

CHAPTER 6

APPLICATION OF THE LAW TO THE FACTS

6.1. This Chapter applies the law to the facts. The applicable law emphasizes the dominant role of geography as a relevant circumstance. Thus, this Chapter begins with a discussion of the relevant geographic circumstances. Second, as it is the practice of the International Court of Justice and arbitral tribunals to examine the provisional equidistance line, Suriname sets forth the provisional equidistance line between Suriname and Guyana constructed using the best data available, without prejudice to Suriname's position that the equidistance method is not appropriate in this case. The third section of this Chapter criticizes the provisional equidistance line so constructed and demonstrates its inequitable characteristics. In the fourth section of the Chapter, Suriname identifies the method to be employed to achieve an equitable delimitation in this case.

I. The Relevant Geographic Circumstances

6.2. Figure 30 highlights the geographic circumstances on the coasts of Suriname and Guyana that are relevant in this case.

A. The Coasts of Suriname and Guyana Are Adjacent Coasts

6.3. Suriname and Guyana are adjacent states on the north coast of South America. There is no doubt that the coasts of the two countries are adjacent as that term is used in the law and practice of maritime delimitation. The importance of categorizing the coasts as adjacent is that, as shown in Chapter 4 above, in adjacent state situations there is reason to be wary of the equidistance method. The significance of the distinction between adjacent and opposite states has been emphasized in all the major maritime boundary delimitation cases of the International Court of Justice involving adjacent states, namely the *North Sea Continental Shelf* cases, *Tunisia/Libya*, and *Gulf of Maine*.⁴³⁰ As discussed in Chapter 4, the geographic circumstances that cause the equidistance line to have inequitable characteristics in an adjacent state situation may often be mitigated by a delimitation method that is based on coastal fronts, rather than the self-selected individual coastal basepoints that determine the equidistance line.

B. The Coastlines of Suriname and Guyana Change Direction Where They Meet

6.4. When the coastlines of Suriname and Guyana are viewed together they do not form a straight line. There is a change in the direction of the coastline of South America in the vicinity of the Suriname-Guyana land boundary terminus where the west bank of the Corantijn River meets the sea. Guyana refers to this geographic circumstance at paragraph 2.6 of its

⁴³⁰ Qatar and Bahrain do not share a land boundary and thus the maritime delimitation between them in the first instance is one between opposite states; however, the Court analogized the northern section of that maritime boundary to a situation involving adjacent coasts. See *Case Concerning Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, I.C.J. Reports 2001, paras. 246-47. The maritime boundary determined by the Court in the Cameroon-Nigeria case involved two countries that share a land boundary and thus the maritime boundary can be properly classified as one between adjacent states, but it only extends for a short distance. *Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)*, Merits, Judgment, I.C.J. Reports 2002, para. 307, p. 141.

Memorial, noting that rivers along the coast of South America, including the Corantijn River, “mark distinct indentations and changes in direction of the coastline.”⁴³¹

6.5. Thus, it is not just that the coastline changes direction in the vicinity of the land boundary terminus that is significant but it is also that this change of direction occurs at an “indentation” in the coastline. Elsewhere, Guyana states: “The coastlines meet at the boundary terminus located at the mouth of the Corentyne River and together form a wide and irregular concavity.”⁴³²

6.6. Coastal concavities are a classic example of a geographic circumstance that will often result in an inequitable delimitation if the equidistance method is employed. As the Court noted in the *North Sea Continental Shelf* cases:

in the case of a concave or recessing coast . . . the effect of the use of the equidistance method is to pull the line of the boundary inwards, in the direction of the concavity.⁴³³

Of course, the Court’s words must be examined in the context of the actual geographic circumstances and must take into account the location of the land boundary terminus relative to the coastal concavity configuration. As is demonstrated more fully below, the application of the equidistance method to the actual geographic circumstances of Suriname and Guyana leads to an inequitable delimitation. The inequity of the equidistance method in this case is attributable to the location of the land boundary terminus where the west bank of the Corantijn River meets the sea, the convex nature of Guyana’s adjoining coast and the recessed nature of Suriname’s coast east of the Corantijn River.

6.7. It is common ground that the coasts of Suriname and Guyana are adjacent. It is also clear that they change direction where they meet, that they meet in a coastal indentation and that Guyana’s coast is convex and Suriname’s coast is recessed. These are relevant geographic circumstances that bear on the choice of delimitation method. The coastal configurations of both Suriname and Guyana also stand to be examined individually to assess whether they have attributes relevant to the establishment of an equitable maritime boundary.

C. The Coast of Suriname and Its Concave Characteristics

6.8. Suriname’s coast is aligned west to east along 6° N latitude, and it essentially faces north for most of its entire length. However, it is marked by three localized indentations and one significant concavity. These indentations include the areas immediately around the mouths of the Corantijn River, the Coppename River and the Suriname River. The significant concavity on the Suriname coast is located between Turtle Bank on the west and Hermina Bank on the east, as can be readily identified at Figure 30. The Coppename River mouth is located at the back of this concavity.

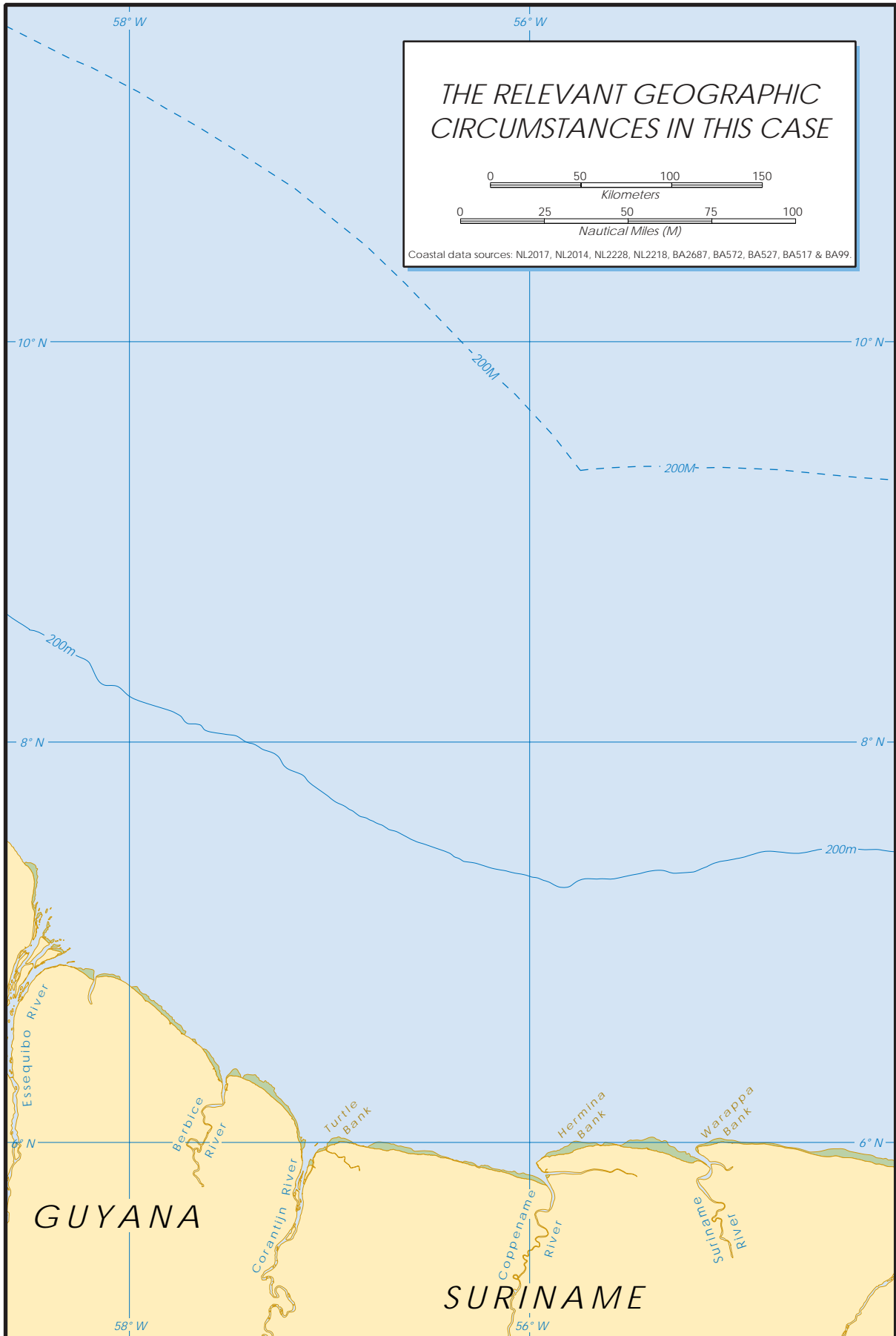
6.9. For purposes of the delimitation with Guyana, Suriname’s relevant coast runs east from the west bank at the mouth of the Corantijn River to the east end of Warappa Bank. East of

