



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

REPUBLIC OF GUYANA

v.

REPUBLIC OF SURINAME

MEMORIAL OF THE REPUBLIC OF GUYANA

VOLUME I

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PART I

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CHAPTER 1

INTRODUCTION

1.1 Guyana initiated these proceedings on 24 February 2004, acting under Part XV of the 1982 United Nations Convention on the Law of the Sea (“the 1982 Convention”). The proceedings were initiated by the filing of a Notification under Article 287 of the Convention and Article 1 of Annex VII to the Convention, together with a Statement of Claim and the grounds on which it was based. Guyana took this action for the purpose of obtaining a definitive ruling on the delimitation of the maritime spaces of Guyana and Suriname – territorial sea, continental shelf and exclusive economic zone – and to bring to an end the differences between the two States which have undermined efforts to develop the resources associated with the maritime spaces. Guyana’s initiative was premised on the availability of the dispute settlement system established by the 1982 Convention and was inspired by the preamble of the Convention, namely to “promote the peaceful uses of the seas and oceans” and to strengthen cooperation and friendly relations with Suriname, its valued neighbour.

1.2 With its notification Guyana appointed Professor Thomas Franck as an arbitrator pursuant to Article 3(b) of Annex VII to the 1982 Convention. Suriname duly appointed Professor Hans Smit as an arbitrator, pursuant to Article 3(c) of Annex VII to the 1982 Convention, and the parties then agreed on the appointment of H.E. Judge Dolliver Nelson as President and Dr. Allan Philip and Dr. Kamal Hossain as members of the Arbitral Tribunal. The Arbitral Tribunal was constituted on 30 July 2004. On 3 September 2004, Dr. Philip resigned due to illness.¹ Professor Ivan Shearer was appointed to the Arbitral Tribunal on 27 October 2004.

1.3 On 30 July 2004, the Arbitral Tribunal adopted the Rules of Procedure for the Arbitral Tribunal. Article 9(1) provided that Guyana would submit its Memorial on or before 15 February 2005. On 25 January 2005, the Arbitral Tribunal extended the time for submission of Guyana’s Memorial until 1 March 2005. This Memorial is submitted in accordance with Article 9(1) of the Rules of Procedure, and the Arbitral Tribunal’s letter of 25 January 2005.

I. Reasons for the Institution of Proceedings Against Suriname

1.4 Guyana’s case was set out in its Statement of Claim of 24 February 2004. Guyana was prompted to bring these proceedings because of actions taken by Suriname which violated Guyana’s territorial integrity and sovereign rights, and Suriname’s repeated refusal to conclude an equitable and peaceful delimitation of its maritime boundary with Guyana in accordance with the principles of international law reflected in the 1982 Convention. The United Kingdom and the Netherlands, the former colonial powers administering the territories of Guyana and Suriname, respectively, were not able to conclude a formal agreement on the delimitation of their adjacent maritime boundaries. They were, however, in agreement on the terminus of the land boundary and the starting point for the maritime delimitation, and on the principle that the delimitation should be effected in application of the principle of equidistance reflected in the work of the United Nations’ International Law Commission and in the 1958 Geneva Convention on the Continental Shelf. These agreements provided the basis upon which the United Kingdom undertook good faith efforts,

¹ Dr. Philip passed away on 10 September 2004. Guyana and its Counsel wish to express their appreciation of Dr. Philip’s contribution to international law and to the pacific resolution of this dispute.

commencing in 1957, to identify the equidistance line based upon the Dutch and British maritime charts that were available at the time. Thereafter, the United Kingdom and Guyana (after it achieved independence in 1966) adopted that equidistance line, which has been consistently relied upon ever since in oil concessions and related matters.

1.5 As a result, since at least 1958 Guyana has exercised peaceful, continuous, and uncontested jurisdiction over that part of the offshore area that forms the extent of its claim in the present proceedings, namely, a line emanating from the Guyana-Suriname land terminus bearing no less than 34° east of true north (“N34E”). This is reflected in the grant of oil concessions and other exercises of administrative authority, which constitute a consistent pattern of public conduct to which no objection was manifested by or on behalf of Suriname before May 2000. Notwithstanding its acquiescence in practice to Guyana’s exercise of sovereignty in the disputed maritime area, Suriname has been unwilling to negotiate a reasonable settlement with Guyana in accordance with the established principles of international law that have long been recognised as applicable, including by the British and Dutch when they exercised colonial authority. Instead, Suriname has insisted on an arbitrary and wholly unjustified boundary line bearing 10° east of true north, a line which has no relationship to an equidistance line. Suriname has rejected Guyana’s proposals to designate a part of the maritime spaces as a Special Zone for Sustainable Development to be jointly managed by both States pending settlement of the maritime boundary. In recent years, Suriname has manifested an increasingly belligerent attitude towards Guyana. Matters came to a head in June 2000, when Suriname’s armed forces used military means to expel a civilian rig that was engaged in exploratory activities well within a maritime zone wherein Guyana had long granted oil exploration licences, enforced its fisheries regulations, and otherwise exercised uncontested jurisdiction since at least 1958.

1.6 The prospective discovery of hydrocarbon deposits in this zone has led to unsustainable and unreasonable demands by Suriname that seek to deny Guyana from exercising sovereignty and sovereign rights over a substantial portion of its established maritime zone. Suriname’s hostile conduct, combined with its rejection of both a principled settlement and a provisional joint development zone, have threatened international peace and security, undermined foreign investment in Guyana’s energy sector, and effectively prevented Guyana from exploring its natural resources in the interest of national development for the benefit of its people.²

1.7 Against this background, Guyana has three objectives in this proceeding. *First*, to obtain a definitive maritime delimitation by the Arbitral Tribunal to follow a line starting at the Guyana-Suriname land terminus bearing at an angle of not less than 34° east of true north for a distance of 12 nautical miles³ in the territorial sea, and thereafter continuing at the same angle in the Continental Shelf and Exclusive Economic Zone to a distance of 200 nautical miles from the land terminus. (For the reasons set out in the Memorial, Guyana does not invite the Arbitral Tribunal to delimit any area beyond 200 miles from the terminus of the land boundary). *Second*, a declaration that the use of armed force by Suriname in June 2000 breached its obligations under the 1982 Convention, including the obligation to resolve disputes by peaceful means, and that Suriname is internationally responsible for the

² Cf. Declaration on Permanent Sovereignty over Natural Resources, G.A.Res. 1803, U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N.Doc. A/5217 (1962), para 1.

³ Hereinafter the term “miles” will be used to denote “nautical miles.”

consequences of that illegal act and liable to pay compensation for all losses arising therefrom. And *third*, a declaration that Suriname failed to comply with its obligations to “make every effort to enter into provisional arrangements of a practical nature and... not to jeopardise or hamper the reaching of the final agreement,” as required by Articles 74(3) and 83(3) of the 1982 Convention, and that Suriname is internationally responsible for the consequences of that illegal conduct and liable to pay compensation for all losses arising therefrom.

II. Guyana’s Approach to the Presentation of the Case

1.8 In preparing this Memorial, Guyana has taken account of the approach taken to the presentation of factual and evidentiary materials and legal arguments before other international courts and tribunals, although it understands that this Arbitral Tribunal is free to adopt its own approach in the particular context of this case. Guyana is conscious that this case is distinguishable from other cases because it turns on its own facts, and because the issues which are to be addressed by the Arbitral Tribunal arise in the context of very significant efforts by the former colonial powers to reach agreement on maritime boundaries dating back nearly 80 years. The Arbitral Tribunal is bound to take into account those efforts and the consequences which flowed therefrom, both factual and legal, not least in order to achieve an equitable solution. Guyana submits that the application of the law today is largely informed by the conduct of the parties against the background of the rules of international law which applied at the time of that conduct.

1.9 For this reason, Guyana has gone to considerable lengths to ascertain the facts and to set them out in a reasonable and balanced manner, so as to assist the Arbitral Tribunal in exercising its arbitral function. Guyana has sought to identify the historical documents and materials which are available not only in its own archives but also in the public archives of the United Kingdom and the Netherlands. Guyana regrets that due to steps taken by Suriname – which are incompatible with the obligation to facilitate the work of the Arbitral Tribunal as set out in Article 6 of Annex VII to the 1982 Convention – it has not yet been able to gain access to all the relevant archival material held in the Netherlands Ministry of Foreign Affairs. Guyana considers that the historical material to which access has been prevented may be highly relevant in supporting Guyana’s arguments concerning the broad agreement of the United Kingdom and the Netherlands on the significance of the equidistance principle and on its meaning and effect as understood by the colonial powers. Guyana hopes that it and the Arbitral Tribunal will be granted full and unconditional access to that material. In the event that such access is not granted, however, Guyana reserves the right to challenge any factual material originating from Dutch archives and relied upon by Suriname, on the grounds that it may be selective and not properly representative of the full historical record.

III. Structure of the Memorial

1.10 Guyana’s Memorial consists of three volumes. Volume I contains Part I of the Memorial, the main text of the Memorial, together with the most important maps and charts, while Volumes II through V contain Part II, which consists of supporting materials. Volumes II, III, and IV contain annexes arranged in the following order: a Synopsis of the History of Guyana and Suriname; Governmental Documents (Guyana); Governmental Documents (Suriname); Governmental Documents (Other); Diplomatic Documents; Treaties and Agreements (Including Drafts); National Legislation (Guyana); National Legislation (Suriname); Oil Concessions (Guyana); Oil Concessions (Suriname); Witness Statements;

and Fishing and Naval Administration. Volume V contains a complete set of maps and illustrations.

1.11 The main text of the Memorial, Part I, consists of 11 Chapters. Following this introductory Chapter, Chapter 2 describes the geographical setting of this dispute, including in particular the coastlines and other geographic features which are relevant to the delimitation. The process of delimitation is simplified by the fact that there are no islands, low-lying elevations or other equivalent features to be taken into account in identifying the relevant equidistance line or achieving an equitable solution. Chapter 2 also describes the early history of British Guiana and Suriname, the colonies established by the United Kingdom and the Netherlands, respectively, on the northeast coast of South America. The colonial period ended for Guyana in 1966 and for Suriname in 1975, the years in which the parties achieved independence. The history of this dispute is important because the United Kingdom and the Netherlands undertook significant and good faith efforts to reach agreement on the maritime boundaries; accordingly, this is not a case in which the Arbitral Tribunal is being asked to effect a delimitation on a clean slate. Chapter 3 describes in detail the efforts of the colonial powers to settle the maritime boundary between British Guiana and Suriname from 1929 until Guyana achieved independence in 1966. As early as 1936, the United Kingdom and the Netherlands agreed on the terminus of the land boundary, and this has served as both parties' starting point for the delimitation of the maritime boundary for nearly seventy years, as well as the starting point for the delimitation of their oil concessions and related conduct. Chapter 3 also describes in detail the early agreement of the United Kingdom and the Netherlands on the application of the equidistance principle (in 1957 and 1958) and the manner in which the United Kingdom sought to delimit the continental shelf on the basis of the principle of equidistance. It also sets out how the parties have generally respected the historical equidistance line developed on the basis of the maps and charts which were available in the 1950's. Chapter 4 describes the conduct of Guyana and Suriname as independent States, beginning with Guyana's independence in 1966, until June 2000 when Suriname used military force against oil exploration activities authorised by Guyana in an area which had traditionally been treated by Guyana as falling within its sovereign rights. Chapter 5 describes Suriname's use of military force in June 2000 and the circumstances which caused Guyana to initiate these proceedings.

1.12 Chapter 6 explains the basis of the Arbitral Tribunal's jurisdiction, and shows clearly that all the requirements for the exercise of jurisdiction by the Arbitral Tribunal have been satisfied. Chapter 7 sets out, by way of introduction, an overview of the principles and rules of international law which are applicable to the delimitation of the maritime spaces of Guyana and Suriname, consisting of the territorial seas, the continental shelves and the exclusive economic zones. The Chapter traces the historical evolution of these principles and rules over three periods: a first period, prior to the adoption of the 1958 Geneva Conventions on the Territorial Sea and the Continental Shelf, in which the United Kingdom and the Netherlands began their efforts to reach agreement on the delimitation of the territorial seas; a second period, which ran from 1958 when the Geneva Conventions were adopted through the adoption of the 1982 Convention, in which the United Kingdom and the Netherlands engaged in sustained and good faith efforts to define an equidistance line as required by the 1958 Conventions; and a third period, which began with the adoption of the 1982 Convention and continues to run to the present day. Chapter 8 addresses the delimitation of the territorial seas, and sets out the basis for Guyana's claim that the maritime boundary between Guyana and Suriname begins at the terminus of the land boundary, which was first agreed in 1936 (at

a location referred to as Point 61, and which is at 5° 59' 53.8" N., longitude 57° 08' 51.5" W.) and then follows a historical equidistance line of 34° east of true north (also referred to in this Memorial as N34E) for a distance of 12 miles. Chapter 9 addresses the delimitation of the continental shelves and exclusive economic zones, setting out the legal and factual basis for Guyana's claim that the boundary follows a historical equidistance line of N34E from the territorial sea boundary out to a distance of 200 miles from the land boundary terminus at Point 61. Chapter 10 describes the violations of international law occasioned by Suriname's use of force in June 2000, and the consequences of Suriname's unlawful conduct. Chapter 11 sets out the Submissions made by Guyana.

1.13 In summary, Guyana submits that the relevant principles and rules of international law which are to be applied by this Arbitral Tribunal confirm that the delimitation of the maritime areas between Guyana and Suriname should commence at the terminus of the land boundary at Point 61 (5° 59' 53.8" N. and longitude 57° 08' 51.5" W.). From that point the maritime boundary should follow a line of N34E for a distance of 12 miles, so dividing the territorial seas of the two States. Thereafter, the boundary should follow the same line to a point located at a distance of 200 miles from Point 61 so as to delimit the continental shelves and the EEZs of the two States. The delimitation is depicted on the map at **Plate 1** (following page 6).⁴

⁴ All of the maps and illustrations submitted by Guyana as part of this Memorial are identified in the text by their "Plate" numbers and are contained in Volume V. In addition, some of those which Guyana considers most useful to the Arbitral Tribunal are reproduced in this Volume, as close as possible to where reference is first made to them in the text. Whenever a map or illustration is reproduced in this Volume, the text will so indicate by specifying the page of the Memorial following which the map or illustration appears.

CHAPTER 2

GEOGRAPHY AND EARLY HISTORY

2.1 The delimitation of the maritime spaces of Guyana and Suriname necessarily takes into account the relevant geographical and historical circumstances. The International Court of Justice has long recognised the importance of relevant geographical and historical circumstances.¹

2.2 In this case both geographic and historic factors have a role to play. As described in further detail below and in the Chapters which follow, the configuration of the coast and absence of features such as islands and low-tide elevations inform the location and direction of the equidistance line and point to the absence of equitable considerations which might be invoked to justify any change to that line. Equally, the history of relations between the two countries dating back to the colonial period – including the efforts of the former colonial powers, the United Kingdom and the Netherlands, to reach agreement on the equidistance line – are of considerable relevance to these proceedings.

I. Geography

2.3 Guyana and Suriname are located on the northeast coast of the South American continent, bounded by the major river basins of the Orinoco and the lower Amazon. The two States are separated by the Corentyne River,² which flows in a northerly direction and empties into the Atlantic Ocean. A modern political map is shown at **Plate 1** (following page 6). As depicted, Guyana has land or riverine boundaries with three countries: Venezuela (to the west and south), Brazil (to the south and east) and Suriname (to the east). Apart from its boundary with Guyana, Suriname shares a boundary with Brazil (to the south and east) and French Guiana (to the east). To the north, both countries face the Atlantic Ocean.

2.4 The two countries have similar areas of land territory: Guyana is approximately 214,970 km² and Suriname is approximately 163,270 km². Guyana has a population of 769,000, with its capital in Georgetown; Suriname has a population of 438,000, and its capital is Paramaribo.³ Guyana became an independent State in 1966, after more than 160 years of British colonial rule. It has a democratically-elected President and Parliament, and an independent judiciary with a legal system based on English common law. Its official language is English. Suriname achieved its independence from the Netherlands in 1975, after more than 170 years of Dutch colonial rule. It, too, has a democratically-elected President and Parliament, and an independent judiciary. Its legal system is based on Roman-Dutch law, and its official language is Dutch.

2.5 The territories of both countries are characterised by the same three features. *First*, along the coast lies a narrow coastal plain (with swamps, lagoons and tidal flats) within which the greater part of the population lives and in which the majority of economic activities are carried out, with the consequence that both countries have always had a very close

¹ *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 81-82 (24 February 1982).

² Also spelled Corantijn, Courantyne, and Corentin.

³ *National Geographic Atlas of the World* 127, 132 (8th Ed., 2004).

connection to the sea. *Second*, inland beyond the coastal belt are low mountains, plateaus, savannas, and extensive tropical rain forests, within which are a significant mineral potential, particularly for bauxite and to a lesser extent gold and diamonds. And *third*, rivers play an important role in the lives of both countries. “Guiana” is an Amerindian word that means “land of many waters.” This is reflected in the names by which the three colonial territories of the United Kingdom, the Netherlands and France were known (British Guiana, Dutch Guiana and French Guiana), and it is no accident that the original names of these settlements were those of the main rivers that ran their course within them: the Essequibo, the Demerara, the Berbice, the Suriname and the Cayenne. Other rivers – such as the Amakura, the Corentyne and the Maroni⁴ – were used to define the boundaries of human habitations.

2.6 The configuration of the coastline of northeastern South America is influenced by the presence of these rivers and river deltas. From west to east across the coasts of Guyana and Suriname, the Essequibo, Demerara, Berbice, Corentyne, Coppename, Suriname, and Maroni Rivers mark distinct indentations and changes in the direction of the coastline. The different shapes and orientations of the coastlines between these rivers are largely controlled by active local processes of sediment transport and coastal erosion. The morphologies of the coastlines of Guyana and Suriname do not lend themselves to simple generalisations in straight segments without undue distortion of important coastal features.

2.7 The coastlines of Guyana and Suriname have an adjacent geographical relationship. The coastlines meet at the boundary terminus located at the mouth of the Corentyne River and together form a wide and irregular concavity.

2.8 In the 1930’s, sustained efforts were undertaken by the British and Dutch authorities to achieve a boundary settlement, leading to the preparation of the maps and charts which were relied upon in the 1950’s and 1960’s when the colonial powers renewed their attempt to reach agreement on the delimitation of maritime areas. These negotiations were based on two sets of charts - Dutch chart 217, which is at **Plate 2** (in Volume V only), and British chart 1801, which is at **Plate 3** (in Volume V only). In the 1970’s and the 1980’s new charts were developed as technologies improved. These new charts showed some differences from their predecessors.

2.9 The most accurate charts today appear to be the United States National Imagery and Mapping Agency (“U.S. NIMA”) large-scale charts, which have a scale of 1:300,000. According to these charts, along the low-water line the coastline of Guyana measures 482 kilometres from the land boundary terminus with Venezuela to the land boundary terminus with Suriname. The U.S. NIMA charts show that the coastline of Suriname along the low-water line measures 384 kilometres from the land boundary terminus with Guyana to the land boundary terminus with French Guiana.

2.10 As described in Chapter 3, in 1936 the United Kingdom and the Netherlands reached agreement on the terminus of the land boundary for British Guiana and Suriname.⁵ This is at a point which has historically been known as “Point 61” (after a nearby Guyanese settlement known as Village 61). The location was first positioned by means of astronomical observations in 1936 at coordinates of latitude 5° 59’ 53.8” North, and longitude 57° 08’

⁴ Also spelled Marowijne.

⁵ See *infra* Chapter 3, para. 3.9.

51.5” West.⁶ The geodetic coordinates of this same Point 61, determined by means of modern Global Positioning System (GPS) techniques, are latitude 6° 00’ 05” North and longitude 57° 08’ 44.5” West in the World Geodetic Reference System of 1984 (WGS84). As discussed in Chapter 3, from 1936 through the present the United Kingdom and the Netherlands and, after their independence, Guyana and Suriname, have consistently regarded this point as the international land boundary terminus.⁷

2.11 Turning to the maritime areas, there are no islands in the territorial seas or exclusive economic zones claimed by Guyana or Suriname. Accordingly, there are no insular features which are to be taken into account as a relevant circumstances in this boundary delimitation.

2.12 As regards other relevant features, according to the most up to date U.S. NIMA charts there is only one relevant low-tide elevation. This is located in the mouth of the Corentyne River and falls within the territorial seas claimed by both Guyana and Suriname.⁸

2.13 The maritime area over which Guyana has sovereignty or exercises sovereign rights borders the maritime areas of three other States apart from Suriname: Venezuela, Trinidad and Tobago, and Barbados. As depicted on the map at **Plate 4** (following page 10), the exclusive economic zone and continental shelf of Guyana border (or overlap) with maritime spaces under the jurisdiction of other States in no less than four directions: to the west with Venezuela; to the northwest with Trinidad and Tobago; to the north with Barbados; and to the east with Suriname. For its part, the exclusive economic zone and continental shelf of Suriname border the maritime spaces only of Guyana to the west and France (French Guiana) to the east.

2.14 Guyana has not signed an international maritime boundary agreement with any of its neighbouring States. It did, however, enter into an Exclusive Economic Zone Cooperation Agreement with Barbados on 2 December 2003. By this agreement the two countries undertook to exploit and develop jointly their overlapping exclusive economic zones, which are located beyond the exclusive economic zones of any third States. Emphasising the “universal and unified character”⁹ of the 1982 Convention, the Guyana/Barbados Agreement regulates the “joint jurisdiction, control, management, development, and exploration and exploitation of living and non-living natural resources, as well as all other rights and duties established under the Convention.”¹⁰

2.15 Suriname has not yet signed a maritime boundary agreement with France (French Guiana). However, Guyana understands that a draft agreement has been concluded, and that

⁶ Report on the Inauguration of the Mark at the Northern Terminal of the Boundary Between Surinam and British Guiana (5 July 1936) [hereinafter “Report on the Inauguration of the Mark at the Northern Terminal”]. See Memorial of Guyana (“MG”), Vol. II, Annex 11.

⁷ To avoid confusion, Guyana will refer throughout the Memorial to the astronomical coordinates for Point 61 identified in 1936. In fact, these are the coordinates that the parties themselves have used in their references to Point 61. See *infra* Chapter 3, note 16.

⁸ U.S. NIMA, 24380 Second Edition, 6 March 1999 (Correct through NM 10/99).

⁹ Exclusive Economic Zone Co-operation Treaty Between the Republic of Guyana and the State of Barbados, (2 December 2003), Preamble. See MG, Vol. III, Annex 97.

¹⁰ *Ibid.*

this reflects a straight equidistance line with a single constant azimuth of 30 degrees east of true north in the territorial sea and continental shelf.¹¹

II. Early History¹²

2.16 European contact with the Guianas dates back at least as far as the early 17th century. The area was known as the “Wild Coast,” the unexplored littoral of South America lying between the Orinoco and Amazon River systems. Over most of the 400 years that followed – though not without discontinuities, particularly in the 18th and 19th Centuries – the Guianas comprised (from the East) French Guiana, Dutch Guiana (Suriname) and British Guiana. Today, French Guiana is a department of France, and Suriname is the independent Republic of Suriname. British Guiana evolved in 1831 as a union of the separate British colonies of Essequibo (to the west bordering Venezuela), Demerara and Berbice (bordering Suriname); therefore, in the 17th and 18th centuries, the colony adjoining Suriname to the west was not British Guiana, but Berbice. The early historical material thus speaks of Berbice and Suriname.

2.17 By the late 18th century, Berbice and Suriname had been fully established as Dutch settlements. However, between 1796 and 1814, sovereignty over the two colonies changed hands several times. In 1796, the British took control of Berbice; in 1799, they took over Suriname as well.¹³ Nevertheless, the administration of the colonies was left much as it was before the British takeover. The two Dutch-appointed governors, van Batenburg in Berbice and Frederici in Suriname, remained in office under the British. The lack of British attention to local administration reflected the fact that Suriname and Berbice were then little more than small clusters of privately-owned plantations.

2.18 In 1799, during the period of British hegemony over Berbice and Suriname, the two Dutch-appointed governors reached the following agreement:

That the West Coast of the River Corentyne as far as the Devil's Creek which hitherto has been held to make part of and belong to the Colony of Surinam, and also the West Bank of the said River, shall be placed under, and considered as belonging to the Government of Berbice.¹⁴

2.19 The agreement made no reference to a maritime boundary separating the territorial seas off the coasts of Berbice and Suriname; nor is there any record that a maritime boundary was discussed or contemplated. So far as the agreement touched on the land or riverine boundary between the two (then) British colonies, it was clear that both governors regarded it

11 “Regional Location and Trade,” Section 1.21 in *Suriname Planatlas 1* (1988). See MG, Vol. II, Annex 47.

12 Annex 1 to the Memorial (*The Evolution of Guyana and Suriname: A Synopsis*), contained in Volume II of this Memorial, supplements this early history of the Guianas by providing a summary account of the social and political evolution of Guyana and Suriname within the Caribbean region. See MG, Vol. II, Annex 1.

13 Robert Robinson, *The Discoverie of the Large, Rich and Beutiful Empyre of Guiana* (London, 1596).

14 *Proclamation of the Governor and Court of Policy of Berbice* decreed in the colony’s capital of New Amsterdam on 20 January 1800, originally published on 07 February 1800, as published in *The Laws of British Guiana 1773-1870*, Vol. 1, 51-53 (McDermott ed., 1870). See MG, Vol. II, Annex 2.

as a provisional arrangement that would need to be ratified by the metropolitan government in London.¹⁵

2.20 In 1802, pursuant to the Treaty of Amiens, Berbice and Suriname were transferred back to the Dutch. The Treaty did not address the boundary between the two colonies.¹⁶ In any event, the Dutch did not long enjoy the sovereignty granted them by the Treaty, at least with respect to Berbice. In September 1803, Berbice was again taken by the British. The Articles of Capitulation, signed in that year, did not purport to formalise a boundary between Berbice and Suriname. They did, however, refer to the 1799 agreement between the governors of the two colonies in relation to respecting prior grants of land along the Corentyne River:

The Grants of Lands on the West Coast and West Bank of the River Corentin, made by Governor Frederici, of Surinam, which territory was formerly held to make part of and belonging to that Colony, but since December, 1799, has been placed and considered as belonging to the Government of Berbice, shall, in the same manner as proposed by the preceding Article, be respected as conclusive, and Letters of Confirmation (*Groundbrieven*) issued by Governor and Council here to the same, complete and indisputable effect as aforesaid.¹⁷

2.21 At the end of the Napoleonic Wars, the Anglo-Dutch Treaty of 1814 (also known as the Convention of London) settled the question of sovereignty over Berbice and Suriname for the next century and a half. The Treaty provided for Dutch sovereignty over Suriname and British sovereignty over Berbice, but without identifying the boundary between the two colonies.¹⁸

¹⁵ The recital to the Proclamation of 20 January 1800 specifically recognised this. *Ibid.*

¹⁶ The relevant article of the Treaty of Amiens signed on 27 March 1802 is as follows:

Article 3. His Britannic Majesty restores to the French Republic and her allies namely his Catholic Majesty and the Batavian Republic all the possessions and colonies which belong to them respectively, and which had been occupied or conquered by the British forces in the course of the war with the exception of the island of Trinidad and the Dutch possession in the island of Ceylon.

Treaty of Amiens, Article 3 (27 March 1802).

¹⁷ Article 11 was proposed by “the Provisional Government and Court of Policy” of Berbice at the time of capitulation. Article 11 was accepted by the British forces on the basis of being “left for future investigation and if found to have been fairly obtained, will be confirmed.” Subsequently, in 1803, steps were taken to regularise grants of lands on the west coast of Berbice. See *Proclamation relative to the 9th, 10th and 11th Additional Articles of the Capitulation of Berbice* concluded on the 24th September 1803, as published in *The Laws of British Guiana 1773-1870*, Vol. 1, 54-66 (McDermott ed., 1870). See MG, Vol. II, Annex 2.

¹⁸ Article 1 of the Convention of London stated:

Art. I. His Britannic Majesty engages to restore to the Prince Sovereign of the United Netherlands, within the term which shall be hereafter fixed, the Colonies, Factories, and Establishments, which were possessed by Holland at the commencement of the late war, viz., on the 1st of January 1803, in the Seas and on the Continent of America, Africa, and Asia; with the exception of the Cape of Good Hope and the Settlements of Demerara, Essequibo, and Berbice, of which Possession the High Contracting Parties reserve to themselves the right to dispose by a Supplementary Convention, hereafter to be negotiated, according to their mutual interest, and especially with reference to the provisions contained in the VI and IX

2.22 In 1831, the three British colonies west of Dutch-ruled Suriname – Berbice, Demerara and Essequibo – were consolidated into a single colony, known thenceforth as British Guiana.¹⁹ The new union subsumed the colony of Berbice, such that latter’s undefined boundary with Suriname became the eastern boundary of the colony of British Guiana. Throughout the remainder of the 19th century, Dutch and British colonial officials in The Hague and London and in Paramaribo and Georgetown, conducted the administration of the colonies against the backdrop of the developments described above. Periodic disagreement over fishing, navigation, buoying and smuggling in the Corentyne River were addressed, and in some cases resolved, in the absence of a formal boundary agreement. By the early part of the 20th century, however, the United Kingdom and the Netherlands came to believe that new and more sustained efforts were required to achieve a boundary treaty with respect to their colonies on the Northeast coast of South America. These efforts – and the agreement which was reached in 1936 on the terminus of the land boundary at Point 61 – are described in Chapter 3.

Articles of the Treaty of Peace, signed between His Britannic Majesty and His Most Christian Majesty on the 30th of May, 1814.

Anglo-Dutch Treaty of 1814 (13 August 1814).

- 19 The union was established by a Commission issued to a single Governor (Sir Benjamin D’Urban) by King William IV reciting that:

whereas for divers, good causes to Us appearing, We have deemed it right that Our settlements and factories on the northern coast of South America, comprising the United Colony of Demerary and Essequibo and the Colony of Berbice, should henceforth be united together... . We... do constitute and appoint you, the said Benjamin D’Urban, to be, during our will and pleasure, Our Governor and Commander in Chief in and Over our settlements on the northern coast of the continent of South America, comprising all such territories and jurisdictions have hitherto been comprised in the said United Colony of Demerary and Essequibo and the said Colony of Berbice respective, with their respective dependencies, and all forts and garrisons erected and established, or which shall be erected and established within the same, and which such settlements shall henceforth collectively constituted and be one Colony, and shall be called “The Colony of British Guiana.”

Chapter 1.1 of The Government of Guyana, *The Laws of Guyana* (revised edition, 1973).

CHAPTER 3

EFFORTS OF THE COLONIAL POWERS TO SETTLE THE BOUNDARY BETWEEN BRITISH GUIANA AND SURINAME: 1929 TO 1966

3.1 In this and the following two chapters Guyana sets out the background and history leading up to its institution of arbitration proceedings against Suriname under Part XV of the 1982 Convention. Chapter 3 describes the period between the fixing of the northern land boundary terminus between British Guiana and Suriname (1936) and the date upon which Guyana attained independence (1966). Chapter 4 describes the conduct of Guyana and Suriname in the period between 1966 and 2004, and in particular the practice of granting oil concessions in the maritime area which is the subject of these proceedings. Chapter 5 describes the circumstances in which Suriname used military force against oil exploration activities lawfully authorised by Guyana in an area over which Guyana had long exercised sovereign rights. It was this use of force which crystallised the dispute by preventing Guyana from continuing to exercise sovereign rights over its maritime spaces and led directly to these proceedings.

3.2 These three historical chapters form a central part of Guyana’s case. Guyana submits that the Arbitral Tribunal should not ignore 50 years of history and accumulated practice and conduct on the part of the United Kingdom and the Netherlands, and Guyana and Suriname. International jurisprudence confirms that history and the conduct of the parties is of great relevance in delimiting maritime boundaries. As the International Court of Justice put it in the *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*: “the conduct of the parties is a circumstance which is highly relevant to the determination of the method of delimitation.”¹ Moreover, in that case the Court confirmed the significance of the conduct of France and Italy when those countries “were responsible for the external relations of present-day Tunisia and Libya.”² For the present case, this means that particular regard must be had to the efforts dating back to 1957 and 1958 – when the United Kingdom and the Netherlands agreed that the maritime spaces of Guyana and Suriname were to be delimited by reference to the equidistance principle – and the subsequent conduct of the parties in drawing and generally respecting a historical equidistance line drawn along the line of N34E.

3.3 In addressing the historical record Guyana has sought to the best of its ability to identify all relevant historical documents. To that end it has engaged in extensive research in British archives as well as in Dutch archives held at the National Archives in the Hague. Guyana regrets that at the time of writing this Memorial it has not been able to have any access to the archives held at the Netherlands Ministry of Foreign Affairs. The Dutch Government has made its consent for such access conditional on the absence of objection by Suriname, and regrettably Suriname objected. The consequence of this is that although Suriname has access to the British material on equal terms with Guyana, Guyana has been denied equal access to the Dutch material.

3.4 Efforts to delimit a maritime boundary go back to 1929, when the United Kingdom and the Netherlands embarked on a significant effort to negotiate a boundary treaty between

¹ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 83-84, paras. 117 - 118 (24 February 1982).

² *Ibid.*

their respective colonies, British Guiana and Suriname.³ At that time the entire border was unsettled. Although there was general agreement that the two colonies were separated by the Corentyne River, the United Kingdom and the Netherlands were not always in agreement as to whether the international boundary ran along the river's thalweg or its west bank (*i.e.*, on the British Guiana side). They also expressed differing and occasionally inconsistent views over which of two tributaries – the Kutari River⁴ or the New River (farther to the west), both of which connected the Corentyne River to the Brazilian border in the South – was the true international boundary.⁵ The Kutari River and the New River, together with the boundary line with Brazil, encompassed a triangular area of land which the United Kingdom and the Netherlands referred to as the “New River Triangle.” This is shown at **Plate 5** (in Volume V only). Rival claims to this triangular area depended on whether the international boundary south of the two tributaries' confluence with the Corentyne was the Kutari River (in which case the triangle would belong to British Guiana) or the New River (in which case it would be part of Suriname). Although of historical interest, the New River Triangle is not part of the coastal area of either party, and has no connection with the sea or the dispute presently before the Arbitral Tribunal. What is significant here, however, is that the negotiations that began in 1929 by addressing these issues led directly to efforts to delimit the maritime boundary between the two colonies in the territorial sea where the Corentyne River flowed into the Atlantic Ocean.

I. The Fixing of the Northern Land Boundary Terminus between British Guiana and Suriname: 1936

3.5 On 7 August 1929, the Netherlands initiated a serious effort to address these issues and achieve a definitive settlement of the British Guiana/Suriname boundary. On that date the Netherlands' Minister in London delivered an *Aide Memoire* to the United Kingdom Foreign Office which challenged a 1927 United Kingdom map showing the international boundary as the Kutari River, with the New River Triangle belonging to British Guiana, and the boundary line running along the thalweg all the way north from the Brazilian border to the Atlantic Ocean.⁶ The Netherlands' 1929 *Aide Memoire* proposed that the two States jointly undertake to determine whether the Kutari River or the New River was the “true source” of the Corentyne.⁷

3.6 The Netherlands' effort to reach agreement with the United Kingdom on the international boundary between British Guiana and Suriname was motivated by the prospects of oil exploration and development in the two colonies. As the British Colonial Office wrote to the Treasury on 3 April 1930:

³ See generally Letter from A.W.A. Leeper, Foreign Office to the Colonial Office with attached *Aide Memoire* from the Netherlands (28 August 1929) [hereinafter “Letter from the Foreign Office to the Colonial Office (28 August 1929)”]. See MG, Vol. II, Annex 56.

⁴ Also spelled Cutari.

⁵ Copy of Minute by the Honourable J. Mullin, Commissioner of Lands and Mines (21 November 1929). See MG, Vol. II, Annex 4; Letter from R. Darnley, Colonial Office to the Foreign Office (4 October 1929). See MG, Vol. II, Annex 3.

⁶ Letter from the Foreign Office to the Colonial Office (28 August 1929), *supra* Chapter 3, note 3; Diplomatic Note on behalf of the British Secretary of State to the Netherlands Minister (18 October 1930). See MG, Vol. II, Annex 57.

⁷ Letter from the Foreign Office to the Colonial Office (28 August 1929), *supra* Chapter 3, note 3.

[T]he reported discovery of oil in Suriname and British Guiana in the vicinity of the Corentyne River, together with the decision to demarcate the British Guiana-Brazil boundary, led to proposals from the Netherlands Minister for a definite fixation by treaty of the frontier between British Guiana and Suriname.”⁸

3.7 The United Kingdom responded by Diplomatic Note dated 18 October 1930.⁹ The United Kingdom proposed that the Netherlands should accept the Kutari River as the border; for its part, the United Kingdom would accept the low-water line of the west bank (i.e., the British Guiana side) of the Kutari and the Corentyne Rivers as the international boundary, giving sovereignty over the rivers to Suriname, provided that British Guiana’s rights on the rivers (i.e., fishing and navigation) were fully safeguarded.¹⁰ The Netherlands agreed to the United Kingdom proposal in an *Aide Memoire* dated 4 August 1931, “The frontier between Suriname and British Guiana is formed by the left [i.e. west or British Guiana] bank of the Corentyne and the Cutari up to its source, which rivers are Netherlands territory.”¹¹

3.8 On the basis of this exchange, the United Kingdom and the Netherlands, along with Brazil, appointed a Joint Boundary Commission to locate the source of the Kutari River. The aim was to fix the tri-junction point at the river’s source, where the boundaries of British Guiana, Suriname and Brazil met.¹² The expedition was a long and arduous one, penetrating into uncharted and extremely difficult terrain. The Boundary Commissioners of the three States were accompanied by large crews of surveyors, guides, boatmen and porters. It took them until 1936 to complete their mission, when they fixed the tri-junction point at the source of the Kutari River.¹³

3.9 In addition to fixing the tri-junction point at the *southern* extremity of the border, the British and Dutch members of the Joint Boundary Commission (without participation by their Brazilian counterpart) were instructed to establish the precise boundary point between British Guiana and Suriname at the *northern* end of the border. This would be at the mouth of the Corentyne River.¹⁴ This point, the northern land boundary terminus between British Guiana and Suriname, was fixed in July 1936. The Boundary Commissioners established the land boundary terminus at a specific point on the west (British Guiana) side of the Corentyne River, near where the river empties into the Atlantic Ocean. The point is commonly referred

⁸ Memorandum from the Colonial Office to the Treasury (3 April 1930). See MG, Vol. II, Annex 5.

⁹ Diplomatic Note on behalf of the British Secretary of State to the Netherlands Minister (18 October 1930), *supra* Chapter 3, note 6.

¹⁰ *Ibid.*

¹¹ *Aide Memoire* from the Netherlands to the United Kingdom (4 August 1931). See MG, Vol. II, Annex 58.

¹² Letter from C.C. Kayser, Chief Netherlands Commissioner to Mr. W. Cunningham, Chief British Commissioner (6 November 1934). See MG, Vol. II, Annex 59.

¹³ Letter from Major Phipps, Chief British Commissioner, British Guiana Brazil Boundary Commission to the Under Secretary of State for the Colonies, Colonial Office (9 July 1936) [hereinafter “Letter from Major Phipps (9 July 1936)”]. See MG, Vol. II, Annex 12. See generally, C. Arthur Hudson, *The Mataruki Trail: The Story of the British Guiana Boundary Commission, 1929-1935* (Joseph Singh, ed., Georgetown, Guyana, 2004).

¹⁴ Diplomatic Note from the Secretary of State to R. de Marees van Swinderen (4 July 1935), see MG, Vol. II, Annex 60; Letter from H. Beckett, Colonial Office to the Under Secretary of State, War Office (22 June 1936), see MG, Vol. II, Annex 10.

to as Point 61 (after Village No. 61, which existed at that location). The geographic coordinates of Point 61 were: latitude 5° 59' 53.8 N., longitude 57° 08' 51.5" W.¹⁵

3.10 For the remainder of the colonial period – in excess of thirty years – the United Kingdom and the Netherlands treated Point 61 as the northern land boundary terminus between their respective colonies. Since their independence, Guyana and Suriname have expressly recognised Point 61 as the land boundary terminus. Both States have consistently maintained (as did the United Kingdom and the Netherlands) that the precise location of the international border at the northern land boundary terminus is at Point 61, *i.e.*, latitude 5° 59' 53.8" N., longitude 57° 08' 51.5" W.¹⁶ This is significant for these proceedings: as described in Chapter 8, this point is also the starting point for the delimitation of the parties' maritime areas, and it has invariably been treated as such.

3.11 In July 1936, a formal boundary marker was placed at Point 61 by the United Kingdom and Netherlands Boundary Commissioners. In their official report, the Boundary Commissioners described this marker as marker "A." It was a: "concrete block (40 cms, cube) with a brass centre bolt embedded in the top. On the top surface is engraved the letter 'A' and the year '1936.' The top of the block is buried 10 cms. below the surface of the ground."¹⁷

3.12 The Commissioners buried a second concrete block – marked "B" – at a point located 220 metres inland from the center bolt of mark A on a true bearing of 190°.¹⁸ Since the "real Marks" were buried below the surface, the Commissioners erected two visible pillars, marked "A" and "B" respectively. These were located "on the line joining the two marks 'A' and 'B', but 3 metres beyond the buried mark in each case so that the line between the two marks is uninterrupted by the pillars."¹⁹ Engraved on the northwest face of Pillar "A" (indicating the buried concrete marker at Point 61) were the words "BRITISH GUIANA;" on its northeast face was engraved "SURINAME."²⁰ The southeast face of Pillar "A" was engraved

¹⁵ Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6.

¹⁶ The following annexed documents demonstrate the mutual acceptance of Point 61 as the northern land terminus of the international boundary between Guyana and Suriname: Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6; Diplomatic Note from Netherlands Chargé d'Affaires in London to the British Secretary of State for Foreign Affairs (22 November 1937), *see* MG, Vol. II, Annex 62; Diplomatic Note from E. Teixeira de Mattos, Netherlands Minister to the United Kingdom to Viscount Halifax, the British Secretary of State for Foreign Affairs (27 August 1938), *see* MG, Vol. II, Annex 63; Letter from W. E. F. Jackson, Governor of British Guiana to the Secretary of State (19 September 1938), *see* MG, Vol. II, Annex 14; Diplomatic Note from the Secretary of State for Foreign Affairs to E. Teixeira de Mattos, Netherlands Minister to the United Kingdom (1 November 1938), *see* MG, Vol. II, Annex 64; Letter from S.W. Martin, Foreign Office to Lt. Cmdr. P. Beazley, Hydrographer's Office, Ministry of Defence with attached sections of draft treaty (18 November 1965), *see* MG, Vol. II, Annex 32; Letter from the Minister of Foreign Affairs of the Republic of Suriname to Kerry Sully, President, CGX Energy, Inc. (31 May 2000), *see* MG, Vol. II, Annex 49; Letter from the Ambassador of Guyana to Suriname to Clement Rohee, Minister of Foreign Affairs, with attached Note Verbale No. 2566/HA/eb from the Republic of Suriname to the Cooperative Republic of Guyana (31 May 2000) [hereinafter "Letter with attached *Note Verbale* 2566/HA/eb (31 May 2000)"], *see* MG, Vol. II, Annex 78.

¹⁷ Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6, (5(a)).

¹⁸ *Ibid.* (5(b)).

¹⁹ *Ibid.* (5(c)).

²⁰ *Ibid.* (5(c)-(d)).

with “A;” the southwest face was engraved with “1936.” Pillar “B” was engraved on its southeast face with “B”; its southwest face was engraved with “1936.”²¹ Pillars “A” and “B” were described as:

truncated square pyramids, with the sides 40 cms. at the top and 50 cms. at ground level. They are buried 60 cms. in the ground and project 60 cms. above the ground, with a rounded cap about 5 cms. high, making the total height above ground about 65 cms. Both pillars are set diagonally on the line joining the two marks “A” and “B”, and thus have two adjacent faces towards the sea and two towards the land.²²

3.13 Before placing these markers at Point 61, the Boundary Commissioners attempted to fix the land boundary terminus at Village No. 63 (also known as Benab), which was located approximately 1,500 metres to the southeast of Point 61.²³ In fact, as both States recognised, Village No. 63 (latitude 5° 58' 53" N, longitude 57° 08' 54" W.) was nearer to the mouth of the Corentyne River, at the point where the river emptied into sea; Point 61 lay somewhat seaward of the river mouth.²⁴ However, practical difficulties led the Commissioners to mark the land boundary terminus at Point 61 rather than Point 63. As explained in the Commissioners' official Report, the geographic coordinates that they had for Village 63 were taken from a Netherlands navigation chart (rather than a land map), with the consequence that the relevant point was under water.²⁵ The nearest land surface was unsuitable for the burial of a marker. So the Commissioners decided that the most suitable location for a boundary marker was at Point 61, and fixed the boundary terminus there.²⁶

3.14 The Commissioners provided an explanation in their *Report on the Inauguration of the Mark at the Northern Terminal of the Boundary Between Surinam and British Guiana*:

The Mixed Commission first plotted on the latest 1927 Dutch chart of the Courantyne Mouth the co-ordinates given in their instructions for the proposed site. (6° 00' 25" N.) (57° 08' 10" W.) Astronomical observations were then made by both Commissioners for Latitude, Longitude and Azimuth near the Government Rest House at No. 63 Village (Benab). From the Astronomical stations a theodolite traverse was made Northwards along the coast. It was found that the point 6° 00' 25" N.: 57° 08' 10" W. was actually in the sea owing to the chart being incorrect as regards Longitude. The

²¹ *Ibid.* (5(d)).

