what you
21 see here in Hermina Bank in the second section. But in the
22 first section, as Dr. Smith concluded, it's geographic parity.

23 Now, speaking of parity, by parity of reasoning, if
24 Professor McRae is a lawyer and not a geographer, then the same
25 goes for me, but there is a major difference between us.

12:13:45 1 Professor McRae relies solely on his own argument. He has no
2 expert opinion or other evidence to support it. My comments,
3 however, are fully supported by Dr. Smith's report and by his
4 testimony. That is why, of course, Suriname's counsel have
5 expended so much of their time in the first round trying to
6 discredit Dr. Smith. Suriname's criticism of the provisional
7 equidistance line is based entirely on the fiction that there
8 is a Berbice Headland, and you have seen that there is not, and
9 that it exerts an undue influence on the provisional
10 equidistance line.

11 Professor McRae has now conceded that the only other
12 feature on Guyana's coast about which Suriname had complained,
13 Devonshire Castle Flats, is unimportant. That leaves Suriname
14 only with the fictitious Berbice Headland to complain about.
15 Apart from maps and charts, which themselves disprove the
16 existence of such a feature, Dr. Smith's testimony is the very
17 powerful evidence in this case on whether there exists a
18 headland or protrusion on the Guyana coast and whether it
19 exerts an undue influence on the provisional equidistance line,
20 and he states unequivocally that there is no such place and no
21 such influence. Suriname's counsel have to discredit him in
22 order to keep their fictitious headland alive. That's why we
23 have heard so much from Suriname about Dr. Smith's arithmetic
24 errors, which he himself discovered and corrected before the
25 hearings began. I doubt they really care about the errors or

12:16:10 1 why he made them or how he corrected them or whether the
2 numbers in his corrected chart are, as he says, accurate. They
3 have seized on his errors and on the difficulty he had in
4 explaining them last Monday to attack him personally as
5 incompetent or worse, and they have turned their personal
6 attack on him based on arithmetic errors that he himself caught
7 and corrected into an attack on his entire report. Here is
8 Professor Greenwood on the subject. "Dr. Smith's explanation
9 of his errors was very troubling to us." Page 700, lines 6 to
10 12.

11 Professor McRae referred to, "a troubling lack of
12 transparency in his explanations." Page 904, lines 6 to 8.

13 Professor Greenwood again, "In the light of
14 Dr. Smith's answers about this table, we say that he is simply
15 not credible as an expert witness in respect of the testimony
16 he has given generally, and no boundary line based on his
17 report could be regarded as credible." Page 705, lines 1 to 5.

18 They're not very subtle about their strategy, are
19 they? Arithmetic errors that were corrected, difficulty
20 explaining the errors that have now been corrected. Throw out
21 his whole report.

22 We could simply dismiss this as zealous advocacy, and
23 in my 33 years of practice as a litigator, especially in this
24 country, I have seen far worse, but there is a human being at
25 the receiving end of this, a human being who has contributed

12:18:17 1 more to the development of the Law of the Sea than most of us
2 in this room ever will, and whom Professor McRae himself
3 recognized as, "without doubt, highly regarded as a
4 geographer," page 903, line 24, and as having, "considerable
5 experience on maritime boundary issues working for the United
6 States Government." Page 903, line 25 to 904, line one. But
7 Dr. Smith does not need me to answer for him. He will do so
8 for himself after my presentation this morning when he appears
9 as a rebuttal witness.

10 While we are on the subject of errors of arithmetic, I
11 would like to call the Tribunal's attention to a different one.
12 This is the error made by my good friend Mr. Colson on
13 Saturday. I want to be very clear about this. This was
14 undoubtedly an innocent error, but it was an error nonetheless,
15 and one I am calling to the Tribunal's attention because it
16 elicited a question from one of the Tribunal members based on
17 the assumption that Mr. Colson's arithmetic was correct, which
18 it was not, and the erroneous number was later repeated by
19 Mr. Greenwood in his closing address.

20 Mr. Colson stated that the equidistance line drawn by
21 Commander Kennedy in 1961 was not a 34-degree line. He said it
22 had several segments, each of a different length and different
23 azimuth. He said that to calculate the average trajectory of
24 the line, you could not simply add all the segments together
25 and divide by the number of segments because they are of

12:20:18 1 different lengths, and they cannot all be given the same
2 weight. He said that a vector analysis was required to
3 calculate a weighted average direction for the line. All of
4 that is correct, and Guyana takes no exception.

5 However, Mr. Colson then said that the actual
6 trajectory of the line when the vector analysis is performed is
7 21 to 22 degrees. He didn't present or even describe the
8 calculations he made to achieve this result. When Mr. Colson
9 concluded, Professor Smit asked him this question, "Mr. Colson,
10 do I understand correctly that your position is that if the
11 34-degree line is corrected as it should be, that you end up
12 with the 21 to 22-degree line?" Page 1210, lines 20 to 24.

13 Mr. Colson responded, "If do you a proper vector
14 analysis on the average on the equidistance line segments,
15 whether you do it in a complex, technical way--your technical
16 expert could do it for you--in a complex way the various
17 segments of the equidistance line, weigh them, do a vector
18 analysis, you will get a line of about 22 degrees." Page 1211,
19 lines 9 to 16.

20 Then Professor Greenwood said in his closing that the
21 Commander Kennedy line was a, "22 or 22-and-a-half degree
22 line." That's at page 1237, line 17.

23 Now, on this side of the room, we couldn't help but
24 notice Mr. Colson's and Mr. Greenwood's rather benign
25 references to a 22-degree line and that these references were

12:22:18 1 included in their final presentations on the final day of their
2 oral pleadings. Suriname had never before spoken favorably
3 about any line other than a 10-degree line from the starting
4 point on the Guyana coast all the way to the 200-mile limit of
5 the Exclusive Economic Zone.

6 And we ask ourselves, why have they now all of a
7 sudden at this stage of the proceedings signaled an interest in
8 a 22-degree line? And the answer that came to us was this: 34
9 degrees plus 10 degrees divided by two equals 22 degrees. In
10 other words, split the difference between the claims of the two
11 parties. This is not an approach that is even remotely
12 acceptable to Guyana, not least because it would be totally
13 contrary to the law. The Tribunal in Barbados-Trinidad and
14 Tobago expressly rejected such an approach. Paragraph 338,
15 "The Tribunal will thus not resort to any form of, 'splitting
16 the difference' or any other mathematical approaches or use
17 ratio methodologies that would entail attributing to one party
18 what, as a matter of law, might belong to the other." The law
19 is very clear, as I said earlier, and this--well, the law is
20 very clear. And as I said earlier, this Tribunal knows the law
21 without me having to tell it. That the law requires a two-step
22 approach: First, the construction of a provisional
23 equidistance line; and second, a determination of whether there
24 are any relevant geographical circumstances that warrant an
25 adjustment to that line to achieve an equitable solution. This

12:24:33 1 is a legal process that requires an adjudication based on
2 applicable legal principles. Splitting the difference is not
3 one of them.

4 Moreover, such an approach would reward parties who
5 make extreme claims, and thereby encourage them to do so.
6 Guyana feels that Suriname's 10-degree claim, certainly beyond
7 the 3 nautical mile Territorial Sea limit, is such a claim, and
8 that it has no basis--no basis--either in law or in fact. Now,
9 undoubtedly, Suriname has the same view about Guyana's
10 34-degree claim, but Guyana's 34-degree claim is at least
11 rooted in equidistance, as Commander Kennedy conceived it in
12 the early 1960s, based on the British and Dutch Charts that
13 were then available to it, and this is where I come back to
14 Mr. Colson's error.

15 We have performed a vector analysis on the segmented
16 line that was drawn by Commander Kennedy, the same line that
17 Mr. Colson described. The analysis was performed not by our
18 lawyers, but by our geodesicists and hydrographer, Dr. Galo
19 Carrera, in combination with our cartographer, Scott Edmonds.
20 And I will share it with you. In fact, you will find the
21 analysis at Tab 42(a) of your Judges' folder for today. The
22 analysis is there along with all of the computations. But I
23 will explain to you what the conclusions are.

24 The weighted average azimuth of Commander Kennedy's
25 line from the starting point on the Guyana coast to the

12:26:42 1 200-meter isobath, which as Professor Greenwood said on
2 Saturday, corresponds to the end point of the first section of
3 the provisional equidistance line about 100 nautical miles off
4 the coast, the weighted average azimuth of Commander Kennedy's
5 line is 31.6 degrees. If the very first segment of Commander
6 Kennedy's line is dropped, the segment that ran on a 10-degree
7 azimuth to the end of Guyana's 3 nautical mile territorial sea,
8 which did not, of course, purport to be based on equidistance,
9 the 10-degree portion of the line, then the weighted average
10 azimuth of the remainder of the line to the 200-meter isobath
11 is 33 degrees. That is why Judge Shahabuddeen, who represented
12 Guyana at the 1966 Marlborough House Talks, referred to an
13 equidistance line of 33 to 34 degrees.

14 Mr. Colson made an honest mistake. I do not suggest
15 that this calls into question any of his other statements.
16 Guyana does not view Mr. Colson as a clock that strikes the
17 13th hour.

18 I come now to the conclusions Guyana draws from the
19 two-step process that the ICJ and Arbitral Tribunals, including
20 most recently the Barbados-Trinidad and Tobago Tribunal have
21 established, but I don't want raise your expectations falsely.
22 These are the conclusions to the first part of my presentation.
23 It's not the end of my presentation yet.

24 I hope that doesn't come as too big a disappointment.

25 First, that in the particular geographical

12:28:42 1 circumstances of this case, the equidistance methodology does
2 lead to an equitable solution.

3 Second, the provisional equidistance line does not
4 itself achieve an equitable solution, but it can lead to one if
5 properly adjusted.

6 Third, there are no features along Guyana's coast that
7 caused the provisional equidistance line to veer
8 disproportionately toward Suriname.

9 Fourth, the coastal feature on Suriname's coast, known
10 as Hermina Bank, causes the provisional equidistance line to
11 veer disproportionately toward Guyana and to Guyana's severe
12 disadvantage.

13 Fifth, the provisional equidistance line should be
14 adjusted by extending the first segment of the line, first
15 section of the line which runs for more than a hundred miles
16 along a constant azimuth of 28 degrees by extending that line
17 to the 200-nautical-mile limit of the Exclusive Economic Zone.
18 As you know, Guyana claims that the line should be further
19 adjusted to a line of 34 degrees, and this will be discussed by
20 Professor Schrijver later today.

21 What remains is to test the equitableness of the
22 28-degree line and the provisional equidistance line. The
23 parties agree that this is a five-step procedure.

24 First, determine the relevant coastline of each state.

25 Second, measure the length of each relevant coastline

12:30:36 1 and establish a coastal ratio.

2 Third, determine the relevant maritime area or, as
3 Suriname calls it, the area to be delimited.

4 Fourth, examine how each of the proposed delimitation
5 lines divides the relevant maritime area and determine the
6 ratio of the areas awarded to the parties.

7 And fifth, compare the area ratios to the coastal
8 ratios to test for proportionality.

9 We begin with the relevant coastlines and their
10 lengths and ratios. It appears that Guyana and Suriname agree
11 that if we are testing the equitableness of the provisional
12 equidistance line or the adjusted equidistance line, the
13 relevant coastline for each party is the length of coastline
14 between the land boundary terminus and the outermost coastal
15 base point that controls the equidistance line. Suriname
16 criticizes Guyana for suggesting that the relevant coastline
17 would be the same even if a different delimitation methodology
18 such as angle bisectors was employed, but Professor McRae
19 appears to agree that the coastal base points can be used to
20 establish the relevant coastline if used to test the
21 equitableness of the equidistance line. That's at page 921,
22 lines 17 to 21. This is the portion of the coastline used by
23 Dr. Smith to test the equitableness of the provisional
24 equidistance line and the 28-degree line, and Professor McRae
25 has expressed no criticism of this part of his report.

12:32:28 1 Dr. Smith measured the relevant coastlines of Guyana
2 and Suriname by three different methods. One, he drew a
3 straight line between the land boundary terminus and the
4 outermost coastal base point. Two, he drew a series of
5 straight lines connecting all of the coastal base points
6 between the outermost coastal base point and the land boundary
7 terminus. And three, which he said was his preferred method,
8 he measured the length of the relevant coastline along the
9 low-water line, what he called the actual coastline. As we all
10 now know, he set forth his calculations in his report in the
11 table in paragraph 49, and that table has now been corrected.
12 Suriname has not introduced any evidence to challenge the
13 accuracy of Dr. Smith's corrected chart. They have merely
14 argued that because he got the numbers wrong the first time and
15 because he had difficulty explaining why he got them wrong, his
16 corrections should not be believed, but that is too much.
17 Suriname has had the corrected chart for nearly two weeks.
18 They had ample time to make their own measurements and
19 calculations. If the numbers in the corrected chart are wrong,
20 then let Suriname demonstrate that. I doubt they can.

21 In the two weeks since Guyana received the corrected
22 chart from Dr. Smith, we have had our geodesicists and
23 hydrographer, Dr. Carrera, review the corrected chart to
24 confirm its accuracy, and he has done so. The numbers in the
25 corrected chart are accurate.

12:34:28 1 Now, Professor McRae has stated that there are two
2 acceptable ways to measure coastal length, not three. He
3 agrees that it is appropriate to measure coastal length by
4 Dr. Smith's first method, the straight line between the land
5 boundary terminus and the outermost coastal base point, and he
6 agrees with Dr. Smith's third method, that it is correct to
7 measure the lengths of the coasts along the low-water line, the
8 actual coastline, and that's at page 922, lines 14 to 17.

9 He disagrees only with Dr. Smith's second method, a
10 series of straight lines connecting all the coastal base
11 points. This happens to be the method that Guyana used in its
12 written pleadings to measure coastal length. We used it
13 because we saw it as a more conservative approach than
14 measuring coastal lengths along the low-water line, despite the
15 fact that its results were less favorable for Guyana than
16 measuring the coasts along the low-water line. So, we are
17 quite happy to concede this point to Professor McRae and to
18 measure the relevant coastlines, as he suggested as
19 appropriate, along the low-water line. And, of course, this is
20 also the method that is preferred by Dr. Smith.

21 Now, this is the corrected chart that was prepared by
22 Dr. Smith, and the table at the top is his old table, the
23 original one which has mistakes and which he recognized has
24 mistakes. In fact, he is the one who brought it to everyone's
25 attention.

12:36:22 1 The second table which he prepared from scratch--that
2 is to say, he did not simply use the first table and
3 extrapolate numbers onto the second. He actually threw out the
4 first table when he discovered that it was erroneous and
5 started from the very beginning to take all the measurements.

6 The second table is the measurement of coastal lengths
7 by the three methods that Dr. Smith used, and in the second
8 table Suriname is given credit in the coastal length
9 calculation for a base point at Vissers Bank. And that is at
10 the time that Dr. Smith prepared his report, while he had
11 doubts about the validity of the base point at Vissers Bank, he
12 was not then prepared to say that it should be disqualified,
13 although he did in a footnote say if further evidence came to
14 light which confirmed that it was an invalid base point, the
15 numbers would have to be recalculated.

16 The third table at the bottom reflects Dr. Smith's
17 measurements by the three different methods eliminating the
18 base point at Vissers Bank.

19 Now, Dr. Smith has concluded that the base point which
20 is S14 at Vissers Bank is invalid and should be disregarded.
21 This is Guyana's position as well. In my opening presentation
22 I demonstrated why. To summarize, all of the charts on which
23 Suriname relies in this case, save a 2005 update to chart
24 NL2218, show that there is no low water line at the place where
25 the updated chart locates it. Rather, they all show the point

12:38:41 1 to be not on the coast, but four kilometers out to sea, to the
2 north of where the low-water line is. Guyana confirmed this
3 with satellite imagery showing that the low-water line was
4 where it was depicted on the earlier charts, not where the
5 updated chart located it. When I say Guyana confirmed this,
6 Guyana retained an independent expert cartographer from the
7 University of Maryland, Dr. Thomas Rabenhorst, who analyzed the
8 satellite imagery and said the earlier charts are correct. The
9 updated chart is not. The low-water line is--or the point that
10 Suriname attributes to this coastal base point is actually four
11 kilometers out to sea. It's nowhere near the low-water line.

12 And, in fact, the updated chart that Suriname
13 presented and which depicts a low-water line at Vissers Bank
14 actually depicts the low-water line as a dashed line, meaning
15 the actual location of the low-water line is uncertain, even to
16 those responsible for producing this updated 2005 map.

17 Now, what's Suriname's response to all of this
18 evidence that there is no low water line where Suriname placed
19 it and no entitlement to place a base point there? Well,
20 according to Professor McRae, all of this evidence is
21 irrelevant. He doesn't dispute it. He just says it's
22 irrelevant. It makes no difference, he said, where the
23 low-water line really is, or whether the coastal base point
24 that they put at Vissers Bank is actually on the low-water line
25 or four kilometers out to sea. It doesn't matter, he says.

12:40:45 1 All that matters, according to Professor McRae, is that
2 Suriname has decided to rely on this updated 2005 version of
3 the chart and that Suriname alone has the unchallenged right to
4 determine where its low-water line is, and that Guyana has
5 nothing to say about this. Nor, apparently, does the Tribunal,
6 according to Suriname.

7 But we don't agree. Maybe Suriname, maybe it can rely
8 on whatever charts it likes in setting its own baselines and
9 measuring the breadth of its territorial sea, but when it comes
10 to maritime delimitation, when it comes to maritime
11 delimitation, which necessarily engages the sovereign rights of
12 Guyana as well as Suriname, Suriname is not free to do anything
13 it wants, especially when the evidence proves it is wrong.
14 Guyana submits that this Tribunal is fully empowered to
15 determine for itself whether S14 is a valid base point for
16 maritime delimitation purposes as well as whether any of the
17 other base points claimed by either Guyana or Suriname in the
18 construction of the provisional equidistance line is a valid
19 base point.

20 The appropriate table to rely on, therefore, in this
21 chart that is on the screen before you is the third table on
22 the corrected chart prepared by Dr. Smith, the one that
23 excludes Vissers Bank. And the relevant coastal lengths,
24 according to this chart and particularly the last line on it
25 which measures coastal length along the low-water line, that is

12:42:40 1 the actual coastline, the relevant coastal lengths are 264
2 kilometers and 155--264 kilometers for Guyana and 155
3 kilometers for Suriname. The coastal ratio as set forth in the
4 chart is 1.7 to 1 in favor of Guyana, and Dr. Smith testified
5 to this figure last Monday.

6 Mr. President, having determined the coastal length,
7 the relevant coastline and the coastal length, the next step in
8 the process of testing the equitableness of the 28-degree line
9 and the provisional equidistance line is to determine the
10 relevant maritime area or the area relevant to the
11 delimitation. Before entering into that topic, would this be
12 an appropriate time for the lunch break?

13 PRESIDENT NELSON: Yes. And we shall resume at 1:30.

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

15 (Whereupon, at 12:44 p.m., the hearing was adjourned
16 until 1:30 p.m., the same day.)

