

## CHAPTER 1

### INTRODUCTION

#### I. Summary of Procedure

1.1. This Counter-Memorial of the Republic of Suriname is filed in response to Guyana's Memorial dated 22 February 2005 and in accordance with Article 9.2 of the Rules of Procedure as modified by the Tribunal's letter dated 18 February 2005. It is also presented bearing in mind the Tribunal's Order No. 2 of 18 July 2005, which in paragraph 3 makes clear that the Tribunal "shall . . . rule on Suriname's Preliminary Objections to jurisdiction and admissibility in its final award."<sup>1</sup> Accordingly, Suriname understands that the Tribunal appreciates that Suriname maintains its Preliminary Objections in their entirety until they are ruled upon. This Counter-Memorial and Suriname's Rejoinder are without prejudice to those Preliminary Objections in any way.

1.2. Those Preliminary Objections include Suriname's objection to the jurisdiction of the Tribunal. Suriname contends that the Tribunal cannot decide the maritime boundary dispute between the Parties because there is no agreement on a matter of territorial sovereignty that must be decided before there can be a maritime delimitation. Matters of territorial sovereignty, in this case the location of the land boundary terminus, do not come within the jurisdiction of this Tribunal, a tribunal that is constituted under Part XV of the 1982 Law of the Sea Convention and whose jurisdiction is defined by Article 288 of that Convention. Because the Tribunal has not yet addressed Suriname's argument, neither the Parties nor the Tribunal has a legally established territorial point from which to begin a maritime delimitation between two adjacent neighboring states.

1.3. Suriname reaffirms its position as set forth in its Preliminary Objections that the Tribunal does not have the power to establish that territorial point. For that reason Suriname in this Counter-Memorial is not in a position to suggest a maritime boundary position running from a territorial point that Guyana has not accepted. This leaves Suriname in the position in this Counter-Memorial of setting forth its maritime boundary position making use of the 1936 Point but only in combination with the 10° Line. As stated in the Preliminary Objections,

Suriname has been willing to accept the 1936 Point as the reference point for the maritime boundary between Suriname and Guyana if that maritime boundary were to run along a 10° azimuth to the outer limit of Suriname's maritime zones.<sup>2</sup>

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<sup>1</sup> Order No. 2 of 18 July 2005, Preliminary Objections. The Memorandum of the Republic of Suriname on Preliminary Objections ("SPO") was filed on 23 May 2005 in accordance with the Rules of Procedure.

<sup>2</sup> SPO, para. 3.14, p. 18. Pursuant to the email dated 29 September 2005, from D. Ratliff on behalf of the Tribunal, Suriname has not included in its Counter-Memorial ("SCM") or Counter-Memorial Annexes (SCM, Vol. II and Vol. III) the documents it provided in its Memorandum and Annexes on Preliminary Objections or documents Guyana provided in its Memorial or Annexes. Instead, Suriname provides cross-references to documents contained in those volumes. In addition, in this Counter-Memorial, Suriname has not relied upon any materials from a file in the archives in the Netherlands to which Guyana has been denied access. Accordingly, no documents from those archives have been annexed herewith in accordance with the letter of 21 February 2005 from P. Saunders to President D. Nelson.

Accordingly, Suriname's use of the 1936 Point as the land boundary terminus in this Counter-Memorial is on this basis only and is without prejudice to Suriname's position that there is no independent agreement on the 1936 Point alone as Guyana contends.

1.4. In this Counter-Memorial, Suriname defends itself against the claims and submissions of Guyana that are set out in its Memorial. Suriname welcomes the opportunity to do so and calls upon the Tribunal both to reject Guyana's submissions, which have no legal or factual basis, and to adopt the submissions of Suriname that are found in the final Chapter of this pleading.

## II. Contentions of Guyana

1.5. Chapter 11 of Guyana's Memorial sets out three submissions. First, Guyana requests that the Tribunal determine that "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."<sup>3</sup> Second, Guyana requests that the Tribunal find that Suriname has engaged in acts for which it is internationally responsible "in maritime areas within the sovereign territory of Guyana or other maritime areas over which Guyana exercises lawful jurisdiction."<sup>4</sup> Third, Guyana requests that the Tribunal find that Suriname is responsible for not making "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."<sup>5</sup> Guyana seeks reparations in the amount of US\$33,851,776 in connection with its second submission and "an amount to be determined" in connection with its third submission.