²² *Ibid.* (5(c)).

²³ Telegram No. 86 from the Governor of British Guiana to the Secretary of State for the Colonies (9 April 1935) [hereinafter “Telegram No. 86 (9 April 1935)”], see MG, Vol. II, Annex 7; Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6; Telegram No. 68 from the Governor to the Secretary of State (1 June 1936), see MG, Vol. II, Annex 9.

²⁴ Telegram No. 86 (9 April 1935), *supra* Chapter 3, note 23. The Governor of British Guiana informs the Secretary of State for the Colonies that “No. 63 in approximately latitude N.5° 58' 53" and longitude W. 57° 08' 54" would appear to be suitable site for erection of landmark and starting point for Boundary....” Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6.

²⁵ Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6.

²⁶ *Ibid.*; See also Letter from the Dutch Boundary Commissioner Vice-Admiral C.C. Kayser to the Dutch Minister of Colonies (17 July 1936) (original in Dutch, translation provided by Guyana). See MG, Vol. II, Annex 41.

traverse was therefore continued along the coast to the Latitude of 6° 00' 25" N., but there the land was found to be most unsuitable for the construction of the pillars.²⁷

After searching for a location that would support the pillars, the Commissioners concluded that:

The most suitable position was found to be on a wide stretch of grass land behind a low sand dune. Here the ground was comparatively firm and did not appear to be subject to the erosion by the sea. In fact it appeared to be being built up here if anything. The coast at this point made a slight bend from North towards the North West similar to the coast shown on the chart at the point indicated by the co-ordinates. The sandbank shown on the chart opposite this bend was also visible at low tide in the corresponding relative position.²⁸

In this manner, the British and Dutch Boundary Commissioners fixed the northern land boundary terminus at Point 61.

II. The First Attempt To Fix a Maritime Boundary in the Territorial Sea: 1936

3.15 At the time of the establishment of the land boundary terminus at Point 61, the Boundary Commissioners also developed a line delimiting the territorial waters adjacent to the two colonies. Prior to the Commissioners' expedition to Point 61, the Governments of the United Kingdom and the Netherlands had agreed that the sea boundary should be a straight line emanating from the land boundary terminus at an angle of N28E to the three-mile limit of the territorial sea, which was then the customary limit under international law. This was the maritime boundary that had first been proposed by the Netherlands in an *Aide Memoire* of 4 August 1931: "in a direction pointing to the right N. 28° to the point where the line meets the outer limit of the territorial waters and from there in an easterly direction following the outer limit of the territorial waters."²⁹ The United Kingdom was in agreement with the Netherlands' proposal.³⁰ The Netherlands again communicated its desire for a N 28°

27 Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6. The two Commissioners reported to the Governor of British Guiana that: "The actual co-ordinates (5° 59' 53.8" N. 57° 08' 51.5" W.) are somewhat different because even the latest (1927) chart of the Courantyne Mouth is considerably out in longitude. Consequently the proposed co-ordinates (6° 00' 25" N. 57° 08' 10"W.) are actually in the sea, but the pillar has been placed at the point on the ground which the co-ordinates indicate on the chart." Letter from Major Phipps (9 July 1936), *supra* Chapter 3, note 13.

28 Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6.

29 *Aide Memoire* from the Netherlands to the United Kingdom (4 August 1931), *supra* Chapter 3, note 11 ("At the mouth of the Corentyne the frontier will be... in a direction point to the right No. 28° to the point where this line meets the outer limit of the territorial waters and from there in an easterly direction following the outer limit of the territorial waters..."); Diplomatic Note from Netherlands Chargé d'Affaires in London to the British Foreign Secretary (28 February 1936) ("My Government prefer [sic] the indication "a true bearing of north 28° east..."). See MG, Vol. II, Annex 61.

30 See generally Telegram No. 62 from P. Leigh-Smith, Foreign Office to the Colonial Office (17 March 1936), see MG, Vol. II, Annex 8; Telegram No. 25 from the Foreign Office to the Colonial Office with early version of British Draft Treaty (24 April 1934) (stating that "the boundry [sic] between the territorial waters of Surinam and British Guiana is formed by the prolongation seawards of the line drawn on a true bearing of 28° from the landmark referred to in Article 1(2) above."), see MG, Vol. II, Annex 6.

line in a Diplomatic Note of 28 February 1936 from the Chargé d'Affaires of the Netherlands in London to the British Foreign Secretary.³¹

3.16 When the Boundary Commissioners set the land terminus at Point 61, the Netherlands changed its position with regard to the direction of the line that should delimit the territorial waters and contended that the maritime boundary should run parallel to the more westerly of the river's two navigation channels, at an angle of N10E from Point 61 to the limit of the territorial sea.³² Although the western channel was shallower and utilised less frequently than the eastern channel,³³ the Netherlands argued that it would be more efficient to keep both navigational approaches to the river under control of a single authority.³⁴ The United Kingdom eventually agreed to this position, although it left open the possibility that the direction of the boundary could be changed in the future.³⁵ In his report to the Undersecretary of State for the Colonies, the British Boundary Commissioner stated that the Commissioners had "fixed" the "Northern Terminal of the Boundary" of British Guiana and Suriname at Point 61, but "the bearing of 28° from the site selected for the Northern Terminal Pillar would intersect the line of the Navigation Channel which is on a bearing of about 10° E."³⁶ The British Commissioner noted that he "did not know of any specific reason why the boundary should continue out to sea on a bearing of 28°," and that in order to "avoid international complications about buoying the channel" the Commissioners had "placed the direction pillar so that it indicates the boundary on a bearing of 10° E, i.e. parallel to the line of the channel."³⁷ The two Commissioners reported that the line "joining the centre bolt of [marker] 'B' [at Point 61] to that of 'A' and projected out to sea gives the direction of the boundary line in Territorial Waters i.e. 10° east of True North."³⁸ The British Commissioner observed that, should there be "any particular reason for the bearing of 28° E it is a comparatively simple matter to rebuild the direction pillar to indicate this bearing instead of the 10° E bearing."³⁹ It is to be noted that agreement on a line of N10E in the territorial sea was provisional and liable to change, and that it did not purport to follow an equidistance line. It was motivated solely by considerations of administrative and navigational efficiencies.

31 *Ibid.*

32 Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6; Letter from Major Phipps (9 July 1936), *supra* Chapter 3, note 13.

33 Letter from J.C.E. White, British Hydrographic Department to N.B.J. Huijsman, Colonial Office (16 October 1962) ("this [western] channel is so set about with shoals and is so tortuous as to render it unsafe for navigation in comparison with the eastern channel which is the one normally used by shipping") [hereinafter "Letter from British Hydrographic Department (16 October 1962)"], *see* MG, Vol. II, Annex 28; Letter from Governor of British Guiana Sir Ralph Grey to J.W. Stacpoole, Colonial Office (3 May 1963) ("it is the Eastern Channel that is buoyed and that is used by all save the local craft") [hereinafter "Letter from Governor (3 May 1963)"], *see* MG, Vol. II, Annex 30.

34 Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6; Letter from Major Phipps (9 July 1936), *supra* Chapter 3, note 13.

35 Telegram No. 70 from the Governor to the Secretary of State (11 July 1936). *See* MG, Vol. II, Annex 13.

36 Letter from Major Phipps (9 July 1936), *supra* Chapter 3, note 13.

37 *Ibid.*

38 Report on the Inauguration of the Mark at the Northern Terminal, *supra* Chapter 2, note 6.

39 Letter from Major Phipps (9 July 1936), *supra* Chapter 3, note 13.

III. The Draft Treaty To Settle the Entire Boundary: 1939

3.17 In the autumn of 1939, with all major issues apparently agreed, the United Kingdom Secretary of State for Foreign Affairs submitted to his Dutch counterpart a comprehensive draft treaty on the delimitation of the boundary between British Guiana and Suriname. The draft treaty was sent from London to The Hague on 25 November 1939.⁴⁰ The Secretary of State's covering Diplomatic Note indicated that the draft treaty had been revised in accordance with prior negotiations and enquired of the Dutch "whether your Government concur in the draft treaty and are prepared to proceed to signature?"⁴¹ Regarding the land boundary terminus, the draft treaty provided in Article 1 that:

(1) The boundary between British Guiana and Surinam shall be formed by the line of the left bank of the River Courantyne from the sea southwards to a point near its source. Where a side channel (itabu) exists, the left bank of the river is the bank of the most leftward channel which normally contains water at all seasons of the year.

(2) The beginning of the left bank of the River Courantyne at the sea shall be the point at which the prolongation of the line joining two concrete marks, on the left bank of the River Courantyne, intersects the shore-line. On this same line which has a true bearing 10° East of True North, a large triangular wooden beacon, 10 metres high, visible from the sea, has been erected. The approximate position of the more seaward of the two concrete marks is:

Latitude 5°59'53.8" North.

Longitude 57°08'51.5" West of Greenwich.⁴²

With respect to the maritime boundary in the territorial sea, Article 3 provided that, "The boundary between the territorial waters of Surinam and British Guiana is formed by the prolongation seawards of the line drawn on a bearing of 10° East of True North of the landmark referred to in Article 1(2) above."⁴³

3.18 By the time the draft treaty was delivered to the Netherlands in 1939, both States were treating Point 61 as the land boundary terminus and the N10E line as the boundary between British Guiana and Suriname in the territorial sea. This is apparent in the 1938 Hague Notice to Mariners No. 250/3179 concerning the "Beacon marking limit between Netherlands and British Territory" on the Corentyne River.⁴⁴ The Notice stated:

⁴⁰ Diplomatic Note from the Secretary of State to E. Michiels van Verduynen, Netherlands Minister to the United Kingdom, with attached 1939 British Draft Treaty (25 November 1939). See MG, Vol. III, Annex 89.

⁴¹ *Ibid.*

⁴² 1939 British Draft Treaty, Article 1(2). See MG, Vol. III, Annex 89. The coordinates are those of Point 61.

⁴³ *Ibid.*, Article 3.

⁴⁴ Letter from S.A. Edgell, Hydrographic Department to the Colonial Secretary (20 December 1938). See MG, Vol. II, Annex 15.

A pyramid-shaped wooden beacon, 10 M. in height, has been placed on the left bank of the Corentyn, 6.05 miles 356°.5 from the Springlands factory chimney. The line drawn 010° from this beacon gives the limits between the Netherlands and British territorial waters in the mouth of the Corentyn.⁴⁵

3.19 The Second World War intervened to prevent the Dutch Government from responding formally to the United Kingdom's 1939 draft treaty. On 1 September 1939 Germany invaded Poland and on 10 May 1940 the Netherlands itself was invaded. The German occupation of the Netherlands lasted until 5 May 1945. It precluded any possibility that the treaty between the United Kingdom and the Netherlands could be concluded. However, there is little doubt that by the time war broke out the Netherlands was in agreement with the terms of the draft treaty, and was preparing to accept them. In a letter of 8 May 1953 to the Secretary-General of the United Nations, the Netherlands stated that the border between Suriname and British Guiana was "settled" according to "a draft treaty between the Netherlands and the United Kingdom, the ratification of which has been interrupted by the last war."⁴⁶

IV. Unsuccessful Post-World War II Efforts To Settle the Boundary: 1949-1957

3.20 Following the war, the United Kingdom and the Netherlands next turned their attentions to a boundary treaty for British Guiana and Suriname in 1949. On 14 September 1949, the United Kingdom Foreign Office transmitted a draft treaty to the Netherlands Government.⁴⁷ The Foreign Office noted that although the two States had come close to agreeing upon a final text before the war, the conclusion of the treaty negotiations had been interrupted by "the unhappy events of 1940."⁴⁸ The United Kingdom proposed that it would now "be opportune to re-open this subject," and to that end transmitted a "revised English text of the draft treaty for the delimitation of the boundary between British Guiana and Surinam."⁴⁹ The "revised English text" was identical to the 1939 draft treaty in all material respects.⁵⁰ The Foreign Office proposed that the draft treaty be "discussed by the Governors of British Guiana and Surinam before any further steps are taken by the two metropolitan Governments in regard to the delimitation of the boundaries between the two dependent territories."⁵¹

45 *Ibid.*

46 Information and Observations Submitted by Governments Regarding the Question of the Delimitation of the Territorial Sea of Two Adjacent States, *Yearbook of the International Law Commission Yearbook 1953*, Vol. II, Doc. A/CN.4/71 and Add. 1-2., 82-83 (1959).

47 Diplomatic Note from the British Foreign Office to E. Michiels van Verduynen, Netherlands Minister to the United Kingdom (16 September 1949). *See MG*, Vol. II, Annex 65.

48 *Ibid.*

49 *Ibid.*

50 *Ibid.*, stating that "the text [of 1949] is identical with the text transmitted in 1939 save for Article 5, 1...." That provision, which in the 1939 text had proposed that "subjects of both High Contracting parties shall enjoy freedom of navigation, including the use of the water as a landing place for hydroplanes," was revised to reflect the post-war international obligations of the United Kingdom under the Convention and Statute of the Regime of Navigable Waterways of International Concern, the Treaty of Economic, Social, and Cultural Collaboration and Collective Self-Defense (also called the Brussels Treaty), and the North Atlantic Pact (establishing the North Atlantic Treaty Organisation).

51 *Ibid.*

3.21 Despite a diligent search of the historical records in its own archives, in British archives and in those Dutch archives to which access has been granted, Guyana has not been able to ascertain whether any such discussions took place. Nor has Guyana been able to ascertain whether (and if so how) the Netherlands responded to the United Kingdom proposal to resume negotiations for a British Guiana-Suriname boundary treaty. It may be that the Netherlands was distracted by other external priorities in the period between 1949 and 1957, such as the restructuring of the metropolitan power's constitutional and legal relationships with its remaining colonies, including Suriname, by means of a new Statute for the Kingdom, promulgated in 1954.⁵² It is clear, however, that no further draft treaties were exchanged in the period between 1949 and 1961, and no formal boundary agreement was reached. Nevertheless, throughout this period Point 61 continued to be recognised in practice as the northern land boundary terminus between British Guiana and Suriname.

V. The United Kingdom's Demarcation of the Maritime Boundary between British Guiana and Suriname by Means of an Equidistance Line: 1957-1958

3.22 There were important developments during this period, however. By 1957 the United Kingdom had concluded that it would be necessary to reach agreement with the Netherlands on the delimitation of the maritime boundary between British Guiana and Suriname beyond the territorial sea, in the area of the continental shelf. At this time also, nearly fifty years ago, the United Kingdom also concluded that any boundary line had to be based on the principle of equidistance, and it initiated a sustained and good faith effort to identify that equidistance line. There were three factors that brought the United Kingdom to this conclusion.

A. The Extension of British Guiana's Boundaries to Include the Continental Shelf

3.23 The first factor was the emerging practice of other States in proclaiming sovereign rights over the continental shelf that extended from their coastlines. In the context of developments in other countries, in 1954 the United Kingdom adopted the British Guiana (Alteration of Boundaries) Order in Council. This extended the boundaries of British Guiana to include the contiguous continental shelf. The Order in Council of 19 October 1954 provided that "The boundaries of the Colony of British Guiana are hereby extended to include the area of the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of British Guiana."⁵³ The Order in Council did not, however, purport to define or delimit that continental shelf.

B. The Draft Articles of the International Law Commission on Maritime Delimitation

3.24 The second factor was the movement toward international negotiations recognising coastal States' rights over the continental shelf. Between 1949 and 1956 the UN International Law Commission ("I.L.C.") discussed and then published Draft Articles concerning the delimitation of maritime boundaries.⁵⁴ The I.L.C. Draft Articles reflected support for the principle of equidistance as the proper method for delimiting boundaries in the

⁵² See *The Evolution of Guyana and Suriname: A Synopsis*. See MG, Vol. II, Annex 1.

⁵³ The British Guiana (Alteration of Boundaries) Order in Council (19 October 1954). See MG, Vol. III, Annex 98.

⁵⁴ Report of the International Law Commission to the General Assembly, *Yearbook of the International Law Commission 1956*, Vol. II, Doc. A/3159, 253-302 (1956). See also United Nations, *The Work of the International Law Commission*, Vol. I, 114-122 (6th ed., 2004).

territorial sea and continental shelf, in the absence of special circumstances or agreement. This was embodied in Articles 14 and 72(2) of the Draft Articles, respectively, in relation to the delimitation of the territorial sea and continental shelf. The Netherlands later commented approvingly that the I.L.C. had come “down firmly in favour of the equidistance principle as the generally applicable rule for the continental shelf as well as the territorial sea.”⁵⁵

C. The Application for an Oil Concession by the California Oil Company: 1957

3.25 The third factor was an application in 1957 by the California Oil Company for a concession to explore for oil off the coast of British Guiana, in close proximity to Suriname.⁵⁶ The application was the first one in the area of the continental shelf, and it underscored the need for a maritime boundary between British Guiana and Suriname, so that the easternmost limits of the concession could be established without encroaching on any area which might fall within the jurisdiction or sovereign rights of Suriname. The California Oil Company application prompted the United Kingdom to initiate efforts to delimit the maritime boundary, to adopt the position that the boundary should be delimited in strict conformity with international law, and to seek to effect a delimitation in accordance with the principle of equidistance which was set forth in the I.L.C.’s Draft Articles and subsequently in the relevant 1958 Geneva Conventions on the Law of the Sea.⁵⁷ The British attitude was reflected in Secret Telegram No. 198 of 18 June 1957 which was sent by the Governor of British Guiana to the Secretary of State for the Colonies:

We think that it would be quite wrong for British Guiana to purport to grant licences over an area which fell on the wrong side of a line drawn in accordance with those articles and indeed, in case the other states concerned could show existence of special circumstances it would probably be wise to err on the side of caution in determining the area to be covered by the licence.⁵⁸

The telegram reflects the very real concern with the need to fully respect the rights of the Netherlands and Suriname. The Governor recommended that the British Admiralty be asked to “suggest lines which would be in accordance with the I.L.C.’s principles” and with the equidistance formula, so that British Guiana would be instructed “to see that the licensee does not operate beyond a boundary line for territorial waters drawn in accordance with the I.L.C.’s articles.”⁵⁹

⁵⁵ Counter-Memorial Submitted by the Government of the Kingdom of the Netherlands in the *North Sea Continental Shelf Case (Germany v. Netherlands)*, para. 17 (20 February 1968) [hereinafter “Netherlands Counter-Memorial, 1968”].

⁵⁶ Secret Telegram No. 224 from British Guiana, Office of the Attorney General to the Secretary of State for the Colonies (15 June 1957). See MG, Vol. II, Annex 16.

⁵⁷ Secret Telegram No. 198 from the Secretary of State for the Colonies to British Guiana, Office of the Attorney General (18 June 1957) [hereinafter “Secret Telegram No. 198 (18 June 1957)”], see MG, Vol. II, Annex 17; Memorandum by D.G. Gordon-Smith of the Colonial Office (18 June 1957), see MG, Vol. II, Annex 18; Letter from D.H.T. Hildyard, writing for the Secretary of State to P.S. Stevens, British Embassy in Venezuela (3 July 1957), see MG, Vol. II, Annex 21.

⁵⁸ Secret Telegram No. 198 (18 June 1957), *supra* Chapter 3, note 57.

⁵⁹ *Ibid.*

D. The Decision To Use an Equidistance Line To Delimit the Maritime Boundary between British Guiana and Suriname, as well as the Eastern Limit of the Oil Concession Area: 1957

3.26 On 26 June 1957, representatives of the United Kingdom Foreign Office, the Colonial Office and the British Admiralty met and agreed that they would delimit the British Guiana-Suriname maritime boundary by means of an equidistance line, which would also serve as the easternmost limit of the concession to be awarded to the California Oil Company. The British officials decided that “even at the exploration stage, the area should be fully defined and that an attempt should be made to draw the lines of boundaries of the continental shelf in accordance with the principles set out in the International Law Commission’s draft articles.”⁶⁰ Although by now the area was well-charted by the British and the Dutch, the approach was not without its difficulties. British Admiralty officials noted that the available materials using British and Dutch charts produced four differing equidistance lines, “none of which was unassailable.”⁶¹ There was evident concern that since the Netherlands might find fault with any line which was chosen, it would be appropriate to draw the equidistance line on the basis of the Dutch charts rather than the British charts.⁶²

3.27 At the conclusion of the meeting on 26 June, the Secretary of State for the Colonies sent the Governor of British Guiana Secret Telegram No. 212.⁶³ This cable advised the Governor that the eastern boundary of any concession to be awarded to the California Oil Company had to be based on equidistance, in conformity with the Draft Articles of the International Law Commission:

After full discussion with Foreign Office and Admiralty we are convinced that it is essential to define... southeast limits of operations under licence in the absence of agreements with territories on precise definition of boundary of respective continental shelves *we would wish to follow as closely as available data allow the principle set out in international law Commission’s articles...* ⁶⁴

The Secretary of State further advised the Governor that in order to avoid disagreement with the Netherlands, the United Kingdom Government had “adopted for this purpose... Netherlands chart 217 of February 1939.” On this basis, the Secretary of State considered that a “reasonable” equidistance line would start: “From large triangular wooden beacon latitude 5° 59’ 53.8” north, 57° 08’ 51.5” west [Point 61] in 010 degrees direction to 3 miles limit from coast; thence 033 degrees direction to intersection with 25 fathom line.”⁶⁵ This line generally approximates to the equidistance line which has been followed by the United Kingdom and Guyana ever since.

⁶⁰ Minutes drafted by E.W.A. Scarlett of the Colonial Office (27 June 1957). See MG, Vol. II, Annex 20.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Secret Telegram No. 212 from the Secretary of State to the Governor of British Guiana (27 June 1957) [hereinafter “Secret Telegram No. 212 (27 June 1957)”]. See MG, Vol. II, Annex 19.

⁶⁴ *Ibid.* (Emphasis added.)

⁶⁵ *Ibid.* Twenty-five fathoms is equivalent to a depth of 45.7 metres.

3.28 The following week, on 3 July 1957, the Office of the Secretary of State wrote that “the best principle to follow” in establishing the boundaries of the California Oil Company concession was “some application of the principle of equidistance set out in the International Law Commission’s draft articles on the law of the sea Nos. 14 and 72 (ii).”⁶⁶ It was noted that although these draft articles had not yet been considered by an international conference, and amounted to “no more than a recommendation in favour of the median line principle... [the] granting of a licence within the median lines would be justifiable and form a suitable precedent for negotiation.”⁶⁷ Once again it was noted that the United Kingdom would employ the Netherlands’ own chart (no. 217). This yielded a boundary line that was “roughly the means of the various alternatives, and as far as possible follows the median line principle.”⁶⁸

E. The Oil Concession Granted by British Guiana to the California Oil Company: 1958

3.29 On 15 April 1958, British Guiana signed a concession agreement with the California Oil Company.⁶⁹ A week earlier the Governor of British Guiana had written to the Secretary of State for the Colonies assuring him that in delimiting the eastern boundary of the concession area, British Guiana “used the lines described in paragraph 5 of your secret telegram No. 212 of the 27th June, 1957,” that is to say a line extending from Point 61 for three miles at an angle of N10E and then proceeding at an angle of N33E for another 66 miles until it reached the twenty-five fathom line.⁷⁰ The 1958 concession agreement granted exploration rights to the California Oil Company that covered some 16,000 square miles “within the boundaries of the Colony of British Guiana.”⁷¹ However, the concession’s eastern boundary deviated slightly from that proposed in the Secretary of State’s Secret Telegram 212 of 27 June 1957 and the Governor’s cable of 8 April 1958.⁷² According to the concession agreement, the eastern boundary ran from:

a point in latitude 5° 59’ 53.8” North, longitude 57° 08’ 51.5” West [*i.e.*, Point 61] established by the intersection of the Surinam and British Guiana international boundary demarcated by a large triangular wooden beacon, thence N. 13° East for a distance of approximately 3 miles, thence N. 32° East for a distance of approximately 69 miles to a point on the 25 fathom line, in latitude 6° 58’ 17” North, longitude 56° 36’ 51” West... .⁷³

3.30 This reflected two changes. First, instead of extending from Point 61 for three miles at an angle of N10E, the concession agreement provided that the three-mile segment

⁶⁶ Letter from D.H.T. Hildyard, writing for the Secretary of State to P.S. Stevens, British Embassy in Venezuela (3 July 1957), *supra* Chapter 3, note 57.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ California Oil Company (British Guiana) Limited - Oil Exploration Licence, Issued on 15th April 1958 [hereinafter “California Oil Company Licence (15 April 1958)”]. See MG, Vol. III, Annex 105.

⁷⁰ Secret Telegram No. 107 from British Guiana Governor Sir Patrick Renison to the Secretary of State for the Colonies (8 April 1958). See MG, Vol. II, Annex 22.

⁷¹ California Oil Company Licence (15 April 1958), Sched. A, *supra* Chapter 3, note 69.

⁷² *Ibid.*

⁷³ *Ibid.*

commencing at Point 61 would have a bearing of N13E; and second, instead of proceeding at an angle of N33E from the limit of the territorial sea for 66 miles to the twenty-five fathom line, the concession agreement provided for an angle of N32E. Despite a thorough search of the historical records, Guyana has so far not been able to identify any materials which could explain this modest deviation. Irrespective of the rationale, the differences were not substantial, as **Plate 6** (following this page) indicates. **Plate 6** consists of the contemporaneous charts used by the United Kingdom and the Netherlands, respectively Dutch chart 217 and British chart 1801. On each chart, *inter alia*, an equidistance line has been plotted (in gold on Dutch chart 217 and in blue on British chart 1801). As true equidistance lines, they are not straight but change direction according to the contours of the British Guiana and Suriname coastlines. However, the general bearings of the equidistance lines between Point 61 and the 25-fathom line are N34E in the case of the Dutch chart, and N32E on the British chart. Also plotted on the two charts in **Plate 6** are: a line drawn in accordance with Secret Telegram 212 (*i.e.*, from Point 61 to the limit of the territorial sea at an angle of N10E, and from that point to the 25-fathom line at an angle of N33E); a line drawn in conformity with the eastern boundary of the California Oil Company concession agreement (*i.e.*, from Point 61 to the end of the territorial sea at an angle of N13E, and thence to the 25-fathom line at an angle of N32E); and a straight line with a bearing of N34E, which is the boundary historically claimed by Guyana. **Plate 6** confirms the close proximity of the various lines to one another, irrespective of which chart is used; from the limit of the territorial sea to a depth of 25 fathoms, the two equidistance lines, the Secret Telegram 212 line, the concession agreement boundary, and the N34E line demonstrate a strong similarity.

F. The Adoption of the Geneva Conventions on the Law of the Sea: 1958

3.31 On 29 April 1958, two weeks after the concession agreement with the California Oil Company was signed, the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the Continental Shelf were adopted.⁷⁴ These conventions adopted the I.L.C.'s recommendations regarding maritime delimitation in the territorial sea and the continental shelf. Article 12 of the 1958 Geneva Territorial Sea Convention and Article 6(2) of the 1958 Geneva Continental Shelf Convention confirmed support for the use of equidistance in the absence of agreement.⁷⁵

VI. The Netherlands' Agreement To Delimit the Maritime Boundary by Means of an Equidistance Line, and Renewed Efforts To Conclude a Boundary Treaty: 1958-1966

A. The Netherlands' Aide Memoire Proposing Maritime Delimitation in the Continental Shelf Area by Means of an Equidistance Line: 1958

3.32 The oil concession granted to the California Oil Company was drawn to the attention of the Netherlands. In the face of that knowledge and the concession's reliance on the equidistance principle, it is noteworthy that the Netherlands did not protest the grant of the oil concession, the definition of the concession area or the exploration activities subsequently undertaken in the area. Even more noteworthy is the fact that, shortly after the adoption of the 1958 Conventions, the Netherlands communicated to the United Kingdom its desire to

⁷⁴ Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958, 516 U.N.T.S. 205; Convention on the Continental Shelf, 29 April 1958, 499 U.N.T.S. 311.

⁷⁵ See *infra* Chapter 7, Sec. III.

delimit the maritime boundary between British Guiana and Suriname in the continental shelf by means of an equidistance line in conformity with Article 6(2) of the Convention on the Continental Shelf.⁷⁶ The Dutch took this initiative at the request of the colonial government of Suriname. The Surinamese and the Dutch were motivated by the same considerations as the British, namely “the practical importance [of] determining the areas covered by oil exploration concessions... .” A Dutch *Aide Memoire* of 6 August 1958 to the United Kingdom Foreign Office set out the background:

The Government of Surinam have requested the Netherlands Government to take steps to determine clearly and precisely the line dividing the continental shelf adjacent to Surinam and British Guiana. *This matter has lately become of practical importance with a view to determining the areas covered by oil exploration concessions granted by the Surinam Government.*

The Convention on the Continental Shelf adopted this spring by the Geneva Conference on the Law of the Sea, although not yet signed by the Netherlands or the United Kingdom, is considered to lay down acceptable general principles of international law concerning the delimitation of continental shelves.

According to Article 6, par. 2, of that Convention, the boundary of a continental shelf adjacent to the territory of two adjacent States shall be determined by agreement between them.

*It is deemed desirable that such an agreement be concluded between the Netherlands and the United Kingdom by an exchange of notes in which the principle of “equidistance” mentioned in the same article of the Convention would be adopted as the determinant of the line dividing the continental shelf adjacent to Surinam and British Guiana. The actual dividing line resulting from the equidistance principle would be charted on a map to be annexed to the notes.*⁷⁷

B. The United Kingdom’s Positive Response to the Netherlands’ Proposal of an Equidistance Line: 1958-1959

3.33 The United Kingdom reacted positively to the Dutch *Aide Memoire*. Meetings were held between senior officials of the two States to discuss the way forward in the context of a shared understanding that agreement on the maritime boundary in respect of the continental shelf should be an equidistance line. At a meeting on 15 October 1958, attended by E.W.A. Scarlett of the United Kingdom Colonial Office, the Netherlands Ambassador to the United Kingdom, and the Netherlands Minister with responsibility for Suriname, the parties “agreed that there was nothing between us on how the line should be drawn,” in other words that it

⁷⁶ *Aide Memoire* from the Netherlands to the United Kingdom (6 August 1958) [hereinafter “*Aide Memoire* from the Netherlands (6 August 1958)”]. See MG, Vol. II, Annex 66.

⁷⁷ *Ibid.* (Emphasis added.)

should be based on equidistance.⁷⁸ The only outstanding issue was to draw an accurate line. The following day – 16 October – the Colonial Office reported on the meeting to the Foreign Office:

there is plainly no difference of principle between ourselves and the Netherlands authorities. We are both wedded to the principle of the “median line,” but we have the practical difficulty to which you refer of drawing the line with absolute certainty, since some of the data on which it is to be based is not beyond question.⁷⁹

3.34 By Diplomatic Note, the United Kingdom gave its positive response to the Dutch *Aide Memoire*: “Her Majesty’s Government learn with pleasure that the Netherlands Government would welcome an agreement on this question, based on the principle of equidistance.”⁸⁰ It added that the Government of the United Kingdom:

is at present preparing a Draft Treaty for the delimitation of the boundary between British Guiana and Surinam. It is intended that the Draft Treaty should contain provisions for the delimitation of the Continental Shelf, based on the accepted principle mentioned above.⁸¹

3.35 In preparing the Draft Treaty, the United Kingdom turned to Commander R. H. Kennedy, its widely respected expert on maritime boundary delimitation, for the elaboration of an equidistance line in the continental shelf, in conformity with the understanding between the United Kingdom and the Netherlands. Commander Kennedy prepared such a line, using Dutch chart 217. His effort elicited the following response from the Colonial Office:

As you say the difficulties in the way of drawing an exact median line are considerable, and the best we can hope to do at the moment is to produce a line which the Dutch could be expected to recognise as an honest attempt, given the difficulties, to follow the principles on which both we and the Dutch are agreed. The Dutch chart which you have selected should serve well for this purpose and I think we could properly adopt the line you have drawn as a starting point in the negotiations which will have to take place.⁸²

C. The Dutch Chart Showing a “Median Line” Dividing British Guiana and Suriname in the Continental Shelf: 1959

3.36 In April 1959, the Netherlands advised the United Kingdom that it was preparing a new version of Dutch chart 222 of the British Guiana/Suriname coastal region, which could

⁷⁸ Letter from E.W.A. Scarlett, Colonial Office to C.M. Anderson, Foreign Office (16 October 1958) [hereinafter “Letter from the Colonial Office to the Foreign Office (16 October 1958)”]. See MG, Vol. II, Annex 23.

⁷⁹ *Ibid.*

⁸⁰ Diplomatic Note from the United Kingdom to the Netherlands (November 1958). See MG, Vol. II, Annex 67.

⁸¹ *Ibid.*

⁸² Memo from E.W.A. Scarlett, Colonial Office to R.H. Kennedy, Hydrographic Department, Admiralty (11 February 1959). See MG, Vol. II, Annex 25.

serve as a more reliable basis for delimiting the maritime boundary. The chart was to be based on an “aero-survey triangulation of Surinam in 1947-48” carried out by the Netherlands.⁸³ In June 1959, the Netherlands Ambassador in London presented the new chart to the United Kingdom Foreign Office, together with “Explanatory Notes to Map concerning the delimitation of the Continental Shelf adjacent to Surinam and British Guiana.”⁸⁴ The map included a “Median Line” delimiting the continental shelf between the two colonies, as drawn by the Netherlands.⁸⁵ According to the Explanatory Notes, the median line was established “by connecting points equidistant from the baseline across the mouth of the Corantyn River and the Surinam low-water-line on the one hand, and the British Guiana low-water-line on the other.”⁸⁶ (Guyana found in British archives the Netherlands Ambassador’s June 1959 communication to the United Kingdom Foreign Office, and the Explanatory Notes referring to the “Median Line” drawn on Dutch chart 222, as well as subsequent internal British government correspondence referring to the Dutch-drawn “Median Line.” Unfortunately, the British archives did not include a version of Dutch chart 222 with the Median Line drawn on it, and Suriname, as explained above, has blocked Guyana’s access to the relevant Dutch archive. Thus, Guyana is unable to include herewith a depiction of the Median Line plotted by the Dutch.)

D. The Treaty Drafted by the United Kingdom: 1961

3.37 These exchanges led the United Kingdom to prepare a new draft treaty to include a delimitation of the continental shelf between British Guiana and Suriname by means of an equidistance line, as the two parties had both proposed. The draft treaty was presented to the Netherlands in 1961. With regard to maritime delimitation, Article VII provided that:

[t]he boundary between the territorial seas and contiguous zones (so far as they respectively extend) and the continental shelves of British Guiana and Surinam shall be formed by the prolongation seawards of the line drawn on a bearing of 010 degrees referred to in Article I(2) to a distance of 6 miles from the more seaward of the concrete marks referred to, thence on a bearing of 033 degrees for a distance of 35 miles, thence on a bearing of 038 degrees for a distance of 28 miles, thence on a bearing of 028 degrees to a point of intersection with the edge of the continental shelves as defined by international law.⁸⁷

The starting point for the line was the land boundary terminus at Point 61. Article I of the draft treaty adopted the same language as the earlier United Kingdom drafts of 1939 and

⁸³ Letter from R.H. Kennedy, Hydrographic Department, Admiralty to E.W.A. Scarlett, Colonial Office (13 April 1959). See MG, Vol. II, Annex 26.

⁸⁴ Letter from J.J. d’A Collings, Foreign Office to R.H. Kennedy, with attached Explanatory Note (3 June 1959) [hereinafter “Letter from Foreign Office to R.H. Kennedy (3 June 1959)”]. See MG, Vol. II, Annex 27.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ 1961 British Draft Treaty – British Guiana/Surinam Boundary, Part II, Article VII [hereinafter “1961 British Draft Treaty”]. See MG, Vol. III, Annex 90.

1949 with respect to the identification of Point 61 as the land boundary terminus and the point of origin for maritime delimitation.⁸⁸

3.38 The proposed maritime delimitation differed in three respects from the earlier British proposal put forward in 1957-1958 and memorialised in Secret Telegram 212.⁸⁹ First, the initial segment of the line, starting at Point 61, extended at an angle of N10E for six miles rather than three;⁹⁰ however, due to the shape of the British Guiana coastline, the point located six miles seaward from Point 61 (at an angle of N10E) lay approximately three miles from the nearest point on that coastline, and thus represented the limit of British Guiana's territorial sea. Second, beyond the outer limit of the territorial sea the equidistance "line" was composed of three segments, at angles of N33E, N38E and N28E, respectively (giving an average bearing of N34E), instead of a single segment at a bearing of N33E. This approach reflected an attempt to track more closely the course of a true equidistance line.⁹¹ Third, in accordance with the 1958 Geneva Continental Shelf Convention, the maritime boundary was extended to the outer limit of the continental shelf at the 200-metre isobath, beyond the 25-fathom line that represented the limit of the 1958 concession agreement.⁹² **Plate 7** (following this page) depicts separately on Dutch chart 217 and British chart 1801 the equidistance line; the 1961 draft treaty line (which is almost congruent with the equidistance line); the eastern boundary of the 1958 California Oil Company concession; and the N34E line claimed by Guyana. **Plate 7** demonstrates how very similar all of these lines are.

3.39 The 1961 draft treaty was not limited to maritime boundary delimitation. It was an attempt by the United Kingdom to achieve a comprehensive international boundary agreement to resolve all controversies on land and sea between British Guiana and Suriname. Regarding title to the Corentyne River and the New River Triangle, the 1961 draft treaty was identical to its predecessors, including the 1939 draft treaty that reflected the agreement of the parties on both of these issues (with title to the Corentyne River going to the Netherlands, subject to navigation and fishing rights for British Guiana, and confirming that title to the New River Triangle remained with the United Kingdom).⁹³

E. The Treaty Drafted by the Netherlands: 1962

3.40 The Netherlands responded to the United Kingdom draft treaty of 1961 with a draft of its own.⁹⁴ In that draft the Netherlands took a position on the Corentyne River and the New River Triangle which was contradictory to the one it had adopted in 1931 and which had remained unchanged for thirty years. Rather than claiming title to the Corentyne and recognising the United Kingdom's sovereignty over the Triangle, as it had done previously, the Netherlands suddenly claimed title to the Triangle and adopted the original United

⁸⁸ *Ibid.*, Part I, Article I.

⁸⁹ *See supra* Chapter 3, para 3.27.

⁹⁰ 1961 British Draft Treaty, *supra* Chapter 3, note 87, Part II, Article VII.

⁹¹ *Ibid.*, Part II, Article VII.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ 1962 Dutch Draft Treaty, Treaty between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland establishing the frontier between Surinam and British Guiana [hereinafter "1962 Dutch Draft Treaty"]. *See MG*, Vol. III, Annex 91.

Kingdom position (which the United Kingdom had abandoned thirty years earlier) that the riverine boundary should be the thalweg, not the west bank.⁹⁵ Not surprisingly the United Kingdom was unwilling to relinquish its claim to the Triangle, and did not agree to the Netherlands' new terms.

3.41 The Netherlands' draft treaty of 1962 also addressed maritime delimitation, but without making reference to the continental shelf.⁹⁶ Article 3(b) of the Dutch draft treaty proposed that the boundary consist of a "line with a true bearing 10° East of true North from the point on the left bank where the river debouches into the sea."⁹⁷ The draft treaty also confirmed the coordinates at Point 61 as the starting point for the delimitation.⁹⁸

3.42 The United Kingdom Minister without Portfolio observed that the Dutch draft treaty "does not make it clear how the Continental Shelf and Contiguous Zones are to be divided."⁹⁹ To be sure, the Netherlands' draft treaty did not *reject* the concept of using an equidistance line to delimit the continental shelf area; it simply did not address the subject. An *Aide Memoire* in response was prepared by the United Kingdom in December 1962. In preparing the draft, the Foreign Office reiterated that "Article 4 of the [Dutch] draft Treaty does not make it clear how the Continental Shelf and Contiguous Zones are to be divided." It concluded that, "There would seem to be no reason why the median line should not be adopted here as the dividing line."¹⁰⁰ The Netherlands later confirmed that "Suriname had already agreed to the equidistance line being used to determine the border on the continental shelf in 1962...."¹⁰¹

3.43 The exchange of draft treaties in 1961 and 1962 established that issues relating to the New River Triangle, at the southern end of the British Guiana/Suriname land boundary more than 300 kilometres from the sea, created an obstacle preventing the formalisation of a comprehensive boundary settlement. That issue did not stand in the way, however, of the parties' common understanding, demonstrated by their conduct, that the northern land boundary terminus was fixed at Point 61, or their commitment to delimitation based on equidistance in the continental shelf.

⁹⁵ *Ibid.*, Article 4.

⁹⁶ *Ibid.*

⁹⁷ 1962 Dutch Draft Treaty, Article 1 (3)(b), *supra* Chapter 3, note 94.

⁹⁸ *Ibid.* The geographic coordinates of "the point on the left bank where the river debouches into the sea," set forth in Article 1(3)(b), were those of Point 61, as provided in that Article: the point at which the prolongation of the line joining two concrete marks on the left bank of the Corentyne intersects the shoreline. On this same line, which has a true bearing 10° East of true North, a triangular wooden beacon 10 metres high, visible from the sea has been erected. The position of the seaward of the two concrete marks is: Latitude 5° 59'53.8" North, Longitude 57° 06'51.5" West of Greenwich. *Ibid.*, Article 1(3)(b)

⁹⁹ Secret Memorandum of the Minister Without Portfolio with attached Appendices (8 October 1965). *See* MG, Vol. II, Annex 31.

¹⁰⁰ Letter from P.M. Hutchinson, Foreign Office to J.W. Stacpoole, Colonial Office, with attached "Preliminary Comments on Points of Substance on the Draft Treaty" (11 December 1962). *See* MG, Vol. II, Annex 29.

¹⁰¹ Briefing Note for Dutch Deputy Prime Minister for a meeting with the Parliamentary Committee (21 June 1966) (original in Dutch, translation provided by Guyana). *See* MG, Vol. II, Annex 44.

F. British Guiana's Oil Concession to Royal Dutch Shell, Using the Equidistance Line as the Eastern Boundary of the Concession Area: 1965

3.44 As boundary negotiations were underway, interest in the oil potential of the offshore areas of both territories continued to grow, providing the impetus for a pattern of conduct and acquiescence by the parties. On 11 August 1965, British Guiana, with the consent of the United Kingdom, granted another oil concession and exploration licence, this time to Guyana Shell Limited, a subsidiary of Royal Dutch Shell.¹⁰² The licence covered an area in Guyana's offshore waters bounded in the east by a line similar to the one delimiting the 1958 concession granted to the California Oil Company.¹⁰³ The two concessions extended to almost identical geographic areas, although the eastern boundary of the Shell concession was longer than that of the California Oil Company concession, extending for a distance of 123 miles up to the 200-metre isobath (as compared with 69 miles for the 1958 concession).¹⁰⁴ As with the 1958 concession, the boundary for the 1965 Shell concession originated at Point 61 and extended seaward at an angle of N13E for three miles, and thereafter extended at an angle of N33E to the northeastern limit of the concession area for a distance of 120 miles.¹⁰⁵ **Plate 8** (following this page) demonstrates separately on Dutch chart 217 and British chart 1801 the close proximity between the equidistance line, the eastern boundary of the Shell concession, and the N34E line claimed by Guyana. Although known to the Netherlands and Suriname, neither the Shell concession nor Shell's exploration activities in the concession area elicited any protest from them.

G. The United Kingdom's Final Effort To Draft a Boundary Treaty: 1965

3.45 Against this background and the impending independence of British Guiana (scheduled to occur in 1966), the United Kingdom made one last attempt to negotiate a definitive settlement of British Guiana's boundary with Suriname. In November 1965, a new draft treaty was prepared and sent to the Netherlands.¹⁰⁶ On the river and land portions of the boundary, the 1965 draft treaty was generally consistent with the earlier United Kingdom drafts of 1939, 1949 and 1961. The 1965 draft treaty provided that the entire maritime boundary, in the territorial sea as well as the continental shelf, would extend along an equidistance line, seaward from Point 61 to the outer limits of the continental shelf.¹⁰⁷ The 1965 draft thereby dispensed with earlier texts which adopted a line along N10E from Point 61 to the outer limit of the territorial sea.¹⁰⁸ The United Kingdom explained the change on the grounds that the original rationale put forward by the Netherlands for a N10E line in the territorial sea was no longer applicable. Specifically, the western channel of the Corentyne was no longer used (or usable) by commercial ships, which were larger and heavier than the ones that operated in the river mouth in the 1930s. This was confirmed in 1963 by the Marine

¹⁰² Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965). See MG, Vol. III, Annex 107.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ 1965 Draft Treaty Between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands for the Definition of the Frontier Between British Guiana and Surinam [hereinafter "1965 British Draft Treaty"]. See MG, Vol. III, Annex 92.

¹⁰⁷ *Ibid.*, Part II, Article VII.

¹⁰⁸ 1961 British Draft Treaty, *supra* Chapter 3, note 87.