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12:44:15 1

AFTERNOON SESSION

2 PRESIDENT NELSON: My apologies for being a few
3 minutes late.

4 Thank you.

5 Mr. Reichler?

6 MR. REICHLER: Good afternoon, Mr. President, Members
7 of the Tribunal. As I said, having established the relevant
8 coastline for the purpose of testing the equitableness of the
9 equidistance line and the adjusted equidistance line, the next
10 step in the process for testing such equitableness is to
11 determine the relevant maritime area or as Suriname calls it,
12 the area relevant to the delimitation. So I may, and I hope
13 you will forgive me for doing this, slide back and forth
14 between relevant maritime area, which is Guyana's terminology,
15 and area relevant to delimitation, which is Suriname's, but I
16 mean the same concept.

17 Now, the parties disagree on how this area should be
18 defined, and they go about doing so in very different ways, but
19 we recall that in the end there is really not very much
20 difference at all between the relevant maritime area defined by
21 Guyana and the area to be delimited defined by Suriname.

22 The biggest difference in approach is that Guyana has
23 employed strictly objective criteria in developing its relevant
24 maritime area. And it has applied those criteria equally to
25 both itself and Suriname. By contrast, we believe that

13:38:03 1 Suriname has defined the area to be delimited in a subjective
2 manner, and we know that they have applied different and less
3 favorable criteria to determining the space in front of
4 Guyana's coast than they have applied in determining their own
5 space.

6 Now, Professor McRae actually defends the subjectivity
7 of Suriname's approach. He says, "Now, like defining a
8 relevant coast, defining a relevant area is not a matter on
9 which there needs to be scientific exactitude. It's neither
10 necessary nor useful." Page 947, lines 5 to 12. Now this, of
11 course, is Professor McRae's way of defending Suriname's
12 approach, which is neither scientific nor exact, in contrast to
13 Guyana's, which we will show, is both scientific and exact.

14 Now, the first challenge in understanding Suriname's
15 approach is to figure out which of their three approaches is
16 the real one. It actually had given three different approaches
17 so far. Here is their first attempt at it. As you can see,
18 they called this the area in dispute. This is Figure 1 from
19 their Counter-Memorial. Now, apparently, after reading our
20 Reply, they went back to the drawing board and produced version
21 two. These are all in the Judges' folder, by the way, for
22 today.

23 Now, this version made its debut in the Rejoinder as
24 Figure 11, but they apparently deemed this one insufficient at
25 some point after they filed the Rejoinder, maybe after they

13:39:58 1 heard our first round of oral pleadings, and then they produced
2 version three on Saturday, just two days ago, during their
3 final day of presentation. Now, I'm not really sure they're
4 entitled to introduce new evidence at this stage of the
5 proceeding, but we really make no issue with that. We would
6 prefer simply to expose the errors, arithmetic and otherwise,
7 in the way they have depicted the area to be delimited.

8 Now, this is the way they have depicted it in their
9 newest version. Professor McRae said on Saturday, "We define
10 the area as follows: We drew perpendiculars to the coasts of
11 both Guyana and Suriname. In the case of Guyana, that is a
12 34-degree line. In the case of Suriname, that is"--now, the
13 transcript says 10-degree line, but that may be an error. I
14 think you meant zero degrees; is that correct? I'm sure that's
15 what he meant. So, in the case of Suriname, that is the zero
16 degree line. "We then drop perpendiculars from the ends of
17 those lines to the coasts of Guyana and Suriname, and we
18 enclose that area."

19 That's page 1187, lines 8 to 14.

20 Notice, we have highlighted that they have used the
21 coastal ratio of 1 to 1.56 in favor of Suriname attributing to
22 Suriname the longer coastline.

23 But take a look at this slide. This is map F at
24 42-B-F in today's Judges' folder. Now, what we have done here
25 is overlaid onto the slide you just saw the coastal fronts that

13:41:46 1 Professor McRae used in a different slide, but in the same
2 series that he displayed on Saturday, and it shows how they
3 derived their coastal ratio of 1 to 1.56 by means of giving
4 themselves a coastal front of 140 miles and Guyana a coastal
5 front of 90 miles. But please notice--and this is key to
6 understanding what they have done here--that the area to be
7 delimited does not correspond to Suriname's definition of it.
8 It does not correspond to the area covered by the projections
9 seaward of its coastal front along perpendicular lines. On the
10 Suriname side, Suriname's side, the area to be delimited in
11 here, it stops well short of the end of their coastal front.
12 On the Guyana side, the opposite. The area to be
13 delimited--they stop Guyana's coastal front here, but the area
14 to be delimited extends out here.

15 This is even more visible on the next two slides.
16 Here we see what they have done. The area to be delimited
17 stops here. This is a perpendicular line, but the coastal
18 front goes here. What's going on here? Why isn't that part of
19 their area to be delimited? And now, Scott, if I can see the
20 next slide.

21 And look what's happening here.

22 Again, we don't believe that the proper way to do this
23 is by straight-line coastal fronts, and we don't believe that
24 the way you depict the relevant maritime area--I will get to
25 our way, which I think you will find more objective at least,

13:43:38 1 we don't think you project it forward along a perpendicular,
2 but let's hold them to their own standards here. Here's what
3 it would look like if they projected their coastal front
4 forward along perpendicular axes. What about this? Why is
5 this in the area to be delimited?

6 Now, when we actually noticed this Saturday evening,
7 and we were here with all of you Saturday for most of the day,
8 and we asked, what's going on here? Why is there no--I can
9 never find the cursor in the computer either. It always gets
10 off the screen. I don't know what's happened here. In any
11 event--maybe I lost the battery. Maybe you can help me with
12 that. But in any event, what's going on here? Well, we got
13 our hydrographic expert and geodesist, Dr. Carrera, together
14 with our cartographic expert, Mr. Edmonds, and they figured it
15 out. Suriname is jiggering with the proportionality analysis.
16 On the one hand, they take the most favorable possible coastal
17 ratio by including this entire line and, of course, not this
18 entire line but just this red portion, so they create a very,
19 very favorable, we would say entirely arbitrary, but we will
20 get to that later. They create this very favorable coastal
21 ratio which later on you will see with the favorable coastal
22 ratio they are going to entitle themselves to a greater
23 proportion of the area to be delimited. And what they do is
24 here--but then they chop off a portion of their area to be
25 delimited. They define their own area to be delimited in a

13:45:36 1 much smaller fashion. Why do they do that? Well, for the same
2 reason that they give Guyana more here than Guyana's coastal
3 front would be entitled to, because when they ultimately do the
4 proportionality analysis, Suriname's space is going to be
5 smaller. And Guyana's space that Guyana gets is going to be
6 larger. So, that means whatever line you put in here--you see,
7 when you put a line here and you measure it, Guyana is going to
8 get credit for all the space, even though it doesn't fit within
9 their definition of area to be delimited, and Suriname is not
10 going to get credit for this space. That's going to push the
11 line over in this direction.

12 Now, by expanding the area to be delimited in front of
13 Guyana's coastal front, and by contracting the area to be
14 delimited in front of their own coastal front, they have rigged
15 the proportionality test to make even the most farfetched
16 delimitation line, one that completely favors Suriname, look
17 justifiable. And where does this game end? When they put up
18 bingo over here. It's a game, but not to Guyana.

19 On Saturday, Professor McRae said, "Complication,
20 Mr. President, is not the road to achieving an equitable
21 solution." Page 1168, lines 15 to 17. He's right. And as a
22 consequence, Suriname's definition of the area to be delimited
23 can only be wrong. But Professor McRae also said some other
24 things that bear mention, particularly in light of the
25 impending presence of Dr. Smith. He accused Dr. Smith of,

13:47:48 1 "sleight of hand," page 1915, 915, line two. And then he
2 accused Dr. Smith of "prestidigitation." Page 938, line 22.
3 We will let Dr. McRae's own work product serve as our answer to
4 him.

5 Well, we will let Dr. Smith's work product serve as
6 his answer, too, but in this case we will let Professor McRae's
7 work product serve as his answer to him, as you've just said.

8 Now, Guyana's approach to defining the area to be
9 delimited is really much simpler by comparison. It is also, as
10 I said, objective, scientific, and exact, and it treats both
11 parties equally. And above all, it's more transparent. It was
12 described in my presentation last Monday, and it was endorsed
13 by Dr. Smith during his examination. To summarize, it starts
14 from the two premises that one, the land dominates the sea, and
15 two, that every point on the coastline generates an entitlement
16 to all maritime space in all directions to a distance of 200
17 nautical miles. We have described this as a radial projection
18 and, as you know, the concept of radial projection was endorsed
19 by the Tribunal in Barbados-Trinidad and Tobago, by the ICJ in
20 Jan Mayen, and by Suriname itself in its Rejoinder.

21 Accordingly, Guyana projected its coastline radially
22 in all directions for a distance of 200 nautical miles and it
23 did the same with Suriname's coastline. It then placed the two
24 areas of entitlement on top of one another and determined where
25 the parties' areas of entitlement overlapped. And you may

13:49:53 1 recall this chart from the other day.

2 It defined the area of overlapping entitlements as the
3 relevant maritime area for the purposes of this case. As I
4 said, it's objective. It's scientific, it's exact, provides
5 equal treatment for the parties, and we submit it's based on
6 law.

7 Professor McRae said, "There is no doubt that for the
8 purpose of entitlement coasts can be understood as projecting
9 in radial fashion. The depiction of the outer limit on the
10 200-mile zones by arcs and circles is simply evidence of this.
11 And an island is an obvious case, as Professor Oxman mentioned
12 this morning, where the entitlement of the state radiates out
13 radiates out in all directions. Page 943, lines 2 to 10.

14 But then Professor McRae says that, "Entitlement to a
15 zone and delimitation within--with a neighboring state are
16 quite different operations." Page 943, lines 9 to 10. We, of
17 course, agree that entitlement to a zone and delimitation with
18 a neighboring state are different operations, but why can't the
19 area to be delimited be defined as the area where the
20 neighboring states' zones of entitlement overlap one another?
21 We submit that Professor McRae never provides a satisfactory
22 answer to this question. Instead, he just says, "In the case
23 of adjacent states, the idea of radial projection is just not
24 helpful." 943, lines 14 to 15.

25 Then he provides this further explanation, "Viewing

13:51:39 1 the coasts as projecting radially simply gives no guidance as
2 to how to seek an equitable solution. It simply is not
3 helpful." Page 944, lines 5 to 9.

4 He tries to clear this up a bit later. "Now, as I
5 have said, radial projection is simply not helpful. It does
6 not provide any guidance, and it simply distracts tribunals by
7 including areas that are a long way away from the area of
8 delimitation." Page 946, lines 11 to 14.

9 Well, this time Professor McRae at least provided a
10 clue as to why he believes that radial projection is simply not
11 helpful, other than saying it's not helpful. He said it,
12 "includes areas that are a long way away from the area of
13 delimitation." And he gives this example. He gives this
14 example, "How can the maritime area in front of Georgetown,
15 Guyana, be usefully perceived as being within the coastal
16 projection of Suriname? Well, that's what the radial
17 projection theory suggests." It's page 949, five to 12. This
18 is his criticism. Here is Georgetown, Guyana. He says, now he
19 explains what's wrong with radial projection. How can the
20 maritime area in front of Georgetown, Guyana, be usefully
21 perceived as being within the area to be delimited.

22 Scott?

23 Well, here is Georgetown, Guyana. This is their area
24 to be delimited. Well, let's be clear. This is their third
25 and most recent version of the area of delimitation. You see

13:53:35 1 where Georgetown is, and you can see the maritime area in front
2 of Georgetown, Guyana, is included in their current definition
3 of the area of delimitation, although to be fair, it was not
4 included in one of their earlier versions when they defined the
5 area to be delimited differently.

6 So we asked, what exactly is it about using radial
7 projection to determine the relevant maritime area that
8 Professor McRae finds simply not to be helpful?

9 Now, as I said earlier, despite all the debate over
10 the area to be delimited, different approaches, Suriname and
11 Guyana end up in almost the same place. Here is an overlay of
12 Guyana's relevant area, which is the arcs, on top of Suriname's
13 area to be delimited. As you can see, all of Suriname's area
14 of delimitation is included within Guyana's relevant maritime
15 area. Guyana's relevant maritime area is larger, distributing
16 additional areas to Suriname and to Guyana.

17 Now, it is true that the additional area attributed to
18 Suriname is slightly larger than the one for Guyana, but this
19 doesn't materially affect the proportionality argument. For
20 example, the provisional equidistance line divides the relevant
21 area, whichever one you use, on roughly a one-to-one basis,
22 whichever one you use. And Guyana's definition of the relevant
23 maritime area has important advantages over Suriname's in that
24 it is entirely objective and scientific and treats both parties
25 the same. It's also much simpler. Suriname's subjective and

13:55:25 1 more complicated approach, we submit, is not defensible, and
2 it's certainly very difficult even to explain.

3 We can now proceed to the final step of testing the
4 equitableness of the 28-degree line and the provisional
5 equidistance line. Here is how the provisional equidistance
6 line divides the relevant maritime area between Guyana and
7 Suriname. The ratio is 1.04 to 1 in favor of Guyana. This is
8 lower and more favorable to Suriname than the coastal length
9 ratio which, according to Dr. Smith, measuring along the
10 low-water lines and using the definition of relevant coastline
11 as between the base points used for the equidistance line
12 because we are measuring in this case the equitableness of an
13 equidistance line. And if--we have on this chart, by the way,
14 1.4 to 1 as the coastal ratio in favor of Guyana because, as I
15 explained before, that is what Guyana used throughout these
16 proceedings. Dr. Smith says it's 1.7 to 1, but in any event,
17 as you can see, the equidistance line would appear to divide
18 the relevant maritime area in a way that is more generous to
19 Suriname than one would expect given the coastal length ratios.

20 Now, this is the 28-degree line, and as you can see
21 here, the difference is that the area ratio is 1.14 to 1, still
22 more favorable to Suriname than the coastal ratio of 1.4 to 1
23 which we have used throughout, and of course far more favorable
24 to Suriname than the ratio of 1.7 to 1 which Dr. Smith says is
25 the right one.

13:57:15 1 While we are not going to show it again in order to
2 save time, I did show last week that the 34-degree line, which
3 Guyana justifies based on conduct-related factors as opposed to
4 geographical-related factors divides this area by a ratio of
5 1.38 to 1 in favor of Guyana, roughly the same as the coastal
6 ratio that we have used throughout of 1.4 to 1, but
7 significantly less favorably to Guyana than the coastal ratio
8 calculated by Dr. Smith.

9 So, this analysis demonstrates that an equitable
10 solution is achieved by an adjustment of the provisional
11 equidistance line to a line of 28 degrees, and even to a line
12 of 34 degrees.

13 Mr. President, Members of the Tribunal, there is no
14 basis for departing from the equidistance methodology in this
15 case. There is no evidence in the record of this case that
16 would possibly justify such a departure. Suriname itself has
17 acknowledged that, "equidistance is a commonly used
18 delimitation method in uncomplicated geographical situations."
19 That's the Rejoinder, paragraph 3.201. It has called--Suriname
20 has called the equidistance line, "the result of a mathematical
21 method applied to geography. As such, it is objective."
22 Rejoinder paragraph 3.203. Professor McRae, whom I previously
23 quoted as saying, "Complication is not the road to achieving an
24 equitable solution," has said that the big advantage of the
25 equidistance methodology is its, "simplicity." Page 951, line

13:59:01 1 11.

2 This case is tailor made for the equidistance
3 approach. It is difficult to imagine a case where the
4 neighboring coastlines would be as unremarkable and
5 uncomplicated as they are here. Guyana asks, if equidistance
6 is not the appropriate delimitation methodology here, where
7 would it ever be appropriate? If not here, where? A decision
8 to abandon equidistance here, as Suriname proposes, would be
9 tantamount to abandoning it everywhere, or at least in every
10 adjacent state situation. But that is plainly contrary to the
11 law. As the Barbados-Trinidad and Tobago Tribunal said,
12 Articles 74 and 83 make no distinction between opposite and
13 adjacent coasts. The two-step process, the
14 equidistance/relevant circumstances test applies to opposite
15 and adjacent states alike. Guyana asks no more than the law be
16 applied.

17 Now, Guyana submits not only that there is no basis
18 whatsoever for departing from the law and from the application
19 of the equidistance methodology in this case, but further that
20 it would be completely untenable to replace equidistance with
21 Suriname's angle bisector approach. What comes to mind is
22 Judge Prosper Weil's dissent in the Canada-France arbitration,
23 "I'm at a loss to identify the principles and rules which could
24 justify in law the delimitation which has been decided, and I
25 fear that the decision may in some respects jeopardize the

14:00:47 1 development of the law of maritime delimitation which had been
2 dramatically moved by the Libya-Malta decision toward a more
3 secure legal foundation."

4 I pointed out the problems with Suriname's angle
5 bisector approach during the first round, and Suriname's
6 counsel, despite their great skill and eloquence, failed to
7 resolve them. The entire approach rests on the foundation of
8 generalized or simplified--those are Suriname's
9 words--representations of the coastlines of Guyana and Suriname
10 by single segment straight lines. There is plainly no need to
11 simplify coastlines that are already simple and uncomplicated.
12 No matter how it is done, simplification is distortion. As
13 Professor McRae told us on Saturday, "There comes a point when
14 simplification is no longer simplification. It is, in fact,
15 novation. It is a new line rather than a simplified old line,"
16 page 1163, lines 17 to 20. That is the case here.

17 The coastlines are not straight lines, and any attempt
18 to depict them as such necessarily distorts them it. It
19 creates a new line, a novation, but there is more wrong with
20 Suriname's approach than that. There is a blatant
21 arbitrariness and prejudice to Guyana in the way that Suriname
22 has drawn straight-line coastal fronts. Professor McRae tells
23 us that, "The relevant coasts are coasts that face onto or abut
24 the area to be delimited, and this means that the relevant
25 coasts are those that extend to a point where the coasts face

14:02:30 1 away from the area to be delimited." Page 919, line 17 to 20.

2 Now, as I said last week, the logic here is entirely
3 circular. Suriname defines the relevant coast as the coast
4 that faces the area to be delimited which, in turn, is defined
5 as the area framed by the relevant coasts. I heard nothing
6 from Professor McRae or his colleagues to break or square this
7 circular logic.

8 But leaving the logical conundrum they have created
9 aside, how can we tell with any precision what part of the
10 coast actually faces a particular direction and where precisely
11 it stops facing that direction? I asked this question last
12 week, and despite four days of presentation, no one on the
13 Suriname side gave a satisfactory answer to it. They ridiculed
14 the Johns Hopkins approach. Fine. But had they given us an
15 explanation for when a coast begins to, "face away from the
16 area to be delimited," other than by eyeballing the map, the
17 answer is no.

18 And the subjectivity inherent in this approach is
19 readily apparent from looking at what they had done here on the
20 figure before you. Let's start with the coastal front they
21 have given themselves.

22 They tell us that the Suriname coast generally faces
23 north and that their straight-line coastal front extends along
24 the entire northward-facing coastline and then stops short of
25 the border with French Guiana at a place called Warappa Bank

14:04:10 1 where the coastline begins to move in a southeasterly direction
2 and faces toward the northeast.