⁴³¹ MG, para. 2.6, p. 8.

⁴³² MG, para. 2.7, p. 8.

⁴³³ *North Sea Continental Shelf Cases* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Merits, Judgment, I.C.J. Reports 1969, p. 17, para. 8.

Figure 30



Warappa Bank the coast of Suriname turns southward away from Guyana and becomes relevant to the delimitation with French Guiana, not Guyana. From Warappa Bank westward lies the coastal front of Suriname that when projected seaward converges and overlaps with the relevant coastal front of Guyana. Also west of Warappa Bank are located the coastal basepoints that for Suriname control the provisional equidistance line to the 200-nautical-mile limit.

D. The Coast of Guyana and Its Convex Characteristics

6.10. The coast of Guyana is characterized by convex coastal configurations rather than by concavities. The convexities of Guyana's coast, combined with Suriname's concave coast between Turtle Bank and Hermina Bank, have a notable effect on the provisional equidistance line. That is particularly so given the extensive low-water line in some locales along Guyana's coast, especially immediately west of the mouth of the Corantijn River.

6.11. Three coastal convexities on Guyana's coast can be identified and are seen on Figure 30. The first extends west from the west bank at the mouth of the Corantijn River to the Berbice River. This rounded or arcing coastline protrudes seaward relative to the adjacent coast of Suriname, and all the more so due to the extensive low-water line. The second convexity is further west between the Berbice River and the Essequibo River. The third significant convexity lies west of the Essequibo River and is formed by the coastline of Guyana that is claimed by Venezuela. The convex coastline west of the Essequibo River, moreover, is not aligned with Guyana's coast that lies east of the Essequibo River, as it extends relatively further into the Atlantic Ocean than the coast of Guyana to the east.

6.12. The coastline of Guyana that is relevant to this case is the coast of Guyana that lies east of the Essequibo River. This is the coast of Guyana that when projected seawards converges and overlaps with the projection seaward of the relevant coast of Suriname. Also, with two exceptions, the basepoints on Guyana's coast that control the provisional equidistance line with Suriname to the 200-nautical-mile limit are on this coast.

II. The Provisional Equidistance Line

6.13. Without prejudice to Suriname's position that the territorial sea boundary is established as the 10° Line and that an equitable delimitation will extend the 10° Line to the 200-nautical-mile limit, this Counter-Memorial now turns to an examination of the provisional equidistance line. Suriname does so being mindful of the procedure employed by the International Court of Justice and arbitral tribunals to first examine the provisional equidistance line. Suriname also does so without hesitation because such an examination demonstrates the inequitable characteristics of the provisional equidistance line.

6.14. Unfortunately, in spite of all that was said by Guyana about equidistance in its Memorial, Guyana did not depict in detail or describe the provisional equidistance line using the modern data that it has available. In particular, it did not show the locations of the basepoints on the adjacent coasts of Suriname and Guyana that direct the provisional equidistance line. Nor did it show any version of an equidistance line reaching to the 200-nautical-mile limit other than Plate 41.⁴³⁴ As Suriname has shown in Chapter 3, Guyana's Plate 41 demonstrates conclusively that Guyana's various "historical equidistance lines" have

⁴³⁴ MG, Vol. V.

no correspondence to what Guyana calls a “strict equidistance line,” which in fact is the provisional equidistance line.

6.15. Thus, it falls to Suriname to provide the Tribunal with accurate information about the provisional equidistance line using the best data available.⁴³⁵

A. The Construction of the Provisional Equidistance Line

6.16. Figure 31 shows the provisional equidistance line between Suriname and Guyana. On this Figure the relevant basepoints on the low-water line that determine each provisional equidistance line turning point are also shown. The provisional equidistance line (beginning on the low-water line at a 10° bearing from the 1936 Point) is made up of 32 segments extending from the coast to the 200-nautical-mile limit. At Annex 67 of this Counter-Memorial are tables that set out the geographic coordinates of each provisional equidistance line turning point and the relevant coastal basepoints and their coordinates.

6.17. For the purpose of calculating the provisional equidistance line, Suriname has not constructed a river closing line. This is in keeping with Suriname’s position that the land boundary terminus remains to be legally established. Once the land boundary terminus is determined by agreement of the Parties, Suriname will establish a closing line for the Corantijn River.