1.6. There is an internal inconsistency between Guyana's submissions. On the one hand, Guyana's Submissions 1 and 3 are founded on the proposition that there is no established maritime boundary between the Parties. On the other hand, Guyana's Submission 2 charges that Suriname has acted unlawfully with respect to activities in a maritime area in which Guyana exercises lawful authority. Guyana cannot have it both ways. There either is or is not a maritime boundary that has been established in law.

1.7. Guyana's first submission is no surprise to Suriname. It is a straightforward expression of Guyana's expansive maritime boundary claim. As set out in Guyana's Memorial, that claim is based on something that Guyana calls the "historical equidistance line" and justifies as legally required because it is alleged to be consistent with the conduct of the Netherlands and the United Kingdom as the colonial powers<sup>6</sup> and Suriname and Guyana since their independence. Suriname disagrees with that claim. In the following Chapters Suriname demonstrates that Guyana's claim line of 34° has no factual or legal basis.

1.8. Guyana's third submission is a further admission that there is no "agreement on the delimitation of the continental shelf and exclusive economic zones of Guyana and Suriname."<sup>7</sup>

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<sup>3</sup> Memorial of the Republic of Guyana, 22 February 2005 ("MG"), p. 135. Guyana Submission 1.

<sup>4</sup> MG, p. 135. Guyana Submission 2.

<sup>5</sup> MG, p. 135. Guyana Submission 3.

<sup>6</sup> From 1954 to the time of independence in 1975, Suriname was an autonomous part of the Kingdom of the Netherlands. SPO, para. 3.8 n.64, p. 16.

<sup>7</sup> MG, p. 135. Guyana Submission 3.

This submission charges that Suriname has not made “every effort to enter into provisional arrangements of a practical nature pending agreement . . . ,”<sup>8</sup> a reference to an obligation set forth in Articles 74(3) and 83(3) of the 1982 United Nations Convention on the Law of the Sea that only arises in the absence of an established maritime boundary.<sup>9</sup> Thus that submission recognizes there is no maritime boundary seaward of the territorial sea and complains that Suriname has not agreed to give up its claim and interests in the disputed maritime area as Guyana has demanded. In Chapter 8, Suriname responds to the specific charge of Guyana’s third submission and demonstrates that it has no factual or legal basis.

1.9. Guyana’s Submission 2 takes a different approach. It charges Suriname with the “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,”<sup>10</sup> all of which can only occur if there is an established maritime boundary between the Parties that Suriname breached, which there is not. Guyana has twisted, distorted and conveniently disregarded the facts in bringing that submission. It was Guyana that authorized drilling activities in a maritime area that has been in dispute since before the independence of both countries and Guyana did so despite the diplomatic objections of Suriname. Guyana acted unlawfully and by its unlawful act created a crisis. Suriname responds further to Guyana’s Submission 2 in Chapter 7 and demonstrates that it has no factual or legal basis.

### III. Overview of Suriname’s Position

1.10. Suriname’s position is that the Tribunal is not empowered to establish the maritime boundary between Suriname and Guyana and, in all events, that Guyana’s second and third submissions are inadmissible. This position is set forth in Suriname’s Preliminary Objections. Since the Tribunal has determined not to rule on Suriname’s Preliminary Objections as a preliminary matter but only to do so in its final award, Suriname finds itself in the situation of either doing no more in this Counter-Memorial than reaffirming the Preliminary Objections or responding to Guyana’s three submissions as if the Tribunal had ruled against Suriname’s Preliminary Objections. In taking the latter course, it must once again be emphasized that the summary of Suriname’s argument as set forth below and as elaborated in the following Chapters is without prejudice to Suriname’s Preliminary Objections and only constitutes Suriname’s alternative position should the Tribunal rule against those Preliminary Objections. It is on this basis that this Counter-Memorial must be understood.

