

International Dispute Resolution Centre
Fleet Street
London, England

Tuesday, 25th October, 2005

ARBITRAL TRIBUNAL CONSTITUTED UNDER
ANNEX VII TO THE UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA

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In the matter of an arbitration between

BARBADOS

and

THE REPUBLIC OF TRINIDAD AND TOBAGO

- - - - -

Before:

JUDGE STEPHEN M SCHWEBEL (The President)
PROFESSOR VAUGHAN LOWE
MR IAN BROWNLIE CBE QC
PROFESSOR FRANCISCO ORREGO VICUNA
SIR ARTHUR WATTS, KCMG QC

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PROCEEDINGS - DAY SIX

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ATTENDANCES

Barbados was represented by:

Hon Mia A Mottley QC, Deputy Prime Minister, Attorney General and Minister of Home Affairs, Agent for Barbados

Mr Robert Volterra, Co-Agent, Counsel and Advocate, Latham & Watkins

Professor Sir Elihu Lauterpacht CBE, QC, Counsel and Advocate

Professor Michael Reisman, Counsel and Advocate

Mr Jan Paulsson, Counsel and Advocate, Freshfields Bruckhaus Deringer, Paris

Sir Henry Forde QC, Counsel and Advocate

Mr Stephen Fietta, Counsel and Advocate, Latham & Watkins

Mr Adrian Cummins QC, Counsel

Dr David Berry, Counsel

Ms Megan Addis, Counsel, Latham & Watkins

Ms Teresa Marshall, Permanent Secretary, Foreign Affairs

Mr Edwin Pollard, High Commissioner for Barbados in London

Mr Anthony Wiltshire, Minister/Counsellor at the Barbados High Commission, London

Mr Francois Jackman, Senior Foreign Services Officer

Mr Tyronne Brathwaite, Foreign Services Officer

Mr Christopher Parker, Fisheries Biologist, Fisheries Division

Ms Angela Watson, President of Barbados Association of Fisherfolk Organisations, BARNUFO

Mr Anderson Kinch

Mr Oscar Price, Information Technology Support, Latham & Watkins

Ms Phillippa Wilson, Information Technology Support, Latham & Watkins.

Mr Dick Gent, UK Hydrographic Office

Dr Robin Cleverly, UK Hydrographic Office.

Ms Michelle Pratley, Assistant, Latham & Watkins

Ms Claudina Vranken, Assistant, Latham & Watkins

The Republic of Trinidad and Tobago was represented by:

Senator the Hon John Jeremie, Attorney-General, Agent
Mr John Almeida, Co-Agent, Messrs Charles Russell
Mr Laurie Watt, Co-Agent, Messrs Charles Russell
Ms Lynsey Murning, Charles Russell
Professor James Crawford SC
Professor Christopher Greenwood, CMG, QC, Counsel
Mr Samuel Wordsworth, Counsel
Ambassador Phillip Sealy, Trinidad and Tobago Ambassador to the
United Nations
Mr Gerald Thompson, Director, Legal Affairs, Ministry of
Foreign Affairs
Mr Eden Charles, Foreign Service Officer at the United Nations,
Ministry of Foreign Affairs
Mr Martin Pratt, International Boundaries Research Unit
Mr Francis Charles, Expert
Dr Arthur Potts, Ministry of Fisheries and Agriculture
Mr Charles Sagba, Ministry of Foreign Affairs
Mr Andre Laveau, Ministry of Foreign Affairs
Ms Glenda Morean, High Commissioner for Trinidad and Tobago

Mr David Gray (Tribunal appointed Expert Hydrographer)

The Permanent Court of Arbitration was represented by:

Ms Anne Joyce
Mr Dane Ratliff

Court Reporter

June Martin, Harry Counsell
Ivan Trussler, Harry Counsell

1 THE PRESIDENT: Good morning. As I see, there is no shortage of
2 paper. The Tribunal wishes to thank Trinidad and Tobago
3 for its answer to the question put on Article 62(3) and it
4 may be that Barbados wishes to comment thereon as well. I
5 believe that we resume this morning with Mr Volterra.

6 MR VOLTERRA: Yes, Mr President, thank you. There are two
7 administrative things. First, I am told by our very
8 efficient assistants that there are some materials that
9 are still in need of insertion to today's Judges' folder,
10 but that will be done by us in due course today.

11 I have asked the people from the PCA to bring out for
12 you as well the Judges' folder from day one, trying to
13 reduce the amount of paper for the Tribunal and the
14 forests that have sacrificed themselves for this
15 arbitration.

16 Mr President, before I commence my presentation
17 proper, there is one preliminary matter that I wish to
18 bring to the attention of the Tribunal. You will recall
19 that yesterday I raised the question of two instances of a
20 pleading by counsel for Trinidad and Tobago which Barbados
21 characterises as improper that took place on Friday. You
22 will recall that one was in relation to the north of the
23 median line and Professor Crawford acknowledged during my
24 objection on Friday that Trinidad and Tobago had submitted
25 no evidence in relation to that matter. The second
26 referred to the south of the median line and it is to that
27 second matter to which I turn at the moment.

28 At paragraph 10 of the Counter Memorial, Trinidad and
29 Tobago stated "in the present case the areas claimed by
30 Barbados and proximate to the coast of Tobago have
31 hydrocarbon potential and have been subject to exploration
32 licensing by Trinidad and Tobago. They are potentially
33 more important for their hydrocarbon resources than their
34 fish".

35 At pages 59 and 60, and at lines 35 to 38 of page 59
36 and lines 1 to 3 of page 60 of the transcript of day 4,
37 Friday, counsel for Trinidad and Tobago stated in part, in
38 reference to the area to the south of the median line,

1 "Barbados claims areas which have been the subject of
2 established licences which are the subject of actual
3 exploitation". "Actual exploitation" not "potential".
4 Professor Crawford was asserting that in the areas to the
5 south of the median line claimed by Barbados there are,
6 one, established licences and, two, that those licences
7 are the subject of actual exploitation. Yesterday I
8 stated that there was no evidence on the record of
9 licences or actual exploitation within the relevant area
10 to the south of the median line. I must correct my
11 statement in part.

12 There is evidence on the record of one Trinidad and
13 Tobago oil licence dating from 1997, a small part of which
14 is located within the extreme south western tip of the
15 area claimed by Barbados to the south of the median line.

16 I apologise for my error. There is no evidence of any
17 actual exploitation within the relevant area, including no
18 evidence in relation to that oil licence to which I have
19 just referred, and until Friday Trinidad and Tobago had
20 made no assertion that there was.

21 As yet another preliminary matter, Mr President, I
22 wish to let the Tribunal know that Barbados will try to
23 answer all of the Tribunal's questions by the end of
24 today, but as you may imagine that sometimes might not be
25 possible for any number of reasons, including the
26 requirement for example in relation to the Co-operation
27 Zone Treaty, to do our due diligence and confer with the
28 Ministry back in Bridgetown. We will answer them as
29 quickly as we can; and if not today then hopefully by the
30 end of this week and as early as possible to give our
31 friends on the other side a chance to make any response
32 they wish to make.

33 Finally and by no means least as a preliminary
34 matter, I wish before you to thank Ms Megan Addis who is
35 helping with my slides that you see before you. You have
36 seen her here at the hearing throughout the last two weeks
37 assisting with our presentation, but you can imagine that
38 this reflects only a small part of the invaluable service

1 that she has rendered to Barbados throughout this
2 arbitration.

3 Mr President, members of the Tribunal, as in round
4 one I have the honour to begin Barbados' submissions in
5 relation to Trinidad and Tobago's claims to the north of
6 the median line. In anticipation of the submissions that
7 will be made by Mr Paulsson, Professor Reisman and me, I
8 preface my remarks to the Tribunal by addressing it in my
9 capacity as Co-Agent of Barbados.

10 Mr President, members of the Tribunal, the maritime
11 territory to the north of the median line and inside
12 Barbados' median lines that is the subject of the claims
13 by Trinidad and Tobago in this arbitration are of
14 paramount importance to Barbados. I direct the Tribunal
15 to the opening address of the Agent of Barbados that can
16 be found at tab 198 of your Judges' folder, the first tab
17 of today's folder. I will refer to page 15, line 25 of
18 the transcript from day one. There it is recorded that
19 the Agent stated "Our exclusive economic zone and our
20 outer continental shelf in the south east are of the
21 highest importance to Barbados' future development". Mr
22 President, nothing could possibly compensate Barbados if
23 this Tribunal were somehow to accept that Trinidad and
24 Tobago was entitled to any maritime territory at all to
25 the north of the median line.

26 I will now address the Tribunal in my capacity as
27 counsel and advocate.

28 After five years of bilateral negotiations and almost
29 two years of this arbitration, the peripatetic claims of
30 Trinidad and Tobago in relation to the maritime territory
31 to the north of the median line finally began to take
32 shape last Friday, a bit like an army in a dawn attack
33 gradually taking form. But Trinidad and Tobago still has
34 not dared to show you what its claim actually represents.

35 Worse, it has declined to account for the legal and
36 practical ramifications of a hypothetical acceptance of
37 its claims. Barbados keeps challenging Trinidad and
38 Tobago to show the Tribunal all of the zones and implicit

1 boundaries that are the result of its claims. Trinidad
2 and Tobago keeps avoiding to do so and that speaks
3 volumes.

4 I will now take the Tribunal through a series of
5 demonstrative maps. They are to be found in sequence in
6 the Judges' folders from tabs 199 to 203 of your folders.

7 I will take you to them in turn. They will also be shown
8 on your monitors as I go through them. I promise only one
9 is the same as the maps I showed you last week.

10 What you see on your screen is map one. It is found
11 at tab 199. This is the superficially simple claim line
12 put forward by Trinidad and Tobago. It follows the median
13 line, it goes to point A and then runs out along the 88
14 degree azimuth. It looks wonderfully simple. But, of
15 course, it is not. If we move to the second map, found at
16 tab 200 - I will ask you in any event to turn to tab 200 -
17 you will see that this is the map that I spoke to in round
18 one. It shows the bewildering multiplicity of different
19 claims that are inherent in the proposed delimitation line
20 put forward by Trinidad and Tobago.

21 10.15

22 A glance reveals the conflict and chaos that results
23 from these claims.

24 I ask you now to turn to tab 201. This shows the
25 universe of Trinidad and Tobago's UNCLOS interpretation.
26 This is the jigsaw of exclusive economic zones that would
27 exist if the Tribunal accepted a number of propositions
28 that are contained in Trinidad's claim. One being the
29 relationship between Part V and Part VI, another being the
30 requirement of the Tribunal to implement and give effect
31 to the 1990 Agreement between Venezuela and Trinidad and
32 Tobago.

33 There is also a close-up of this universe of EEZs you
34 can see. Trinidad and Tobago would get the large red
35 hashing on the map, Barbados would get the green hatching,
36 and in Trinidad and Tobago's claim Venezuela would get the
37 purple.

38 Now I ask you to turn to the next map which is at tab

1 202. This is the universe of Trinidad and Tobago's
2 extended continental shelf vision based on its
3 interpretations again of Part V and Part VI. In Trinidad
4 and Tobago's world these would be the extended continental
5 shelf entitlements that would result from its claim line
6 being accepted by the Tribunal. You can see that Barbados
7 would get the triangle to the north and Trinidad and
8 Tobago would get the middle triangle and Venezuela would
9 get whatever shape it is below it.

10 The map shown on the map, tab 203, shows the
11 overlapping zones that result from Trinidad and Tobago's
12 vision of UNCLOS. You can see them flashing now. In the
13 universe of UNCLOS á la Trinidad and Tobago they would be
14 from north to south: Barbados' Exclusive Economic Zone
15 existing simultaneously with Trinidad and Tobago's
16 extended continental shelf in part; next Barbados'
17 Exclusive Economic Zone and Venezuela's extended
18 continental shelf in part; and finally down in the south
19 Barbados' and Guyana's Joint Co-operation Zone in part and
20 Venezuela's extended continental shelf in part.

21 In its written pleadings Trinidad and Tobago said
22 that this chaotic series of overlapping zones was "a
23 function of the coexistence of the relevant parts of the
24 1982 Convention". Page 72 of Trinidad and Tobago's
25 Rejoinder tucked away in footnote 228.

26 In round 1 counsel for Trinidad and Tobago appeared
27 to recognise the weakness of relying on a supposed
28 intended result of UNCLOS that would have this sort of
29 chaos. Counsel for Trinidad and Tobago would have you
30 believe that these zones, an illegitimate offspring of an
31 unholy union of Parts V and VI, are an inevitable and
32 indeed necessary result of sloppy drafting by the drafters
33 of UNCLOS. Trinidad and Tobago's case in this respect
34 rests on the entirely untenable foundation of the novel
35 interpretation of UNCLOS that it has proposed to this
36 Tribunal. According to this interpretation, the EEZ
37 regime is entirely about the water column and living
38 resources, whilst Part VI is all about the seabed and

1 subsoil. The text of Part V flatly contradicts this
2 conclusion. Certainly Trinidad and Tobago has been forced
3 to admit that there are what it refers to as "overlaps"
4 between the two Parts. Using Mexican jumping crabs and
5 marine worms, counsel for Trinidad and Tobago attempted to
6 gloss over this insuperable obstacle to its case.

7 Barbados' interpretation of Parts V and VI and their
8 interplay results in the two Parts operating in harmony,
9 with no chaotic overlapping zones. Not just here but
10 anywhere. Trinidad and Tobago's interpretation has the
11 opposite result. Counsel for Trinidad and Tobago's
12 observations on this issue can be found at tab 204. They
13 are recorded on pages 92 and 93 of the transcript of Day 4
14 and I invite the Tribunal to turn to them now. I will
15 also put the relevant extract up on the screen. Trinidad
16 and Tobago's legal analysis to explain the resolution of
17 the incompatibility of its assertions as to the meanings
18 of Parts I and VI with the text of UNCLOS itself can be
19 found at line 24 of page 93. In defence of its
20 interpretation of Parts V and VI Trinidad and Tobago has
21 this to say. "It is true, and it might be thought to be
22 an example of sloppy legal craftsmanship that there is an
23 overlap between them, but the gist of the EEZ was always
24 on living natural resources".

25 In response to the question from Professor Lowe last
26 week, Trinidad and Tobago's legal analysis of the
27 potentially chaotic overlap of different maritime regimes
28 is based on a reliance of an alleged "gist" of Part V.
29 But no manner of generalisation or extraction can avoid
30 the truth. That Part deals with the water column, the
31 living resources and the seabed and subsoil within 200
32 nautical miles of a coastal state.

33 Trinidad and Tobago seeks to give Part VI precedence
34 over Part V, but there is no textual support for this
35 interpretation. My colleague, Professor Reisman, will
36 speak to this issue further when he presents Barbados'
37 rebuttal to Trinidad and Tobago's arguments about its
38 extended continental shelf claim.

1 As I noted at the outset of my remarks on this issue,
2 Trinidad and Tobago has chosen not to show the Tribunal in
3 graphic form what is the practical result of its
4 interpretation of UNCLOS. But the potential for conflict
5 is evident at a glance. Trinidad and Tobago has still not
6 commented upon the obvious practical problems that would
7 be the consequences, indeed what Trinidad and Tobago
8 admits would be the inevitable consequences, of accepting
9 its view of UNCLOS.

10 I turn now to address briefly the 1990 Venezuela-
11 Trinidad and Tobago Agreement.

12 There is actually little for me to say in rebuttal.
13 Counsel for Trinidad and Tobago did not speak to it very
14 much last week. To borrow a phrase from the ever eloquent
15 Professor Greenwood, but to direct it more aptly, this is,
16 in truth, the claim that dare not speak its name.

17 Counsel for Trinidad and Tobago confirmed that the
18 1990 Agreement was not opposable to Barbados. You can
19 find that at page 107 of the transcript day 3.
20 Nonetheless, Trinidad still seeks to have its effect
21 imposed on Barbados indirectly in two ways. I will
22 address each of these in turn.

23 First, Trinidad and Tobago seeks to import the
24 Agreement and the line that it produced through the back
25 door under the cover of its regional implications
26 argument. After my colleague, Professor Reisman, dealt
27 with that argument last week, Trinidad proceeded to avoid
28 the issue almost entirely. Despite this, at page 104 of
29 the transcript day 3, you can find counsel for Trinidad
30 and Tobago trying to cajole the Tribunal into giving
31 effect to the Agreement. This can be found at tab 205 of
32 the Judges' folder from today, starting at line 25. I put
33 it up on the screen for your convenience. "Of the 1990
34 Agreement Trinidad argues all it constituted was an
35 acknowledgement by Trinidad and Tobago, after extensive
36 negotiations which lasted more than a decade, of
37 Venezuela's entitlement as a coastal state with a
38 significant coastal frontage on to the region to a modest

1 salida, just like the ausgang the Federal Republic of
2 Germany got following the North Sea Continental Shelf
3 decisions or the corridor -I am afraid the French word for
4 that corridor is unpronounceable - which the islands of St
5 Pierre and Miquelon have got in that decision".