Superintendent of British Guiana's Transport and Harbours Department, who reported that the western channel of the river was no longer buoyed, rather "it is the Eastern Channel that is buoyed and that is used by all save the most 'local' craft."¹⁰⁹ The British Guiana Customs Department reported that, in 1962, 255 coastal ships from British Guiana and 425 Dutch ships used the eastern channel; there were no reports of ships using the western channel.¹¹⁰ Accordingly, there was no need for the supervision or maintenance of that channel, the factors which had been cited by the Netherlands in 1936 as the justification for the N10E boundary line. The change was reflected in Article VII of the 1965 draft treaty, which provided that:

(1) The boundary between the territorial seas, the contiguous zones and the continental shelves which appertain to British Guiana and Surinam respectively, shall be based on a line formed by the prolongation of the line joining two concrete marks (the positions of which are given in paragraph (2) of this Article) until it intersects the line of mean low-water spring tide level existing at the date of the present Treaty (the position of the point of intersection being) and then drawn in accordance with the principle of equidistance from the nearest points of the base lines from which the territorial sea of British Guiana and Surinam respectively is measured.

(2) The two concrete marks mentioned in paragraph (1) of this Article are situated on the left bank of the River Corentyne, the approximate position of the seaward of the two marks being Latitude 5° 59' 53.8" North, Longitude 57° 08' 51.5" West of Greenwich, and the line joining the two marks having a true bearing 10° East of true North...¹¹¹

3.46 The United Kingdom believed that the Netherlands was likely to agree that the maritime boundary in the territorial sea and the continental shelf should be based on equidistance (as the 1958 Conventions indicated) and would be "anxious to conclude an agreement with [the United Kingdom] rather than have to negotiate with [British Guiana]" following independence.¹¹² The Netherlands responded, in a *Note Verbale* delivered in February 1966. As the British had hoped, the Dutch agreed to open talks on the British Guiana/Suriname boundary "as soon as possible." However, the Netherlands objected to the 1965 draft treaty as the basis for the talks, on the grounds that the New River Triangle belonged to Suriname and that the maritime boundary should follow a line of N10E in the territorial sea and in the continental shelf area (this was the first time that such a claim had been made).¹¹³ The approach appears to have been a negotiating tactic, as it was plainly inconsistent with the Netherlands' prior position on delimitation of the continental shelf, namely that it should be based on equidistance (the Netherlands did not claim that a line of N10E reflected equidistance).

¹⁰⁹ Letter from Governor (3 May 1963), *supra* Chapter 3, note 33.

¹¹⁰ *Ibid.*

¹¹¹ 1965 British Draft Treaty, Part II, Article VII, *supra* Chapter 3, note 106.

¹¹² Letter from Rear Admiral G.S. Ritchie, Hydrographer of the British Royal Navy to Captain A.H. Cooper of the HMS Vidal (27 January 1966). See MG, Vol. II, Annex 33.

¹¹³ *Note Verbale* from the Netherlands to the United Kingdom (3 February 1966). See MG, Vol. II, Annex 68.

3.47 This contradiction was made all the more stark by the contrast with the Netherlands' position in its disputes with the United Kingdom and the Federal Republic of Germany concerning the delimitation of the continental shelf in the North Sea. In October 1965, just one month before the United Kingdom presented the Netherlands with its draft treaty pertaining to the boundary between British Guiana and Suriname, the two States had concluded a treaty delimiting their maritime boundary in the North Sea. The Netherlands was explicit in its belief that "The dividing line agreed upon is based on the principle of equidistance."¹¹⁴ In the same period, the Netherlands was arguing before the ICJ in the *Case Concerning the North Sea Continental Shelf (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)* that its maritime boundary with Germany should be based on equidistance.¹¹⁵

3.48 The Netherlands strongly objected to the Federal Republic of Germany's claim that the equidistance principle was a "novel" concept spawned by the International Law Commission.¹¹⁶ According to the Netherlands it was, by the mid-1960's, an expression of a principle which was "known and accepted in State practice in relation to maritime boundaries" and "generally accepted... as the modern law governing continental shelf boundaries."¹¹⁷ In the context of the present case, it is notable that as early as the *North Sea Continental Shelf Case* the Netherlands was relying explicitly on its practice of awarding oil concessions in the continental shelf area up to, but not beyond, the equidistance line:

Since 1959, the N.A.M. (*Nederlandsche Aardolie Maatschappij*) has been exploring with the seismic method in the North Sea throughout the area which, on the basis of the equidistance principle, constitutes the Netherlands part of the continental shelf; since 1960, these activities have been especially concentrated on the northern part and up to the median lines which separate the Netherlands part from the German and Danish parts of the shelf... . [A] total of 24 licences have been granted during the period from August 1962 to 1966 to about 19 companies or groups of companies... the licences in

¹¹⁴ Netherlands Counter-Memorial, 1968, *supra* Chapter 3, note 55.

¹¹⁵ *Ibid.*, Part III. In its submissions to the ICJ the Netherlands argued that:

1. The delimitation as between the Parties of the said areas of the continental shelf in the North Sea is governed by the principles and rules of international law which are expressed in Article 6, paragraph 2, of the Geneva Convention of 1958 on the Continental Shelf;
2. The Parties being in disagreement, unless another boundary is justified by special circumstances, the boundary between them is to be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured;
3. Special circumstances which justify another boundary line not having been established, the boundary between the Parties is to be determined by application of the principle of equidistance indicated in the preceding submission.

¹¹⁶ *Ibid.*, para. 78

¹¹⁷ *Ibid.*, para. 84

question cover all of that part of the continental shelf which comes under the jurisdiction of the Netherlands on the basis of the equidistance principle.¹¹⁸

3.49 It appears that the Netherlands' unwillingness in February 1966 to recognise the application of the equidistance principle in relation with British Guiana resulted from the insistence of the territorial government in Suriname. At that moment, the independence of British Guiana was imminent and the government of Suriname appears to have been fearful that the Netherlands would reach an agreement with the British that recognised British (and eventually Guyanese) sovereignty over the New River Triangle.¹¹⁹ Indeed, only four months earlier, on 7 October 1965 the Surinamese parliament adopted a motion that the entire Corentyne River (which the parliament defined to include the New River) belonged to Suriname.¹²⁰ The following month, in a meeting to consider the British draft treaty, the Surinamese advised the Dutch that:

After the motion of the Surinamese Parliament on 7 October 1965, compromises are no longer possible. This motion forces the government to go for broke; it is everything or nothing. Hence no compromise on the border along the western bank of the Corantijn New River nor the triangle in the southwest.¹²¹

However, the Surinamese informed the Dutch that they *were* prepared to compromise on the maritime boundary: "The situation regarding the border delineation on the continental shelf is different [and the] possibility of negotiating on this border is therefore still open provided that, of course, the point on the west bank of the Corantijn, where it meets the sea [*i.e.*, Point 61], is taken as a starting point in dividing the continental shelf."¹²² Thus, it appears clear that the position taken in the *Note Verbale* of February 1966 – with respect to a boundary line of N10E in both the continental shelf and the territorial sea – was due to Suriname's insistence that nothing else was negotiable. Indeed, Suriname itself recognised that the Dutch position on delimitation of the continental shelf was identical to Guyana's. After observing that Guyana "has always invoked the principle of equidistance as laid down in the Geneva Convention on the Continental Shelf," the Surinamese diplomat Dr. Siegfried Werners wrote, "It is well known that the Netherlands... has for many years based its claims against neighbouring countries to the continental shelf of the North Sea on the same principle as Guyana."¹²³ According to Dr. Werners, therefore, if Suriname were to maintain a claim to a N10E boundary in the continental shelf: "a collision of the interests of parts of the Kingdom

¹¹⁸ *Ibid.*, para. 11

¹¹⁹ Report on the Discussion held 30 November 1965 at the Office of the Secretary-General of the Netherlands Ministry of Foreign Affairs between Surinamese and Dutch Delegations (30 November 1965) (original in Dutch, translation provided by Guyana) [hereinafter "Report on the Discussion held 30 November 1965"]. See MG, Vol. II, Annex 43.

¹²⁰ Text of the Motion adopted by the States of Surinam on 7th October 1965. See MG, Vol. III, Annex 102.

¹²¹ Report on the Discussion held 30 November 1965, *supra* Chapter 3, note 119.

¹²² *Ibid.*

¹²³ Siegfried E. Werners, *Complications of a Border Dispute*, in Netherlands Lawyers Journal, Vol. 43, No.9 (1968), at pp. 224-225 (original in Dutch, translation provided by Guyana). See MG, Vol. II, Annex 45.

would be almost unavoidable.”¹²⁴ Hence, Suriname’s willingness to compromise on this issue.

3.50 The fact is that the Netherlands never treated the N10E line as an equidistance line and never seriously pursued it as the boundary in the continental shelf. This became especially clear in 1975, when Suriname attained independence. As more fully discussed below,¹²⁵ the Netherlands Prime Minister was asked by the Prime Minister of Suriname for an official statement on Suriname’s boundaries at the time of independence. In respect of the territorial sea, the Netherlands Prime Minister indicated that the maritime boundary with Guyana ran along a N10E line. But in respect of the continental shelf, the Dutch Prime Minister was conspicuously silent: the letter made no claim to a N10E boundary line in the continental shelf.¹²⁶ By contrast, with respect to Suriname’s maritime boundary with French Guiana to the east, the Dutch Prime Minister’s letter stipulated that it was the “equidistance line between the coasts of Suriname and French Guiana through the territorial sea.”¹²⁷ As described further below, it is of material significance that the draft agreement between Suriname and France on the maritime boundary applies the principle of equidistance and follows a line of N30E.¹²⁸

H. Conclusions

3.51 In conclusion, the United Kingdom and the Netherlands had not reached formal agreement on the maritime boundary between Guyana and Suriname by the time Guyana attained independence in 1966. Nevertheless, a great deal had been achieved. The northern land boundary terminus at Point 61 was firmly established and the parties were in agreement on the principle that the delimitation of the continental shelf should be effected on the basis of equidistance. The United Kingdom had granted two offshore oil concessions which recognised boundary lines with a general bearing of N32E and N33E respectively, and the Netherlands had not objected to either concession. The equidistance lines plotted on the contemporaneous charts, including Dutch chart 217, had a general bearing of N34E in the continental shelf area. By 1966, there was already in place an equidistance line which recognised a division of the maritime space along the line of approximately N34E. The significance of that line assumed even greater importance after Guyana achieved independence.

¹²⁴ *Ibid.*

¹²⁵ *See infra* Chapter 4, para. 4.11.

¹²⁶ Letter from J.M. den Uyl, Prime Minister of the Kingdom of the Netherlands to H.A.E. Arron, Prime Minister, Government of the Republic of Suriname (25 November 1975) (original in Dutch, translation provided by Suriname) [hereinafter “Letter of 25 November 1975 from the Prime Minister of the Netherlands”]. *See* MG, Vol. II, Annex 46.

¹²⁷ *Ibid.*

¹²⁸ *See infra* Chapter 4, para. 4.14.

CHAPTER 4

THE CONDUCT OF GUYANA AND SURINAME AFTER INDEPENDENCE: 1966-2004

4.1 This Chapter describes the conduct of the parties since 1966, when Guyana achieved independence.¹ The conduct of Guyana and Suriname shows that between 1966 and 2000 there existed a broad understanding – a *modus vivendi* – as to the location of the maritime boundary. Over that period, the understanding encompassed a mutual recognition that the boundary should follow an equidistance line, and to a very great extent the line of N34E was recognised as such by the practice of both parties in respect of their oil concessions and drilling activity. This Chapter therefore describes a pattern of conduct which is broadly consistent and based upon an equidistance line developed in 1957-1958 by the United Kingdom on the basis of Dutch chart 217. From its independence in 1966 to the present day, over a period of nearly 40 years, Guyana has consistently regarded its maritime boundary with Suriname as being an equidistance line similar to the one identified and applied by the United Kingdom from 1957-1958, and to which the Netherlands did not in practice object. Moreover, that historical equidistance line is reflected in Guyana's negotiations with Suriname, its domestic legislation, in the grant of concessions to private parties to explore for petroleum in the continental shelf area, in the exercise of fisheries jurisdiction, and in law enforcement activities. Indeed, when the actions of Guyana's colonial predecessor are taken into account, this consistent line of conduct extends back nearly 50 years, to at least 1957, when the equidistance line was first drawn.

4.2 Likewise, Suriname has conducted itself over the past half-century, especially after independence in 1975, in a manner which is generally respectful of the 1957-1958 equidistance line. Suriname has largely refrained from granting petroleum exploration concessions, sanctioning exploration activities, exercising fisheries jurisdiction or otherwise enforcing its laws in the continental shelf area to the west (*i.e.*, on the Guyana side) of that equidistance line.

4.3 The respect shown by both States for an equidistance line based on the one conceived in 1957-1958 is graphically depicted in **Plate 9** (following page 38). **Plate 9** depicts the existing oil concessions granted by Guyana and Suriname. It shows the locations of oil concessions granted in Guyana's offshore area extending eastward to a line in very close proximity to N34E. **Plate 9** also shows that Suriname's concessions in its offshore area extend westward only to a line that, likewise, is in very close proximity to N34E. (In fact, as depicted in **Plate 9**, Suriname's concessions are bordered on the west by a straight line with a bearing of N33E.)

4.4 As **Plate 9** indicates, the oil concessions granted by Guyana and Suriname are neatly divided by the historical equidistance line, with a bearing of N34E, or a line that closely

¹ When, on May 26, 1966, the independent State of Guyana came into being, its territory comprised all the areas that immediately before that day were comprised in the former colony of British Guiana. Article 1.2 of Guyana's Independence Constitution was to the following effect:

(2) The territory of Guyana shall comprise all the areas that, immediately before 26th May, 1966 were comprised in the former colony of British Guiana together with all such other areas as may be declared by Act of Parliament to form part of the territory of Guyana.

See Chapter 1.1 of The Government of Guyana, *The Laws of Guyana* (revised edition, 1973).

approximates it. This same line also generally divides oil exploration activities, and in particular the conduct of seismic testing, which is carried out by commercial operators pursuant to licences granted by Guyana and Suriname. **Plate 10** (in Volume V only) illustrates the seismic exploration activities licenced by Guyana and Suriname in the period from 1966 to 2000 as shown on a map produced by Suriname's state-owned petroleum company, Staatsolie. **Plate 11** (in Volume V only) shows the geographic extent of Guyana's seismic testing, while **Plate 12** (in Volume V only) shows the analogous information on the Surinamese side, drawn from the same map published by Staatsolie. **Plate 13** (following this page) is a composite of **Plates 11 and 12**: it shows the areas of seismic testing performed by Guyanese licencees (in red) and by Surinamese licencees (in green). It becomes abundantly clear from these Plates that licencees authorised by Guyana and Suriname generally respected the N34E line as the outer limit of their authorised exploration activities. In a few instances, the Surinamese licencees did cross the N34E line. However, their incursions into Guyana's waters were modest, usually less than one kilometre and never more than five kilometres. Moreover, the incursions may be explained by the need for Suriname-licenced vessels carrying out seismic testing up to the N34E limit to enter Guyanese waters in order to turn around without cutting across their trailing seismic lines (which can extend from two to six kilometres behind the aft portion of the vessel).

4.5 These Plates indicate that, in the period after independence, Guyana and Suriname (and their licencees) have generally conducted themselves as though the N34E line was the maritime boundary separating the two States. This is consistent with the recognition of that line as a historical equidistance line, and it is confirmed by other activities, as indicated below (see paragraphs 4.44 through 4.52). Although efforts since 1966 to achieve a formal boundary treaty did not bear fruit, the actions of Guyana and Suriname – in particular with respect to concessions, exploration and drilling for oil – reinforced the understanding that there was a *modus vivendi* around a historical equidistance line of N34E.

I. Post-Independence Efforts To Settle the Maritime Boundary: 1966-1971

A. The Marlborough House Talks: 1966

4.6 In June 1966, shortly after Guyana achieved independence (on 26 May of that year), the United Kingdom hosted direct talks between Guyana and (not yet independent) Suriname. The purpose was to explore once again whether a formal boundary settlement was possible. The talks were held at Marlborough House in London. In the end, they foundered on the parties' inability to reach agreement on the land boundary.² With regard to the maritime boundary, Guyana based its position on the 1958 Geneva Conventions, explaining it in the following terms:

The application of the rules incorporated in these provisions [of the 1958 Conventions] to the delimitation of the border in the contiguous zone and the continental shelf leads to a boundary line in accordance with the equidistance principle which means a line of 33 to 34 degrees... . We are aware that the Kingdom of the Netherlands has ratified the above-mentioned treaties and has cited the equidistance principle in demarcating the border between the

² Report of the Discussions Held between Surinam and Guyana at Marlborough House, London, England, on 23 June 1966 (original in Dutch, translation provided by Guyana) [hereinafter "Marlborough House Discussions"]. See MG, Vol. II, Annex 69.

Netherlands, Germany and Great Britain. Even these countries agreed to a treaty on the basis of the equidistance principle. Furthermore, in 1958 The Hague proposed to Britain that the border between Surinam and Guyana in the contiguous zone and on the continental shelf should be delimited according to the equidistance principle. This proposal was accepted by Britain.³

Guyana concluded from this that:

[T]he border should run as we proposed in our last draft treaty of 1965, namely beginning at the point where the 10 degree line crosses the low-water line on the coast [i.e., at Point 61] and continuing in the direction proposed by you in 1958 according to the equidistance principle, which would result in a line of 33 to 34 degrees...⁴

4.7 Suriname's approach was different. For Suriname:

the demarcation of the border must be effected, in the first place, in accordance with geographical reality and that, if an agreement cannot be reached on this basis, the border should be demarcated according to the equidistance principle as a sort of emergency solution... only if this [*i.e.* geographical reality] offers no solution is the equidistance principle to be applied.⁵

This contrasted not only with Guyana's position, but also with the position adopted by the Netherlands, namely that the principle of equidistance was the "major principle" and the "general rule." According to the Dutch, it would be "misleading" to refer to equidistance as a "subsidiary rule."⁶ The Netherlands relied on Article 6(2) of the 1958 Geneva Territorial Sea Convention (which bound the Netherlands and Suriname), and which provided that "the equidistance line is the boundary unless a case of 'special circumstances' within the meaning of the Convention is both shown to exist and to justify a boundary other than the equidistance line."⁷ For Suriname's territorial government, however, the concept of "geographic reality" was paramount:

After all, the chain of hills, which separates the catchment areas of the Guyanese rivers and the Brazilian rivers, as a geographical circumstance, is a decisive circumstance in demarcating the border, it is the watershed... . In this case, the [Corentyne] river valley is, just as the previously mentioned example of the chain of hills, the primary indicator of the border. This is the indicator that the geographical reality gives us. If the geographical reality is not used as the basis, demarcating the border becomes an arbitrary affair.⁸

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

6 Netherlands Counter-Memorial, 1968, *supra* Chapter 3, note 55.

7 *Ibid.*, para. 120.

8 Marlborough House Discussions, *supra* Chapter 4, note 2.

According to Suriname, the thalweg of the no-longer-used western channel of the river had a bearing of N10E when it flowed into the sea, and this was a controlling “geographical reality” which mandated that the maritime boundary should follow the same bearing.⁹ It is noteworthy that in adopting this claim Suriname did *not* state that the N10E line was justified by prior agreement between the United Kingdom and the Netherlands, or by past practice, or by the application of an equidistance principle. Indeed, Suriname reiterated explicitly that “in the 1930s there was never an agreement made between the relevant authorities,” and that “We therefore also do not regard ourselves as being bound to the opinion of the Netherlands... .”¹⁰

4.8 Guyana robustly objected to the argument of geography: “The general direction of the valley of the river is, according to us, not a relevant factor for the delimitation of the border in the territorial sea and on the continental shelf.”¹¹ That position was correct in law in 1966, and it remains correct today.¹² According to Guyana, international law required the use of an equidistance line where neighbouring States were unable to reach agreement on a different means of delimiting their maritime boundary. Suriname’s response was indicative of an approach which was rather more rooted in political and geographic considerations than legal requirements. It asserted that “the Geneva Convention is intended to accord the equidistance principle a supplementary role,” adding that: “The difference in accent can possibly be explained by the fact that you [*i.e.*, Guyana] view the case mainly from a legal perspective whereas we see it as more geographical.”¹³

B. The Oil Concession Granted by Guyana to Oxoco: 1971

4.9 Following the Marlborough House talks, a special Committee was established by Guyana and Suriname to continue boundary discussions. There was little progress, however, in the period prior to November 1971, when Guyana submitted to Suriname a formal draft treaty on the delimitation of the boundary.¹⁴ The catalyst was once again a renewed interest in offshore oil exploration. On 13 January 1971, Guyana issued an oil concession and exploration licence to Offshore Exploration Company Limited (“Oxoco”).¹⁵ The following year, in 1972, Guyana issued a second concession to Oxoco in an area adjacent to the first.¹⁶ This concession agreement, like the 1965 concession granted to Royal Dutch Shell, provided that the eastern boundary of the concession area would be a straight line bearing at an angle of N33E. The concession area is depicted in **Plate 14** (in Volume V only).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *See infra* Chapter 7.

¹³ Marlborough House Discussions, *supra* Chapter 4, note 2.

¹⁴ 1971 Treaty Between the Republic of Guyana and the Kingdom of the Netherlands for the Definition of the Frontier Between Guyana and Surinam [hereinafter “1971 Guyanese Draft Treaty”]. *See* MG, Vol. III, Annex 93.

¹⁵ Oil Exploration Licence No. 222, between the President and Commander-in-Chief of Guyana and Oxoco (Guyana) Ltd. (13 January 1971). *See* MG, Vol. III, Annex 110.

¹⁶ Oil Exploration Licence No. 226, between the President and Commander-in-Chief of Guyana and Oxoco Guyana Ltd. (15 November 1972). *See* MG, Vol. III, Annex 113.

C. The Boundary Treaty Drafted by Guyana: 1971

4.10 Guyana's 1971 draft treaty provided for Guyanese sovereignty over the New River Triangle, and Surinamese sovereignty over the Corentyne River, subject to Guyana's historic fishing and navigation rights. With regard to the maritime boundary, the draft treaty was virtually identical to the United Kingdom's draft treaty of 1965, notably in relying on an equidistance line proceeding seaward from the land boundary terminus at Point 61, which Guyana understood as a line extending in a northeasterly direction on a general bearing of 34 degrees east of true north to the outer limit of the continental shelf.¹⁷ Article VII of the draft treaty proposed a boundary along the equidistance line from Point 61 through the territorial sea, the contiguous zone and the continental shelf:

(1) The boundary between the territorial seas, the contiguous zones and the continental shelves, which appertain to Guyana and Surinam respectively, shall be based on a line formed by the prolongation of the line joining two concrete marks (the positions of which are given in paragraph (2) of this Article until it intersects the line of low-water spring tide level existing at the date of the present Treaty (the position of the point of intersection being) and then drawn in accordance with the principle of equidistance from the nearest points of the base lines from which the territorial sea of Guyana and Surinam respectively measured.

(2) The two concrete marks mentioned in paragraph (1) of this Article are situated on the left bank of the River Corentyne, the approximate position of the seaward of the two marks being Latitude 5° 59' 53.8" North, Longitude 57° 08' 51.5" West of Greenwich, and the line joining the two marks having a true bearing 10° East of true North.¹⁸

Suriname did not respond with a draft treaty of its own, then or at any later date. Guyana's 1971 draft treaty was the last comprehensive effort to formalise a settlement in treaty terms. There have been no others in the past 34 years.

II. Suriname's Boundaries at Independence: 1975

4.11 Four years later, on the eve of gaining independence in November 1975, Suriname requested that the Netherlands clarify its land and maritime boundaries.¹⁹ Dutch Prime Minister J.M. den Uyl responded by letter of 25 November 1975 (the date of Suriname's independence) to Prime Minister H.A.E. Arron of Suriname.²⁰ He advised that Suriname's boundary with Guyana followed the left bank of the Corentyne River "up to the point where the river bank changes into the coastline and from this point along a line with a direction of 10° east of True North through the territorial sea."²¹ It is notable that the letter did *not* state

¹⁷ 1971 Guyanese Draft Treaty, *supra* Chapter 4, note 14.

¹⁸ *Ibid.*

¹⁹ Letter of 25 November 1975 from the Prime Minister of the Netherlands, *supra* Chapter 3, note 126.

²⁰ *Ibid.*

²¹ *Ibid.* According to Oostindie and Klinkers, in *Decolonising the Caribbean*: "The document drawn up in the early morning of 25 November only confirmed, rather vaguely, that both Suriname and the Netherlands declared to consider as territory of the independent State of Suriname, 'the area which up until the date of

that the N10E maritime boundary line extended beyond the limit of the territorial sea into the continental shelf area. As regards the boundary beyond the territorial sea, the Dutch Prime Minister advised that Suriname was entitled to pursue a prolongation of its maritime boundary “according to international law” and that the Netherlands’ historic claims in the territorial sea should not prejudice any future delimitation in accordance with international law.²² Some indication of the Netherlands’ position on what international law might require may be gleaned from the Dutch Prime Minister’s advice on Suriname’s boundary with French Guiana: this should run from a point on the closing line at the mouth of the Maroni River (which divides Suriname from French Guiana) along the “line of equidistance between the coasts of Suriname and French Guiana through the territorial sea... .”²³ Thus, in its response to Suriname’s inquiry as to its boundaries at independence, the Netherlands again demonstrated its understanding that international law established *equidistance* as the principal basis for maritime delimitation in the absence of an agreement between the parties.

III. The Enactment of Maritime Boundary Laws by Guyana and Suriname: 1977-1978

A. Guyana’s Maritime Boundaries Act: 1977

4.12 In 1977 and 1978, Guyana and Suriname adopted domestic legislation on their maritime boundaries. These laws are addressed in greater detail in Chapter 8. On 30 June 1977, Guyana enacted its Maritime Boundaries Act 1977.²⁴ The Act defined Guyana’s maritime boundaries as those determined by agreement with adjacent States or, in the absence of agreement, by means of equidistance lines (see Article 35(1) of the Act). The legislation also extended the breadth of Guyana’s territorial sea to twelve miles (Article 3(1)), and provided for the establishment of an Exclusive Economic Zone (Article 15). At the time this legislation was enacted, Guyana’s most current chart of its coastlines and maritime spaces, dated June 1976, depicted a straight boundary line of N34E from Point 61 through the limit of the continental shelf area, and described it as the “average direction 34° of 1965 line.” This is shown in **Plate 15** (following this page). The “1965 line” referred to in **Plate 15** is the equidistance line proposed by the United Kingdom in its draft treaty of November 1965. **Plate 15** also depicts the “1961 British line,” which is the segmented line drawn by Commander Kennedy and incorporated in the draft treaty of 1961; as previously described, it too had an average bearing of N34E.

B. Suriname’s Maritime Boundaries Legislation: 1978

4.13 The following year, on 14 April 1978, Suriname enacted its own maritime legislation. This similarly extended the breadth of the territorial sea to a distance of 12 miles from the coastal baseline and declared an Exclusive Economic Zone extending 200 miles from the

Suriname’s independence was part of the Kingdom.’ The issue of the disputed territories was not mentioned, let alone solved.” Gert Oostindie & Inge Klinkers, *Decolonising the Caribbean: Dutch Policies in a Comparative Perspective* 112 (2004).

²² Letter of 25 November 1975 from the Prime Minister of the Netherlands, *supra* Chapter 3, note 126.

²³ *Ibid.*

²⁴ Maritime Boundaries Act 1977, Act No. 10 of 1977 (1977) [hereinafter “Maritime Boundaries Act 1977”]. See MG, Vol. III, Annex 99.

coast.²⁵ Suriname's law did not, however, purport to define the lateral boundaries of the territorial sea or the EEZ, or to identify the principles according to which such boundaries should be determined. Suriname's maritime legislation was accompanied by an *Explanatory Memorandum*. It referred explicitly to the 1958 Geneva Territorial Sea and Continental Shelf Conventions, and acknowledged that Suriname was bound by both Conventions as a result of the Netherlands' adherence.²⁶ The *Explanatory Memorandum* also noted that "the law of the sea has been governed for years by customary international law" and cited the 1958 Geneva Continental Shelf Convention, Article 6(2) of which provided that in the absence of agreement the "boundary shall be determined by application of the principle of equidistance."²⁷

4.14 Consistent with its 1978 legislation and *Explanatory Memorandum*, Suriname subsequently published, via the National Planning Office, a National Planning Atlas (in Dutch, the *Planatlas*). This stated explicitly that:

the delineations between the Surinamese territorial sea and those of its neighbors must be established by bilateral agreements, which use the principle of equity to draw boundaries, where possible by means of an equidistance line. Such a line is determined by taking points equidistant from the nearest points on the baselines of both contiguous coastal states.²⁸

Suriname has acted consistently with this approach in relation to its maritime boundary with French Guiana. According to Suriname, this boundary "is formed by an equidistance line with a direction of 30° east of true north" as measured from the middle of the mouth of the Maroni River.²⁹ Negotiations between Suriname and France over a final settlement of Suriname's boundary with French Guiana commenced in 1999 and have yielded a draft treaty to delimit the maritime boundary³⁰ on the basis of an equidistance line with a bearing of N30E. The Acting Permanent Secretary of Suriname's Foreign Ministry, Fred Boekstaaf, advised the United States Embassy in Paramaribo that the maritime boundary with French Guiana was "essentially resolved."³¹ This was confirmed by the Deputy Chief of Mission of the French Embassy, who explained that the reason the treaty was not yet executed was due to Suriname's fear of the impact an equidistance boundary with French Guiana would have

²⁵ Law Concerning the Extension of the Territorial Sea and the Establishment of a Contiguous Economic Zone of 14 April 1978, Articles 2-3 (1978) (original in Dutch, translation on deposit with the United Nations) [hereinafter "1978 Territorial Sea/Contiguous Economic Zone Act (Suriname)"]. See MG, Vol. III, Annex 104.

²⁶ Explanatory Memorandum of the Government of Suriname relating to the Bill for the Extension of the Territory Sea of the Republic of Suriname and the Establishment of the Contiguous Economic Zone (July 1977) [hereinafter "Explanatory Memorandum of the Government of Suriname (July 1977)"]. See MG, Vol. III, Annex 103.

²⁷ *Ibid.*

²⁸ "Regional Location and Trade," Section 1.21 in *Suriname Planatlas 1* (1988). See MG, Vol. II, Annex 47.

²⁹ *Ibid.*

³⁰ Ivan Cairo, *Vaststelling Maritieme Grens Suriname-Frans Guyana Nabij*, De Ware Tijd (15 July 2003) (original in Dutch, translation provided by Guyana). See MG, Vol. III, Annex 96.

³¹ Cable 03 Paramaribo 255 from the United States Embassy in Paramaribo, Suriname to the United States Secretary of State (17 April 2003). See MG, Vol. II, Annex 55.

on its maritime boundary dispute with Guyana, “because the GOS [Government of Suriname] is not in a position to make the same agreement with Guyana in that maritime border dispute.”³²

IV. The Enactment of Petroleum Laws by Guyana and Suriname: 1980-1986

A. Suriname’s Creation of Staatsolie: 1980

4.15 From 1980, Guyana and Suriname undertook efforts to enact domestic legislation to establish national policies on the development of their domestic petroleum resources. This followed the shocks of the 1970’s to the international oil market, including significant increases in the price of imported oil. The two States approached the issue in different ways. Suriname enacted legislation on 3 December 1980. This created a state-owned oil company: *Staatsolie Maatschappij Suriname N.V.*, or State Oil Company of Suriname N.V. (“Staatsolie”).³³ Suriname granted Staatsolie a licence covering the entire country (including maritime areas) “for the exploration for the presence of, and a concession for the development of hydrocarbon resources.”³⁴ Staatsolie was thereby put in charge of Suriname’s oil exploration and development activities, so that all concessions and licences for oil exploration or development in any part of Suriname were issued by Staatsolie itself, on behalf of the Government of Suriname. Staatsolie was also given responsibility for: the promotion of investment in oil exploration and development in Suriname, both onshore and offshore; the auctioning of designated concession blocks to international bidders; and the negotiation and execution of concession agreements and licences.³⁵ Against this background, the information and materials put out by Staatsolie are properly treated as having an official and public character and are to be treated as reflecting the views of Suriname.

B. Guyana’s Petroleum Program with the World Bank and the Official Charting of Its Maritime Area: 1980-1985

4.16 Guyana’s petroleum legislation followed a different path. In 1980, with a view toward enacting legislation that would allow enhanced exploitation of its offshore resources, Guyana sought assistance from the World Bank. Specifically, the Bank was asked to assist in identifying options for hydrocarbon development and formulating strategies to accelerate exploration.³⁶ Consultants made available by the Bank identified eight areas where assistance was needed to encourage petroleum development: equipment, data base files, seismic data analysis, gravity and magnetic surveys, geological studies, well data, legislation and accounting, and training of personnel. The World Bank sent a mission to Guyana in

³² *Ibid.*

³³ Decree No. E8 of December 3, 1980 Granting a Licence and a Concession to State Oil Company Suriname N.V. (3 December 1980). *See* MG, Vol. IV, Annex 170.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Affidavit of Brian Sucre, former Commissioner of the Guyana Geology and Mines Commission and Head of Petroleum at the Guyana Natural Resources Agency [hereinafter “Affidavit of Brian Sucre”]. *See* MG, Vol. IV, Annex 184.

1981 with a mandate to identify specific areas for a program loan.³⁷ In February 1982, Guyana and the Bank negotiated funding to accelerate petroleum exploration and development.³⁸ A central element of the program was a survey of petroleum potential in Guyana, including offshore.³⁹ In 1983, with the approval and support of the World Bank, Guyana engaged Exploration Consultants Limited (ECL) of the United Kingdom to perform the survey.⁴⁰ The following year ECL collected and analyzed data pertaining to Guyana's onshore and offshore petroleum potential.⁴¹ To satisfy the loan agreement's requirement that all proposals for execution of surveys be approved by the Bank, the Bank assigned its own technical supervisor to the ECL project.⁴² All work performed by ECL was submitted to the technical supervisor for approval.⁴³

4.17 Pursuant to the loan agreement between the World Bank and Guyana, ECL directed and supervised the Guyana Ministry of Energy and Mines' production of a block reference map to define Guyana's potential concession areas, including offshore.⁴⁴ ECL used topographic, aeromagnetic, and aero-navigational sources, as well as eighty-six existing maps, to prepare a block reference map which was plotted by computer.⁴⁵ The ECL map (see **Plate 16**, in Volume V only) depicted the easternmost boundary of Guyana's offshore concession area as a straight line extending seaward from the land boundary terminus at Point 61 on a bearing of N34E.

4.18 In 1985, the Head of Petroleum at the Guyana Natural Resources Agency, Brian Sucre, shared with Dr. S.E. Jharap, Managing Director of Staatsolie, the petroleum-related materials prepared for Guyana by ECL.⁴⁶ On 17 October 1985, Dr. Jharap invited Mr. Sucre to visit Staatsolie in Suriname, where these materials were discussed.⁴⁷ On 30 December 1985, Guyana placed an advertisement in the *Oil & Gas Journal* announcing the availability

³⁷ Guyana Cabinet Document CP (81) 475, Development Credit Agreement for Petroleum Project, International Development Association, Memorandum by Minister of Energy and Mines (11 December 1981). See MG, Vol. III, Annex 126.

³⁸ Development Credit Agreement (Petroleum Exploration Promotion Project) between Guyana and International Development Association (24 November 1982) [hereinafter "Development Credit Agreement, 24 November 1982"]. See MG, Vol. III, Annex 129.

³⁹ World Bank, *Press Release*, "Guyana to Promote Petroleum Exploration with IDA Assistance," (18 February 1982). See MG, Vol. III, Annex 128.

⁴⁰ Letter from Christopher R. Poncia, Energy Department of the World Bank to Brian Sucre, Head of the Petroleum Unit at the Ministry of Energy and Mines of Guyana (26 October 1983) with attached letter from Thomas F. Ritter to Christopher R. Poncia (19 October 1983). See MG, Vol. III, Annex 130.

⁴¹ ECL Petroleum Exploration Project Status Report 1 (20 April 1984). See MG, Vol. III, Annex 132.

⁴² Affidavit of Brian Sucre, *supra* Chapter 4, note 36; Development Credit Agreement (24 November 1982), *supra* Chapter 4, note 38.

⁴³ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁴⁴ Letter from H. Rashid, Minister of Energy and Mines, "Guyana-Petroleum Exploration Promotion Project" (4 June 1984), see MG, Vol. III, Annex 131; Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁴⁵ Exploration Consultants Limited (ECL), File Organisation & Data-Base (June 1985), Section 2.5.1. See MG, Vol. III, Annex 134.

⁴⁶ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁴⁷ Letter from S.E. Jharap, Managing Director, Staatsolie to Brian Sucre, Head of the Petroleum Union at the Ministry of Energy and Mines (17 October 1985). See MG, Vol. III, Annex 135.

of promotional materials describing petroleum exploration opportunities offshore.⁴⁸ The advertisement included a map depicting the eastern limit of the concession area as a line conforming to the historical equidistance line, namely a line starting at Point 61 and extending seaward on a bearing of 34° East of true North.⁴⁹ (See **Plate 17**, in Volume V only.) Suriname did not protest or otherwise object to this map, or to any of the other publicly available materials depicting or describing Guyana's offshore concession area or its boundaries.

C. Guyana's Petroleum Act: 1986

4.19 On 14 June 1986, Guyana enacted the Petroleum (Exploration and Production) Act of 1986 ("the 1986 Petroleum Act") to govern petroleum licencing, exploration and development activities in Guyana.⁵⁰ Senior planning officers from the World Bank's Energy Department provided technical assistance to the office of the Guyana Attorney General in drafting the 1986 Petroleum Act and related model contracts and licences.⁵¹

4.20 The 1986 Petroleum Act covered the entirety of Guyana's land and maritime jurisdiction. It addressed the exploration, exploitation, conservation and management of petroleum in Guyana's territorial sea, continental shelf and exclusive economic zone. It established a regime to manage petroleum activities by dividing Guyana into "blocks" to be awarded to operators. The blocks were to be defined in regulations adopted by Guyana's Parliament.⁵² The regulations, known as the Petroleum (Exploration and Production) Regulations 1986, required the Minister of Energy and Mines to prepare a reference map showing the entire geographical area of Guyana, divided into blocks, each of which was to measure five minutes of longitude by five minutes of latitude and to bear its own number. The 1986 Regulations required that the "reference map prepared under this regulation... be deemed to form part of this regulation."⁵³ The reference map that was prepared and "deemed to form part of this regulation" was drawn from the map produced for Guyana by ECL, with the support and under the supervision of the World Bank. It depicted the eastern boundary of Guyana's offshore concession area as a straight line extending from Point 61 to the 200-mile limit at an angle of N34E. See **Plate 18** (following this page). Since 1986, this map has been the official map of Guyana for all petroleum licencing, exploration and exploitation activities; and it has been regularly distributed to all interested persons as an essential element of Guyana's marketing efforts to attract new petroleum investment. Suriname did not object to the map in 1986 and has not objected at any time since. In 2001, the Government of Germany provided technical assistance to Guyana to produce a digitised version of the same

⁴⁸ Advertisement, *Petroleum Exploration Opportunities in Guyana*, Oil & Gas Journal (30 December 1985). See MG, Vol. III, Annex 136.

⁴⁹ *Ibid.*

⁵⁰ Petroleum (Exploration and Production) Act 1986, Act No. 3 of 1986 (1986). See MG, Vol. III, Annex 100.

⁵¹ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁵² Petroleum (Exploration and Production) Act 1986, Act No. 3 of 1986 (1986). See Part IX of the Act, "Regulations", 70(2)(u), which provides that "The Minister may make regulations for carrying out the purposes of this Act" including the division of the geographic area of Guyana into particular sections." Regulations Made Under Petroleum (Exploration and Production) Act 1986, The Official Gazette, Legal Supp. B, 12 July 1986 [hereinafter "1986 Petroleum Act Regulations"]. See MG, Vol. III, Annex 101.

⁵³ 1986 Petroleum Act Regulations, Part II, "Constitution of Blocks", 3.(1), *supra* Chapter 4, note 52.

map. This has been widely circulated during the past several years. **Plate 19** (following page 48) is a version of the map depicting oil concessions licenced by Guyana as of 2001.

V. Oil Concessions Granted by Guyana and Suriname: 1966-1975

4.21 The conduct of Guyana and Suriname with regard to oil concessions demonstrates respect for the historical equidistance line as the maritime boundary between the two States. Since achieving independence in 1966, Guyana has consistently granted oil concession rights in its offshore area up to the limits of the historical equidistance line first delimited by the United Kingdom. Guyana's practice followed that of the United Kingdom and British Guiana, which had granted oil concessions extending eastward to a N32E line in 1958 (to the California Oil Company) and a N33E line in 1965 (to Royal Dutch Shell). The geographic extent of the concession areas licenced by the United Kingdom and British Guiana to the California Oil Company and Royal Dutch Shell are shown at **Plates 20** (In Volume V only) and **8** (following page 32), respectively, and the concession areas licenced by Guyana to Oxoco in 1971 and 1972 are shown at **Plate 14** (in Volume V only).

4.22 In accordance with their licences, these three companies conducted seismic testing for oil deposits throughout their concession areas right up to the eastern limits of those areas.⁵⁴ In all cases, the seismic testing was conducted openly and reported officially in Guyana's and British Guiana's public records that were readily available in Georgetown. On occasion the results were also reported in the main industry publications, such as the *Oil and Gas Journal*.⁵⁵ The Netherlands and Suriname knew or could have known of these licences and the consequential exploration activities; nevertheless, they did not file any objection or protest with Guyana, British Guiana or the United Kingdom.

4.23 Under the California Oil Company licence, a seismic testing survey was carried out from July to September 1958. This survey shot seismic lines to the eastern border of the concession. British Guiana made this seismic survey publicly known. The 1958 Annual Report of the Geological Survey Department for British Guiana reported that Western Geophysical, a U.S. corporation contracted by the California Oil Company, had performed a marine seismograph survey over the continental shelf by recording approximately 3,000 reflection seismograph stations as far as the 25 fathom line.⁵⁶

4.24 The oil exploration licence issued by British Guiana to Royal Dutch Shell required that "with all reasonable despatch [sic]," the company commence examining "geologically or by geophysical methods the said lands."⁵⁷ Pursuant to this requirement, Shell conducted offshore seismic testing over the entire concession area, right up to the historical equidistance line reflecting the maritime boundary with Suriname. The Annual Report of the Geological

⁵⁴ Geological Survey Department, British Guiana, *Report on the Geological Survey Department for the Year 1958*, 19-20 (1959), see MG, Vol. III, Annex 106; Ministry of Agriculture and Natural Resources, *Report on the Geological Survey Department for the Year 1968*, 19 (1969), see MG, Vol. III, Annex 109; Oxoco, Offshore Guyana Seismic Program (1972), see MG, Vol. III, Annex 112.

⁵⁵ See e.g. *Guyana awards two offshore concessions*, *Oil & Gas Journal* (11 December 1972). See MG, Vol. III, Annex 114.

⁵⁶ Geological Survey Department, British Guiana, *Report on the Geological Survey Department for the Year 1958*, 19-20 (1959), *supra* Chapter 4, note 54.

⁵⁷ Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965), at 3-4, para. 4, *supra* Chapter 3, note 102.

Survey Department for British Guiana reported that “[W]estern Geophysical was contracted by Guyana Shell Ltd. to carry out a reconnaissance seismic programme. The programme which consisted of 2038 km. of line was commenced in August and completed in September [1966].”⁵⁸ This report was in the public domain. In 1968, Shell retained Geophysical Service, Inc. to conduct further seismic testing in the offshore area. These too were reported in the 1968 Annual Report of the Geological Survey Department for Guyana.⁵⁹ The seismic testing carried out by Oxoco, between 1971 and 1973, was likewise performed in its entire concession area in an open manner, and was similarly recorded in official Guyanese documents that were publicly available. In its 1971 Annual Report, the Geological Survey Department of Guyana’s Ministry of Mines and Forests published an announcement that “Oil Prospecting Licence 222 was issued to Oxoco Guyana Ltd. over an area of 834 sq. miles of the Continental Shelf.”⁶⁰ And on 14 March 1973, the Guyana Transport and Harbours Department issued a Notice to Mariners cautioning vessels to stay clear of the *Mediterranean Seal*, which was surveying for oil off the coast of Guyana and towing two miles of cable.⁶¹ All of these activities proceeded on the basis that the historical equidistance line reflected the maritime boundary with Suriname, and all were publicly recorded. On no occasion did Suriname object.

A. Royal Dutch Shell’s Activities in Guyana and Suriname: 1966-1975

4.25 None of these early Guyanese and British Guianese concessions resulted in the discovery of oil. However, Royal Dutch Shell’s seismic testing revealed the potential for oil in a part of its concession area, not far from the eastern limit of the concession in proximity to the historical equidistance boundary. On 26 December 1974, Shell began drilling an exploratory well, known as the Abary-I well. This was at latitude 7° 19’ 16” N. and longitude 56° 42’ 49” W.⁶² The approximate location of the drilling site is depicted in **Plate 21** (in Volume V only). In keeping with the policy of the Guyana Ministry of Energy and Mines, the Ministry stationed a representative aboard the rig to observe the technical aspects of drilling operations and to look after the Government of Guyana’s interests.⁶³ Suriname was aware that the well was being drilled under a licence granted by Guyana, since the offshore operations for Royal Dutch Shell were coordinated in Paramaribo, and the Abary-I operation received onshore operational support from the Surinamese capital.⁶⁴ Although

⁵⁸ Ministry of Agriculture and Natural Resources, British Guiana, *Report on the Geological Survey Department for the Year 1965*, 33 (1968). See MG, Vol. III, Annex 108.

