

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

- - - - - x
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 In the Matter of Arbitration :
 Between: :
 :
 REPUBLIC OF GUYANA, :
 : Case No. 2004-4
 Claimant, :
 : PCA Reference GU-SU
 and :
 :
 REPUBLIC OF SURINAME, :
 :
 Respondent. :
 :
 - - - - - x Volume 1

Thursday, December 7, 2006

Organization of American States
 17th Street and Constitution Avenue, N.W.
 Guerrero Conference Room, Second Floor
 Washington, D.C.

The hearing in the above-entitled matter convened at
 9:40 a.m. before:

H.E. JUDGE L. DOLLIVER M. NELSON, President

PROF. THOMAS M. FRANCK, Arbitrator

DR. KAMAL HOSSAIN, Arbitrator

PROF. IVAN SHEARER, Arbitrator

PROF. HANS SMIT, Arbitrator

Permanent Court of Arbitration:

MR. BROOKS W. DALY, Registrar
MR. DANE RATLIFF

Tribunal Hydrographer:

MR. DAVID GRAY

Court Reporter:

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

2 PRESIDENT NELSON: I'm sorry that we have such a small
3 room for such a large throng of people. It can't be helped.
4 And I welcome you all to the opening of these very important
5 pleadings on a case of some significance.

6 First of all, I have been requested to read a
7 statement prepared to deal with the question of a witness who
8 will be presented to us on Monday, 11 December. It reads as
9 follows: "The Tribunal has reviewed the 5th December, 2006
10 draft of the minutes of the prehearing telephone conference of
11 10 November, 2006, with respect to Guyana's possible recall of
12 Dr. Robert Smith in the second round of oral proceedings. The
13 Tribunal unanimously decides that he may be recalled only for
14 rebuttal and with regard to matters he could not have addressed
15 in his first round of testimony scheduled for Monday, 11
16 December, 2006. Dr. Smith is to remain sequestered until his
17 testimony on 11 December, 2006. Following his testimony, the
18 parties will be invited to inform the Tribunal of their views
19 and whether his further sequestration is necessary."

20 We meet this morning to deal with the dispute between
21 Guyana and Suriname. I must state that the question of the
22 settlement of disputes, particularly boundary disputes, in
23 Latin America has a glorious tradition and a long history.
24 Some of the more important arbitration among the South American
25 republics took place at the end of last century, perhaps the

09:43:32 1 most important and significant of which has been the
2 Brazil-Argentina-Brazil arbitration. There was a series of
3 arbitrations between Argentina and Chile, and lately we have
4 been having arbitration between Caribbean islands--the recent
5 Barbados and Trinidad arbitration, and also in the Caribbean we
6 have the Nicaragua-Colombia dispute that goes before the ICJ.

7 Well, it is fitting that we should meet in this
8 hallowed building, the Organization of American States, because
9 the two States Parties are both members of the OAS. They are
10 also members of the Caribbean Community. And in my brief
11 remark I would just like to look again at the Caouan
12 Declaration, which said that the Heads of Government affirmed
13 the vital importance of settling this dispute by peaceful means
14 in accordance with the spirit of the Treaty of Chaguaramas and
15 the need to ensure that the benefits of existing resources in
16 the area redound to the benefit of the respective peoples.
17 That is the spirit of Chaguaramas.

18 I would like you also to bear in mind that the parties
19 are also parties themselves to the Convention, the 1982
20 Convention on the Law of the Sea.

21 Well, having said and made these brief remarks, I
22 think we should get down to the business at hand. Again, we
23 must be pleased that the parties have come to this forum and
24 accept this Annex VII arbitral Tribunal to have the matter
25 decided by peaceful means.

09:46:03 1 Now, I take it that we have the hearing schedule, and
2 without further ado, I would like to call on the delegate of
3 the representative of Guyana to begin the deliberations.

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

5 I am Paul Reichler. I'm a Co-Agent for Guyana. I am
6 honored to appear before such a distinguished and prestigious
7 Tribunal. I'm also privileged to be able to speak on behalf of
8 the Republic of Guyana.

9 I believe that we have arranged with the Registrar,
10 subject, of course, to your consent, that we would begin the
11 proceedings with each side introducing its delegation, and then
12 we would proceed to the opening statement of Guyana. If that
13 meets with your approval, I would propose that we introduce our
14 delegations, and then move to the statement.