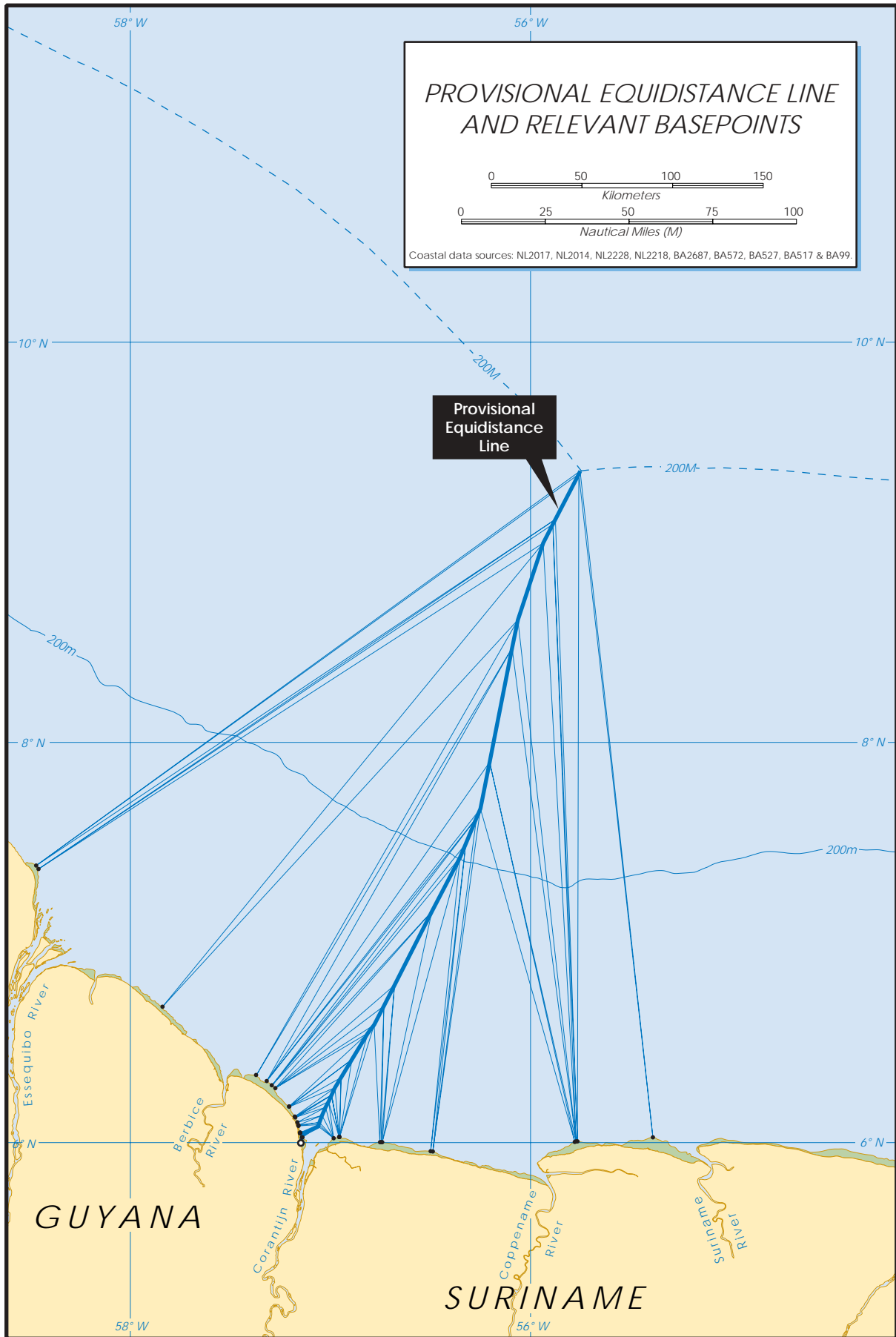
6.18. As Suriname has demonstrated in its Preliminary Objections and as is addressed in the Points of Disagreement in Chapter 2, the absence of a starting point for the maritime delimitation precludes the Tribunal from applying any method of delimitation. This problem cannot be resolved by selecting a seaward point that purports to make irrelevant the dispute over the location of the land boundary terminus. The land boundary terminus defines what coast belongs to which Party, and the Tribunal has no basis for making that judgment or for evaluating, indeed speculating, on a possible maritime boundary outcome based on hypothetical outcomes of a territorial dispute. Nonetheless, faced with the need to proceed in this Counter-Memorial as ordered by the Tribunal’s Procedural Order No. 2, Suriname does so in full confidence that its Preliminary Objections will be heard and decided before any consideration is given to the merits of this case, if indeed any such consideration is warranted after the Preliminary Objections are decided.

B. Characteristics of the Provisional Equidistance Line

6.19. The relative location of the respective basepoints on the coasts of Suriname and Guyana causes the provisional equidistance line to change direction on its way to the 200-nautical-mile limit. In general, two such reorientations of the provisional equidistance line should be noted, giving heed to the coastal basepoints that cause those major shifts in

⁴³⁵ The most accurate large-scale charts of this area are produced by the Netherlands Hydrographic Office (NLHO) and the United Kingdom Hydrographic Office (UKHO). The low-water lines are shown on the charts listed at SCM, Vol. III, Annex 68. Guyana contends that U.S. NIMA charts 24370 and 24380 (both at a scale of 1:300,000) are “at the present time, the most accurate large-scale charts showing the low-water lines of Guyana and Suriname.” MG, para 8.19. This is not true. In fact, Guyana’s smaller-scale U.S. charts are simply compilations of the NLHO and UKHO charts listed at SCM, Vol. III, Annex 68. This is clear from the source diagrams and source lists on NIMA 24370 and NIMA 24380. As such, the two sets of charts used by the parties should not differ significantly in their depiction of the low-water lines of Suriname and Guyana.

Figure 31



direction. Those two reorientations create three sections of the provisional equidistance line. The three sections are addressed below beginning with the near-shore section and are shown at Figure 32.

6.20. Due to the geographical circumstances, the first section of the provisional equidistance line thrusts east northeast in front of the mouth of the Corantijn River and continues in a northeasterly direction across the coastal front of Suriname. The direction of the provisional equidistance line in this first segment is due to the change in the direction of the South American coast at the mouth of the Corantijn River, the location of the land boundary terminus where the western bank of that river meets the sea, the convexity of Guyana's adjacent coast immediately west of that location and the Suriname coastal concavity stretching toward the Coppename River.

6.21. Even if Suriname were to employ a river closing line to serve as a baseline for determining the provisional equidistance line, this problem would not be totally alleviated. A river closing line as a baseline would not mitigate the cut-off of the extension of Suriname's northward facing coastal front created by the first section of the provisional equidistance line as it moves away from the coast. The cut-off effect is caused by a combination of Suriname's concavity pulling, and Guyana's convex coastline west of the mouth of the Corantijn River pushing, the provisional equidistance line toward and in front of Suriname's coast. Figures 31 and 32 clearly demonstrate the way the geographical features manipulate the provisional equidistance line in this adjacent state situation. The intense congregation of Guyana's basepoints just west of the Corantijn River on the convex coast of Guyana direct the provisional equidistance line in segment after segment as it extends into the sea. On the adjacent Suriname coast the controlling basepoints are spread out and indeed are largely absent from Suriname's recessed coast reaching toward the Coppename River. Thus, the coastal configuration of Guyana from the mouth of the Corantijn River west to the Berbice River pushes the first segment of the provisional equidistance line eastward. At the same time, the concave coast of Suriname does not offer any countervailing protuberance, and thus there are no basepoints on Suriname's coast to counter those of Guyana in order to turn the provisional equidistance line away from the front of the coast of Suriname. Out as far as the 200-meter depth contour, the relative position of the basepoints on the adjacent coasts continues to direct the provisional equidistance line in this way: the provisional equidistance line continues to be pushed by Guyana's convex coast near the mouth of the Corantijn River and pulled by the concave nature of Suriname's coast toward and in front of the coast of Suriname.