3 On the map it looks pretty good. But then let's see
4 what they did in depicting Guyana's straight-line coastal
5 front. They tell us that Guyana's coastline generally faces to
6 the northeast, and they're correct in this. But look what
7 they've done. It only takes one look to see that much of the
8 coast to the west of the Essequibo River faces the same
9 direction as the coast to the east of the Essequibo River.
10 That is, this faces to the northeast, just like this. If it
11 faces in the same direction, if this faces in the same
12 direction as this, and they tell us this is the relevant coast
13 because it faces northeast, then how do they exclude all of
14 this from Guyana's relevant coastal front line, from Guyana's
15 coast? Well, they did at least try to answer this question,
16 and the Tribunal can judge for itself whether the answer is a
17 satisfactory one. Here is the answer that Professor McRae
18 gave, "On the Guyana's side, the relevant coast extends from
19 the Corantijn River to the Essequibo River, and as I mentioned
20 earlier, after a short turn northward, the coast returns to a
21 northwesterly trend," okay? It's moving in the northwest, but
22 from Devonshire Castle Flats on--that's right here, right
23 here--from Devonshire Castle Flats on, it no longer faces or
24 abuts into the area to be delimited. If you cut off the coast
25 here, yes, but it faces in the same direction.

14:06:06 1 He said that at page 919 line 25 to 920, line 4.

2 Is there any way you can look at this map and decide
3 that there is no portion of Guyana's coastline that faces to
4 the northeast? On what basis has he concluded that the portion
5 of the Guyana coast--that this portion of the Guyana coast does
6 not face the same portion--does not face the same direction as
7 this portion? He never tells us, but he says it over and over
8 again.

9 Really, what happens here is a large portion of
10 Guyana's coast is simply chopped off as not relevant because
11 it's inconvenient for Suriname to treat it as relevant. But
12 they can't make it disappear that easily. The map says
13 otherwise. They are not--they are blatantly obvious in what
14 they're trying to do. If the rest of Guyana's northeast-facing
15 coastline is added to Guyana's coastal front line, that line
16 becomes longer than Suriname's coastal front line, giving
17 Guyana a larger area of entitlement and throwing off everything
18 Suriname has claimed regarding the area of delimitation and
19 proportionality. But it is even worse than this. Including
20 the coastline west of the Essequibo as part of Guyana's coastal
21 front would change the direction of the line. It would come
22 down more like this than like this. It would change the
23 direction of the line, and that means it would change the angle
24 at which Guyana's line purportedly, but doesn't actually, as we
25 know, meet Suriname's actual coastlines. In other words, the

14:07:54 1 subjectivity involved in drawing a coastal front line infects
2 the entire angle bisector methodology and renders it entirely
3 arbitrary. It also makes it a very complicated process.
4 Professor McRae himself admits this. "In the case of adjacent
5 coasts identifying facing coasts is somewhat more complicated."
6 917, lines 16 to 17. That is a very significant admission from
7 the same gentleman who said, "Complication, Mr. President, is
8 not the road to achieving an equitable solution."

9 Now, it's worth recalling here what Professor Sands
10 said this morning, and I will conclude with these remarks.
11 Suriname has produced no expert in geography, not one, to give
12 evidence either in written or oral form in support of the views
13 expressed by its lawyers on the geographical circumstances of
14 this case or on the delimitation methodology that Suriname
15 offers in substitution of the well established equidistance
16 methodology. Why don't they have an expert geographer? Why
17 don't they have a hydrographer here with them? Look how many
18 distinguished lawyers they have. The very best and the very
19 brightest. By reputation, by eloquence, they far outshine our
20 side. But argument is not evidence. As Professor McRae
21 helpfully reminded us, geographers are not lawyers, lawyers are
22 not geographers. So could it be that it never occurred to all
23 of these legal heavyweights, and I mean no offense to my friend
24 Professor Greenwood. This is a reference only to his
25 intellectual status. Could it be that they would--they didn't

14:09:58 1 realize that they would benefit from the services of an expert
2 geographer? Certainly, the idea would have occurred to them,
3 if not sooner, then certainly after they received Guyana's
4 Reply, to which Dr. Smith's report was Annex Number 1 and was
5 cited repeatedly in the main text.

6 So, why didn't they produce an expert witness of their
7 own? Could it be that they couldn't find one who was willing
8 to put his name to this convoluted, contrived, and ultimately
9 very complicated angle bisector methodology? In the end it
10 doesn't matter why they didn't produce an expert to support
11 their novel theory of maritime delimitation. The fact--and
12 this is uncontestable--is that they did not produce one. They
13 had no evidence to support their advocacy of this entirely
14 unconventional methodology, and they have no law to support it.
15 The Gulf of Maine case involved vastly different geographical
16 circumstances that are not remotely present here. There is no
17 other more recent use of angled bisectors. There is no
18 precedent for what Suriname is asking this Tribunal to do. By
19 contrast, the application of the established equidistance
20 methodology is fully supported both by the law and the
21 geographical circumstances particular to this case.

22 In conclusion, Guyana respectfully asks that you
23 employ it here in the manner that I have described to achieve
24 an equitable solution in the delimitation of the maritime
25 boundary between Guyana and Suriname.

14:11:35 1 Mr. President, and Members of the Tribunal, this
2 completes my presentation this morning or afternoon. I thank
3 you for your courtesy and your patience in allowing me to
4 address you. If it pleases the Tribunal, we would propose to
5 recall as a rebuttal witness Dr. Robert Smith.

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

7 MR. REICHLER: May I say, Mr. President, that this is
8 rebuttal, and we understand that, and we understand the
9 limitations. And we will, and I will say this before the
10 witness enters the room, we will question him on only two
11 topics: One, his arithmetic; and two, on his analysis and
12 opinion with respect to the first section of the equidistance
13 line, the one that Suriname alleges includes a so-called
14 Berbice Headland. We will not expand the scope of our direct
15 examination during this rebuttal beyond those two points.

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

17 ARBITRATOR SMIT: While you call the witness, could
18 Professor Schrijver give us the Dutch word that appears after
19 "schoorsteen." "

20 PROFESSOR SCHRIJVER: Professor Smit, it is just
21 "voor," so "for" in English.

22 ROBERT W. SMITH, CLAIMANT'S WITNESS, RECALLED

23 MR. REICHLER: Is it necessary to reswear the witness,
24 or shall we consider him already under oath as he was before?
25 We'll proceed as the President dictates.

14:14:14 1 PRESIDENT NELSON: I see no harm in re-oathing the
2 witness.

3 THE WITNESS: I solemnly declare upon my honor and
4 conscience that I shall speak the truth, the whole truth, and
5 nothing but the truth, and that my statement will be in
6 accordance with my sincere belief.

7 PRESIDENT NELSON: Thank you.

8 DIRECT EXAMINATION

9 BY MR. REICHLER:

10 Q. Good afternoon, Dr. Smith.

11 A. Good afternoon.

12 Q. Dr. Smith, you received from me excerpts of the
13 transcript of these hearings that were agreed to; that is, the
14 distribution to you was agreed to between counsel for both
15 sides. You received those transcript excerpts; correct?

16 A. That's correct.

17 Q. You read what they had to say about you and your
18 charts and your arithmetic?

19 A. I did.

20 Q. Would you like to say anything in response?

21 A. I would. First and foremost, I would like to
22 apologize to the Tribunal and to the Suriname team and the
23 Guyana team for the amount of time they've had to spend due to
24 errors that I made on that table, and if I may, I would just
25 kind of like to walk through once again the numbers and to

14:15:49 1 explain what the numbers mean and where my errors were. We are
2 going to get this on the screen?

3 Q. You have the floor until the President says otherwise.

4 A. Okay. If perhaps I could have the table put on the
5 screen just...

6 The top table was the table that was presented in my
7 report, and in reviewing the numbers and preparing for this
8 testimony last week, I realized that there were errors in the
9 second row. The first row indicated in the single line coastal
10 front, those numbers were absolutely correct, all those, the
11 numbers 116 for Guyana, 105 one for Suriname were for nautical
12 miles. But then I realized in the second row they were
13 kilometers, and then upon further review just the other day I
14 had realized that the number 246 for Guyana was a switch in
15 numbers of the four and six, and then I realized the 167 had
16 just been an incorrect number taken from my notes.

17 But at the time that I redid the corrected table, I
18 focused on primarily the error I made in the second row, and so
19 I set that table aside and went back to my notes to recreate
20 the whole table which appears in the middle of that page, the
21 corrected table. So, the corrected table now shows all the
22 correct numbers in kilometers. So, when it was brought--when I
23 was questioned last week as to why or what was the cause of all
24 the errors, particularly those in the third row, at the time
25 that I corrected the table, I hadn't really stopped to analyze

14:17:42 1 the reason for the errors of the third row because once I had
2 realized errors had been made for the second row, the
3 controlling point coastal front numbers, I scratched that table
4 and went back and re-did the whole thing. That's why I was at
5 a loss last week to give a complete, full answer as to the
6 reasons behind all the errors, but I can assure the Tribunal
7 that the table in the middle, the corrected table, reflects all
8 the correct numbers to the correct spots along the coastlines
9 and the correct ratios.

10 And then finally, the third bottom table, the
11 coastline measurements not using Suriname's Vissers Bank to
12 Hermina Bank instead was a completely different and new table.
13 That one never had any errors to begin with, but I put this on
14 the same table, same page for completeness.

15 So, again, I apologize for making the errors. They
16 were errors made by me, and I'm not proud of it.

17 Q. Dr. Smith, did you read what they had to say about
18 your opinion, your report, your objectivity, your completeness,
19 your competence in describing the first section of the
20 equidistance line, the one that extends from the Guyana coast
21 out the first hundred miles and their criticism of your
22 opinions there? You read the transcripts?

23 A. I did.

24 Q. Would you like to respond?

25 A. I would. I appreciate having the opportunity to

14:19:33 1 respond to several of the points made by the Suriname team in
2 its presentation.

3 If I can get the table put up on the screen, I could
4 speak to it.

5 Thank you.

6 Virtually all the criticisms made on me pertain to the
7 creation of the first section equidistance line, so perhaps I
8 could address several of the issues as I describe how I went
9 about my analysis of the coastline configuration and analyzing
10 it against the provisional equidistance line. The first aspect
11 is the idea that the coastal configuration can't ignore
12 political boundaries. I just don't accept that premise. I
13 think when one looks at a coastline in the first instance, you
14 don't have to bring political boundaries into effect.
15 Certainly you do have to consider them once you do the final
16 analysis, but in looking at the relevant coastline area, I
17 think it's proper to put those blinders on. Just look at the
18 geography. And so I stand by my report when I said that there
19 is a shallow concavity from Guyana's Devonshire Castle Flats on
20 through into Suriname up to the Coppename River.

21 And as such, I respectfully disagree with how the
22 other side has characterized my approach of looking at the
23 coastline. In this regard, I do want to note that particularly
24 what's on the screen in front of you, there are areas that fall
25 south of that concavity that I have just described, and these

14:21:19 1 are found primarily at the river mouths, the Essequibo River,
2 the Berbice River, the Corantijn River, where just by the very
3 geography of how rivers enter into the ocean, you have a mouth,
4 and you have got the coastlines that kind of flare out, and in
5 the immediate area adjacent to the mouth, you do have localized
6 convexities on both sides of the river mouth, and that's what
7 you do have here in the Corantijn area. You have localized
8 convexities around Turtle Bank as well as across in Guyana.

9 Suriname has accused me of ignoring what they label as
10 the Berbice Headland. I would like not to use that phrase
11 because I don't think such a geographic feature exists by that
12 name, but I clearly know the area of the Guyana coastline to
13 which they refer, essentially kind of points G1 to G15 is the
14 area they feel skews the line.

15 I looked at this coastline. I looked at the entire
16 coastline, so I want to assure the Tribunal that I did not make
17 light of any particular part of the coastline. And I believe
18 that part of the coastline that you see on Guyana's side of G1
19 to G15 is well-balanced geographically by the Suriname side of
20 points S2 through S10. You have the Guyana coastline for the
21 most part facing the northeast direction. You have the
22 Suriname coastline again from S2 actually facing northwest. As
23 you come around the headland at that point, you continue to
24 have a northwest, north, and then northeast-facing coast and on
25 down the coastline to S6 to S8, which falls slightly south of

14:23:20 1 the concavity, kind of a north, northeast-facing segment of
2 their coastline.

3 Then, finally, when you reach S9 and S10, that axis is
4 on the concavity that has been shown illustrations earlier in
5 the proceedings, and so I would argue those are north,
6 northeast-facing segments of the coast.

7 So, you have counterbalances here that create
8 essentially a straight line of Section 1, and this leads me
9 into the aspect of the Jaenicke effect, if I may use his name
10 in that way, the Professor who first presented that diagram in
11 the North Sea cases. I just don't see a Jaenicke effect in
12 this Section 1. Again, going back to the idea that the base
13 points of G1 through G15 are counterbalanced by S2 through S10,
14 and I'm very familiar what the Jaenicke diagram does. That's a
15 diagram where you have headlands to various dimensions
16 proceeding off the coast on one state going against a
17 completely flat horizontal coast of state B, for example, and
18 as the equidistance line proceeds seaward, you have the
19 parabolic curve created where you have a headland not being
20 counterbalanced by any opposing feature on state B, and so you
21 do have that curve going across in front of and into state B's
22 area. I don't believe you have that here in Section 1. My
23 main criticism of the whole geography as it applies to the
24 provisional equidistance line really starts at Hermina Bank
25 because Hermina Bank does not have that balancing geographical

14:25:12 1 point on Guyana's coast until you encounter Devonshire Castle
2 Flats, which is well to the west, and by that time the
3 equidistance line is about 179 miles off the coast.

4 My last point that I want to just respond to,
5 Suriname's side talked about clusters of base points. The way
6 I interpreted the transcript, at least the couple of pages that
7 I read on this point, was it was another way of trying to bring
8 in the Jaenicke effect here, and I can't disagree with what I
9 think was being stated; that if, indeed, his definition of
10 cluster of points, and again that definition I think can mean
11 different things to different people, but I think he was
12 talking about how the cluster was spread apart enough to
13 identify further a geographic feature, and if a certain cluster
14 of points is not countered by anything on the other side, yes,
15 you may end up having kind of a Jaenicke diagram effect.
16 Again, I don't see it being in existence here.

17 I think at this point I will just stop my response to
18 their analysis of my paper.

19 Q. You helped prepare some diagrams to further elucidate
20 your views. Would you like to go through them?

21 A. Yes. These are, I think, diagrams that kind of
22 address further the Jaenicke diagram, Jaenicke effect. On this
23 first diagram, very simple showing state A, state B on
24 essentially a very flat, horizontal coastline, where the land
25 boundary shown here in a dash and dot symbol comes to the

14:27:09 1 coast, and the line that goes outwards into the sea is the
2 equidistance line in this situation from this flat coast.

3 Then we add a little bit to this coast. We have the
4 same coast, but now we have a bit of a headland, a bit of a
5 bump on state A appearing right next to the land boundary
6 terminus, and what you now see projected into the ocean in the
7 shaded gray area is the straight line from the previous
8 diagram, but now you have got this parabolic curve beginning
9 where you have got the headland of state B not being matched by
10 any feature on state B, so there you have the curve that will
11 extend into state B's maritime area.

12 Now, just creating a slightly different configuration
13 of the coastline, instead of having the complete flat
14 horizontal coastline of state A and state B running in the same
15 direction, we now have a straight state A coastline coming in
16 at an angle meeting state B with a land boundary terminus, and
17 that line is the equidistance line between these two
18 coastlines.

19 Again, in the similar flavor of what I just discussed
20 a couple of diagrams ago, we had the same coastlines, but now
21 we have a headland in state A right up against the land
22 boundary terminus, and this again creates a parabolic curve
23 because there is no opposing, no similar counterbalancing
24 feature on state B that has the curve going into and across
25 state B's coastline. And again we've got the faded gray arrow

14:29:07 1 that shows you what it was like without that headland.

2 Now, I attempted to bring a little bit of reality back
3 into the picture here, showing the true Guyana and Suriname
4 coastlines, and showing how Section 1 of the provisional
5 equidistance line essentially is a straight line going off the
6 coast at an angle, and so the straight line basically reflects
7 the counterbalancing act of the coastal points of Guyana's
8 points G1 to G15 to Suriname's points S2 to S10.

9 And then finally, again to kind of give some symmetry
10 to the diagrams we have shown just previously, we have this
11 infamous parabolic curve jumping in here, and one sees that in
12 order for that to happen, you see that rather large green bulge
13 coming off the Guyana coast near the beginning of the
14 equidistance line, so that essentially is a sort of geographic
15 configuration you'd have to have that creates that sort of
16 Jaenicke diagram curve going across Suriname's coastline, and
17 then that's compared to the true provisional equidistance line
18 in red, and the underlying straight line that if you had the
19 more simplified coastlines coming in at an angle, basically
20 reflecting the straight line, that suggests to me that you have
21 the counterbalancing coastal points, and basically no coastal
22 state in this Section 1 is placed at a disadvantage, using the
23 provisional equidistance line.

24 Q. Thank you, Dr. Smith.

25 MR. REICHLER: I have no further questions.

14:31:04 1 PRESIDENT NELSON: Thank you, Mr. Reichler.

2 MR. SAUNDERS: Mr. President, we have prepared some
3 binders in anticipation of Dr. Smith's rebuttal testimony, and
4 with your permission, I will pass those out to the Members of
5 the Tribunal and to counsel for Guyana and to the witness.

6 (Pause.)

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

8 PRESIDENT NELSON: Yes, you may.

9 CROSS-EXAMINATION

10 BY MR. SAUNDERS:

11 Q. Good afternoon, Dr. Smith.

12 A. Good afternoon.

13 Q. I want to ask you a question about the tables that
14 were originally paragraph 49 of your report and that you
15 corrected and about which you just testified.

16 A. All right.

17 Q. Could we put that up on the screen, please.

18 And in the book, I believe that the chart that you
19 just saw on the screen is behind Tab Number 8. Do you have
20 that?

21 A. I do.

22 Q. As I understood your testimony, you said that with
23 respect to the top table, the one that appeared in your report,
24 the first row of that table was correct?

25 A. Correct.

14:34:08 1 Q. And the second row was incorrect in that it was
2 expressed in kilometers and not nautical miles?

3 A. Correct.

4 Q. The middle table on this chart is your corrected
5 table, assuming that you are using Vissers Bank; correct?

6 A. Correct.

7 Q. And the corrected table is all in kilometers?

8 A. Correct.

9 Q. If that's true, Dr. Smith, how is it that Suriname's
10 controlling point coastal front in the first table was 153
11 kilometers, which you just told us was in kilometers, and
12 Suriname's coastal--controlling point coastal front in the
13 second table, which you also told us was in kilometers, is 195
14 kilometers, can you explain that?

15 A. Yes. One of the additional errors in putting together
16 the original table was that I had in error gone to Hermina Bank
17 and not Vissers Bank.

18 Q. Oh, so there was an additional error in the first
19 table?

20 A. Correct. Well, as it turned out there were several
21 additional errors, including those on line three.

22 Q. So, the error in the first table was going to Hermina
23 Bank and not Vissers Bank?

24 A. Correct.

25 Q. All right. You didn't say that during your direct

14:36:00 1 testimony, did you?

2 A. I don't recall. I may not have.

3 Q. All right. So, it's not correct that the only mistake
4 in the first table row two is that those numbers were expressed
5 in miles when they should have been expressed in kilometers.
6 That was another mistake; right?

7 A. Correct.

8 Q. There are any other mistakes in these charts that we
9 don't know of?

10 A. Just the ones on row three that I just went through,
11 and the first chart.

12 Q. The transposition of the number?

13 A. Correct.

14 Q. All right. Now, we just heard your testimony about
15 the Jaenicke diagram and the Jaenicke effect. I take it that
16 there is no doubt in your mind that a convexity near the land
17 boundary terminus would have an effect on an equidistance line,
18 is there?