6 The description of the so-called salida as modest is
7 breathtaking. There is nothing modest about this
8 Agreement. There is nothing modest about the ambitions
9 that motivated it or the line that it produced. The so-
10 called salida purportedly salidas far beyond Venezuela's
11 200 nautical mile arc and salidas right up to the outer
12 edge of the continental shelf. It bears no resemblance to
13 the petite sortie of St Pierre and Miquelon, let alone the
14 ausgang of Germany.

15 Second, Trinidad seeks to have the 1990 Agreement
16 imposed on Barbados in practical result by suggesting that
17 the Tribunal may not consider any dispute between the
18 parties to the extent that that dispute relates to areas
19 to the south and east of the 1990 line. That is off
20 limits, says Trinidad and Tobago. This argument is
21 untenable. I addressed Trinidad's arguments on this issue
22 in the first round. Barbados claims all the area to the
23 north of the median line in the area now claimed by
24 Trinidad for itself. Barbados also claims for itself the
25 area to the north of the median lines and to the south and
26 east of the 1990 line, that which Trinidad says belongs to
27 Venezuela, and Trinidad and Tobago's claims would exclude
28 Barbados from that area. The parties are in dispute,
29 undoubtedly as you have heard over the last week, in
30 relation to all of that area. As such, it is subject to
31 the jurisdiction of this Tribunal in toto as it considers
32 the bilateral delimitation between the two parties before
33 it.

34 The issue is joined and Barbados is content to rest
35 on its pleadings.

36 The 1990 Agreement between Venezuela and Trinidad is
37 not of a higher legal order than the Barbados-Guyana EEZ
38 Co-operation Zone Agreement. The Barbados-Guyana Co-

1 operation Zone Treaty cannot be ignored by this Tribunal.
2 Nor can the zone it creates in relation to the water
3 column, the living resources, the seabed and subsoil. It
4 cannot be dismissed. That zone was carefully crafted in
5 the west so as to lie beyond any legitimate claim of any
6 third party. It, nevertheless, leaves the parties to the
7 Co-operation Zone Treaty free to expand it should they so
8 desire to reach its full and natural dimension to the west
9 at the appropriate time.

10 As Barbados has described to the Tribunal previously,
11 the EEZ Co-operation Zone Treaty represents the legitimate
12 exercise of rights and jurisdiction by Barbados and Guyana
13 over the overlapping areas of maritime territory that lie
14 within 200 nautical miles of their coasts and beyond 200
15 nautical miles of any other states. It has the advantage
16 of being entirely consistent with UNCLOS and international
17 law. Barbados will answer Professor Lowe's questions
18 about the zone in the next few days.

19 I now ask the Tribunal to turn to the Judges' folder
20 for day one, which the very helpful Anne Joyce of the PCA
21 brought this morning. I am going to turn you to tab 48.
22 Mr President, I am now going to turn to the 1990
23 Trinidadian map that traces the history of the
24 negotiations between Trinidad and Venezuela. This is the
25 fold-out map. I took the Tribunal to this a number of
26 times last week.

27 I have a free copy if it would assist. Let me make
28 sure there is nothing in it to which my friend would
29 object. It is a blank copy of the map.

30 You can also see it on the screen in front of you.
31 The Tribunal will recall that this was the map circulated
32 by the current Prime Minister of Trinidad and Tobago in
33 1990 when he was leader of the Opposition. The Tribunal
34 will recall that this 1990 Manning map records graphically
35 the history of the Venezuela and Trinidad and Tobago
36 negotiations that led to their 1990 Agreement,
37 negotiations that we have been told by counsel for
38 Trinidad and Tobago lasted for more than a decade.

1 Indeed, well more than a decade.

2 10.30

3 The Tribunal will no doubt recall the attempt made
4 last week by Trinidad and Tobago to impugn indirectly the
5 Manning map. Counsel for Trinidad and Tobago said "I
6 should say that Barbados has made a great deal of the
7 draft map which fell off the back of a truck or other
8 conveyance at some stage unspecified during the very
9 lengthy negotiations". The reference is to transcript day
10 3, pages 104 and 105, starting at line 24.

11 Counsel for Trinidad and Tobago takes the view that
12 this fell off the back of a truck or other conveyance at
13 some stage during the lengthy negotiations.

14 There are further references to the map having fallen
15 off the back of a truck elsewhere in Trinidad and Tobago's
16 pleadings.

17 It is significant that Trinidad and Tobago does not
18 deny the truth contained in the map. Trinidad and Tobago
19 implied that it is somehow unfair that it has been caught
20 out so unfairly and so awkwardly, but it does not deny
21 that the lines shown on the map reveal what they have been
22 described as revealing. It does not deny the implications
23 that arise from the fact that the various proposed lines
24 stopped at the median line between Barbados and Trinidad
25 and Tobago. Nor did it address the inevitable
26 implications of the lines that rise up from the coast of
27 Guyana claimed by Venezuela to join the finally-agreed
28 1990 line at significant locations in its perambulations.

29 Rather Trinidad and Tobago is content to imply by
30 suggesting that the Manning map fell off the back of a
31 truck that somehow it was obtained by foul means.

32 Barbados is puzzled by Trinidad and Tobago's attempt
33 to imply there was foul play. This map was obtained by
34 Trinidad and Tobago's current Prime Minister, Patrick
35 Manning, in 1990. It was he who disseminated it widely to
36 the media and others back then. It did not fall off the
37 back of a truck into Barbados' hands.

38 The media published copies of the map at the time.

1 Indeed, one newspaper article, reporting on a press
2 briefing given by Mr Manning on the Agreement back in 1990
3 and printing a copy of the map with the article in its
4 newspaper, recorded that the map was "exhibited by
5 Opposition leader, Patrick Manning". Barbados submitted a
6 copy of that article, including the map, at tab 6 of its
7 supplementary evidence. I have included a copy of the
8 article and this map at tab 207 of your folders. If there
9 was any foul means used to obtain this map, they were
10 engaged in back in 1990 and they were not engaged in by
11 Barbados. What is important is that Trinidad and Tobago
12 does not challenge the Manning map's authenticity, or at
13 least it has not to date, nor the accuracy of the contents
14 shown on it. Nor did Trinidad and Tobago seek to
15 challenge the fact that the lines drawn on the maps have
16 the meanings I described to you last week.

17 So what does the map show? It shows the first and
18 second boundary lines proposed by Venezuela. It shows the
19 counter-proposed line of Trinidad and it shows the final
20 lines. It shows all of these lines stopping within the
21 Trinidad and Tobago-Barbados median line, apart from the
22 final line tagged on as an appendage, handwritten beyond
23 the median line. Clearly, until the very last moment
24 Trinidad and Tobago was negotiating based on the shared
25 understanding that Trinidad's maritime territory was
26 constrained to the north by its median line with Barbados.

27 In addition, the lines rising up from the coast of
28 Guyana demonstrate the understood and intended effect of
29 the final agreed line on the claims of Venezuela in
30 relation to the land territory of Guyana. This is not
31 some latter day invention of Barbados. It was known at
32 the time by Trinidad and Tobago and Venezuela and Prime
33 Minister Manning. The Tribunal will no doubt recall that
34 I took it to a number of the extended quotations of the
35 statements made by Mr Manning back in 1990 to that effect.

36 In response to this evidence, Trinidad and Tobago
37 referred to the note sent by Trinidad to Venezuela in the
38 1991 diplomatic exchange that related to the Agreement's

1 ratification. A copy of that 1991 note can be found at
2 tab 208 of the Judges' folder. You may wish to turn to
3 that now. If you like, you can get rid of the Judges'
4 folder from day one. I am not going to take you to it
5 again. We are at tab 208 and this is a diplomatic note of
6 1991, sent by Trinidad and Tobago to Venezuela. In that
7 note, Trinidad told Venezuela that, Trinidad having agreed
8 to a Treaty that contained a map that expressly showed
9 Guyana land territory as being Venezuelan, that did not
10 constitute recognition of Venezuela's claim to that
11 territory. Trinidad and Tobago's 1991 diplomatic note was
12 as genuine as an apology that is uttered with a smirk, Mr
13 President. The note does not say, as counsel for Trinidad
14 seems to try to imply, that Trinidad did not support
15 implicitly Venezuela's claim to Guyana by agreeing to the
16 1990 line. The very agreement contained within it that
17 implicit agreement. It only said the words "zona de
18 reclamacion" on the map did not mean that Trinidad and
19 Tobago accepted Venezuela's claims.

20 THE PRESIDENT: Where are those words on the map?

21 MR VOLTERRA: That is not on the Manning map I have given
22 you. It was on the map that was part of the final version
23 of the treaty itself. I can give the Tribunal the
24 reference to that but I do not have it to hand at the
25 moment.

26 Trinidad and Tobago's note is not a defence to the
27 evidence that the clear effect of the 1990 agreement
28 between Trinidad and Tobago and Venezuela was to prejudice
29 Guyana and enhance Venezuela's land and maritime claims.
30 Because that is what the agreement does, and no amount of
31 rhetorical resiling by Trinidad now or even back in 1990
32 can change that effect.

33 Trinidad and Tobago made much last week of its
34 support for Guyana and its CARICOM neighbours in relation
35 to the well-known territorial ambitions of Venezuela. But
36 actions speak louder than words.

37 I ask you now to turn to tab 209 of the Judges'
38 folder. You will find a copy of this map also displayed

1 on the monitors in front of you. It is map 1.2 of
2 Trinidad's Counter Memorial. The magnified section of the
3 map that you see on the screen is also contained in tab
4 209, the second page, and that is merely a magnification
5 of map 1.2 of Trinidad's Counter Memorial. And I ask you
6 to look to the left hand side of that magnification, about
7 half way up above the words "Caribbean Sea" and you will
8 see a maritime feature shown there. Mr President, members
9 of the Tribunal, it is a matter of international
10 notoriety that there is a geographical feature to the west
11 of the Windward Islands whose first name is Bird, or, in
12 Spanish, Aves. Venezuela asserts that it is an island
13 with all of the territorial implications that flow from
14 such a designation, to the significant detriment of the
15 states of the Windward Islands. It is also a matter of
16 international notoriety that CARICOM as a body and its
17 member states as individual states assert that this
18 feature is not an island but rather a rock, with no more
19 significance in terms of generating maritime entitlements
20 than such a lesser feature has. Thus Venezuela and its
21 supporters refer to the feature as Bird Island, or Isla
22 Aves, or Aves Island. The states of the Windward Islands
23 and CARICOM refer to it as Bird Rock.

24 As the Tribunal can see here, Trinidad and Tobago's
25 map labels it "Aves Island". Trinidad is yet again
26 demonstrating something rather less than solidarity with
27 its fellow CARICOM countries by endorsing Venezuela's
28 claim against its fellow CARICOM members.

29 I come to the conclusion of my address. Barbados is
30 a small nation without significant natural resources. But
31 even before independence it enjoyed a dignified history of
32 regional harmony, and it remains today at the forefront of
33 regional co-operation initiatives. Barbados has taken, by
34 way of this arbitration, the courageous step of standing
35 up for its rights in the face, you will well appreciate,
36 of daunting opposition. History is replete with examples
37 of relatively large and powerful states that have a vision
38 of their own place in the world and an appetite to achieve

1 it even at the expense of their neighbours. Trinidad and
2 Tobago's claim demonstrates its appetites. Its proposed
3 delimitation line cannot be sustained as legally justified
4 and certainly not required. Trinidad and Tobago has
5 declined to show the Tribunal what its visually simple 88
6 degree azimuth actually entails in terms of multiple
7 zones, a bewildering array of conflicting entitlements and
8 a jigsaw of unspoken boundary lines. In the end, Trinidad
9 and Tobago's claim amounts to nothing more than an
10 assertion that Trinidad and Tobago is big and Barbados is
11 small, and so Trinidad and Tobago should be awarded more
12 living space. Against that appetite, Mr President,
13 Barbados seeks the protection of the law.

14 I ask the Tribunal, please, to call upon Professor
15 Reisman. I apologise, I ask you to call on Jan Paulsson
16 instead.

17 MR PAULSSON: The confusion is flattering.

18 THE PRESIDENT: Mr Paulsson, please.

19 10.45.

20 MR PAULSSON: Thank you. My subject is geography. I will say a
21 few things about adjacency and I will say a few words
22 about proportionality and that is that. But I would like
23 to start with the mysterious point A, which you see again
24 set out at tab 210 of the Judges' folder. Barbados
25 persists in maintaining that point A remains unexplained
26 and unexplainable.

27 In his opening speech last week, Professor Crawford
28 expressed what he called a mild complaint about my oral
29 submissions, so I will be allowed a mild defence. He said
30 that it was improper for counsel to misrepresent the
31 record, in particular to say that a point had not been
32 dealt with when the opposite is true. None of us, I
33 suppose, likes to be lectured by our opponents about
34 "advocacy and accuracy", as Professor Crawford put it
35 (line 6, page 18 of the day 3 transcript) but he said it
36 in such an agreeable tone that I assure you and him that
37 no offence was taken. Professor Crawford's contention was
38 that Trinidad and Tobago had explained how it had selected

1 point A in its Counter Memorial and again in its
2 Rejoinder. He was kind enough to give me credit for being
3 literate and then expressed in what seemed to be a mixture
4 of sadness and disappointment that I had not used that
5 skill. In the same breath, Professor Crawford said this,
6 "I promise on behalf of my colleagues that they will not
7 make more complaints." In honesty, I must admit that I
8 did not think for a second that such a promise could bind
9 his successors. It did not and I do not protest. As
10 Voltaire would surely have put it, I may disagree with
11 what Professor Greenwood has to say but I will defend to
12 the death his right to try to give me a hard time.

13 Professor Greenwood certainly exercised that right.
14 He observed that Barbados had said that it could not
15 understand point A as anything but wholly arbitrary. That
16 is true. He offered to help us. "There is in fact
17 nothing arbitrary or unexplained about point A", he said
18 on page 93 of the day 3 transcript, and invited us to read
19 passages from the Counter Memorial and Rejoinder. With
20 just a touch of exasperation he then repeated the alleged
21 explanation.

22 On Friday, Professor Crawford came back to this
23 matter in his penultimate speech, where he once again
24 asserted that we had forgotten Trinidad and Tobago's twice
25 repeated explanation of point A, as he put it on page 74
26 of the day 4 transcript. He, too, gave the explanation
27 one more time. It sounded to me as though the two
28 professors' card on me would read "Could be a good student
29 but needs to do his homework". Now, it is my turn.

30 First of all, you will understand that it cannot fail
31 to encourage an advocate when his opponent feels it
32 necessary to send out one eminent champion after another
33 to repeat their assaults on the very same point. Point A
34 is Trinidad and Tobago's raw nerve. Many statements are
35 attributed to Winston Churchill and this is what he is
36 said to have said about one of his political rivals, if
37 anyone remembers him, I think it is Stafford Cripps, at
38 the time the Labour Chancellor of the Exchequer, he said

1 about one of his speeches, "He delivered that speech with
2 an expression of injured guilt". Trinidad and Tobago
3 knows it has come up with a dodgy proposition and it
4 pretends to complain when it is given short shrift.

5 Barbados' contention, Mr President, is not that
6 Trinidad and Tobago failed to say what it had done to come
7 up with point A, rather we expressed disbelief. The
8 transcript will show that Barbados expressed the view that
9 no principle had been articulated, no principle was even
10 conceivable that could make it proper to alight on this
11 point A.

12 I will cut to the chase and tell you what my report
13 on the two professors would be, "Brilliant students but
14 need to pay attention in class". I say this in a light-
15 hearted way because I do not see why I should be heavy-
16 hearted, but please make no mistake. This is a matter of
17 utmost seriousness. Trinidad and Tobago is seeking at
18 Barbados' expense to extend its maritime territory by
19 thousands of square miles beyond the median line, nearly
20 15,000 square miles. Trinidad and Tobago is saying that
21 this vast space of Barbados' natural patrimony should be
22 lost forever to Barbados due to the calamitous impact of
23 this point A. In Barbadian eyes point A is a
24 monstrosity. To say that we question it is a considerable
25 understatement.

26 So how did you come to alight on this particular
27 point, Barbados asks Trinidad and Tobago? Why does not
28 the adjacency effect that you claim kick in as soon as you
29 enter what you have decreed is the Atlantic? We were told
30 that the effect of adjacency requires that you get out to
31 some unspecified distance into the Atlantic. I may have
32 expressed mild irony when I said that adjacency is
33 apparently a feeling that must grow on you as you sail
34 away. Professor Crawford then made my point beautifully
35 as he strove to remember a poetical notion which he
36 ascribed to Donne of the difficulty of knowing when the
37 spirit cometh and goeth. Day 4, transcript page 74. Let
38 the point be crystal clear. When Trinidad and Tobago

1 asserts that it has explained to us more than once how it
2 selected point A Barbados says that that is not true.

3 What if Trinidad and Tobago had said "we picked point
4 A because it corresponded to the width of Professor
5 Greenwood's thumb on the map we were using"? That would
6 tell us how they did it, but is that an explanation? Only
7 in the most narrow and useless sense of the word
8 "explanation".