15 PRESIDENT NELSON: Certainly does.

16 MR. REICHLER: Thank you. Thank you very much.

17 First, I would like to introduce, again it's an honor
18 for me to do so, our distinguished agent, The Honorable Foreign
19 Minister of the Republic of Guyana, S.R. Insanally.

20 And second, the leader of our legal team and our
21 leader in many ways, Sir Shridath Ramphal, who certainly needs
22 no further introduction from me.

23 To my right, my good friend and colleague, Professor
24 Philippe Sands, Q.C.

25 And to his right, our Co-Agent, Professor Payam

09:48:40 1 Akhavan.

2 And to his right, another good friend and colleague,
3 Professor Nico Schrijver.

4 These are the members of our legal team who will be
5 addressing the Tribunal in these proceedings, and I hope my
6 other colleagues will forgive me if we are--in the interest of
7 brevity, their names are listed in our delegation, but I will
8 not introduce them individually, except that I would like to
9 introduce our distinguished guests and team members from the
10 Republic of Guyana, starting with Ambassador Elizabeth Harper,
11 who is the Director General of the Ministry of Foreign affairs.

12 Ambassador Bayney Karran, who is the Ambassador to the
13 United States, and also to this esteemed institution, the
14 Organization of American States.

15 And Mr. Keith George, one of our most valued members,
16 who is also a member of the Frontiers Commission of the
17 Republic of Guyana and has put in many hours assisting us in
18 preparing for these hearings.

19 I would like to state on behalf of everyone present on
20 behalf of Guyana that all of us are bound by the
21 confidentiality provisions that were agreed as part of the
22 Rules of Procedure.

23 And with that introduction, which I hope is
24 satisfactory to the Members of the Tribunal, I would like to
25 turn the floor over to my very distinguished colleague and also

09:50:27 1 friend, Paul Saunders, who speaks on behalf of Suriname.

2 MR. SAUNDERS: Thank you very much.

3 Good morning. My name is Paul Saunders. I am the
4 Co-Agent for the Republic of Suriname, and I have the great
5 honor and privilege of presenting to you this morning the
6 delegation from the Republic of Suriname.

7 First, I would like to introduce the agent for the
8 Republic of Suriname, the Minister of Foreign affairs, The
9 Honorable Lygia Kraag-Keteldijk.

10 The rest of the delegation from the Republic of
11 Suriname consists of The Honorable Capriano Allendy, the Deputy
12 Speaker of Parliament.

13 The Honorable Henry Illes, the Ambassador of Suriname
14 to the United States and to the OAS.

15 The Honorable Henley McDonald, the Embassy Secretary.

16 The Honorable Winston Jessurun, a member of Parliament
17 of the Republic of Suriname.

18 The Honorable Jennifer Pinas from the Ministry of
19 Foreign Affairs.

20 And The Honorable Krish Nandone from the Ministry of
21 Justice and Police of the Republic of Suriname.

22 The legal delegation from the Republic of Suriname
23 includes my Co-Agent from the Republic of Suriname, Mr. Hans
24 Lim A Po.

25 I would also like to introduce Professor Christopher

09:52:56 1 Greenwood, Q.C., a Professor from the London School of
2 Economics and Political Science, who will perform the role as
3 the principal advocate for the Republic of Suriname in this
4 proceeding.

5 My partner, Stephen Madsen, from the firm of Cravath,
6 Swaine & Moore.

7 David Colson from the firm of LeBoeuf, Lamb, Greene &
8 MacRae.

9 Professor Sean Murphy, Professor of international law
10 from the George Washington University Law School.

11 Professor Bernard Oxman, Professor of international
12 law from the University of Miami School of Law.

13 Professor Donald McRae, Professor of international law
14 from the University of Ottawa. Professor Alfred Soons,
15 professor of public international law from the Utrecht
16 University in the Netherlands.

17 And Dr. Alex Oude Elferink, a senior research
18 associate from the Netherlands Institute for Law of the Sea at
19 Utrecht University.

20 I would like to say on behalf of the delegation from
21 the Republic of Suriname that we, too, recognize our
22 obligations under the agreement of confidentiality that was
23 agreed to earlier on in these proceedings.