⁵⁹ Ministry of Agriculture and Natural Resources, *Report on the Geological Survey Department for the Year 1968*, 19 (1969), *supra* Chapter 4, note 54.

⁶⁰ Ministry of Mines and Forests, *Report on the Geological Survey Department for the Year 1971*, 39 (1972). See MG, Vol. III, Annex 111.

⁶¹ Transport and Harbours Department, Notice to Mariners No. 6 (1973). See MG, Vol. IV, Annex 186.

⁶² Guyana Shell Limited, Drilling Program – Location Abary-I (Cretaceous Test on “D” Structure) (20 December 1974), see MG, Vol. III, Annex 115; Shell Daily Report (28 December 1974), see MG, Vol. III, Annex 116; Letter from E. van der Meulen, General Manager, Guyana Shell Limited to Commissioner, Geological Surveys & Mines Department (2 January 1975), see MG, Vol. III, Annex 117.

⁶³ Affidavit of Clemsford A. Pollydore, former Geologist with the Guyana Geology Department and Petroleum Engineer with the Guyana Ministry of Energy and Mines. See MG, Vol. IV, Annex 177.

⁶⁴ *Ibid.*

aware of the activity, Suriname did not protest the drilling of the well pursuant to a Guyanese licence.⁶⁵

4.26 At the time Shell conducted seismic testing and drilled the Abary-I well pursuant to its licence from Guyana, the company also held oil concession rights in Suriname. In 1966, one year after it had signed an oil concession agreement with Guyana, Shell acquired a 50% interest in an existing Surinamese concession originally awarded in 1960 to a company known as “Colmar.”⁶⁶ The original Colmar concession (issued 15 years before Suriname’s independence and 20 years before Staatsolie was created) covered, on paper at least, the entire maritime area that is at issue in this Arbitration.⁶⁷ By the time Shell acquired its half-interest in the concession, Colmar had already sold the other half to a French consortium headed by Elf.⁶⁸ According to Suriname, pursuant to this concession “the first offshore seismic was acquired” and four “early daring offshore wells were drilled” during the period 1966-1970 by Shell and Elf.⁶⁹ These activities occurred well to the east (*i.e.* on the Surinamese side) of the historical equidistance line of N34E, or, in the case of some of the seismic testing, beyond the 200-metre isobath that represented the seaward limit of the historical equidistance line. By contrast, the seismic exploration and drilling for oil to the west of the line (*i.e.* on the Guyanese side) and on the shoreward side of the 200-metre isobath were conducted pursuant to the concession agreement and licence that Shell obtained from Guyana. In 1975, Esso acquired a one-third interest in the Shell-Elf concession from Suriname, and it, too, conducted drilling activities in Surinamese waters -- but never west of the N34E line.⁷⁰ Esso’s concession area and seismic testing were all beyond the 200-metre isobath, where the historical equidistance line then ended. It is therefore clear that in practice, by the mid-1970’s, Suriname’s conduct generally respected the historical equidistance line.

B. The Oil Concessions Granted by Guyana to Seagull-Denison: 1979-1981

4.27 In April 1979, Guyana granted a new oil concession to a consortium composed of Seagull Oil Company and Denison Mines, in a portion of the concession area formerly licenced to Shell.⁷¹ In July 1979, Seagull-Denison applied for additional acreage, near the eastern boundary with Suriname, to supplement its existing concession.⁷² In November 1979, Guyana awarded the additional acreage sought by Seagull-Denison to another operator,

⁶⁵ Affidavit of Grantley Walrond, former Senior Geologist with Guyana Ministry of Energy and Mines. See MG, Vol. IV, Annex 181.

⁶⁶ Th. E. Wong, *Hydrocarbon Exploration and Exploitation in Suriname*, printed in *The History of Earth Sciences in Suriname* 388 (1998) [hereinafter “Wong”]. See MG, Vol. IV, Annex 172.

⁶⁷ “Summary of 1 March 1965 Concession Agreement of Colmar Surinaamse Olie Maatschappij” and “Map of Colmar Suriname 1965 Concession Area,” *Petroleum Concession Handbook* (1965). See MG, Vol. IV, Annex 169.

⁶⁸ Wong, *supra* Chapter 4, note 66, at 388.

⁶⁹ Staatsolie, “Exploration History,” available at <http://www.staatsolie.com/explorationinformation/3-1.html> [last viewed 31 January 2005].

⁷⁰ Wong, *supra* Chapter 4, note 66, at 388.

⁷¹ Heads of Agreement Between The Government of Guyana and Seagull Petroleum Limited (2 April 1979). See MG, Vol. III, Annex 118.

⁷² Letter from M. Ala, Seagull Petroleum Ltd. to H.O. Jack, Minister of Energy and Natural Resources (9 July 1979). See MG, Vol. III, Annex 119.

Major Crude.⁷³ The eastern limit of the concession area awarded to Major Crude was the same as that of the concession areas that Guyana had previously awarded to Shell and Oxoco, namely the historical equidistance line, as depicted in **Plate 22** (in Volume V only). In February 1981, Guyana revoked Major Crude's concession for non-compliance with the terms of its licence,⁷⁴ and in April 1981 this concession area was awarded to the Seagull-Denison consortium.⁷⁵ Shortly thereafter, the consortium commenced a program of seismic testing over the full extent of its concession, including the area along the historical equidistance line.⁷⁶ Specifically, it commissioned Western Geophysical to conduct a seismic survey up to the line running from Point 61 to the northeastern limit of the concession area.⁷⁷ The seismic testing survey was carried out in May 1981.⁷⁸ In early 1982, Seagull-Denison again retained Western Geophysical to conduct further seismic testing.⁷⁹ This additional seismic survey was performed, as before, up to the eastern limit of the concession area along the historical equidistance line.⁸⁰ The Seagull-Denison concession area is depicted in **Plate 23** (in Volume V only).

4.28 Again, Suriname did not protest the concessions to Seagull-Denison or Major Crude, or the seismic testing that was performed in the concession areas, although it would have known about these activities from public sources that were readily available.⁸¹ During the same period, Staatsolie issued its first offshore oil concession, to Gulf Oil Company in 1981.⁸² Pursuant to its Surinamese concession, which lapsed in 1984, Gulf drilled at least nine wells, most of them in very close proximity to Suriname's coastline, and all of them well to the east of the historical equidistance line of N34E.⁸³ To be sure, the licence issued by Staatsolie to Gulf in 1981 covered an area extending west of the N34E line, and Gulf

⁷³ Secret Memorandum by the Minister of Energy and Natural Resources, Application for Permission by Seagull/Denison and Major Crude Oil for exploration rights for petroleum in Guyana (November 1979), *see* MG, Vol. III, Annex 120; Secret Minutes - Application for Permission by Seagull/Denison and Major Crude Oil for exploration rights for petroleum in Guyana (27 November 1979), *see* MG, Vol. III, Annex 121.

⁷⁴ Agreement for an Oil Prospecting Licence Between Denison/Seagull and Government, Memorandum by the Minister of Energy and Mines (9 April 1981). *See* MG, Vol. III, Annex 122.

⁷⁵ Agreement between the Government of Guyana and Denison Mines Limited and Seagull Petroleum (Guyana) Limited (30 April 1981). *See* MG, Vol. III, Annex 123.

⁷⁶ Ministry of Energy and Mines and Exploration Consultants Limited (ECL), *Guyana Petroleum Exploration Appraisal - Guyana Basin* (June 1985), Section 4.3, "Seismic Reprocessing" and Seismic Reprocessing Location Map (Figure 20) [hereinafter "Report by ECL and Ministry of Energy and Mines"]. *See* MG, Vol. III, Annex 133.

⁷⁷ Letter from the Permanent Secretary, Ministry of Energy and Mines to the Comptroller of Customs and Energy (5 May 1981). *See* MG, Vol. III, Annex 124.

⁷⁸ Letter from Joseph Vercellino, President, Seagull International Exploration to H.O. Bovell, Permanent Secretary Ministry of Energy and Mines (29 May 1981). *See* MG, Vol. III, Annex 125.

⁷⁹ Letter from Leo L. Samoil, Vice-President, Oil & Gas Operations, Denison Mines Limited to H.O. Jack, Minister of Energy and Mines (21 January 1982). *See* MG, Vol. II, Annex 127.

⁸⁰ Report by ECL and Ministry of Energy and Mines, *supra* Chapter 4, note 76.

⁸¹ World Bank, *Press Release*, "Guyana to Promote Petroleum Exploration with IDA Assistance," (18 February 1982), *supra* Chapter 4, note 39.

⁸² Service Contact Between State Oil Company Suriname N.V. and Suriname Gulf Oil Company (13 December 1980). *See* MG, Vol. IV, Annex 171.

⁸³ Wong, *supra* Chapter 4, note 66, at 388-389.

apparently conducted some seismic testing -- but no drilling -- in that area. Upon learning that the concession area extended west of the N34E line, Guyana immediately protested to Suriname.⁸⁴ Staatsolie responded by advising Guyana that the concession had lapsed and would not be reissued.⁸⁵ In fact, no further Surinamese concessions were awarded in the area.

C. The Oil Concession Granted by Guyana to LASMO-BHP: 1988

4.29 In 1985, as part of the World Bank-funded Petroleum Exploration Promotion Project, Guyana conducted a new petroleum bidding round with the assistance of ECL as technical consultant.⁸⁶ In response to advertisements and promotional materials, Guyana received a significant number of enquiries regarding the available maritime acreage⁸⁷ and sold petroleum data packages to companies that had expressed interest.⁸⁸ Guyana eventually awarded an offshore concession to a consortium of LASMO Oil (Guyana) Limited, a subsidiary of London and Scottish Marine Oil Company (LASMO) of the United Kingdom, and BHP Petroleum (Guyana) Inc., a subsidiary of Broken Hill Properties Pty (BHP) of Australia.⁸⁹ The parties reached agreement on the concession on 28 July 1988, by which time Guyana's 1986 Petroleum Act was in effect.⁹⁰ Once again, the eastern limit of the concession area closely followed the historical equidistance line. As depicted in **Plate 24** (in Volume V only), the coordinates of the eastern limit of the concession area granted to LASMO-BHP followed a N33.8E line.⁹¹ This was consistent with the 1986 Petroleum Act and accompanying regulations, and similar to prior concessions to the California Oil Company, Royal Dutch Shell, Oxoco, Major Crude, and Seagull-Denison.⁹²

4.30 Guyana publicly announced the LASMO-BHP concession on the day it was agreed. The Guyana Natural Resources Agency published a press release which stated that "The Government of Guyana today granted a Petroleum Prospecting Licence to LASMO Oil (Guyana) Ltd... in respect of an area of approximately 11,400 sq. km. offshore.... . During

⁸⁴ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ See Letters in Response to Guyana's Advertisement in the 20 December 1985 Oil & Gas Journal. See MG, Vol. III, Annex 137.

⁸⁸ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁸⁹ Memorandum of the LASMO/Petrel Discussion of 10 July 1986 at the Office of the Deputy Prime Minister, Planning and Development (11 July 1986), see MG, Vol. III, Annex 138; Letter from Winston King, Executive Chairman, Guyana Natural Resources Agency to LASMO International Oil Development Limited (10 April 1987), see MG, Vol. III, Annex 139; Guyana Natural Resources Agency, *Press Release* (28 July 1988), see MG, Vol. III, Annex 141.

⁹⁰ Guyana Natural Resources Agency, *Press Release* (28 July 1988), *supra* Chapter 4, note 89; *Guyana, Two More Oil Cos Sign Exploration Agreement*, Guyana Chronicle (29 July 1988). See MG, Vol. III, Annex 142.

⁹¹ LASMO Oil (Guyana) Limited and BHP Petroleum (Guyana) Inc., Co-operative Republic of Guyana Exploration Licence: Satira, 1988/1989 Work Programme and Budget (16 November 1988). See MG, Vol. III, Annex 145.

⁹² Letter from Brian Sucre, Head of the Petroleum Unit at the Ministry of Energy and Mines to Harbour Master, Ministry of Transport, Transport and Harbours Department (22 July 1988). See MG, Vol. III, Annex 140.

Phase I of the exploration term, the companies will complete about 2000 km. of necessary seismic surveys."⁹³ The following day, an article appeared in the *Guyana Chronicle* stating that Guyana had "granted a petroleum prospecting licence... for an area approximately 11,400 square kilometres between the Demerara and the Corentyne rivers."⁹⁴ A map and description of the concession also appeared in the 8 August 1988 edition of the *Oil & Gas Journal*.⁹⁵ In October 1988, the Guyana Natural Resources Agency formally advised Suriname, through Staatsolie, of the geographic coordinates of the LASMO-BHP concession.⁹⁶ Suriname did not protest or otherwise object to the concession. In accordance with the terms of the concession, LASMO-BHP agreed to conduct seismic surveys throughout the concession area during a Phase I exploration period.⁹⁷ The surveys, which were announced in the *Oil & Gas Journal*, were conducted between May and July 1989,⁹⁸ covering 3,285 kilometres along 38 different seismic lines, many of them in close proximity to the eastern boundary of the concession area.⁹⁹ Suriname did not protest any aspect of the seismic testing.

D. Guyana's Protest of Suriname's Proposed Concession to IPEL: 1989

4.31 By contrast, Guyana protested to Suriname when it discovered in December 1989 that International Petroleum Exploration Ltd. ("IPEL") was interested in obtaining from Staatsolie an offshore licence that purported to allow it to carry out exploration activities in a small segment to the west of the N34E line. On 11 January 1989, the Guyana Ministry of Foreign Affairs wrote to the Embassy of Suriname in Georgetown that the rights sought by IPEL encroached upon "an area offshore which falls within the jurisdiction of the Government of Guyana."¹⁰⁰ Suriname disputed this contention, but in the end no agreement was executed between IPEL and Suriname, and no exploration activities were conducted.¹⁰¹ An earlier Surinamese concession, awarded in 1985 by Staatsolie to a consortium called Energy World Trade Group, and led by Austra-Tex Oil Company, elicited no protest from Guyana. This was because no seismic testing was performed by the consortium, and its activities were

⁹³ Guyana Natural Resources Agency, *Press Release* (28 July 1988), *supra* Chapter 4, note 89.

⁹⁴ *Guyana, Two More Oil Cos Sign Exploration Agreement*, *Guyana Chronicle* (29 July 1988), *supra* Chapter 4, note 90.

⁹⁵ *Guyana awards offshore licenses to two combines*, *Oil & Gas Journal* (8 August 1988). See MG, Vol. III, Annex 144; Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁹⁶ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

⁹⁷ Guyana Natural Resources Agency, *Press Release* (28 July 1988), *supra* Chapter 4, note 89.

⁹⁸ Report on Guyana (Satira) Exploratory Advisory Committee Meeting No. 2, June 2nd, 1989, Georgetown, Guyana (19 July 1989), see MG, Vol. III, Annex 146; Guyana Natural Resources Agency, Petroleum Unit, Report on the Seismic Survey by Western Geophysical for London and Scottish Marine Oil and Broken Hill Proprietary, Completed During May 29 to July 8, 1989 (1 August 1989) [hereinafter "GNRA Report on May 1989 Seismic Testing"], see MG, Vol. III, Annex 147.

⁹⁹ GNRA Report on May 1989 Seismic Testing, *supra* Chapter 4, note 98.

¹⁰⁰ *Note Verbale* from the Cooperative Republic of Guyana to the Republic of Suriname (11 January 1989). See MG, Vol. III, Annex 70.

¹⁰¹ Letter from B.D. Hodgson, LASMO International Limited to Winston King, Guyana Natural Resources Agency (12 October 1989). See MG, Vol. III, Annex 148.

limited to drilling close to the near-to-shore sites where Gulf had previously drilled -- all far to the east of the N34E line. The concession lapsed in 1987.¹⁰²

E. The Meeting of the Presidents of Guyana and Suriname: 1989

4.32 In August 1989 President Desmond Hoyte of Guyana and President Ramsewak Shankar of Suriname met in Paramaribo to discuss a range of bilateral issues, including the maritime boundary between the two States.¹⁰³ As stated in the Agreed Minutes of the meeting, the two Presidents expressed concern over the potential for disputes “with respect to petroleum development within the area of the North Eastern and North Western Seaward boundaries of Guyana and Suriname respectively.”¹⁰⁴ They agreed that pending settlement of the border question “representatives of the Agencies responsible for Petroleum Development within the two countries, should agree on modalities which would ensure that the opportunities available within said area can be jointly utilised.” President Hoyte and President Shankar further agreed that “with respect to concessions already granted within the said area, by one or other of the parties, such concession shall not be disturbed.”¹⁰⁵ At the time, the only existing concessions in the “said area” had been issued by Guyana. The Joint Communiqué did not preclude the issuance of new oil concessions. Accordingly, on 2 October 1989, less than two months after the two Presidents had met, Guyana concluded two additional concession agreements with a Texas-based company called Petrel. Petrel paid for and received the rights to certain acreage, up to the N34E line. Acting on behalf of Guyana it then sought operators to conduct exploratory activities in that area.¹⁰⁶ The first licence to Petrel covered the offshore area known as “Abary,” where Shell had discovered a potential oil deposit and drilled a well in 1974.¹⁰⁷ Its eastern boundary followed a line bearing N31E. The second concession covered the “Berbice” offshore area, which extended eastward to the N34E boundary line.¹⁰⁸ These concessions are depicted in **Plates 25** and **26** (in Volume V only). Once again, Suriname made no protest of either concession, notwithstanding the fact that both were publicised by Petrel.

4.33 Pursuant to the agreement reached by Presidents Hoyte and Shankar, representatives of the Guyana Natural Resources Agency (GNRA) and Staatsolie met in February 1990 to discuss modalities for joint utilisation of the maritime boundary area. GNRA presented Staatsolie with its draft of proposed modalities.¹⁰⁹ Staatsolie claimed it had no authority to

¹⁰² Wong, *supra* Chapter 4, note 66, at 388-389.

¹⁰³ Joint Communiqué Signed at the Conclusion of the State Visit to Suriname by Hugh Desmond Hoyte, President of the Cooperative Republic of Guyana and Ramsewak Shankar, President of the Republic of Suriname (25 August 1989). *See* MG, Vol. II, Annex 72.

¹⁰⁴ Agreed Minutes, signed by Foreign Minister Rashleigh Jackson of Guyana and Foreign Minister Edwin Sedoc of Suriname (25 August 1989). *See* MG, Vol. II, Annex 71.

¹⁰⁵ *Ibid.*

¹⁰⁶ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

¹⁰⁷ Guyana Natural Resources Agency, Abary Agreement (12 October 1989). *See* MG, Vol. III, Annex 149.

¹⁰⁸ Guyana Natural Resources Agency, Berbice Agreement (12 October 1989). *See* MG, Vol. III, Annex 150.

¹⁰⁹ Memorandum by Guyana Natural Resources Agency, Notes on Meetings with Mr. R. Bergval, Deputy Director, Exploration and Drilling, Staatsolie, Suriname, 22-23 February 1990 (23 February 1990) [hereinafter “GNRA Memorandum on Meeting with Staatsolie, February 1990”]. *See* MG, Vol. III, Annex 151.

discuss, let alone reach a binding agreement on, any such modalities.¹¹⁰ Accordingly, GNRA's Deputy Director for Exploration & Drilling reported that "the draft proposal and any amendments made, could not be signed or endorsed by Staatsolie" since "Staatsolie... had not been instructed by the Ministry of Natural Resources to discuss or even meet with GNRA officials for such discussions."¹¹¹ GNRA's efforts to schedule further meetings with Staatsolie were unsuccessful.¹¹²

4.34 In February 1991, GNRA informed President Hoyte that it "has been unable to obtain from Staatsolie a date for another meeting to conclude the discussions," and that "the Ministry of Foreign Affairs acting through the Guyana Embassy in Suriname as well as directly through the Suriname Foreign Ministry has similarly been unsuccessful in obtaining a date for settlement of this matter."¹¹³ GNRA thus recommended that President Hoyte contact Suriname President Johannes Kraag (the successor to President Shankar) directly, to request "early steps to complete discussions on the modalities for treatment of natural resources within the off-shore area of overlap between Guyana and Suriname, pending settlement of the border between Guyana and Suriname."¹¹⁴ GNRA assured President Hoyte that it was fully "prepared to receive a team from Suriname represented by the appropriate agency, and armed with full authority... to deal conclusively with this long outstanding issue."¹¹⁵ President Hoyte accepted GNRA's advice and raised the matter with President Kraag at a meeting in Guyana on 7 February 1991. The two Presidents agreed that "GNRA and Staatsolie... would meet in Georgetown during the course of February 1991 to conclude discussions on the modalities for the treatment of natural resources within the framework of the Agreed Minutes of August 1989."¹¹⁶

F. The Memorandum of Understanding To Respect Guyana's Concession: 1991

4.35 In accordance with the agreement of the two Presidents, representatives of GNRA and Staatsolie met in Georgetown on 21-25 February 1991. Discussions centered on the draft modalities prepared by GNRA.¹¹⁷ Staatsolie again claimed a lack of authority to sign a binding agreement on joint utilisation of maritime resources. The parties therefore decided to sign a preliminary Memorandum of Understanding, with a commitment to meet again to

¹¹⁰ *Ibid.*; Letter from Barton Scotland, Deputy Chairman of the Guyana Natural Resources Agency to Executive Chairman (28 February 1990). See MG, Vol. II, Annex 152.

¹¹¹ GNRA Memorandum on Meeting with Staatsolie, February 1990, *supra* Chapter 4, note 109.

¹¹² Affidavit of Dr. Barton Scotland, former Deputy Chairman of the Guyana Natural Resources Agency [hereinafter "Affidavit of Barton Scotland"]. See MG, Vol. IV, Annex 182.

¹¹³ Background Memorandum for President Desmond Hoyte prepared by Guyana Natural Resources Agency (5 February 1991). See MG, Vol. II, Annex 73.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ A Summary of the Decisions, Meeting Between the President of Guyana and the President of Suriname, Skeldon, 7 February 1991 (14 February 1991). See MG, Vol. II, Annex 74.

¹¹⁷ Guyana Natural Resources Agency, Note on Visit by Official of Staatsolie (21 February 1991), see MG, Vol. III, Annex 153; Brief Report on Visit by Staatsolie Representative to Guyana Natural Resources Agency to Discuss Modalities for Area of Overlap (27 February 1991) [hereinafter "Brief Report on Visit by Staatsolie Representative (27 February 1991)"], see MG, Vol. III, Annex 154.

reach agreement on the proposed modalities.¹¹⁸ On 25 February 1991, Dr. Cedric Grant, Ambassador and Special Adviser on Foreign Affairs to the President of Guyana, and Dr. John Kolader, Ambassador of Suriname to Guyana, executed a Memorandum of Understanding governing “Modalities for Treatment of the Offshore Area of Overlap Between Guyana and Suriname as it Relates to the Petroleum Agreement Signed Between the Government of Guyana and the LASMO/BHP Consortium on August 26, 1988.”¹¹⁹ The Memorandum of Understanding stated that “the rights granted to the LASMO/BHP consortium in the ‘area of overlap’ shall be fully respected and not be disturbed.”¹²⁰ The 1991 Memorandum also provided that within 30 days representatives of both governments would meet to conclude discussions on modalities for joint utilisation of the maritime border area until there is a final boundary agreement.¹²¹

4.36 Despite Guyana’s repeated invitations, Suriname never sent a delegation or representative to continue discussions on modalities for joint utilisation of the maritime border area.¹²² Nor did Suriname ratify the Memorandum of Understanding. Accordingly, it never became binding or effective under Suriname law. Suriname did, however, continue to respect Guyana’s concessions to LASMO/BHP and others in the area west of the N34E line.¹²³

4.37 In 1994, Guyana made another attempt to revive negotiations. It submitted to Suriname a new draft of proposed “Modalities for Treatment of the Offshore Area of Overlap between Guyana and Suriname.”¹²⁴ Suriname did not respond.¹²⁵ On the Suriname side of the N34E line, this was a period of “waning exploration activity,” according to Staatsolie, and “no new seismic data were acquired and no wells drilled;” only two “paper studies” of offshore oil potential were carried out pursuant to Surinamese licences, by Pecten and Nomeco.¹²⁶

¹¹⁸ Brief Report on Visit by Staastolie Representative (27 February 1991), *supra* Chapter 4, note 117.

¹¹⁹ Memorandum of Understanding - Modalities for the Treatment of the Offshore Area of Overlap Between Guyana and Suriname as it Relates to The Petroleum Agreement Signed Between the Government of Guyana and the LASMO/BHP Consortium on 26 August 1988 (25 February 1991). See MG, Vol. III, Annex 94. It should be noted that the Memorandum of Understanding erroneously described the “area of overlap” as extending between N10E and N30E. As indicated above, Guyana’s licence to the LASMO/BHP consortium encompassed a concession area with an eastern limit along the line of N33.8E, and Guyana (and British Guiana and the United Kingdom) had consistently maintained, since 1958, that the eastern boundary line with Suriname had a general bearing of N34E. Thereafter, between 1991 and the present, Guyana continued to treat the N34E line as its maritime boundary with Suriname.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Affidavit of Barton Scotland, *supra* Chapter 4, note 112.

¹²³ *Ibid.*

¹²⁴ Affidavit of Brian Sucre, *supra* Chapter 4, note 36.

¹²⁵ *Ibid.*

¹²⁶ Staatsolie, “Exploration History,” available at <http://www.staatsolie.com/explorationinformation/3-1.html> [last viewed 31 January 2005]. The “paper study” licenced to Pecten apparently included the area in dispute in this Arbitration; however, as a “paper study” (Staatsolie’s words), it involved no seismic testing, drilling or other physical activity in that area.

G. The Oil Concession Granted by Guyana to Maxus: 1997

4.38 As indicated, Suriname failed to ratify the 1991 Memorandum of Understanding or respond to Guyana's proposed "Modalities." Thereafter, Guyana resumed issuing oil concessions west of the N34E line. In November 1997, Guyana granted a concession to Maxus Guyana Ltd. covering the offshore area of the "Georgetown Block."¹²⁷ Maxus sold a 25 percent interest in the concession to AGIP Guyana BV, a subsidiary of the Italian oil company AGIP. In 1998, Maxus was acquired by YPF of Argentina, which in turn was acquired in 1999 by Repsol, a Spanish company.¹²⁸ Also in 1999, AGIP Guyana BV sold its 25 percent interest in Maxus to CGX Resources Inc., a Canadian company.¹²⁹ The Georgetown Block did not extend all the way east to the N34E boundary line, but came within close proximity of it, as depicted in **Plate 27** (in Volume V only).¹³⁰ Once again Suriname did not protest. The concession remains in effect to this day.

H. The Oil Concessions Granted by Guyana to CGX: 1998

4.39 In June 1998, Guyana granted a petroleum prospecting licence to CGX Resources, Inc. The eastern limit of part of CGX's concession area, known as the "Corentyne Block," was a straight line with a bearing of N34E "at the Guyana/Suriname boundary."¹³¹ In December 1998, Guyana issued another licence to CGX in an adjacent area. The eastern limit of the new area extended from Point 61 seaward on a bearing of N34E "along the Guyana/Suriname boundary."¹³² CGX's entire concession area is shown at **Plate 28** (in Volume V only). Suriname did not protest Guyana's issuance of this concession at or near the time it was granted, although the concession was highly publicised and Suriname was well aware of it.¹³³ Because CGX and Maxus operated in adjoining offshore blocks (and CGX was a minority partner of Maxus in the Georgetown Block), the two companies agreed to share the costs of a seismic testing program.¹³⁴ In the spring of 1999, Western

¹²⁷ Petroleum Prospecting Licence Between Guyana Geology and Mines Commission and Maxus Guyana Limited (25 November 1997), Annex A "Description of Contract Area" [hereinafter "Maxus Petroleum Prospecting Licence (25 November 1997)"]. See MG, Vol. III, Annex 155.

¹²⁸ *Staatsolie and Repsol YPF sign Production Sharing Agreement - A responsible partner for Suriname*, Newsletter (June 2004) pg. 5 available at <http://www.staatsolie.com/newsletter/juni2004/page5.html> [last viewed 31 January 2005]. See MG, Vol. III, Annex 174.

¹²⁹ *Ibid.*

¹³⁰ Maxus Petroleum Prospecting Licence (25 November 1997), *supra* Chapter 4, note 127.

¹³¹ Petroleum Prospecting Licence Between the Minister Responsible for Petroleum Representing the Government of the Cooperative Republic of Guyana and CGX Resources Inc. (24 June 1998) [hereinafter "CGX Licence (24 June 1998)"]. See MG, Vol. III, Annex 156.

¹³² Petroleum Prospecting Licence Between the Minister Responsible for Petroleum Representing the Government of the Cooperative Republic of Guyana and CGX Resources Inc. (9 December 1998). See MG, Vol. III, Annex 157.

¹³³ See e.g. CGX Press Releases (1998-2000). See MG, Vol. III, Annex 158.

¹³⁴ 1999 *CGX Annual Report* (2000) ("...in May 1999, CGX and Maxus/Repsol jointly conducted a seismic acquisition program and shared the resulting data."), see MG, Vol. III, Annex 162; CGX Press Releases (1998-2000), *Press Release*, "CGX Energy Inc. (CGXX.U - CDN) Targets Enhanced by New Seismic" (27 May 1999), *supra* Chapter 4, note 133.

Geophysical performed a seismic survey on their behalves.¹³⁵ This survey covered nearly the full extent of both the Georgetown (Maxus/CGX) and Corentyne (CGX) Blocks.¹³⁶ The areas in which the seismic survey was carried out were publicly known. On 16 April 1999, the Guyana Transport and Harbours Department issued a Notice to Mariners cautioning seafarers to proceed with caution in the zone because a survey vessel was conducting seismic testing and trailing streamer cables some four kilometres in length.¹³⁷ CGX issued press releases announcing, *inter alia*: seismic testing programs in its concession area (19 April and 27 May 1999); Guyana's approval of the company's drilling program (10 August 1999); positive test results (19 August and 13 September 1999); plans for new drilling in the area (1 November 1999); success in raising new financing for additional drilling in the area (13 December and 23 February 2000); and a map of its concession area showing potential oil deposits (23 February 2000 and 10 April 2000). None of these public announcements elicited a protest from Suriname.

4.40 As is frequently the case, the survey ship's seismic testing equipment was towed behind the vessel, and a large radius was required to turn the ship around without cutting across the tow lines.¹³⁸ Thus, when the ship reached the eastern boundary of the concession area, it had to cross that line for some distance in order to turn around. The process of turning the vessel required the ship to be in Surinamese waters for between one and three hours. Before crossing the N34E line, the captain sought and obtained permission to cross into Surinamese waters from the Surinamese Harbour Master in Paramaribo. During the course of the survey, the vessel collected at least twenty-three lines of seismic data that required entry into Surinamese waters. Each crossing of the N34E line occurred without incident or objection by Suriname.¹³⁹

I. The Oil Concession Granted by Guyana to Esso: 1999

4.41 In June 1999, Guyana granted an offshore concession to Esso Exploration and Production (Guyana) Company, a subsidiary of Exxon-Mobil Corp. The concession area is shown in **Plate 29** (in Volume V only). It lay seaward of the Georgetown (Maxus) and Corentyne (CGX) Blocks, in deeper water, and stretched from the Guyana-Venezuela border in the west all the way east just short of the N34E boundary line with Suriname.¹⁴⁰ Exxon issued a press release announcing the concession. The press release included a map showing

¹³⁵ CGX Press Releases (1998-2000), *Press Release*, "CGX Energy Inc. (CGXX.U - CDN) Financing for Seismic Survey Fully Subscribed" (10 April 1999) and *Press Release*, "CGX Energy Inc. (CGXX.U - CDN) Targets Enhanced by New Seismic" (27 May 1999), *supra* Chapter 4, note 133; Affidavit of David Purcell, Shore Administrator for a seismic survey conducted by the Western Geophysical Company from April 22 - May 26, 1999 [hereinafter "Affidavit of David Purcell"]. See MG, Vol. IV, Annex 185.

¹³⁶ Affidavit of David Purcell, *supra* Chapter 4, note 135. See also Maxus Prospect Offshore Guyana (1999) (showing seismic lines shot by both Maxus and CGX in 1999). See MG, Vol. III, Annex 161.

¹³⁷ Transport and Harbours Department, Notice to Mariners No. 6 (1999). See MG, Vol. IV, Annex 191.

¹³⁸ Affidavit of David Purcell, *supra* Chapter 4, note 135.

¹³⁹ *Ibid.*

¹⁴⁰ Petroleum Prospecting Licence, between the Minister Responsible for Petroleum and ESSO Exploration and Production Guyana Limited (14 June 1999), see MG, Vol. III, Annex 159; *Press Release*, "Exxon Signs PSC for Deepwater Acreage Off Guyana; Adds to Global Deepwater Portfolio," (14 June 1999) [hereinafter "Exxon Press Release"], see MG, Vol. III, Annex 160.

the boundaries of the concession area.¹⁴¹ At Exxon's direction, in February and March 2000, Geoterrex Dighem conducted an aeromagnetic survey of the concession area.¹⁴² The survey covered the entire breadth of the concession, from west to east.¹⁴³ Suriname did not protest the issuance of the concession or the aeromagnetic survey.

4.42 In sum, by May 2000 Guyana (and British Guiana) had issued eleven concessions in the maritime area that is the subject of this arbitration, all of which treated the historical equidistance line as the maritime boundary with Suriname. Seismic testing was carried out in respect of seven concessions, and another was the subject of aeromagnetic testing. Drilling had taken place as far back as 1974 in close proximity to the historical equidistance line. Suriname had knowledge of most if not all of these activities, either directly or through Staatsolie. On no occasion did Suriname protest or object. By May 2000, Suriname, and previously the Netherlands, knew of and had acquiesced in Guyana's historical equidistance line for a period in excess of forty (40) years. In that month, Suriname's acquiescence with regard to the N34E line was the subject of critical commentary by Dr. Siegfried Werners, the Surinamese diplomat (by then retired) who had advised his government in maritime boundary matters. In an 11 May 2000 article published in the Surinamese newspaper, *De Ware Tijd*, Dr. Werners wrote:

I draw attention to the statement by the Guyanese Prime Minister, Samuel Hinds, in this newspaper on 9 May under the title: "Oil drilling in disputed area is common practice." Hinds said literally that Suriname had never made any objections before to oil drilling and that it has almost become a Guyanese tradition to grant concessions in the area. If it ever comes to a court case or arbitration, this lax attitude of Suriname will work against it – something which every international lawyer knows only too well. I had warned about this in earlier articles. What a pity!¹⁴⁴

J. Staatsolie's Treatment of the Historical Equidistance Line as the Western Boundary of Suriname's Offshore Concession Area: 1980-2004

4.43 There was a similar respect for the historical equidistance line by Staatsolie. In its investment promotion activities, Staatsolie regularly published maps and charts of concession blocks awarded to successful bidders, and concession blocks available for acquisition by new investors.¹⁴⁵ Staatsolie's maps were included in the promotional materials that the company disseminated to potential investors or published on its website. These indicate that Staatsolie offered offshore concessions in the continental shelf area only to the *east* of the line extending seaward on a bearing of N33E from Point 61, *i.e.*, almost the same N34E line, to the *west* of which Guyana has regularly awarded oil concessions, as shown above. As depicted in **Plate 30** (following this page), none of the concession blocks offered by

¹⁴¹ Exxon Press Release, *supra* Chapter 4, note 140.

¹⁴² Letter from Michael G. Silver, Esso Exploration and Production Guyana Limited to Newell Dennison, Guyana Geology and Mines Commission, with attached map (24 January 2000) [hereinafter "Letter from Esso (24 January 2000)"]. See MG, Vol. III, Annex 163.

¹⁴³ Letter from Esso (24 January 2000), *supra* Chapter 4, note 142.

¹⁴⁴ Siegfried E. Werners, *Border Disputes at Election Time*, *De Ware Tijd* (11 May 2000) (original in Dutch, translation provided by Guyana). See MG, Vol. II, Annex 48.

¹⁴⁵ See *generally* maps and charts available at <http://www.staatsolie.com> [last viewed 31 January 2005].

Staatsolie to investors lay west of the historical equidistance line. **Plate 31** (in Volume V only), which is Staatsolie's map of concession blocks then under negotiation, shows that those blocks were bounded on the west by that line.¹⁴⁶ This is consistent with earlier conduct. As depicted in **Plate 32** (following page 60), two concession agreements concluded by Staatsolie in 1999 with the Deepwater Consortium (led by Shell and Burlington) included a western boundary line which was broadly consistent with the historical equidistance line of N34E. This was not done by accident. Rather, acceptance of the historical equidistance line as the maritime boundary between Guyana and Suriname appears to have been Staatsolie's intention. In August 2000, Dr. Eddy Jharap, Staatsolie's longtime Managing Director, wrote to Esso and advised that CGX's oil exploration activities under licence from Guyana (conducted just to the west of the N34E line) were "at the border of Suriname and Guyana."¹⁴⁷ Consistent with this view, Suriname's concessions to Repsol in 2003 (depicted in **Plate 33**, in Volume V only) and Maersk in 2004 (shown in **Plate 34**, in Volume V only) followed a western boundary line of N33E, in very close proximity to the historical equidistance line.

VI. The Exercise of Fisheries Jurisdiction by Guyana and Suriname: 1977-2004

4.44 Beyond oil concessions, the conduct of the parties extends also to other activities in maritime spaces that public authorities are required to authorise. Guyana has regularly and over time exercised jurisdiction over fishing in the area west of the N34E line, while Suriname, by its own admission, has not. In Guyana's case, a principal purpose of the 1977 Maritime Boundaries Act was to address the depletion of Guyanese fisheries stocks as a result of over-fishing by foreign vessels in waters beyond the territorial sea.¹⁴⁸ To this end, the 1977 Act established a Fishery Zone, and defined it in Article 23 as encompassing all of the waters within 200 miles of the nearest point on the baseline along Guyana's coast.¹⁴⁹ This is analogous to an exclusive economic zone. The 1977 Act authorised the government to promulgate fisheries regulations and enforce them within the Fishery Zone, and included powers to licence fishing activities, limit access, and establish an enforcement regime to apprehend and prosecute violators of fishing regulations and/or licences.¹⁵⁰ To prevent foreign vessels from over-fishing in Guyana's waters, Article 25(2) of the 1977 Act provided for exclusion of foreign fishing boats.¹⁵¹ Article 27 defined offences within the Zone.¹⁵²

4.45 Under Article 36(1) of the 1977 Act, the Minister of Agriculture, who is responsible for Lands and Surveys, caused a special chart to be created which depicts Guyana's Fishery

¹⁴⁶ *Ibid.*

¹⁴⁷ Letter from S.E. Jharap, Managing Director, Staatsolie to Wendel Hoppe, Esso Exploration & Production Guyana Limited (18 August 2000) [hereinafter "Letter from Staatsolie to Esso (18 August 2000)"]. See MG, Vol. IV, Annex 173.

¹⁴⁸ Affidavit of Barton Scotland, *supra* Chapter 4, note 112.

¹⁴⁹ Maritime Boundaries Act 1977, *supra* Chapter 4, note 24.

¹⁵⁰ *Ibid.*

¹⁵¹ An exception is provided: "except for a purpose recognised by international law or by any convention for the time being in force between the Government of Guyana and the Government of the country to which the boat belongs and any such boat which enters the zone for such a purpose... shall not fish while within the zone." *Ibid.*, Part IV, Article 25(2)

¹⁵² *Ibid.*, Part IV, Articles 26-28.

Zone.¹⁵³ The Zone depicted in the chart lies to the west of the N34E line that is the subject of this arbitration, as shown in **Plate 35** (in Volume V only). All licencees permitted to fish in the Zone, including Surinamese nationals, are provided with a diagram of the Zone, which is part of the fishing log that every licencee is given and required to maintain.¹⁵⁴ The diagram was made available to Surinamese fishing authorities during discussions with their Guyanese counterparts. The international community is well-aware of Guyana's exercise of fisheries jurisdiction throughout the Fishery Zone, not least because Guyanese fisheries authorities regularly work together with fisheries officials of international organisations and national agencies including, *inter alia*, the Food and Agriculture Organisation of the United Nations, the Western Central Atlantic Fisheries Commission, the European Union and the Canadian International Development Agency, to protect fish stocks in the Fishery Zone. These organisations and agencies, in some of which Suriname participates, are kept informed of the geographic extent of Guyana's fisheries jurisdiction. The extent of the Fishery Zone is therefore a matter of public record and is well-known to Surinamese authorities. Suriname has never protested the chart.¹⁵⁵

4.46 Guyana's Fisheries Department routinely works with the Guyana Coast Guard, Guyana Defence Force Air Corps, Police Department and Office of the Public Prosecutor to enforce Guyana's fishing laws.¹⁵⁶ Since 1977, Guyana has regularly issued licences to foreign vessels to fish in the Fishery Zone, including the part of the Zone that is at issue in this arbitration, and has seized vessels operating without licences.¹⁵⁷ Among the foreign vessels licenced by Guyana to fish in the relevant area are those from Suriname, Venezuela, the United States, St. Vincent and the Grenadines, Dominica, Japan, and South Korea.¹⁵⁸ As recently as 2003, for example, Guyana issued licences to Suriname-based fishing operators to fish in the waters that are at issue in this arbitration.¹⁵⁹

4.47 When an unlicensed fishing vessel is seized, the boat, its crew and catch are brought to Georgetown, and Fisheries Officers are dispatched to the wharf to inspect the catch and report on the seizure.¹⁶⁰ Police and Coast Guard officials interview the crew members and take statements, and the reports by the Fisheries, Police and Coast Guard Officers are forwarded to the Chambers of the Director of Public Prosecutions, where a determination is

¹⁵³ *Ibid.*, Part IV, Article 36(1); Affidavit of Reuben Charles, former Chief Fisheries Officer of the Fisheries Department of the Guyana Ministry of Agriculture [hereinafter "Affidavit of Reuben Charles"]. See MG, Vol. IV, Annex 183.

¹⁵⁴ Affidavit of Reuben Charles, *supra* Chapter 4, note 153.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ See Applications for Licences to Fish in Guyana's Fishery Zone and Licences to Fish in Guyana Fishery Zone, see MG, Vol. IV, Annex 187; Letter from Bowhan Balkaran, Permanent Secretary, Ministry of Fisheries, Crops & Livestock to Randjitsing Ramkisor, Carib Fisheries AVV (28 May 2003) [hereinafter "Letter from Bowhan Balkaran (28 May 2003)"], see MG, Vol. IV, Annex 195.

¹⁵⁹ Letter from Bowhan Balkaran (28 May 2003), *supra* Chapter 4, note 158.

¹⁶⁰ See e.g. Letter from G.A.R. Best, Commander to Chief of Staff, Guyana Defence Force, "General Procedures After Seizure of Vessel Illegally Fishing in Guyana's Waters" (12 October 1999), see MG, Vol. IV, Annex 192; Affidavit of Reuben Charles, *supra* Chapter 4, note 153.

made whether to prosecute the offenders before a magistrate.¹⁶¹ Within the first year of enactment of the 1977 Act at least seven vessels engaged in unlicensed fishing activities in the Fishery Zone were seized, and their crews were arrested and fined. All of these vessels – the *Kwang Myong 302*, the *Soo Gong 162*, the *Soo Gong*, the *Soo Gong 111*, the *Soo Gong 113* and the *Sugam 26* – were based in Suriname.¹⁶²

4.48 Despite the physical limitations of patrolling a vast maritime space, the Guyana Coast Guard has consistently apprehended vessels engaged in illegal fishing in the Fishery Zone from a variety of different countries without any official protest.¹⁶³ For example, in 1983, at least eleven trawlers from Trinidad and Tobago, Barbados and Venezuela were seized and their crews fined. In 1984, the Guyana Coast Guard seized at least three Surinamese-based Korean trawlers (the *Makendra #11*, and the *SE Chong #10* and *#22*) and fined the crews.¹⁶⁴ In 1985, at least three more Suriname-based trawlers (the *Shin Wah #15*, the *Shin Wah #32* and the *Barbara*) were seized and the crews fined. In 1988, at least one trawler registered in St. Vincent was seized and its crew fined. In 2000, at least five Venezuelan trawlers were apprehended in waters at issue in this arbitration, and their crews fined and their gear and catch confiscated.¹⁶⁵ There have not been any protests by the flag States of the detained fishermen concerning these police actions by Guyanese authorities. In particular, in no case has Suriname protested the seizure of a vessel, or the enforcement of Guyanese fishing regulations by Guyanese authorities in any of the maritime spaces that are the subject of this arbitration.¹⁶⁶

4.49 By contrast with Guyana’s active enforcement of its fisheries jurisdiction, Suriname has acknowledged that it has not exercised fisheries jurisdiction in the continental shelf area west of the historical equidistance line. Suriname’s official *Planatlas* depicts Suriname’s fisheries zone as extending seaward only to the 200-metre isobath, and confirms that “there is little monitoring of fishing activity in the exclusive economic zone, either for compliance with the licences granted, or illegal fishing (poaching) by foreign fishing boats.”¹⁶⁷ Guyana is unaware of any examples of Suriname having licensed any fisheries activities in the area west of the historical equidistance line, or of any Surinamese attempts to enforce its fisheries laws west of the N34E line.