19 A. Well, it depends on what's on the other side--

20 Q. Nothing, nothing.

21 A. If it's a true Jaenicke diagram, we have the convexity
22 of the headland on one side matched by nothing on the other
23 side, yes, there will be an effect against the side that has
24 nothing.

25 Q. And that will be an effect on the equidistance line;

14:37:33 1 correct?

2 A. Correct.

3 Q. You will push the equidistance line over toward the
4 coastline that has nothing?

5 A. Correct.

6 Q. And that effect will be magnified, will it not, as the
7 equidistance line is extended?

8 A. Correct, if, indeed, nothing is met on the other side.

9 Q. Right. So, for example, if there is a slight effect
10 with a slight bulge in the coastline of state A in your
11 example, that effect will be magnified as the equidistance line
12 goes out, toward, say, 200 miles?

13 A. Right. I think you can see in the Jaenicke diagram
14 basically that parabolic curve that will do so.

15 Q. All right. And if you look at what is behind Tab 3 in
16 this book, that's an article, I believe, that you wrote
17 entitled, "Geographic Considerations in Maritime Boundary
18 Delimitations," and you wrote that, according to the article,
19 in 1989?

20 A. That's correct.

21 Q. Have you read that article recently?

22 A. No.

23 Q. Well, if you look at pages seven and eight, you see
24 there you reproduced the Jaenicke diagram. It's a slightly
25 different version than Dr. Jaenicke used, but it's essentially

14:39:17 1 the same. Would you agree with that?

2 A. That's correct.

3 Q. And one of them goes to a hundred miles--I'm sorry,
4 one of them goes to a hundred kilometers, and one of them goes
5 to 200 miles?

6 A. That's correct.

7 Q. And you have different dotted lines, and if I'm
8 reading this chart correctly, the first one that you have is on
9 the first page, page seven, the dark line is a one-kilometer
10 headland?

11 A. I believe so, yes.

12 Q. I take it that's a protrusion into the sea of one
13 kilometer?

14 A. Right. Here along the line itself is what you're
15 reading from?

16 Q. I'm reading from the box. It says headland one
17 kilometer and then there is a straight line. Do you see that?

18 A. Yes. Correct.

19 Q. So that would mean that if there is a one-kilometer
20 protrusion, the effect on the equidistance line would be shown
21 by the dark line on this chart?

22 A. Correct.

23 Q. And you see that that effect gets greater as the line
24 goes out?

25 A. Yes.

14:40:21 1 Q. And if you look over to page eight where you do the
2 same thing in nautical miles out to 200 miles, you see
3 similarly that the effect of that headland gets greater as the
4 line goes out for 200 miles?

5 A. Correct.

6 Q. And you had different lines for different size of
7 headlands; right? Is that the difference between these
8 different lines?

9 A. That's correct.

10 Q. One would be either one-kilometer or one-nautical-mile
11 headland and the greatest would be a five-kilometer or
12 five-nautical-mile headland?

13 A. Correct.

14 Q. Okay. Now, in your report and in your testimony just
15 a moment ago, you said that the Hermina Bank had an effect on
16 the equidistance line.

17 A. Correct.

18 Q. And reading from your report, in fact, you said that
19 the few coastal points have a significant impact on influencing
20 the direction of almost half the length of the equidistance
21 line. Those would be the coastal points on the Hermina Bank;
22 right?

23 A. Correct.

24 Q. You didn't say anything in your report about the
25 effect, if any, on the equidistance line of the area between

14:41:49 1 the Corantijn River and the Berbice River, did you?

2 A. I believe I have a paragraph in there that describes
3 the coastline in that area.

4 Q. Now, earlier today, counsel for Guyana made the point,
5 and I take the point that the phrase "Berbice Headlands" does
6 not in those words appear in the Suriname Rejoinder, but there
7 is no doubt in your mind that the concept of the convexity
8 between the Corantijn River and the Berbice River is, in fact,
9 discussed in the Suriname Rejoinder and in the
10 Counter-Memorial, is there?

11 A. I suspect there is, but I could not know exactly what
12 paragraphs they are.

13 Q. All right. If you look at what is behind Tab 10 in
14 the binder, and I'm referring you specifically to paragraph
15 3.186 of the Suriname Rejoinder. Just take a moment and look
16 at that, if you would.

17 (Witness reviews document.)

18 Q. Have you had a chance to look at that?

19 A. I have.

20 Q. You have seen that before, have you not?

21 A. I have.

22 Q. And that discusses at least Suriname's view as to the
23 effect on the equidistance line of the convexity between the
24 Corantijn River and the Berbice River?

25 A. Using your words, yes, I think that reflects

14:44:02 1 Suriname's approach.

2 Q. Yes.

3 And I take it that you have no quarrel with the
4 proposition set forth in that paragraph that the base points in
5 that area of the Guyana coast have a controlling influence on
6 approximately 170 nautical miles, or 80 percent of the
7 equidistance line?

8 A. I have no quarrel with that statement. I do have a
9 quarrel with your--the way you have characterized the
10 coastline.

11 Q. I'm just asking you about that statement.

12 A. Fine.

13 Q. You have no quarrel with that statement, do you?

14 A. No.

15 Q. And I take it that you have no quarrel with the
16 proposition that approximately 80 percent of the base points on
17 the Guyana coast are found in the area between the Corantijn
18 River and the Berbice River, do you?

19 A. I believe that's inappropriate. I think it's 15 out
20 of 19, something like that, that was found there.

21 Q. All right. Now, if you would look at your original
22 report which is behind Tab 1, and in particular your Figure 10,
23 do you recall we saw this during your testimony last week?

24 A. Yes.

25 Q. And this figure has some lines on it that you drew?

14:46:02 1 A. That's correct.

2 Q. And you recall that I asked you about the straight
3 line which in the version that's on the screen we made darker
4 red?

5 A. I'm aware of that line.

6 Q. That's your straight line coastal, relevant coastline?

7 A. It is one of three coastlines that I used to calculate
8 the coastal length, yes.

9 Q. All right. Now, I also asked you last week if there
10 was a portion of the Guyana coast that is seaward of that
11 straight line.

12 Do you see that?

13 A. I do.

14 Q. And that's the portion between the Guyana--between the
15 Corantijn River and the Berbice River; right?

16 A. Correct.

17 Q. Now, there has been some quarrel over the use of the
18 phrase Berbice Headlands, so let's me call that the Berbice
19 bulge. Are you with me?

20 A. You can call it whatever you like.

21 Q. All right. I like that, so we will call it the
22 Berbice bulge. Are you with me?

23 A. I'm with you.

24 Q. Now, can you tell by looking at that--

25 MR. REICHLER: For the record, we don't like that, but

14:47:08 1 we have no problem with Mr. Saunders using it.

2 PRESIDENT NELSON: Thank you.

3 BY MR. SAUNDERS:

4 Q. Can you tell from looking at that chart how big the
5 Berbice bulge is?

6 A. Only in a very rough estimate. I see degrees along
7 the side, but it would just be very much a guess.

8 Q. Well, there is a legend inside the box that tells you
9 what the scale of this map is.

10 A. Correct.

11 Q. Can you tell by using that legend how long the Berbice
12 bulge is?

13 A. What is your definition in the first place of the
14 bulge?

15 Q. My definition is that portion of the Guyana coast that
16 is seaward of your red line.

17 A. Measured along that red line?

18 Q. Yes.

19 A. If you had a straight edge, you could take that length
20 and go up and measure it.

21 Q. Would you like to try?

22 A. Sure.

23 Q. Thank you.

24 These are usually the tools of the trade for a
25 geographer, are they not? Careful, that's very sharp.

14:48:18 1 A. Thank you.

2 I'm dangerous with sharp objects.

3 Q. The record should reflect that I have given Dr. Smith
4 a ruler and a device that I think is called a divider, but I'm
5 not--

6 A. Or a compass.

7 Q. But you have reached the extent of my expertise.

8 All right. Can you tell by using those instruments
9 how long the Berbice bulge is?

10 A. It would be somewhat longer than 25 nautical miles.
11 Probably in the 26, 27. It's difficult to get any more exact
12 than that.

13 Q. All right. Can you tell by using those instruments
14 how far the Berbice bulge protrudes toward the seacoast from
15 your straight line?

16 A. Do you want it at its maximum?

17 Q. Yes, sure.

18 A. This, of course, is assuming there is accuracy in this
19 page size map.

20 Q. It's your map, Dr. Smith.

21 A. Well, when you are dealing with this scale, you do
22 have to give flexibility on measurements.

23 Q. I appreciate that.

24 A. Again, it's difficult, but I would say something on
25 the order of 5 nautical miles, plus or minus half a mile from

14:49:42 1 the way I'm able to use the scale.

2 Q. All right. Now, if we go back to your article, to the
3 Jaenicke charts in your article, I think it was on page eight,
4 5 nautical miles is the maximum that you used in that chart to
5 show the effect of the Jaenicke--of, say, a bulge in the
6 coastline of one state where there was no corresponding bulge
7 in the other state; right?

8 A. I guess so, yes.

9 Q. And so if we were to look at that chart on page eight
10 of your article, the effect of a five-nautical-mile protrusion
11 would be the very far right-hand line on your chart.

12 A. Right. Again assuming you had no counterbalancing
13 thing on another coastline.

14 Q. Right.

15 Now, if we go back to your Figure 10 behind Tab 1, I
16 think you still have it open to you, and then focusing only on
17 the straight-line relevant coastline that you drew--are you
18 with me?

19 A. I'm with you.

20 Q. Can you tell us what the--what azimuth a bisector of
21 the angle formed by those two lines would be?

22 A. I don't know.

23 Q. Why don't you know?

24 A. It was not my intent in creating these--this
25 particular straight line for that purpose. In fact, I created

14:51:18 1 this straight line for coastal length, and I don't think it
2 gives an accurate depiction of the two coastlines itself.

3 Q. I understand that. I didn't ask you that, Dr. Smith.
4 I simply asked you--

5 A. I just wanted to get it in the record, because I think
6 the question you asked me was for a different purpose from why
7 I drew these lines.

8 Q. Right. I'm sorry, Dr. Smith. I'm just asking you a
9 very simple question.

10 MR. REICHLER: Again I would like you to please ask
11 away, but please allow the witness to finish his answers.

12 MR. SAUNDERS: Of course.

13 BY MR. SAUNDERS:

14 Q. Can you tell the Tribunal what the azimuth would be of
15 a line that bisects the angle shown in the straight line
16 relevant coastal fronts in your Figure 10?

17 A. Could you repeat that question, please?

18 Q. Could you tell us what the azimuth would be of a
19 bisector of the angle formed by the two relevant coastlines
20 that you drew on Figure 10, the straight-line relevant
21 coastlines?

22 A. I don't know.

23 Q. What would you need to know in order to answer that
24 question?

25 A. I would need to know the angle created by the

14:52:25 1 intersection of those two red lines.

2 Q. All right. That's what I'm asking you.

3 A. But I never did that calculation.

4 Q. I understand that. Let me ask you to assume, if you
5 would, and you may want a piece of paper and pencil, that the
6 line--the portion of the line that is in front of the Guyana
7 coast is at an azimuth of north 316 degrees east.

8 A. Am I going to need to do some subtraction here?
9 Should I be writing something down?

10 Q. Well, let me finish my question first, and then I will
11 give you a piece of paper and a pencil and you can calculate
12 away.

13 I want you to assume first that the angle, the azimuth
14 of the line, the straight line that you drew in front of the
15 Guyana coast is north 316 degrees east.

16 Are you with me?

17 A. Okay.

18 Q. And I would like you to assume that the angle of the
19 line that you drew in front of the Suriname coast is north 90
20 degrees east.

21 Are you with me?

22 A. Um-hmm.

23 Q. With that information, can you tell us what the
24 azimuth would be of a bisector of the angle formed by these two
25 azimuths?

14:53:43 1 A. I could attempt it, but I would be more comfortable
2 with time.

3 Q. Please give us your best shot.

4 A. Do you have--

5 Q. Do you want some paper?

6 (Paper handed to the witness, and witness calculates.)

7 ARBITRATOR SMIT: Mr. Saunders, while he makes the
8 computations, can we understand that you are representing that
9 those are the correct figures?

10 MR. SAUNDERS: Yes, I am. Yes, I am.

11 Thank you.

12 MR. REICHLER: Mr. Saunders, why don't you tell us
13 what it is? I assume you have calculated it. We'll trust your
14 arithmetic.

15 MR. SAUNDERS: It's 23 degrees.

16 THE WITNESS: I will accept that.

17 BY MR. SAUNDERS:

18 Q. Is that about right?

19 A. I will accept that.

20 Q. Now, you have told the Tribunal that you think that
21 the proper delimitation in this area looking only at
22 geographical issues and not historical issues, would be an
23 extension out of the line formed by the first section of the
24 equidistance line; is that correct?

25 A. Correct. That was my conclusion.

14:55:46 1 Q. And do you know what the azimuth of that line is?

2 A. I believe it was approximately 28 degrees.

3 Q. 28 degrees?

4 A. I believe so.

5 Q. All right. So, would it be correct, Dr. Smith, that
6 the difference between 23 degrees, the angle bisector of the
7 line shown on your Figure 10 and the 28-degree line that you
8 think would be the appropriate line with an extension of the
9 first section of the equidistance line, that that difference is
10 caused primarily by the existence of the Berbice bulge?

11 A. I think the difference is created by an incorrect
12 depiction of the coastline that you're kind of forcing me to
13 accept by these red straight lines.

14 Q. But isn't it also affected by the existence of the
15 Berbice bulge?

16 A. I would say no. I mean, it is created by the
17 coordinates, the coastal points on that stretch of land of
18 Guyana, but it's also counteracted by points on Suriname's
19 coast coming up with a relatively straight line in Section 1
20 that proximates 28 degrees, so I think the 28 degrees is formed
21 by points from the Corantijn River up around the feature you're
22 discussing and the points on Suriname.

23 Q. All right. So, your testimony is that the first
24 section of the equidistance line is a relatively straight line?

25 A. Relatively. I mean, again, it would depend on your

14:57:23 1 definition of relative, but I think the way we have seen it on
2 charts of Section 1, there is a relative, you know,
3 straight-line element to it, yes.

4 Q. And it's not affected by the base points on the
5 Berbice bulge, is it?

6 A. Oh, it is.

7 MR. REICHLER: That misstates his testimony. I think
8 that's an improper question.

9 MR. SAUNDERS: He's about to tell me that, Mr.
10 Reichler. If you give him a chance to answer my question, I
11 think you will probably hear that.

12 THE WITNESS: A point along that stretch of the Guyana
13 coastline, would certainly affect the equidistance line in that
14 Section 1.

15 BY MR. SAUNDERS:

16 Q. They do?

17 A. They do.

18 Q. And they include the 16 of the 19 base points on the
19 Berbice bulge; correct?

20 A. I think it's 15.

21 Q. 15 out of 19?

22 A. Yes.

23 MR. SAUNDERS: Could I ask, Mr. President, could we
24 have Mr. Edmonds perhaps put up on the screen what was earlier
25 shown as chart 40? I think it was 42 B? Is that possible to

14:58:42 1 do? If not, it's in your book. This is Mr. Reichler's chart
2 42 B. It's this one. I have a copy for you, Dr. Smith.
3 It's--the only writing on the chart is the words Turtle Bank.
4 There is a B in the bottom right-hand corner. It's 42 B.

5 BY MR. SAUNDERS:

6 Q. That's the line--that chart shows the line that you
7 think is relatively straight?

8 A. Well, if you take--you need to extend this a little
9 bit further out to the end of Section 1. I'm talking about
10 from basically here, T7 to T25. So, I think I need to see a
11 little bit more of this line to give a fair answer.

12 Q. I just have Mr. Reichler's chart.

13 A. Right. This particular--

14 MR. REICHLER: We can provide the other chart he's
15 asking about.

16 THE WITNESS: I could go back to the chart I used.

17 MR. REICHLER: It's the previous one, it's A.

18 MR. SAUNDERS: That's fine. This one is sufficient
19 for my purposes.

20 BY MR. SAUNDERS:

21 Q. What do these little circles represent on the red
22 line?

23 A. Those are the turning points of the provisional
24 equidistance line.

25 Q. All right. Now, you see that this equidistance line

15:00:29 1 begins out in the mouth of the Corantijn River, and that's not
2 what I'm asking you about.

3 Do you see that?

4 A. I do.

5 Q. And you see that there are four little circles from
6 the beginning of the line?

7 A. The nearest to the coast?

8 Q. Yes.

9 A. Yes, I do.

10 Q. One of them is about half covered, and the other one
11 is maybe a quarter covered.

12 Do you see those?

13 A. Yes, I do.

14 Q. Now, Dr. Smith, during the lunch hour I took that
15 chart and I drew a line through the center of the first four
16 little circles on that red line.

17 A. Okay.

18 Q. And with your permission, I would like to hand you a
19 copy of what I did, and I'm happy to hand this to the Members
20 of the Tribunal and to counsel for Guyana. Unfortunately, I
21 didn't have a chance to get this in your book, but I have
22 copies. And I guess we ought to give this chart a number of
23 some kind, and I guess I will have it put in the Tribunal's
24 cross-examination book. It will become Tab 11.

25 Are you with me, Dr. Smith?

15:02:41 1 A. I am.

2 Q. Do you see that I have drawn a red line through the
3 center of the bottom four turning points?

4 A. I do.

5 Q. And did I do that correctly?

6 A. It appears so.

7 Q. And then I have extended that line out to sea?

8 A. Correct.

9 Q. And do you see that the line that I drew extending the
10 line formed by the first four turning points is considerably to
11 the west of the provisional equidistance line?

12 A. Yeah, it is.

13 Q. And is it correct that that line is then pushed to the
14 east because of the base points on the Berbice bulge, the
15 provisional equidistance line? Pushed to the east of the line
16 that I drew?

17 A. It is pushed to the east from the coastline that's
18 kind of at the entrance of that river on that same feature that
19 you're calling that, yes.

20 Q. If there were no feature there, the line that I drew
21 would be the straight line extension of the first four turning
22 points on the provisional equidistance line, would it not?

23 A. Correct.

24 Q. And the only reason it's not co-extensive with the
25 provisional equidistance line is because of the effect of the

15:04:06 1 base points on the Berbice bulge; correct?

2 A. Right. I mean, I think that's the definition of
3 creating a provisional equidistance line. Coastal features on
4 both sides are going to swing segments back and forth.

5 Q. So, if you wanted to neutralize the effect of those
6 coastal features, you would use some method of delimitation
7 other than provisional equidistance, would you not?

8 A. Assuming you have a coastline that doesn't do it by
9 itself, which I think here you do. If you had absolutely a
10 straight coastline à la the Jaenicke diagram, then you perhaps
11 give some thought about whether there is a method other than
12 equidistance.

13 Q. Now, you have written that that coastal configurations
14 determine the methodology that you use to delimit maritime
15 boundaries, have you not?

16 A. Could you repeat that phrase again? Coastal
17 configuration certainly affects the equidistance line
18 determination.

19 Q. Doesn't it also affect the methodology that one would
20 choose to determine a maritime boundary?

21 MR. REICHLER: Are you asking him a legal question
22 now?

23 MR. SAUNDERS: No, my question was about what he had
24 written.

25 THE WITNESS: I don't know what specific quote you're

15:05:26 1 taking, but certainly the coastal geography would influence
2 what a state would put forward as an appropriate maritime
3 boundary, and that may effect negotiation.