6.22. The second section of the provisional equidistance line starts shortly after it crosses the 200-meter depth contour, where it takes a sharp turn to the north. This is the first pronounced change in direction of the provisional equidistance line. This change of direction is caused by the fact that the eastern headland of the Suriname concavity (Hermina Bank) begins to take effect on the line. Thus, for the first time basepoints on Suriname's coast counter the influence of the basepoints on Guyana's protruding convex coast just west of the mouth of the Corantijn River and turn the provisional equidistance line so that it ceases its swing in front of Suriname's coastal front. While the northward direction of the provisional equidistance line in this second sector might suggest that it is a reasonable line, it is in fact not an equitable delimitation line in this sector since it starts from an eastward point that has been determined by the convex/concave relationship between the neighboring coasts. Suriname's basepoints on Hermina Bank can only stop the swing of the provisional equidistance line from in front of Suriname's coast; they cannot cause the provisional equidistance line to retrace its route.

Moreover, even at this juncture, the protruding basepoints on Guyana's coast, basepoints that are still only a few miles from the 1936 Point and almost all east of the Berbice River, continue to push the second segment of the provisional equidistance line to the east. Suriname's basepoints east of the Coppename River, however, can only counter their influence to some extent, yet they do so and for this reason the second segment of the provisional equidistance line has a northerly orientation.

6.23. The third section of the provisional equidistance line (within 200 nautical miles of the coast) starts just as it approaches the 200-nautical-mile limit. For this third segment, Guyana's controlling basepoints are located on the protruding coast west of the Essequibo River in coastal areas claimed by Venezuela. The relatively further seaward location of the two proximate basepoints is juxtaposed with basepoints on Suriname's coast on Hermina Bank that remain aligned along 6° N latitude. Accordingly, here, basepoints on Guyana's prominent convex coastline west of the Essequibo River cause the provisional equidistance line to veer again to the east to Suriname's disadvantage. While the coast on which these basepoints are located is in dispute with Venezuela, the relevant geographical fact is that they are located on a coast west of the Essequibo River that is not only convex but protrudes in relative terms substantially into the Atlantic Ocean. For this reason, with no basepoint on Suriname's coast in a balancing position, Guyana's basepoints cause the provisional equidistance line once again to change direction and veer to the east across Suriname's coastal front as the provisional equidistance line approaches the 200-nautical-mile limit.

III. The Inequitable Characteristics of the Provisional Equidistance Line

6.24. In order to evaluate the provisional equidistance line, it is useful to examine the relationship between the neighboring adjacent coasts. This is best done when those coasts are represented by two simple straight lines – one line representing the coastal front of Suriname and the other line representing the coastal front of Guyana. On this basis a reasoned assessment is possible as to whether a delimitation method such as equidistance, which relies on micro-geography in its application as evidenced by the provisional equidistance line, or one that relies on a method based on coastal fronts, is the more appropriate in the circumstances.

6.25. As noted above, the relevant coastal front of Suriname runs for approximately 140 nautical miles from the west bank of the mouth of the Corantijn River to the east end of Warappa Bank. Generally, this coastal front corresponds to 6° N latitude. It faces north and thus it represents a coastal front that projects due north (N00E) into the maritime area that lies in front of that coast of Suriname. Guyana's relevant coastal front runs for approximately 90 nautical miles from the west bank of the mouth of the Corantijn River to the east bank of the Essequibo River. It faces northeast and projects into the maritime area that lies in front of that coast on a bearing of 34° (N34E).

6.26. Those two coastal fronts, their extensions into the maritime area in front of those coasts, the resulting area of overlap of those coastal front extensions and the provisional equidistance line are shown on Figure 33.