9 As it happens, the eastward drift of point A probably
10 does correspond to the width of a thumb on some of the
11 maps we have been seeing, but that is of course not what
12 Trinidad and Tobago is saying. We have told you before,
13 and we are telling you again, Trinidad and Tobago's
14 advocates intone, point A is justified because it is the
15 last point on the equidistance line which is determined by
16 a base point on the south-west facing coast of Barbados.
17 But is this any better than the width of my thumb? Are we
18 supposed to be impressed by the use of sanctifying words
19 which the man on the Clapham omnibus would perceive as
20 technical - equidistance line, base point? Barbados has
21 the certitude that this Tribunal will not be bedazzled.
22 This is not a difficult point. It is this. The coasts
23 which in the contention of Trinidad and Tobago justify an
24 adjustment to the median line are not the coasts where one
25 finds the base points that generate that line.

26 The directly opposing coasts are those which generate
27 the median line which Barbados says should be the border.

28 These opposing coasts are given full, simple, orthodox
29 decisive effect in the median line fortunately
30 acknowledged by both parties. The different coasts now at
31 issue, because they were brought into issue by Trinidad
32 and Tobago as allegedly justifying an adjustment, are in
33 Trinidad and Tobago's thesis the "generally eastern-facing
34 coasts" of the island of Trinidad. We are told that point
35 A is an appropriate location from which to commence giving
36 effect to this eastern facade of the island of Trinidad.
37 But what precisely is the alleged magic of this point,
38 defined as the last point on Barbados' south-west facing

1 coast which has a controlling effect on the equidistance
2 line? That definition is a bit of a mouthful, so perhaps
3 we might call it, not the Cape of Good Hope, but, looking
4 at it from Trinidad and Tobago's point of view, the Cape
5 of Last Hope. Looking at tab 211 of the Judges' folder,
6 it is important to understand that point A does not have a
7 fixed relation to that Cape of Last Hope. To put it
8 another way, point, A where it sits many scores of miles
9 down the equidistance line, could find itself in a number
10 of places, even if the Cape of Last Hope remains, as it
11 should, exactly where it is.

12 We had better look at an illustration. What you see
13 depicted at tab 212 of the Judges' folder is a series of
14 base points which presently control the undisputed median
15 line. The Cape of Last Hope does indeed control Trinidad
16 and Tobago's point A. But let us look closer at the
17 base points. Beyond the Cape of Last Hope, the next base
18 point on Barbados' south east coast, here numbered two,
19 becomes controlling, until the median line, off in the
20 watery distance, falls under the control of the third base
21 point, and so forth.

22 What would happen if one were to eliminate a few of
23 the Cape of Last Hope's neighbouring points? You could do
24 so by lopping off a slight rounding of Barbados' coast
25 like this. Tab 213. As one would grasp instantly,
26 conceptually, although I suspect that not many people in
27 this room could carry out the mechanics, the Cape of Last
28 Hope now extends its control further downwards across the
29 median line until it yields to the control of a new more
30 distant neighbour. This more distant neighbour is base
31 point 4A, obviously a new point because we have chopped
32 off knobs of this sliver of Barbadian coast. Given the
33 now greater reach of the Cape of Last Hope, the famous
34 point A on the equidistance line would move from here to
35 here, a distance of 54 miles. Trinidad and Tobago's
36 claimed adjustment would have to be reduced, Mr President,
37 by 5,632 square miles. Very simply, the position of point
38 A is not controlled by the south-west facing cost of

1 Barbados.

2 I make no apology for this geographical manipulation.

3 The validity of a proposition must be susceptible to
4 testing under a variety of hypotheses. What have we seen?

5 We have seen a rather modest change in the geography of
6 the island of Barbados. We removed one quarter of a
7 square mile of Barbados' land mass, a good city block,
8 without in the slightest way altering the direction of the
9 coast. And, as my tower of strength, my rock of ages, Mr
10 Gent tells me, the equidistance line will end at precisely
11 the same point as before.

12 The Cape of Last Hope, which in Trinidad and Tobago's
13 conceit represents the eastern most marker of the alleged
14 Caribbean sector, has not moved. Nor has the coast of
15 Tobago, nor Trinidad, nor indeed Trinidad and Tobago's
16 archipelagic baseline. So how can one imagine that the
17 Cape of Last Hope gives us any principled basis on which
18 to effect an adjustment on account of the island of
19 Trinidad's eastern facade? None whatsoever. It is no
20 less arbitrary than a thumb nail. Trinidad and Tobago's
21 big point, its supposed rationale, was that it had found
22 the point at which the relationship of the two states as a
23 whole becomes lateral rather than opposite. That is
24 Professor Greenwood's expression. Day 3 transcript, page
25 92, line 30. This simply cannot be. As we have just
26 seen, Trinidad and Tobago's ostensible rationale would
27 have the effect that the tiniest difference on Barbados'
28 coast would mean that the lateral relationship of the two
29 states as a whole does not become a reality until you have
30 gone a further 54 miles out to sea, with 5,632 square
31 miles changing hands as a result.

32 This is not an explanation. This is a contrivance
33 most artificial. Trinidad and Tobago has given no
34 justification for point A. The Counter Memorial offered a
35 pseudo explanation. The Rejoinder reiterated that pseudo
36 explanation. And when it was repeated orally, indeed by
37 two speakers, Barbados must conclude that it is *faute de*
38 *mieux*.

1 We have waited in vain for an explanation. The time
2 for waiting is over, the Tribunal will surely not accept a
3 new explanation if it is finally provided at the 13th hour
4 on the day of surrebuttal and when there is no occasion
5 for Barbados to answer.

6 It will not have escaped the Tribunal's attention
7 that we have not even begun to address the choice of
8 azimuth moving up and away to the north east from point A.

9 Again Trinidad and Tobago seems to rely on the uncertain
10 spirit of the poet. "We do not suggest that this is
11 necessarily the unique way of dealing with the problem"
12 Day 4, page 74. "We have proposed a method of dealing
13 with the adjustment and we have given reasons for it".
14 Reasons for the choice of the azimuth. The stated reason
15 was that the length was the length of a vector
16 representing the distance from the furthest points north
17 and south on the island of Trinidad. In fact, as the
18 Tribunal's hydrographer can confirm, if it is felt
19 relevant, this is inaccurate. It is for some unexplained
20 reason only an approximation. Perhaps Trinidad and Tobago
21 preferred not to promote explicitly a breathtaking new
22 rule of international law to the effect that when two EEZs
23 overlap there should always be a 50/50 division, which
24 Trinidad and Tobago admits is the practical result of its
25 purported line. Day 4, page 75.

26 11.00

27 But of course all this dissolves into gossamer
28 nothings when one contemplates the arbitrariness of point
29 A. One can only suppose that Trinidad and Tobago will say
30 that the azimuth must be coupled with point A to give the
31 total maritime dominion which Trinidad and Tobago covets.

32 Where is the principle? Barbados rather surmises that
33 this is a matter of "This is the rule, because this is
34 what I want". So much for point A.

35 I next wish to revert to the metaphysics of adjacency
36 and opposition. After that some remarks about
37 proportionality. And after that, Mr President, I will
38 pray to be allowed to take my leave from this pulpit!

1 With respect to adjacency and opposition, as a
2 preliminary remark may I observe that Trinidad and Tobago
3 rather exaggerated its argument when it said that the
4 distinction between the Caribbean and the Atlantic "has
5 been recognised by bodies like the International
6 Hydrographic Organisation for many many years." Day 1,
7 page 86. "Bodies like the IHO?" Name one other body!

8 As for the IHO itself, what we are talking about is
9 one document half a century old which incidentally
10 proposed a convenient notional division for the purposes
11 of whatever study was germane to that document. So to
12 speak of "the IHO's dividing line" as though it were
13 something sacrosanct is rather overdoing it.

14 More interestingly, the map you were shown when this
15 reference to "bodies like the IHO" was being made is this
16 one, tab 215, where we see the "Atlantic Ocean" to the
17 east in its empty light blue expanse and darker waters to
18 the west, containing the entirety of this Tribunal's
19 delimitation area, where the only designation at the far
20 left is "the Caribbean Sea."

21 I know that Barbados has an Atlantic side and a
22 Caribbean side, but so does St Lucia, so does every other
23 of its neighbouring Caribbean islands. Lest you think
24 that Barbados may be yielding to the temptation of
25 overstating its own argument let it be said that this
26 business of rough indicative nomenclature simply does not
27 contain even the germ of any legally decisive proposition,
28 so let us move on.

29 You will recall that I spent a considerable time
30 talking about the Anglo/French case and its Scilly effect.

31 On this point too we were taken to task because I heard
32 on day 3, transcript page 88, line 2, our way was not the
33 proper way to use authorities. Trinidad and Tobago said
34 it would not "throw short extracts on the screen but look
35 at the passages in context rather than seeing just a short
36 gobbet taken as an extract". And then a wonderful thing
37 happened. Trinidad and Tobago immediately proceeded
38 precisely to read out short gobbets. And what is more, as

1 the record will show, the very same gobbets which had
2 commended themselves to the present speaker. This is very
3 good news for the Tribunal because it means that there is
4 agreement as to what is relevant, a disagreement as to
5 what it means, and a requirement to have the Tribunal sort
6 out the competing theses. No more needs to be said.

7 That leaves us, as they say in Brussels, with two
8 acquis. First you will recall my observation that the
9 decision in the Anglo/French case explicitly stated that
10 there was no need to establish as a legal proposition
11 whether the two states were in a position of adjacency or
12 opposition, but that if it were necessary to do so the
13 Court of Arbitration would have been inclined to conclude
14 that they were in opposition, and this destroys Trinidad
15 and Tobago's thesis. Day 2, page 56 line 11. In other
16 words Trinidad and Tobago cannot invoke the Anglo/French
17 case for the proposition that the two states, in that case
18 or this one, are transformed into legally adjacent states
19 in the Atlantic sector. There was no comeback on this
20 point from Trinidad and Tobago. In fact I think we end in
21 agreement; what matters is the physical reality of
22 geography.

23 That leads me to observe the second acquis. There is
24 no Scilly effect in our case. Trinidad and Tobago has
25 been able to show no such thing because there is none.
26 However interesting its articulation of abstract
27 principles may or may not strike you, the Anglo/French
28 case gives no concrete guidance for assessing Trinidad and
29 Tobago's claim for adjustment.

30 The same I venture to say may reasonably be concluded
31 with respect to Gulf of Maine and Qatar/Bahrain. Each of
32 those cases also presented peculiar geographic features,
33 which find no correspondence in our rather simpler case of
34 two small island states separated by 116 nautical miles of
35 open uncluttered waters.

36 So it seems that Trinidad and Tobago's prayers for an
37 adjustment in the eastern sector depend on Trinidad and
38 Tobago's concept of proportionality, and so I come to my

1 third and final topic of geography.

2 The Tribunal will have noted Trinidad and Tobago's
3 acute lack of enthusiasm for the equidistance line. Its
4 advocates paid fleeting lip service to the median line as
5 a starting point - for a nanosecond, but my, what a great
6 hurry they were in to get away from it! Indeed this
7 allergy was so pronounced that my ears actually picked up
8 Professor Greenwood's reference to "the putative median
9 line", and so did the day 4 transcript at page 31 line 4.

10 The median line may make Trinidad and Tobago as
11 nervous as a long tailed cat in a room full of rocking
12 chairs, but it is no good calling the median line
13 "putative". It is what it is, and perhaps the one
14 fortunate certainty in this case, the one thing that has
15 been agreed between the parties.

16 Professor Crawford took you through some measurements
17 of the lengths of what he presented as the relevant
18 coasts. They produced a range of ratios. He took as what
19 he called a starting point the 3.6 to 1 ratio which I had
20 shown you earlier. This is in the folder at tab 216. His
21 poisonous suggestion seemed to be that this was an extreme
22 starting point and that the true measurement would likely
23 result in some middle position between the 3.6 to 1, and
24 Professor Crawford's 8.9 to 1 at the other extreme end.
25 But of course this was not Barbados' starting point at
26 all. The 3.6 to 1 ratio represents a correction of
27 Trinidad and Tobago's application of its highly contested
28 notion of eastern facing coastline as being relevant; but
29 Barbados of course says that this notion is wrong as a
30 first principle.

31 The relevant coasts are these opposing coasts and
32 they produce a ratio substantially in favour of Barbados;
33 more than two and a half to one. Tab 217.

34 Even if one were to disregard the doubtfulness of its
35 relevance, Trinidad and Tobago's presentation of its
36 alleged east facing coastal frontage is more than
37 debatable. You will recall the map which Professor
38 Crawford showed in support of his extremist 8.9 to 1

1 ratio. Tab 218. It purported to show relevant
2 coastlines. It will not have escaped your attention,
3 indeed I hope it will have shocked you, that the Barbadian
4 shore directly fronting the median line was entirely
5 ignored in computing this ratio; and yet on the other
6 hand the Trinidad and Tobago calculation counted the full
7 length of Trinidad's sizeable beak which, as far as I can
8 tell turns its back on the delimitation area and faces
9 rather directly, as I was surprised to find, in the
10 direction of the tip of South Africa, that is to say the
11 real Cape of Good Hope.

12 Then we are told to give great weight to the frontage
13 of the island of Trinidad. Professor Crawford would have
14 you think that it projects in this fashion, tab 219; now
15 all of a sudden to do this he disregarded what he called
16 the little cap of the hat, what I call Trinidad's beak,
17 which is actually 15 miles long. Even if one accepts to
18 leave out this beak Barbados would suggest, and so would
19 Mr Gent, that the proper placing of the baseline would
20 give you this projection. I hope someone will say "Please
21 do not be silly, include the beak". So we will and here
22 is the projection which we submit is the most
23 representative of the island of Trinidad's general
24 direction. It does not even touch the delimitation area.

25 Mr President, let us not even talk about the eastern
26 coast of Tobago. If it were not for Brazil it would be
27 projecting towards Antarctica!

28 In an attempt to justify the reference to coastlines
29 that do not front the delimitation area Trinidad and
30 Tobago said that "Trinidad and Tobago are caught in the
31 middle in a concave situation in exactly the same way that
32 Germany was caught in the middle, except that these are
33 islands". Day 4 transcript, page 67. Exactly the same
34 way? I could make a number of comments but they seem
35 unnecessary. Let me merely point out that the maritime
36 space that Trinidad and Tobago would enjoy under the
37 boundary proposed by Barbados would be a multiple of
38 Trinidad and Tobago's land mass whereas Germany's agreed

1 North Sea domain is a small fraction of its national land
2 territory.

3 And if we started playing this game where would it
4 end?

5 11.15

6 Is not the island state of St Vincent caught in a
7 concave situation, vis-a-vis Barbados and Trinidad and
8 Tobago? You can ponder this at your leisure. If you
9 examine the location of the string of islands to the west,
10 where would we stop?

11 What is ultimately the implication of saying that the
12 facade of these away facing coasts should push the order
13 northward?

14 Please consider this image at tab 220 of the Judges'
15 folder. If Trinidad were bigger, should Trinidad and
16 Tobago's maritime domain expand even further? Or should
17 this also occur if Tobago were larger? If we are going to
18 entertain such notions, then we should consider what would
19 happen if we shrink Trinidad and Tobago. Does this mean
20 that Barbados is entitled to adjust the median line
21 southwards in its favour? Members of the Tribunal, Mr
22 President, are we not really looking at two opposite
23 coasts where the border should be determined by the median
24 line? After so much talk about radiation, by all means
25 let us look at the proper and rational ambit of radiation.

26 Baselines do radiate, but only if they represent the base
27 points that control the median line. We are looking at an
28 image reproduced at tab 224.

29 I must say that, if Trinidad and Tobago's aggressive
30 ideas about proportionality and radiation would become a
31 rule of law, it would come as very bad news to a lot of
32 people. It would break the hearts of the citizens of the
33 Kingdom of Bahrain, who would have to come to terms with
34 the proposition that their historic judgment of 2001 made
35 them the beneficiaries of an injustice (tab 225). Look at
36 Qatar's size compared to Bahrain. Trinidad and Tobago
37 would advise Qatar to seek to reopen the judgment and, on
38 the footing of some allegedly-relevant measurement,

1 whether at the neck or the waist or some other
2 anthropomorphic manifestation of Qatar, to ask for an
3 appalling reduction of Bahrain's maritime domain.

4 What about Sri Lanka? Sri Lanka has agreed to a
5 maritime border with India. The Union of India has
6 produced, I think I can say, a gallery of distinguished
7 and able international lawyers and India is not known to
8 be either shy or ill-informed when pursuing its
9 entitlements under international law. So how did India
10 miss this trick? How does Sri Lanka dare to put itself so
11 impudently in the path of the manifest destiny of India's
12 mighty coastlines? Surely, India was entitled to radiate
13 Sri Lanka's maritime domain into smithereens?