4 BY MR. SAUNDERS:

5 Q. My question was whether you have written whether or
6 not coastal geography affects the method that one would use to
7 delimit a maritime boundary.

8 A. I am certain that in the numerous articles I have
9 written, there is probably a phrase out there that says
10 something like that.

11 Q. Well, if you would look at your article, Tab 3, page
12 nine, under the heading, "Coastal Configuration."

13 Do you see that, sir?

14 A. I do.

15 Q. You wrote, did you not, and I quote, "The coastal
16 configuration in the vicinity of the required maritime boundary
17 can have a significant impact on the choice of delimitation
18 methods."

19 Do you see that?

20 A. I do.

21 Q. You wrote that?

22 A. Yes, I did.

23 Q. You agree with that today?

24 A. I do.

25 Q. Oh, good. And you see that you then wrote that

15:06:48 1 configuration becomes particularly critical for states sharing
2 a land boundary where the coastline changes direction at or
3 near the land boundary terminus.

4 Do you see that?

5 A. I do.

6 Q. Now, that's taking into consideration political
7 considerations, is it not?

8 A. Well, yes, at some point you do have to recognize
9 where the land boundary does come to the coast.

10 Q. Yeah. You have to recognize that you can't just look
11 at the entire coastline of both countries taken together. If
12 you're trying to delimit a maritime boundary, you have to take
13 into account the fact that one country is going to be on one
14 side of the boundary and the other country is going to be on
15 the other side of the boundary; right?

16 A. Correct. I think you can do both.

17 Q. All right. So, in this case you have told us that the
18 general direction of the Guyana coast is northeast; right?

19 A. Correct.

20 Q. And you have told us that the general direction of the
21 Suriname coast is north or northwest.

22 A. I believe I used northeast in there as well, where
23 that portion is along the concavity, but there are--the
24 Suriname coastline at different segments is northwest, is
25 north, and is northeast.

15:08:10 1 Q. Well, when you were here last week you testified that
2 the general direction of the Suriname coast was northwest.

3 A. Well, it certainly is in this area as the Corantijn
4 River splays outward.

5 Q. So, if the general area of the Suriname coast is north
6 or northwest, and the general direction of the Suriname coast
7 is north or northwest, and the general direction of the Guyana
8 coast is northeast--are you with me?

9 A. I am.

10 Q. They would meet at an angle; right?

11 A. I don't know I would characterize it meet at an angle
12 when you're describing general directions of certain parts of
13 the coast. Again you're implying there is a coastal front when
14 you're talking about meeting, and I don't think that's the
15 case.

16 Q. I'm just taking your words. You told us last week
17 that the general direction of the Guyana coast was northeast,
18 and the general direction of the Suriname coast was northwest.
19 Do you recall that?

20 A. Right.

21 Q. Now, drawing back on my high school geometry which was
22 a long time ago, if one line is northeast and one line is
23 northwest, they meet at an angle, do they not?

24 A. You are assuming that we're talking about a single
25 front that has the identical northeast, northwest orientation,

15:09:37 1 and I don't think you have that here.

2 Q. If they did, they would meet at an angle?

3 A. If you have a coastline that's totally northeast kind
4 of similar to the diagram we put up earlier this afternoon,
5 then it would meet at an angle, but I don't think you have
6 coastlines here that have the simplicity of single line coastal
7 fronts.

8 Q. Let me just direct your attention to the last
9 paragraph of your report, which is behind Tab 1, paragraph 54.
10 There, you state--the last sentence, do you see that? Last
11 sentence in paragraph 54.

12 A. Okay.

13 Q. "To best reflect the northeastward-facing coastlines
14 in this region of South America and to discount Suriname's
15 convex coastline as a pivotal point in the calculation of the
16 provisional equidistance line," and then there is a
17 parenthetical, and then you say, "the direction of the
18 provisional equidistance line depicted in Section 1 should be
19 continued seaward."

20 Do you see that?

21 A. I do.

22 Q. Now, there you wrote that it was appropriate to do
23 that in order to take into account the northeastward-facing
24 coastline in this region of South America; right?

25 A. Um-hmm.

15:11:02 1 Q. Right?

2 A. Right. This reflects my sweeping concave coast.

3 Q. Right.

4 You didn't say anything at all about the direction of
5 the Suriname coast in that sentence, did you?

6 A. Well, it was implied that the good portion of it was
7 northeast facing based on its being part of the concavity up to
8 Hermina Bank.

9 Q. Haven't you told us that the Suriname coast faces
10 north or northwest?

11 MR. REICHLER: Excuse me. That does mischaracterize
12 his testimony, and I will tell you exactly what he said just a
13 few moments ago. He said there were different segments of
14 Suriname's coast, and different segments face in different
15 directions. He said that one segment faces northwest, one
16 segment faces north, one segment faces northeast. And we could
17 have the Reporter read that back, but you can't ask him a
18 question by distorting his words and then feeding them back to
19 him, Mr. Saunders. You know that.

20 MR. SAUNDERS: Thank you.

21 BY MR. SAUNDERS:

22 Q. Would you look at Tab 2, please. That's your
23 testimony from your first appearance here.

24 A. Okay.

25 Q. If you look at page 469, I guess you have to start

15:12:54 1 over at page 468. The question was:

2 "QUESTION: What is your basis for saying that
3 the first section of the provisional equidistance line
4 divides in a fair manner the maritime jurisdiction
5 projecting from the two coastlines?"

6 "ANSWER: Well, in this part of the coastline, it
7 appears to me that Guyana coastline is facing
8 northwest." You say, "Excuse me, northeast. The
9 Suriname coastline is facing northwest."
10 What section of the Suriname coastline were you
11 referring to in that testimony?

12 THE WITNESS: Well, the northwest facing part of the
13 Suriname coastline is that portion immediately adjacent to the
14 river, Corantijn River mouth is northwest, and then as it
15 swings around, that headland. I perhaps did not give as
16 complete an answer as I should have because it goes northwest,
17 north, and then back to northeast.

18 MR. SAUNDERS: If I might have just a moment,
19 Mr. President.

20 I have no further questions.

21 Thank you very much, Mr. President.

22 PRESIDENT NELSON: Thank you very much.

23 MR. REICHLER: We have no questions for the witness,
24 Mr. President.

25 (Witness steps down.)

15:15:09 1 MR. REICHLER: Would this be an appropriate time for
2 the afternoon coffee break?

3 PRESIDENT NELSON: I was just discussing this. We
4 will have a 15-minute break. 3:30.

5 MR. REICHLER: Thank you very much, Mr. President.
6 (Brief recess.)

7 PRESIDENT NELSON: I give the floor to Professor
8 Schrijver.

9 PROFESSOR SCHRIJVER: Mr. President, Members of the
10 Tribunal, it is a pleasure to appear once again before you, and
11 my presentation on behalf of Guyana will relate to three
12 issues. I will speak to the scope of the applicable law, to
13 the status of the equidistance methodology under contemporary
14 international law, and lastly about the conduct of the parties.

15 Mr. President, in taking up the issue of applicable
16 law first, Guyana notes that throughout the Convention we can
17 find quite a number of references to international law; thus,
18 UNCLOS itself addresses the relationship between the Convention
19 and other relevant rules and principles of international law.
20 Sometimes the Convention does so in a very general way,
21 sometimes in a more specific context. The Preamble, Article
22 288 and Article 293 may serve as examples of the former, the
23 general references, whereas Article 74, Articles 83 and 301 are
24 examples of the latter.

25 In accordance with the Vienna Convention Rules on

15:38:12 1 Treaty Interpretation, these provisions have to be read in the
2 context of the general object and purpose of the '82 Convention
3 to serve as a framework convention to serve as the constitution
4 for the oceans, to quote, as Sir Shridath also did in his
5 opening remarks, the celebrated words of Ambassador Tommy Koh.

6 Thus, Mr. President, the rules of international law
7 not only concern the relationship between jurisdiction and
8 applicable law within the confines of Part XV, they also serve
9 a much wider function of coordination, if not pursuing
10 coherence in the interpretation and application of all the
11 rules of international law which directly or indirectly relate
12 to maritime matters. After all, as is stated in the Preamble,
13 the Law of the Sea Convention wants to pursue an integrated
14 approach to all maritime issues and ocean affairs.

15 Also, the Virginia Commentary explains in a useful way
16 that there was from the beginning an agreement at the
17 conference on the priority status of the Law of the Sea
18 Convention among the sources of law to be applied by the courts
19 and the tribunals having jurisdiction under the Convention,
20 and, of course, that was to be the '82 Convention. However,
21 this priority status is not to be interpreted, Mr. President,
22 as to mean that the 1982 Convention serves as the alpha et
23 omega of the Law of the Sea, and that courts and tribunals are
24 barred from applying additional principles and rules of
25 international law.

15:40:07 1 Mr. President, your Tribunal is vested with the
2 authority--yes, even charged with the obligation--to take into
3 account the other rules and principles of international law.
4 Obviously, your Tribunal has to identify what those applicable
5 rules are, those other applicable rules, and Guyana made and,
6 once again, makes an effort to assist you in this venture.

7 Professor Greenwood referred to the penultimate
8 paragraph of the Preamble. He stated that, in view of
9 Suriname, this clause was to be interpreted as precluding your
10 Tribunal from applying principles and rules of international
11 law on topics addressed in the Convention. With due respect,
12 Guyana states that Professor Greenwood has not fully
13 appreciated the wording, the context, and the travaux
14 preparatoires of this provision as well as of the other
15 provisions, relevant provisions, on international law in the
16 Convention. Suriname appears to neglect that UNCLOS is
17 operating as a framework convention--if you like, as the mother
18 of all treaties--relating to maritime matters.

19 Let me clarify this. As regards to the Preamble, the
20 clause referred to by Professor Greenwood is similar to the one
21 found in quite a number of multilateral treaties, including the
22 Vienna Convention on the diplomatic relations, the Vienna
23 Convention on the Law of Treaties, and the Vienna Convention on
24 Succession of States in Respect of Treaties. It was introduced
25 to establish a link between the new Convention and existing law

15:41:54 1 in order to ensure the most effective application of the future
2 Convention by establishing a set of rules without any lacunae.
3 Virginia Commentary Volume 1, page 405.

4 It cannot be interpreted to mean, as Professor
5 Greenwood claims, that, I quote transcript at page 635, "that
6 the Convention provides that other rules of international law
7 apply only to matters not regulated by the Convention." That
8 is simply not correct.

9 Proceeding now to a brief discussion of Article 288,
10 Guyana, first of all, would like to note that this is a
11 jurisdictional clause. According to the Virginia Commentary,
12 that jurisdiction extends primarily, but not exclusively, to
13 disputes relating to the interpretation or application of the
14 1982 Convention itself; Virginia Commentary Volume 5 at 47.
15 For example, Article 288(2) allows the submission to a court or
16 a tribunal functioning under Article 287 of any dispute
17 relating to the interpretation or application of an
18 international agreement related--related--to the purposes of
19 the Convention, and it requires that it be submitted in
20 accordance with the provisions of the agreement.

21 Mr. President, let there be no misunderstanding.
22 Guyana has not invited your Tribunal to exercise its
23 jurisdiction under any other international agreement pursuant
24 to Article 288.2 of UNCLOS. It simply wants to point out that
25 there is a possibility that courts and tribunals can take into

15:43:56 1 account other principles and rules of international law.
2 Suriname seems to agree, for example, by inviting you to give
3 effect to the 1799 Agreement. The jurisdiction of the Tribunal
4 is, of course, one thing while the applicable law and the basis
5 of delimitation is completely another thing. That should not
6 be confused.

7 Therefore, Article 293 on applicable law is quite
8 distinct from Article 288 on jurisdiction. Article 293
9 stipulates that the Tribunal that does have jurisdiction under
10 UNCLOS Part XV may nonetheless have to apply certain rules that
11 are found outside of UNCLOS. Indeed, it goes further than
12 that, and makes this even an obligation upon the Tribunal. It
13 says that the Tribunal "shall" apply both UNCLOS and other
14 rules of international law not incompatible with UNCLOS.

15 Obviously, Article 293 fully relates to our case. It
16 is perfectly clear that for the purposes of maritime
17 delimitation between our two parties, not only UNCLOS, but also
18 other international instruments need to be taken into account.
19 Obviously, Article 293 makes also clear that other rules of
20 international law would not be applied in case of their
21 incompatibility with the Convention. Apparently, the
22 thresholds you are facing is only the compatibility of those
23 other rules of international law with the 1982 Convention.
24 This logically follows not only from the provisions of Article
25 293, but also from specific provisions in the Law of the Sea

15:46:01 1 Convention elsewhere.

2 For example, Articles 83 and 74, so much under review
3 during our proceedings, contained references to both general
4 international law and to specific international law rules
5 relating to maritime delimitation. As regards the general
6 reference, they stipulate that any agreement as regards the
7 delimitation of these maritime areas is to be effectuated on
8 the basis of international law as referred to in Article 38 of
9 the Statute of the International Court of Justice in order to
10 achieve an equitable solution. And as Guyana already spelled
11 out in the first round, these include customary international
12 law as well as international case law.

13 Furthermore, paragraph four of these two Articles
14 specifically requires in identical texts the application of any
15 other international agreement which is of relevance to the
16 delimitation of the continental shelf or EEZ. For the purposes
17 of maritime delimitation, therefore, UNCLOS itself makes
18 reference to general international law as well as to specific
19 other international agreements, should they exist.

20 The relevant case law, although not extensive,
21 provides further clarification. Could I, first of all, refer
22 you by way of a convenient point of departure to the ITLOS
23 judgment in the Saiga II case of 1999 where the Tribunal took
24 the view--and I refer you to paragraph 120--"that there is
25 nothing to prevent it" from considering both the obligations

15:48:01 1 under the Convention and general international law. And at a
2 later point in the judgment, the Tribunal was even more
3 explicit. I quote from paragraph 155, where it is stated that
4 international law, which is applicable by virtue of Article 293
5 of the Convention, requires that the use of force must be
6 avoided as far as possible; and where force is unavoidable, it
7 must not go beyond what is reasonable and necessary in these
8 circumstances. Considerations of humanity must apply in the
9 Law of the Sea, as they do in other areas of international law.
10 The Tribunal is stating this obviously with Article 301 in mind
11 which deals with peaceful uses of the seas.

12 Mr. President, even more illustrative is the recent
13 Arbitral Award in the Barbados-Trinidad and Tobago case of
14 2006. After reproducing Article 293 in full, namely paragraph
15 220, the Tribunal recalls, with reference to Articles 74 and
16 83, that in the case of States with either opposite or adjacent
17 coasts, the delimitation of such maritime areas shall be
18 effected by agreement on the basis of international law as
19 referred to in Article 38 of the Statute of the ICJ.

20 Subsequently, the Tribunal in Barbados-Trinidad and
21 Tobago made the following important and also very interesting
22 pronouncement. It referred to the clause in 74 and 83,
23 identified it as a simple and imprecise formula which allows,
24 in effect, for a broad consideration of the legal rules, and
25 these legal rules, in the view of the Tribunal, are embodied in

15:50:14 1 treaties, in customary law pertinent to the delimitation
2 between the parties. It allows also for the consideration of
3 general principles of international law, it allows for the
4 consideration of the contributions that the decisions of
5 international courts and tribunals have made, and also quite
6 encouraging, it is ready to take into account the views of
7 learned writers which have contributed to the understanding and
8 interpretation of this body of legal rules. I was referring to
9 paragraph 221 of this Award.

10 And then the Court added in paragraph 223, that in a
11 matter that has so significantly evolved over the last 60
12 years, customary law also has a particular role that, together
13 with judicial and arbitral decisions, helps to shape the
14 considerations that apply to any process--any process--of
15 delimitation.

16 Mr. President, Members of the Tribunal, Guyana
17 concludes on this issue that Suriname is simply not correct in
18 submitting that your Tribunal has no competence to apply
19 non-UNCLOS principles and rules of international law. The
20 principles and rules governing the delimitation of the
21 continental shelf and the EEZ require you to effect
22 delimitation of these maritime zones by reference to the
23 Convention and rules of international law not compatible with
24 this Convention. And this is important because Guyana has
25 demonstrated that that includes the sources of international

15:52:07 1 law as referred to in Article 38 of the Statute of the ICJ, so
2 hence that includes treaty law, customary international law,
3 and also the extensive body of international judicial and
4 arbitral practice that we have in this field. Of course, the
5 ultimate aim should be that the delimitation is to achieve an
6 equitable solution.

7 Mr. President, I now proceed to my second topic, and
8 that is the adequacy but also the appropriateness of the
9 equidistance methodology. Over the past days, we listened
10 often with some amusement to Suriname to their attempts to
11 crack the equidistance line as a method of delimitation in
12 international law. It all culminated in the proposition of
13 Dr. Colson, and I quote from page 1193, "that the case law
14 shows that equidistance lines are very rare in cases between
15 adjacent States." And also in Professor Greenwood, building on
16 this statement by Dr. Colson and on that by Professor Oxman,
17 stating, and I quote from page 1229, "that equidistance not
18 being chosen as the boundary in any of the leading cases on
19 maritime delimitation between adjacent States."

20 Mr. President, Members of the Tribunal, at times
21 Guyana has been wondering do we read entirely different
22 arbitral and judicial awards? Do we interpret customary
23 international law so differently? Are contemporary academic
24 books and literature on maritime delimitation only available to
25 the legal team of Guyana? Mr. President, now that the

15:54:15 1 smokescreen Suriname sought to put up is clearing away,
2 visibility on the facts and on the trends we can identify, is
3 fully restored in this room. The first fact is that there are
4 several cases involving States that were, at least in part, in
5 a lateral situation which, as confirmed by the International
6 Court of Justice is similar to adjacency. Qatar-Bahrain,
7 Cameroon-Nigeria, Barbados-Trinidad and Tobago are good
8 examples. Second fact, current interpretation has it that
9 there is no longer reason to differentiate in this respect
10 between the situations of opposite, adjacent, or lateral
11 States. Articles 74 and 83 have abandoned that distinction.
12 Your Tribunal may wish to think twice to resurrect it. And
13 third, as Guyana has already demonstrated in the first round,
14 the methodology of equidistance as the starting point of any
15 maritime delimitation is a very adequate one.

16 Mr. President, at the end of my first presentation
17 before your Tribunal, you honored me with what you called a
18 "modest inquiry," and may I quote the question you put to me.
19 You asked: "Under what circumstances, if any, can a coastal
20 State be justified in completely abandoning the equidistance
21 method, even as a starting point?"

22 Honestly, as a Professor of international law, I
23 replied to you: "In no circumstance." Equidistance is always
24 the starting point, although one cannot exclude the possibility
25 that in some enormously complex geographical configurations it

15:56:29 1 may not be possible to apply equidistance. However, that is
2 not the case here. Suriname claims the opposite. Suriname
3 seeks to abandon the equidistance methodology altogether, and
4 argues that the unremarkable geographical situation between
5 Guyana and Suriname warrants the unique application of a very
6 subjective and arbitrary use of a straight-line coastal front
7 and angle bisector methodology, and bingo, this proves,
8 surprise-surprise, to result in the 10-degree line.