¹⁶¹ See e.g. Court Report No. 4,986/96, *Samuel William Detective Constable No. 13080 v. Ramnauth Sampot*, Georgetown Magisterial District (12 April 1996), see MG, Vol. IV, Annex 190; Letter from G.L. George, Lieutenant Commander for Commandeering Officer, Coast Guard to Colonel General Staff, “Seizure of Surinamese Trawler *Sugam #28*” (22 August 1995), see MG, Vol. IV, Annex 189; Letter from D. Erskine, Coast Guard Lieutenant Patrol Commander to Commanding Officer, Coast Guard, “Seizure of Surinamese Trawler *Sugam #28*” (21 August 1995), see MG, Vol. IV, Annex 188.

¹⁶² Guyana Defense Force Files, Guyana Defence Force Coast Guard Vessel/Seizures from 1977 to 2003 (2004) [hereinafter “Guyana Vessel Seizures, 1977 to 2003”]. See MG, Vol. IV, Annex 196.

¹⁶³ Affidavit of Commander John Flores, Guyana Coast Guard. See MG, Vol. IV, Annex 179.

¹⁶⁴ Guyana Vessel Seizures, 1977 to 2003, *supra* Chapter 4, note 162.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ “Fishery” in *Suriname Planatlas* 39 (1988). See MG, Vol. II, Annex 47.

VII. Other Law Enforcement Activities by Guyana and Suriname: 1977-2004

4.50 In addition to enforcing fisheries laws and regulations, the Guyana Coast Guard regularly patrols Guyana's maritime area to protect against piracy, drug trafficking, smuggling, and other criminal activities, including the harassment of licenced fishing vessels and oil rigs. The Coast Guard patrols oil concession areas and their environs to ensure the safety of petroleum exploration operations, including seismic testing surveys and drilling, and to perform search and rescue missions in the event of an emergency.¹⁶⁸ The Guyana Coast Guard also monitors the areas within and surrounding oil exploration areas for environmental protection purposes, and to enforce international covenants protecting endangered species. Aerial surveillance by the Guyana Defence Force Air Corps is conducted approximately every fortnight above all patrol zones, including much of the area that is the subject of this arbitration, in support of the Coast Guard's operations.¹⁶⁹

4.51 The Guyana Transport and Harbours Department exercises jurisdiction over Guyanese waters for matters concerning maritime safety and navigation. The Department regularly publishes Notices to Mariners alerting seafarers of hazards and impediments to navigation. Whenever seismic testing occurs in any Guyanese oil concession area, a Notice to Mariners is published.¹⁷⁰ These are also posted on stellings, wharves, and landing sites in Guyana. The Guyana Transport and Harbours Department exercises its jurisdiction over Guyana's entire maritime area, right up to the limits of the historical equidistance line of N34E.¹⁷¹

4.52 By contrast, in the period prior to June 2000, Guyana is not aware that Suriname engaged in or otherwise authorised *any* law enforcement activities in the continental shelf area west of the N34E line. That changed in June 2000, when Suriname used force illegally to prevent oil drilling pursuant to an authorisation lawfully granted by Guyana in an area over which it exercised sovereign rights. To those events Guyana now turns in Chapter 5.

¹⁶⁸ Affidavit of Commander John Flores, Guyana Coast Guard, *supra* Chapter 4, note 163.

¹⁶⁹ *Ibid.*

¹⁷⁰ Affidavit of Leslie Lui-Hing, former Superintendent of Hydrographic Surveys, Guyana Department of Transport and Harbours. *See* MG, Vol. IV, Annex 180.

¹⁷¹ *Ibid.*

CHAPTER 5

SURINAME'S USE OF MILITARY FORCE AND THE CIRCUMSTANCES LEADING TO GUYANA'S INITIATION OF THIS ARBITRATION: 2000-2004

5.1 As described in Chapter 4, in 1998 Guyana awarded a concession to CGX in respect of an offshore area in the continental shelf. The eastern limit of the concession was formed by the historical equidistance line of N34E.¹ The concessions followed the terms of earlier concessions granted by Guyana and covered areas close to the historical equidistance line where drilling had been carried out pursuant to Guyanese licences. Guyana had no reason to expect that activities under the CGX licence should cause any particular difficulties.

5.2 In 1999, CGX arranged for seismic testing to be performed over the entire concession area, right up to and along the eastern boundary line.² The survey ship which carried out these tests on behalf of CGX was required to traverse the N34E line into Surinamese waters on numerous occasions, in order to turn around without crossing the seismic lines that extended outward from the aft portion of the vessel. Permission was sought from Suriname, which had not objected to the concession or to CGX's activities in the concession area.³ Suriname lodged no protest over the penetration of its maritime area in the course of CGX's seismic testing; to the contrary, Suriname's Harbour Master in Paramaribo expressly consented to these boundary crossings at the N34E line.⁴

5.3 Until May 2000, Suriname indicated no concern or difficulty with CGX's presence in the concession area or its oil exploration activities. In that month, however, it appears that opposition parties in Suriname saw fit to make the CGX concession an issue in the upcoming parliamentary elections, scheduled for 25 May 2000.⁵ Alarmed by the Surinamese opposition's anti-Guyana rhetoric, Guyana's Ambassador in Paramaribo reported that political parties were sharply accusing the governing coalition of acquiescing in Guyana's petroleum exploration activities in "Surinamese" waters.⁶ The Ambassador wrote to Guyana's Foreign Minister on the same day, 11 May 2000, to alert him that a "senior Member of the National Democratic Party... reportedly accused the Government of allowing Guyana to continue its plans to drill oil in Suriname's territory."⁷ The election-related political pressure on the Government of Suriname to move against the CGX concession was described by Dr. Siegfried Werners, the former Surinamese diplomat. On 11 May 2000, Dr.

¹ CGX Licence (24 June 1998), *supra* Chapter 4, note 131.

² Transport and Harbours Department, Notice to Mariners No. 6 (1999), *supra* Chapter 4, note 137; CGX Press Releases (1998-2000), *Press Release*, "CGX Energy Inc. (CGXX.U - CDN) Financing for Seismic Survey Fully Subscribed," (10 April 1999), *supra* Chapter 4, note 133; Affidavit of David Purcell, *supra* Chapter 4, note 135.

³ Affidavit of David Purcell, *supra* Chapter 4, note 135.

⁴ *Ibid.*

⁵ Letter from Karshanjee Arjun, Ambassador of Guyana to Suriname to Honourable Clement Rohee, Minister of Foreign Affairs with attached article, *Guyana Drills For Oil in Suriname's Territory*, *De Ware Tijd* (28 April 2000). See MG, Vol. II, Annex 35; Letter from Karshanjee Arjun, Ambassador to Clement Rohee, Minister of Foreign Affairs (4 May 2000, see MG, Vol. II, Annex 36.

⁶ Letter from Karshanjee Arjun, Ambassador of Guyana to Suriname to Clement Rohee, Minister of Foreign Affairs with attached article, *Oil Drilling in Disputed Area Normal Matter, Says Guyanese Vice President* (11 May 2000). See MG, Vol. II, Annex 37.

⁷ *Ibid.*

Werners wrote in the *De Ware Tijd* newspaper that “our government and Parliament have devoted insufficient attention to the land and sea borders of the Republic of Suriname.” Therefore “in this election period, several political parties have included this issue in their programmes in response to the impending oil drilling by our neighbor Guyana in the disputed sea area.”⁸

5.4 Also on 11 May 2000, Suriname delivered to Guyana a *Note Verbale* demanding that Guyana cease all oil exploration activities in Suriname’s so-called “North West Offshore Area.”⁹ The communication came without warning or prior consultation, formal or informal. Suriname’s *Note Verbale* stated that “should there be activities of any sort in the area concerned, the Government of the Republic of Suriname would expect an immediate termination of such activities, in conformity with the internationally accepted principle of territorial integrity.”¹⁰ Guyana replied on 17 May 2000.¹¹ Guyana’s *Note Verbale* assured Suriname that “any exploration/exploitation activity, which may be in progress at the present time with the permission or at the instance of the Government of Guyana, is being conducted in the territory of the Cooperative Republic of Guyana.”¹² The *Note* also expressed Guyana’s “concern[] over the tenor of the *Note Verbale* from the Ministry of Foreign Affairs of Suriname.”¹³ Suriname did not publicly acknowledge receipt of Guyana’s *Note*, and no response was provided. The reason may have been identified by Guyana’s Ambassador in Paramaribo, who reported that the “Government of Suriname, for some reason, has kept Guyana’s response a secret. As I had suggested in previous correspondence, they many [sic] have found it politically suicidal to publicise it so close to the elections.”¹⁴

5.5 The parliamentary elections were held in Suriname on 25 May 2000. The New Front, in a coalition of four parties, won 33 of 51 parliamentary seats, defeating the incumbent National Democratic Party-led coalition.¹⁵ By 31 May 2000, the new President of Suriname was still to be elected by the necessary two-thirds majority of parliament.¹⁶ That day, the

⁸ Siegfried E. Werners, *Border Disputes at Election Time*, *De Ware Tijd* (11 May 2000) (original in Dutch, translation provided by Guyana), *supra* Chapter 4, note 144.

⁹ *Note Verbale* No. 2651 from the Republic of Suriname to the Cooperative Republic of Guyana (11 May 2000). See MG, Vol. II, Annex 76.

¹⁰ *Ibid.*

¹¹ *Note Verbale* No. 353/2000 from the Cooperative Republic of Guyana to the Republic of Suriname (17 May 2000). See MG, Vol. II, Annex 77.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Letter from Karshanjee Arjun, Ambassador of Guyana to Suriname to Clement Rohee, Minister of Foreign Affairs, with attached article, *Guyana Sends Oilrig to Surinamese Territory*, *De Ware Tijd* (30 May 2000). See MG, Vol. II, Annex 38.

¹⁵ “Suriname: 2000 National Assembly, List of Elected Members,” Georgetown University and the Organization of American States, *Political Database of the Americas*, available at <http://www.georgetown.edu/pdba/Elecdata/Sur/leg00.html>. [last updated 02 August 2000; last viewed 31 January 2005].

¹⁶ President Venetiaan was not elected until 4 August 2000. “Suriname: 2000 Legislative Elections,” Georgetown University and the Organization of American States, *Political Database of the Americas*, available at <http://www.georgetown.edu/pdba/Elecdata/Sur/pres00.html> [last updated 31 May 2002; last viewed 31 January 2005]. On 1 June 2000, the United States Embassy in Suriname reported that continued agitation on the maritime border dispute following the 25 May 2000 parliamentary elections was an attempt to divert attention from infighting within the newly-elected coalition over the filling of key government

Foreign Minister of Suriname summoned Guyana's Ambassador in order to present him with a further *Note Verbale*, the first since Guyana's *Note* of 17 May.¹⁷ The Surinamese *Note* stated:

The Government of the Republic of Suriname wishes to reiterate that from the point mark Latitude: 5° 59' 53" .8 North, Longitude: 57° 08' 51" .5 West [*i.e.* Point 61], the direction of the boundary line in the territorial waters is on a true bearing of 10° East.¹⁸

The *Note* continued:

Within this context the territory located eastward of this demarcation line is considered an integral part of the Surinamese territory and all activities undertaken in this area without the permission of the Government of the Republic of Suriname constitute an illegal act. Therefore, the Government once again strongly insists on the forthwith termination of all activities being undertaken in this area.

The Government of the Republic of Suriname is determined to protect its territorial integrity and national sovereignty utilising all avenues offered by international law and international practice on these matters.¹⁹

5.6 That same day – 31 May 2000 – Suriname ordered CGX to immediately cease all activities in its concession area, and threatened adverse action if the company refused to comply.²⁰ This action was taken without awaiting a reply from Guyana (or leaving any time for such a reply). In a letter to the President and Chief Executive Officer of CGX, the Minister of Foreign Affairs of Suriname stated:

The Government of the Republic of Suriname wishes to reiterate that from the point mark Latitude: 5° 59' 53" .8 North, Longitude: 57° 08' 51" .5 West [Point 61], the direction of the boundary line in the territorial water is on a true bearing of 10° East.

Within this context the territory located eastward of this demarcation line is considered an integral part of the Surinamese territory and activities undertaken in this area without the permission of the Government of the Republic of Suriname constitute an illegal act.

In this respect the Ministry explicitly likes to inform you that the Government of the Republic of Suriname is determined to protect its territorial integrity and national sovereignty.

positions. Cable 00 Paramaribo 456 from the United States Embassy in Paramaribo, Suriname to the United States Secretary of State (1 June 2000). See MG, Vol. II, Annex 52.

¹⁷ Letter with attached *Note Verbale* No. 2566/HA/eb (31 May 2000), *supra* Chapter 3, note 16.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Letter from the Minister of Foreign Affairs of the Republic of Suriname to Kerry Sully, President, CGX Energy Inc. (31 May 2000), *supra* Chapter 3, note 16.

Taking into consideration the above-mentioned, the Surinamese Government calls upon the CGX Energy Inc. to immediately end all (intended) activities in the afore-mentioned area.²¹

5.7 Guyana replied to Suriname's 31 May 2000 *Note Verbale* within two days, on 2 June 2000.²² The reply disagreed with Suriname's assertion that the maritime boundary was a N10E line. It set forth Guyana's position that the "common boundary between Guyana and Suriname commences at the intersection of the seaward prolongation of the north 10° east line between two concrete marks on the Guyana mainland with the line of mean low water springs," and that it then extends "seawards along the line of equidistance to the outer limit of Guyana's continental shelf."²³ Guyana's *Note Verbale* of 2 June 2000 affirmed that all oil exploration activities were, or would be, conducted in Guyanese waters, as so defined. To resolve the dispute caused by the two States' contradictory claims, Guyana invited Suriname to send "a high-level delegation" to Georgetown "to commence dialogue" within 24 hours:

The Ministry of Foreign Affairs wishes to state that the Government of Guyana remains favourably disposed to engage in dialogue either at the bilateral or multilateral levels with a view to addressing any misunderstandings that may exist... . In this regard, the Government of Guyana is inviting the Government of Suriname to send a high level delegation to Georgetown within twenty four (24) hours to commence dialogue on these and other related matters.²⁴

I. Suriname's Use of Military Force against CGX: 2000

5.8 On the same day that Guyana's *Note Verbale* and proposal for immediate dialogue were delivered to Suriname – 2 June 2000 – the Guyanese Coast Guard patrolling the offshore area near the CGX concession reported Surinamese military aircraft "flying aggressively" over a Coast Guard vessel and the CGX rig.²⁵ Guyana promptly protested Suriname's intrusion into Guyanese air space, in both diplomatic correspondence²⁶ and by means of a public statement issued to the news media.²⁷ Guyana pointed out that the unfriendly action had taken place at a time when Guyana was calling for diplomatic negotiations to resolve the matter amicably.²⁸ Guyana called again for an immediate, high-level dialogue.²⁹

²¹ *Ibid.*

²² *Note Verbale* No. 400/2000 from the Cooperative Republic of Guyana to the Republic of Suriname (2 June 2000). See MG, Vol. II, Annex 79.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Guyana Coast Guard, Post Operations Report: Fisheries Protection (3 June 2000). See MG, Vol. IV, Annex 193.

²⁶ *Note Verbale* No. 404/2000 from the Cooperative Republic of Guyana to the Republic of Suriname (3 June 2000) [hereinafter "*Note Verbale* from Guyana (3 June 2000)"]. See MG, Vol. II, Annex 80.

²⁷ Government of Guyana, *Press Statement*, "Guyana/Suriname Relations" (3 June 2000) [hereinafter "Guyana Press Statement (3 June 2000)"]. See MG, Vol. II, Annex 39.

²⁸ *Ibid.*

²⁹ *Note Verbale* from Guyana (3 June 2000), *supra* Chapter 5, note 26.

5.9 That call went unheeded by Suriname. In the early morning hours of 3 June, shortly after midnight, two gunboats from the Surinamese navy arrived at the CGX concession area and circled CGX's oil rig and drill ship, the *C.E. Thornton*.³⁰ The geographic coordinates of the location were 7° 19' 37' N. latitude and 56° 33' 36' W. longitude.³¹ This was approximately 15.4 miles west of the N34E line. The Surinamese gunboats trained their searchlights on the drilling platform, established radio contact with the *C.E. Thornton* and its accompanying service vessels, and ordered the ships to "leave the area within twelve hours, or the consequences will be yours."³² This order was repeated several times.³³ Crew members aboard the *C.E. Thornton* were fearful that they would be fired upon, so they detached the rig's legs from the sea floor and withdrew from the concession area hastily.³⁴ The Surinamese gunboats followed, to ensure that there was no return to the area.³⁵ The rig was so seriously threatened that its U.S. owners contacted their embassy in Georgetown, which maintained contact with it to ensure the safety of the rig as it withdrew from the concession area. A Surinamese aircraft buzzed overhead and naval vessels remained within striking distance throughout the rig's difficult departure.³⁶ CGX has not since returned to the concession area, because of the continuing threat from Suriname.³⁷

5.10 As a result of Suriname's action, CGX incurred significant financial losses, including its investment in and the costs of the rig, service vessels and crews. As described in more detail in Chapter 10, these losses are claimed by CGX to amount to more than U.S. \$5.5 million.³⁸ The company was not prepared to risk another loss of this magnitude.³⁹ Other companies, which had previously contracted to perform exploratory activities in Guyana's waters, were similarly unwilling to risk a military assault on their operations by Suriname.⁴⁰ As a result of Suriname's incursion, Guyana has suffered direct financial loss and foregone development opportunities. These are addressed in more detail in Chapter 10.

5.11 In the early morning of 3 June 2000, Guyana made a public statement deploring the position taken by the Government of Suriname and noting the serious damage caused by that

³⁰ CGX Morning Report (3 June 2000). *See* MG, Vol. III, Annex 164.

³¹ Affidavit of Edward Netterville, former Rig Supervisor on the *C.E. Thornton*. *See* MG, Vol. IV, Annex 175.

³² *Ibid.*; CGX Morning Report (3 June 2000), *supra* Chapter 5, note 30.

³³ Affidavit of Edward Netterville, former Rig Supervisor on the *C.E. Thornton*, *supra* Chapter 5, note 31; Affidavit of Graham Barber, former Reading & Bates Area Manager, *see* MG, Vol. IV, Annex 176.

³⁴ Affidavit of Edward Netterville, former Rig Supervisor on the *C.E. Thornton*, *supra* Chapter 5, note 31.

³⁵ CGX Morning Report (4 June 2000). *See* MG, Vol. III, Annex 164.

³⁶ Cable 00 Georgetown 544 from the United States Embassy in Georgetown, Guyana to the United States Secretary of State (5 June 2000). *See* MG, Vol. II, Annex 53.

³⁷ *See infra* Chapter 10, para. 10.12.

³⁸ *See infra* Chapter 10, para. 10.28; *see also* Affidavit of Newell Dennison, Head of Petroleum Unit, Guyana Geology and Mines Commission [hereinafter "Affidavit of Newell Dennison"], *see* MG, Vol. IV, Annex 178.

³⁹ *See infra* Chapter 10, para. 10.12.

⁴⁰ Letter from G.A. Worthington, Vice President, Esso Exploration and Production Guyana Limited to Brian Sucre, Guyana Geology and Mines Commission (29 September 2000) [hereinafter "Letter from Esso (29 September 2000)"]. *See* MG, Vol. III, Annex 166.

Government to good neighborly relations.⁴¹ Guyana reiterated that the only way to resolve the problem was by diplomatic means. Guyana again urged Suriname to accept the invitation for a high-level dialogue:

The Ministry of Foreign Affairs wishes to state that despite these violations and intimidatory acts, the Government of Guyana stands ready to engage the Government of Suriname in a frank exchange of views with a view to addressing the misunderstandings that have arisen concerning the common maritime boundary between Guyana and Suriname.

The Government of Guyana, in a spirit of good neighbourliness, urges the Government of Suriname to desist from committing further hostile activities...⁴²

5.12 On 6 June 2000, the Prime Minister of Trinidad and Tobago offered and then provided his good offices for a meeting between the Guyanese and Surinamese Foreign Ministers. Both Foreign Ministers publicly expressed a desire to resolve the dispute peacefully.⁴³ However, Guyana's draft Memorandum of Understanding, which would have allowed all existing exploration concessions and licences to be respected until a final agreement on the maritime boundary could be reached, was not accepted by Suriname.⁴⁴ On 8 June 2000 Suriname, acting through the Managing Director of Staatsolie, wrote to Esso E & P Guyana, which in 1999 had been granted a concession by Guyana seaward of the one held by CGX, and asserted that the company was operating in Surinamese waters without a licence.⁴⁵ The letter was sent five days after Surinamese gunboats had forcibly evicted CGX from the adjacent concession area. It advised Esso that "the Suriname coast guard is patrolling in that area and in order to prevent problems we would appreciate your quick response in this matter."⁴⁶ Esso did not immediately respond. On 18 August 2000 Staatsolie again informed Esso that it was operating in Surinamese waters without a licence, and that this was unacceptable to Suriname.⁴⁷ On 14 September, the Guyanese Coast Guard advised Guyana Defence Force headquarters that a Surinamese patrol boat "apprehended" two Guyanese-licensed fishing trawlers "in an area off the Corentyne Delta."⁴⁸ To the best of Guyana's knowledge, this was the first occasion on which Suriname had taken such action;

41 *Note Verbale* from Guyana (3 June 2000), *supra* Chapter 5, note 26; Guyana Press Statement (3 June 2000), *supra* Chapter 5, note 27.

42 *Note Verbale* from Guyana (3 June 2000), *supra* Chapter 5, note 26; Guyana Press Statement (3 June 2000), *supra* Chapter 5, note 27.

43 Joint Communiqué, Special Ministerial Meeting between Representatives of the Governments of Guyana and Suriname, Port of Spain, Trinidad and Tobago (6 June 2000) [hereinafter "Joint Communiqué (6 June 2000)"]. See MG, Vol. II, Annex 81.

44 Draft Memorandum of Understanding – Modalities for Treatment of the Offshore Area of Overlap Between Guyana and Suriname as it Relates to Granting of Petroleum Licences (2000). See MG, Vol. III, Annex 95.

45 Email from S.E. Jharap, State Oil Company Suriname to Barbara S. McBride, Exxon (8 June 2000). See MG, Vol. II, Annex 50.

46 *Ibid.*

47 Letter from Staatsolie to Esso (18 August 2000), *supra* Chapter 4, note 147.

48 Letter from E. Alexander, Lieutenant Commander, Guyana Defence Force to Head of the Presidential Secretariat (14 September 2000). See MG, Vol. II, Annex 194.

and Guyana sent a Diplomatic Note to Suriname on 15 September 2000 protesting the violations of Guyana's maritime space.⁴⁹ Against this background, on 29 September 2000 Esso invoked the *force majeure* clause in its concession agreement with Guyana, and ceased its operations in the concession area.⁵⁰ Because of the continuing threat of force from Suriname, Esso has not returned to the concession area. Citing similar threats from Suriname, Maxus, too, has refrained from carrying out exploration activities in its Guyanese concession area.⁵¹

II. Guyana's Decision To Invoke Its Rights under UNCLOS and Initiate These Proceedings: 2000-2004

5.13 As indicated above, Guyana issued repeated calls for negotiations before Suriname resorted to the use of force against activities conducted by CGX which had been duly and properly authorised by Guyana. Suriname ignored these calls, opting instead for unilateral military action. On 6 June 2000, Guyana and Suriname held an emergency ministerial meeting, in Trinidad and Tobago, under the good offices of the Prime Minister of the host State. The stated purpose of the meeting was to discuss the "recent developments relating to the grant by Guyana of exploratory oil concessions in the area of maritime space claimed by both countries."⁵² The Foreign Ministers of Guyana and Suriname agreed that "a Joint Technical Committee should begin working immediately" and that they should "reconvene the Joint Meetings of the respective National Border Commissions."⁵³ The Joint Technical Committee held meetings on 13 June 2000,⁵⁴ and again on 17-18 June.⁵⁵ At these meetings, Guyana proposed that "the area in dispute be designated a Special Area for the Sustainable Development of Guyana and Suriname," in which both States could share in the exploitation of natural resources on an interim basis, and that "at the same time negotiations to find an acceptable solution to the border dispute be placed on fast track."⁵⁶ Suriname manifested no interest in joint utilisation, exploitation, or enjoyment of the border area's natural resources. Nor did Suriname manifest interest in an agreement on the maritime boundary in the absence

⁴⁹ *Note Verbale* No. 735/2000 from the Cooperative Republic of Guyana to the Republic of Suriname (15 September 2000). See MG, Vol. II, Annex 84.

⁵⁰ Letter from Esso (29 September 2000), *supra* Chapter 5, note 40.

⁵¹ Affidavit of Newell Dennison, *supra* Chapter 5, note 38; Minutes, Advisory Meeting Between Guyana Geology and Mines Commission and Repsol-YPF/AGIP (10 November 2000), see MG, Vol. III, Annex 167; Letter from Robeson Benn, Commissioner, Guyana Geology and Mines Commission to Maxus Guyana Ltd. (24 November 2001), see MG, Vol. III, Annex 168.

⁵² Joint Communiqué (6 June 2000), *supra* Chapter 5, note 43.

⁵³ *Ibid.*

⁵⁴ Brief Notes on the Caucus Held by the Guyana Delegation to the Joint Guyana/Suriname Technical Committee, Herdmanston House, 13 June 2000 (14 June 2000) [hereinafter "Brief Notes on Caucus (14 June 2000)"]. See MG, Vol. II, Annex 82.

⁵⁵ Main Points, Guyana/Suriname Discussions, Paramaribo, June 17-18, 2000 (18 June 2000) [hereinafter "Guyana/Suriname Discussions, June 17-18, 2000"]. See MG, Vol. II, Annex 83.

⁵⁶ *Ibid.*

of a comprehensive border agreement, including settlement of the land and riverine boundaries.⁵⁷

5.14 At the Twenty-First Meeting of the Heads of Government of CARICOM, held at St. Vincent and the Grenadines from 2 to 5 July 2000, the Presidents and Prime Ministers of CARICOM issued a “Statement on Guyana and Suriname.” This affirmed “the vital importance of settling this dispute by peaceful means... and the need to ensure that the benefits of the existing resources in the area redound to the benefit of their respective peoples.” The CARICOM Heads of Government offered the good offices of the Prime Minister P.J. Patterson of Jamaica. The Presidents of Guyana and Suriname agreed to meet in Jamaica within seven days “in order to expedite a resolution of outstanding differences which have recently arisen.” They also “agreed to determine a modality for exploiting the benefits of the exploratory drilling activities to be undertaken in the disputed area.”⁵⁸

5.15 Prime Minister Patterson hosted and facilitated meetings between Presidents Bharrat Jagdeo of Guyana and Jules Wijdenbosch of Suriname, and their respective delegations, from 14 to 17 July at Montego Bay and Kingston. The meetings were unsuccessful, as Suriname rejected all constructive proposals for dispute resolution put forward by Prime Minister Patterson. President Jagdeo of Guyana subsequently reported that Suriname had:

rejected all suggestions to delimit the maritime zone based on principles of international law contained in the United Nations Convention on the Law of the Sea. Suriname even rejected repeated offers to establish a Special Zone for Sustainable Development in order to allow for joint exploration and exploitation pending settlement of the maritime boundary. In short, Suriname made clear that it would not compromise, and that it was willing to use force to prevent Guyana from exploring and exploiting the natural resources in its exclusive economic zone and continental shelf.⁵⁹

5.16 It appeared that Suriname’s strategy was to refuse to entertain any proposal on maritime delimitation or to agree to joint utilisation of maritime resources pending a final settlement unless Guyana ceded to Suriname sovereignty over the New River Triangle to Suriname. As President Jagdeo put it:

the Government of Suriname has sought to link this matter with its contentions in the relation to the New River Triangle in the south of both countries. In doing so, it has been prepared to sacrifice the economic development of each country on the altar of a claim that we consider to be misconceived. The people of Guyana cannot accept that sacrifice. It is both wrong and sad; for, quite apart from Guyana’s long-standing rejection of this claim, it has no relevance to the mutual benefits that can accrue today to both

⁵⁷ Brief Notes on Caucus (14 June 2000), *supra* Chapter 5, note 54; Guyana/Suriname Discussions, June 17-18, 2000, *supra* Chapter 5, note 55.

⁵⁸ CARICOM Summit Statement on Guyana and Suriname (6 July 2000). *See* MG, Vol. II, Annex 54.

⁵⁹ Bharrat Jagdeo, President of Guyana, Address to the Nation (25 February 2004). *See* MG, Vol. II, Annex 40.

countries from offshore mineral development -- save a potential for frustrating them.⁶⁰

5.17 On 1 September 2000, President Jagdeo met in Brasilia with newly-elected Surinamese President Ronald Venetiaan. They agreed to reconstitute their respective Border Commissions. President Jagdeo's effort to revive Prime Minister Patterson's good offices did not elicit a positive response from Suriname. On 28-30 January 2002, President Jagdeo made an official visit to Suriname, where he again proposed that the two states agree to joint exploration for hydrocarbon resources. President Venetiaan would not agree, but he was willing to allow the Border Commissions of Guyana and Suriname to resume meeting. The Border Commissions subsequently met and formed a Subcommittee on Hydrocarbons. The Subcommittee met on 31 May 2002⁶¹ and again on 23 and 24 July 2002.⁶² It reported to the Border Commissions that it could not find common ground even in interpreting its mandate. The last meetings of the Border Commissions were held on 25 and 26 October 2002⁶³ and on 10 March 2003.⁶⁴ The meetings did not make progress. It became apparent to Guyana that Suriname's policy was to link agreement with Guyana on the maritime boundary to the issue of the New River Triangle. In light of the developments which had occurred since 1957 and the conduct of the parties since that date, Guyana considered the approach to be unjustified.

5.18 Guyana has long considered that the issues concerning the maritime boundary are separate and distinct and capable of resolution without reference to unrelated matters concerning riverine or land boundaries. In particular, by the time the present dispute crystallised with Suriname's use of force in May 2000, the parties had been in agreement as to the point of origin of the maritime boundary at Point 61 for more than 60 years. Both Suriname and Guyana accepted the fact that the land boundary terminus was at Point 61, and they agreed on its precise geographic coordinates. From Guyana's perspective, the refusal of Suriname to resolve outstanding issues by formalising agreement on the maritime boundary was not due to any practical, technical or legal objection. Rather, it was part of a deliberate strategy to force Guyana to make concessions on unrelated issues concerning a distant land dispute that is geographically and juridically unconnected to the ocean or to maritime boundary issues.

5.19 By late 2003, it had become clear to Guyana that there was no prospect of resolving the distinct dispute which had arisen with Suriname over the use of force in May 2000. Guyana understood that further attempts to negotiate a maritime boundary agreement would be futile. The only viable option would be for Guyana to invoke its rights under UNCLOS and initiate arbitration proceedings under Part XV of the 1982 Convention. On 24 February 2004, Guyana delivered to Suriname the Notice of Arbitration and Statement of Claim that

⁶⁰ *Ibid.*

⁶¹ Agreed Minutes of Meetings of the Subcommittee of the Guyana-Suriname Border Commission Held in Georgetown, Guyana, at the Ministry of Foreign Affairs, (31 May 2002). *See* MG, Vol. II, Annex 85.

⁶² Report of the Subcommittee of the Joint Guyana/Suriname Border Commissions (25 July 2002). *See* MG, Vol. II, Annex 86.

⁶³ Agreed Minutes of the Fourth Joint Meeting of the Suriname-Guyana Border Commissions, 25-26 October 2002, Paramaribo, Suriname (10 March 2003). *See* MG, Vol. II, Annex 87.

⁶⁴ Minutes of the Fifth Joint Meeting of the Guyana/Suriname Border Commissions, Ministry of Foreign Affairs, March 10, 2003 (24 March 2003). *See* MG, Vol. II, Annex 88.

initiated these proceedings. The following day, in his Address to the Nation, President Jagdeo explained the reasons for doing so:

[T]he Government of Guyana has a clear and pressing duty to seek to resolve our maritime differences with Suriname by every peaceful means. Fortunately, as the Government of Barbados has recently demonstrated in its maritime dispute with Trinidad and Tobago, such means are at hand in the form of procedures available under the United Nations Convention on the Law of the Sea to which both Guyana and Suriname are parties. These procedures allow for disputes relating to maritime boundaries between adjacent States which are parties to the Treaty to be submitted for binding resolution to an Arbitral Tribunal established under the Treaty.

The Government of Guyana has had these procedures under advisement for some time. On 22 December 2002, Foreign Minister Insanally indicated publicly that while his Ministry was exploring every possible avenue of diplomacy to resolve the problem with Suriname, “bringing the matter to an arbitral tribunal may be a last resort” if those efforts fail. Now, having exhausted all other peaceful means of settling this dispute with Suriname, and conscious of the urgency of doing so in the interest of the people of both countries, Guyana has today invoked these procedures. It has formally submitted to the Government of Suriname a Statement of Claim invoking Article 287 and Annex VII of the United Nations Convention on the Law of the Sea in relation to its maritime boundary dispute with Suriname... .

Everyone can be assured that we will proceed with the arbitral process with Suriname which we have initiated in the spirit of the United Nations Convention and in keeping with the highest standards of international amity -- not as an adversarial process, but one designed to establish a sound basis for economic development in the maritime regions of both Suriname and Guyana. We hope the Government of Suriname will cooperate with us in achieving this.⁶⁵

⁶⁵ Bharrat Jagdeo, President of Guyana, Address to the Nation (25 February 2004), *supra* Chapter 5, note 59.

CHAPTER 6

JURISDICTION

6.1 This Chapter establishes that the dispute concerns exclusively the maritime boundary between the maritime zones of the two parties and that the Annex VII Tribunal is fully competent to deal with this case. There is no dispute concerning the land terminus. Neither is there a dispute on the issue of where and how to draw the baselines. Guyana has fully complied with all procedures required for the submission of this dispute in accordance with Part XV of the UN Convention on the Law of the Sea.

6.2 Guyana and Suriname are parties to the 1982 UN Convention on the Law of the Sea (“the 1982 Convention”). Guyana ratified the 1982 Convention on 16 November 1993, becoming the 60th state to do so, thereby inaugurating the Law of the Sea Convention into force. Suriname ratified on 9 July 1998. Both States made no declarations to qualify their acceptance of the dispute settlement system of the Convention.¹

6.3 Guyana has brought this claim in order to uphold its specific rights under Articles 15, 74, 83 and 279 of the 1982 Convention, relating to the delimitation of the territorial sea, exclusive economic zone and continental shelf of the two States. This dispute is exclusively concerned with the maritime boundary between the two States.

6.4 As set out in Chapters 3 through 5, this dispute has a long history. Between 1929 and 1966 the United Kingdom and the Netherlands sought to reach agreement on the delimitation of the territorial seas and subsequently the continental shelves of British Guiana and Suriname. Thereafter, from the time Guyana attained independence in 1966 until Suriname attained independence in 1975, further efforts at maritime delimitation were made by Guyana and the Netherlands. Since 1975 Guyana and Suriname have sought – unsuccessfully – to reach agreement on their maritime boundaries.

6.5 In May and June 2000, matters came to a head when Suriname used military force to prevent oil exploration activities which had been authorised by Guyana in a maritime area over which Guyana had long exercised sovereign rights.² Thus, Suriname broke unilaterally the *modus vivendi* of peaceful and uninterrupted oil exploration around a N34E boundary that existed for decades between the two States. On 6 June 2000, the Prime Minister of Trinidad and Tobago provided his good offices to facilitate a meeting between the Guyanese and Surinamese Foreign Ministers, during the course of which the Ministers expressed their desire to resolve the dispute peacefully. They also agreed to establish a Joint Technical Committee that would begin to work with immediate effect. The Joint Technical Committee met on two occasions in June 2000, during the course of which Guyana proposed that “the area in dispute be designated a Special Area for the Sustainable Development of Guyana and Suriname” whilst negotiations would be undertaken on a fast-track basis to find an acceptable solution to the maritime border dispute.³ At around the same time, in July 2000, negotiations

¹ See Multilateral treaties deposited with the Secretary-General, UN Convention on the Law of the Sea, available at <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXI/treaty6.asp> [last viewed 06 February 2005].

² See *supra* Chapter 5, para. 5.9.

³ Guyana/Suriname Discussions, June 17-18, 2000, *supra* Chapter 5, note 55.

were also held under the good offices of the Prime Minister of Jamaica. Guyana presented to Suriname a formal proposal that again raised the possibility for joint exploration of the disputed maritime area, pending a final settlement on the boundary.⁴ To complete the picture, the Border Commissions of Guyana and Suriname continued to meet, most recently in January, May, July and October 2002, and March 2003.⁵

6.6 None of these efforts enabled the parties to come closer to a solution on the resolution of the dispute concerning their maritime boundaries. None of the meetings were successful. Suriname's representatives made clear that Suriname's policy was not to negotiate a separate agreement with Guyana on maritime boundaries, but to insist instead on a comprehensive boundary treaty settling the entire boundary between the two States. Against this background, and the continuing inability of Guyana to proceed with the exploration and exploitation of the resources located on its continental shelf, on 24 February 2004 Guyana notified Suriname that there exists a dispute under the 1982 Convention and initiated these proceedings by communicating to Suriname a Notice of Arbitration and Statement of Claim in accordance with the requirements of Part XV, section 2 of the 1982 Convention.

6.7 Part XV of UNCLOS establishes a regime for the settlement of disputes concerning the interpretation and application of the Convention. Article 279 requires parties to seek a solution by peaceful means in accordance with the UN Charter. Between 1975 and 2000, the parties undertook various discussions on the settlement of their maritime boundary.⁶ Efforts to seek a peaceful solution were stepped up in June 2000, after Suriname had used military force.

6.8 Article 283(1) provides that when a dispute arises between States Parties, the Parties should proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means. There has been a full exchange of views by Guyana and Suriname concerning the settlement of this dispute, as described in Chapter 5. Notwithstanding Suriname's recourse to armed force in 2000, Guyana has complied with the requirements of Part XV in good faith. Over the period between 1975 and February 2004, Guyana exhausted all possibilities of settlement by direct negotiation or third-party facilitation. By that later date, it had become repeatedly and abundantly clear that there was no possibility of resolving the differences over the maritime boundary by further negotiation. Accordingly, Guyana exercised its right to resort to compulsory arbitration. It did so as a last resort.

6.9 It has been repeatedly stated in international jurisprudence that a State cannot be expected to wait endlessly before submitting a dispute with another State to an international court or tribunal. Thus, in the *Southern Bluefin Tuna Cases*, the International Tribunal for the Law of the Sea held that "a State Party is not obliged to pursue procedures under Part XV, section 1, of the Convention when it concludes that the possibilities of settlement have been exhausted,"⁷ while in *The MOX Plant Case* it concluded that "a State Party is not obliged to continue with an exchange of views when it concludes that the possibilities of reaching

⁴ See generally *supra* Chapter 5, para. 5.13; Guyana/Suriname Discussions, June 17-18, 2000, *supra* Chapter 5, note 55.

⁵ See Chapter 5, para. 5.17.

⁶ See generally *supra* Chapter 4.

⁷ *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)*, Order of 27 August 1999, International Tribunal for the Law of the Sea, para. 60.

agreement have been exhausted.”⁸ Similarly, the Tribunal established in the *Land Reclamation Case* that in the circumstances of that case “Malaysia was not obliged to continue with an exchange of views when it concluded that this exchange could not yield a positive result.”⁹

6.10 This dispute plainly falls within the jurisdiction of the Annex VII Tribunal. Guyana and Suriname have failed to settle the dispute between them by negotiation, and have not chosen any other means for its settlement. UNCLOS Article 281(1) allows recourse to procedures provided for in Part XV, including compulsory procedures entailing binding decisions under Section 2 of that Part, where there has been no settlement and there is no agreement between the parties to exclude any further procedure. It is self-evident that there has been no settlement and no such agreement exists.

6.11 Article 286 permits these compulsory procedures to be activated by the submission of the dispute to the court or tribunal having jurisdiction under Section 2, and it permits any Party to the dispute to make that submission.

6.12 Article 287 governs the choice of compulsory procedures. Article 287(1) permits a State Party, by way of a written declaration, to choose one or more of the means for the settlement of disputes listed in the paragraph, which include an arbitral tribunal established under Annex VII. Neither Guyana nor Suriname has made a written declaration pursuant to Article 287(1). Both are therefore deemed by operation of Article 287(3) to have accepted arbitration in accordance with Annex VII.

6.13 No further procedures need to be exhausted before arbitration proceedings may be initiated under Annex VII. Nevertheless, as described above in Chapter 5, Guyana, over a period of nearly thirty years, had raised its concerns in relation to the dispute concerning the settlement of the maritime boundary. As between the parties, the 1982 Convention had been in force for nearly six years before Guyana brought these proceedings under Part XV. Guyana’s efforts to resolve the dispute prior to its recourse to UNCLOS were unsuccessful, and the dispute remains unresolved to the present time.

6.14 Article 298 provides for optional exceptions to the applicability of Section 2 of part XV of UNCLOS. Article 298(1) expressly states that “[w]hen signing, ratifying or acceding to this Convention or at any time thereafter, a State may... declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to... (a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitation.” Neither Guyana nor Suriname has made any such declaration.

6.15 This dispute concerns the interpretation and application of Articles 15, 74, 83 and 279 of the 1982 Convention, and it is exclusively concerned with the maritime boundary between Guyana and Suriname. Guyana’s application does not concern – either directly or indirectly – any claim or other issues relating to the determination of any boundary other than the maritime boundary. The parties have had a longstanding agreement as to the terminus of their land boundary, and the starting point for delimitation of their maritime spaces, at Point

⁸ *The MOX Plant Case (Ireland v. United Kingdom)*, Order of 3 December 2001, International Tribunal for the Law of the Sea, para. 60.

⁹ *Case Concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v. Singapore)*, Order of 8 October 2003, International Tribunal for the Law of the Sea, para. 48.

61,¹⁰ and Guyana's application does not require the Annex VII Tribunal to make any findings of fact or law as regards the land or riverine boundary between the two States.

6.16 In these circumstances, Guyana submits that it is evident that this Annex VII Tribunal has jurisdiction to determine Guyana's claims concerning the interpretation and application of UNCLOS in relation to the dispute between the two States concerning the delimitation of their maritime boundary.

¹⁰ See *supra* Chapter 3, para. 3.10; *supra* Chapter 3, note 16.

CHAPTER 7

THE LAW OF MARITIME DELIMITATION: AN OVERVIEW

I. Introduction

7.1 Guyana turns now to address the principles and rules of international law which govern the delimitation of maritime boundaries and which are to be applied by the Arbitral Tribunal in relation to the territorial seas, exclusive economic zones and continental shelves of Guyana and Suriname. Efforts to delimit the maritime spaces off the coasts of Guyana and Suriname date back more than seventy years. It is therefore necessary to take account of the evolution of international law over the past seven decades in which the colonial powers and then the parties to the present proceedings have sought to delimit their maritime areas. The relevant law falls into three time periods: the law prior to 1958, that which applied from 1958 to 1982, and the law which is reflected in the 1982 Convention. This Chapter describes the relevant rules in broad terms, as well as the principles which have been applied in the applicable international case law. Chapter 8 identifies in more detail the rules relating to the delimitation of territorial waters and applies them to the facts as they arise off the coasts of Guyana and Suriname. Chapter 9 addresses the rules relating to the delimitation of the continental shelf and the exclusive economic zone (EEZ) and applies them to the facts pertaining to the maritime areas beyond the territorial seas of Guyana and Suriname up to a distance of 200 miles. As set out paragraph 7.24, Guyana is not inviting the Arbitral Tribunal to delimit any area beyond that 200 mile limit, although it fully reserves its rights in that area.

7.2 Since it attained independence in 1966, Guyana has adopted a consistent approach in seeking to give effect to the relevant rules of international law governing the delimitation of maritime spaces. This is reflected in its domestic legislation – the Maritime Boundaries Act of 1977 – and in its practice. The approach takes into account and gives effect to the historical equidistance line identified by the United Kingdom as early as 1957, a line which was developed on the basis of the rules set forth in the 1958 Geneva Conventions and which has generally been followed by both parties, particularly in relation to the grant of oil concessions.

7.3 Article 293 of the 1982 Convention directs the Arbitral Tribunal to apply “this Convention and other rules of international law not incompatible with this Convention.”¹ The 1982 Convention permits and requires the Arbitral Tribunal to have regard to practice under the relevant rules of international law prior to the 1982 Convention, including the significant colonial practice prior to the independence of Guyana and Suriname. These earlier rules are, in any event, broadly similar to those of the 1982 Convention, and in no way inconsistent. The application of the 1982 Convention leads to the conclusion that the delimitation of the maritime areas between Guyana and Suriname commences at the terminus of the land boundary at Point 61 (5° 59’ 53.8” N. and longitude 57° 08’ 51.5” W.), a point over which the parties have been in agreement since 1936. From there the maritime boundary follows what Guyana considers to be a historical equidistance line identified by the United Kingdom as long ago as 1957 on the basis of maps and charts then available. That historical equidistance line follows a general bearing of N34E for a distance of 12 miles, so dividing the territorial seas of the two States. Thereafter, the historical equidistance line

¹ United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, Article 293, 833 U.N.T.S. 397, 21 I.L.M. 1245, 1324 (1982) [hereinafter “Law of the Sea”].

follows the same course to the 200 mile limit of continental shelf and the EEZ of the two States. The delimitation is depicted on the map at **Plate 1** (following page 6). Guyana considers that there are no grounds in equity or otherwise for moving away from a historical boundary line which has broadly been followed by both parties.