24 Thank you very much, Mr. President.

25 PRESIDENT NELSON: Thank you very much, Mr. Saunders.

09:54:42 1 OPENING STATEMENT BY COUNSEL FOR CLAIMANT

2 MR. REICHLER: I would like to start the presentation
3 on behalf of the Republic of Guyana. We would like to call our
4 first speaker to the podium on behalf of the Republic of Guyana
5 who is our agent, the distinguished Foreign Minister of the
6 Republic of Guyana, Honorable S.R. Insanally.

7 MINISTER S.R. INSANALLY: Mr. President, Members of
8 the Tribunal, Excellencies, ladies and gentlemen, it is a great
9 privilege for me to appear before you as Guyana's Foreign
10 Minister and agent in these proceedings to open the
11 presentation of Guyana's case to the Tribunal. Guyana pays its
12 respects to the Tribunal, to you, Mr. President, and to each
13 and every member.

14 It is a privilege because you are who you are, eminent
15 individuals whose lives are so largely devoted to the
16 settlement of disputes of what politically we like to call
17 conflict resolution. There are few pursuits more worthy in
18 today's troubled world.

19 It is a privilege made all the greater by the fact
20 that this is a tribunal established under the United Nations
21 Convention on the Law of the Sea. Guyana feels a special
22 commitment to the Convention, to the fulfillment of its highest
23 purposes, for in a modest way as a small developing country, we
24 have always identified fully with those purposes.

25 From the outset, Mr. President, when the call came

09:57:05 1 from a small island state, Malta, in the United Nations General
2 Assembly Second Committee in November 1967, and I quote, "for a
3 defective regime over the seabed and the ocean floor beyond the
4 clearly defined national jurisdiction," Guyana responded in
5 full support of the initiative.

6 We had not yet attained two years as an independent
7 state, but we were old enough to know that such an
8 international regime, the reach of international law to the
9 ocean floor, was a cause that was ours also. And so, of
10 course, in a small, humble but always consistent way, we sought
11 to play a part as a process thus begun turned into a historical
12 global diplomatic effort to regulate the management of the
13 ocean areas, the seas, and all of their resources.

14 We shared the satisfaction, Mr. President, of
15 Ambassador Tommy Koh of Singapore when after nine years of
16 negotiations, the Third United Nations Conference on the Law of
17 the Sea adopted in 1982 a virtual Constitution for the seas,
18 the United Nations Convention on the Law of the Sea.

19 At the beginning of the negotiations, many, including
20 myself, had doubted when or even if such a Convention would be
21 achieved. Yet, today we have what the United Nations
22 Secretary-General described after the Treaty was signed as, and
23 I quote, "possibly the most significant legal instrument in
24 this century" governing, I may add, as it does, a major area of
25 multilateral cooperation."

09:59:21 1 Its conclusion was undoubtedly a triumph for
2 internationalism which, like the mills of God, grinds slowly
3 but surely. We were delighted, too, that it was in Jamaica, a
4 fellow member state of the Caribbean Community that a final act
5 was signed and the Convention opened for signature on 10
6 December, 1982, almost exactly 24 years ago.

7 And as the Tribunal will appreciate, Guyana has always
8 been proud of the fact that it was our ratification of the
9 Treaty, the sixtieth, in 1993, that brought the Convention into
10 force one year later.

11 And at a more present level, Mr. President, I hope you
12 and Members of the Tribunal will permit me to recall the
13 special honor which I felt as President of the assembly at the
14 time in assisting the inauguration of the International
15 Tribunal for the Law of the Sea through the preparatory
16 Commission. I salute you, Mr. President, for having served it
17 with such great distinction in its early years.

18 I would wish to greet The Honorable Minister of
19 Foreign Affairs of Suriname and her delegation and to reaffirm
20 Guyana's friendship and respect for Suriname and its people,
21 with whom we have shared over many centuries a history of
22 colonization, of slavery, of indenture, and of struggle for
23 freedom. It is a friendship and respect we will no doubt share
24 over eternity as neighbors living in peace and harmony and ever
25 increasing cooperation with mutual development as the

10:01:32 1 touchstone of our relations.

2 Mr. President, Members of the Tribunal, after years of
3 effort at the bilateral level to reach a settlement of our
4 maritime dispute, it was only natural that Guyana should turn
5 to the U.N. Convention on the Law of the Sea, as dispute with
6 Suriname over maritime space refused to yield to negotiation
7 and eventually with Suriname's resort to force inflicted
8 serious and continuing damage on Guyana's economic development
9 prospects. By then, of course, Mr. President, Guyana had
10 pursued every avenue of negotiation. As our written
11 submissions have extensively and meticulously set out, allow me
12 to recall that as we searched for the permanent settlement that
13 we all wanted, we initiated the idea of interim measures,
14 provisional arrangements as they are called in the language of
15 the Convention, providing for joint development of the
16 resources of our maritime space pending eventual resolution.