Figure 32

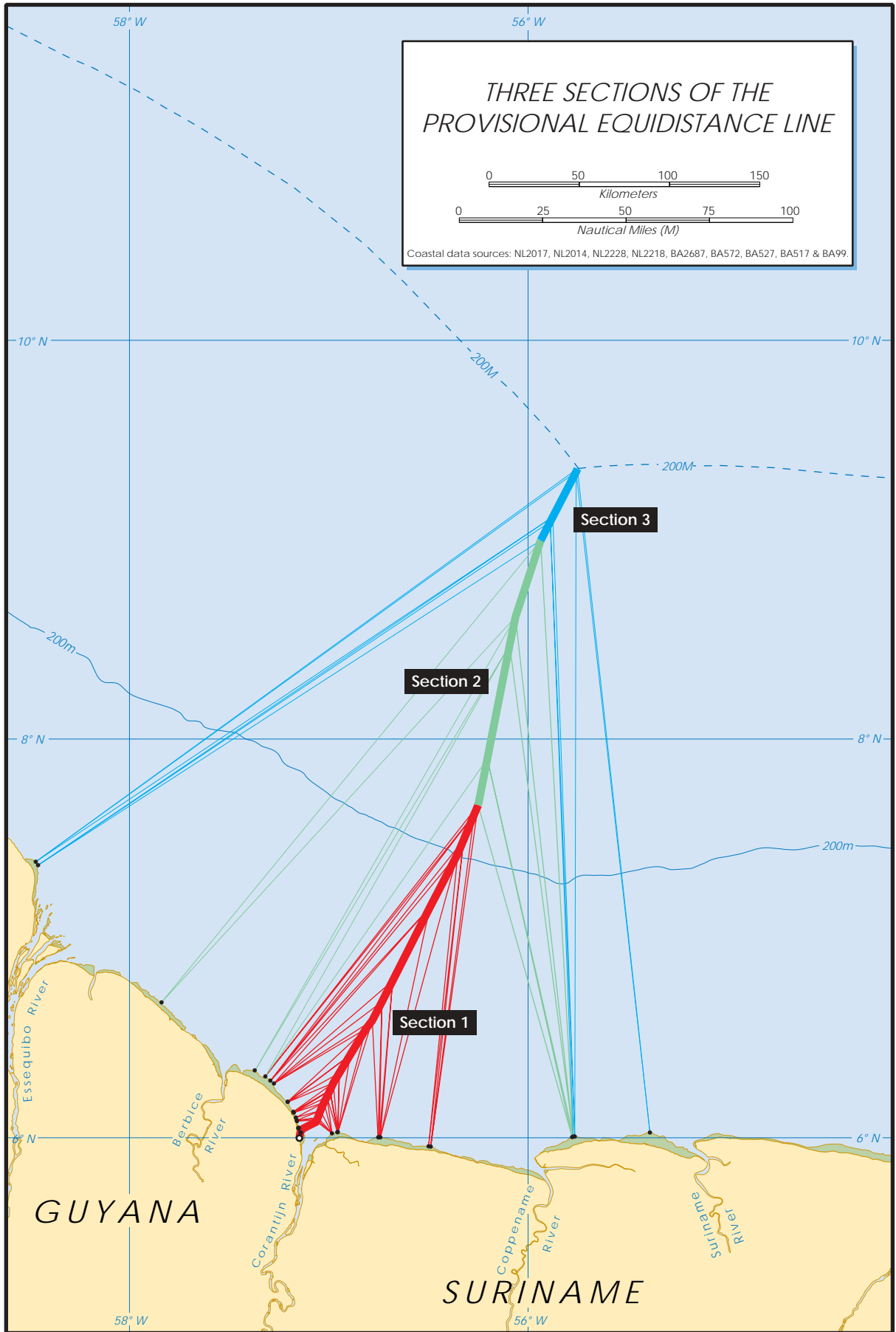
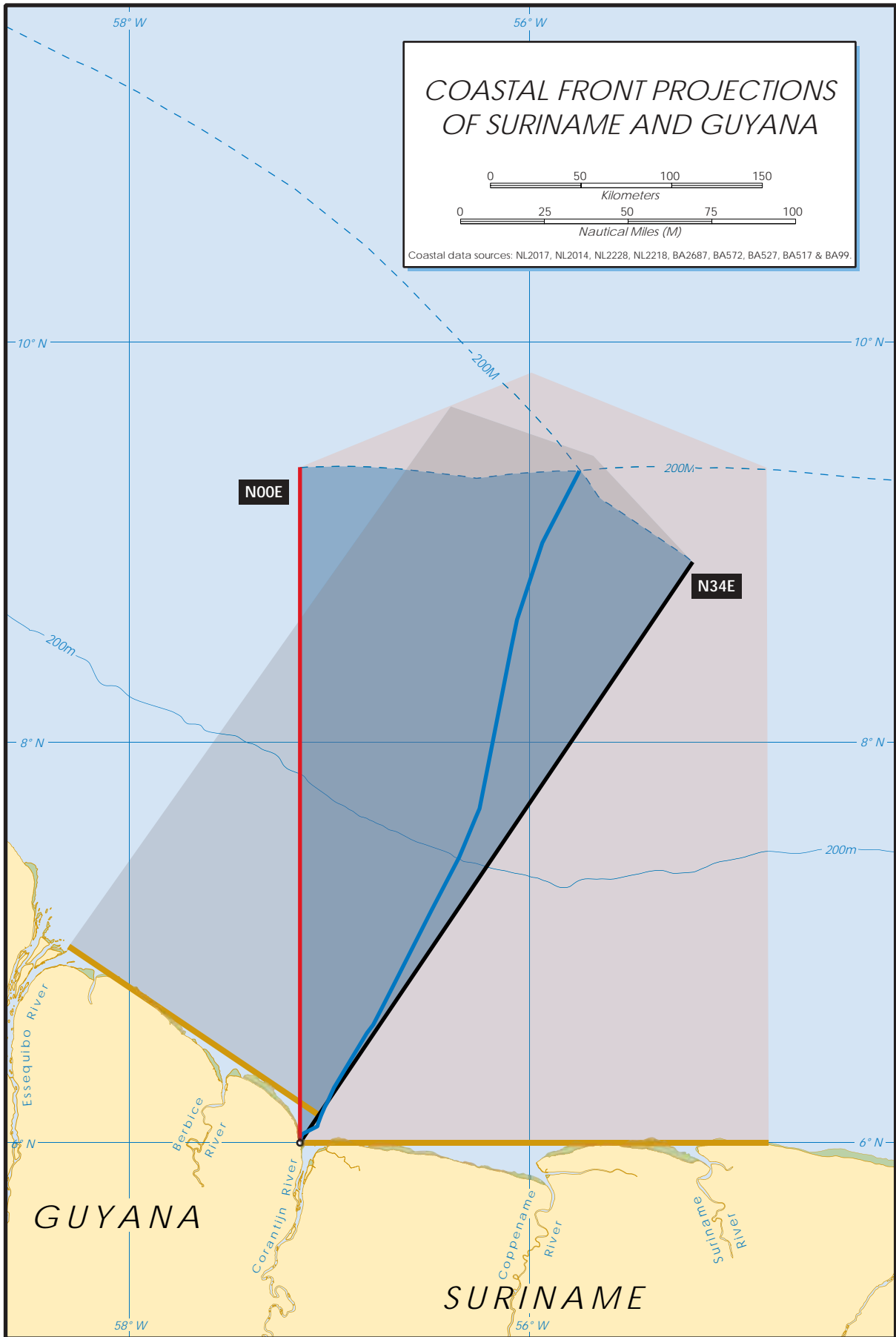


Figure 33



A. The Provisional Equidistance Line Cuts Off the Extension of Suriname's Coastal Front into the Sea

6.27. Figure 33 demonstrates conclusively that the provisional equidistance line fails to divide the area of overlapping coastal front extensions in an equitable manner. This is particularly so for the first section of the line – the inshore sector from the coast to the 200-meter isobath. Almost the entire area of overlapping coastal front projections in the inshore sector appertains to Guyana by virtue of the provisional equidistance line. This does not confirm the merit of the equidistance method as Guyana might contend; to the contrary, it demonstrates the inequitable results that the equidistance method can produce when it attributes to one party alone all of the area of overlap of the seaward extensions of the relevant coastal fronts. In this case, the provisional equidistance line acts as it so often does in adjacent state situations. It “cuts off” the extension of one state’s coastal front into the sea – in this case Suriname’s coastal front. It thus creates a line that violates the principle of non-encroachment.

6.28. Nor does the second section of the provisional equidistance line mitigate that encroachment. Although the provisional equidistance line takes a turn to the north once basepoints east of the Suriname concavity begin to influence its direction, the first section of the provisional equidistance line is so far off course that an equally unbalanced push to the west would be required to make up for it. Such a countervailing push does not occur due, on the one hand, to the continuing influence of basepoints on Guyana’s coastal convexity, primarily those that are located east of the Berbice River, and on the other hand, the absence of any Suriname basepoints substantially north of 6° N latitude. Thus, while the general orientation of the provisional equidistance line in the second sector extends seaward in a northerly direction more appropriate to the overall circumstances, it begins in the wrong place too far to the east to mitigate the encroachment that is the result of the first segment of the provisional equidistance line.

6.29. Moreover, the third section of the provisional equidistance line again swings back to the east across Suriname’s coastal front due to Guyana’s basepoints on the coast west of the Essequibo River. Accordingly, the third section of the provisional equidistance line only exacerbates the encroachment that begins in the first section of the provisional equidistance line caused by the configuration of the neighboring adjacent coasts.

6.30. The applicable law requires that there be an equal division of the area of overlap (absent a special circumstance that calls for a further adjustment). Figure 33 makes clear that the provisional equidistance line does not do that. Thus, the provisional equidistance line does not produce an equitable delimitation and, it must be adjusted, or another method employed, in order to achieve an equitable delimitation result.

B. The Cut-off of Suriname's Coastal Front Is Caused by the Effect of Minor Coastal Configurations on the Provisional Equidistance Line

6.31. The provisional equidistance line “cut[s] off”⁴³⁶ the extension of Suriname’s coastal front into the sea because of the relative location of the corresponding basepoints on the coast of Suriname and the coast of Guyana. The individual basepoints on those coasts represent a selective micro-geographical perspective, while the coastal fronts represent a broad picture of the geographical relationship between the coasts of Suriname and Guyana.

⁴³⁶ *North Sea Continental Shelf*, I.C.J. Reports 1969, p. 17, para. 8.