7.4 This Chapter describes the evolution of the rules of international law on the delimitation of maritime areas, including the territorial sea, EEZ and continental shelf. The United Kingdom and the Netherlands engaged in serious efforts to negotiate a boundary treaty between their respective colonies, British Guiana and Suriname, between 1929 and 1966, when Guyana achieved independence. Those efforts continued after 1966, between Guyana and the Netherlands until 1975 when Suriname achieved independence, and they have continued between Guyana and Suriname since that date. Over this period, the rules of international law concerning rights over maritime areas and the delimitation of such areas have evolved, although the principles have been generally consistent. Section II of this Chapter describes the rules of international law which pertained in the period prior to the adoption of the four Geneva Conventions of 1958. During this period, the United Kingdom and the Netherlands reached agreement on the terminus of the land boundary (at Point 61), which they also treated as the starting point for the delimitation of the maritime boundary. Section III describes the rules of international law which were adopted by the relevant Geneva Conventions in 1958, putting into treaty language the important achievements of the work of the United Nations International Law Commission (I.L.C.). During this period the United Kingdom sought to give effect to the I.L.C. principles and the 1958 rules to identify an equidistance line, and both parties made efforts to reach formal agreement on the delimitation of maritime areas. It was also during this period that Guyana and Suriname achieved independence, largely adopting in practice the approaches taken by the former colonial powers. Part IV describes the rules of international law as they are reflected in the 1982 Convention, which now reflect customary international law and are in no way inconsistent with the earlier rules which informed colonial practice.

II. Pre-1958

7.5 Until 1958 the rules of international law governing the delimitation and use of maritime areas were not codified. That did not mean, however, that there were no rules. International law recognised the rights of coastal States over the waters immediately adjacent to their coasts, which were known as territorial waters. International law did not include agreed rules or principles on the delimitation of areas beyond these waters.

A. Territorial Sea

7.6 The United Kingdom and the Netherlands began to address the delimitation of the territorial seas of British Guiana and Suriname in the 1930's. Already at that time it was recognised in international law that States were fully sovereign within their territorial seas, although there was not yet agreement on the breadth of the territorial sea, which varied in the practice of States. Until the beginning of the 19th century "the 'cannon-shot' rule defined the width in terms of the range of shore based artillery."² At the beginning of the 19th century, State practice began to recognise the right of a State to claim a territorial sea of up to three

² M. Shaw, *International Law* 505 (5th ed., 2003) [hereinafter "Shaw"].

miles.³ From the late 19th century, the United Kingdom claimed three miles in respect of its territory, as well as that of its overseas colonies. The Netherlands also began to claim three miles for its own territory, as well as that of its colonies. By the time of the 1930 Hague Codification Conference, States were in broad agreement that the territory of a State included a belt of sea, a “territorial sea,” over which States exercised sovereignty in accordance with the rules of international law.

7.7 By the time the United Kingdom and the Netherlands began to negotiate a delimitation of the territorial waters of British Guiana and Suriname, both States were agreed on three miles as the outer limit of their territorial seas. The United Kingdom declared a three mile territorial sea for British Guiana in 1878.⁴ Similarly, the Netherlands adhered to a three mile territorial sea for Suriname.⁵

7.8 The principles and practice governing the delimitation of territorial seas were not well-established in this period. Essentially it remained a matter for negotiation between the relevant States.

B. Continental Shelf and Exclusive Economic Zone

7.9 In the period prior to 1958, international law did not recognise any general right of States to have sovereignty or exercise sovereign rights in maritime areas beyond their territorial seas. However, in 1954 the United Kingdom adopted the British Guiana (Alteration of Boundaries) Order in Council, 1954, extending the boundaries of British Guiana to include the contiguous continental shelf. The Order in Council stated: “The boundaries of the Colony of British Guiana are hereby extended to include the area of the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of British Guiana.”⁶ Neither the Order in Council nor any other acts at this time defined the extent of the continental shelf or purported to set its limits. The Netherlands did not formally assert a continental shelf claim, but took the view that a continental shelf automatically accrues to a coastal State, in line with the emerging international law of the sea at that time.

7.10 The absence of agreed international rules explained the reason why there was no attempt by the United Kingdom and the Netherlands to delimit the maritime areas beyond the territorial seas of British Guiana and Suriname. Nevertheless, during this period a number of States began to make claims, leading to the development of the modern law of the sea. In 1945, President Truman of the United States made a proclamation asserting rights over a continental shelf: “... the Government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and

³ *Ibid.* at 540.

⁴ See United Kingdom Territorial Waters Jurisdiction Act (1878).

⁵ A.W. Koers, “The Netherlands and International Fisheries Law,” in H.F. van Panhuys et al., *International Law in the Netherlands*, Vol. I, 317-318 (1978).

⁶ The British Guiana (Alteration of Boundaries) Order in Council (19 October 1954), *supra* Chapter 3, note 53.

control.”⁷ Other States soon followed this approach, although the claims were varied in terms of the nature and extent of the rights claimed. It was not until 1958 that States first agreed on the principles governing rights over a continental shelf. General international agreement on rights over the waters superjacent to the continental shelf – the exclusive economic zone – had to wait until 1982.

III. 1958 to 1982

7.11 In 1949, the United Nations International Law Commission commenced work on the elaboration of new treaty regimes on the law of the sea. The I.L.C. continued its work for seven years, completing the task in 1956.⁸ In 1958, a diplomatic conference was organised and entrusted with the task of elaborating the I.L.C.’s work into treaties. This was done under the auspices of the *United Nations Conference on the Law of the Sea*, which was convened pursuant to resolution 1105 (XI) of the UN General Assembly.⁹ On 29 April 1958, based on the I.L.C.’s work, States meeting in Geneva adopted four conventions relating to the law of the sea:

- (a) The Convention on the Territorial Sea and Contiguous Zone (1958 TS Convention) ;
- (b) The Convention on the Continental Shelf (1958 CS Convention);
- (c) The Convention on the High Seas; and
- (d) The Convention on Fishing and Conservation of the Living Resources of the High Seas.

The United Kingdom and the Netherlands participated fully and actively in the elaboration of these conventions, which are known collectively as the “Geneva Conventions.”

A. Territorial Sea

7.12 The 1958 Convention on the Territorial Sea and the Contiguous Zone marked the first successful effort at codifying general rules of international law on territorial seas. Article 1(1) of the Convention declared that “The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.” The 1958 TS Convention did not include any provision addressing the extent of the outer limits of the territorial sea, because States were unable to reach agreement on such a limit. By that time a number of States (in particular in Scandinavia and Latin America) were proclaiming territorial seas with a width exceeding three miles, and sometimes significantly so. The 1958 Convention did, however, include a provision (Article 24) allowing a coastal State to declare a zone contiguous to its territorial sea within which the infringement of certain regulations (on customs, fiscal, immigration or sanitary matters) could be prevented and punished. Significantly, Article 24(2) made it clear that “The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.” It was implicit from this provision that a territorial

⁷ *Whitman’s Digest*, Vol. IV, 756 (1963-1973).

⁸ United Nations, *The Work of the International Law Commission*, Vol. I, 114-122 (6th ed., 2004).

⁹ The Conference met from 24 February to 27 April 1958. For the travaux préparatoires and the proceedings of the Conference, see *Official Records of the United Nations Conference on the Law of the Sea*, Vols. I to VII (1958).

sea could not have exceeded 12 miles. In any event, the United Kingdom and the Netherlands maintained claims of three miles for their own territories and their colonies, including British Guiana and Suriname, and neither State purported to establish a contiguous zone in respect of British Guiana or Suriname.

7.13 As regards the delimitation of territorial seas between two States, the 1958 Convention contributed significantly to the development of new international rules. Article 12(1) of the 1958 Convention provided that:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

This provision expressly recognised that the principle of equidistance did not apply where a State had exercised historic title over certain waters, or where special circumstances so required.

7.14 The United Kingdom signed the TS Convention on 9 September 1958 and ratified it on 14 March 1960. The Netherlands signed the Convention on 31 October 1958, and became a party on 18 February 1966. As described in Chapter 3 above and in further detail in Chapter 8 below, this provision on the delimitation of the territorial sea (and the equivalent provisions in relation to the continental shelf) assumed considerable importance in the efforts by the United Kingdom and the Netherlands to reach agreement on a maritime boundary for British Guiana and Suriname before the two territories achieved independence in 1966 and 1975.

B. Continental Shelf and Exclusive Economic Zone

7.15 The 1958 CS Convention marked the first attempt to codify the rights of coastal States over their continental shelves. The earlier work of the I.L.C. and the 1958 Convention had catalysed the British and Dutch governments into extending their negotiations beyond the territorial seas and onto the continental shelves to which they were now entitled under international law.¹⁰ Under the 1958 Convention the continental shelf was defined as:

the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas. (Article 1(1)).

The coastal State's rights over the continental shelf were recognised as being inherent, in the sense that they were not dependent on occupation or proclamation (Article 2(3)). Such rights fell short of full sovereignty: Article 2(1) provided that "The coastal State exercises over the

¹⁰ See *supra* Chapter 3, paras. 3.31 -3.35; *Aide Memoire* from the Netherlands (6 August 1958), *supra* Chapter 3, note 76.

continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.”

7.16 As regards delimitation, Article 6 of the 1958 CS Convention provided in relevant part:

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

7.17 The United Kingdom signed the 1958 CS Convention on 9 September 1958, and became a party on 11 May 1964. The Netherlands signed the Convention on 31 October 1958, and became a party on 18 February 1966. The Convention entered into force on 10 June 1964. As described in Chapter 3 above and in further detail in Chapter 9 below,¹¹ the adoption of the Convention spurred efforts by the United Kingdom and the Netherlands to identify an equidistance line to be followed in delimiting the continental shelf boundary between British Guiana and Suriname. Those efforts relied on the British and Dutch maps which existed in 1957 and 1958, as Article 6(3) required. In issuing oil concessions from 1958 onwards, the subsequent practice of the United Kingdom (in relation to British Guiana) and then Guyana relied on those maps and the equidistance lines which resulted from those maps, and in particular Dutch chart 217.

7.18 It was against this background that Guyana and Suriname promulgated new rules of national law on the regulation and delimitation of their maritime spaces. On 30 June 1977, Guyana enacted the Maritime Boundaries Act of 1977.¹² Part 1 of the 1977 Act deals with the territorial sea, extending the limit to 12 miles from the nearest point of the baseline (Section 3(1)).¹³ Part II of the 1977 Act concerns the continental shelf, providing for “full and exclusive sovereign rights” to the outer limit of the edge of the continental margin or to a distance of 200 miles from the baselines (Sections 9 and 10(1)). Section 9 refers back to the 1954 Order in Council which first provided for Guyana’s boundaries to be extended to encompass a continental shelf.¹⁴ It then states that Guyana’s continental shelf:

comprises the seabed and subsoil of the submarine areas that extend beyond the limits of the territorial sea throughout the natural prolongation of the land

¹¹ See *supra* Chapter 3, paras. 3.31-3.35; *infra* Chapter 9, para. 9.16.

¹² Maritime Boundaries Act 1977, *supra* Chapter 4, note 24.

¹³ *Ibid.* Sections 7 and 8 provide for the drawing of baselines.

¹⁴ *Ibid.* Section 9.

territory of Guyana to the outer edge of the continental margin or to a distance of two hundred miles from the base line referred to in section 7, where the outer edge of the continental margin does not extend up to that distance.¹⁵

Part III permits the President to designate an area beyond the territorial sea as an exclusive economic zone, and Part IV establishes a fishery zone “beyond and adjacent to the territorial sea and bounded on its seaward side by the line every point on which is two hundred miles from the nearest point of the baseline of the territorial sea” (Section 23). Section 34 authorises the President to alter “the seaward limit of the... continental shelf,” having regard to international law and State practice. Section 35 provides for the delimitation of maritime spaces:

The maritime boundaries between Guyana and any State whose coast is adjacent to that of Guyana in regard to their respective territorial sea, continental shelves, exclusive economic zones, fishery and other maritime zones shall be determined by agreement between Guyana and such States and pending such agreement shall not extend beyond the line every point of which is equidistant from the nearest point on the baseline from which the breadth of the territorial sea of Guyana and such State is measured.

Section 36 authorises the Minister responsible for lands and surveys to cause charts to be issued delineating the baseline.

7.19 Suriname adopted its law on 14 April 1978.¹⁶ This extended the territorial sea to a distance of 12 miles from the nearest point on the line of the low-water mark along the coast (Article 2). Article 3 declared an “economic zone” extending 200 miles from the low water mark on the coast, but no provision was made for rights over the continental shelf. Unlike Guyana’s law, the 1978 Surinamese law did not purport to define the lateral boundaries of any maritime areas.¹⁷ However, an “Explanatory Memorandum” accompanying the Surinamese draft legislation (prepared in July 1977) referred expressly to the 1958 CS and TS Conventions, and acknowledged that Suriname was bound by both Conventions as a result of the Netherlands’ adherence.¹⁸ The Explanatory Memorandum stated:

the law of the sea has been governed for years by customary international law. This situation was changed when in 1958 under the aegis of the United Nations 4 (four) multilateral treaties were made in which the principal rules of international law with regard to maritime law were codified.¹⁹

The Explanatory Memorandum referred in particular to the 1958 CS Convention, Article 6(2) of which stated that boundary delimitation shall be based on agreement or, in the absence thereof, the “boundary shall be determined by application of the principle of equidistance.”

¹⁵ On the issue of baselines, *see infra*, Chapter 8, paras. 8.10 - 8.19.

¹⁶ *See* 1978 Territorial Sea/Contiguous Economic Zone Act (Suriname), Articles 2-3, *supra* Chapter 4, note 25.

¹⁷ *Ibid.*

¹⁸ *See* Explanatory Memorandum of the Government of Suriname (July 1977), *supra* Chapter 4, note 26.

¹⁹ *Ibid.*

7.20 It is readily apparent, therefore, that Guyana and Suriname accepted the principles reflected in the 1958 Conventions. As described in Chapters 3 and 4, in the years before the 1982 Convention was adopted and came into force, their practice purported to give effect to principles that were to be applied and developed in the new Convention.

IV. 1982

7.21 In 1973, the Third UN Conference on the Law of the Sea was convened pursuant to UN General Assembly resolution 3067 (XXVIII). Its work was concluded with the adoption, in Montego Bay on 10 December 1982, of the 1982 UN Convention on the Law of the Sea, which established a comprehensive framework for the regulation of all ocean spaces. The Preamble noted that “developments since the United Nations Conferences on the Law of the Sea held in Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea.” The 1982 Convention developed the rules governing the territorial sea (Part II) and the continental shelf (Part VI). Additionally, the Convention crystallised new rights in relation to the exclusive economic zone (Part V). Guyana and Suriname signed the 1982 Convention on 10 December 1982. Guyana became a party on 16 November 1993 and Suriname became a party on 9 July 1998.

A. Territorial Sea

7.22 Subject to a material change in regard to the width of the territorial sea, the 1982 Convention broadly adopted the approach taken by the 1958 Convention with respect to territorial seas. Article 2 of the 1982 Convention confirmed that the sovereignty of a coastal State extended to “an adjacent belt of sea, described as the territorial sea,” and that such sovereignty was exercised subject to the 1982 Convention and international law. Article 3 provided that “Every State has the right to establish the breadth of its territorial seas up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.”

7.23 The delimitation of the territorial sea between two coastal States is now governed by Article 15 of the 1982 Convention. This provides:

Where the coasts of two States are opposite or adjacent each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

The language is essentially identical to Article 12 of the 1958 Convention. Indeed, in the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, the International Court of Justice expressly declared that Article 15 of the 1982 Convention “is virtually identical to Article 12, paragraph 1, of the 1958 Convention on the

Territorial Sea and the Contiguous Zone, and is to be regarded as having a customary character.”²⁰

B. Continental Shelf and Exclusive Economic Zone

7.24 The continental shelf is governed by Part VI of the 1982 Convention (comprising Articles 76 to 85 of the Convention). It is now well-established that the right to explore for and exploit oil and gas on the continental shelf is a matter governed by Part VI of the 1982 Convention. Article 76(1) defines the continental shelf of a coastal State as:

the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Article 76(4) to (6) sets out the principles governing the limits beyond which the continental shelf of a coastal State may not extend. Where the continental margin extends beyond 200 miles, geographical factors are to be taken into account in establishing the limit, which cannot exceed either 350 miles from the baselines or 100 miles from the 2,500-metre isobath. In this regard, Article 76(8) of the 1982 Convention provides that the Commission on the Limits of the Continental Shelf “shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf.” Having regard to this provision, in the *Case Concerning the Delimitation of Maritime Areas between Canada and the French Republic (St Pierre and Miquelon)*, the Court of Arbitration ruled that it was “not competent to carry out a delimitation which affects the rights of a Party which is not before it,” and that it was

only competent to effect a delimitation reaching as far as the 200 nautical mile outer limit, which is the single delimitation applicable simultaneously both to the exclusive economic zone and to the normal continental shelf of the parties, that is to say, the shelf which is not extended under Article 76(4) of the 1982 Convention.²¹

In the present case Guyana reserves its rights under Article 76(4) of the 1982 Convention, but does not seek a delimitation in any area beyond 200 miles from the baselines of Guyana and Suriname. Accordingly, these provisions do not come into play in the present proceedings.

7.25 Article 77(1) provides that a coastal State “exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.” Article 77(3) reiterates Article 2(3) of the 1958 CS Convention, to the effect that a coastal State’s rights over the continental shelf are inherent and “do not depend on occupation, effective or notional, or on any express proclamation.”

²⁰ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, 2001 I.C.J. 40, 94, para. 176 (16 March 2001).

²¹ *Case Concerning the Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre and Miquelon)*, 95 I.L.R. 645, 674, paras. 79, 82 (10 June 1992) (Jimenez de Arechega, President; Schachter, Arangio-Ruiz, Weil and Gotlieb).

7.26 The exclusive economic zone is governed by Part V of the Convention (comprising Articles 55 to 74 of the Convention). Article 55 defines the exclusive economic zone as:

an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

Article 56 sets out the three categories of rights which a coastal State has in its exclusive economic zone: sovereign rights to explore, exploit, conserve and manage the natural resources of the waters superjacent to the seabed and of the seabed and its subsoil; jurisdiction over artificial islands, installations and structures; and such other rights and duties as provided by the 1982 Convention. The interrelationship between these rights and continental shelf rights is reflected in Article 56(3), which provides that EEZ rights and duties with respect to the seabed and subsoil are to be exercised “in accordance with Part VI.” Article 57 provides that “The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”

7.27 Under the 1982 Convention, the principles governing the delimitation of the continental shelf and the exclusive economic zone are broadly similar. In respect of the continental shelf, the approach to be applied for delimitation departs from the principle set forth in Article 6 of the 1958 CS Convention. Article 83(1) provides: “The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.” Article 74(1) provides for the same principles to be applied in relation to the delimitation of the exclusive economic zone between States with opposite or adjacent coasts. The 1982 Convention also imposes obligations on coastal States in respect of any period pending agreement on the delimitation of the continental shelf and/or the exclusive economic zone. In such circumstances the coastal States “in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of the final agreement” (Articles 83(3) and 74(3)).

V. International Judicial and Arbitral Practice

7.28 Since the late 1950’s, a body of international arbitral and judicial practice has been developed that has interpreted and applied the various principles and rules of international law as they have emerged and been refined over time. The case law of the International Court of Justice and of international arbitral tribunals are referred to where appropriate in the two Chapters which follow on the delimitation of the territorial sea (Chapter 8) and of the continental shelf and exclusive economic zone (Chapter 9). Before turning to these specific issues, a number of more general points need to be made, since they have informed the approach taken by Guyana in setting out the basis of its claim to the Arbitral Tribunal.

7.29 *First*, in carrying out its arbitral function the Arbitral Tribunal is called upon to apply the 1982 Convention. In this case the relevant provisions are Articles 15, 74 and 83 (which Guyana considers are reflective of customary international law). Both States are also bound by the 1958 Geneva Conventions, by reason of the participation of the United Kingdom and the Netherlands. As indicated above at para. 7.19, in the Explanatory Memorandum to its

1978 Law Suriname acknowledged that it was bound by the 1958 Conventions.²² Article 293 of the 1982 Convention also directs the Arbitral Tribunal to apply other rules of international law “not incompatible with” the 1982 Convention. In this case those other rules of international law which are to be applied include the rules of customary law prohibiting the use of force (in relation to the military incident of 3 June 2000) as discussed in Chapter 10. Further, the Arbitral Tribunal is entitled to take into account – and to apply as necessary – the provisions of the 1958 CS Convention upon which the United Kingdom and Guyana and the Netherlands and Suriname relied in the period between its adoption in 1958 and their signature of the 1982 Convention (in December 1982). In this regard, the provisions of the 1958 Convention are especially pertinent since they formed the basis – as early as 1958 – for efforts to delimit the two States’ continental shelves and the practice which began shortly thereafter to recognise a boundary line of N34E projecting seaward from the agreed land boundary terminus at Point 61. That historical and *de facto* line reflected the application of the equidistance principle calculated on the basis of the 1958 Geneva CS Convention and based on the Dutch and British nautical charts then in use. It is also a historical equidistance line which has generally been relied upon in both parties’ oil concessions and in their other practices from 1958 right up to the present day.

7.30 *Second*, in carrying out its task Guyana submits that the Arbitral Tribunal should decide on the course of a single delimitation line, which will delimit the territorial sea, the continental shelf and the superjacent waters.²³ Such an approach is justified so as to “avoid as far as possible the disadvantages inherent in a plurality of separate delimitations.”²⁴

7.31 *Third*, notwithstanding the desirability of a single delimitation line, Guyana recognises that in practice the designation of a single delimitation line does not preclude the possibility that the Arbitral Tribunal might begin by delimiting the territorial sea (in accordance with the principles required by Article 15 and having regard to historical practice) and then proceed to delimit the continental shelf and exclusive economic zone (in accordance with the requirements of Articles 74 and 83). In the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, the International Court of Justice stated:

[T]he Court has to apply first and foremost the principles and rules of international customary law which refer to the delimitation of the territorial sea, while taking into account that its ultimate task is to draw a single maritime boundary that serves other purposes as well. Once it has delimited the territorial seas belonging to the Parties, the Court will determine

²² See *supra* Chapter 4, para. 4.13; Chapter 7, para. 7.19; Explanatory Memorandum of the Government of Suriname (July 1977), *supra* Chapter 4, note 26. The Memorandum reads, “The most important rules of international law concerning the law of the sea were codified. This pertained to the following four (4) multilateral treaties, whereby Suriname was a party, as part of the Kingdom of the Netherlands.”

²³ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, 1984 I.C.J. 246, 327, para. 194 (12 October 1984).

²⁴ *Ibid.*

the rules and principles... to be applied to the delimitation of the Parties' continental shelves and their exclusive economic zones or fishery zones.²⁵

In that case, the Court applied customary international law since only Bahrain was a party to the 1982 Convention. However, the parties agreed that most of the relevant provisions of the 1982 Convention reflected customary law. Accordingly, reference was made to the rules set forth in Articles 15, 74 and 83 of the 1982 Convention.²⁶ Guyana submits that there is no reason to depart from the approach adopted by the International Court in the present case.

7.32 *Fourth*, the international case law recognises a distinction in the methods to be utilised for delimiting the territorial sea and the exclusive economic zone/continental shelf. Article 15 imposes a method of delimitation for the territorial sea which has come to be referred to as the “equidistance/special circumstances rule,” whereas Articles 74 and 83 impose a method of delimitation for the exclusive economic zone and the continental shelf which is referred to as the “equitable principles/relevant circumstances rule.” Although distinguishable, the two methods are recognised to be closely related. In the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, the International Court stated that:

[T]he equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated.²⁷

The following year, in *Land Boundary Between Cameroon and Nigeria (Cameroon v Nigeria)*, the Court described the two methods as “very similar.”²⁸

7.33 *Fifth*, in respect of the delimitations of the territorial sea and of the exclusive economic zone and continental shelf, international judicial practice has tended to follow a similar approach. According to the International Court of Justice, the preferred approach is to begin by provisionally drawing an equidistance line and then proceed to consider whether there are circumstances which should lead to an adjustment of that line.²⁹

7.34 *Sixth*, in respect of the delimitation of the territorial sea and the continental shelf and exclusive economic zone, international courts and tribunals have long recognised that the conduct of the parties – and in particular the existence of a *modus vivendi* reflected in a pattern of oil and gas concessions – is an important circumstance to be taken into account in

²⁵ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, 2001 I.C.J. 40, 93-94, paras. 174, 176 (16 March 2001).

²⁶ *Qatar v. Bahrain*, 2001 I.C.J. 40, 91, para. 167.

²⁷ *Qatar v. Bahrain*, 2001 I.C.J. 40, 111, para. 231.

²⁸ *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, 2001 I.C.J. 94, para. 288 (10 October 2002).

²⁹ *Qatar v. Bahrain*, 2001 I.C.J. 40, 94, 111, paras. 176 (territorial sea), 230 (maritime zones beyond the 12 mile zone).

effecting a boundary delimitation.³⁰ In the present case, the parties' oil concessions date back nearly 50 years and are based on a serious and good faith effort to identify a historical equidistance line which was plotted on the basis of the best British and Dutch charts available at the time (British chart 1801 and Dutch chart 217). The concessions reflect a *de facto* pattern of acceptance that the line extending from Point 61 on a bearing of approximately N34E has long been treated as reflecting an equidistance line which divides the parties' maritime spaces.

7.35 *Seventh*, the case law confirms that geographic and geological factors are of no material relevance for this case. The International Court of Justice has long held that landmass is irrelevant; as the Court put it in the *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*: "The juridical link between the State's territorial sovereignty and its rights to certain adjacent maritime expanses is established by means of its coast. The concept of adjacency measured by distance is based entirely on that of the coastline."³¹ In the same case, the International Court confirmed the irrelevance of the geological characteristics of the seabed and subsoil:

since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding sea-bed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims.³²

7.36 And *eighth*, it is now widely recognised and established that the conduct of colonial powers may be relevant to the delimitation of the maritime boundary. In the *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya/Malta)*, the International Court of Justice took account of the *modus vivendi* giving rise to a *de facto* respect for a line delimiting the maritime boundary which was reflected in the conduct of France and Italy "during the period when these States were responsible for the external relations of present-day Tunisia and Libya."³³

7.37 In conclusion, Guyana submits that the current and correct approach is accurately reflected in the following recent academic commentary:

[T]here is now a substantial convergence of applicable principles concerning maritime delimitation, whether derived from customary law or treaty. In all cases, whether the delimitation is of the territorial sea, continental shelf or

³⁰ *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 83-84, paras. 117 - 118 (24 February 1982). See also *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, 1984 I.C.J. 246, 310-311, paras. 149-152 (12 October 1984); *Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, para. 82 (14 June 1993).

³¹ *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*, 1985 I.C.J. 13, 40-41, para. 49 (3 June 1985).

³² *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, 1985 I.C.J. 13, 35, para. 39.

³³ *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 70, 84-85, paras. 94, 119 (24 February 1982).

exclusive economic zone (or of the latter two together), the appropriate methodology to be applied is to draw an equidistance line and then see whether any relevant or special circumstances exist which may warrant a change in that line. The presumption in favour of that line is to be welcomed as a principle of value and clarity. Any circumstances that may change the line would exclude any notion of distributive justice and equitable sharing, but would be rigorously examined. Configuration of the relevant respective coastlines, length of relevant coastlines, existence of islands, security considerations and the prior conduct of parties may all be pertinent factors in the particular circumstances of the case.³⁴

It is on the basis of this general approach that Guyana now turns to the application of the principles and rules to the circumstances of the present case, first in relation to the territorial sea and then in relation to the continental shelf and exclusive economic zone.

³⁴ Shaw 540, *supra* Chapter 7, note 2.

CHAPTER 8

DELIMITATION OF THE TERRITORIAL SEA

I. Introduction

8.1 In this Chapter, Guyana sets forth its arguments in support of its claim relating to the delimitation of the territorial sea. The starting point is Article 15 of the 1982 Convention, which provides that, in the absence of agreement or any claim to historic title or “other special circumstances,” the delimitation is to follow an equidistance line. The parties have long agreed that the terminus of the land boundary is at Point 61 (5° 59’ 53.8 N. and longitude 57° 08’ 51.5” W.) and that this is the appropriate starting point for the delimitation of the territorial sea. From that point the delimitation follows the historical equidistance line of N34E for a distance of 12 miles to the outer limit of the territorial seas as provided by Article 3 of the 1982 Convention. In accordance with Article 15, there are no grounds for departing from that equidistance line, which reflects Guyana’s conduct ever since it achieved independence in 1966 and which has also generally been followed by Suriname in its conduct. This boundary is depicted on **Plate 36** (following page 92), which shows the historical equidistance line on each of the relevant charts, including Dutch chart 217, British chart 1801, and the current U.S. NIMA charts.¹

8.2 This Chapter is divided into two sections. Against the background of the evolving rules of international law, Section II describes the conduct of the parties – as well as that of the States which previously had responsibility for their international relations – in the period from 1936 until these proceedings were initiated on 24 February 2004. It is clear that the parties’ conduct reflected a common understanding on the application of an equidistance line, and consistent practice (reflected in oil concessions granted by both States) demonstrates the parties’ understanding and recognition of the existence of a historical equidistance line. In Section III, Guyana applies the law to the facts and sets out its submissions on the manner in which the Arbitral Tribunal should determine the maritime boundary dividing the territorial seas of the two States.

II. The Conduct of the Parties in Relation to the Territorial Seas: 1936-2004

8.3 Efforts to delimit the territorial seas of Guyana and Suriname date back to the early 1930’s. The United Kingdom and the Netherlands undertook serious negotiations to try to reach agreement on a maritime boundary between their respective colonies - British Guiana and Suriname - between 1930 and 1966, when Guyana achieved independence. Those efforts continued after 1966 between Guyana and Suriname (with involvement of the Netherlands until 1975, when Suriname achieved independence). Since that date, efforts have been undertaken directly between Guyana and Suriname.²

¹ The U.S. NIMA chart in **Plate 36** (which follows page 92) and in **Plate 38** (which follows page 104) is a composite of the two most recent U.S. NIMA charts that cover the coastlines of Guyana and Suriname in the vicinity of the Corentyne River. See MG, Vol. V. These charts are U.S. NIMA chart 24370 First Edition, 31 August 1985 (correct through NM 35/85) and U.S. NIMA chart 24380 Second Edition, 6 March 1999 (correct through NM 10/99), both at a scale of 1:300,000, as set out in paragraph 8.19, *infra*.

² See *supra* Chapter 6, para. 6.7.

8.4 The prior conduct of the parties is a singularly important element to be taken into account in carrying out the delimitation of the territorial seas. The Arbitral Tribunal should not ignore the conduct of the former colonial powers and the parties since the 1930's. As explained in the previous Chapter, this practice is part of the "special circumstances" which the Arbitral Tribunal is required to take into account in effecting the delimitation.³ Of particular importance is the fact that conduct since the 1930's in regard to the territorial seas has been consistent, particularly in respect of one central matter: the former colonial powers and then Guyana and Suriname have long accepted that the starting point for any delimitation of the maritime boundary is the terminus of the land boundary which is located at Point 61. Equally important is the conduct of the parties in relation to the *course* of the maritime boundary in the territorial seas, and in particular the underlying rationale for such conduct.

A. The Conduct of the Parties Concerning the Starting Point for the Maritime Delimitation

8.5 In Chapter 3, Guyana has set out in detail and with supporting historical material the circumstances in which the United Kingdom and the Netherlands reached agreement on the terminus of the land boundary located at Point 61.⁴ This terminus is also the starting point for the delimitation of the maritime boundary, and has been recognised repeatedly as such by both Guyana and Suriname.

8.6 By July 1936, the Boundary Commissioners appointed by the United Kingdom and the Netherlands had completed their work. They formally demarcated the land boundary terminus at Point 61, in the vicinity of Village 61 near the mouth of the Corentyne River. The Commissioners buried markers (concrete blocks of 40 cm³) at latitude 5° 59' 53.8 N., longitude 57° 08' 51.5" W.

8.7 For the remainder of the period in which both the United Kingdom and the Netherlands exercised colonial authority (from 1936 to 1966), the two States treated Point 61 as the land boundary terminus of their respective colonies. Since Guyana assumed independence in 1966, it has accepted Point 61 as the starting point for any delimitation of the maritime boundary. The Netherlands continued to recognise Point 61 as the land boundary terminus between 1966 and 1975, when Suriname achieved independence. Since 1975, Suriname has continuously recognised Point 61 as the terminus of the land boundary and, consequently, as the starting point for the delimitation of the maritime boundary. Most recently, in the context of the events leading to the initiation of these proceedings, Suriname confirmed that it considers Point 61 to be the starting point for the maritime delimitation. The point was made explicitly by Suriname in a *Note Verbale* dated 31 May 2000 to Guyana,⁵ and in a letter also of 31 May 2000 from the Minister of Foreign Affairs of Suriname to Mr. Kerry Sully, President of CGX.⁶

³ See e.g., *supra* Chapter 7, paras. 7.36 - 7.37.

⁴ See *supra* Chapter 3, paras. 3.5 - 3.13.

⁵ Letter with attached *Note Verbale* No. 2566/HA/eb (31 May 2000), *supra* Chapter 3, note 16.

⁶ Letter from Minister of Foreign Affairs of the Republic of Suriname to Kerry Sully, President, CGX Energy, Inc. (31 May 2000), *supra* Chapter 3, note 16; see also Description of the Western Boundary of the Republic of Suriname (28 June 2000) ("from this marked point [point 61 coordinates] the boundary continues..."). See MG, Vol. II, Annex 51.

8.8 This consistent pattern of conduct is reflected in the striking fact that each of the successive draft treaties on a maritime delimitation which has been put forward – as prepared in 1939, 1949, 1961, 1962, 1965, and 1971 - by the United Kingdom and the Netherlands, and then by Guyana in 1971, takes Point 61 as the starting point for the delimitation of the maritime boundary.⁷ The same pattern of conduct is reflected in the maps, charts and illustrations produced by Guyana and Suriname,⁸ as well as in the concessions for the exploration of oil and gas which have been granted by the United Kingdom and Guyana, and by the Netherlands and Suriname.⁹

8.9 In the face of such consistent practice, there can be no question but that there exists a clear and unambiguous understanding which confirms that Point 61 serves as both the terminus of the land boundary and the starting point for the maritime delimitation. The conduct of the parties admits of no other conclusion.

B. The Conduct of the Parties in Relation to Baselines

8.10 The parties' conduct in relation to baselines has been consistent over time in using low-water as the normal baseline for both States. State practice relating to the use of the low-water line as the reference datum for the determination of normal baselines dates back to the nineteenth century.¹⁰ The work of the Preparatory Committee of the Hague Codification Conference of 1930 represented a first attempt to codify the low-water line as the baseline from which the breadth of the territorial sea is determined.¹¹ Although the 1930 Codification Conference did not produce an international law convention, it had a decisive influence on the development of international rules providing for the definition of normal baselines by reference to the low-water line. In 1951, the International Court of Justice ruled in the *Anglo-Norwegian Fisheries Case (United Kingdom v. Norway)* (1951) that it had:

no difficulty in finding that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high water mark, or the mean between the two tides, which has generally been adopted in the practice of States. This criterion is the most favourable to the coastal State

⁷ 1939 British Draft Treaty, Article 1. See MG, Vol. III, Annex 89; 1949 British Draft Treaty, Article 1 (See Diplomatic Note from the British Foreign Office to E. Michiels van Verduynen, Netherlands Minister to the United Kingdom (16 September 1949), *supra* Chapter 3, note 47); 1961 British Draft Treaty, Article II, *supra* Chapter 3, note 87; 1962 Dutch Draft Treaty, Article 1, *supra* Chapter 3, note 94; 1965 British Draft Treaty, Part II, Article VII, *supra* Chapter 3, note 106; 1971 Guyanese Draft Treaty, Article VII, *supra* Chapter 4, note 14.

⁸ See generally **Plates 18, 19, 30** (following pages 46, 48 and 58 respectively). See MG, Vol. V.

⁹ See e.g. California Oil Company Licence (15 April 1958), *supra* Chapter 3, note 69; Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965), *supra* Chapter 3, note 102.

¹⁰ D. P. O'Connell, *The International Law of the Sea*, Vol. I, 172 (1982). See generally the 1839 Fisheries Convention between Great Britain and France and the 1882 North Sea Fishery Convention as early examples supporting the use of the low-water line as the initial point from which the breadth of the territorial sea was to be measured.

¹¹ S.W. Boggs, *Delimitation of the Territorial Sea: the Method of Delimitation Proposed by the Delegation of the United States at the Hague Conference for the Codification of International Law*, *American Journal of International Law* 24 (3), 541-555 (1930).

and clearly shows the character of territorial waters as appurtenant to the land territory.¹²

8.11 The practice of the United Kingdom and the Netherlands during the colonial period was consistent with the use of the low-water line as the baseline for the determination of the breadth of the territorial seas, including in relation to British Guiana and Suriname. This was reflected in their respective national legislation and in their support for and ratification of the 1958 TS Convention.¹³

8.12 Against the background of developments in international law, the issue of baseline delineation in connection with the determination of an equidistant maritime boundary between British Guiana and Suriname arose for the first time in 1957. British Admiralty officers noted that the use of the baselines depicted as low-water lines on British Admiralty chart 1801 and Dutch chart 217, which were the best available charts for the region at the time, produced slightly different results. Both of these charts were relied upon by the United Kingdom in its efforts to identify an equidistance line. In order to avoid disagreement with the Netherlands, the United Kingdom “adopted for this purpose... Netherlands chart 217 of February 1939.”¹⁴

8.13 The baselines from which the breadth of the territorial seas were to be measured were discussed on other occasions, including at a meeting held between representatives of both governments on 15 October 1958.¹⁵ By June 1959, a new version of Dutch chart 222, based on an aero-triangulation survey conducted in 1947-48, was used by the Netherlands to present a maritime boundary proposal to the United Kingdom. The Dutch proposal was premised on baselines defined by the low-water lines located along the coasts of both States.¹⁶

8.14 Subsequent conduct also made use of low-water lines. They were the basis for the draft treaty prepared by the United Kingdom in 1961, which is consistent with the choice of baselines depicted as the low-water lines on Dutch chart 217.¹⁷ They were also the basis for the draft treaty submitted by the United Kingdom to the Netherlands in November 1965, which proposed an equidistance line defined by reference to the mean low-water spring tide level.¹⁸

8.15 The practice of Guyana and Suriname since their independence has also followed the use of the low-water line as the baseline for the determination of the breadth of the territorial sea. This is consistent with their respective national legislation and their support for the 1982 Convention. The draft boundary treaty prepared by Guyana in 1971 was identical to that

¹² *Fisheries Case (United Kingdom v. Norway)*, 1951 I.C.J. 118, 128 (18 December 1951).

¹³ See *supra* Chapter 7, para. 7.14.

¹⁴ See *supra* Chapter 3, para. 3.27.

¹⁵ See *supra* Chapter 3, para. 3.33.

¹⁶ See *supra* Chapter 3, para. 3.36.

¹⁷ See *supra* Chapter 3, para. 3.38.

¹⁸ See *supra* Chapter 3, para. 3.45.

submitted by the United Kingdom to the Netherlands in 1965, also proposing an equidistance line based on the low-water line defined by the mean low-water spring tide level.¹⁹

8.16 Guyana adopted its Maritime Boundaries Act, 1977, Act No. 10 on 30 June 1977. Section 7(1) establishes that:

The baseline from which the territorial sea shall be measured shall be the low-water line along the coast and, where the coastline is broken by a river, a straight line joining the two points where the low-water line on the coast ends on either side of the river.

Guyana's legislation also declares in Section 8(2) that:

In any proceedings in any court, a certificate purporting to be signed by the Minister responsible for lands and surveys or a person authorised by him that:

- (a) Any specified Guyana Government nautical chart of any area is the largest scale chart for the time being of that area; or
- (b) No Guyana Government nautical chart for any area exists and that any specified British Admiralty chart of that area is the largest scale British Admiralty chart for the time being of that area, shall be admissible as evidence of the matter stated in the certificate.

The Government of Guyana has not produced a nautical chart depicting its coastlines. Guyana's legislation provides that the largest scale British Admiralty chart will be admissible as evidence, but does not make such a chart dispositive. At present, the largest scale British chart for the region is BA 517 Sixth Edition, dated 6 March 2003. Since this chart has a very small scale (of 1:1,500,000), it is generally not considered to be suitable as a basis for the delineation of baselines, particularly where larger scale charts are available.²⁰

8.17 For its part, in April 1978 Suriname promulgated the Law Concerning the Extension of the Territorial Sea and the Establishment of a Contiguous Economic Zone. Article 2 of the 1978 Law declares that the outer limit of the territorial sea is to be determined "from the nearest point on the line of the low-water mark along the shore, the so-called baseline."²¹ Suriname's 1978 Law is accompanied by an Explanatory Memorandum, which provides that Dutch chart 2017 (which was prepared in 1970 on the basis of the earlier Dutch chart 217 and has a scale of 1:750,000) serves as the official chart for the purpose of establishing its normal baselines for measuring the breadth of the territorial sea.²²

8.18 Neither Guyana nor Suriname has deposited with the Secretary General of the United Nations a copy of any charts or lists showing baselines for measuring their territorial seas, as provide by Article 16 of the 1982 Convention.

¹⁹ 1971 Guyanese Draft Treaty, Article VII(i), *supra* Chapter 4, note 14.

²⁰ United Nations, Office for Ocean Affairs and the Law of the Sea, "Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea," *The Law of the Sea* 5 (1989).

²¹ 1978 Territorial Sea/Contiguous Economic Zone Act (Suriname), Article 2, *supra* Chapter 4, note 25.

²² Explanatory Memorandum of the Government of Suriname (July 1977), *supra* Chapter 4, note 26.

8.19 At the present time, the most accurate large-scale charts showing the low-water lines of Guyana and Suriname are the U.S. NIMA chart 24370 First Edition, 31 August 1985 (correct through NM 35/85) and U.S. NIMA chart 24380 Second Edition, 6 March 1999 (correct through NM 10/99) at a scale of 1:300,000. The U.S. NIMA charts are larger-scaled than BA chart 517 (1:300,000 vs. 1:1,500,000) and Dutch chart 2017 (1:300,000 v. 1:750,000).

C. The Conduct of the Parties Concerning the Boundary Line To Be Followed from Point 61 to the Outer Limit of the Territorial Sea

8.20 As regards the line to be drawn from Point 61, the parties' practice falls into two distinct periods. During a first period, between 1936 and 1965, the parties generally followed a line of N10E, but only up to a distance falling within the three mile territorial sea as permitted by international law. The line of N10E was never used beyond the three miles of the territorial sea. The line of N10E was motivated by a desire to give effect to navigational requirements which were considered to be necessary in the conditions that prevailed in the 1930's. However, by the early 1960's the United Kingdom no longer recognised this rationale for a line of N10E, as it was inconsistent with the results derived from implementing the median line principle, a delimitation methodology reflected in the work of the International Law Commission and legislated in Article 12(1) of the 1958 Geneva Territorial Sea Convention. A second period was then initiated by the United Kingdom, and in 1966 newly-independent Guyana informed the Netherlands that it shared the United Kingdom's view that the sole basis for following the line of N10E had disappeared.²³ Thereafter, Guyana's practice was predicated on the equidistance line required by Article 12(1) of the 1958 Territorial Sea Convention. On this basis, starting from Point 61, Guyana drew and gave effect to an equidistance line within the territorial sea which followed a general bearing of N34E. Initially this was only for a distance of three miles, but eventually it was extended to 12 miles as international law extended the permitted breadth of the territorial sea. Until recently, the Netherlands and then Suriname generally respected that equidistance line as it was applied in relation to various oil concessions granted by Guyana.

1. 1936 to 1965

8.21 As set out in Chapter 3, the Netherlands originally proposed that the maritime boundary should follow a straight line from the land boundary terminus at the mouth of the Corentyne River at an angle of N28E for a distance of three miles, the outer limit of the territorial sea. The United Kingdom supported this N28E line, as reflected in a Dutch *Aide Memoire* of 1931.²⁴

²³ Marlborough House Discussions, *supra* Chapter 4, note 2.

²⁴ See *Aide Memoire* from the Netherlands to the United Kingdom (4 August 1931), *supra* Chapter 3, note 11 ("At the mouth of the Corentyne the frontier will be "...in a direction pointing to the right No. 28° to the point where this line meets the outer limit of the territorial waters and from there in an easterly direction following the outer limit of the territorial waters.."); Telegram No. 25 from the Foreign Office to the Colonial Office with early version of British Draft Treaty (24 April 1934) (stating that "the boundry [sic] between the territorial waters of Surinam and British Guiana is formed by the prolongation seawards of the line drawn on a true bearing of 28° from the landmark referred to in Article 1(2) above."), *supra* Chapter 3, note 30.

8.22 Subsequently, the Netherlands proposed that the line should run parallel to the westernmost of the Corentyne River's two navigation channels, at an angle of N10E from Point 61, up to the three miles limit of the territorial sea. The rationale for the Dutch proposal was that it would be more efficient and practical to keep both navigational channels to the river maintained under control of a single authority.²⁵ This would mean, amongst other matters, that all the navigation buoys would be maintained under the control of a single State. On this basis - and on this basis alone - the United Kingdom expressed its willingness to accede to the Dutch position: as the British Boundary Commissioner put it, he "did not know of any specific reason why the boundary should continue out to sea on a bearing of 28°" and in order to avoid "international complications about buoying the channel" the direction pillar at Point 61 indicated the boundary on a bearing parallel to the line of the western navigation channel.²⁶ Significantly, however, the British Commissioner recognised that if any particular reason arose to adopt a different bearing - for example N28E - it would be "a comparatively simple matter to rebuild the direction pillar to indicate this bearing instead of the 10° E bearing."²⁷ It was therefore clear that the willingness to make use of a line of N10E was provisional and not endowed with a permanent character. It was also clear that the line of N10E was not - and was not intended to be - an equidistance or median line.