1.11. Suriname’s position is that if the land boundary terminus was established in 1936, it was inextricably linked with a territorial waters boundary established as a 10° Line from that point, and it was established without reference to the breadth of the territorial sea. As the breadth of the territorial sea is today 12 nautical miles, Suriname’s position is that the territorial sea boundary between Suriname and Guyana is established as the 10° Line to the 12-nautical-mile limit.

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<sup>8</sup> *Ibid.*

<sup>9</sup> Both Articles 74(3) and 83(3) provide in pertinent part: “Pending agreement . . . , 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 jeopardize or hamper the reaching of the final agreement.”

<sup>10</sup> MG, p. 135. Guyana Submission 2.

1.12. It is also Suriname's position that no agreement exists pertaining to the continental shelf or exclusive economic zone boundary seaward of the territorial sea. In this light, Suriname's position is that the 10° Line produces an equitable delimitation line in the circumstances to the 200-nautical-mile limit in accordance with applicable international law.

1.13. Thus, in contrast to Guyana's first submission, Suriname's submission pertaining to the maritime boundary requests that the Tribunal determine that the single maritime boundary follows the 10° Line to its intersection with the 200-nautical-mile limit established from Suriname's baseline. Accordingly, the Tribunal is faced with maritime boundary claims of Suriname, on the one hand, and Guyana, on the other hand, of 10° and 34° respectively. Suriname's claim has reflected its position since before independence, contrary to the many misleading, inaccurate assertions of Guyana's Memorial to the effect that Suriname has acted throughout time consistent with Guyana's claim. Guyana's claim, while couched in "historical" terms, has no basis in history or law or other relevant facts and as shown in Chapter 3 is of a recent vintage.

1.14. As for Guyana's Submissions 2 and 3, Suriname calls on the Tribunal to reject those submissions. Concerning Submission 2, Guyana deliberately attempted to create a *fait accompli* in the area of overlapping maritime claims by authorizing the company holding Guyana's oil concession, CGX, to undertake drilling operations in an area that it knew was claimed by Suriname. Guyana's action was unlawful as it was contrary to its duty "not to jeopardize or hamper the reaching of the final agreement."<sup>11</sup> Suriname had every right to protect its interests and thus to ask the drill ship to leave the disputed area.

1.15. Concerning Submission 3, it was Guyana that breached its duties to cooperate pending a maritime boundary settlement and created and has maintained a crisis atmosphere. It has demanded that the only acceptable provisional arrangement of a practical nature is for Suriname unilaterally to recognize the validity of Guyana's agreements with its concessionaires as those agreements pertain to the area of overlapping maritime claims. That is not a good faith position and Suriname has engaged in no unlawful act by rejecting it. A provisional arrangement of a practical nature requires the agreement of both parties. Guyana's unabashedly unreasonable demands have made that impossible.

1.16. Accordingly, Guyana's second and third submissions are without any factual or legal foundation and are not made in good faith. In neither situation is Suriname's state responsibility engaged because Suriname did not act unlawfully. To the contrary, Guyana acted unlawfully in authorizing drilling in a disputed area in violation of the *status quo* to create a *fait accompli*, exacerbating the differences between the Parties, and thereby breaching its duty "not to jeopardize or hamper the reaching of the final agreement."<sup>12</sup> Furthermore, by making unreasonable demands during negotiations to adopt provisional arrangements of a practical nature, Guyana has breached its affirmative duty to make "every effort"<sup>13</sup> to reach such arrangements. For these reasons, Suriname submits that the Tribunal should find that Guyana has not fulfilled its international law obligations to Suriname in these regards.

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<sup>11</sup> Articles 74(3) and 83(3) of the 1982 Law of the Sea Convention.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

#### **IV. Organization of the Counter-Memorial**

1.17. This Counter-Memorial is organized as follows:

Chapter 1:	Introduction
Chapter 2:	Points of Agreement and Disagreement
Chapter 3:	The Single Maritime Boundary Lines Claimed by the Parties
Chapter 4:	The Law of Maritime Delimitation Applicable in This Case
Chapter 5:	There Is No <i>Modus Vivendi</i> Pertaining to a Boundary Line
Chapter 6:	Application of the Law to the Facts
Chapter 7:	Suriname's Response to Guyana's Submission 2
Chapter 8:	Suriname's Response to Guyana's Submission 3
Chapter 9:	Submissions