17 At every stage and at every level, we sought to
18 impress on our Surinamese colleagues the need to ensure that
19 the cause of development in our maritime space was not held
20 hostage to dispute on delimitation.

21 In the end, regrettably, Mr. President, we had to ask
22 ourselves whether nonagreement was precisely Suriname's
23 approach: To use Guyana's need to explore its mineral
24 potential offshore, to induce acceptance of Suriname's claim in
25 the area of Guyana most remote from the sea, frustrate

10:03:47 1 agreement on maritime delimitation, deny and delay, and
2 eventually Guyana will become more amenable to Suriname's other
3 objectives. If so, Mr. President, it was a cruel tactic for
4 one poor country to pursue against another, because eventually
5 it would be tantamount to preventing exploration of the
6 maritime space and leaving its development in limbo.

7 And that, sadly, is just what happened, as our written
8 pleadings to the Tribunal already have, and the oral
9 submissions that will follow these opening remarks, make
10 absolutely lucid. There has been absolutely no developmental
11 activity in the disputed area since Suriname's armed
12 intervention on the 2nd of June 2000. One may very well ask
13 whom has this policy benefited? The answer can only be neither
14 of our countries has.

15 Mr. President, Suriname claims surprise and implies
16 hurt at being taken to the dispute settlement procedures of the
17 UNCLOS when, in fact, Suriname is not being taken here. They
18 agreed in advance as a party to the Convention that this is
19 where they would come if no other way could be found to resolve
20 the dispute. As my President, President Jagdeo, made clear in
21 announcing Guyana's recourse to Annex VII more than a year
22 before Guyana filed its claim, I spoke publicly on December the
23 22nd, 2002, of the possibility that Suriname's continued
24 obstruction of negotiation would leave us no option but to seek
25 arbitration.

10:06:06 1 But that apart, Mr. President, is this not precisely
2 the kind of mischief that these dispute settlement provisions
3 of the Convention were intended to prevent? The resort to
4 force, frozen development, conflict instead of cooperation
5 between states who share maritime space? Leave that mischief
6 unchecked, Mr. President, Members of the Tribunal, and much
7 more beside the maritime interests of Guyana and Suriname will
8 be put in jeopardy in a region in which harmony is essential to
9 peace and stability.

10 It thus became Guyana's clear and its capital duty,
11 Mr. President, to itself, to its people, to turn to the
12 Convention for protection from persistent threat and obstructed
13 development. Suriname's approach left our country no other
14 course.

15 It was also, we believe, Guyana's duty as a state
16 party to the Convention to do so for every recourse thus far to
17 the Convention for conflict resolution attests to its utility
18 as an instrument for peace, and every resolution on this
19 provision is a vindication of the lofty purpose expressed in
20 very first preambular paragraph of the Convention to
21 contribute, and I quote, "to the maintenance of peace, justice,
22 and progress for all peoples of the world."

23 Mr. President, Members of the Tribunal, there are two
24 other more specific elements of that Preamble to which I would
25 respectfully refer the Tribunal. The first is a recognition in

10:08:20 1 preambular paragraph four of the desirability of establishing
2 under it a legal order for the seas and oceans which will, and
3 I quote, "facilitate the equitable and efficient utilization of
4 their resources."

5 The Treaty, Mr. President, is not neutral about
6 exploiting the resources of the sea. On the contrary, its
7 express purpose is to facilitate such exploitation.

8 The second, Mr. President, is the assertion in
9 preambular paragraph five that the achievement of the
10 Convention's goals will contribute to an economic order which
11 takes into account, and again I quote, "in particular, the
12 special interests and needs of developing countries." Both
13 Guyana and Suriname have interests and needs as developing
14 countries that are special to our circumstances. In this
15 arbitral proceeding, therefore, Mr. President, Guyana certainly
16 will look to the Tribunal for ensuring the fulfillment of these
17 promises of the UNCLOS. Were these promises not to be
18 fulfilled, the special interests and needs of Suriname and
19 Guyana as developing countries will be not only unmet, but also
20 dangerously and inhumanely disregarded. With nonfulfillment of
21 these promises of the UNCLOS, I quote, "The equitable and
22 efficient utilization of resources" of both Suriname and
23 Guyana, not Guyana alone, both of our countries, far from being
24 facilitated, will be immobilized, petrified, and prohibited in
25 the midst of palpable human need and suffering.