8.23 In subsequent years, the colonial powers were both willing to follow a line along N10E from Point 61 to the outer limit of the three mile territorial sea. This willingness was reflected in the draft treaties put forward by the United Kingdom in 1939,²⁸ 1949²⁹ and 1961,³⁰ as well as in the Dutch draft treaty of 1962.³¹ In all cases, the N10E line was accepted only up to the limit of the three mile territorial sea; it was only the 1961 draft treaty proposed by the United Kingdom that spoke of a six-mile extension of the N10E line, but that was six miles on an angle of N10E from Point 61, which, due to the contour of the British Guiana coast, reached no farther than three miles from the nearest point on that coast.³²

8.24 As described in Chapter 3, the maritime area beyond three miles only began to be considered in the 1950's, in accordance with the emerging principles set forth in the work of the International Law Commission and, in 1958, in the Convention on the Continental Shelf.³³ As described in Chapter 9, the United Kingdom and the Netherlands agreed that any delimitation outside the territorial sea beyond three miles from Point 61 was to be carried out in accordance with the principle of equidistance. In 1957, the United Kingdom first calculated the methodology to be applied in establishing an equidistance line. It relied upon the charts which were available at that time, namely Dutch chart 217 and British chart 1801. On the basis of those charts, the United Kingdom proposed - and the Netherlands never

²⁵ Letter from Major Phipps (9 July 1936), *supra* Chapter 3, note 13.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ 1939 British Draft Treaty, Article 1. See MG, Vol. III, Annex 89.

²⁹ Diplomatic Note from the British Foreign Office to E. Michiels van Verduynen, Netherlands Minister to the United Kingdom (16 September 1949), *supra* Chapter 3, note 47.

³⁰ 1961 British Draft Treaty, Part II, Article VII, *supra* Chapter 3, note 87.

³¹ 1962 Dutch Draft Treaty, *supra* Chapter 3, note 94.

³² See *supra* Chapter 3, para. 3.37.

³³ See *supra* Chapter 3, paras. 3.22 - 3.24.

objected to – a segmented line with a general bearing of N34E. The explanation for how that line was calculated is described in Chapter 9.³⁴ Thereafter, the United Kingdom and then Guyana adopted the line of N34E as the equidistance line, both within the territorial sea and eventually up to a limit of 12 miles, and then beyond the territorial sea onto the continental shelf. This was reflected in consistent British (and later Guyanese) practice, and in particular in the grant of oil concessions. In its practice, the Netherlands did not object to the use of that line as an equidistance line and, as reflected in the grant of oil concessions, Suriname too appears to have respected in practice the historical equidistance line as originally plotted by Commander Kennedy of the British Admiralty.

2. 1965 to 2000

8.25 In 1965, shortly before Guyana attained independence, the United Kingdom first proposed a draft treaty which departed from the line of N10E from Point 61 in the territorial sea. As with earlier draft treaties, the 1965 draft took Point 61 as the starting point (draft Article VII(2)), but instead of applying the line of N10E it proposed the use of a line to be “drawn in accordance with the principle of equidistance from the nearest points of the base lines from which the territorial sea of British Guiana and Surinam respectively is measured” (draft Article VII(1)).

8.26 The reason for the departure from the line of N10E was explained in a number of documents prepared contemporaneously by officials of the United Kingdom and British Guiana.³⁵ These indicated that the original reasons given by the Netherlands for the N10E line in the territorial sea were no longer applicable. Specifically, the western channel of the River Corentyne which flowed into the Atlantic Ocean on a bearing of N10E, and which was shallower than the eastern channel and historically used much less frequently, was no longer used (or usable) by commercial ships. Since the 1930’s, there had been changes in the nature of the vessels, which had become larger and heavier than the ones that had been operated in the 1930’s and earlier. Accordingly, there was no longer a need for supervision or maintenance of the western channel, which had been invoked as a principal justification for the N10E boundary line in the territorial sea.

8.27 Thereafter, and consistently ever since, the position adopted by Guyana has been to take an equidistance line from Point 61 to the limit of its territorial seas and then beyond to include the continental shelf. This is reflected in the draft treaty proposed by Guyana in 1971.³⁶ Oil concessions granted in 1972, 1979 and 1981 and then throughout the 1980’s and 1990’s followed the historical equidistance line, namely a straight line with a bearing of N34E from Point 61,³⁷ as did official maps prepared by and on behalf of the Government of Guyana.³⁸ On no occasion did the Netherlands (before 1975) or Suriname (after it attained

³⁴ See *infra* Chapter 9, para. 9.18.

³⁵ Letter from British Hydrographic Department (16 October 1962), *supra* Chapter 3, note 33 (“this [western] channel is so set about with shoals and is so tortuous as to render it unsafe for navigation in comparison with the eastern channel which is the one normally used by shipping”; Letter from Governor (3 May 1963), *supra* Chapter 3, note 33 (“it is the Eastern Channel that is buoyed and that is used by all save the ‘local’ craft.”).

³⁶ 1971 Guyanese Draft Treaty, *supra* Chapter 4, note 14.

³⁷ See generally **Plates 14, 22, 23, 24** and **28** (in Volume V only). See MG, Vol. V.

³⁸ See generally **Plates 18** and **19** (following pages 46 and 48, respectively). See MG, Vol. V.

independence in 1975 until it used military force in June 2000) object to the use of the N34E line within the territorial sea for oil concessions or depicting boundary limits on maps.

8.28 With its Maritime Boundaries Act, 1977, Guyana established a 12-mile territorial sea.³⁹ Thereafter, reliance on the N34E line from Point 61 was to be taken as falling within the territorial sea up to 12 miles, and within the continental shelf and EEZ in the area beyond 12 miles. The legal basis for the claim to the N34E line in the area of the continental shelf and the EEZ is addressed in Chapter 9, although the basis for its calculation applies the same principles.

8.29 As described in Chapter 4, on the eve of Suriname's independence on 25 November 1975, the Dutch Government spelt out in a letter addressed to the Prime Minister of Suriname the contours of the territory of Suriname. The letter stated that the western boundary of Suriname was the low water line on the west bank of the Corentyne:

up to the point where the river bank changes into the coastline and from this point along a line with a direction of 10 east of True North through the territorial sea, without prejudice to the rights which according to international law belong to the sovereign Republic of Suriname as a coastal State in the part of the sea area delimited by the continuation of this line.⁴⁰

It is clear that the line of N10E refers only to an area within the territorial sea, and could not have extended beyond the limits of the territorial sea under then-existing international law. The Dutch government did not make any claim to that line beyond the outer limit of the territorial sea.

8.30 However, after Suriname achieved independence in 1975, its conduct was inconsistent with the earlier position on the N10E line, and generally consistent with that of Guyana. Its conduct constituted acceptance of a *modus vivendi* on the use of a line having a general bearing of N34E as reflecting both parties' views on equidistance in the territorial seas. Although Suriname did articulate a claim that the boundary should follow a line of N10E in the territorial sea, it never objected by diplomatic note or otherwise to the grant by Guyana of oil concessions over the line of N10E up to the line of N34E. Suriname also respected the line of N34E, or one in very close proximity to it, in nearly all of its own concessions. Moreover, as set out in Chapter 4, following the creation of the national oil company, Staatsolie, in 1980, Suriname's practice in granting oil concessions generally reflected the use of the historical equidistance line as indicating the western limit of its territorial waters.⁴¹ The same approach is reflected in maps produced by and on behalf of the national authorities of Suriname.⁴²

³⁹ Maritime Boundaries Act 1977, *supra* Chapter 4, note 24

⁴⁰ See Letter of 25 November 1975 from the Prime Minister of the Netherlands, *supra* Chapter 3, note 126.

⁴¹ See generally Plates 9, 30, 32 (following pages 38, 58 and 60, respectively). See MG, Vol. V.

⁴² See generally Plates 30 (following page 58) and 31 (in Volume V only). See MG, Vol. V.

III. The Boundary Dividing the States' Territorial Seas Follows the Line of N34E

8.31 Section II of this Chapter set out the parties' conduct, against which Guyana's claim to the delimitation of its territorial sea is to be determined. In summary, Guyana's position with respect to the delimitation of the territorial sea is that:

- (a) there is longstanding agreement between the Parties that Point 61 is to be taken as the land boundary terminus and the starting point for the maritime delimitation of the territorial sea;
- (b) the conduct of the parties confirms that the delimitation of the territorial seas is to be effected on the basis of the principle of equidistance, which is to be measured from low-water baselines, and that a historical equidistance line has been measured and given effect along a line generally following N34E and now running for a distance of 12 miles from Point 61; and
- (c) further or alternatively, even if a line of N34E from Point 61 for a distance of 12 nautical miles were not to be regarded as the relevant equidistance line, then the conduct of the parties since 1966 constitutes a special circumstance which justifies an adjustment to the equidistance line.

8.32 The delimitation of the territorial sea between Guyana and Suriname is to be effected in accordance with the principles set forth in Article 15 of the 1982 Convention. As set out in Chapter 7, the approach to be followed is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of special circumstances.⁴³ There is no reason of principle why the provisional equidistance line should not be that which was prepared by the British authorities from 1957 onwards on the basis of the Dutch chart 217 and British chart 1801, which were the best charts then available and were relied upon by both parties. This historical equidistance line may then be compared with an equidistance line which would be measured on the basis of the most recently available and appropriate charts, namely U.S. NIMA charts 24370 (First Edition) and U.S. NIMA 24380 (Second Edition). In both cases – for the historical equidistance line and the provisional equidistance line – the starting point is the terminus of the land boundary at Point 61.

A. Measuring a Provisional Equidistance Line

8.33 In drawing a provisional equidistance line – whether on the basis of the charts available in 1957 or those available today – the international jurisprudence confirms that four steps are to be followed: *first*, it is necessary to determine the relevant coasts of the parties; *second*, it is necessary to identify the location of the baselines; *third*, it is necessary to determine the pertinent basepoints which enable an equidistance line to be measured; and *fourth*, it becomes possible to measure an equidistance line on a provisional basis.

1. The Coastlines

8.34 The coasts of Guyana and Suriname are adjacent. As noted in paragraph 2.9, on the basis of the most recent U.S. NIMA charts, the coastline of Guyana measures 482 kilometres

⁴³ See *supra* Chapter 7, para. 7.33; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, 2001 I.C.J. 40, 94, para. 176 (16 March 2001).

along the low-water line from the land boundary terminus with Venezuela to the land boundary terminus with Suriname (at Point 61). The coastline of Suriname measures 384 kilometres along the low-water line from the land boundary terminus with Guyana to the land boundary terminus with French Guiana.

8.35 The determination of those parts of the coasts which are relevant to the delimitation of the maritime boundary (in relation to the territorial sea and the maritime spaces beyond) involves the identification of the coastal fronts that generate legal entitlements to the maritime area in dispute. The International Court of Justice has made clear that maritime rights derive from the coastal State's sovereignty over the land, a principle which it has summarised as "the land dominates the sea."⁴⁴ The relevant coast of Guyana facing the region over which the delimitation is to be effected runs for a distance of 255 kilometres along the low-water line (this is depicted on U.S. NIMA chart 24380 from a point of latitude 7° 22' 52" N. and longitude 58° 28' 13" W. to Point 61, which is the land boundary terminus with Suriname). The relevant coast of Suriname facing the region over which the delimitation is to be effected measures a length of 224 kilometres along the low-water line (as depicted on U.S. NIMA chart 24370, from a point of latitude 6° 00' 37" N. and longitude 55° 45' 29" W. to Point 61, which is the land boundary terminus with Guyana).

8.36 Both the earlier charts relied upon in 1957 (Dutch chart 217 and British chart 1801) and current U.S. NIMA charts indicate that there are no islands, rocks, or reefs consideration of which would be taken into account for the purposes of identifying the relevant coasts and effecting the delimitation.

8.37 The only element which may be taken into consideration to effect the delimitation relates to the existence of a single low-tide elevation, shown by the U.S. NIMA charts described in paragraph 8.35. This low-tide elevation is located in the mouth of the Corentyne River at a distance of less than 12 miles from the baselines from which the breadth of the territorial sea is measured from both States. As established by the International Court in the *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain* of 6 March 2001, for delimitation purposes the competing rights derived by both coastal States from the relevant provisions of the law of the sea in relation to low-tide elevations would by necessity seem to neutralise each other:

When a low-tide elevation is situated in the overlapping area of the territorial sea of two States, whether with opposite or with adjacent coasts, both States in principle are entitled to use its low-water line for the measuring of the breadth of their territorial sea. The same low-tide elevation then forms part of the coastal configuration of the two States. That is so even if the low-tide elevation is nearer to the coast of one State than that of the other, or nearer to an island belonging to one party than it is to the mainland coast of the other. For delimitation purposes the competing rights derived by both coastal States

⁴⁴ *Qatar v. Bahrain*, 2001 I.C.J. 40, 97, para. 185 (citing *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, 1969 I.C.J. 3, 51, para. 96 (20 February 1969) and *Aegean Sea Continental Shelf (Greece v. Turkey)*, 1978 I.C.J. 3, 36, para. 86 (19 December 1978)).

from the relevant provisions of the law of the sea would by necessity seem to neutralise each other.⁴⁵

8.38 On the basis of the charts which were relied on in the late 1950's and the most current charts, there are no "special circumstances" of a geographical character relating to the nature of the parties' respective mainland coastlines which are to be taken into account for the purposes of delimitation.

2. The Location of the Baselines

8.39 Article 5 of the 1982 Convention provides that the normal baseline for measuring the breadth of the territorial sea is "the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State." There are no reasons to depart from this normal approach in the present case, in respect of Guyana or Suriname. There is no inconsistency with the legislation in force in Guyana or Suriname.⁴⁶

8.40 Since the mid-1950's, the United Kingdom and Guyana, and the Netherlands and Suriname, have relied on a number of different charts for the purpose of identifying their respective low-water lines. In 1957, the United Kingdom relied on Dutch and British Admiralty charts, namely Dutch chart 217 and British chart 1801. The low-water lines shown on these charts are set out at **Plates 2 and 3** (in Volume V only). The most recent charts relied upon by Guyana are U.S. NIMA chart 24370 First Edition, 31 August 1985 (correct through NM 35/85) and U.S. NIMA chart 24380 Second Edition, 6 March 1999 (correct through NM 10/99). The low-water lines shown on these charts are set out at **Plate 37** (in Volume V only).

3. Measuring the Provisional Equidistance Line

8.41 In 1957, the United Kingdom authorities carefully calculated the equidistance (median) line on the basis of an average of the charts then available.⁴⁷ Particular reliance was placed on Dutch chart 217 and British chart 1801. On the basis of these charts, an equidistance line was plotted within the territorial sea. **Plate 36** (following page 92) depicts the equidistance line in the territorial sea as calculated on the basis of each chart, and the more recent U.S. NIMA charts. **Plate 36** shows the equidistance lines up to the three-mile limit which existed in the 1950's, and then extending from three to 12 miles, the limit for the territorial sea which was recognised after 1977. On Dutch chart 217, the equidistance line follows a general bearing of N35E. On British chart 1801, the general bearing of the equidistance line is N34E. On the U.S. NIMA charts, the general bearing is N36E.

8.42 In an *Aide Memoire* dated 6 August 1958, the Netherlands confirmed that it would be desirable that "the principle of 'equidistance,' mentioned in [Article 6(2) of the 1958 Geneva Continental Shelf Convention] would be adopted as the determinant of the line dividing the continental shelf adjacent to Surinam and British Guiana."⁴⁸ Although this did not purport to

⁴⁵ *Qatar v. Bahrain*, 2001 I.C.J. 40, 101, para. 202.

⁴⁶ See Maritime Boundaries Act 1977, Section VII, *supra* Chapter 4, note 24; 1978 Territorial Sea/Contiguous Economic Zone Act (Suriname), Articles 2-3, *supra* Chapter 4, note 25.

⁴⁷ See *supra* Chapter 3, para. 3.28.

⁴⁸ *Aide Memoire* from the Netherlands (6 August 1958), *supra* Chapter 3, note 76.

apply to the three-mile territorial sea, it reflects early Dutch acceptance that the principle of equidistance was applicable to the delimitation of the area lying between three and 12 miles from Point 61 (the former being the outer limit of the territorial sea in the late 1950's). In 1959, the Netherlands prepared a chart setting out its approach to an equidistance line for the area beyond three miles; reference to such a chart is made in numerous documents which have been located in the British archives.⁴⁹ Guyana has not been able to locate a copy of that chart, but assumes it may be available in the archives held at the Dutch Ministry of Foreign Affairs to which Guyana's access has been denied.

8.43 **Plate 38** (following page 104) shows a comparison between the equidistance lines on the contemporaneous charts (Dutch chart 217 and British chart 1801) and the modern U.S. NIMA charts. This comparison confirms that within the territorial sea – up to three miles and also up to 12 miles – there is no material difference between the three charts and the equidistance line should follow a general bearing of at least N34E, as claimed by Guyana.

B. The Conduct of the Parties and Special Circumstances

8.44 Article 12 of the 1958 TS Convention and Article 15 of the 1982 Convention confirm that the only circumstances in which the equidistance line is not to be used are when historic title or “other special circumstances” make it necessary to use another line.

8.45 Neither party has claimed a historic title within any part of the territorial sea.

8.46 The possibility cannot be excluded that Suriname may claim that a line of N10E is justified as a “special circumstance” within the meaning of Article 12 of the 1958 Convention and Article 15 of the 1982 Convention, perhaps because of the navigational requirements that gave rise to the use of that line in the 1930's. It is abundantly clear, however, that as far back as the early 1960's the United Kingdom rejected such a claim and reverted to an equidistance line originating from Point 61. Guyana has never accepted a line of N10E for any distance within the territorial sea.

8.47 Moreover, at no time did the Netherlands propose or claim that a line of N10E represented an equidistance line. And Suriname has never claimed that the line of N10E represents an equidistance line. A Memorandum of 27 April 1964 from S.D. Emanuels (Minister Plenipotentiary of Suriname in The Hague) to the Prime Minister of Suriname confirms that the N10E line is not an equidistance line.⁵⁰

8.48 In the absence of any claim based on historic title or “other special circumstances,” an equidistance line is to be applied from Point 61 up to the limit of the territorial sea. The historical equidistance line is that identified by the United Kingdom and relied upon by both parties and their former colonial powers. It was plotted on the basis of the Dutch chart 217 and British chart 1801, the best available in the late 1950's. The equidistance line which results has been relied upon by the parties in their subsequent conduct, in particular in relation to oil concessions granted since 1958.

⁴⁹ See Letter from Foreign Office to R.H. Kennedy (3 June 1959), *supra* Chapter 3, note 84.

⁵⁰ Memorandum from S.D. Emanuels, Minister Plenipotentiary of Suriname in The Hague to the Prime Minister of Suriname (27 April 1964) (original in Dutch, translation provided by Guyana). See MG, Vol. II, Annex 42.

8.49 International case law has long recognised that the conduct of the parties (including former colonial powers) may be a “special circumstance.”⁵¹ In the present case, the conduct of the parties would be a “special circumstance” within the meaning of Article 15 of the 1982 Convention if the Arbitral Tribunal were to proceed to measure a provisional equidistance line on the basis of current charts and such charts were to result in a different line from that prepared on the basis of the charts relied upon by the United Kingdom and the Netherlands, and Guyana and Suriname, since the 1950’s.

8.50 In the present circumstances, the Arbitral Tribunal should not apply an equidistance line derived from modern charts, because this would ignore more than four decades of conduct by the parties and lead to an inequitable result. In these proceedings, the Arbitral Tribunal should delimit the territorial seas on the basis of the special circumstances reflected in the conduct of the parties. This would respect the historical equidistance line (based on the charts relied upon by the United Kingdom and the Netherlands between 1957 and 1959) which subsequently gave rise to a pattern of generally consistent conduct in respect of oil concessions granted by the two States since 1958.

8.51 It would not be equitable to ignore the fact that there exists a historical equidistance line or the fact that during a period of nearly 40 years the conduct of the parties has generally respected that historical equidistance line as the boundary that divides the territorial seas around the course of N34E. Guyana has granted ten oil concessions respecting this line, in 1958, 1965, 1972, 1979, 1981, 1988, 1989, 1998, and 1999.⁵² For its part, Suriname has offered or granted oil concessions respecting a similar line. On those occasions since independence in which Suriname granted an oil concession on the Guyanese side of that line, there was either no take-up in the sense of actual exploratory or other physical activities, or it was protested by Guyana, or both.

8.52 Similarly, fishing practice in the period since 1977 has also respected the line of N34E within territorial waters. There were no reports of Surinamese efforts to enforce fisheries jurisdiction west of that line prior to the events leading to Guyana’s institution of these proceedings.

8.53 As described in detail in Chapter 9, it is by now well-established in international case law that practices of the kind engaged in by Guyana and Suriname – the grant of oil concessions and fisheries practices – can amount to a “special circumstance” (a *modus vivendi*), both within the meaning of Article 12 of the 1958 Territorial Sea Convention and Article 15 of the 1982 Convention.⁵³

8.54 The general coincidence of approaches adopted by the United Kingdom and the Netherlands and then Guyana and Suriname with respect to the grant of oil concessions within the territorial sea is remarkable for its consistency. In the present case, therefore, the locations of the oil concessions reflect a mutual understanding, and follow the views of the parties, as to the location of the equidistance line. The oil concessions and oil wells are not in themselves the relevant circumstances that justify the adjustment or shifting of any

⁵¹ See *supra* Chapter 7, paras. 7.36-7.37.

⁵² See *generally supra* Chapter 4.

⁵³ See *infra* Chapter 9, para. 9.36.

provisional delimitation line; they reflect where the parties believed the equidistance line to be in the 1950's, on the basis of the contemporaneous charts available to them at that date.

8.55 It is instructive in this regard to consider the approach taken by Suriname in relation to the delimitation of its maritime boundary with French Guiana. A draft treaty was agreed in principle in 1999. This applies a principle of equidistance to the delimitation of the territorial sea, continental shelf and exclusive economic zone. In circumstances in which the coastal configuration of the two States is broadly similar to that of Suriname and Guyana, the boundary follows an equidistance line of N30E. By reference to that treaty, it becomes apparent that while a maritime boundary line of N10E between Suriname and Guyana cannot be justified, a boundary line of N34E is reasonable, equitable and justifiable.

C. Conclusions

8.56 For forty years, since 1965, Guyana's practice has been to delimit its territorial sea by means of an equidistance line drawn from Point 61 along the line generally following N34E, eventually up to a limit of 12 miles. That line has served as the eastern limit of Guyanese oil concessions, and has been respected in practice by the Netherlands and Suriname. A line of N10E cannot be claimed as an equidistance line, and cannot be justified on the basis of navigational or other requirements.

CHAPTER 9

DELIMITATION OF THE CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONE

I. Introduction

9.1 In this Chapter, Guyana sets forth its legal arguments in support of its claims relating to the delimitation of the continental shelf and exclusive economic zone. In summary, Guyana submits that in accordance with the requirements of Articles 74 and 83 of the 1982 Convention the delimitation of the continental shelf and exclusive economic zone should follow a single maritime boundary; it should commence from the outer limit of the territorial sea boundary at a point located at 6° 13' 46.0" N.; 56° 59' 31.9" W., and should from there follow a line of N34E up to the 200-mile limit to a point located at 8° 54' 01.7" N.; 55° 11' 07.4" W. This point will be the outer limit of the exclusive economic zone. As set forth in Chapter 7, Guyana is not requesting that the Arbitral Tribunal delimit any area of the continental shelf beyond that point, although it reserves its rights in respect of any such delimitation.¹ The single maritime boundary proposed by Guyana is depicted at **Plate 39** (following page 108).

9.2 This Chapter is divided into two sections. Section II sets out the basis on which the delimitation of the continental shelf is to be effected. Section III sets out the basis on which the delimitation of exclusive economic zone is to be effected.

II. The Delimitation of the Continental Shelf

9.3 Article 83(1) of the 1982 Convention provides that: "The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution." This has come to be known as the "equitable principles/relevant circumstances rule."² It has been followed both in international case-law and in the practice of States.

9.4 In recent years, the International Court of Justice has developed a consistent approach in applying the equitable principles/relevant circumstances rule. In the *Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway)*, both parties were bound by the 1958 Continental Shelf Convention. In its 1993 Judgement, the International Court stated:

Turning first to the delimitation of the continental shelf, since it is governed by Article 6 of the 1958 Convention... it is appropriate to begin by taking provisionally the median line between the territorial sea baselines, and then enquiring whether "special circumstances" require "another boundary line." Such a procedure is consistent with the words in Article 6, "In the absence of

¹ See *supra* Chapter 7, para. 7.24.

² See *supra* Chapter 7, para. 7.32.

agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line.”³

The approach has been confirmed on several occasions subsequently. In *Qatar/Bahrain*, the Court confirmed that it will “first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to the adjustment of that line.”⁴ The Court has not stated that this is the only approach to be applied, and has not defined with any degree of precision how the approach is to be applied in any particular case. Each case turns on its own circumstances.

9.5 In the present case, two factors exist which distinguish the task of the Arbitral Tribunal from other cases. The first is that this appears to be the first case before an international court or tribunal in which the parties have themselves sought over an extended period of time – in excess of forty years – to identify and then agree upon an equidistance line. It is a central part of Guyana’s case that those efforts and related conduct should be taken into account in achieving an equitable solution. The second factor is that over that period of time the rules of international law have developed and changed; for example, in the late 1950’s it was generally understood that continental shelf rights existed to a distance of the 200-metre isobath, but against the background of the negotiations that became the 1982 Convention the earlier limit became a 200-mile limit. This is a relevant factor in considering the effect of conduct.

9.6 The United Kingdom and the Netherlands first sought to identify an equidistance line to divide the continental shelves of Guyana and Suriname in 1957, applying the principles reflected in the work of the International Law Commission and relying upon the maps and charts which were then available. Shortly thereafter, the 1958 Continental Shelf Convention was adopted, with the support of the United Kingdom and the Netherlands. Both countries played a key role in the elaboration of language which placed primary emphasis on the equidistance principle, but recognised the need for a certain degree of elasticity in exceptional circumstances. The role played by these two countries – and by Commander Kennedy – was highlighted by Judge Schwebel in his Separate Opinion in the *Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway)*:

At the Geneva Conference at which the 1958 Convention was adopted, the [I.L.C.’s] carefully crafted proposal was sustained in a formulation of the British and Netherlands delegations. The only elucidation of what might be a special circumstance was the statement of the British delegation’s Commander Kennedy, offered in explanation of ‘The fairest method of establishing a sea boundary ... that of the median line:

‘Among the special circumstances which might exist there was, for example, the presence of a small or large island in the area to be apportioned; he [Commander Kennedy] suggested that, for the purposes of drawing a boundary, islands should be treated on their merits, very small islands or sand keys... being

³ *Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 59, para. 49 (14 June 1993).

⁴ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, 2001 I.C.J. 40, 111, para. 230 (16 March 2001).

neglected as base points... . Other types of special circumstances were the possession by one of the two States concerned of special mineral exploitation rights or fishery rights, or the presence of a navigable channel; in all such cases a deviation from the median line would be justified, but the median line would provide the best starting point for negotiations. (UNCLOS I, Fourth Committee, Continental Shelf, Official records, Vol. VI, p. 93.)'

No delegation questioned the sense and scope of special circumstances given by Commander Kennedy.⁵

Shortly thereafter, the British and Dutch agreed that Article 6 of the Convention should serve as a basis for the delimitation of the continental shelf boundary between British Guiana and Suriname. Commander Kennedy led the effort to accurately calculate the median line and apply it up to the 200-metre isobath, as described in further detail below. The line which Commander Kennedy developed – the historical equidistance line – has served as the basis for Guyana's equidistance line consistently ever since. In Guyana's view, it is appropriate to take the historical equidistance line as a starting point. This is consistent with the approach adopted by the International Court of Justice.

9.7 As already noted in Chapter 7, the approach adopted by the International Court is consistent with the practice of both parties, and also with the national legislation adopted by and currently in force for Guyana and Suriname. Guyana's continental shelf legislation is set out at Sections 9 to 14 of the Maritime Boundaries Act, 1977.⁶ Suriname's legislation is set out in the Law Concerning the Extension of the Territorial Sea and the Establishment of a Contiguous Economic Zone of 14 April 1978.⁷

A. The Provisional Equidistance Line

1. Coastlines, Baselines and Basepoints

9.8 The drawing of a provisional equidistance line for the continental shelf and the exclusive economic zone generally follows the same approach as that for drawing the provisional equidistance line in the territorial sea.⁸ In Chapter 8, Guyana identified the considerations upon which it relied for the delimitation of the territorial sea, in relation to the terminus of the land boundary and the starting point for the territorial delimitation, the coastlines, the location of the baselines and the determination of the pertinent basepoints.⁹ As with the territorial sea, the starting point is the effort undertaken by Commander Kennedy for the British authorities commencing in 1957 and resulting in the historical equidistance line of N34E. It is appropriate to begin with the equidistance line which was identified on the basis of Dutch chart 217 and British chart 1801 and which served as a basis for subsequent

⁵ *Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 122, 123 (Separate Opinion of Judge Schwebel).

⁶ See Maritime Boundaries Act 1977, *supra* Chapter 4, note 24.

⁷ 1978 Territorial Sea/Contiguous Economic Zone Act (Suriname), Articles 2-3, *supra* Chapter 4, note 25.

⁸ See *supra* Chapter 7, para. 7.33.

⁹ See *supra* Chapter 8, paras. 8.5 - 8.19.

conduct, and then to compare that line with the equidistance line which results from the more modern U.S. NIMA charts.

2. The Historic Equidistance Line

9.9 As described in Chapter 3, two main factors led the United Kingdom to initiate efforts to draft an equidistance line which would divide the continental shelves of Guyana and Suriname. The *first* factor was a general move towards the recognition of a coastal State's sovereign rights over its continental shelf. This was reflected in the work of the International Law Commission, which began in the early 1950's and culminated with the adoption in 1956 of draft Articles 14 and 72(2) on the delimitation of the continental shelf.¹⁰ The early work of the I.L.C. provided the background against which the 1954 British Guiana (Alteration of Boundaries) Order in Council could be adopted.¹¹ The *second* factor was the receipt of an application from a private company - the California Oil Company - for a concession to allow it to explore for oil off the coast of British Guiana. This was the first such application to deal with the continental shelf area and raised squarely the issue of British Guiana's continental shelf boundary with Suriname.

9.10 The British authorities were acutely aware of the international implications of authorising oil activities in an area which might be claimed by another State, and went to considerable lengths to ensure that the outer limits of any concession area should not encroach upon any area in which Suriname could reasonably make a claim. This is reflected in a series of internal memoranda showing communications between British officials in various government departments. These materials are in the public domain in the United Kingdom and shed light on these important historical efforts. As a result of actions taken by Suriname, Guyana has not been able to gain access to the equivalent files held in the Dutch archives.

9.11 In a memorandum dated 18 June 1957, Mr. D.G. Gordon-Smith of the Colonial Office, explained the context:

The baseline referred to in these [I.L.C. draft] Articles [14 and 72(2)] is of course normally the line of low water mark on the coast. These articles lay down principles acceptable to H.M.G. and they have considerable authority although the principles they contain may not yet have acquired the status of customary international law and the articles have not been embodied in any multilateral convention. We think it would be quite wrong for British Guiana to purport to grant licences over an area which fell on the wrong side of a line drawn in accordance with these articles, and indeed, in case the other states concerned could show existence of special circumstances it would probably be wise to err on the side of caution in determining the area to be covered by the licence. I suggest that we ask Commander Kennedy at the Admiralty (copying to the Foreign Office) to suggest lines which would be in accordance with the I.L.C.'s principles.¹²

¹⁰ See *supra* Chapter 3, para. 3.24, note 54.

¹¹ See *supra* Chapter 3, paras. 3.23 - 3.24.

¹² Memorandum by D.G. Gordon-Smith of the Colonial Office (18 June 1957), *supra* Chapter 3, note 57.

9.12 By 27 June 1957, Commander Kennedy had set in train the steps necessary to carry out the task entrusted to him. A minute written by Mr. E.W.A. Scarlett of the Colonial Office on that date described a meeting which had been held on the previous day, attended by Commander Kennedy with representatives of the General, American and European, and Legal Departments of the Foreign Office. Mr. Scarlett's minute states:

The discussion was limited to the question of definition of the area to be covered by the licence.

We were all agreed that it was important that, even at the exploration stage, the area should be fully defined and that an attempt should be made to draw the lines of boundaries of the continental shelf in accordance with the principles set out in the International Law Commission's draft articles.

Cdr. Kennedy then explained that he was in considerable difficulty because of the absence of reliable and up-to-date charts of the area. He had, by reference to the material available, produced four differing lines at both ends none of which was unassailable. In these circumstances the Foreign Office, not unnaturally pressed for the definition of an area that would be unquestionably well within any boundaries that could ultimately be agreed upon. I was able to resist this and we eventually got down to discussing which of Cdr. Kennedy's lines should be adopted for the present purposes and we reached agreement that lines based on the American chart of the Venezuelan coast and on the Netherlands chart of the Guiana coast were preferable.¹³

On the basis of the agreed approach, Mr. Scarlett then drafted the relevant parts of a telegram to be sent to the authorities in British Guiana.

9.13 That same day – 27 June 1957 – Secret Telegram no. 212 was transmitted by the British Secretary of State to the Governor of British Guiana. It stated:

After full discussion with Foreign Office and Admiralty we are convinced that it is essential to define northwest and southeast limits of operations under licence in the absence of agreements with territories on precise definition of boundary of respective continental shelves we would wish to follow as closely as available data allow the principles set out in International Law Commission's articles quoted in my previous telegram.

There is considerable practical difficulty here in drawing precise lines on this basis owing to absence of completely reliable charts. We have however adopted for this purpose... Netherlands chart 217 of February 1939 for the Surinam boundary; and on these bases we consider the following lines would be reasonable:

[...]

(b) for Surinam

¹³ Minutes drafted by E.W.A. Scarlett of the Colonial Office (27 June 1957), *supra* Chapter 3, note 60.

From large triangular wooden beacon latitude 5° 59' 53.8" north, 57° 08' 51.5" west, [*i.e.* from Point 61] in 010 degrees direction to 3 miles limit from coast; thence 033 degrees direction to intersection with 25 fathom line.¹⁴

9.14 The line of N33E was an initial effort, which may also have been conservative so as to avoid risk of crossing into any area which might be claimed by Suriname. Commander Kennedy later determined that, by reference to Dutch chart 217, a more accurate median line was one that had a general bearing of N34E.¹⁵ The significance of the application for the oil exploration licence is reflected in a letter from Mr. D.H.T. Hildyard of the Foreign and Commonwealth Office to Mr. P. S. Stevens, Commercial Counsellor of the British Embassy to Venezuela, dated 3 July 1957.¹⁶ The letter indicated the careful efforts undertaken by the United Kingdom to apply emerging international principles and to ensure the fullest respect for the rights of the Netherlands and Suriname:

Evidently care must be taken lest the Company be authorised by the licence to operate in the areas of the continental shelf which might reasonably be claimed by Venezuela on application of the median line principle. The same consideration applies to a lesser extent to the boundary with Dutch Suriname. The situation is complicated because at both ends of the British Guiana coast line the line of the shore is very inadequately charted and it is not possible for the Hydrographic Department of the Admiralty to produce an unchallengeable median-line. In fact, five alternative lines can be drawn from the various charts, which vary substantially. It was originally proposed that the area included in the licence should stop short of the boundaries with both Venezuela and Suriname by a "safe" distance, e.g. about five miles. The Colonial Government however felt that it would be a tactical mistake to stop short of the boundary because this might unfavourably prejudice future negotiations with the Governments concerned.

[...]

It was agreed the best principle to follow was some application of the principle of equi-distance set out in the International Law Commission's draft articles on the law of the sea Nos. 14 and 72 (ii). These articles have yet to be considered by an international conference next year and at present amount to no more than a recommendation in favour of the median line principle. Nevertheless it was considered that the granting of a licence within the median lines would be justifiable and would form a suitable precedent for negotiations.

The letter proceeded to explain the circumstances under which the equidistance line was constructed:

¹⁴ Secret Telegram No. 212 (27 June 1957), *supra* Chapter 3, note 63. The earlier telegram referenced is Secret Telegram No. 198 (18 June 1957), *supra* Chapter 3, note 57.

¹⁵ *See infra* Chapter 9, para. 9.18.

¹⁶ Letter from D.H.T. Hildyard, writing for the Secretary of State to P.S. Stevens, British Embassy in Venezuela (3 July 1957), *supra* Chapter 3, note 57.

Since the data available would not provide a proven median line, it was agreed to take for the purposes of the licence the line obtained when using... on the Surinam side a Dutch chart. The lines produced are roughly the means of the various alternatives, and as far as possible follow the median line principles.¹⁷

9.15 The concession to the California Oil Company was granted on 15 April 1958. The British effort at identifying the equidistance line to be utilised for the delimitation of the continental shelf was not protested by the Netherlands or Suriname. As described in Chapter 3, the line adopted in the concession agreement included a modest deviation from the line proposed in Secret Telegram 212. According to the concession agreement itself, the eastern boundary ran from:

a point in latitude 5° 59' 53.8" North, longitude 57° 08' 51.5" West [*i.e.*, Point 61] established by the intersection of the Surinam and British Guiana international boundary demarcated by a large triangular wooden beacon, thence N. 13° East for a distance of approximately 3 miles, thence N. 32° East for a distance of approximately 69 miles to a point on the 25 fathom line, in latitude 6° 58' 17" North, longitude 56° 36' 51" West... .

9.16 The reason for the modest deviation – taking a N32E line rather than a N33E line – was not explained. However, it had no material effect. What is significant is the fact that neither the Netherlands nor Suriname objected to the line, the details of which were made public. At the same time, the Netherlands was also considering the grant of oil concessions off the coast of Suriname. In August 1958 – just four months after the first oil concession had been granted by British Guiana – the Netherlands sent an *Aide Memoire* to the British Foreign Office. This noted that the Government of Surinam had requested the Netherlands government “to take steps to determine clearly and precisely the line dividing the continental shelf adjacent to Surinam and British Guiana,” and that this matter had become of practical importance to allow Suriname to grant oil exploration concessions. Also, the 1958 Geneva Convention on the Continental Shelf now had been adopted. The *Aide Memoire* confirmed the view of the Dutch Government that:

although not yet signed by the Netherlands or the United Kingdom, [the 1958 Geneva Convention on the Continental Shelf] is considered to lay down acceptable general principles of international law concerning the delimitation of continental shelves.¹⁸

And the *Aide Memoire* added:

It is deemed desirable that... an agreement be concluded between the Netherlands and the United Kingdom by an exchange of notes in which the principle of ‘equidistance’ mentioned in the same article of the Convention, would be adopted as the determinant of the line dividing the continental shelf adjacent to Surinam and British Guiana. The actual dividing line resulting

¹⁷ *Ibid.*

¹⁸ *Aide Memoire* from the Netherlands to the United Kingdom (6 August 1958), *supra* Chapter 3, note 76.

from the equidistance principle would be charted on a map to be annexed to the notes.¹⁹

9.17 The desire of the Netherlands to agree to an Exchange of Notes was noted by the Colonial Office. In a letter dated 16 October 1958 to Mr. Anderson at the Foreign Office, Mr. Scarlett noted that:

In practice, this is a matter on which there is plainly no difference of principle between ourselves and the Netherlands authorities. We are both wedded to the principle of the “median line,” but we have the practical difficulty to which you refer of drawing the line with absolute certainty, since some of the data on which it is to be based is not beyond question. On this there are, as I see it, two possible courses which we could follow; namely we could propose the line which Commander Kennedy drew for us last year as being, in our view, the best shot that can be made at it, although we would, of course, for this purpose have to invoke his aid once more in projecting the line beyond the 25 fathom line; or, if need be, we could look to a physical survey of the coastal areas so far as may be necessary to establish the lines beyond all doubt. Naturally, we would prefer to avoid the expense of an exercise of this nature if it is at all possible to do so, and I suggest our best course would be to have the line projected as best we can and put it to the Netherlands authorities as our proposal, and see how they re-act.²⁰

9.18 Thereafter, the British Government proceeded in reliance on the calculations of Commander Kennedy and his colleagues. In January 1959, in preparing a draft treaty which would delimit the two parties’ continental shelves, Commander Kennedy wrote to Mr. Scarlett that “it is essential that we should use the median line principle as a basis for the agreement [with the Netherlands].”²¹ He noted that there were two elements which superimposed themselves on a “true median line.” The first was “the almost agreed boundary through the territorial sea (010 degrees from the concrete markers),” and which was justified by reasons of navigation dating back to 1936.²² As Commander Kennedy made clear, however, that 10 degree line was:

not drawn according to median line principles and so the boundary across the continental shelf cannot automatically continue for the intersection of the 010 degree line with the limit of the territorial sea is at a different point from that of the intersection of the median line with that limit.²³

The second element was the difficulty in establishing a true median line. This was caused by the limitations of the existing charts, divergences in the coastlines and low-water lines, and the small scale of the various charts and maps. Commander Kennedy summarised the approach which had been taken:

19 *Ibid.*

20 Letter from the Colonial Office to the Foreign Office (16 October 1958), *supra* Chapter 3, note 78.

21 Letter from R.H. Kennedy, Hydrographic Department, Admiralty to E.W.A. Scarlett, Colonial Office (15 January 1959). See MG, Vol. II, Annex 24.

22 *Ibid.*

23 *Ibid.* (Emphasis in original.)

You will recall that four so-called median lines were then drawn and a solution was arrived at by drawing a further line roughly through the middle of these as far as the 25 fathom depth contour. It would seem probable that negotiation on a technical level will have to take place before the boundary across the shelf is established and that if the boundary is to conform at all closely to a true median line, then the first thing to be agreed will have to be which chart is to be used.

After again looking at some of the charts of the area, it has been seen that the median line drawn on the Netherlands chart No. 2217 (renumbered from 217) is the one that gives more of the continental shelf to British Guiana than the median line drawn on Admiralty Chart No. 1801, although this increase in area is further offshore and in deeper water. As this is so and as no doubt the Dutch would prefer to use their own chart which incidentally is on a somewhat larger scale than ours, may I suggest that a median line on the Dutch chart be used as the starting point in the negotiations.²⁴

On the basis of this approach, Commander Kennedy then proposed revised language for the draft treaty to be put to the Dutch:

The boundary between the territorial seas of British Guiana and Surinam and beyond such seas, of the contiguous zones and continental shelves of the two territories, shall be formed by the prolongation seawards of the line drawn on a bearing of 010 degrees from the more seaward of the concrete markers referred to in Article 1(2), from the intersection of this line with the low-water line of Mean Spring Tides to a distance of 6 miles from the more seaward marker, thence on a bearing of 033 degrees for a distance of 35 miles, thence on a bearing of 038 degrees for a distance for 28 miles, thence on a bearing of 028 degrees to the point of intersection with the edge of the continental shelves as defined by International Law.²⁵

The British eventually proposed to the Dutch a simplified equidistance line that had a general bearing of N34E in the continental shelf. This is shown at **Plate 40** (following page 116), which depicts the equidistance lines drawn on Dutch chart 217 and British chart 1801, the segmented equidistance line developed by Commander Kennedy (as described above and as incorporated in the British draft treaty of 1961) and a straight line on a bearing of N34E (representing Guyana's claim), from the limit of the three-mile territorial sea to the 200-metre isobath. As shown in **Plate 40**, all three lines depicted on Dutch chart 217 have a general bearing of N34E. This line, in its straightened form, is the line that Guyana submits the Arbitral Tribunal should now apply, although with the development of the relevant rules of international law it is to be taken out further, beyond the 200-metre isobath limit and up to the 200-mile limit. It is pertinent to note that Commander Kennedy recognised that this new proposed line was not identical to that used in the oil concession granted to the California Oil Company in April 1958:

²⁴ *Ibid.*

²⁵ *Ibid.*

It should perhaps be noted that the oil concession boundary extended about 48 miles along the bearing of 033 degrees and not for 35 miles only, as above. The boundary given above follows the median line more closely on the Netherlands chart and gives British Guiana an additional breadth of shelf of about 2 miles at the 25 fathom depth line.²⁶

This equidistance line was subsequently included in the text of the 1961 British draft treaty, at Article VII.²⁷

9.19 The British archives indicate that in the spring of 1959 the Netherlands produced its own equidistance line, prepared on the basis of Dutch chart 222. Guyana has not been able to locate a copy of that chart, although an explanatory memorandum has been found.²⁸ It may be that the chart is available in those archives of the Dutch Ministry of Foreign Affairs in respect of which Suriname has objected to Guyana's access. In any event, Guyana has not been able to identify any documentary or other material which indicates that the Netherlands or Suriname has ever sought to justify a line of N10E as an equidistance line. In 1962, the Netherlands put forward a draft treaty, Article 4 of which proposed that "in the sea and on the bottom of the sea" the frontier should follow a line of N10E.²⁹ However, it is not clear whether this delimitation was limited to the territorial sea or was also intended to extend beyond and onto the continental shelf.³⁰ The draft treaty does not purport to give effect to the principle of equidistance, notwithstanding the fact that an internal Briefing Note for the Dutch Deputy Prime Minister confirmed that the Netherlands and Suriname were willing to use an equidistance line in 1962.³¹ By 1964, Suriname and the Netherlands were in dispute as to the negotiating position to be taken in the continental shelf delimitation. The Dutch wanted to offer an equidistance line, but the Surinamese wanted to propose a line of N10E. In his 1964 Memorandum to the Surinamese Prime Minister, Mr. S.D. Emanuels (Suriname's Minister Plenipotentiary in The Hague) wrote that "The equidistance line has not been delineated as the border with British Guiana on the continental shelf but, as expressly wanted by Suriname, the 10 degree line."³² This makes it abundantly clear that the line of N10E cannot be justified as an equidistance line.