9 Mr. President, Members of the Tribunal, as a matter of
10 fact, this method was followed only once or, at best, only
11 twice: Arguably partly in Libya-Tunisia 24 years ago, and in
12 the first section only of the Gulf of Maine delimitation 22
13 years ago. And in both cases, even that was in entirely
14 different geographical circumstances relating to islands.
15 Guyana referred in its pleadings to the statement Judge
16 Guillaume made in 2001 in the President's Annual Speech to the
17 United Nations. Professor Oxman sought to belittle somewhat
18 the Guillaume speech by stating that Judge Guillaume was not
19 speaking for the Court; page 883. The summary record of the
20 Sixth Committee which we have revisited shows that Judge
21 Guillaume was listed on the agenda as President of the
22 International Court of Justice. Obviously, we all know that
23 not every word can be attributed to each and every individual
24 judge, but such a substantive and long speech of the President
25 of the International Court of Justice on such an important

15:58:36 1 issue cannot be other than an authoritative reflection of the
2 Court's thinking as a collective body.

3 Consequently, Mr. President, the following question
4 arises, did President Guillaume get it wrong and does Suriname
5 get it right, or could it be the other way around? In the
6 search for a reply to this question, Guyana revisited over the
7 weekend once again all the relevant international case law of
8 the last 20 years, and let me start where obviously Guyana and
9 Suriname have common ground. At paragraph 4.10 of its
10 Counter-Memorial, Suriname states, and I quote from the
11 Libya-Malta case decided in '85, "The Court adopted the
12 practice which it has since followed of identifying first a
13 provisional equidistance line and then considering whether that
14 provisional equidistance line should be adjusted to create, to
15 achieve an equitable delimitation." Here, Guyana agrees with
16 Suriname. Judge Guillaume observed in his speech that the
17 development of the modern approach here outlined was begun in
18 the Continental Shelf Case between Libya and Malta, although we
19 know that formally the '82 Convention was not yet applicable to
20 this case, but the Court took cognizance of and was influenced
21 obviously by its provisions.

22 Guillaume said that it is clear from paragraph 45 that
23 the Court's decision was motivated, in part, by the need for a
24 "consistency and degree of predictability" that was absent from
25 earlier cases. I apologize I quoted from paragraph 45 of the

16:00:46 1 Court's judgment and not just from the speech of Guillaume.

2 From Libya-Malta, we proceed to Jan Mayen in 1993, a
3 judgment which received notable little attention from Suriname
4 during these oral pleadings. Mr. President, please recall that
5 Guyana demonstrated that what I identified as the turning point
6 regarding the use of equidistance method came with this ICJ
7 decision in the Jan Mayen case of 1993. The Court specifically
8 rejected at paragraph 49 Denmark's reliance on Gulf of Maine
9 and Libya-Tunisia for argument that equidistance was not an
10 appropriate starting point. Your Tribunal should do the same
11 with Suriname's argument here.

12 Qatar-Bahrain followed suit in 2002. Also, here we
13 see the by now well-known formula of first drawing a
14 provisional equidistance line and considering whether, in the
15 light of circumstances, any adjustment is necessary.

16 And lastly, we have Cameroon-Nigeria, 2002. Guyana,
17 first of all, notes that Suriname has raised the same factors
18 as did Cameroon, a geographically disadvantaged state; in
19 particular, the concavity of the Cameroonian coastline as
20 compared to the convexity of Nigeria. However, the Court
21 thought otherwise, and it stated that, on various occasions, it
22 already had an opportunity to make clear what the applicable
23 criteria, principles and rules of delimitation were, and it
24 confirmed that it involves, first of all, drawing an
25 equidistance line and then considering whether any adjustment

16:02:58 1 is necessary in order to achieve an equitable result.

2 In this case, Suriname has made much of the purported
3 fact that the coasts here are adjacent, meeting and forming an
4 angle. For the record, as far as our case is concerned, Guyana
5 disputes the latter characterization, but it simply notes that
6 the coast of Africa truly does change direction where Cameroon
7 and Nigeria meet. Even so, the Court adopted an equidistance
8 line for approximately one-third of the maritime boundary to be
9 delimited, and the Court, as Suriname helpfully notes in the
10 Counter-Memorial, paragraph 4.15, I quote from Suriname, "found
11 no reason to adjust it for geographical or other reasons."

12 As Guyana showed in the first round, there are also a
13 number of recent arbitral awards which followed the track of
14 the Jan Mayen judgment. In addition to the Eritrea-Yemen case
15 of 1999 on which Guyana addressed you last week, I briefly
16 refer you to the Newfoundland and Labrador/Nova Scotia case of
17 2002--very familiar to some of us--and extracts of the Award
18 are under Tab 44(b) of your folder. And although the case
19 involves two Provinces of Canada, the terms of reference
20 provided that it was to be decided in accordance with
21 international law, and in paragraph 2.28 of the Award, the
22 Tribunal stated, "In the context of opposite coasts, and
23 laterally adjacent coasts as well"--interesting to note, same
24 treatment--"it has become normal to begin by considering the
25 equidistance line and then possible adjustments."

16:05:11 1 Furthermore, Guyana wants to note that the Tribunal
2 said that the same approach applied regardless of whether
3 applicable law came from the 1958 Geneva Convention, the 1982
4 Law of the Sea Convention, or customary international
5 law--paragraph 2.28--in effect, closely echoing the assessment
6 of President Guillaume in his speech in 2001, "The law
7 governing maritime delimitation has thus obtained a basic unity
8 while retaining the necessary flexibility to respond to the
9 specific facts and features of each case."

10 And then, of course, Mr. President, we have the most
11 recent statement on the applicable law from the first Annex VII
12 Arbitral Tribunal to rule on the merits of a maritime
13 delimitation case. Suriname argues--and I refer you to
14 Professor Oxman at page 880--that the decision stands for the
15 proposition that delimitation methods other than equidistance
16 may prove of greater utility in the circumstances of a
17 particular case. Well, that's a curious reading given what the
18 Tribunal actually did. There is no need for me to repeat
19 because it was also mentioned by my colleague, Paul Reichler,
20 but I would just like to recall that once again the Tribunal
21 said that the measure of certainty could positively be ensured
22 by the equidistance methodology. And then very importantly,
23 the last line of this paragraph 306, a different method would
24 require a well-founded justification. A different method would
25 require a well-founded justification.

16:07:24 1 In the light of Suriname's arguments in this case, it
2 is also important to note that at paragraph 315 of its Award,
3 the Tribunal stated, "There is no justification to approach the
4 process of delimitation from the perspective of a distinction
5 between opposite and adjacent coasts and apply different
6 criteria to each."

7 Mr. President, if you read and re-read these sections
8 of the Barbados-Trinidad and Tobago Award, Guyana just wonders
9 upon what basis Suriname could arrive at the conclusion that
10 the case is something other than a reiteration of the
11 centrality of equidistance. As Professor Sands has shown this
12 morning, the Tribunal applied strict equidistance to most of
13 the delimitation, and it did not delimit by a simplified line.
14 It used 10 turning points.

15 Mr. President, Suriname relies chiefly on three cases
16 for much of its argument--the North Sea Continental Shelf Case,
17 Libya-Tunisia, and Gulf of Maine, all some older cases--and
18 allow me to recall that these were exactly the three cases
19 which President Guillaume, upon reflection--and with the
20 benefit, of course, of hindsight--prompted to report to the
21 United Nations that, at this stage, case law and treaty law had
22 become very unpredictable. And later on he said, "Sensitive to
23 these criticisms in subsequent years, the Court proceeded to
24 develop its case law in the direction of greater certainty."

25 Mr. President, Guyana can rely on an impressive body

16:09:17 1 of international case law in its submission that the
2 equidistance methodology is the starting point for any maritime
3 delimitation, that it can be employed in situations of opposite
4 lateral and adjacent coasts, if necessary, to be corrected on
5 the basis of either special circumstances for the territorial
6 sea or relevant circumstances for the continental shelf and EEZ
7 in order to achieve an equitable result as stipulated under the
8 1982 Convention.

9 Mr. President, that brings me to my third and final
10 subject for today: The conduct of the parties. Perhaps
11 understandably, Suriname has tried fairly hard to minimize the
12 weight of history in this case, but the facts cannot be ignored
13 so easily. History does matter, not least as a way of
14 evaluating Suriname's contentions before this Tribunal. And
15 some central assertions of Suriname are not in accordance with
16 history and Suriname's own conduct.

17 I should start by returning for a few moments to the
18 1954 Charter for the Kingdom of the Netherlands. I do so
19 because Suriname has tried to distance itself from the views
20 and positions of the Netherlands by suggesting that the views
21 of the Kingdom, even those expressed externally to other
22 States, are not binding upon it. However, that cannot be so
23 easily the case.

24 Last Wednesday, my friend, Professor Soons treated the
25 Tribunal to an analysis of the Kingdom Charter, and I am happy

16:11:10 1 to report that, on most scores, this is in line with Guyana's
2 own analysis, but in truth his intervention only underscored
3 the extent to which in a critical period after the adoption of
4 the '58 Convention, the Kingdom's Ministry of Foreign Affairs
5 spoke for Suriname. According to Professor Soons--and we agree
6 with him--that the Kingdom was exclusively competent for
7 defense, foreign relations, nationality matters and a few
8 others, the so-called "Kingdom affairs." Thus, according to
9 Professor Soons, the Ministries of Defense and of Foreign
10 Affairs were organs of the Kingdom.

11 And a bit further, Professor Soons stated, "The
12 conclusion of international agreements was, by definition, a
13 Kingdom affair." We add to that demarcation of boundaries were
14 certainly considered a matter of international treaties.
15 Indeed, the Ministry of Foreign Affairs didn't just speak for
16 Suriname. It reflected Suriname's will, no doubt upon
17 consultation of Suriname and with Suriname in the lead in
18 matters with respect to Suriname's maritime boundaries. Where
19 Guyana differs with Suriname is that for Suriname all of this
20 is now just history and that Suriname is in no way bound, I
21 quote from Professor Soons, from views that may have been
22 expressed by officials of the Ministry of Foreign Affairs of
23 the Kingdom of Netherlands; page 730.

24 Mr. President, Members of the Tribunal, the theory of
25 tabula rasa always have that there should be some stability as

16:12:57 1 regards boundary issues of a predecessor State taking over
2 responsibilities--of a successor State taking over the
3 responsibilities from a predecessor State, and to state that
4 this is just old history now would give rise to a rather
5 radical new view, perhaps a Nyerere/Soons doctrine, and be
6 aware of this in this particular sensitive field of State
7 succession.

8 Mr. President, this is also not in line with the Mixed
9 Kingdom Commission which, shortly before Suriname's
10 independence, advised the Kingdom Government on the issue of
11 succession of States with regard to treaties concluded by the
12 Kingdom. It stated that treaties establishing a boundary
13 regime or another territorial regime--treaties on boundary
14 waters, on rights of passage, for example--would be transferred
15 de jure to the new sovereign. And this advice is also part of
16 the background of the Prime Minister Den Uyl letter of 1975 on
17 the extent of the territory of newly independent Suriname with
18 which the Tribunal is now familiar.

19 In fact, Professor Greenwood made a useful distinction
20 in our difficult discussion on access to documents as regards
21 documents to which Guyana obtained access in a very late stage.
22 Professor Greenwood identified two main categories, namely
23 interstate correspondence and internal correspondence with, of
24 course, various subcategories.

25 Now, inspired and guided by what we now conveniently

16:14:56 1 may call the "Greenwood categorization," Guyana would like to
2 pay some attention to the 1958 Dutch Aide Memoire proposing to
3 delimit the continental shelf boundary by reference to
4 equidistance. It may not be the smoking gun altogether up to
5 Professor Greenwood's expectation, but I can report that
6 Guyana's chief detective, Philippe Sands, agrees that it is
7 important.

8 Mr. President, the interstate 1958 Aide Memoire can be
9 found in your folder under Tab 6. Guyana notes with pleasure
10 the fact that also Dr. Colson reported that it was Suriname
11 that encouraged the Netherlands to this note, stating that
12 equidistance was acceptable and, hence, desirable. Of course,
13 this simple fact is confirmed by the very first line of the
14 Aide Memoire itself: "The Government of Suriname have
15 requested the Netherlands Government to take steps to delimit
16 clearly and precisely the line dividing the continental shelf."
17 And in both the opening and closing presentations, Professor
18 Greenwood rather curiously suggested that Suriname's proposal
19 to use equidistance was made as one part of an overall solution
20 and must be evaluated in that context. But with the greatest
21 of respect, that is simply not correct. The Kingdom Ministry
22 proposed to settle the continental shelf boundary, and only the
23 continental shelf boundary, by an exchange of Diplomatic Notes.
24 In fact, the record shows that the parties' deal only got
25 side-tracked when other considerations came into the picture.

16:16:53 1 Professor Greenwood also argued that the proposal was
2 made in a different legal context, that is under Article 6 of
3 the 1958 Convention which imposed so-called "equidistance
4 straight-jackets," but, of course, that's not true, either.
5 That is not the text of Article 6 because it contains obvious
6 and explicit alternatives to equidistance, including agreements
7 and new arrangements to be made upon the basis of special
8 circumstances. What is notable is that the Dutch proposal and
9 the follow-up exchanges after it did not hint at either. The
10 Kingdom's acceptance of equidistance was thus unqualified.

11 On Friday, Dr. Colson tried another approach, that the
12 reference to equidistance was not a reference to strict
13 equidistance, and the point is that the Kingdom's invocations
14 of equidistance is to be contrasted with its approach before
15 this Tribunal. It is here saying to the Tribunal that
16 equidistance is not only unfair. It is even saying it is so
17 unfair that it should be discarded altogether. But, in 1958,
18 Suriname took manifestly the opposite position.

19 Finally, on Saturday, Dr. Colson tried again to create
20 some separation from the Aide Memoire by suggesting that the
21 Kingdom Ministry of Foreign Affairs had somehow overlooked
22 configuration of the coasts in proposing equidistance in the
23 first place. With respect, this is also not true as set forth
24 in Annex R39, officials at the Ministry of Foreign Affairs
25 recognized in 1966, and I quote, "Suriname cannot even appeal

16:18:56 1 to the circumstance, as can Germany, that the configuration of
2 the coast makes the equidistance line disadvantageous."

3 Now, Suriname's treatment of the events following from
4 the 1958 Aide Memoire is equally striking. I will not go in
5 many details for reasons of time, but on many issues we have
6 not found Suriname responding to important documents, including
7 internal memorandum. But based upon the Greenwood
8 categorization that they are of less relevance--I will not deal
9 at length with it--there is, of course, that may also take away
10 the last doubts you may have, the well-known statement by
11 Professor Riphagen in the oral pleadings in the North Sea
12 Continental Shelf Cases. Everybody who browses through the
13 judgment of the Court in North Sea Continental Shelf Cases can
14 read that Professor Riphagen was the agent of the Kingdom of
15 the Netherlands and speaking as the principal legal advisor of
16 the Kingdom ministry of Foreign Affairs, and it is quite
17 notable that he reported, I quote, "the Kingdom of the
18 Netherlands responsible for the foreign relations of Suriname
19 has never laid a legal claim to such boundary line [that is the
20 10-degree line] ...on the continental shelf adjacent to
21 Suriname."

22 In Guyana's view, this is all very powerful evidence
23 that constitutes clear statements against interests under
24 established international law, or in the terms of Libya-Malta,
25 it provides a very helpful indication of any view of either

16:20:54 1 party as to what would be credible, differing from the view of
2 what was taken in pleadings before the Court.

3 A few words, Mr. Chairman, on the situation regarding
4 French Guiana which, in fact, Professor Greenwood introduced in
5 our proceedings. He said, "We have made no attempt whatever to
6 explain away why the equidistance approach which Guyana is
7 urging on this Tribunal has not been used elsewhere in boundary
8 delimitations in adjacent States in South America." In fact,
9 we have included in your folder a copy of the very first page
10 of the Judge Aréchaga chapter where he confirms that the south
11 American maritime delimitation treaties in the Atlantic Ocean
12 all concluded after the '58 Conference followed the method of
13 equidistance. You can find that under Tab 44(c).

14 It is also very interesting to refer to Suriname's own
15 Planatlas published by the National Planning Office of Suriname
16 in 1988, and it is included at Tab 5 of your folder. And we
17 have the relevant quotation describing the equidistance line
18 pursued in the boundary delimitation between Suriname and
19 French Guiana here on the screen. And in view of the
20 similarity, the broad similarity--I'm not a geographer--of the
21 relevant geography, Suriname's embrace of equidistance with
22 French Guiana cannot be reconciled with its attitude before
23 this Tribunal. Indeed, Suriname has never offered any
24 principal distinction between the two situations. Surely, if
25 it could have, it would have. Its failure to do so requires no

16:23:10 1 further comment.

2 Mr. President, I come to my conclusions. They are
3 three. As regards the applicable law, Guyana respectfully
4 submits that the 1982 Convention vests your Tribunal with the
5 authority to apply both the Convention and other rules of
6 international law not incompatible with the Convention.

7 Two, the equidistance methodology is the starting
8 point for any maritime delimitation and the contemporary
9 international law, both for opposite and laterally adjacent
10 coasts. Guyana submits that your Tribunal should apply the
11 equidistance methodology first, and, if necessary, correct it
12 as regards the continental shelf and the Exclusive Economic
13 Zone in the light of relevant circumstances in order to achieve
14 the results as stipulated in the '82 Convention.

15 Three, the review of the history and the conduct of
16 the parties is fully in support of the application of the
17 equidistance methodology. In particular, Commander Kennedy's
18 line, starting from the outer limits of the line delimiting the
19 territorial sea is nearly identical to the 34-degree line.

20 Mr. President, Members of the Tribunal, I thank you
21 for your attention, and on a personal note allow me also to
22 express my gratefulness for the courtesy extended to me by all
23 members of the team of Suriname. Personally, I did not find on
24 occasions it easy to participate in a case opposing a nation
25 and a people for which for so long I have great respect and

16:25:02 1 friendship as much as I have got that now for Guyana. However,
2 Sir Shridath gave me time and again peace of mind and
3 conscience that the peoples of Guyana and Suriname are one
4 people and have a shared common destiny. Hopefully, on
5 whatever sides we are, we are professionally, of course, in the
6 best way we can contributing to the delivery of justice, and I
7 look forward to your Tribunal assisting both countries in
8 realizing their right to development.

9 Mr. President, this concludes my presentation. May I
10 invite you to call upon my colleague, Professor Payam Akhavan.

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

13 There is a question for you.

14 ARBITRATOR SMIT: Professor Schrijver, you say that
15 Mr. Guillaume, who spoke at this Sixth Committee.

16 PROFESSOR SCHRIJVER: Sixth Legal Committee.

17 ARBITRATOR SMIT: Was stated to be the President of
18 the ICJ and spoke in that capacity.

19 Is it correct to conclude from that that in any case
20 now in the future will come before the ICJ, he should recuse
21 himself?

22 PROFESSOR SCHRIJVER: Could you repeat the last part
23 of your question?

24 ARBITRATOR SMIT: I said if you are correct that he
25 was speaking for the Court that in any case coming before the

16:26:46 1 ICJ involving the maritime delimitation, he may have to recuse
2 itself and maybe the whole Court should recuse itself?

3 PROFESSOR SCHRIJVER: No, it is a somewhat academic
4 question, which of course I like, but Judge Guillaume is no
5 longer serving on the International Court of Justice, has been
6 succeeded by Judge Ronnie Abrahams, and at the time we could
7 see in the summary record, I'm most willing to make it
8 available to the Tribunal, that the agenda item lists a
9 statement by the President of the International Court of
10 Justice. He was also welcomed in that capacity by the Vice
11 Chairman.