10:10:38 1 And, of course, Mr. President, with the promises of
2 the UNCLOS unfulfilled, the dispute mechanisms/settlement
3 provisions of the Convention will have failed to contribute to
4 the maintenance of peace, justice, and progress for all peoples
5 of Suriname and Guyana. We will be left to suffer from
6 precisely the kind of tensions from which the UNCLOS promises
7 release. International law, Mr. President, Members of the
8 Tribunal, cannot fail to save our region from this unkind fate.

9 The final matter, Mr. President, on which I
10 respectfully say a word to the Tribunal, Mr. President,
11 concerns the regional context in which Suriname and Guyana
12 exist as neighbors committed to ever increasing cooperation, a
13 matter which is addressed in the Memorial submitted by Guyana
14 to the Tribunal. I refer particularly to the synopsis on the
15 evolution of Guyana and Suriname in Annex 1 of Volume Two of
16 Guyana's Memorial. The Caribbean Community to which you
17 averted, Mr. President, now includes Suriname as a full and
18 equal member, admitted in July 1995 under Guyana's chairmanship
19 of the conference of Heads of Government of CARICOM and, I may
20 add, fully supported by Guyana.

21 Our two countries, therefore, Mr. President, share the
22 same goals of regional integration. This year, CARICOM
23 inaugurated the CARICOM signal market. Its aim is to be a
24 single economy by the year 2008. Guyana and Suriname are on
25 the South American continent, but the character of the

10:12:56 1 community, as you well know, is archipelagic. The Caribbean
2 Sea is both a uniting and a dividing one. Maritime
3 Delimitation, the settlement of maritime space between members
4 of the community is thus a great service which the UNCLOS can
5 render to this fledgling region.

6 Mr. President, the Convention has done so already with
7 Barbados and Trinidad and Tobago, as you mentioned yourself,
8 through another Annex VII Tribunal, bringing the principle of
9 equidistance to the aid of conflict resolution and ultimately
10 in a peaceful development of the region's resources.

11 Guyana does not come to the Tribunal, Mr. President,
12 in an adversarial posture. We seek, of course, the vindication
13 of our rights under law and equity, but we do so under law and
14 through due process. Our search for the delimitation of our
15 maritime boundary and Suriname is not a hostile act.
16 Ultimately the definitive maritime boundary which we seek will
17 serve the interests not only of Suriname and Guyana, but also
18 of the entire integrated Caribbean.

19 We seek this resolution, Mr. President, without
20 recrimination and in the certain knowledge that in the long
21 future ahead of Suriname and Guyana, it is our capacity to
22 cooperate, particularly in the highest purposes. We thank all
23 concerned for the ready and fulsome support which we, the
24 Tribunal, and the parties have received, and I wish to pay a
25 special tribute to the OAS because here, a regional

10:15:07 1 organization, we share the same goals of peace, security, and
2 stability in the region. We are very grateful that we have the
3 premises made available to us, for having made the Tribunal,
4 the delegations, and all of us comfortable.

5 So, I thank you, Mr. President, and I wish your
6 deliberations well.

7 PRESIDENT NELSON: Thank you very much, Mr. Foreign
8 Minister.

9 SIR SHRIDATH RAMPHAL: Mr. President, Members of the
10 Tribunal, our distinguished colleagues, the delegation of
11 Suriname, Mr. President, as I follow the Guyana Foreign
12 Minister and agent in addressing the Tribunal, I do so also in
13 saluting you, and in saying what a great pleasure and privilege
14 it is to be again appearing before you.

15 Since the first encounter of the parties with the
16 Tribunal in London in July 2004, how long ago it seems, when we
17 settled the Rules of Procedure; a great deal of paper has moved
18 across the bridge of the registry to the Tribunal, not all of
19 that paper contemplated at that initial meeting. The Tribunal
20 has accepted these additional burdens with remarkable
21 equanimity. Guyana wishes to acknowledge this and wishes to
22 record its appreciation to the Tribunal for all of that.