6.32. As pointed out above and as noted further below, the bulges in the coastal configuration of Guyana and the recessed nature of Suriname's relevant coast cause the provisional equidistance line "to swing out," in the words of the *North Sea Continental Shelf* cases, across the coastal front of Suriname.⁴³⁷

1. *Guyana's Convex Coastal Configuration Pushes the Provisional Equidistance Line Across the Coastal Front of Suriname*

6.33. The overall convexity of Guyana's coast relative to the coast of Suriname is a classic example of how the provisional equidistance line is influenced by protruding coastal features in an adjacent state situation. If a convexity on one side is not balanced by a corresponding convexity on the other side, it will push the provisional equidistance line across the coastal front of the other state, cutting it off from the area in front of its coast. That is the lesson of the *North Sea Continental Shelf* cases, and it is present here.

2. *The Relatively Recessed Nature of the Coast of Suriname Pulls the Provisional Equidistance Line Across the Coastal Front of Suriname*

6.34. The recessed nature of Suriname's coast, in particular between Turtle Bank and Hermina Bank, is also a classic example of how the provisional equidistance line is influenced by coastal concavities. Due to its coastal concavity, Suriname has no basepoints to counter those on Guyana's coast immediately to the west of the mouth of the Corantijn River. Suriname's basepoints on its recessed coast cannot counter the push generated by the basepoints on Guyana's convex coast. Accordingly, the provisional equidistance line is pulled toward and swings across Suriname's coastal front before Suriname's basepoints on Hermina Bank take effect and change the course of the line. In this case, both the convexity of Guyana's coast and the concavity of Suriname's coast operate together to make the provisional equidistance line manifestly inequitable to Suriname.

3. *Coastal Accretion and Erosion*

6.35. A final problem in applying the equidistance method in this coastal situation was recognized early on by the colonial powers. Due to the natural forces which are constantly at work in reshaping the low-water line in this region, the coastline from which a provisional equidistance line is determined will be subject to constant change. Furthermore, slight accretion relative to basepoints on one side, with erosion on the other side or even stability, could result in substantial shifts in the provisional equidistance line from year to year, particularly if the relative positions of those basepoints control the equidistance line over a long distance. Thus, while it is possible to take a "snap shot" of the provisional equidistance line at any moment, its acknowledged shifting characteristics, based on the changing position of its basepoints, weigh heavily against use of the equidistance method in this case and call for the adoption of a method based upon coastal fronts.

⁴³⁷ *Id.* at p. 31, para. 44.

C. If the Provisional Equidistance Line Is Inequitable, the Claim Line of Guyana Is Manifestly Inequitable

6.36. If the provisional equidistance line does not result in an equitable delimitation, Guyana's 34° line most certainly does not do so. Guyana's claim line lies even further to the east and thus cuts off more of the extension of Suriname's coastal front than does the provisional equidistance line. Figure 34 shows the provisional equidistance line and the 34° line of Guyana. As is shown, more than 12,000 square kilometers of maritime space lie between the provisional equidistance line and Guyana's claim line. If the provisional equidistance line is inequitable, the claim line of Guyana is far more inequitable, having no basis in law or the relevant facts of this case.

IV. The 10° Line Respects the Extension of the Coastal Fronts of the Parties and Results in an Equitable Division of the Area of Overlapping Coastal Front Projections

6.37. Guyana argues that the coasts of the Parties do not lend themselves to representation by coastal fronts. Guyana states:

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.⁴³⁸

Suriname disagrees. While there is no doubt that some of the rivers draining into the Atlantic, such as the Corantijn, "mark distinct indentations and changes in direction of the coastline,"⁴³⁹ and that "local processes of sediment transport and coastal erosion"⁴⁴⁰ occur, this would seem to make it all the more desirable to view the relevant coasts for purpose of legal analysis as straight lines rather than as a constantly shifting micro view of coastal sinuosities.

6.38. Surely, the configurations of the relevant coasts of Suriname and Guyana are not so daunting as to make it impossible to identify the coastal front and to consider them as straight lines. The Chamber of the Court in the *Gulf of Maine* case considered the coasts of the United States and Canada, which faced the area of delimitation, as straight lines even though those coasts are much more irregular than those here. The Chamber in that case constructed "two basic coastal lines" – one from Cape Elizabeth to the international boundary terminus and the other from Cape Sable to the international boundary terminus.⁴⁴¹ It likewise constructed coastal front lines between Cape Ann to the elbow of Cape Cod and from Brier Island to Cape Sable.⁴⁴²

⁴³⁸ MG, para. 2.6, p. 8.

⁴³⁹ *Ibid.*

⁴⁴⁰ *Ibid.*

⁴⁴¹ Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Merits, Judgment, I.C.J. Reports 1984, p. 333, para. 213.

⁴⁴² *Id.* at para. 216, pp. 333-334.

6.39. In the *North Sea Continental Shelf* cases, the Court held that it was “the general configuration of the coasts of the Parties”⁴⁴³ that was to be taken into account. There is no reason why that cannot be done in this case.

6.40. Indeed, in this case it is manifestly clear that Guyana’s claim line has nothing to do with the equidistance method. Neither Suriname nor Guyana asks the Tribunal to apply the equidistance method in this case, although Guyana disguises its claim by calling the 34° line an “historical equidistance line.” Guyana’s claim line obviously is intended to represent a perpendicular to Guyana’s coastal front, wholly disregarding Suriname’s rights to the area that lies in front of its coast. Guyana, by setting forth a line as its claim line that is in truth based on its coastal front, rather than the equidistance method, implicitly acknowledges the utility of coastal front methodology in the situation of adjacent states, but misapplies it and takes no account of the neighboring adjacent coast and the requirements of the governing international law.

A. The Coastal Fronts

6.41. The coastal fronts of Suriname and Guyana form a shallow obtuse angle of 146° that opens toward the Atlantic Ocean.

1. Suriname’s Coastal Front

6.42. Suriname’s relevant coastal front is represented by the straight line that runs due east from the west bank of the mouth of the Corantijn River. The bearing of that line is 90°. Suriname’s coastal front projects due north into the sea perpendicular to that coastal front.

2. Guyana’s Coastal Front

6.43. Guyana’s relevant coastal front is represented by the straight line that runs from the west bank of the mouth of the Corantijn River to the east bank of the mouth of the Essequibo River. The bearing of that line is 304°. Guyana’s coastal front projects into the sea perpendicular to that coastal front in a direction of 34°.