14 But the real victims of Trinidad and Tobago's
15 radiation would be the poor Gambians. Tab 227. At
16 present they live in the seemingly false security of this
17 agreed, boringly predictable maritime border. But by the
18 time Professors Greenwood and Crawford reach the
19 Senegalese with the Trinidad and Tobago doctrine, the
20 matter will have to be reconsidered. First, the northern
21 border will be pushed down by Senegal's dominant northern
22 coast and then the southern border would be pushed up by
23 Senegal's dominant southern coast. The good citizens of
24 Gambia will be lucky to be left with the equivalent of a
25 swimming pool of maritime domain.

26 Barbados, Mr President, is of course a firm partisan
27 of the judgment line in Qatar-Bahrain, and a firm partisan
28 of the agreed borders of India and Sri Lanka and Gambia
29 and Senegal. The wild mischief of the Trinidad and Tobago
30 claim is flatly contrary to legal orthodoxy, which
31 Barbados submits is reflected in the following simple
32 sentence which you find in tab 228, a quotation from
33 Churchill and Lowe, Third Edition. "Differences in the
34 lengths of the relevant coastlines are a relevant
35 circumstance especially (perhaps only) in the case of
36 opposite coasts". Need I repeat: Tab 217 shows us that
37 the lengths of the opposite coasts favour Barbados by a
38 2.6:1 ratio. The eminent good sense of this proposition

1 may be grasped instantly by considering, on the one hand,
2 this emblematic case of opposition where an adjustment
3 seems justified, (Judges' folder tab 229) and, on the
4 other hand, this emblematic case of adjacency where
5 adjustment does not seem justified.

6 Mr President, I can see that my train is coming into
7 the station just a little quicker than I had anticipated,
8 so I will leave the Tribunal with one last thought, which
9 occurred to me as a possible encapsulation of the Gestalt
10 of this case: one thought that, for this advocate
11 encompasses everything. The thought came to me as I
12 listened with admiration to the erudite and apposite
13 arguments of my colleagues on both sides of the aisle
14 reaching back into 18th century poetry to come up with
15 concepts that were germane to their arguments. So you
16 heard Michael Reisman referring to Andrew Marvell's coy
17 mistress to illustrate a temporal aspect of a problem of
18 jurisdiction, "had we but world enough and time", and
19 James Crawford, referring to John Donne, if it was John
20 Donne, in a very sporting way, making a powerful argument
21 in favour of Barbados, saying the spirit comes and goes,
22 you never know what it is but, when you have to make a
23 maritime delimitation, at some point, the spirit might
24 move you and the spirit will tell you to do something
25 somewhere. I am not a fan of John Donne, I find him a bit
26 arch and arid for my taste, but I understand that for most
27 of his life he was an impecunious preacher - and that of
28 itself is enough for him to stay in our minds as a
29 sympathetic figure. I suppose that he stayed that way
30 until later in his life when he was elected Dean of St
31 Paul's Cathedral, the cathedral down the way. But during
32 his impecunious times, he wrote one poem, I think that it
33 is called "A Verse Letter" (you can tell because it is
34 always to somebody) to the Countess of Bedford, which
35 stays in the poetry anthologies. Given the piety of the
36 man I am sure that it was not the impulse of adulterous
37 yearnings but, not to put too fine a point on it, I
38 suppose he was paid for it. Anyway, he gave value because

1 the Countess of Bedford has been immortalised. Mr
2 President - one line - six words: "Your radiation" - not
3 radiance - "can all clouds subdue". That is poetic
4 licence - and it ain't true! You might procure that John
5 Donne writes a poem to immortalise you for the ages, but
6 your radiance will not the English clouds subdue. And I
7 put it to you, as a moral certainty, that the Countess of
8 Bedford was as susceptible as any of us to being drenched
9 by the occasional English squall or even drizzle.

10 Trinidad and Tobago can procure that an array of
11 eminent advocates, whose names will certainly be handed
12 down from generation to generation, invent a radiation
13 that they will ascribe to Trinidad and Tobago. But this
14 poetic licence ain't true either. This notion of radiance
15 will not be able to subdue the clouds of legal orthodoxy
16 which stand in the way of Trinidad and Tobago's
17 extravagant claim.

18 My subject is geography. Everything I say is subject
19 to fishing. But that is not my subject. Radiation is a
20 part of geography. There is a place in international
21 jurisprudence for radiation. It has, incidentally, had
22 effects in maritime delimitation, but its effect has been
23 orthodox, its effect should be foreseeable, its effect
24 should be, as you see on the map now (tab 227), neither
25 predatory nor mischievous.

26 As this is I think my last intervention in these
27 proceedings, may I thank the Tribunal and all of its
28 members for all their patience and courtesy.

29 THE PRESIDENT: Thank you so much, Mr Paulsson. Is this the
30 time when we should have our coffee break?

31 MR PAULSSON: Yes, thank you.

32 THE PRESIDENT: Then we will adjourn until twenty to 12.

33 PROFESSOR CRAWFORD: Mr President, I noticed that Mr Volterra
34 said earlier that there would be replies to the questions
35 asked yesterday some time this week. When we were asked a
36 question by Professor Orrego Vicuna we took some trouble
37 to ensure that the answer to that question was provided in
38 writing on the first day of Barbados' Reply so that they

1 could consider what, if anything, needed to be said about
2 it. We would have no difficulty with replies in writing
3 to questions asked by members of the Tribunal, but we
4 would have grave concern if those replies were provided
5 later than Thursday.

6 THE PRESIDENT: Thank you. Have you any observation, Mr
7 Volterra, on that?

8 MR VOLTERRA: Oh, but that we had a two day weekend as well!

9 PROFESSOR CRAWFORD: Sir, the questions were asked yesterday.
10 Yesterday is Monday and we are asking for replies on
11 Thursday. Close of business on Thursday will be enough.
12 I think that after today the substantial team of Barbados
13 can address their mind ... If I might say so, without
14 wanting to take up your time, I am slightly puzzled that
15 they need instructions as to what has happened in the Zone
16 of Co-operation, but no doubt they will tell us.

17 THE PRESIDENT: Mr Volterra.

18 MR VOLTERRA: Mr President, we can certainly evaluate during the
19 coffee break where we are.

20 THE PRESIDENT: Thank you. We stand adjourned.

21 **(Short Adjournment)**

22 THE PRESIDENT: Mr Volterra, did you wish to speak?

23 MR VOLTERRA: Thank you, Mr President. I will respond on the
24 point of responding to questions. In Barbados'
25 calculation the Tribunal has asked 12 questions in the
26 course of the hearing to date. Six of those were asked
27 yesterday and the Tribunal may imagine that Barbados has
28 been preparing for its second day of its second round. Of
29 those 12 questions Barbados has answered five already in
30 the course of its presentations in this round of the
31 hearing. Barbados will be able to answer two more of
32 those questions by the close of play Wednesday. It will
33 seek to submit responses to a further four by the close of
34 day Wednesday, but that might have to be Thursday. And
35 there is one question on which Barbados is already working
36 and it will try to submit by the close of day Wednesday,
37 but it might not be able to do so properly within that
38 time. That is the question raised by Professor Lowe

1 yesterday afternoon in which he requested a summary of
2 precedents for all Tribunals who have been asked to
3 delimit boundaries and give remedies other than
4 delimitation of a boundary, together with a note of how
5 far that remedy was in a question contemplated in terms of
6 reference to the Tribunal. This Tribunal may understand
7 that whilst we are working assiduously on it even whilst
8 some of us are here that might require something more than
9 the time available. But nonetheless I assure my friends
10 that we are hoping that we will get it finished in time.

11 11.45

12 In relation to the aside about the exclusive economic
13 zone one of the reasons that Barbados was seeking to do
14 due diligence is that it is on the public record that the
15 Prime Minister of Barbados was heading a multilateral
16 CARICOM delegation to Guyana to talk over a number of
17 issues. Also on the agenda between the Prime Minister of
18 Barbados and the President of Guyana were a number of
19 bilateral issues and importantly among those were a number
20 of matters dealing with the exclusive economic zones,
21 including consideration of a number of protocols and so
22 on.

23 This meeting we have discovered, has been postponed
24 and we do not know why. It is being rescheduled or
25 apparently the bilateral meeting is being rescheduled for
26 November and Barbados wanted to find out the status of
27 things before making a precipitous response, but that is
28 one of the questions to which Barbados will respond by the
29 end of the day tomorrow. Thank you very much, Mr
30 President.

31 THE PRESIDENT: Thank you so much, Mr Volterra. Professor
32 Crawford.

33 PROFESSOR CRAWFORD: Sir, that was a long answer and I am
34 just trying to grasp its implications. Is Mr Volterra
35 telling us that, in effect, all but the one question asked
36 by Professor Lowe about alternative remedies will be
37 answered by the end of the day tomorrow, saving force
38 majeure?

1 MR VOLTERRA: I am saying that we will seek to have them all,
2 other than perhaps the question from Professor Lowe, by
3 the close of day tomorrow, but it might be that four will
4 be responded to on Thursday.

5 PROFESSOR CRAWFORD: I am sorry, "four"?

6 MR VOLTERRA: Four questions in total.

7 PROFESSOR CRAWFORD: Will be responded to on Thursday. I ask
8 when on Thursday. We are dealing with issues on Thursday
9 to which we are not planning to reply on Friday. I think
10 that we are entitled to have answers. They are mostly
11 questions of law. The question that Professor Lowe asked
12 is a question of law and we can just reply to it
13 ourselves, but the questions of fact and mixed questions
14 of fact and law, if they do not know the answers now, I
15 wonder why.

16 THE PRESIDENT: Do you have anything to add, Mr Volterra?

17 PROFESSOR CRAWFORD: If I may take an example, sir, one of
18 Professor Lowe's questions was, what is the significance
19 of article 297.3(a) for the jurisdiction of this Tribunal?
20 It is a vital question. It has been flagged by us. It
21 is on the table. We are entitled to an answer to that
22 question before we stand up on jurisdiction on Thursday
23 afternoon.

24 THE PRESIDENT: Mr Volterra.

25 MR VOLTERRA: Barbados will endeavour to respond to these
26 questions as soon as it can. It will certainly endeavour
27 to do so by the end of the day tomorrow, but there may be
28 some questions that it will not be able to answer by the
29 end of tomorrow as I have indicated.

30 THE PRESIDENT: Professor Reisman is the next speaker, is he?

31 PROFESSOR REISMAN: Yes, Mr President.

32 THE PRESIDENT: Please, Professor Reisman.

33 PROFESSOR REISMAN: Thank you, Mr President. Mr President,
34 members of the tribunal, with your permission I turn to
35 Trinidad and Tobago's regional implications theory. I
36 will not address this theory at length because we have
37 already had the opportunity to explain to you in written
38 and oral submissions that we think that it is little more

1 than a ruse and that little new has been said about it by
2 our friends in the first round, though a few of their
3 points warrant comment.

4 I should emphasis at the very outset that Barbados
5 relies on the customary international law of maritime
6 delimitation and has submitted to you that that body of
7 law now holds that for states in coastal opposition the
8 appropriate methodology is the median line-special
9 circumstances method. Many experiments, some
10 unsuccessful, have been tried with other methods and the
11 accumulated experience distilled through general state
12 practice and judicial and arbitral decision teaches that
13 this is the method which provides equitable outcomes in
14 situations of coastal opposition. Of course, we take it
15 as *res ipsa loquitur* that Barbados and Trinidad and Tobago
16 are in a state of coastal opposition and that attempts to
17 pretend that they are really or somehow adjacent simply
18 collide with reality.

19 We question the legitimacy of a proposed method such
20 as regional implications theory which is deployed to
21 obscure the geographical situation that obtains and the
22 method that has been prescribed for it. In asking you to
23 ignore the general state practice, including treaty
24 practice, which has produced and sustained over time the
25 median line special circumstances method, and instead to
26 look at only two treaties, one of which, Trinidad and
27 Tobago-Venezuela, is not even supposed to be in this case,
28 the other Dominica-France, an idiosyncratic agreement
29 without repetition in the region, and to look at no other,
30 Trinidad and Tobago, we submit, is inviting the Tribunal
31 into ignoring Article 31, paragraph 1, subparagraph (b) of
32 the Statute and replacing it with a new provision which
33 says to you look only at the regional treaties which I say
34 are relevant and ignore everything else. That is the
35 wrong intellectual procedure and it is perilous. The
36 device for suppressing Article 38, paragraph 1
37 subparagraph (b) of the Statute by replacing the
38 requirement of general practice with a selection of one or

1 two treaties and presenting them as if they displaced
2 general international law should be rejected.
3 International law is international and not parochial. And
4 it is international law that is the mandate of the
5 Tribunal.

6 The only treaties which Trinidad and Tobago presented
7 under the rubric of the regional theory are, first,
8 Trinidad and Tobago's treaty with Venezuela, which is not
9 opposable to Barbados, and, second, the treaty between
10 France and Dominica, but, Mr President, having listened to
11 our learned friends, we are no longer sure that one of
12 those treaties is still in play. Does Trinidad and Tobago
13 actually insist on the Trinidad and Tobago and Venezuela
14 treaty? Listen to Professor Crawford. "You are not asked
15 to validate or invalidate the 1990 treaty. It is not a
16 matter for this Tribunal. It is not a matter for this
17 dispute. You were certainly not asked to render it
18 opposable to Barbados". Day 3, page 104, lines 21 to 24.

19 Tab 243. Mr President, are we to conclude that the
20 regional implication theory has now retracted to one
21 treaty? Perhaps as a means for concealing the exclusion
22 and selectivity which its regional implication theory
23 imports, Trinidad and Tobago has accused us of only citing
24 regional treaties that are favourable to Barbados. But,
25 Mr President, ours is not a regional implication theory.
26 We are not relying on practice of one or two states within
27 a region. We are relying upon general international law.

28 We strenuously object to a stratagem that tries to oppose
29 Trinidad and Tobago and Venezuela or Dominica as an
30 integral part of their regional implication theory, and
31 Professor Crawford's assurance notwithstanding, we still
32 find throughout the written submissions disturbing
33 evidence that the entire regional implications theory is a
34 stratagem to have the Trinidad and Tobago-Venezuela treaty
35 applied against Barbados.

36 Mr President, as for the Dominica-France agreement,
37 we insist that one agreement does not a regional norm
38 make. As we said last week, the reason why our discipline

1 looks for general practice and general trends in decision
2 is precisely to ensure that the customary rule that
3 emerges is fully general and not a reflection of the
4 special or idiosyncratic political features of any one
5 agreement. Dominica is an unusual agreement, its
6 commentaries have observed, and could hardly be the basis
7 for either a general rule or a corollary that would
8 justify departing from the rule, especially in our case.
9 It is arguable that Dominica could have been cut off by
10 application of median line special circumstances, but in
11 our case the median line allows Trinidad and Tobago a zone
12 of 193 nautical miles. That is hardly a cut-off.

13 The Barbados-Guyana agreement apparently does not
14 qualify for inclusion in the regional implications theory.

15 We are baffled as to the criteria for membership in the
16 region. We thought that Barbados and Guyana were members.

17 Nor is the St Lucia agreement apparently qualifying as a
18 member in this region; yet Trinidad and Tobago/Venezuela
19 which is not supposed to be in the case, as Professor
20 Crawford said, does seem to qualify.

21 Mr President, members of the Tribunal, at a certain
22 point one would be forgiven if one said we are not certain
23 exactly what your regional implications theory is, and how
24 it comports with Article 38 of the Statute, and indeed
25 which treaty qualifies as regional and which does not and
26 why; and what role the Trinidad and Tobago/Venezuela
27 treaty plays or does not play? Of course we understand
28 your regional implication theory gives you everything you
29 want, and that is why you have invented it and that is why
30 you are pleading it, but if it is a regional theory what
31 does it do for the region; what does it mean in practice?

32 What is the regional equitability that flows from it and
33 that would not flow from the application of general
34 international law?

35 In America we say the proof of the pudding is in the
36 eating. We have been given quite a complicated pudding.
37 So let us taste it. We tried to do that, Mr President,
38 members of the Tribunal, to cut through the pudding of

1 rhetoric and the contradictions to the critical question;
2 what does the regional implication theory as propounded
3 by Trinidad and Tobago produce? Here is what it produces.
4 Consider the graphic on your screen. Look at the equity
5 that it does to Barbados. Barbados submits that this
6 picture speaks for itself and condemns Trinidad and
7 Tobago's regional implication theory in this case more
8 eloquently than words can.

9 Mr President, members of the Tribunal, Trinidad and
10 Tobago has seen this graphic and says that this is a
11 nightmare scenario which is a figment of our imagination
12 (day 3, page 69 tab 244). "None of those states", says
13 Professor Crawford, with reference to the states that you
14 are looking at, "none of those states have made proposals
15 of that kind and there would be no basis for them to do
16 so."

17 12.00

18 None of them have made proposals of this kind,
19 although they are all members of the region. And none of
20 them would have a basis for so doing so. No basis for
21 them to do so. But that is exactly what Trinidad and
22 Tobago is doing. The projection was designed to show
23 exactly what the consequences of Trinidad and Tobago's
24 theory of delimitation would be. If there is no basis
25 for the other states in the region whose geography
26 supposedly justifies recourse to the regional implications
27 theory, on what basis does Trinidad and Tobago claim to do
28 it? What support does the regional implication theory
29 provide for it? Mr President, members of the Tribunal,
30 is not this just an elaborate ploy to justify Trinidad and
31 Tobago's claim and then to turn it off so that no one else
32 in the region supposedly supporting this regional norm can
33 do it; and of course no one else has claimed it.