12 ARBITRATOR SMIT: But at the time he made the
13 statement he was no longer a member?

14 PROFESSOR SCHRIJVER: He was in 2001 certainly a judge
15 and the President of the ICJ.

16 ARBITRATOR SMIT: At the time he made the statement,
17 he purported to express the view of what the status of the law
18 was as to matters that come before the ICJ.

19 PROFESSOR SCHRIJVER: Yes. And he did so in the
20 context of the annual President's speech to the United Nations.

21 ARBITRATOR SMIT: Isn't it highly unusual for a
22 sitting judge to express his views about what the status of the
23 law is with respect to matters that may come before the Court?

24 PROFESSOR SCHRIJVER: Professor Smit, that is in the
25 field of public international law not unusual because

16:28:04 1 sometimes, yeah, speaking from that capacity you can also
2 assist states and other relevant actors to have the
3 international law clarified.

4 More recently, President Wolfrum did that in his
5 statement last week to the United Nations, and there was a
6 fabulous speech earlier this year by the new President of the
7 ICJ, President Rosalyn Higgins, and of course there are
8 differences, but it also reflects the evolution of the thinking
9 of the Court as a collective body. There was a reference, I
10 believe, by Professor Oxman to the speech by President Higgins
11 taking some distance from earlier views on the competition
12 between the Tribunals and courts based in The Hague and
13 elsewhere. She feels that they now have a very complementary
14 role.

15 ARBITRATOR SMIT: Another question: If this Tribunal
16 were to decide the case one way or another, could it not take
17 comfort in the fact that whatever it decided it would be
18 regarded as a subsidiary expression of international law in the
19 sense of Article 38 of the Statute?

20 PROFESSOR SCHRIJVER: Professor Smit, indeed also the
21 decisions by an Annex VII tribunal qualify as a supplementary
22 means of interpretation of the current state of international
23 law as referred to in Article 38. So, you are fully right that
24 your award will be extremely important for, yes, assessing the
25 state of the law in this particular sensitive area of public

16:29:46 1 international law.

2 ARBITRATOR SMIT: And we are not bound by the doctrine
3 of stare decisis by any expression given by any earlier
4 Tribunal?

5 PROFESSOR SCHRIJVER: No, you are not bound. No. You
6 are completely at freedom to make a complete U-turn, but that
7 may bring quite some intense reaction.

8 ARBITRATOR SMIT: Or we might be free to reconcile all
9 the different views that have been expressed by turning to what
10 we think the appropriate considerations are in reaching an
11 equitable decision.

12 PROFESSOR SCHRIJVER: I can only wish you all success
13 in this very important effort.

14 Thank you.

15 PRESIDENT NELSON: I thank you, Professor Schrijver.

16 I now give the floor to Professor Akhavan.

17 PROFESSOR AKHAVAN: Mr. President, Members of the
18 Tribunal, I will briefly address Suriname's response to our
19 submissions on use or recourse to force. In doing so, I will
20 be referring to various documents found in Tab 45 of your
21 folder.

22 My distinguished friend Professor Greenwood referred
23 to the surgical precision with which Professor Murphy responded
24 to our claim, and surgical it was, except that in this case the
25 surgeon removed the wrong organ.

16:31:09 1 Suriname's pleading was most remarkable because of
2 what it did not address. Professor Murphy admitted the central
3 and obvious fact that Suriname's recourse to military coercion
4 was intended as a countermeasure aimed at inducing Guyana to
5 comply with Suriname's demands. But he persisted in the theory
6 that this was a coastal enforcement measure as if this dispute
7 is about the arrest of a fishing vessel on the high seas.
8 There could be no doubt whatsoever that this was a frontier
9 incident between two sovereign states and that it is directly
10 linked to the maritime boundary dispute before this Tribunal.

11 And in terms of jurisdiction, only the most rigid
12 formalism would conclude that in its many exchanges with
13 Guyana, Suriname did not have adequate notice that the incident
14 was substantially related to the 1982 Convention.

15 Suriname presumes that Guyana's authorization of
16 exploratory drilling was an unlawful act and therefore that it
17 was justified in pursuing its countermeasure. But Suriname has
18 admitted that a well was previously drilled in close proximity
19 under Guyanese license and makes no mention of the fact that
20 this CGX rig was well within the provisional equidistance line
21 which is depicted in Tab 45(a) of your folder, and that Guyana
22 relied in good faith on this precedent.

23 Professor Murphy did not even bother to address
24 Professor Churchill's and Ulstein's Marine Management in
25 Disputed Areas at pages 85 to 86, which I previously cited and

16:32:44 1 which is in Tab B of your folder, and which is cited in
2 Churchill and Lowe's Law of the Sea at page 192, on which
3 Suriname relies. He did not even bother to address this source
4 which clearly indicates that the temporal scope of the
5 obligation not to drill in a disputed area under Article 83(3)
6 of the Convention is not indefinite, that it lapses at some
7 stage, not least where one party has pursued a policy of
8 filibuster.

9 The gravest omission, however, in the counsel for
10 Suriname's presentation was the failure to mention that the CGX
11 rig was many days away from drilling a well. The statements of
12 Mr. Netterville at paragraph five and Mr. Barber at paragraph
13 four, these are at Tabs 38 D and E of your folders, these
14 statements indicate that the rig had just arrived, that no
15 drilling had actually taken place, that the rig was still in
16 the jacking up or stabilization and raising process, and the
17 April 10, 2000 CGX press release, which is contained in Tab C
18 of your folder, indicates that the drilling of the 12,500-foot
19 well was expected to take 45 days, which would obviously
20 require many days of preparation. In other words, there was
21 ample time, ample time for peaceful negotiation on June 3rd, an
22 obligation that Guyana vigorously pursued and which Suriname
23 rejected. This, we submit, is the central issue before the
24 Tribunal.

25 Counsel for Suriname focused exclusively on use of

16:34:18 1 force and completely failed to address the broad scope of
2 Article 279 which forms the basis for Guyana's claim, and
3 within which we think the general allegation on use of force in
4 Guyana's submission should be construed. It is very clear from
5 Guyana's pleadings that the threat of force forms the primary
6 basis for our claim, and that use of force is used in a general
7 sense to refer to recourse to force, and the Tribunal need not
8 engage in this sort of metaphysical hair splitting which
9 counsel for Suriname engages in.

10 Counsel for Suriname did not deal at all with the
11 Simma Commentary's observation at page 587 that "the obligation
12 of peaceful settlement is not subsumed by the prohibition of
13 the use of force, but possesses a specific substance of its
14 own." And it is our submission that whether the CGX incident
15 is characterized as threat of force or merely a hostile act,
16 there is an affirmative obligation to exhaust all peaceful
17 means prior to imposing such measures against another state.

18 Counsel for Suriname completely ignored evidence of
19 President Jagdeo's cordial exchange with President Wijdenbosch
20 on June 2nd, their agreement that the respective Foreign
21 Ministers should establish immediate contact and Guyana's
22 subsequent Note Verbale. There was no explanation whatsoever
23 as to why the parties could not negotiate on June 3rd, many
24 days before any drilling operation could have commenced.

25 With respect to the definition of armed force, Counsel

16:35:52 1 for Suriname failed even once to mention the Nicaragua case
2 reference to "less grave forms of force" and "mere frontier
3 incidents," let alone explain why it would not apply to the
4 present case. This case appears at Tab D. This is
5 well-settled law. Even the Tokyo Tribunal in 1946 made a
6 distinction between aggression and a mere "clash between border
7 patrols." Ian Brownlie wrote in 1963 that "the victim of an
8 unlawful resort to force, whether as a major military onslaught
9 or as a minor frontier incident, has a claim for adequate
10 compensation." This is Tab E.

11 In a more recent work on armed force, Professor
12 Christine Grey explains that "the difference envisaged in the
13 Nicaragua case is one of degree rather than of kind; that is,
14 both frontier incidents and armed attacks were attributable to
15 the state." This is at Tab F.

16 It is with good reason that the prohibition on force
17 does not trivialize minor incidents because as history has
18 demonstrated, a mere frontier incident may well be the spark
19 that leads to the conflagration of war. Indeed, counsel for
20 Suriname noted Lieutenant Colonel de Mees's admission that in
21 this confrontation "the first shot would be the start of a
22 war." This is at Rejoinder Annex 17, paragraph 13.

23 But we are told, Mr. President, that the concept of
24 force only applies to states with powerful navies. That small
25 developing countries with gunboats are exempt because they only

16:37:28 1 brandish 7.62-millimeter machine guns and not 50 millimeter
2 cannons or torpedoes. We're told that unless and until a
3 frontier incident results in war, there is no scope for the
4 prohibition on force.

5 And it is "silliness beyond words," says Professor
6 Greenwood, to suggest that such conduct is inconsistent with
7 the obligation to settle disputes by peaceful means under
8 Article 279 of the Convention.

9 With respect to the definition of a threat, counsel
10 for Suriname attempts to transform this interstate proceeding
11 into a criminal trial where Guyana must establish mens rea or
12 animus aggressionis on the part of Surinamese officials. He is
13 focused exclusively on their state of mind and not on the
14 objective circumstances from which a threat of force may be
15 inferred. This is the appropriate standard for state
16 responsibility. With respect to aggression, for instance, the
17 International Law Commission has expressed the view that
18 threats consist of messages which would give "good reason" to
19 believe that aggression is being seriously contemplated. This
20 source is in Tab G.

21 In relation to less grave forms of threat and force,
22 as in the present case, the applicable standard would be
23 whether the statements made by the Surinamese Navy gave good
24 reason to Guyana's licensees to believe that force was being
25 seriously contemplated.

16:38:54 1 Now, counsel for Suriname emphasized Captain Bholla's
2 statement at the Rejoinder Annex 16, paragraph eight, that in
3 coastal enforcement, "My instructions never implied that I may
4 use force." This, we submit, with great respect, is a case of
5 factual overreach which has no credibility whatsoever. And as
6 set forth previously, witness statements by Surinamese military
7 officials submitted only at the Rejoinder phase, when Guyana
8 could no longer submit additional evidence, should be treated
9 with considerable caution by the Tribunal.

10 In any event, turning to the objective circumstances
11 of the CGX incident rather than the subjective claims of
12 Suriname's military officials, the Tribunal must consider
13 whether the presence of two gunboats with mounted machine guns
14 together with the utterance of warnings would give good reason
15 to believe that threat of force was being made. In this
16 connection, Professor Murphy's statement that the machine guns
17 were stored below deck is astonishing. There is no evidence
18 whatsoever in the record for this assertion unless he now
19 claims to be a witness himself. On the contrary, the
20 statements of Captain Bholla and Galong both clearly state that
21 this weapon was on board the boats, and it is simply not
22 credible to suggest that the weapons would be brought on board
23 simply to be stored below deck. That is unless the boats were
24 sent merely as peaceful messengers, in which case it's not
25 clear what purpose they would serve since obviously there were

16:40:24 1 other more expedient means of communication with the rig, such
2 as radio or INMARSAT or other means of communication.

3 The bottom line is that the Tribunal must consider
4 whether and why two highly experienced rig crew who were
5 completely disinterested and have no relation whatsoever to the
6 Government of Guyana would exaggerate or fabricate the claim
7 that they feared the imminent use of lethal force against them.
8 Professor Murphy speculates that it was impossible for the crew
9 to see the machine guns on the boats because it was nighttime.
10 There is no explanation whatsoever as to whether there was
11 moonlight, artificial lights, or other visual aids that would
12 have allowed the crew to see the weapon.

13 And the most incriminating fact here is that Suriname
14 does not provide a photograph of the actual gunboat indicating
15 the size of the mounted machine guns, and surely this was
16 available to counsel for Suriname. Instead, we are treated to
17 a photo of a boat that resembles a yacht. In an apparently
18 Freudian slip Professor Murphy himself referred to a gunboat,
19 and I think he would agree that it certainly was not "The Love
20 Boat."

21 Counsel for Suriname further asserted that construing
22 the statement, "The consequences will be yours," as a threat of
23 force is mere conjecture. What about Ian Brownlie's "implied
24 promise of force" standard to which we have both referred? The
25 Surinamese gunboats did not say please leave or we will be

16:41:48 1 disappointed. They did not say kindly comply or we will return
2 to Paramaribo and inform the Foreign Ministry. Even if there
3 was no express threat of force, the implications were clear,
4 and contrary to what Professor Murphy suggests, the CGX crew
5 were clearly not nervous because of a threat of a police
6 summons for speeding. They were told to leave or else. Leave
7 or face the consequences, and they were told to do so by two
8 gunboats brandishing machine guns.

9 To the extent that any credence is given to Captain
10 Galong's claim that he told the crew that it was not our
11 intention to harm them, it must be interpreted as a reassurance
12 to the already frightened crew that if they complied with the
13 Navy's demands, they would not be harmed. We are given suspect
14 evidence as to what the subjective state of mind of what the
15 Surinamese military was, but nothing as to whether a threat of
16 force may be reasonably inferred from the circumstance, and to
17 the extent that the Tribunal would apply a reasonable rig
18 supervisor test, we respectfully submit that the statements of
19 Mr. Netterville and Mr. Barber satisfied the standard.

20 In summary, the standard for threat of force as set
21 forth by Ian Brownlie is whether there was resort to force by
22 one state conditional on nonacceptance of certain demands by
23 the other state, and this we respectfully submit is exactly the
24 situation before the Tribunal.

25 What makes this issue so important for Guyana and for

16:43:11 1 this Tribunal is that beyond friendly and peaceful relations,
2 this conduct has inflicted tremendous damage and injury on
3 Guyana's development, not least over the past six years. It
4 may be recalled that beyond scaring off Guyana's Licensees,
5 Suriname has even pressured Repsol YPF into not conducting any
6 exploration activity, whether seismic or otherwise throughout
7 the Georgetown Block, most of which lies outside even the
8 10-degree line. This is depicted in Tab 45(i) of your folders
9 this. This punitive policy, this punitive policy commencing
10 with filibuster through insistence on the 10-degree line, the
11 forcible expulsion of the CGX rig and the effective termination
12 of all offshore development explains why Guyana attaches such
13 importance to the vindication of peaceful dispute settlement in
14 this proceeding.

15 Mr. President, Members of the Tribunal, counsel for
16 Suriname claims that responsibility, state responsibility,
17 should not be joined with a boundary dispute because this would
18 discourage states from complying with the awards rendered by
19 international tribunals. We respectfully submit on the
20 contrary that the Tribunal can ill afford to establish a
21 precedent whereby hostile acts and military coercion are
22 disregarded merely because there is a frontier dispute among
23 states. As the Eritrea-Ethiopia Claims Commission has noted,
24 and this is at paragraph 8.11 of our Reply, "border disputes
25 between states are so frequent that any exception to the

16:44:47 1 prohibition on the threat of force would create a large and
2 dangerous hole in a fundamental rule of international law." If
3 Article 279 is to have a preventive effect, it must not
4 trivialize such border incidents. Guyana has acted with
5 considerable self-restraint in this instance, and it is our
6 hope that this proceeding will only strengthen friendly
7 relations with Suriname and make this dispute a thing of the
8 past.

9 But another neighbor in another boundary dispute may
10 have reacted differently, and a mere border incident could have
11 resulted in escalating reprisals and even full-scale armed
12 conflict. The Tribunal is thus presented with a unique
13 opportunity to establish the principle that the strict and
14 exacting obligation on peaceful dispute settlement is so
15 fundamental, so essential to the viability of international law
16 that it must embrace even minor incidents of military coercion
17 in interstate relations, especially where peaceful alternatives
18 are so readily available.

19 This concludes my presentation, Mr. President. I take
20 this opportunity also to pay my respect to my esteemed
21 colleagues in the Surinamese delegation. It has been a
22 privilege and honor to appear before you, and I thank you for
23 your patience and consideration.

24 PRESIDENT NELSON: Thank you very much, Professor
25 Akhavan.

16:46:13 1 You have a question. Sorry.

2 ARBITRATOR SHEARER: Thank you, Mr. President.

3 Professor Akhavan, I just have one question. Could
4 you clarify for me the basis in state responsibility for this
5 cause of action against the rig? It was not flying the flag of
6 Guyana. It was not owned by Guyanese. You say I think it was
7 a shipshape rig that had not yet put down its feet, as it were,
8 and is it on the basis that it was licensed by Guyana? I
9 follow your argument about the consequences for Guyana and so
10 on, but what gives Guyana a basis to bring a claim especially
11 for monetary damages against this rig?

12 PROFESSOR AKHAVAN: Yes, thank you very much,
13 Professor, for that question. In this case it is clear that if
14 Guyana was seeking damages on behalf of let's say Reading and
15 Bates or the country which was flying the flag, whether it's
16 Marshall Islands, U.S. nationals, that the claim would have
17 been very different. You would have noticed from the claim for
18 damages that we are not seeking damages for, let's say, costs
19 incurred by Reading and Bates or by CGX Energy, but only
20 damages which are directly relevant to Guyana. In this case,
21 clearly the presence of the CGX rig was by virtue of Guyana's
22 claim to sovereign jurisdiction over the relevant area, and
23 Suriname's use of force was in directly disputing that claim.
24 So, in that context, it's very clear that there is a
25 direct link between the presence of that rig in territory

16:48:06 1 claimed by Guyana, and that Suriname's force is not so much
2 against the rig as it is in order to compel Guyana to comply
3 with its demands. And this, we submit, is the distinction
4 between arresting a ship on the high seas. Of course, unless
5 one subscribes to the Lotus case with the ship as a sort of
6 floating piece of territory, theory which is clearly not the
7 case here, that in this case there is a use of force in order
8 to resolve a frontier dispute between two sovereign states, and
9 the CGX rig simply symbolizes, if you like, that dispute.

10 ARBITRATOR SMIT: Professor Akhavan, you said twice
11 that they were brandishing machine guns. Now, brandishing to
12 me conveys displaying them and creating the impression that one
13 is ready to use them if the occasion may warrant. Is that your
14 interpretation of the term?

15 PROFESSOR AKHAVAN: Well, the facts indicate,
16 Suriname's own statements indicate, Professor Smit, that there
17 were two group weapons, meaning to say mounted machine guns,
18 we're even given a description of what those weapons are, and
19 the fact that you have a "gunboat" which is what the CGX crew
20 described it as making certain threats while there is such a
21 weapon on board, I think the implications are clear. It would
22 be the equivalent of someone walking into a convenience store
23 late at night with a gun and making certain threats. Now,
24 whether that gun is loaded or not whether it's a toy gun or an
25 actual gun is not the relevant question. The relevant question

16:49:56 1 is, is there a reasonable perception that that weapon can be
2 used in order to inflict lethal harm? And this, we submit, is
3 exactly the case here. There is a boat with weapons on board
4 uttering a threat, and the CGX crew who are totally
5 disinterested witnesses interpreted that as an imminent threat
6 of lethal force.

7 ARBITRATOR SMIT: It doesn't necessarily imply that
8 there was someone ready standing by the gun and aiming it at
9 someone?

10 PROFESSOR AKHAVAN: Certainly not. We would not
11 stretch the record to try and fit our interpretation, but we
12 have established, we believe, that there was a group weapon, a
13 7.62-millimeter machine gun on board, and that the presence of
14 that weapon in combination with the utterance of the threat was
15 perceived, reasonably we would submit as a threat of force.