3. The Area of Overlapping Coastal Front Projections

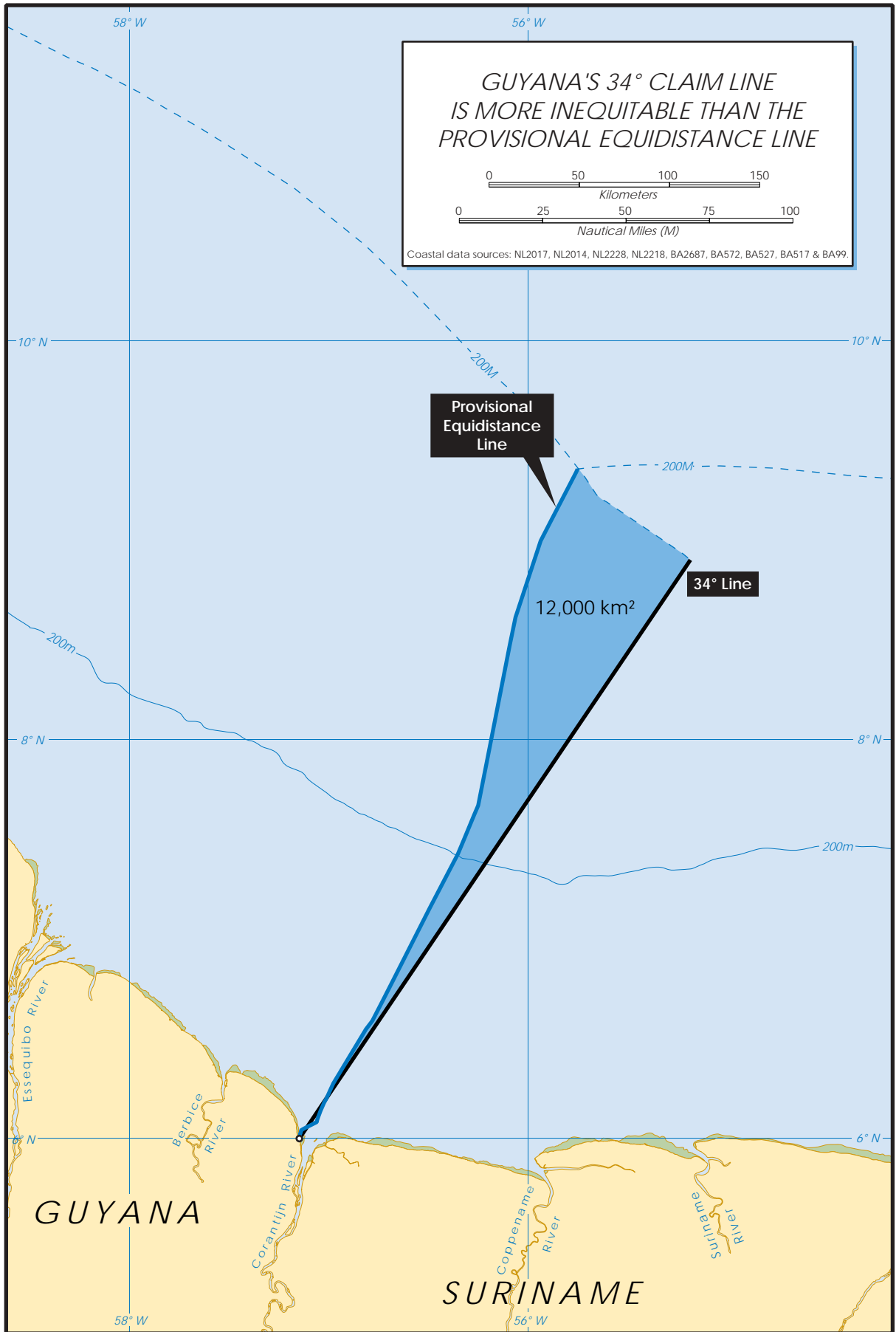
6.44. The area of the overlapping coastal front projections is shown on Figure 33. This area measures 44,000 square kilometers. The claim line of Guyana ascribes the entirety of the area of coastal front projections to Guyana. As shown below, the claim line of Suriname divides the area of overlapping coastal front projections equitably in light of the relevant geographic circumstances.

B. The 10° Line Divides the Area of Overlapping Coastal Front Projections Equitably

6.45. In the *Gulf of Maine* case, the Chamber stated that the principle to be employed in the circumstance of overlapping coastal front projections is:

⁴⁴³ North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Merits, Judgment, I.C.J. Reports 1969, pp. 53-54, para. 101. D.

Figure 34



in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap.⁴⁴⁴

The Chamber noted that “[t]he multiplicity and diversity of geographical situations frequently call for this criterion to be adjusted or flexibly applied to make it genuinely equitable.”⁴⁴⁵

6.46. On this basis, therefore, the area of overlapping coastal front projections of Suriname and Guyana (shown on Figure 33) is to be considered. Guyana claims all of the area of overlap. That claim is obviously inequitable and not in accordance with the applicable law. Also, it has been shown that the provisional equidistance line does not result in an equitable division of the area of overlapping coastal front projections either. In Chapter 4 it was noted that it is often the case that when the equidistance method is not suitable in a delimitation between adjacent states, a method that employs coastal fronts and methods such as bisectors of the angle formed by adjacent coastal fronts or perpendiculars to the general direction of the common coastal front will do so.

6.47. In this case, a perpendicular to the general direction of the coast is not a suitable delimitation method because the neighboring coastal fronts of Suriname and Guyana do not form a straight line (as was the case immediately around the land boundary terminus in *Libya-Tunisia*), but instead they form an angle. This suggests that the method to be employed should be a bisector of the angle that is formed by the neighboring coastal fronts of Suriname and Guyana.

6.48. The bisector of the angle that is formed by the adjacent coastal fronts of Suriname and Guyana extends from the coast at 17°. A line of that bearing would appear to accomplish an equal division of the area where the maritime projections of the coasts of Suriname and Guyana meet and overlap. Moreover, such a line has the advantage of simplicity and it does not change direction and veer toward the coastal front of either Party throughout its course to the 200-nautical-mile limit.

6.49. However, that is not the end of the analysis. It remains to be considered whether there is reason to adjust that line in order to achieve an equitable delimitation. Suriname holds that there are reasons to do so and that the result should be an adjustment that validates Suriname’s position that an equitable delimitation between Suriname and Guyana is the 10° Line.

I. The 10° Line as the Territorial Sea Boundary

6.50. At the outset, an angle bisector cannot supplant the 10° Line as the boundary in territorial waters. As set forth in Chapter 4, Section III, if the Tribunal were to conclude that 1936 Point is binding on the Parties, then the 10° Line as the territorial waters boundary is also established.

6.51. Even if the territorial sea section of the single maritime boundary were to be established *de novo*, it would still be pertinent to take into account the navigational considerations at the mouth of the Corantijn River. The entirety of that river is under the

⁴⁴⁴ *Gulf of Maine*, I.C.J. Reports 1984, p. 327, para. 195.

⁴⁴⁵ *Id.* at p. 327, para. 196.

sovereignty of Suriname, and, as recognized from the beginning in the work of the Netherlands-United Kingdom Boundary Commission, Suriname's right to control the approaches to that river through the exercise of its sovereign rights in the territorial sea constitute a special circumstance that requires the adjustment of any delimitation method that would deny that right.⁴⁴⁶

6.52. Navigational considerations are often found to be a special circumstance that requires accommodation in the establishment of a territorial sea boundary. Even Guyana, at paragraph 9.6 of its Memorial, excerpts a quote from Commander Kennedy from the records of the First United Nations Conference on the Law of the Sea wherein he takes note of "navigable channel[s]" as a special circumstance requiring adjustment of the equidistance line, even for the continental shelf.⁴⁴⁷ Navigational considerations remain an important factor in maritime delimitation practice.⁴⁴⁸

6.53. Accordingly, a maritime delimitation that respects Suriname's sovereignty over the Corantijn River and its rights and responsibilities in relation to the shipping in the approaches to the River is a maritime delimitation that validates the 10° Line.