34 Judge Schwebel has called for transparency and clear
35 reasoning in maritime boundary delimitations, and as a
36 member of the Court he criticised judgments which did not
37 achieve this. The so called regional implications theory
38 fails any transparency and clear reasoning test. It was

1 invented for this case. We submit that it must be
2 rejected.

3 Mr President, members of the Tribunal, I turn to
4 consider Trinidad and Tobago's substantive claims on the
5 ECS, the extended continental shelf, which is appurtenant
6 to Barbados' EEZ but not to Trinidad and Tobago's EEZ.

7 Professor Greenwood, with characteristic humour and
8 modesty, introduced this part of his presentation by
9 inviting the Tribunal to regard it as "the commercial
10 break between the two halves of a serious film", tab 245.

11 Commercial break between the two halves of a serious
12 film. That is usually a signal to get up and go to the
13 refrigerator to get a beer, alcoholic or non-alcoholic.
14 We did not do that. As befits an international
15 arbitration of this importance, we took what he said and
16 what his colleagues said on this point very seriously, and
17 having done so we find considerable difficulties with it,
18 as we believe the Tribunal will as well.

19 I outlined the sequence of premises of Trinidad and
20 Tobago's argument here last week so the briefest mention
21 of Trinidad and Tobago's argument should suffice.
22 Continental shelf doctrine entered customary international
23 law before the EEZ and the doctrine survives intact.
24 Moreover it trumps EEZ rights of other states, that is
25 rights within 200 miles of the coast of another state. As
26 the continental shelf doctrine predates the institution of
27 the EEZ, a state's continental shelf which encounters
28 another state's shelf in the EEZ may go under that state's
29 EEZ and co-exist with it and reappear as the extended
30 continental shelf which goes beyond the other state's EEZ.

31 Those are the essential steps of the argument.

32 The humorous opening of the presentation of this part
33 of Trinidad and Tobago's case by Professor Greenwood was
34 followed by many throwaway lines as Trinidad and Tobago
35 developed its argument. We appreciate your time is
36 limited and we do not intend to address each of these
37 arguments because many of them self-destruct on any
38 examination. But there are a few points. Professor

1 Crawford asks you to ignore France/Dominica's terminus of
2 Dominica's rights at the 200 nautical mile limit which one
3 would have thought would have been indicative of practice
4 as evidence of law with respect to the extended
5 continental shelf. Why ignore it? Because our friend
6 explains Judge Guillaume simply told Dominica it could not
7 do it - page 102. But was this simply an ipso dixit of
8 Judge Guillaume or was it evidence of international law?
9 Mr Dundas on whom Trinidad and Tobago relies and we do not
10 in his article which has been presented as travaux - and
11 it is not travaux, he seems to have worked for one of the
12 parties - says that the ground for France's objections or
13 President Guillaume's objection to Dominica's claim here
14 was that "it would be contrary to international law". So
15 here we have a clear indication of practice and opinio
16 juris, manifest opinio juris, and it is from a major
17 power; and we are told just to ignore it. And it
18 establishes that the EEZ concludes at the 200 mile
19 nautical limit and nothing extends beyond it.

20 We agree with Judge Guillaume and as a matter of
21 legal method we would say that when someone of the status
22 of a judge of the International Court says something is
23 contrary to international law in a practical case that
24 view is entitled to more than summary dismissal.

25 Mr President, members of the Tribunal, consider
26 Professor Greenwood, repeating Professor Crawford's
27 previous argument, contending that where Trinidad and
28 Tobago's 200 mile arc bends away from Barbados' 200 mile
29 arc Barbados' area cannot belong to Barbados and thus
30 block Trinidad and Tobago's shelf claim because "it
31 amounts to reinstating a rigid adherence to equidistance"
32 (tab 246). What is the sequitur here? What is the
33 connection? And as a separate matter what about the
34 entitlements of Barbados to an exclusive economic zone of
35 200 nautical miles which does not end until it encounters
36 another? Professor Crawford, though relied upon by
37 Professor Greenwood, has a different view, though it's a
38 view that changes very rapidly, so rapidly, I would say,

1 that it is hard to follow. He says, "If our maritime
2 zones come to the end within 200 miles of our coast, then
3 that is it. We are dead". Day 3, page 20, lines 3 and 4.

4 "If our maritime zones come to the end within 200 miles
5 of our coast, then that is it. We are dead". He goes on
6 to say, "We do not somehow go underground. Where would we
7 go underground and emerge somehow in some mysterious
8 process hundreds of miles further east and still in an
9 area claimed by others". Same page, lines 4 to 8.

10 Incidentally, this is your tab 247. Well, this seems
11 fairly reasonable. But wait. On the very same page, one
12 paragraph later, Professor Crawford says - and I believe
13 you should turn to this just to verify it, Mr President,
14 members of the Tribunal - tab 247 - Professor Crawford
15 says, having said, "If our maritime zones come to the end
16 within 200 miles of our coast, then that is it. We are
17 dead", he says a paragraph later, "If you say - and we
18 will explore this in more detail tomorrow - that the mere
19 fact that another state has a few miles of exclusive
20 economic zone beyond our exclusive economic zone and that
21 puts an end to all of our maritime claims, you will have
22 reinstated equidistance for the outer continental shelf".

23 But we thought you are dead. "If our maritime zones come
24 to an end within 200 nautical miles, then we are dead".
25 Apparently, there is life after death and you need not
26 wait for the rapture or the resurrection. All you have to
27 do is go down one paragraph

28 Mr President, we wonder what is the serious half that
29 is on one side or the other side of the commercial break.

30 I will not take your time to go through many of the
31 very, very problematic and inconsistent statements that we
32 find and we think are manifest and which, as I said
33 earlier, we believe self-destruct on a reading, but I
34 would like to go to the core of the thesis that was
35 propounded to us and that is the notion of the continental
36 shelf doctrine as an almost platonic notion. A premise of
37 Trinidad and Tobago's argument is - and I am quoting
38 Professor Crawford - that "there are not two continental

1 shelves, outer and inner, intended and extended, so to
2 speak. There is only one. Just as there are not two
3 continental shelf doctrines, one old and one new, there is
4 not the old continental shelf of 1958 and the new
5 continental shelf of 1982" - a very important premise in
6 the argument that I outlined a moment earlier. Of course,
7 Mr President, law frequently presents itself as permanent
8 and immoveable. We all use the expression "as mutable as
9 the decrees of the Medes and the Persians", but we all
10 know that law changes, sometimes tectonically, sometimes
11 dramatically and in a revolutionary fashion. It was Dean
12 Pound who said that all legislation is an experiment in
13 social control and, if there is any area of international
14 law which demonstrates that, it is the law of the sea of
15 the modern era. For all the extraordinary ferment in the
16 law of the sea, has the continental shelf doctrine alone
17 proved impervious to that dynamic change? Is there really
18 only one doctrine of a continental shelf that has never
19 changed through time - a platonic continental shelf - and,
20 if there is, what does not this unchanging doctrine give
21 to Trinidad and Tobago?

22 Let us understand what we are talking about by going
23 back to the geological origins of the continental shelf.
24 I apologise, Mr President, for such basic information, but
25 I think that it is important to make sure that it is on
26 the record. Geologically, the continental shelf is that
27 extension of the land mass that extends in shallow water
28 to the top of the continental slope, also known as the
29 shelf break. Beyond the break the continental land mass
30 falls away down the continental slope to the abyssal plain
31 of the deep ocean. The transition from continental to
32 oceanic geology happens in the foot of the slope. Were we
33 to define continental shelf in its geological reference,
34 and let us not forget that it was that reference that
35 preceded the juristic experiments, and indeed that
36 reference that gives us the very designation of
37 continental shelf, then, if that is the designation, then
38 Trinidad and Tobago's continental shelf ends within four

1 miles of its coast. Four miles of its coast.

2 If one were to define the continental shelf of
3 Trinidad and Tobago as including the shelf and the slope
4 as we saw in the previous graphic, Trinidad and Tobago's
5 inclusive continental shelf does not even reach the 200
6 nautical mile limit measured from its archipelagic
7 baselines.

8 That is, I suppose, as close as you will get to a
9 platonic definition of the continental shelf and it does
10 not give Trinidad and Tobago the ocean space that it is
11 claiming.

12 Mr President, members of the Tribunal, the 1958
13 Convention defined the continental shelf in article 1 in
14 quite a different fashion. "For the purpose of these
15 articles, the term 'continental shelf' is used as
16 referring to the seabed and subsoil of the submarine areas
17 adjacent to the coast but outside the area of the
18 territorial sea to a depth of 200 metres or beyond that
19 limit to where the depth of a superjacent waters admits of
20 the exploitation of natural resources of the said areas".

21 There is another provision, of course, to this. I do not
22 want to be accused of just giving you a gobbet, but, as
23 you will see, this is all that is relevant to our
24 discussion.

25 If this was the continental shelf that Trinidad and
26 Tobago claims to have acquired at some point in the past,
27 what did it actually acquire given its natural
28 prolongation? There is the 200 metre isobath. The depth
29 of 200 metres. Of course, under the strict language of
30 article 1 of the 1958 Convention there actually is no
31 definition of the continental shelf other than a
32 definition of the limits of exploitability. So this
33 could, in theory, ultimately extend to mid-ocean as there
34 was no other geological or geomorphological definition
35 provided by the 1958 Convention. But, Mr President, no
36 one other than Judge Oda, to our knowledge, has propounded
37 or advocated that theory, in part because that view, if it
38 were accepted, would preclude any common heritage in the

1 other part of the sea. The majority view of jurists was
2 that the shelf is more bounded and, certainly, in 1958 the
3 200 metre isobath of Trinidad and Tobago was less than 12
4 miles from its coast. Is this the concept of continental
5 shelf to which Professor Crawford was referring?

6 Mr President, was the concept of continental shelf in
7 article 1 of the 1958 Convention, perhaps the platonic
8 continental shelf, was it carried over to UNCLOS?
9 Consider article 76, paragraphs 1 and 3 of the 1982
10 Convention. I will not read it into the record as it is
11 in your folders or is supposed to be in your folders. It
12 may not be there.

13 This is quite a different concept from 1958 and also
14 from the geological conception, the original conception,
15 as it were, of continental shelf. I think there should be
16 no surprise. In 1958 exploitability technology and
17 economics seemed quite limited. We all know that the
18 first well of more than 200 metres was not drilled until
19 about 1970, but after that explorations were being
20 conducted in deeper water. By 1982 drilling was being
21 conducted in over 1,000 metres. So it was appreciated
22 that the limits of deeper prospecting had not been
23 reached. If the 1958 definition of the shelf was
24 retained, there might be no common heritage of mankind as
25 States extended their exploitation to the mid-ocean
26 reaches. Hence, the entirely new definition which was
27 more limiting in some ways, more extensive in some ways,
28 was developed. Still Article 76, paragraphs 4 to 8
29 introduced the possible extended continental shelf, which
30 might go as far seaward as 350 nautical miles from the
31 baselines or 100 nautical miles from the 2,500 metre
32 isobath. The provision prescribed the maximum length of
33 straight outer lines and it made this extension subject
34 ultimately to the final decision of the Commission on the
35 Limits of the Continental Shelf under Annex II or, to be
36 precise, subject to its recommendations "which shall be
37 final and binding."

38 This is quite different from what was available in

1 1958. In addition, Article 82 imposed the system of
2 payments or contributions in kind in respect of the
3 exploitation of the non-living resources of the
4 continental shelf to be made to the Authority, which was
5 to distribute them to state parties. So, in place of the
6 200 metre isobath along with an undefined exploitability
7 test, a qualified and geological and contingent distance
8 test was installed with automatic rights to a now defined
9 continental shelf limited to the outer edge of the margin
10 or the 200 nautical miles where it is greater than the
11 margin. After that, coastal states' rights were
12 conditional on additional geomorphological tests, subject
13 to confirmation by a designated commission and even then
14 the benefits that might be gained from those rights were
15 subject to mandatory contributions to the Authority.

16 So, Mr President, members of the Tribunal, is it not
17 clear that there have been radically different conceptions
18 of a continental shelf? Is there a natural continental
19 shelf? If there is, it is the geological definition - and
20 the geological definition provided to Trinidad and Tobago
21 4 miles from its coast. 1982 represents, if I may say, a
22 watershed, a qualitative change in the early experiments.

23 We submit that it was only under the 1982 Convention that
24 Trinidad and Tobago could have first made a claim -
25 obviously assuming that Barbados did not exist and enjoy
26 its own equally valid entitlements - the areas beyond 200
27 nautical miles which it is now claiming as its continental
28 shelf. And that definition of the continental shelf was
29 contemporaneous with the statutory installation of the
30 exclusive economic zone. I will consider the relationship
31 between these two institutions in a moment, but to
32 emphasise the point that we are dealing with distinctively
33 different conceptions of a continental shelf, I ask the
34 hydrographer to add the line possible under UNCLOS to the
35 chart where you can see the line possible under the 1958
36 Convention.

37 You will observe that under the new definition
38 Trinidad and Tobago's continental shelf is quite different

1 from what it was under the 1958 definition and radically
2 different from what it was under the geological
3 definition, the definition that ultimately gave us the
4 terms that entered into the codex of international law.
5 The point of emphasis is that the notion of a single
6 conception of the shelf, single and coherent and
7 consistent through time as propounded by Professor
8 Crawford, is not empirical at all. It is a metaphysical
9 concept, vague in contour and essentially ex post facto in
10 content. Anyone who claims that he or she could have
11 foreseen these developments as inevitable within the womb
12 of the platonic ideal of continental shelf is impressively
13 psychic or dreaming.

14 Until 1982 neither Trinidad and Tobago nor any state
15 had a right to an ECS or even a right to the shelf as
16 defined in UNCLOS Article 76. If any state qualified
17 under paragraphs 4 to 8 of Article 76, it qualified as a
18 result of the 1982 Convention, not as a result of any pre-
19 existing concept of the continental shelf, and that new
20 definition had to be accommodated with the contemporaneous
21 installation of the exclusive economic zone. So Trinidad
22 and Tobago's claim based on a continuous single doctrine
23 of continental shelf we submit fails.

24 Incidentally, Mr President, members of the Tribunal,
25 this review of the evolution of the continental shelf
26 doctrine obviates the apparent contradiction between
27 chapters 5 and 6 of UNCLOS, a seeming contradiction which
28 Trinidad and Tobago's claim creates and then has to
29 struggle to justify. The drafters of UNCLOS were not
30 sloppy. They did not create a regime under which two
31 states have the same rights, one under Article 56
32 paragraph 1 and the other under Article 77 to the same
33 piece of seabed. They were not guilty of sloppy drafting
34 and there is no reason to try and reconstruct why and how
35 they would have arranged for two different states to use
36 the same seabed at the same place. Nor is there any
37 reason to load so much and so implausibly on to the words
38 "in accordance" in Article 56 paragraph 3 in order to

1 pretend that the EEZ is subordinated in this artificially
2 created conflict to the continental shelf by the drafters.

3 Trinidad and Tobago's argument requires you to read
4 "in accordance with" as if it said "subject to", but the
5 drafters used "subject to" when they intended to create a
6 subordination between different parts of UNCLOS. Consider
7 Article 87. Look at paragraph 1, subsection (c), "the
8 freedom to lay submarine cables and pipelines subject to
9 Part VI". Subsection (d), "freedom to construct
10 artificial islands and other installations permitted under
11 international law subject to Part VI". Subsection (e),
12 "freedom of fishing, subject to the conditions laid down
13 in section 2". Mr President, members of the Tribunal, the
14 words "subject to" were part of the lexicon of the
15 drafters of the Law of the Sea Convention and when they
16 wanted to use those words they did. "In accordance with"
17 is not "subject to", and the exclusive economic zone was
18 not made subject to the continental shelf, as our friends
19 have argued.

20 Second, if as we said last week Trinidad and Tobago
21 automatically acquired a continental shelf at some moment
22 in the past, then Barbados must have acquired its shelf at
23 the same time. And Trinidad and Tobago's shelf would have
24 stopped where Barbados' shelf encountered it. Given the
25 situation of coastal opposition that would have been the
26 median line. Trinidad and Tobago would not have reached
27 the ECS because Barbados was once again inconveniently in
28 front of it.

29 Third, as a general legal theory, the proposition
30 that the codification and progressive development of an
31 area of customary international law into a widely accepted
32 treaty still allows the customary international law which
33 was codified to continue to exist and to develop in ways
34 different from the treaty takes us into Rudolf von
35 Jhering's satirical Begriffshimmel; a heavenly abode - a
36 heaven of concepts - in which departed jurists can
37 blissfully play with concepts as disembodied as themselves
38 forever. This notion of the continuing existence of the

1 customary law despite a multilateral and widely accepted
2 treaty that incorporated it was used as one of the basis
3 of jurisdiction by the International Court in the
4 Nicaraguan case, and it has been widely criticised and it
5 was wrong. The very idea that international law which was
6 codified in UNCLOS on its entry into force continues to
7 exist and to evolve as custom while the treaty goes its
8 own direction is belied by Article 31 of the Vienna
9 Convention which mandatorily incorporated subsequent
10 practice in the construction of UNCLOS or any treaty.