16 ARBITRATOR SMIT: Now, your other argument that
17 Suriname saying you must face the consequences has filled me
18 with some trepidation because I often tell my students that
19 they have to do certain things, and then they ask me, and some
20 have the temerity to ask me, what are the consequences if we
21 don't, and I tell them that is for me to know and you never to
22 find out. And I say that because actually, I have very little
23 that I can do to effect that.

24 Now, is it possible to put that kind of construction
25 on what Suriname did in these circumstances?

16:51:40 1 PROFESSOR AKHAVAN: Well, Professor Smit, with the
2 greatest respect, if you were to walk in into the classroom
3 with a 7.62 millimeter machine gun and make the exact
4 statement, I would take it very seriously.

5 ARBITRATOR SMIT: But then I was brandishing; right?

6 PROFESSOR AKHAVAN: Even if you were just holding it
7 by your side, I would be filled with trepidation.

8 PRESIDENT NELSON: Thank you.

9 ARBITRATOR FRANCK: Professor Akhavan, clearly if the
10 CGX rig had been west of, let's say, the 10-degree line, there
11 would have been no question that a couple of gunboats from
12 Suriname telling it to pull up and move over would be an
13 invasion of Guyanese sovereignty, but it wasn't in an
14 undisputed area. It was in a disputed area, as you yourself
15 have said, and so we won't know until this case has been
16 resolved whether it was, in fact, on Guyanese territory or not.
17 It might have been on Surinamese territory for all we know at
18 this stage.

19 Under those circumstances, Suriname has said the
20 Nigeria-Cameroon case makes clear that the ICJ at least would
21 not award damages for asserted violations of sovereignty of a
22 state whose sovereignty is only alleged prior to the time that
23 that sovereignty has been determined and perhaps not even
24 afterwards, not even after it's been alleged--it's been
25 determined by the Court because the compensation would be part

16:53:29 1 of the decision that that territory belonged to the state to
2 which the territory had been ascribed. So I wondered, you
3 haven't addressed that confrontation of your claim by Suriname,
4 and I wondered if you would do that for us.

5 PROFESSOR AKHAVAN: With pleasure, Professor Franck.

6 The Nigeria-Cameroon case, as I explained in my
7 initial presentation, actually did not give compensation to
8 Cameroon and did not give compensation to Nigeria which had
9 made similar counterclaims on the grounds that the parties had
10 not produced sufficient evidence to prove their claims, and I
11 believe I referred you to the essay by Judge Higgins which
12 indicated the Court's reasoning, and we see from the judgment
13 that the Court says in the circumstances of this case we
14 believe that the judgment and the withdrawal of the Nigerian
15 forces is adequate redress for the claim by Cameroon.

16 So, we don't believe that that is an enunciation of
17 the general principle that where there is no distinct basis for
18 state responsibility, namely unlawful use of force, that
19 responsibility does not attach to what is clearly an
20 internationally wrongful act.

21 And one can see the tremendous danger in establishing
22 the precedent that the mere existence of a frontier dispute
23 justifies recourse to force. I have referred in my first
24 presentation and in our written pleadings, we have referred to
25 the Declaration of Friendly Relations which is an authoritative

16:55:10 1 interpretation of the U.N. Charter which specifically says that
2 the prescribed uses of force under the U.N. Charter extends to
3 boundary disputes. There is an express reference to that.

4 And I would finally add, Professor Franck, that in
5 paragraph 8.11 of our Reply, we refer to the Jus Ad Bellum
6 Partial Award of the Eritrea-Ethiopian Claims Commission which
7 found that Eritrea had acted in violation of the Jus Ad Bellum
8 in the village of Badme which had been awarded to Eritrea in a
9 separate Boundary Commission proceeding. So in this case, even
10 though Eritrea was awarded that disputed territory, the Claims
11 Commission found there was still a basis for attribution of
12 state responsibility.

13 And we would invite the Tribunal in this instance when
14 the facts are so clear and exactly because we are dealing with
15 a minor incident, to set clear the rule that where peaceful
16 dispute settlement procedures have not been exhausted, where a
17 remedy is available, it is simply not appropriate to have
18 recourse to force and that that is a separate grounds for
19 responsibility, irrespective of how the Tribunal rules on the
20 delimitation of the boundary.

21 PRESIDENT NELSON: Thank you, Professor Akhavan.

22 I give the floor to Sir Shridath Ramphal.

23 SIR SHRIDATH RAMPHAL: I feel just like Cinderella at
24 five minutes to midnight. I assure you I shall do my best to
25 ensure that I don't turn into a pumpkin.

16:57:06 1 Mr. President, there were times over the last four
2 days of argument immediately preceding today when I felt myself
3 transported, to recall Professor Greenwood's metaphor,
4 transported to a hearing in the Privy Council many, many years
5 ago when as a young pupil to the late and much loved Dingle
6 Foot, I listened fascinated as that great common lawyer Sir
7 Hartley Shawcross after a lengthy and at times quite
8 impassioned submission for one of the other parties, rose and
9 said to the board, "My Lords, the submissions we have just
10 heard have as much to do with this case as the flowers that
11 bloom in spring." But there were other times, Mr. President,
12 when my learned friends' arguments deserved and required a
13 response, and so Guyana has responded, and I rise to close
14 those responses.

15 After all my colleagues have said already, there is,
16 of course, really not so much for me left to add, save
17 primarily some observations in relation to my original
18 substantive arguments about Articles 74(3) and 83(3), the issue
19 of Suriname's failure to make every effort to enter into
20 provisional arrangements of a practical nature pending a final
21 resolution of the maritime dispute, the issue to which
22 Professor Murphy spoke, and I shall confine my remarks to this
23 issue.

24 Let me say at the outset that having heard all that
25 Suriname has had to say in these proceedings supplementary to

16:59:17 1 its pleadings, including all that Professor Murphy urged on you
2 somewhat selectively last Friday, I invite the Tribunal to
3 conclude that Suriname simply did not make that every effort
4 with regard to provisional arrangements for which the
5 Convention calls. It was a qualitative failure, but one of
6 much significance for the parties and, indeed, for this case.
7 Suriname simply did not want to enter into provisional
8 arrangements of a practical nature in the maritime area. As we
9 say in the Caribbean, "they had other fish to fry."

10 Mr. President, Members of the Tribunal, the
11 irresistible inference from the record is that Suriname had
12 taken a strategic decision not to engage seriously with Guyana
13 on provisional arrangements in the sea, or to be drawn into
14 such an engagement, unless Guyana made concessions to them, in
15 relation to the reopening of the land boundary between Guyana
16 and Suriname and Brazil in the area described as the New River
17 Triangle, matters to which Professor Greenwood made reference
18 in his opening.

19 I make no comment on those territorial claims. They
20 are not before this Tribunal, as Suriname agrees, but Guyana
21 does regret their having been made the basis of a strategy of
22 refusal to fulfill the legal obligations to Guyana that
23 Suriname had under the Convention on the law of the sea, for a
24 refusal it was, whether it took the blunt form of the Misier
25 formula of the offshore not being a matter for discussion, or

17:01:34 1 Dr. Essed's more oblique but no less candid assertion that
2 Suriname was going for broke, it is all or nothing.

3 Having taken that strategic position, Suriname really
4 should not be upset that we draw attention to it because it had
5 significant legal implications, including implications for
6 these proceedings. In defense of that position, what Suriname
7 is saying, in effect--although they don't do it in so many
8 words--is that Articles 74(3) and 83(3) of the 1982 Convention
9 must be read as if they were each followed by a subparagraph
10 which said something like "Nothing in subparagraph three above
11 shall apply to any State Party to a dispute which considers it
12 not in its interest to enter into provisional arrangements of a
13 practical nature, et cetera."

14 And, in fact, this is what they do say inferentially
15 in their Rejoinder, although Professor Murphy glided
16 away--backed away it too strong and, indeed, not elegant
17 enough--glided away from saying so last Friday, when they
18 assert, and in the Rejoinder say, that the Articles amount to
19 no more than an exhortation to the parties to cooperate as best
20 as possible in the period prior to the conclusion of the final
21 delimitation agreement--encouragement, merely--and not even
22 related specifically to provisional measures of a practical
23 nature. Professor Murphy was only a shade less dismissive.
24 The transcript at pages 37 to 38 of Volume 7 will recall what
25 he said.

17:03:45 1 It just requires, he concluded, that the two States
2 should be engaging in some level of discussions that are
3 meaningful and that they do address the issues between them.
4 The Rejoinder had earlier warned--and this is important for
5 this Tribunal--at most, the Tribunal can make a judgment as to
6 whether the parties have made efforts to resolve their
7 differences through negotiations. It is as if the whole notion
8 of provisional measures of a practical nature is totally lost
9 on Suriname. Not surprisingly, it behaved in just that way,
10 and Guyana urges the Tribunal to ensure that your Award is not
11 remembered for endorsement of those propositions either in
12 relation to the obligation of the parties under Article 74(3)
13 or 83(3) or the authority of the Tribunal that is evaluating
14 compliance with them.

15 Suriname's interpretation, we submit, drives a coach
16 and four through these crucial provisions of the Convention.
17 They do so mainly by asserting the obvious, that the Convention
18 does not require the parties to actually agree on provisional
19 arrangements. Of course it does not. I said so myself in my
20 presentation to you last Monday when I talked about it taking
21 two to tango. Guyana may and does regret that its efforts to
22 secure provisional arrangements did not succeed, but it has
23 never argued that the fact of such failure constitutes a breach
24 of Articles 74 and 83 of the Convention. What constitutes a
25 breach of the Articles is failure of one of the parties to make

17:05:55 1 every effort to enter into such arrangements. Nonagreement by
2 itself--let me emphasize--does not establish that. The
3 obligation is one of conduct, not of result. But failure by
4 either party to make every effort to agree on provisional
5 arrangements is a breach of the Convention, and that is what we
6 say Suriname did by its conduct. It failed to make every
7 effort to enter into provisional arrangements. Provisional
8 arrangements were just not on its agenda.

9 There will be many cases in which both parties
10 genuinely want to put in place provisional arrangements of a
11 practical nature pending settlement of the maritime dispute,
12 but try as they might, they fail to agree on them. They make
13 every effort to agree, but agreement eludes them. UNCLOS asks
14 no more. Article 74(3) and 83(3) ask no more. But where one
15 party sets its face against agreement and adopts a tactic of
16 "stonewalling," Professor Murphy's word following our Memorial,
17 how could they ever be said to have made every effort to enter
18 into provisional arrangements? Suriname surely couldn't
19 disagree with that proposition. Then the question becomes in
20 this case: Did Suriname make every effort? If in these
21 proceedings it asserts that it did, it is, we submit, because
22 it recognizes a need to bring itself within the four walls of
23 the Convention.

24 And let me be clear. This is not because of some
25 unintended implication of the drafting of UNCLOS. This is the

17:08:01 1 very architecture of the Convention in relation to disputes.
2 Substantively, the Convention is serving the interests of all
3 States that are parties to it by insisting that those who have
4 a maritime dispute must do everything they can to settle it,
5 and that pending settlement, they must do all they can to agree
6 on provisional arrangements of a practical nature which would
7 not prejudice the ultimate resolution of the dispute,
8 arrangements like those put forward in Guyana's concept paper
9 that enabled the resources of the disputed area to be explored
10 and exploited on an agreed and shared basis.

11 This Tribunal, we submit, does not need to be shy of
12 saying that, under the Convention, a party to a maritime
13 dispute must not purposefully avoid settling it because of some
14 other problem with its neighbor, whether it is a problem over
15 some other boundary or over some matter that does not concern
16 boundaries at all, like economic rivalry or social tensions or
17 ethnic differences or any other of the endless forms of human
18 differences. In other words, UNCLOS is saying in the matter of
19 maritime disputes which is its domain that States who are
20 parties to it must settle their maritime disputes by means
21 provided by the Convention, and pending that settlement must
22 make every effort within their capacity to agree on interim
23 arrangements.

24 This requirement is not met by quantitative measures.
25 It is met, and can only be met, by qualitative standards, which

17:10:07 1 is why it calls specifically for a spirit of understanding and
2 cooperation. When a State allows other considerations to blunt
3 that spirit of understanding and cooperation in relation to
4 provisional arrangements, it really prevents itself from making
5 every effort to agree on them. In doing so, it violates
6 Articles 74(3) and 83(3) of the Convention. In this case,
7 certainly Guyana came to believe that that intervening
8 consideration was a land boundary far away, but there are
9 maritime disputes in parts of the world where some of these
10 other considerations are actually active. UNCLOS says they
11 must not get in the way of cooperative, practical, provisional
12 arrangements between neighbors pending that final settlement.
13 That, Guyana submits, is the law, and it invites the Tribunal
14 to use this opportunity to say that clearly to a world that
15 needs the UNCLOS spirit and methods.

16 In his presentation to the Tribunal last Friday,
17 Professor Murphy did concede that paragraph 3 of Articles 74
18 and 83 did impose an obligation, a legal obligation, to make
19 what he described as a "good-faith effort," but he didn't go on
20 to say to what end. And then he went on to provide a table of
21 meetings at different levels that Suriname attended with
22 Guyana. He claimed that that illustrated that Suriname did
23 make every effort as required by UNCLOS.

24 Mr. President, Members of the Tribunal, in the days of
25 the Cold War, the Russians attended every meeting of the

17:12:17 1 Security Council, save one: When their absence had rather
2 decisive results. And they used their attendance to veto
3 innumerable resolutions directed at the peaceful resolution of
4 global problems. Quantitatively, they were very, very active.
5 Qualitatively, did they make every effort to agree on these
6 arrangements for peace? No. Perhaps I should say "nyet." It
7 was not their intention to agree. They, too, had other fish to
8 fry.

9 I am, of course, not equating Suriname with the Soviet
10 Union. I'm trying to demonstrate that making every effort is
11 not a numbers game. In all the many meetings at all the levels
12 over the years, Suriname never came with proposals, from
13 President Hoyte's Proposal for Joint Development in 1989 to
14 Guyana's Concept Paper. Every initiative for provisional
15 measures of a practical nature at these meetings came from
16 Guyana. After the CGX incident, Suriname did have a proposal,
17 a proposal for Guyana to turn over all of CGX's seismic and
18 other data and all of Guyana's technical data in the disputed
19 area, says Professor Murphy, in order for Suriname to engage in
20 a meaningful dialogue about whether we would do joint
21 development of some sort.

22 And Professor Murphy was a little economical with the
23 record when he talked about Suriname accepting Prime Minister
24 Paterson's Memorandum of Understanding and Guyana rejecting it.
25 It was not as simple as that, as President Jagdeo explained in

17:14:29 1 his address to the people of Guyana on the 19th of July 2000,
2 immediately after the Jamaica meeting ended, a statement, of
3 course, in the public domain, but in your folder at tab 46. I
4 do not read it.

5 The main point about it is that the draft MOU was not
6 a finished proposal made by Prime Minister Patterson and
7 commended to both sides. It was a working document, as
8 explained by President Jagdeo, and the account of the meeting
9 is at paragraph 5.15 and 5.16 of Guyana's Memorial.

10 So much, then, for the substance of our submission.
11 When Professor Greenwood began his closing presentation on
12 Saturday, he intimated that Suriname was not adding to its
13 counterclaim against Guyana in respect of Articles 74(3) and
14 83(3) a claim for damages. It could hardly be otherwise.
15 However, the point I want to make is that in relation to
16 submission 4, that is in relation to our allegation that
17 Suriname was in breach of its obligations concerning
18 provisional measures, Guyana likewise limits its claim which it
19 advances with utmost strength, but limits its claim to one for
20 declaratory relief.

21 Mr. President, Members of the Tribunal, in all I have
22 urged, I speak, of course, for Guyana, but I do so in the
23 context of a Caribbean region to which Guyana and Suriname
24 belong, an archipelago whose maritime areas need an environment
25 of understanding and cooperation, not a culture of

17:16:35 1 strategically sustained disputes, of no-development zones, and
2 of gunboat activism. Suriname in its maritime dispute with
3 Guyana has introduced all three strains to the region. It is a
4 virulent culture from which the U.N. Convention on the Law of
5 the Sea can provide timely immunization. The message from this
6 Tribunal must be that it does so. The Caribbean which was the
7 Convention's birth place will expect no less. I recall and
8 reiterate, therefore, all I said to the Tribunal on this matter
9 in my address last Monday.

10 Mr. President, Members of the Tribunal, this is the
11 end of Guyana's substantive presentations to you. We will not
12 have another opportunity of addressing you, certainly not in
13 this case. It is right, therefore, that I shall again formally
14 place before you Guyana's submissions as they appear at page
15 159 of Volume I of Guyana's Reply, subject, of course, to the
16 modification I have intimated to you in respect of submission
17 4.

18 I seek your indulgence, therefore, for one brief final
19 word. When I spoke on the first day following Guyana's Foreign
20 Minister, I used words I would like to repeat, as Guyana's
21 presentations end, and they were these: "The equitable and
22 efficient utilization of an important part of the maritime
23 space of Suriname and Guyana now depends on this Tribunal
24 drawing the line of delimitation between them. Without that
25 maritime delimitation, those resources which in present

17:18:45 1 conditions are world resources, too, will remain unutilized.
2 Without that maritime delimitation, uncertainty, disorder, and
3 tension will reign over Guyana and Suriname's maritime zones,
4 the very dangers from which UNCLOS sought to relieve all
5 countries. Compliance with your Award to which I can now say
6 Guyana and Suriname are pledged can allow both countries to put
7 a not always worthy past behind them. In so doing, they would
8 honor the ancestors whose sacrifices made that future
9 possible."

10 I recall those thoughts, Mr. President, with
11 particular emphasis on the future. It is common ground that
12 the resource-potential of the Guyana-Suriname shield is
13 considerable. Suriname, on the eve of these proceedings,
14 announced the drilling of exploratory wells offshore during the
15 coming year, and Guyana wishes that those efforts should
16 fulfill their promise for the people of Suriname. This week,
17 Guyana's Ambassador in Washington has been occasionally absent
18 from this hearing because he is concluding the final stages of
19 Guyana's debt relief program with the Inter-American
20 Development Bank. I do not say this by way of a plea ad
21 misericordium between the parties which would be of no
22 jurisprudential relevance. I say this in reinforcement of the
23 reality that providing the parties with an equitable line of
24 delimitation in their maritime space is now a matter of the
25 most pressing importance.

17:20:50 1 The noble purposes of CARICOM's Montego Bay
2 Facilitation Process of 2000 can yet be fulfilled by this
3 Tribunal's Award in 2007, rooted, as it will be in the 1982
4 Convention that Guyana and Suriname signed in Montego Bay 25
5 years earlier. In practical terms, that line of delimitation
6 that both parties seek of you in these proceedings will be the
7 harbinger of much needed hope for the people of our neighboring
8 countries. It will divide the maritime space, but it will be a
9 uniting line, as well.

10 Thank you, Mr. President.

11 PRESIDENT NELSON: Thank you, Sir Shridath Ramphal.

12 As you know, we won't be meeting tomorrow. There will
13 be no hearing tomorrow, Tuesday, but we will resume the hearing
14 with a final session on Wednesday.

15 Thank you very much.

16 (Whereupon, at 5:21 p.m., the hearing was adjourned
17 until 9:30 a.m., Wednesday, December 20, 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