2. *The Prolongation of the Suriname-Guyana Land Boundary Is a Relevant Circumstance in the Establishment of the Single Maritime Boundary Beyond the Territorial Sea*

6.54. At the Marlborough House Talks in 1966, Suriname explained that its 10° Line maritime boundary position was based in "geographical reality." It explained that in its view the "boundary line runs in the territorial sea and on the continental shelf in accordance with a line which runs parallel to the valley of the Corantijn."⁴⁴⁹ Suriname's articulation was for a maritime delimitation that respects the extension of the land boundary of Suriname and Guyana into the sea.

6.55. The extension of the land boundary is often a factor to be taken into account in the establishment of an equitable maritime delimitation. In the work of the International Law Commission prior to the First United Nations Conference on the Law of the Sea, the extension of the land boundary was in fact a methodology that was considered along with the equidistance method. While in that context the equidistance method gained prominence and the extension of the land frontier did not, a maritime boundary that extends seaward following the same course as the land boundary as it approaches the sea is often justified, particularly where the course of the land boundary is consistent over a long distance, as it is in this case, and where it reflects other factors. In the *Tunisia/Libya* case, the Court noted the importance of the extension of the land frontier when it corresponded with a line based upon relevant coastal fronts:

the factor of perpendicularity to the coast and the concept of prolongation of the general direction of the land boundary are, in the view of the Court,

⁴⁴⁶ See *supra* Chapter 3, Section I, Part A.

⁴⁴⁷ MG, para. 9.6, pp. 108-109.

⁴⁴⁸ See *supra* note 55.

⁴⁴⁹ Report of the Discussions Held Between Suriname and Guyana at Marlborough House, London, England on 23 June 1966, at SPO Annex 17, at pp. 3, 7.

relevant criteria to be taken into account in selecting a line of delimitation calculated to ensure an equitable solution.⁴⁵⁰

6.56. Accordingly, a maritime boundary that extends from the coast as a single straight line segment reflecting the “geographical reality” of the relationship of two countries, and in particular the trend of that relationship as it is demonstrated by the land boundary as it approaches the sea, is a circumstance of relevance to be taken into account in considering the application of any delimitation method.

6.57. In this case, an adjustment of the angle bisector line to conform to the 10° Line is called for because the 10° Line represents the extension of the land boundary into the sea. The Corantijn River runs north as it approaches the sea. Guyana’s Memorial states: “The two States are separated by the Corentyne River, which flows in a northerly direction and empties into the Atlantic Ocean.”⁴⁵¹ It is therefore the northward course of the Corantijn River that expresses the geographical reality between Suriname and Guyana. This northward course of the western bank of the Corantijn River — the extension of the land frontier — calls for an adjustment of the coastal front angle bisector that validates the 10° Line.

3. *The Relative Length of the Relevant Coasts Is a Relevant Circumstance in the Establishment of the Single Maritime Boundary Beyond the Territorial Sea*

6.58. The relevant coast of Suriname is approximately 50 percent longer than the relevant coast of Guyana. This geographical factor is a relevant circumstance that should be taken into account when evaluating whether the angle bisector method produces an equitable delimitation. In a situation where the lengths of the relevant coasts demonstrate a substantial disparity, as they do in this case, an adjustment in the angle bisector delimitation method is called for to recognize the maritime entitlement of that longer coast.

6.59. Differences in the lengths of the relevant coasts have played a role in the delimitation methodology employed in three cases (*Gulf of Maine*, *Libya/Malta*, and *Jan Mayen*).⁴⁵² In each of those cases, the delimitation method chosen by the Court or the Chamber of the Court was adjusted to reflect the greater entitlement of the state with the longer relevant coast. An adjustment of the angle bisector line to the west to account for the entitlement of Suriname’s longer relevant coast is called for and will validate the 10° Line.

6.60. Suriname submits that when the law is applied to the facts of this case, the 10° Line exhibits the properties that the law requires in the geographical circumstances of this delimitation between adjacent states and results in an equitable delimitation. An equitable delimitation line should exhibit the following properties:

⁴⁵⁰ Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Merits, Judgment, I.C.J. Reports 1982, p. 85, para. 120.

⁴⁵¹ MG, para. 2.3, p. 7. Guyana is not entirely correct, however. The Corantijn River is entirely in Suriname territory, which includes the western bank of the Corantijn River.

⁴⁵² See Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Merits, Judgment, I.C.J. Reports 1984, pp. 336-37, paras. 221-22; Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 49, para. 66; Case Concerning Maritime Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway), Judgment, I.C.J. Reports 1993, p. 68, para. 68.

- it should be constructed on the basis of the broad patterns of the geography;
- it should therefore be based on a method that employs coastal fronts rather than selected and isolated basepoints;
- the line should not be pushed out by the protruding incidental features that do not represent the direction of Guyana's coast or drawn in toward Suriname by the recessed nature of Suriname's coast; and
- it should not veer toward the coast of either party as it proceeds toward the outer limit of the continental shelf, so as to divide equitably between the Parties both the inshore and offshore area of overlapping coastal front projections.

The 10° Line proposed by Suriname meets these criteria; the provisional equidistance line does not and, manifestly, the 34° claim line of Guyana does not.

CHAPTER 7

SURINAME'S RESPONSE TO GUYANA'S SUBMISSION 2

7.1. Guyana's Submission 2 is as follows:

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.⁴⁵³

That submission is based upon an erroneous premise. Guyana assumes that it has legal title over a disputed maritime area. That premise, however, has things backwards: Guyana cannot anticipate the Tribunal's decision on the maritime boundary issue and thus it cannot seek a judicial benefit that has not yet accrued to it.

7.2. Guyana's Submission 2 assumes that on 3 June 2000 Guyana was lawfully entitled to undertake a drilling operation in a continental shelf area that had long been in dispute with Suriname. Guyana had no such entitlement then or now. The area concerned was and is claimed by Suriname. If the Tribunal rejects Suriname's Preliminary Objections, it will then be for the Tribunal to decide, by determining the single maritime boundary, which Party has jurisdiction in which part of the maritime area in dispute. Lawful title will then be established and the Parties, respectively, will then be able to undertake all activities they deem necessary for the exploration and exploitation of the natural resources on that basis.

7.3. Moreover, when the facts associated with the 3 June 2000 CGX incident are examined in the light of the applicable international law, it becomes obvious that Guyana committed an internationally wrongful act and that Suriname did not. It is in light of those facts that Suriname maintains its position, expressed in its Preliminary Objections, that Guyana lacks clean hands with respect to its Submission 2.

I. The Relevant Facts

7.4. The facts that are relevant to consideration of Guyana's Submission 2 are set forth in Chapter 6 of Suriname's Preliminary Objections. In addition, Chapter 5 of this Counter-Memorial reviews the facts that pertain to the limits of the oil concessions, service contracts and licenses that have been offered by the Parties from independence up to the 3 June 2000 incident. Those facts demonstrate that the combined oil concession practice of the Parties has always reflected the existence of a maritime boundary dispute, even though both Parties from time to time have not included the entirety of the disputed area in their concessions, service

⁴⁵³ MG, p. 135. Guyana Submission 2.