11 Fourth, the treaty cited in support of Trinidad and
12 Tobago's claim deal with fisheries access and no other
13 uses of water column or seabed, while Trinidad and
14 Tobago's proposals would have a state drilling for oil on
15 the seabed of the EEZ of another state which presumably
16 would be able to exercise its own rights with respect to
17 the seabed in its EEZ. Nor do any of the cases cited by
18 Trinidad and Tobago in this regard even deal with the
19 issue for which they were invoked. But last week Trinidad
20 and Tobago did try to use Sir Gerald's doctrine of non-
21 exclusive rights to bolster its argument. As I said
22 yesterday, we were of course gratified that opposing
23 counsel now accept a theory which we had introduced, but
24 they initially rejected, but I have to say that theirs is
25 a grotesque misapplication of it. Sir Gerald spoke of
26 non-exclusive fishing rights. When some 60 Barbadian
27 iceboats, each with a crew of 3-5 people, net fish in
28 waters south of the median line they do not interfere with
29 any other uses of the water column or seabed. Can the same
30 be said, Mr President, for two states using the same
31 seabed for the search for minerals on the basis of
32 different legal bases; one relying on Article 56
33 paragraph 1 and the other on Article 77?

34 Fifth, the theory of the exclusive continental shelf
35 which Trinidad and Tobago propounds must be generalisable
36 if it is to be law. If generalised it would be
37 mischievous and chaotic, as I indicated in the graphics
38 last week, for which I would say poor Mr Gent was unfairly

1 criticised. Those particular graphics, which are just what
2 graphics in any litigation should be, were prepared by Dr
3 Cleverly. It maybe worth considering them again for a
4 moment. This is the generalisation of the theory that is
5 being put forward by Trinidad and Tobago, in two areas and
6 others of course could be generated.

7 12.30

8 Mr President, members of the Tribunal, Professor
9 Greenwood commenced his presentation on the ECS with a
10 pleasant joke. Let me show you what the punch line is.
11 You will see here the allocation of the extended
12 continental shelf that flows from Trinidad and Tobago's
13 theory. How much is given to Trinidad and Tobago and how
14 much is given to Venezuela, how much is given to Barbados.

15 This is not simply a bad joke, it is a bad theory,
16 incorporating faulty reasoning. It would, if it were
17 effected, produce a grossly inequitable result. Barbados
18 would receive 25 per cent of the extended continental
19 shelf to which it is entitled under international law, one
20 quarter of what its entitlement is. This inequity is
21 curious because Trinidad and Tobago has urged you to
22 discard the clear and rational criteria which
23 international law has developed for delimitation of
24 maritime spaces of states in coastal opposition, and to
25 adopt the new theory ostensibly based on equitability.

26 Trinidad and Tobago's theory is in fact a formula for
27 inequity in this case and for chaos and conflict in any
28 other cases in which it might be applied.

29 Mr President, members of the Tribunal, this will be
30 my final opportunity to plead before you. I should like
31 to say again what a privilege and an honour it has been to
32 plead and to appear on behalf of Barbados.

33 Mr President, with your permission Sir Eli and
34 Attorney General Mottley will address you this afternoon
35 at a time you designate.

36 THE PRESIDENT: Thank you so much, Professor Reisman. We will
37 stand adjourned until 3 o'clock.

38 **(Adjourned for a Short Time)**

1 THE PRESIDENT: Professor Lauterpacht.

2 PROFESSOR SIR ELIHU LAUTERPACHT: Thank you, Mr President. Mr
3 President and members of the Tribunal. The issues before
4 you have now been so thoroughly canvassed that there is
5 little that I can add. Certainly it is unnecessary for me
6 to review all the main issues or pretend to offer them in
7 a summary form to which they no longer lend themselves.
8 Instead I will touch briefly on four points which have
9 wider ramifications in the resolution of the case. The
10 fact that I do not deal with others should not be taken as
11 a reflection of any unimportance for them. This is
12 especially so in relation to the conduct of Barbados north
13 of the median line which has been so amply dealt with by
14 Mr Volterra.

15 Just by way of preface, may I repeat that this is
16 really a simple case that has been made difficult by the
17 complexities introduced on behalf of Trinidad and Tobago.

18 Both sides are now agreed that the process of
19 delimitation should start from the drawing of a median
20 line between Barbados and Tobago. This is in accord with
21 established precedent. Both sides are also agreed that
22 it may be justifiable on a persuasive demonstration then
23 to adjust or modify the median line by reference to
24 certain relevant circumstances. It is in the
25 identification of these circumstances that the two sides
26 differ.

27 For Barbados the relevant circumstances operate in
28 the north-western sector south of the median line. The
29 extensive fisheries conducted by Barbados fishermen in the
30 waters off the north west, north and north east coasts of
31 Tobago cannot be disregarded. So I come to my first
32 substantive point. The parties disagree as to the extent
33 in time and location of the fisheries. Barbados has
34 introduced a number of affidavits by Barbados fisherfolk
35 attesting to the fact that flying fish have been long
36 caught in these waters by them and their ancestors.
37 Trinidad and Tobago has sought to denigrate the probative
38 value of these affidavits by relying instead on a number

1 of reports suggesting that fishing for flying fish in this
2 region is a relatively recent development, but Barbados is
3 entitled to ask why should greater probative value be
4 attached to these reports than is attached to the
5 affidavits of the fisherfolk? The fact that in some cases
6 they are reports by government or international officials
7 is tacitly deemed by Trinidad and Tobago to endow them
8 with a greater authority than the statements of persons
9 who are actually involved in the fisheries.

10 But Trinidad and Tobago has not introduced this
11 material in the form of witness statements that could have
12 led to the cross-examination of their authors; Barbados,
13 on the other hand, by submitting its evidence in affidavit
14 form has indicated that their authors would be available
15 for cross-examination. Trinidad and Tobago has chosen not
16 to embark on a direct questioning of the Barbados
17 deponents. Instead it has merely asked the Tribunal to
18 accord a greater weight to reports written by persons who
19 appear never to have been involved in actual fishing in
20 the area, than is to be accorded to the evidence, never
21 made the subject of direct challenge, of fisherfolk who
22 have worked in these waters and whose families have done
23 so for generations.

24 At one point, Trinidad and Tobago classified the
25 evidence given in the affidavits regarding what had
26 happened in earlier generations as hearsay evidence. But
27 is not much of the evidence presented in the form of
28 reports and studies, official or otherwise, also hearsay?

29 Where did those experts get the facts on which they base
30 their reports? They got them from secondary sources. But
31 even if the reports in question were to be accepted as the
32 only valid source of information, it has to be observed
33 that they clearly evidence consistent Barbadian flying
34 fish activity at least as far back as the 1970s. Indeed
35 Barbados contends that the documentary record from 1942
36 onwards demonstrates that Barbadian fishing activity in
37 the relevant area dates back to at least the 1930s.
38 Barbados contends further that the evidence as a whole

1 clearly shows such continuous activity since as far back
2 as the early 18th century.

3 Trinidad and Tobago seems to assume that activity
4 that has now gone on for at least some 30 years or, as
5 Barbados contends, for 60 years, and indeed for centuries,
6 that such activity is not a sufficient basis for
7 attributing weight in the process of delimitation that is
8 taking place today.

9 But even some 30 years of relevant activity may not
10 be disregarded. This must especially be the case where, as
11 here, it is common ground that the activity concerned has
12 been substantial and continuous since the time when the
13 relevant area was high seas. Just as in the Jan Mayen
14 case, continuous fishing activity for capelin for some 20
15 years was considered a relevant circumstance, so even the
16 indisputable fishing activities for some 30 years in this
17 case must be a relevant circumstance. In any event, it is
18 difficult to believe that Barbadian fishing for flying
19 fish off Tobago is an activity that suddenly sprang into
20 being in the 1970s or even the 1930s, given the documented
21 fact that it was taking place two centuries previously.

22 The evidence produced by Barbados makes it clear that
23 any conclusion of the present case that leaves the
24 Barbados fishermen unprotected will have major adverse
25 effects. There has been much talk about whether these
26 effects will be catastrophic. Two questions arise. The
27 first is, for whom is the development catastrophic? The
28 second is, what exactly is meant by catastrophic? As to
29 the first, the impact of the catastrophe is to be measured
30 principally in the effects upon the fisherfolk themselves.

31 Though it extends, of course, to their families and all
32 those engaged in the processing and marketing of the
33 flying fish and, indeed, more generally to the population
34 at large.

35 The Tribunal has been provided with evidence of the
36 hardship that the fisherfolk will suffer if their freedom
37 to fish is curtailed. It is by reference to their
38 hardship that the catastrophe must be measured. In any

1 event, and this is the second question, is "catastrophic"
2 the right adjective to be used to describe the degree of
3 economic and social consequences of any failure to ensure
4 that Barbados fisherfolk can continue to fish in the
5 relevant area? It has become a commonplace of the
6 discussion of relevant factors in delimitation that
7 economic and social considerations should be disregarded.

8 Barbados suggests that this commonplace is ripe for re-
9 consideration. There is no good reason why an approach to
10 an equitable solution should exclude consideration of
11 economic and social factors, particularly in the case of a
12 small island state that is already inherently vulnerable.

13 The very fact that the concept of catastrophic
14 consequences has been acknowledged as relevant itself
15 indicates that economic consequences require
16 consideration. But why the adjective "catastrophic"? It
17 appeared out of thin air in the Gulf of Maine case as a
18 description of the consequences that the Court considered
19 might follow from what it was so keen to avoid, namely, to
20 use the Court's own words, "a radically inequitable
21 delimitation". But the relevance and context of the test
22 were the subject of debate between the parties and the
23 Chamber of the Court did not enter into any discussion of
24 it.

25 Barbados submits that the present Tribunal should
26 approach the concept of "catastrophe" in a questioning
27 spirit and should be prepared as part of the process of
28 delimitation to consider the impact of the Trinidad and
29 Tobago claim upon a section of the Barbados population and
30 upon the small island of Barbados as a whole. The more
31 so, I should add, because there is no evidence of any
32 specific adverse effect upon the Tobago population if
33 Barbados fisherfolk are enabled to continue their fishing
34 in the area as hitherto. Any failure to take these
35 critical economic and social consequences into
36 consideration would be radically inequitable.

37 3.15

38 I turn now to the second matter that calls for

1 further discussion. Trinidad and Tobago has argued that
2 its claim to continental shelf rights has priority over
3 Barbados' economic zone claim because the continental
4 shelf is a concept of customary international law which
5 preceded the establishment of the concept of the exclusive
6 economic zone. As a general proposition, that is true,
7 since international lawyers began talking about the
8 continental shelf in the late 1940s. But the important
9 question is, what was the continental shelf about which
10 they were talking? The answer, prior to 1982, may be
11 found in the definition given to the continental shelf in
12 the 1958 Continental Shelf Convention. This is a matter
13 that has already been discussed by Professor Reisman, but
14 it is sufficiently important to warrant a brief and
15 slightly different restatement.

16 In the 1958 Convention the continental shelf was
17 defined as the seabed and subsoil of the submarine areas
18 to a depth of 200 metres or beyond that depth to where the
19 depth of the superjacent waters admits exploitation. In
20 the later and current definition, this depth criterion was
21 replaced by the criterion of natural prolongation of the
22 land territory to the outer edge of the continental margin
23 or to a distance of 200 nautical miles if the continental
24 margin does not extend so far.

25 Where the edge of the continental margin extends
26 beyond 200 nautical miles, the outer limits shall not
27 exceed 350 nautical miles from the baseline or 100
28 nautical miles from the 2,500 metre isobath. So today we
29 are talking about a much larger continental shelf than was
30 the case prior to the acceptance of the 1982 Convention.
31 If priority for the continental shelf is to be asserted
32 before 1982, it can only be priority over a significantly
33 smaller continental shelf.

34 Now, the relevant facts are that off Tobago the 200
35 metre contour, that is the test under the 1958 Convention,
36 is reached within four miles of the coast. In the area
37 of claimed overlap between the Barbados economic zone and
38 the Trinidad and Tobago continental shelf the water depth

1 is four and a half thousand metres, therefore well outside
2 the definition of the continental shelf prior to 1982.

3 So it is immediately evident that in the period prior
4 to 1982, or rather the date when the convention came to
5 force, Trinidad and Tobago had no customary international
6 law ipso facto right over the whole of the area that it
7 now claims. The actual continental shelf, that is to say
8 the foot of the slope, falls not only within Trinidad and
9 Tobago's 200 mile arc but also falls short of its median
10 line tri-point with Barbados and Guyana. It follows
11 therefore that Trinidad and Tobago's claim to continental
12 shelf cannot trump Barbados' economic zone on the alleged
13 ground of some temporal priority of legal right.

14 It is significant that the British Government in its
15 1952 comments on the International Law Commission's Draft
16 Articles on the continental shelf, went no further than to
17 state "Her Majesty's Government considers that state
18 practice is sufficiently uniform to justify fixing this
19 limit" - a fixed limit for depth - "at the 100 fathom
20 line". That view reflected the customary international
21 law position up to and following the 1958 Continental
22 Shelf Convention.

23 I come now to my third point. A word about the
24 relationship between economic zone rights and continental
25 shelf rights. Trinidad and Tobago has invoked the terms
26 of Article 56 paragraph 3 of UNCLOS, which state that "the
27 rights set out in that Article with respect to the seabed
28 and subsoil shall be exercised in accordance with Part
29 VI", as according priority to the rights of Trinidad and
30 Tobago where its continental shelf overlaps with Barbados'
31 economic zone.

32 Perusal of pages 521-544 of the Virginia Commentary,
33 which presents the travaux preparatoires of this
34 paragraph, does not support the Trinidad and Tobago
35 argument. As I have already submitted in my opening
36 speech, to say that the rights shall be exercised in
37 accordance with Part VI does not make Part VI prevail over
38 Part V of the 1982 Convention. It states only that the

1 detailed provisions of Part VI regarding the exercise of
2 continental shelf rights shall also be followed where a
3 state exercises its exploration and exploitation rights
4 under Part V. The phrases "shall be exercised" or "in
5 exercising its rights" in conjunction with the reference
6 to rights dealt with elsewhere in UNCLOS are frequently
7 used in that Convention to avoid unnecessary repetition in
8 one provision of details set out in another. In other
9 words Article 56 paragraph 3 prescribed method not
10 subordination.

11 Turning now to my fourth point, I would like to
12 conclude with a word again about the deficiency in
13 Trinidad and Tobago's claim line as set out in its
14 conclusions and submission. The Tribunal will recall that
15 I observed in my opening statement that Trinidad and
16 Tobago appeared to have got itself into a bit of a muddle.

17 It had requested the Tribunal to reject the claim line of
18 Barbados "in its entirety". Nonetheless Trinidad and
19 Tobago asked the Tribunal to decide in its favour that the
20 boundary to the west of their point A followed the median
21 line between Barbados and Trinidad and Tobago until it
22 reaches the maritime area falling within the jurisdiction
23 of St Vincent and the Grenadines. I pointed out that the
24 Barbados claim also followed the median line, and that
25 there is a section of the median line that is common to
26 both claims. I asked, if the median line south east of
27 Barbados' point D cannot form part of Barbados' boundary,
28 how can it form part of the boundary for Trinidad and
29 Tobago? In consequence there is a gap of approximately 16
30 nautical miles in the line now claimed by Trinidad and
31 Tobago. In his speech Professor Crawford said that he
32 would deal with this point. His treatment of it may be
33 found in the transcript, day 4 at pages 76-77. Perusal of
34 the few lines that he devotes to the matter reveals no
35 answer. All that he did was to explain that Trinidad and
36 Tobago's equidistance line ran northwest from Trinidad and
37 Tobago's point A rather than south east from the tri-point
38 with St Vincent and the Grenadines. The virtue of this,.

1 he said, was that the Tribunal did not have to determine
2 the tri-point. So be it, but that is no response to the
3 identification of the defect in the Trinidad and Tobago
4 claim. If the equidistance line of Barbados must be
5 rejected in its entirety, as proposed by Trinidad and
6 Tobago, if that equidistance line must be rejected in its
7 entirety, this must mean that there is no stretch of
8 equidistance that can properly be used as the maritime
9 boundary. If that is so, how can the 16 nautical miles of
10 coincidence between the Trinidad and Tobago claim and the
11 Barbados claim be upheld by Trinidad and Tobago as part of
12 its line? If equidistance is good for Trinidad and
13 Tobago, it must also be good for Barbados. If it is not
14 good for Barbados, it is not good for Trinidad and Tobago.