9.20 As described in Chapter 3, and shown on **Plate 8** (following page 32), in 1965 British Guiana, with the consent of the United Kingdom, granted an oil concession and exploration licence to Guyana Shell Limited, a subsidiary of Royal Dutch Shell. The eastern boundary for this concession extended beyond earlier concessions, for a distance of 123 miles up to the

²⁶ *Ibid.*

²⁷ 1961 British Draft Treaty, Part II, Article VII, *supra* Chapter 3, note 87.

²⁸ Letter from Foreign Office to R.H. Kennedy (3 June 1959), *supra* Chapter 3, note 84.

²⁹ 1962 Dutch Draft Treaty, *supra* Chapter 3, note 94.

³⁰ Internal memoranda reveal that the British could not decipher whether the Dutch draft applied beyond the territorial sea. Secret Memorandum with Preliminary Comments on Draft Treaty, *supra* Chapter 3, note 99.

³¹ Briefing Note for Dutch Deputy Prime Minister for a meeting with Parliamentary Committee (21 June 1966), *supra* Chapter 3, note 101.

³² Memorandum from S.D. Emanuels, Minister Plenipotentiary of Suriname in The Hague to the Prime Minister of Suriname (27 April 1964), *supra* Chapter 8, note 50.

vicinity of the 200-metre isobath (as compared with 69 miles for the 1958 concession).³³ There was no objection from the Netherlands, even though the United Kingdom and the Netherlands were unable to conclude a formal agreement delimiting the continental shelves.

9.21 In 1966, at the insistence of Suriname and for purposes of negotiation, the Netherlands put forward a *Note Verbale* proposing a 10 degree line for the continental shelf as well as the territorial sea.³⁴ But in 1975, on the very eve of Suriname's independence, a letter from the Dutch Prime Minister made it clear that the Netherlands did not support a claim to a N10E line for the continental shelf.³⁵ Moreover, as indicated below at paragraphs 9.23, the conduct of the Netherlands and then Suriname was generally to accept the historical equidistance line of N34E as the *de facto* line respected by both parties in the grant of oil concessions, at least up to the 200-metre isobath limit and also beyond.

9.22 In summary, against the backdrop of the 1958 Continental Shelf Convention the United Kingdom and the Netherlands had early on agreed that the delimitation of the continental shelf was to be effected by application of the equidistance principle. The United Kingdom calculated an equidistance line in accordance with the principles proposed by the International Law Commission and then adopted in the 1958 Geneva Continental Shelf Convention. The United Kingdom identified an equidistance line with a general bearing of N34E to a distance of 100 miles (the 200 metre isobath), and subsequently proposed that line to the Dutch and relied upon it in the grant of oil concessions. There is no record of formal objection by the Netherlands to the basis upon which the N34E equidistance line was calculated or then applied through the grant of oil concessions.

9.23 Over time, the N34E line emerged as a historical equidistance line, serving as the basis for oil concessions granted by the United Kingdom and Guyana from 1958 to the present. In 1986, following the adoption of the 1982 Convention, Guyana extended the historical equidistance line to the 200-mile limit of the continental shelf established by the Convention; Guyana's official petroleum map, adopted at that time and reflecting a boundary line of N34E to the 200-mile limit, is shown at **Plate 18** (following page 46). Consistent with its petroleum map, Guyana has granted oil concessions which conform to the boundary line of N34E beyond the 200-metre isobath and extending toward the 200-mile limit. See **Plate 9** (following page 38). Since the creation of Staatsolie in 1980, Suriname's oil concessions beyond the 200-metre isobath have respected a similar boundary line; this is reflected in **Plates 32** (following page 60), and **33** (in Volume V only).

9.24 Until May 2000, there was no formal objection by or on the part of Suriname to any of Guyana's oil concessions. As indicated, for much of this period a line similar to the historical equidistance line also coincided with the western limit of oil concessions granted by the Netherlands and Suriname. These facts indicate the existence:

of an acquiescence in the proper sense of the term, connoting consent evinced by inaction or, as MacGibbon well expresses it, by "silence or absence of protest in circumstances which generally call for the positive reaction

³³ See *supra* Chapter 3, para. 3.44; Guyana Shell Limited Oil Exploration Licence No. 205 (11 August 1965), *supra* Chapter 3, note 102.

³⁴ *Note Verbale* from the Netherlands to the United Kingdom (3 February 1966), *supra* Chapter 3, note 113.

³⁵ See *supra* Chapter 4, para. 4.11.

signifying an objection” (“The Scope of Acquiescence in International Law,” *British Year Book of International Law*, XXXI, 1954, p. 143) or then again, as Sperduti says, by “the passivity observed towards a situation by a person... who had been entitled to object to it” (“Prescrizione, consuetudine e acquiescenza in diritto internazionale,” *Rivista di diritto internazionale*, 1961).³⁶

9.25 In the circumstances, Guyana submits that the equidistance line originally calculated by Commander Kennedy was a reasonable and equitable one, and served as the basis for a *de facto modus vivendi* between Guyana and Suriname. It is reflected in the conduct of the parties on both sides of the N34E line, initially up to the 200-metre isobath and then to the 200-mile limit.

3. Modern Provisional Equidistance Line

9.26 In the previous section, Guyana has explained the provenance and use of the traditional equidistance line up to the 200-metre isobath. It was prepared mainly on the basis of Dutch chart 217 and British chart 1801, the best charts available to Commander Kennedy and the British and Dutch governments in the late 1950’s and 1960’s. How does that line compare to the plotting of an equidistance line on more modern U.S. NIMA charts?

9.27 **Plate 41** (following this page) depicts the various equidistance lines in the continental shelf drawn on current U.S. NIMA charts, to a distance of 200 miles from Point 61. It compares the equidistance line derived from the U.S. NIMA charts themselves with the historical equidistance lines prepared by Commander Kennedy using Dutch chart 217 and British chart 1801, and with the straight line of N34E. **Plate 41** indicates that in the areas between 3 miles and 12 miles, and between 12 miles and the 200-metre isobath, the historical and modern equidistance distance lines are very similar, and that they closely approximate N34E. **Plate 40** (following page 116), as previously indicated, also shows the very close similarity between the line of N34E and the equidistance lines as drawn on Dutch chart 217 and British chart 1801 up to the 200-metre isobath. These two Plates show that irrespective of the chart which is used, there is a striking congruence as to the equidistance line which is to be drawn from the limit of the territorial sea (whether that is taken at 3 miles or 12 miles) up to the 200-metre isobath line.

9.28 To be sure, the line of N34E and the equidistance lines depicted on **Plate 41** begin to diverge in the area beyond the 200-metre isobath. However, as shown in **Plate 9** (following page 38) and **Plates 32** (following page 60), and **33** (in Volume V only), between the 200-metre isobath and the 200-mile limit of the continental shelf, there is a near perfect congruence as to the line respected in practice by Guyana and Suriname as the boundary line in grants of oil concessions; and that line very closely approximates N34E. In effect, by their consistent conduct subsequent to the adoption of the 1982 Convention, especially in grants of oil concessions and related activities, the parties have extended the N34E historical equidistance line beyond the 200-metre isobath to the 200-mile limit of the continental shelf.

³⁶ *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 83, para. 4 (24 February 1982) (separate opinion of Judge Ago).

B. The Line To Be Applied by the Arbitral Tribunal

9.29 The Arbitral Tribunal should take as its starting point for the delimitation of the continental shelf (and the exclusive economic zone) the historical equidistance line which has been given effect consistently by the United Kingdom and Guyana since 1957, and to which Suriname had not, until very recently, manifested its objection.

9.30 There are no grounds for shifting that line, which produces an “equitable solution” within the meaning of Article 83 of the 1982 Convention. Against the background of historical practice it is for Suriname to establish why the use of the historical equidistance line would not produce an equitable solution, or why there are relevant circumstances which would justify a shift in that line. Guyana’s approach is fully consistent with that adopted by the International Court of Justice, which has not previously been faced by a case in which one or both of the parties to a case had identified and relied upon an equidistance line for over forty years.

9.31 There is no justification at all for applying the line of N10E to delimit the continental shelf and exclusive economic zone. First, the origin of the line along N10E predated the emergence of the equidistance rule and related to perceived navigational interests in the 1930’s, and was limited only to the mouth of the Corentyne River. There has been no navigational justification for a 10 degree line for half a century. There are no circumstances which could justify such a line to be taken and then extended for an additional 197 miles beyond that which was originally intended. Second, such an approach would result in a manifestly inequitable solution which would be inconsistent with Article 83 of the 1982 Convention. Third, it would be inconsistent with nearly four decades of practice on both sides of the 34 degree line.

1. The N10E Degree Line Is Not Equitable or Justified by Relevant Circumstances

9.32 Suriname is bound to accept that there are no possible arguments to support the claim that a line of N10E could constitute an equidistance line, whether on the basis of contemporaneous or modern charts. Even on the basis of the most modern maps and charts, such a line would amount to a significant departure from the equidistance principle.

9.33 To justify such a line, Suriname would have to demonstrate the existence of relevant circumstances. It is difficult to see on what basis Suriname could do so. There are no islands off the coast, nor any geographic circumstances relating to the configuration of the coast. Suriname can claim no mineral exploitation rights or fishery rights in that area, and there is no navigable channel which could give rise to a claimed relevant circumstance. Although the Netherlands and the United Kingdom agreed to utilise a N10E line in 1936, they only did so in relation to a short stretch which never extended beyond the then-applicable three mile limit of the territorial sea. Moreover, the sole justification for that line was navigation, and by the early 1960’s that justification had completely disappeared. Accordingly, the United Kingdom and then Guyana abandoned the N10E line even for the three-mile stretch of territorial sea. In the period preceding abandonment, Commander Kennedy had made it very clear that the N10E degree line had not been “drawn according to median line principles.”³⁷ Whatever rights Suriname may have claimed in respect of a N10E degree line, its own practice has been to grant oil concessions within an area that respects the historical

³⁷ See *supra* Chapter 9, para. 9.18.

equidistance line. In the circumstances, the N10E degree line is unsustainable for any part of the delimitation of the maritime areas.

2. A Modern Equidistance Line Does Not Achieve an Equitable Solution Because It Ignores Forty Years of Practice

9.34 Alternatively, Suriname may argue that the delimitation should follow a modern equidistance line drawn in accordance with the most recent maps and charts. As described above, in the area between the 200-metre isobath and the 200-mile limit of the continental shelf area, such a line might on some calculations depart from the historical equidistance line generally applied by both parties in the grant of oil concessions. Nevertheless, any such departure from the historical equidistance line would lead to an inequitable solution. For many years Guyana has undertaken seismic testing and the collection of other data in pursuance of its lawful and exclusive sovereign rights to explore its continental shelf, as recognised in Article 77(2) of the 1982 Convention. Guyana had legitimate rights to build its development policy on this basis and to invite foreign investors and multilateral institutions to assist the country in exploring the continental shelf and in exploiting its petroleum resources for the benefit of national economic development.

9.35 The International Court of Justice has long recognised that the conduct of the parties may be taken into account in achieving an equitable solution when delimiting the continental shelf. It is well-established that conduct of the kind engaged in by or on behalf of Guyana and Suriname – the grant of oil concessions and fisheries practices – can reflect the existence of a historic right to use certain waters or amount to a “relevant circumstance” (a *modus vivendi*), within the meaning of both Article 6 of the 1958 Continental Shelf Convention and Article 83 of the 1982 Convention.

9.36 In the *Case Concerning the Continental Shelf (Tunisia/Libya)*, the International Court recognised that the conduct of the parties is a circumstance which is “highly relevant to the determination of the method of delimitation.”³⁸ In that case, the Court identified conduct of the parties for which:

the result was the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims, in the sense that exploration activities were authorised by one Party without interference, or (until 1976) protests by the other. The Court does not of course overlook the fact that the areas to which a legal claim was asserted by both Parties were more far-reaching;... . The actual situation, however, was that which has just been described.³⁹

The Court made clear that it was not making a finding of “tacit agreement” or holding that the parties were debarred by conduct from pressing claims which were inconsistent with such conduct on the basis of estoppel. Nevertheless, it considered that this aspect – the conduct of the parties – was one of the “indicia... of the line or lines which the Parties themselves may have considered equitable or acted upon as such.”⁴⁰ It is a factor which indicates that a line

³⁸ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 83-84, para. 117 (24 February 1982).

³⁹ *Ibid.* at para. 118

⁴⁰ *Ibid.* at para. 119

to be chosen is “neither arbitrary nor without precedent in the relations between the two States.”⁴¹ The Court noted that the line was drawn “by each of the two States separately... for purposes of delimiting the eastward and westward boundaries of petroleum concessions, a fact which, in view of the issues at the heart of the dispute between Tunisia and Libya, has great relevance.”⁴² As the Court later summarised the position in *Cameroon/Nigeria*, it had found that “close to the coasts the concessions of the parties showed and confirmed the existence of a *modus vivendi*.”⁴³ A Chamber of the International Court endorsed that approach in the *Gulf of Maine* case, but concluded that it did not apply to the *modus vivendi* which Canada claimed to exist in respect of the practice of Canada and the United States in the period between 1965 and 1972. The Chamber concluded that a period of just seven years was “too brief to have produced a legal effect” of the kind claimed by Canada. By contrast, in the present case the practice of the parties relating to oil concessions spans a period of over 47 years, from 1958 to the present.⁴⁴

9.37 The International Court has had occasion to revisit its earlier case law on the relationship between oil concessions and a *modus vivendi* between the parties. In the *Cameroon/Nigeria* case, the Court reviewed its earlier jurisprudence as well as that of various international arbitral tribunals. It concluded that:

although the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions and oil wells may indicate a consensus on the maritime areas to which they are entitled, oil concession and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line.⁴⁵

In *Cameroon v Nigeria*, the parties had not sought to reach agreement on a delimitation, whether by identifying an equidistance line or by other means. The oil concessions and the oil wells reflected wholly unilateral acts. In the present case, the relationship between the oil concessions and the historical equidistance line is altogether different. The United Kingdom originally sought to identify an equidistance line based on Dutch chart 217 (and British chart 1801) precisely for the purpose of granting a first oil concession off the coast of British Guiana and on its continental shelf. The Netherlands also supported use of an equidistance line for this purpose and did not object to the line adopted by the United Kingdom. The coincidence of approaches adopted by the United Kingdom and the Netherlands and then Guyana and Suriname with respect to the grant of oil concessions is striking. In this case, the existence of the oil concessions reflects an understanding by, and follows the views of, the parties as to the location of the equidistance line. The oil concessions and oil wells are not in themselves the relevant circumstances which justify the adjustment or shifting of any provisional delimitation line; rather, they are themselves a reflection of where the parties believed the equidistance line to be in the 1950’s, on the basis of the most reliable information available to them at that date.

⁴¹ *Ibid.* at para. 118

⁴² *Ibid.*

⁴³ *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, 2002 I.C.J. 94, para. 304 (10 October 2002) referring to *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 18, 84-85, para. 119.

⁴⁴ *See supra* Chapter 8, para. 8.51.

⁴⁵ *Cameroon v. Nigeria: Equatorial Guinea intervening*, 2002 I.C.J. 94, para. 304.

3. There Are No Other Reasons for Departing from the Historical Equidistance Line

9.38 Finally, Guyana submits that there are no other reasons which militate against delimiting in accordance with the historical equidistance line.

9.39 First, that line fully respects the principle of non-encroachment. That is to say, it would not depart from the object of leaving as much as possible to both parties those parts of the continental shelf that constitute a natural prolongation of their land territories into and under the sea, without encroachment on the natural prolongation of the land territory of the other.⁴⁶

9.40 Second, that line is consistent with the maritime boundary which is reportedly reflected in the draft France-Suriname Maritime Delimitation Agreement. Although the Agreement is yet to be signed, it proposes a delimitation based on equidistance along the line of N30E.

9.41 Third, there are no geographical circumstances to indicate that the historical equidistance line would be inequitable. In particular, there are no features of the configuration of either coastline which point towards a different approach, and there are no principles of proportionality (whether in terms of the lengths of the two parties' respective coastlines or otherwise) which indicate an alternative approach or result.

9.42 And fourth, having regard to the configuration and length of the two States' coastlines (see paragraphs 8.34 through 8.38) the line of N34E does not lead to an inequitable solution.

III. The Delimitation of the Exclusive Economic Zone

9.43 Under the 1982 Convention, both States are entitled to a 200-mile exclusive economic zone (EEZ), in which they enjoy sovereign rights for the purpose of "exploring and exploiting, conserving and managing the natural resources, whether living or non-living."⁴⁷ As indicated in the name of the zone, the sovereign rights of the coastal State over the natural resources of the EEZ are full and exclusive. The regimes for the continental shelf and the exclusive economic zone overlap with respect to hydrocarbons in the subsoil of the maritime area up to 200 miles. As opposed to the continental shelf, to which coastal States have *ipso facto* and *ab initio* sovereign rights to the seabed resources, the exclusive economic zone has to be proclaimed. Guyana did proclaim an EEZ in 1991, while Suriname did so through its legislation of 1978.

9.44 The EEZ starts at the outer limit of the 12-mile territorial sea and its outer limit "shall not extend beyond 200 nautical miles from which the breadth of the territorial sea is measured."⁴⁸ Delimitation of the EEZ is, *mutatis mutandis*, to be effected through the same method as that for the delimitation of the continental shelf in Article 83, para. 1 of the Convention, i.e. by agreement on the basis of international law with a view of achieving "an

⁴⁶ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, 1969 I.C.J. 3, 53, para. 101(c) (20 February 1969).

⁴⁷ Law of the Sea, Article 56, para. 1, 833 U.N.T.S 397, 434, 21 I.L.M. 1245, 1280 (1982), *supra* Chapter 7, note 1.

⁴⁸ *Ibid.* at Articles 55 and 57.

equitable solution.”⁴⁹ Thus, Article 74 provides: "The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”⁵⁰ As discussed above, the equidistance method is the starting point for any maritime delimitation.

9.45 There is a considerable and fairly representative body of practice to determine one single maritime boundary for both the continental shelf and the exclusive economic zone.⁵¹ In addition, several decisions of the International Court of Justice and arbitral tribunals have effected a single maritime boundary between both the continental shelves and the EEZs of States with opposite or adjacent coasts. Reference may be made to *Libya/Malta* (1982), *Gulf of Maine* (Canada/U.S., 1984), *Greenland/Jan Mayen* (Denmark v. Norway, 1993), *Qatar/Bahrain* (2002) and *Cameroon/Nigeria* (2003) as well as arbitral decisions such as in *Guinea/Guinea Bissau* (1985), *Canada/France* (1992) (St. Pierre - Miquelon Maritime Area Dispute), *Eritrea/Yemen* (1999). There is a clear and general trend that delimitations address both the boundaries of the continental shelf and the EEZ (and often the territorial sea as well) and do not differentiate between these two zones.⁵²

IV. Conclusions

9.46 For almost fifty years, since the late 1950's, the practice of British Guiana and Guyana has been to delimit its continental shelf with Suriname by reference to a historical equidistance line generally following the line of N34E, up to the 200-metre isobath. That line has also been followed in a large number of oil concessions and in other State activity. Over the past 20 years, in Guyana's petroleum legislation and in the awarding of oil concessions by both Guyana and Suriname, the historical equidistance line has been extended up to the 200 mile limit of the continental shelf and EEZ. Until May 2000, the Netherlands and Suriname had never objected to the historical equidistance line as applied by Guyana, up to the 200 metre isobath or beyond, or to its practice in relation thereto. It would be inequitable for any other line of delimitation to be applied, and there are no circumstances which point to another line. Guyana submits that, in accordance with the requirements of Articles 74 and 83 of the 1982 Convention, the delimitation of the continental shelf and exclusive economic zone should follow a single maritime boundary; it should commence from the outer limit of the territorial sea boundary at a point located at 6° 13' 46" N; 56° 59' 32" W, and should from there follow a line of N34E up to the 200 mile limit to a point located at 8° 54' 01.7" N; 55° 11' 07.4" W.

⁴⁹ See *supra* Chapter 7, para 7.27.

⁵⁰ The text of Article 74 is identical to that of Article 83 relating to the delimitation of the continental shelf.

⁵¹ The only notable exception is Australia in its maritime boundaries treaties with, e.g., Papua New Guinea (1978), Indonesia (1997).

⁵² Cf. R.R. Churchill and A.V. Lowe, *The Law of the Sea* 195 (Manchester, 3rd ed., 1999); D. Pharand and U. Leanza (eds.), *The Continental Shelf and the Exclusive Economic Zone* (1993).

CHAPTER 10

SURINAME'S UNLAWFUL THREAT AND USE OF FORCE AGAINST GUYANA

I. Introduction

10.1 In this Chapter, Guyana sets forth legal arguments in support of its claims arising from Suriname's unlawful threat and use of armed force against Guyana. In summary, it is submitted that Suriname has acted in violation of its obligation to settle disputes by peaceful means under Articles 279, 74(3) and 83(3) of the 1982 Convention, the UN Charter, and general international law. Suriname rejected Guyana's repeated offers of immediate high-level negotiations concerning offshore exploratory activities by Guyana's licensee CGX. Instead, it resorted to the use of force on 3 June 2000 to expel Guyana's licensee – the CGX exploratory rig and drill ship *C.E. Thornton* – and threatened similar military action against other licensees, namely Esso E & P Guyana and Maxus. Suriname's conduct has resulted in both material and non-material injury to Guyana, including the considerable loss of foreign investment and licencing fees. This has blocked the development of Guyana's offshore hydrocarbon resources, for which injuries Guyana is entitled to full reparation in accordance with international law.

10.2 This Chapter is divided into three sections. Section II sets forth the international law principles concerning the peaceful settlement of disputes and prohibitions on the threat or use of armed force. Section III applies these principles to the facts, demonstrating that Suriname's conduct in relation to Guyana and its licensees is wholly unjustified and contrary to Suriname's fundamental obligations under the 1982 Convention, the UN Charter, and general international law. Section IV sets forth the basis for Suriname's responsibility for its internationally wrongful acts, and the reparations which Suriname owes to Guyana as a consequence.

II. The Obligation To Settle Disputes by Peaceful Means

10.3 The peaceful settlement of disputes is the essential purpose of Part XV of the 1982 Convention, pursuant to which this Tribunal has been established. Article 279 provides that:

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

Article 2(3) of the UN Charter provides: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Article 33(1) of the UN Charter provides:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

10.4 Article 279 of the 1982 Convention may also be considered as:

the flip side of the general principle of international law, as embodied in [Article 2(4) of] the United Nations Charter, in accordance with which States should not resort to the use of or threat of the use of force as way of settling their disputes. Article 279 in effect couches this same principle in a positive way.¹

Article 2(4) of the UN Charter is a fundamental norm of international law having the character of *jus cogens*.² It provides: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” The 1982 Convention incorporates this general principle in terms of the “peaceful uses of the seas” under Article 301. It provides:

In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

10.5 The Article 2(4) prohibition against the threat or use of force against the territorial integrity of States applies equally to situations involving territorial or maritime boundary disputes. The *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*³ – reflecting an authoritative interpretation of the UN Charter⁴ – includes within the ambit of Article 2(4) “... the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.”⁵ (Emphasis added)

10.6 The 1982 Convention specifically contemplates situations involving disputes over the delimitation of the EEZ or continental shelf between States with opposite or adjacent coasts. Articles 74(3) and 83(3) – applying to the EEZ and continental shelf respectively – provide in identical terms that:

¹ *Case Concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v. Singapore)*, Order of 8 October 2003 (Separate Opinion of Judge Jesus), International Tribunal for the Law of the Sea, page 2 (footnote omitted).

² *See generally Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986 I.C.J. 14, 100, para. 190 (27 June 1986).

³ G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8028 (1970).

⁴ On the customary law status of the Declaration, *see generally Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986 I.C.J. 14, 99-100, para. 188 (27 June 1986).

⁵ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, at 122, U.N. Doc. A/8028 (1970).

Pending agreement [on delimitation on the basis of international law], the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

Thus, beyond Article 279 and general international law, where a maritime boundary is in dispute, States parties to the 1982 Convention are under a specific obligation to negotiate in good faith a provisional arrangement of a practical nature, and to not jeopardise or hamper a final agreement through the threat or use of force.

10.7 The threat or use of armed force as a means of settling territorial disputes and problems concerning maritime boundaries – especially where the other party has not resorted to similar measures – represents a serious threat to international peace and security. Beyond Security Council action under Chapter VII, the only exception to Article 2(4) envisaged by the Charter is “the inherent right of individual or collective self-defence if an armed attack occurs” against a State (Article 51). Under customary international law, even this exception is subject to the condition of “necessity and proportionality.”⁶ Considering that the right to self-defence against armed attack is so narrowly construed, there is little scope for justification of force in circumstances of lesser gravity where no armed attack is involved.

10.8 As a threat to international peace and security in violation of Articles 2(3) and 2(4) of the Charter, the use of force in relation to a maritime boundary dispute – including the forcible expulsion of a vessel from a disputed maritime area – cannot be likened to the arrest of a ship on the high seas for law enforcement purposes. Nonetheless, even with respect to the arrest of ships in law enforcement activities, the International Tribunal on the Law of the Sea (ITLOS) has held that “the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.”⁷

10.9 Further, the arrest of ships on the high seas is justified only in exceptional circumstances. To be valid, it must be demonstrated that “(a) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and (b) the act did not seriously impair an essential interest of the State towards which the obligation existed.”⁸

⁶ See generally *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, 1986 I.C.J. 14, 94, para. 176 (27 June 1986); *Legality of the Threat or Use of Nuclear Weapons*, 1996 I.C.J., at para. 41 (8 July 1996); *Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America)*, 2003 I.C.J., at para. 76 (6 November 2003).

⁷ *M/V “Saiga” (No. 2) Case (St. Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, International Tribunal for the Law of the Sea, para. 155.

⁸ Article 33, paragraph 1 on the International Law Commission’s Draft Articles on State Responsibility cited in *M/V “Saiga” (No. 2) Case (St. Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, International Tribunal for the Law of the Sea, para. 133. See also *Gabcikovo-Nagymaros (Hungary/Slovakia)*, 1997 I.C.J. 7, 40, paras. 51-52 (25 September 1997).

10.10 The object and purpose of Part XV – especially the Compulsory Procedures Entailing Binding Decisions under Section 2 – are to give effect to the *jus cogens* principles embodied by Articles 2(3) and 2(4) of the UN Charter. “[A]ware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world” (Preamble), the drafters of the 1982 Convention went to great lengths to ensure that effective dispute settlement procedures would be available as an alternative to threats or use of force.⁹ At the Final Session of the Law of the Sea Conference in 1982, the Foreign Minister of Guyana, Rashleigh E. Jackson, remarked to the delegates that:

The Convention elaborates a regime for the peaceful use of the seas. In this sense Guyana notes with keen interest the provisions dealing with the peaceful settlement of disputes through compulsory procedures... . Guyana is particularly attracted to article 301 under which states “in exercising their rights and performing their duties under the convention” are enjoined to “refrain from any threat or use of force against the territorial integrity or political independence of any state....”¹⁰

10.11 Similarly, the President of the Law of the Sea Conference, Ambassador T.T.B. Koh, remarked that “The world community’s interest in the peaceful settlement of disputes and the prevention of use of force in the settlement of disputes between States have been advanced by the mandatory system of dispute settlement in the Convention.”¹¹ Because such a mandatory system of dispute settlement is readily available to States parties, the already strict prohibition on the threat or use of force under general international law applies with even greater vigour in the context of the 1982 Convention.

III. Suriname’s Threat and Use of Armed Force

10.12 Suriname’s threat and use of force against Guyana and its licencees CGX Energy, Esso E & P Guyana, and Maxus, beginning in May 2000 and continuing in effect through the present, are wholly unjustified and contrary to its obligation to settle disputes by peaceful means under Article 279 and 301 of the 1982 Convention, Articles 2(3), 2(4), and 33(1) of the UN Charter, and general international law. In response to Suriname’s unexpected and hostile demands for the immediate termination of all further exploration activity in an area well within Guyana’s side of the longstanding *de facto* maritime boundary, Guyana urgently invited its neighbour to engage in immediate high-level dialogue with a view to negotiating provisional arrangements of a practical nature. Suriname opted to use force without ever accepting these repeated offers to negotiate and without offering any other peaceful means of dispute settlement, let alone exhausting such means.

⁹ See S. Rozenne and L.B. Sohn, *United Nations Conventions on the Law of the Sea, 1982. A Commentary*, Vol. V., 3-149 (1989).

¹⁰ Statement by Foreign Minister Rashleigh Jackson of Guyana at the Third United Nations Conference on the Law of the Sea, Final Session, *in Safeguarding the Security of Small States*, at 38 (1982).

¹¹ United Nations, *Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index*, at xxxiii (1983).

10.13 As set forth in Chapters 3 and 4, Guyana has exercised sovereign rights in the maritime area west of the N34E line since at least 1958. It has consistently issued licences for oil exploration and required its licencees to conduct exploratory activities in this area – with the acquiescence of Suriname – for a period of more than 40 years. As set forth in Chapter 4, during 1999, Guyana’s licencee CGX Energy conducted extensive seismic testing in Guyana’s maritime zone immediately adjacent to Suriname. Its survey ship had to enter Surinamese waters across the N34E *de facto* maritime boundary numerous times in order to turn around without entangling the seismic lines that extended outward from the rear of the vessel. Suriname’s Harbour Master in Paramaribo expressly consented to these crossings at the N34E line. Suriname had full knowledge of and acquiesced in CGX’s exploratory activity in the relevant area, as it had done with respect to prior licencees since 1958. In May 2000, the CGX rig and drill ship were situated at 7° 19’ 37.4” N. latitude and 56° 33’ 35.9” W. longitude, approximately 15.4 miles west of the N34E line. They were well within the Guyanese side of the *de facto* boundary where exploratory activities had occurred since 1958. Furthermore, the location of the drilling target was barely nine miles from the location where Royal Dutch Shell drilled the Abary-I exploratory well under Guyanese licence in 1974-75. The proximity of these two drilling targets is depicted in **Plate 42** (in Volume V only).

10.14 Suriname’s *Note Verbale* of 11 May 2000 was its first formal protest against exploratory activity by Guyana’s licencees in the area west of the N34E line. In disregard of the historical equidistance line, and the good faith reliance of Guyana and its licencees on this well-established *modus vivendi*, Suriname pre-emptively demanded “an immediate termination of such activities” without any prior consultation or invitation to negotiate with Guyana. The Surinamese government’s abrupt change of course occurred in the context of the run-up to the 25 May parliamentary elections, during which opposition parties chose to politicise the issue and accused the government of weakness in the face of Guyana’s exploratory activities in “Surinamese” waters.

10.15 In a *Note Verbale* of 17 May, Guyana responded to Suriname’s demands by affirming its sovereign rights over the area and expressing concern over the “tenor” of Suriname’s statements. Instead of agreeing to dialogue, however, Suriname maintained its approach in a *Note Verbale* of 31 May, which contained a warning that it is “determined to protect its territorial integrity and national sovereignty.” On the same day, without awaiting a reply from Guyana, Suriname ordered CGX directly to cease all activities in its concession area and threatened action if it refused to comply. Despite Suriname’s posture, Guyana responded in good faith by calling for immediate negotiation of provisional arrangements pending final agreement on the maritime boundary. In particular, on 2 June, the day before Suriname’s use of force against the CGX exploratory vessels, Guyana submitted a *Note Verbale* indicating that it “remains favourably disposed to engage in dialogue either at the bilateral or multilateral levels” and invited Suriname to send “a high-level delegation to Georgetown within twenty four (24) hours to commence dialogue.” On the same day, Suriname responded to Guyana’s call for immediate high-level dialogue by sending military aircraft into Guyana’s air space and flying low and aggressively over a Guyanese Coast Guard vessel and the CGX rig, as an apparent act of intimidation. Guyana protested but repeated its call for immediate high-level dialogue.

10.16 Shortly after midnight on 3 June 2000, instead of engaging in dialogue or searching for peaceful means of settling the dispute, Suriname elected to pursue a military option. It dispatched two navy gunboats which circled the CGX oil rig and drill ship, repeatedly

ordering them to “leave the area within twelve hours, or the consequences will be yours.”¹² Fearful that the Surinamese navy would use force against them, the crew detached the rig’s legs from the sea floor as expeditiously as possible – a difficult task in a 12-hour time frame – and withdrew from the concession area, escorted by the Surinamese gunboats.

10.17 The crew on the *C.E. Thornton* considered themselves to be so seriously threatened by Suriname’s actions that the rig’s U.S. owners contacted the U.S. Embassy in Georgetown for assistance. The military liaison officer at the Embassy maintained regular contact with the *C.E. Thornton* to ensure the safety of the vessel and its crew until they were out of harm’s way.¹³

10.18 After daybreak on 3 June, Guyana made a public statement concerning Suriname’s conduct, pointing to the “serious damage this position... can inflict on the good neighbourly relations.” Nonetheless, Guyana stated that “despite these violations and intimidatory acts [it] stands ready to engage the Government of Suriname in a frank exchange of views... [and]... in a spirit of good neighbourliness, urges the Government of Suriname to desist from committing further hostile activities... .”

10.19 On 6 June, the Prime Minister of Trinidad and Tobago provided good offices for a meeting between the Guyanese and Surinamese Foreign Ministers. However, Suriname was unwilling to accept a draft Memorandum of Understanding which would have allowed existing exploration licences to be respected pending a final agreement on delimitation of the maritime boundary. Instead of considering this reasonable provisional arrangement in good faith, Suriname continued to pursue its policy of recourse to threats of force.

10.20 Two days after the meeting in Trinidad, on 8 June, the Managing Director of Staatsolie wrote to another Guyanese licensee, Esso E & P Guyana, advising that it was “performing exploration activities in Suriname offshore territories without a permit” and warned that “the Suriname coast guard is patrolling in that area and in order to prevent problems we would appreciate your quick response in this matter.” In the aftermath of the CGX incident, Suriname’s message was clear: it was willing to resort to force yet again in order to put an end to all exploration activities. The next day, Esso informed Guyana that it had received “communications” from Suriname which “reaffirm Esso’s concerns regarding its ability to conduct petroleum operations.”¹⁴ In a letter dated 18 August 2000, Staatsolie reiterated to Esso that “[y]ou may have taken notice of the developments with respect to the proposed drilling activities of CGX last June at the border of Suriname and Guyana.”¹⁵ On 29 September, Esso finally succumbed to Suriname’s threats of force, declaring *force majeure* and terminating all exploration activities in its Guyanese concession area.¹⁶

¹² Affidavit of Edward Netterville, former Rig Supervisor on the *C.E. Thornton*, *supra* Chapter 5, note 31; CGX Morning Report (3 June 2000), *supra* Chapter 5, note 30.

¹³ Cable 00 Georgetown 544 from the United States Embassy in Georgetown, Guyana to the United States Secretary of State (5 June 2000), *supra* Chapter 5, note 36. *See generally supra* Chapter 5, para. 5.9.

¹⁴ Letter from Wendel J. Hoppe, Esso Exploration and Production Guyana Ltd. to Newell M. Dennison, Head of Petroleum Unit, Guyana Geology and Mines Commission (9 June 2000). *See MG*, Vol. III, Annex 165.

¹⁵ Letter from Staatsolie to Esso (18 August 2000), *supra* Chapter 4, note 147.

¹⁶ Letter from Esso (29 September 2000), *supra* Chapter 5, note 40.

10.21 Suriname's threats of force against Guyana's licencees did not end with Esso. In November 2001, Staatsolie made yet another warning to Maxus not to conduct any further exploratory operations in the so-called "Area of Overlap."¹⁷ As related in the official minutes of a 10 November 2000 meeting between Maxus and the Guyana Geology and Mines Commission (GGMC), Maxus found that the "effect of the recent Suriname action on CGX" precluded it from attempting to drill.¹⁸ No further exploration occurred in the area of Maxus' concession. In effect, Suriname's actions resulted in the termination of *all* offshore exploration on Guyana's continental shelf.

10.22 Suriname had several options for peaceful settlement rather than recourse to armed force. In addition to Guyana's expressions of good faith and repeated invitations for high-level negotiations, Suriname could have pursued compulsory procedures under Part XV of the Convention, including conciliation and arbitration. To the extent it felt that time was of the essence, it could have requested provisional measures from ITLOS pending establishment of an Annex VII Tribunal. Instead, it chose threats and use of armed force to enforce arbitrary demands.

10.23 Suriname's conduct and its potential implications on peaceful relations were significant. Neither Guyana nor Suriname has, or can afford to have, sizeable armed forces. In relative terms, Suriname's use of aircraft in hostile flyovers, and the use of two navy gunboats to forcibly expel a civilian vessel, represent a significant show of military force.

IV. Reparations Owed to Guyana

10.24 As set forth above, Suriname's threat and use of armed force against Guyana and Guyana's licencees constitute internationally wrongful acts and entail the international responsibility of Suriname. As the responsible State, Suriname is under an obligation to make full reparation for the injuries caused by its unlawful conduct. Reparation must "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."¹⁹ Reparation includes all losses "attributable [to the wrongful act] as a proximate cause."²⁰

10.25 Reparation may be in the form of "restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, either singly or in combination."²¹ Reparation may take the form of:

¹⁷ Letter from Robeson Benn, Commission, GGMC to Maxus Guyana Ltd. (24 November 2001), *supra* Chapter 5, note 51.

¹⁸ Minutes, Advisory Meeting Between Guyana Geology and Mines Commission and Repsol-YPF/AGIP (10 November 2000), *supra* Chapter 5, note 51.

¹⁹ *Factory at Chorzow, (Merits) (Germany v. Poland)*, 1928 P.C.I.J. (ser. A) No. 17, at 47 (13 September 1928).

²⁰ See United States-Germany Mixed Claims Commission, *Administrative Decision No. II*, UNRIIAA, vol. VII 23, at 30 (1923).

²¹ Article 42(1) of Draft Articles on Responsibility of States for Internationally Wrongful Acts in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001).

monetary compensation for economically quantifiable damage as well as for non-material damage, depending on the circumstances of the case. The circumstances include such factors as the conduct of the State which committed the wrongful act and the manner in which the violation occurred. Reparation in the form of satisfaction may be provided by a judicial declaration that there has been a violation of a right.²²

10.26 With respect to non-material injury "... unlawful action against non-material interests, such as acts affecting the honour, dignity or prestige of a State, entitle the victim State to receive adequate reparation, even if those acts have not resulted in a pecuniary or material loss for the claimant State."²³

10.27 In the present case, Suriname's unlawful conduct has resulted in both material and non-material damage to Guyana. With respect to financially assessable injuries, Suriname's conduct has effectively terminated all exploration in the affected maritime area. Accordingly, Guyana is entitled to compensation for (a) loss of foreign investment in offshore exploration for hydrocarbon resources on its continental shelf, as required by the terms of licences issued to oil companies, and related benefits of such capital inflow, insofar as such losses arise directly from Suriname's use of force against CGX's vessels and threats of similar action against other licencees such as Esso and Maxus; (b) loss of licencing fees and other related sources of income from the issuance of licences for offshore exploratory activities, arising directly from the same conduct; and (c) the foregone benefits of the development of Guyana's offshore resources, also arising directly from Suriname's conduct.

10.28 With respect to lost foreign investment, under the terms of its agreement with Guyana, CGX was committed to the expenditure of U.S. \$1.2 million for a 1,500 km² 2D seismic survey, U.S. \$4 million for an additional 500 km² 3D survey, and U.S. \$8 million to drill an exploratory well, for a total of U.S. \$13.2 million in investment.²⁴ Similarly, under the terms of its agreement, Esso was committed to the expenditure of U.S. \$1.7 million for a 2,150 km² 2D seismic survey, U.S. \$2.4 million on completing another 3,000 km² 2D seismic survey, U.S. \$7 million on either drilling an exploratory well to 3,600 metres, or completing 1,250 km² of a 3D seismic survey, and U.S. \$500,000 on conducting geochemical sampling and other exploratory activities, for a total of U.S. \$11.6 million in investment. Furthermore, the terms of the Maxus concession agreement required Maxus to drill an initial exploratory well at a cost of U.S. \$7 million and to conduct further seismic exploration at a cost of U.S. \$1 million for a total of \$8 million in investment.²⁵ Guyana would thus have benefited from at least U.S. \$32.8 million in foreign investment in the development of its hydrocarbon resources had Suriname not used or threatened to use force against Guyana's licencees in violation of international law.

22 *M/V "Saiga" (No. 2) Case (St. Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, International Tribunal for the Law of the Sea, para. 171.

23 *Rainbow Warrior (New Zealand/France)*, UNRIAA, vol. XX 217, at 267 (1990).

24 Affidavit of Newell Dennison, *supra* Chapter 5, note 38. This figure does not include the estimated loss of \$5.5 million by CGX in relation to the disruption of the exploratory drilling in June 2000.

25 Affidavit of Newell Dennison, *supra* Chapter 5, note 38.

10.29 Therefore, the direct losses to Guyana in lost foreign investment arising directly from Suriname's actions are in the amount of no less than US \$ 32.8 million.

10.30 Guyana is further entitled to compensation for lost licencing fees and other related sources of income from the issuance of licences for offshore exploration. Because of Suriname's threats against Esso and its consequent declaration of *force majeure*, Guyana lost U.S. \$3,000 in an application fee for Esso's renewal; U.S. \$600,000 in rental fees Esso did not pay after declaring *force majeure*; U.S. \$110,000 worth of contractually-required training; U.S. \$4,000 in lost licence fees and U.S. \$145,000 in lost training fees due to Guyana not being able to re-licence acreage relinquished by Esso; and U.S. \$180,000 in lost rental fees, for a total of U.S. \$1,042,000.²⁶ Because of Suriname's threats, Maxus was unable to meet its obligation to relinquish 25 percent of its concession area to Guyana (subsequently reduced to 10 percent in 2003), and thus, Guyana has been unable to re-licence this acreage, resulting in a loss of U.S. \$6,112 in rental fees and the loss of a further U.S. \$3,664 worth of training which Maxus would have otherwise been contractually obligated to spend on training GGMC personnel, for a total of U.S. \$9,776.²⁷

10.31 Therefore, the losses to Guyana in lost revenue and other benefits from issuance of exploration licences arising directly from Suriname's actions are in an amount of no less than U.S. \$1,051,776.

10.32 Guyana is also entitled to compensation for losses occasioned by the foregone benefits of its development plans and policies, including but not limited to the benefits accrued from commercial production of oil and other hydrocarbons. Guyana reserves the right to specify and quantify such losses in subsequent pleadings.

10.33 With respect to non-material injuries, Suriname's unlawful use and threats of force against Guyana and its licencees have adversely affected Guyana's honour, dignity, and prestige, for which Suriname owes Guyana reparation in the form of satisfaction including but not limited to a declaration by the Tribunal that Suriname's threats and use of force were contrary to the rights of Guyana to enjoy peaceful relations under international law, and an order precluding Suriname from further resort to threats or use of force against Guyana or its licencees.

²⁶ *Ibid.*

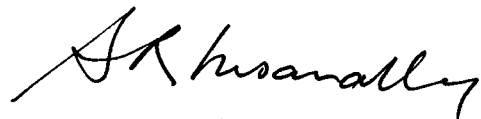
²⁷ *Ibid.*

CHAPTER 11
SUBMISSIONS

Having regard to the considerations set forth in this Memorial and, in particular, the evidence put to the Arbitral Tribunal,

May it please the Arbitral Tribunal to adjudge and declare that:

- (1) from the point known as Point 61 (5° 59' 53.8" north and longitude 57° 08' 51.5" west), the single maritime boundary which divides the territorial seas and maritime jurisdictions of Guyana and Suriname follows a line of 34° east of true north for a distance of 200 nautical miles;
- (2) Suriname is internationally responsible for violating its obligations under the 1982 United Nations Convention on the Law of the Sea, the Charter of the United Nations, and general international law to settle disputes by peaceful means because of its use of armed force against the territorial integrity of Guyana and/or against its nationals, agents, and others lawfully present in maritime areas within the sovereign territory of Guyana or other maritime areas over which Guyana exercises lawful jurisdiction; and that Suriname is under an obligation to provide reparation, in a form and in an amount to be determined, but in any event no less than U.S. \$33,851,776, for the injury caused by its internationally wrongful acts;
- (3) Suriname is internationally responsible for violating its obligations under the 1982 United Nations Convention on the Law of the Sea to make every effort to enter into provisional arrangements of a practical nature pending agreement on the delimitation of the continental shelf and exclusive economic zones of Guyana and Suriname, and by jeopardising or hampering the reaching of the final agreement; and that Suriname is under an obligation to provide reparation, in a form and in an amount to be determined, for the injury caused by its internationally wrongful acts.



Samuel Rudolph Insanally
Agent of the Republic of Guyana
22 February 2005

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