15 Professor Crawford does not meet that point at all. He
16 did not accept my suggestion that Trinidad and Tobago
17 might seek leave to amend its submissions. So Trinidad
18 and Tobago insists on adhering to a line with a 16
19 nautical mile gap in it. There is something wrong there,
20 but Trinidad and Tobago seems unwilling to acknowledge or
21 remedy it. The resulting situation makes the selection by
22 Trinidad and Tobago of its point A appear even more
23 arbitrary than has already been shown by my colleagues.

24 Mr President and members of the Tribunal, this almost
25 concludes my brief intervention, but in closing I should
26 respectfully recall the words used by you, Mr President,
27 in the course of your dissenting opinion in the Libya-
28 Malta case. In commenting on the circumstances that the
29 court had considered in determining the boundary, you
30 said, "In my view the Court shows no such relevant
31 circumstances. Moreover, it does not use the
32 circumstances on which it relies only to the extent
33 actually dictated by them. Rather the Court's judgment
34 conspicuously fails to invoke and objectively apply
35 relevant circumstances which specifically or measurably
36 justify still less require correction of the median line.

37 It demonstrates not the slightest correspondence between
38 the considerations which it characterises as relevant and

1 the line which it claims to derive from these
2 circumstances".

3 Later you said, and I quote again, "It is difficult
4 to criticise the Court's reasoning at any length since
5 there is so little of it". You then said, "The relevance
6 of these circumstances is not demonstrated. Authority for
7 them in conventional or customary international law, in
8 judicial or arbitral decisions or in state practice is not
9 shown. If the Court concludes that certain designated
10 circumstances are relevant, it has the burden of showing
11 why and of sustaining its reasoning by appropriate
12 authority. What is clear is that the attenuated illusions
13 supplied by the Court do not suffice".

14 Later, Mr President, you made the point again, and I
15 quote once more. "In sum, the Court finds it equitable to
16 choose a line for reasons only vaguely voiced whose
17 relevance to the law and still less to the line is not
18 articulated, still less demonstrated". Then, finally,
19 towards the end of your opinion, you say, "The process
20 which the Court follows in today's judgment is so far from
21 that followed in the Gulf of Maine case or other
22 adjudications as to be unconvincing. The Court declares
23 in today's judgment that the application of justice of
24 which equity is an emanation should display consistency
25 and a degree of predictability. I fully agree. Equally I
26 recognise that, as I put it in an opinion in the Gulf of
27 Maine case, there is considerable room for differences of
28 opinion in the application of equitable principles to
29 problems of maritime delimitation. But, in my view, in
30 today's judgment the Court rose beyond those ample bounds.

31 The Court is of course correct in holding that any median
32 line that is subject to correction so as to take account
33 of special circumstances, but I cannot agree that the
34 Court's cryptic references to the length of coasts, the
35 distance between coasts, the sparsity of base points and
36 the general geographical context suffice to justify the
37 selection of the line of delimitation which it has chosen
38 in this case. Nor do these arrested allusions conduct

1 towards building the sense of consistency and
2 predictability at which the Court and the law so rightly
3 aim".

4 Mr President and members of the Tribunal, with the
5 greatest respect, I am confident that these wise dicta
6 will not be overlooked in the formulation of the
7 Tribunal's decision in the present case. I thank you for
8 hearing me and now would respectfully ask you to call upon
9 Ms Mottley, the Attorney General to conclude Barbados'
10 Reply.

11 3.30

12 THE PRESIDENT: Thank you so much, Sir Elihu. Ms Mottley,
13 please. Professor Lowe would like to ask a question.

14 PROFESSOR LOWE: It is very simple. You referred to the
15 Virginia Commentary on Article 56(3). I am not certain
16 that that has been put in evidence and I wonder whether,
17 for the convenience of the Tribunal, copies could be made
18 available to us.

19 PROFESSOR SIR ELIHU LAUTERPACHT: Sir Arthur, the Virginia
20 Commentary is of course not a matter for evidence. It is
21 a public book, a work of reference, but, as you ask for a
22 copy of it, the volume is very large and, if you please,
23 we will just provide you with copies of the relevant
24 pages.

25 PROFESSOR LOWE: That is all we require. Thank you.

26 THE PRESIDENT: Ms Mottley.

27 THE HON MIA A MOTTLEY: Thank you very much, Mr President and
28 members of the Tribunal, my colleague, the Agent of the
29 Republic of Trinidad and Tobago. Today, as I make these
30 closing remarks on behalf of Barbados, I really cannot
31 help but reflect on the historic nature of this
32 arbitration for Barbados, for Trinidad and Tobago and,
33 indeed, for international law in general. It is historic
34 for the parties because it is the first time that two
35 member countries of the Caribbean community find
36 themselves in a forum such as this. It is historic
37 because such arbitrations really have been the preserve
38 really of larger countries. This is therefore one of the

1 first times that small island developing states, such as
2 ours, have been at the centre, Bahrain apart. It is
3 historic for the United Nations Convention on the Law of
4 the Sea, from an institutional perspective, because this
5 is the first time that two state parties under this
6 Convention have come before an Annex VII tribunal in
7 accordance with Part XV of the Convention for a maritime
8 boundary delimitation. It is historic because this
9 Tribunal is being asked to make an award which, one way or
10 another, will have significant and wide-ranging
11 consequences for the jurisprudence in this area of the law
12 and, in particular, for the interpretation of the 1982
13 United Nations Convention on the Law of the Sea.

14 Barbados has come, Mr President, to the end of its
15 case and its submissions, effectively. The advocacy has
16 been robust and muscular, some may even say excessive, but
17 bereft of malice, I trust. This must not however distract
18 us from the central issue at hand. That is the role that
19 this distinguished tribunal must play in applying the law
20 to delimit a single maritime boundary between the parties.

21 The seriousness of that responsibility is clearly
22 understood by the members of the Tribunal and I need not
23 remind you. Your sustained attention, interest and
24 probing inquiries throughout the proceedings have truly
25 been a great source of satisfaction to us as a state. For
26 you are aware, Mr President, that what is ultimately at
27 stake for us is the future livelihood of all of our
28 citizens and, indeed, those in particular in our fishing
29 community - our traditional artisanal fisherfolk and their
30 dependants, but also the future development of Barbados as
31 a nation by virtue of its ability to exploit without
32 impediment the resources of its maritime space.

33 We have presented to you various aspects of Barbados'
34 case and I trust that there can be no doubt as to what it
35 is we seek, a solution based on the law. The people of
36 Barbados, as well as those of Trinidad and Tobago, expect
37 and deserve no less.

38 As I adumbrated in my opening statement on Monday

1 last, Mr President, Barbados has always had a keen sense
2 of fair play and a strong commitment to the rule of law.
3 There are those who argue that this has been one of the
4 consequences of over 300 years of an uninterrupted but
5 evolving relationship with the United Kingdom. If that
6 per chance be so, then, it is notably one of the more
7 beneficial consequences of the colonial rule. But it is
8 this sense, that the rule of law must prevail, which has
9 really brought us here today.

10 In the lead up to the commencement of this arbitral
11 process, Barbados was confronted by a series of actions by
12 Trinidad and Tobago which it considered to be threatening
13 to its rights under the Law of the Sea Convention and
14 under international law. One, the arrest and harassment
15 of Barbadian traditional artisanal fisherfolk; two, the
16 signing of a unitisation agreement with Venezuela in
17 August 2003, while they were negotiating with Barbados
18 this boundary agreement; three, the advertising for tender
19 of concession blocks in a part of the relevant area under
20 dispute and without bringing it to our attention once
21 again; four, the Trinidad and Tobago, in our view,
22 filibustering of Barbados in both of the negotiation
23 processes while engaging in activities which would lead to
24 facts on the ground, and those facts are the commercial
25 activities to which I just referred; five, Prime Minister
26 Manning's description of the dispute on 16th February 2004
27 as being intractable and effectively inviting the
28 Government of Barbados to take his Government to
29 arbitration. These are some of the events which led up to
30 Barbados' decision to commence these proceedings. The
31 Tribunal, I trust, will better understand, therefore, how
32 we come to be here today.

33 From the outset of the recent bilateral negotiations
34 to which I have just referred, the parties were in dispute
35 with respect to both fisheries and boundaries, with
36 respect to both substance and form, down to even what the
37 discussion notes should be called, a situation which
38 simply did not evolve, even though it came to be discussed

1 at the highest level by the Prime Ministers of the two
2 countries on several occasions and through a series of
3 correspondence between them.

4 Barbados in our view was therefore left with no
5 choice in February of last year but to begin these
6 proceedings. Trinidad and Tobago has suggested that we
7 have dragged them here without exhausting the provisions
8 of the Convention. That is truly unfortunate and
9 regrettable, as Trinidad and Tobago knows the difficulty
10 of the efforts over the course of more than one decade to
11 come to this point. And the circumstances of small states
12 are not those of large countries and the resources
13 necessary to complete the task very often are simply not
14 there. Barbados has shown, therefore, this view to be
15 false both in fact and in law. Unlike the position of the
16 parties, however, in recent bilateral negotiations, at
17 least now Barbados and Trinidad are agreed upon one thing.

18 The first rule of the law of maritime boundary
19 delimitation is that one which starts the process with the
20 provisional median line and thereafter one considers what
21 are the special circumstances which require the adjustment
22 of that median line. Sir Elihu has simply and clearly
23 averted to that in his wrap-up. It is, therefore, only
24 for this Tribunal to determine the identification of those
25 special circumstances. And it is on this matter that the
26 parties now disagree.

27 As you will have seen, Mr President, members of the
28 Tribunal, Barbados has repeatedly insisted, whether in
29 negotiations that are documented or the joint reports and
30 negotiation records or in this arbitration, that maritime
31 boundary delimitation and fisheries for us are
32 interdependent. This is in sharp contradistinction with
33 Trinidad and Tobago's case which, although now agreeing on
34 the orthodox international law methodology to be employed,
35 as I just said, has asserted a constantly varying list,
36 almost chameleon-like, of relevant circumstances requiring
37 the adjustment of the provisional median line. I can
38 really not attempt to list them all, because I might read

1 from the wrong document and I am not sure what will come
2 in response by the end of the week. Suffice it to say
3 that Barbados has sought simplicity and thus seeks
4 simplicity and certainty from the law. Trinidad and
5 Tobago in our view has made a simple case difficult.

6 The circumstances surrounding our traditional
7 artisanal fishery to the north, north west and north east
8 coast of Tobago, we say, qualifies as a special
9 circumstance. We have underscored how deeply woven into
10 our fabric are the fisheries and ancillary sectors to the
11 fisheries. Trinidad and Tobago does not deny that the
12 flying fish occupies a special place in Barbadian cuisine,
13 nutritional intake, economy, culture and, perhaps most
14 importantly, iconography. Barbados is globally recognised
15 as being the land of the flying fish. It is part of,
16 indeed it is central to, our national psyche and national
17 identity. For centuries, the flying fish has been as
18 symbolic to Barbados as the steel band is to Trinidad and
19 Tobago, perhaps even as the kangaroo is to Australia. It
20 really requires, Mr President, that for two seconds I
21 focus on the people. To quote from Churchill and Lowe,
22 "Although the international law of the sea is a principle
23 limited in its application to states and other entities
24 having international personality, it has immediate
25 significance for individuals". Allow me, therefore, to
26 dwell, as I said, for a moment on these individuals. I
27 underlined in my opening address last Monday, and other
28 advocates on Barbados' side have followed suit, the human
29 aspect of this case. Special circumstances, estoppels,
30 effectivités are all critical legal concepts which you are
31 asked carefully to consider, and you must. But to me, Mr
32 President, part of this case must translate into critical
33 human realities for the men and women whom I have the
34 honour to represent and in whose interests I speak today
35 and for whom so much is at stake. We have now made clear
36 how Barbadian fishermen, their dependants, the workers who
37 depend on them in the ancillary sectors, will suffer from
38 dislocation if they lose the ability to fish. As I also

1 indicated last week, it cannot be fair and it cannot be
2 just that a change, (nor could it have been intended by
3 states) that a change in international law could render
4 behaviour necessary by the ordinary people for their
5 sustenance to be rendered illegal and in some cases,
6 unfortunately for them, to suffer from ill consequences.

7 We have shown that, unlike Trinidad and Tobago in
8 this case, the effect is harmful to Barbados. But it is
9 not harmful to the fisherfolk of Trinidad and Tobago,
10 since we believe that we have satisfactorily asserted and
11 proven that there is no competition either in terms of the
12 location of the flying fish fishery or, indeed, the actual
13 flying fish effectively fished between the Barbadian and
14 Tobagonian fishermen.

15 I now turn, Mr President, members of the Tribunal,
16 to what I described in my opening address as being of the
17 highest importance to Barbados' future development. I
18 refer, of course, to our exclusive economic zone and our
19 extended continental shelf in the south east. Barbados'
20 interest in this delimitation lies equally in the exercise
21 of the totality of its rights, those legitimately acquired
22 under the United Nations Convention on the Law of the Sea,
23 and general international law with respect to the
24 exclusive economic zone and the extended continental
25 shelf.

26 In this regard Barbados' understanding of the law is
27 that, apart from the special circumstances of the
28 traditional artisanal fishery to which I have just
29 referred, there are no other special circumstances.
30 Therefore we argue that an equidistance boundary will
31 provide an equitable solution in the eastern sector.

32 3.45

33 Let me underscore the importance to Barbados of the
34 non-living resources in its Exclusive Economic Zone and
35 extended continental shelf. Our only significant and
36 sustainable resource thus far has been the creativity and
37 the industry of our people, and we are proud of that. But
38 we believe that a boundary in the eastern sector which

1 diverges into Barbados' side of the median line will now
2 deprive Barbados, Mr President, members of the Tribunal,
3 of what our research over the years has suggested to us is
4 potentially the only significant source of hydrocarbons
5 available to the country of Barbados. The only
6 significant source of hydrocarbons potentially available
7 to Barbados. That is what the research within the
8 Barbados government has suggested.

9 Trinidad and Tobago's claim is to an area over which
10 Barbados has continuously and effectively for almost 30
11 years exercised its sovereign rights unchallenged, indeed
12 acquiesced to, and recognised by Trinidad and Tobago until
13 the eve of this dispute. The undisputed evidence before
14 this Tribunal is that Barbados, and only Barbados, has
15 granted concessions since 1978, Mr President, members of
16 the Tribunal, more than half of my life, in this area
17 north of the median line included in the area that
18 Trinidad and Tobago now claims. Oil companies have long
19 accepted Barbados' jurisdiction there. Trinidad and
20 Tobago has not disputed that evidence; that even its own
21 oil concessionaires have recognised Barbados' sovereign
22 rights and jurisdiction in this area.

23 And what about surveillance, Mr President, an
24 independent factor that will always help in this matter?
25 It is of note that it is the Barbados Coast Guard that has
26 surveyed and undertakes the surveillance in this
27 particular area north of the median line. So Barbados'
28 paramount interest in this area is underscored as well by
29 what you have heard about the Joint Co-operation Zone
30 Treaty with the Republic of Guyana, and Professor Lowe has
31 asked questions which we have undertaken to answer. But I
32 can tell you even now that in June of this year a
33 Commission on the Non-Living Resources, a Joint Commission
34 on the Non-Living Resources, was established by the
35 parties along with provision for two other commissions,
36 but the full response will come to you.

37 For all of these reasons, Mr President, Barbados
38 believes that the only boundary in the eastern sector

1 which is consistent with international law is the
2 equidistance line between Barbados and Trinidad and
3 Tobago. As I said for us this is a simple matter of law,
4 and no special circumstances mean no modification of the
5 provisional equidistance line. I am told that I should
6 not cite law but if I were allowed to I too would have
7 adopted the dissenting judgment, Mr President, of yours,
8 that my learned friend Sir Eli ended his presentation
9 with.

10 It would be incomprehensible to Barbadians who know
11 that Barbados has been exercising its sovereignty on its
12 side of the median line, north of the median line, for
13 almost 30 years, for them to be told that this territory
14 was not theirs and indeed was to be taken from them. I
15 would not be able to explain it because it just never
16 entered their thoughts that this could be territory owned
17 by anyone other than Barbados. I have outlined therefore
18 the simple construction of Barbados' case.

19 By contrast we believe that Trinidad and Tobago's
20 case is complex and opaque. It is seeking to boldly go
21 where no state has gone before, to use a phrase known to
22 my generation. It is asking this Tribunal to refashion
23 geography in order to satisfy its ambitions. I believe
24 that your distinguished Tribunal, like its predecessors,
25 will reject such an approach.

26 Trinidad and Tobago insists that it would be
27 geographically disadvantaged by Barbados' proposal. It
28 complains that a median line would cut it off. What is it
29 being cut off from? It has a maritime zone of up to 193
30 nautical miles under Barbados' proposal, 193 nautical
31 miles. It seeks therefore this Tribunal's assistance to
32 help it refashion geography. If Trinidad and Tobago's
33 geographical location can be said to cause it some
34 disadvantage because of its geographic relations with its
35 neighbours that same geographical location has resulted in
36 it being blessed with an abundance of hydrocarbon
37 resources, and we do not envy them that. Geography and
38 geology have indeed both been very generous to Trinidad

1 and Tobago. They have offshore and onshore resources
2 which it has wisely used to the aid of its people, but it
3 cannot have it both ways. Mr President, members of the
4 Tribunal, there is no dispute between the parties that
5 case law confirms that there can be no refashioning of
6 geography and you would have heard that from the advocates
7 on both sides.

8 I will also at this stage ask you to look at another
9 one of the relevant circumstances cited by them, that is
10 regional implications. And it is on this that we equally
11 have very strong feelings. It should come as no surprise
12 to Trinidad and Tobago that Venezuela's ambitions in the
13 Caribbean Sea have been at variance with the interests of
14 small states in the region and in fact with international
15 law, particularly UNCLOS, to which Venezuela is not a
16 party. Mr President, members of the Tribunal, we are sure
17 that you realise what is happening here. Trinidad and
18 Tobago signed a treaty in 1990 with Venezuela. In it
19 Trinidad and Tobago conceded a part of its own maritime
20 territory and also attempted to give away territory which
21 belonged to Barbados and to Guyana. Territory which we
22 assert they had no right to concede. It is a fact that
23 this agreement is not opposable to Barbados and on that we
24 are agreed. But the reality of Trinidad and Tobago's
25 position is that they seek to bring through the back door
26 that which they cannot get through the front door.

27 Therefore this agreement still stands before us today
28 for us to deal with even if by reason of another name. We
29 say that it is the reality of that agreement which drove
30 Trinidad and Tobago in its negotiations and continue in
31 this arbitration to make the assertion that they call upon
32 Barbados to contribute to Venezuela's Salida al Atlantico
33 in order to compensate Trinidad and Tobago. But they want
34 to go north because of where they have been elsewhere with
35 Venezuela to create that Salida al Atlantico. I must
36 confess, Mr President, members of the Tribunal, that this
37 calls to mind the prediction of the late Dr Eric Williams,
38 Trinidad and Tobago's most illustrious statesman and

1 intellectual, and indeed its first Prime Minister. Thirty
2 years ago Dr Williams gave a seminal address which bears
3 reading by all Caribbean citizens, and indeed those
4 interested in this area of the law, to the Special
5 Convention of the People's National Movement (his
6 political party) where he sought to analyze the
7 Caribbean's relationship with Venezuela. Dr Williams on
8 that occasion 30 years ago, 1975, foretold of an impending
9 catastrophe if CARICOM nations did not adopt common
10 approaches to protect themselves in the evolving law of
11 the sea negotiations on the 200 mile exclusive economic
12 zone, but chose instead to enter bilateral arrangements
13 with Venezuela. This bilateralism he said "has all the
14 hallmarks of the colonialism implicit in all of the
15 statements of the Venezuelan publicist. The new Venezuela
16 that they are preaching in the context of the old
17 colonialism of the Caribbean". It is regrettable, Mr
18 President, members of the Tribunal, that Trinidad and
19 Tobago did not choose to heed the advice of their former
20 Prime Minister.

21 Where do we stand today? The 1990 Venezuela Treaty
22 is not the only sign of the aggression for which we as a
23 region are being asked to pay. You will have seen, and
24 heard discussed today Aves Rock, and what is the
25 significance of that which was addressed today. Only in
26 the last few days, Mr President, the Prime Ministers of
27 Antigua and St Vincent have called urgently for a summit
28 of the Organisation of Eastern Caribbean States to discuss
29 the matter of what they call Bird Rock (not Aves Island as
30 shown on the map of Trinidad and Tobago) because of events
31 taking place this weekend in relation to the marrying of
32 two Venezuelan soldiers at the Military Chapel on Saturday
33 and the baptism of three children at the Military Chapel
34 on Sunday. We say, Mr President, that these matters are
35 part of the general imperialistic ambitions which have
36 caused all of us to suffer in some way, and while I repeat
37 the 1990 treaty is not opposable to Barbados we are being
38 asked to pay for the consequences of it. And yet Trinidad

1 and Tobago can produce a map here today, and Mr Volterra
2 spoke to it, with the designation "Aves Island", knowing
3 full well that CARICOM Heads of Government, as Mr Volterra
4 adverted to, met and have reflected on the position of
5 four members of the Caribbean community, four OECS states.

6 Indeed Professor Lowe's book Churchill and Lowe at page
7 164 refers to the protest lodged by these four countries,
8 Antigua, St Kitts, St Lucia and St Vincent, on the ground
9 that the action of Venezuela is contrary to Article 121(3)
10 of UNCLOS. But yet Trinidad and Tobago asserts both
11 through its Agent and Professor Crawford that it has
12 excellent relations with CARICOM. At some point in the
13 future these records will be made public and whenever that
14 happens the islands of the OECS will be shocked to see a
15 reference on a map to "Aves Island" in circumstances when
16 they have been fighting a battle for which they have asked
17 us in the wider Caribbean community to provide political
18 support.

19 But then again Trinidad and Tobago talks of its
20 continental destiny, but yet says that it supports
21 CARICOM. I have always known, Mr President, that you
22 cannot be in the church and the chapel too, but then again
23 Trinidad and Tobago wants you to designate continental
24 shelf rights and exclusive economic zone rights on the
25 same area. So I suppose they are trying to achieve
26 politically and diplomatically that which they ask you to
27 do in the area of international law maritime law.

28 Enough said of that.

29 I believe, Mr President, members of the Tribunal,
30 that Barbados cannot be asked to pay for Trinidad and
31 Tobago's largesse in this matter, and that it must be
32 presumed that Trinidad and Tobago obtained some benefit
33 for the Treaty. That is their concern. But we cannot as a
34 country be asked to underwrite this in what were bilateral
35 negotiations and now a bilateral arbitration between
36 Barbados and Trinidad and Tobago. And the Venezuelan
37 agreement is not opposable to us and I suggest, Mr
38 President, members of the Tribunal, that that should be

1 the end of the consideration of the Treaty and that truly
2 not only do you keep the front door locked but keep the
3 back door locked as well from the ambitions of Venezuela.

4 The complex and puzzling multi-zonal jurisdiction has
5 been spoken to by Mr Volterra and, indeed, again by Sir
6 Elihu. In his inimitable style, he describes it as a bit
7 of a muddle. I could not do better. Barbados' water
8 column above Trinidad and Tobago's outer continental
9 shelf, and then somehow a Trinidad and Tobago outer
10 continental shelf which supersedes that of Barbados, and
11 all of this bound together by a complex argument about the
12 survival of pre-existing continental shelf rights,
13 notwithstanding the very clear provisions of the
14 Convention on the Law of Sea and, notwithstanding, of
15 course, both Professor Reisman's and Sir Elihu's excellent
16 presentations on the inconsistency of that assertion that
17 it derives from existing/pre-existing continental shelf
18 rights.

19 Your jurisdiction to determine this maritime boundary
20 as between Barbados and Trinidad and Tobago, Mr President,
21 in the area of the overlap of the conflicting claims we
22 assert is truly within the province of this Tribunal.
23 Barbados has proposed a delimitation line along the median
24 line with Trinidad and Tobago that starts at the tri-point
25 between Barbados, St Vincent and the Grenadines and
26 Trinidad and Tobago in the west, of course, and then runs
27 to the tri-point between the parties and Guyana in the
28 east and it is adjusted to the south, we argue, to take
29 account of the relevant circumstances of our traditional
30 artisanal fisheries off Tobago. We claim the maritime
31 area to the north with part of the area being subject to a
32 Barbados-Guyana joint exclusive economic co-operation
33 zone. Trinidad and Tobago, on the other hand, proposes a
34 delimitation line that follows the median line from the
35 western tri-point and we say at an arbitrary point turns
36 and runs along the azimuth of 88 degrees until it reaches
37 the outer limit of an extended continental shelf.
38 Trinidad and Tobago's claim results in a bewildering array

1 of zones, as I have said, maritime zones and boundary
2 lines. Some of those areas to the south of the azimuth,
3 Trinidad and Tobago claims for itself. Some of those
4 areas it claims to share with Barbados. From some of
5 those zones it claims to exclude Barbados. A veritable
6 confusion.

7 I will not seek to repeat the detailed analysis of
8 these claims that, as I said, Barbados co-counsel have
9 adequately in my view, addressed to the Tribunal. It is
10 sufficient to note for me that the claims of Barbados and
11 Trinidad and Tobago are in direct conflict and therefore
12 truly require a determination by this Tribunal. The
13 dispute is patent. Thus, we argue that as between
14 Barbados and Trinidad and Tobago the area of maritime
15 territory to the north of the median line and to the south
16 and east of the 1990 line between Venezuela and Trinidad
17 and Tobago is also in dispute. We claim that it belongs
18 to Barbados, with part of the area being subject to
19 Barbados, the joint Guyana EEZ Co-operation Zone.
20 Trinidad and Tobago claims that it does not belong to
21 Barbados. Once again, it is a matter that is ripe for
22 determination by this Tribunal. We say that Trinidad and
23 Tobago's case is deeply problematic, because of the havoc,
24 Mr President, that it wreaks both in treaty law to which
25 it is a party and to general international law. The
26 universal appeal of the United Nations Convention on the
27 Law of the Sea lies in the promise that it holds out
28 clarity, certainty and finality in the exercise of
29 jurisdiction over maritime space by coastal states.
30 International law and the relevant provisions of UNCLOS
31 are intended to reduce and eliminate conflict between
32 states. We say that Trinidad and Tobago's interpretation
33 of Parts V and VI of UNCLOS invites the opposite.
34 International law traditionally seeks to delimit
35 jurisdiction in all series of state activities. And their
36 proposal would deliberately subvert this, in our view, by
37 an involuntary system of overlapping and competing
38 jurisdictions in the same maritime territory. It is a

1 veritable recipe for disaster.

2 Mr President, members of the Tribunal, you are all
3 seasoned international lawyers and you bring rich
4 experience from the public as well as the private sphere,
5 so you will appreciate that any solution that leads to a
6 prescription of conflict is, in fact, a recipe for
7 disaster. If two states are given title to the same
8 seabed space, the potential for disaster clearly exists.
9 Conflicting development of the same resource will lead to
10 environmental degradation, inefficiency and need I say, of
11 course, more disputes. That was not why countries like
12 ours signed the United Nations Convention on the Law of
13 the Sea. And, indeed, the promise of the exclusive
14 economic zone and the promise of a juridical continental
15 shelf with clarity, with clear provisions for all was
16 indeed the promise as we negotiated over the period of
17 time and chose to sign on.

18 Before I conclude, sir, let me make sure that I leave
19 our position in this in proper perspective. I will make a
20 few remarks about our two countries and the way forward
21 for us, because, as I said in the beginning,
22 geographically, historically, economically, politically,
23 culturally, the two countries have much in common.

24 When we initiated these proceedings 20 months ago,
25 and indeed last week, I indicated then, as I do now, that
26 the bilateral relations between these two countries are of
27 paramount importance to Barbados and we trust to Trinidad
28 and Tobago, as evidenced by their conduct with us on other
29 matters. And that we really believe that this arbitral
30 process is the most effective and least contentious way to
31 resolve an issue that has been brought into dispute
32 between the two countries. I have tried to stay away from
33 the political rhetoric because I am firmly of the view
34 that how we move forward as two countries is critical to
35 the interests of our people - our population. I say that
36 this year Barbados and Trinidad and Tobago, along with
37 Jamaica, became compliant in the establishment of the
38 Caribbean Single Market and Economy, a historic occurrence

1 to create a Single Market for the first time and a single
2 economic space in the Caribbean Community of nations. We
3 are on the verge, along with the other member CARICOM
4 states, of becoming compliant in that process by 2006, a
5 few months away from here. It is therefore critical to
6 note that we have not come to this stage lightly. After
7 due consideration, we really determined that the defence
8 of our maritime territory was important for the
9 sustainable development of future generations of
10 Barbadians and that for both countries certainty and
11 clarity is required to move forward, because to stay in
12 the same position without movement can be equally as
13 dangerous as being in a mode of reversal.

14 In these circumstances, Mr President, it is
15 absolutely essential that we undertake this legitimate
16 defence, without prejudice and without injury to our
17 regional interest. In this regard, I therefore can only
18 affirm that, for some, this has been a matter of a highly
19 technical area of the law. For some, it has been a matter
20 about the ability of persons within a particular community
21 to survive and to support their families. For others, it
22 is about the ability of a country to plan its economic
23 development in the certain knowledge that that which
24 accrues to it under international law can so benefit it to
25 provide for its citizens on a sustainable basis. But, I
26 say to you this evening that it is about all of that and
27 more.

28 I would venture to suggest, sir, that, when we
29 consider the circumstances of small states, small island
30 developing states, we may find that it is in the nature of
31 things that their existence may be sometimes difficult and
32 brutish. The one feature that has given us comfort as a
33 small island state is that the international system
34 provides the ability to ameliorate our circumstances and
35 our options through the rule of law. International law,
36 we believe, affords certain protections to those states
37 fortunate enough to find themselves in the position where
38 they can avail themselves of those rights. In short, the

1 rule of law is necessary for the survival of small states
2 in this world, both for them to survive and to thrive.

3 Barbados, therefore, closes its case today, Mr
4 President. And as we do so we thank you and the members of
5 your Tribunal for the time, the patience and the interest
6 and attention that you have shown to these matters, not
7 just in the course of these hearings but, indeed, over the
8 period of the 20 months leading to this point today. But
9 we also close our case today hopeful that the application
10 of the law (to which I just spoke) by this Tribunal will
11 not deprive our country of its past, its tradition, so to
12 speak, or indeed of the promise of its future. What is to
13 be of the nation of Barbados in the early to mid-21st
14 century, I say to you, lies very much in your hands. We
15 eagerly await your determination.

16 Before I formally sit, Mr President, I would wish now
17 formally to state Barbados' formal submission which is
18 from the Memorial, but if you would wish me to read it
19 into the record I would do so at this stage. As follows,
20 Barbados contends that international authority clearly
21 prescribes that the Tribunal should start the process of
22 delimitation by drawing a provisional median line between
23 the coasts of Barbados and Trinidad and Tobago. This line
24 should then be adjusted so as to give effect to a special
25 circumstance and, thus, lead to an equitable solution.
26 The special circumstance is the established traditional
27 artisanal fishing activity of Barbadian fisherfolk south
28 of the median line. The equitable solution to be reached
29 is one that would recognise and protect Barbadian fishing
30 activities by delimiting the Barbados exclusive economic
31 zone in the manner illustrated in Map 3 of Barbados'
32 Memorial. Barbados, therefore, requests the Tribunal to
33 determine a single maritime boundary between the exclusive
34 economic zones and continental shelves of the parties that
35 follows the line described below and is illustrated on Map
36 3 of its Memorial. The proposed delimitation line is a
37 median line modified in the northwest and encompasses the
38 area of traditional fisheries enjoyed by Barbados. The

1 line is defined in three parts from points A to B, B to C
2 and a third part from point C to E. The first part of the
3 line from A to B is defined by the meridian 61 degrees, 15
4 minutes west. This line runs south from point A, the
5 point of intersection of the meridian with a line of
6 delimitation between Trinidad and Tobago and Grenada, to
7 point B, the intersection of this meridian, with the 12
8 nautical mile territorial sea limit of Trinidad and
9 Tobago.

10 The second part of the proposed delimitation line is
11 the 12 nautical mile territorial sea limit of Trinidad and
12 Tobago, running from point B around the northern shores of
13 Tobago to point C, the intersection of the parallel 11
14 degrees 8 minutes north and the 12 nautical mile
15 territorial sea limit of Trinidad and Tobago lying
16 southeast of the island of Tobago.

17 The third part of the proposed delimitation line is
18 defined by a geodesic line from point C following an
19 azimuth of 48 degrees until it intersects with the
20 calculated median line between Barbados and Trinidad and
21 Tobago at point D; then the line follows the median line
22 south eastwards running through intermediate points of the
23 median line numbered one to eight. From point eight, the
24 proposed delimitation line follows an azimuth of
25 approximately 120 degrees for approximately five nautical
26 miles towards the point of intersection with the boundary
27 of a third state at point E. This, as I indicated, is
28 also reflected in the Memorial of Barbados.

29 Mr President, members of the Tribunal, this has been
30 the case of Barbados and, as I said, we eagerly await your
31 determination and that of your members. I am obliged to
32 you.

33 THE PRESIDENT: Thank you so much. We are grateful to the agent
34 of Barbados and to her colleagues for their exposition.
35 We look forward to the arguments of Trinidad and Tobago
36 beginning Thursday morning. Professor Crawford, did you
37 have a point you would like to make?

38 PROFESSOR CRAWFORD: Sir, I think we will take a leaf

1 out of Barbados' book and begin at 3 o'clock on Thursday
2 afternoon. That will give us still ample time to finish
3 before the drinks we all look forward to on Friday
4 evening.

5 THE PRESIDENT: Good, then we will meet on Thursday at
6 3 o'clock, and if there is no further business we stand
7 adjourned.

8 **(Adjourned till Thursday next at 3 p.m.)**