23 Now that Foreign Minister Insanally has made Guyana's
24 opening address, it falls to me and then to other members of
25 our legal team to present Guyana's claim in furtherance and

10:18:02 1 supplementation of Guyana's Memorial and Reply and, of course,
2 taking account of Suriname's Preliminary Objections and the
3 order of the Tribunal in relation to them, and taking account
4 also of Suriname's Counter-Memorial and Rejoinder, and to do
5 all this within the time limits already agreed with Suriname
6 and with the Tribunal.

7 So, let me briefly outline that scheme of
8 presentations. After my general remarks pertinent to Guyana's
9 overall claim, Professor Philippe Sands and Professor Payam
10 Akhavan will address the Tribunal on jurisdiction. Professor
11 Sands will begin by addressing the relevant rules. Professor
12 Akhavan will then address the historical origin of Point 61 and
13 its definitive fixing by the Mixed Boundary Commission in 1936
14 which set the stage for 70 years of consistent and unequivocal
15 practice by the parties. He will consider the extensive
16 deliberations of the parties from 1929 to 1936, the agreement
17 by the parties about the location of the northern boundary
18 terminus at the mouth of the Corantijn River by 1936, the
19 express mandate of the Commission to demarcate the boundary
20 compatible with permanence and subsequent approval of Point 61
21 by the Netherlands and the United Kingdom.

22 Professor Sands will then consider what those facts
23 mean for the Tribunal's jurisdiction. First and foremost, he
24 will show that the Tribunal's jurisdiction is established on
25 the basis that this dispute relates exclusively to the maritime

10:20:26 1 boundary; and he will demonstrate that Point 61 has been
2 mutually, consistently, and unequivocally accepted by the
3 parties as a starting point for maritime delimitation, and
4 accepted for 70 years. By way of alternative, he will explain
5 the other bases upon which the Tribunal can exercise
6 jurisdiction.

7 Professor Sands will be followed by Mr. Paul Reichler,
8 who will address the Tribunal on the geographical circumstances
9 of the case. Mr. Reichler will discuss the parties' agreement
10 that coastal geography is the most important factor to take
11 into account in achieving an equitable solution.

12 He will also discuss the parties' agreement that the
13 coastal geography in this case is unremarkable, there being no
14 major promontories, islands, rocky outcroppings, or offshore
15 areas to render the coasts of Guyana or Suriname in any way
16 extraordinary.

17 He will then compare the provisional equidistance
18 lines the parties have each drawn with emphasis on the
19 similarity of the two lines.

20 After that, he will analyze Suriname's argument that
21 the equidistance line is unfair to Suriname and show that, in
22 fact, it is not unfair to Suriname, but on the contrary, is
23 unfair to Guyana. Mr. Reichler will also critique the novel
24 angle bisector methodology that Suriname has proposed to
25 displace the equidistance methodology and show that it is

10:22:39 1 deeply flawed and does not fit the geographic circumstances of
2 this case. He will demonstrate that the established method for
3 maritime delimitation is entirely appropriate here. That
4 method involves first the construction of a provisional
5 equidistance line and then a consideration of whether there are
6 special or relevant circumstances that warrant adjustment of
7 the line to achieve that equitable solution. Mr. Reichler will
8 prove that in the geographical circumstances in this case, an
9 adjustment to the provisional equidistance line is required in
10 order to prevent unfairness to Guyana and to achieve an
11 equitable solution.

12 Professor Nico Schrijver will then present our
13 arguments on the applicable law. In doing so, he will
14 distinguish three relevant periods of time. First, the law
15 prior to 1958; next, the law which applied during the period
16 1958 to 1982; and thirdly, the law incorporated in the 1982
17 Convention and beyond. He will also discuss the status of the
18 equidistance line in international law with special reference
19 to international judicial and arbitral practice.

20 Professor Schrijver will be followed by Professor
21 Sands, who will address the Tribunal on this occasion on the
22 delimitation of the territorial sea. He will set out Guyana's
23 arguments in support of the claim for a delimitation in
24 accordance with the 1982 Convention, and in particular its
25 Article 15 with the result that the boundary in the territorial

10:24:54 1 sea should follow a bearing of north 34 east for a distance of
2 12 miles, from the point on the low-water line nearest to the
3 northern terminal of Point 61.

4 Following Professor Sands's presentation on
5 delimitation of the territorial sea, Guyana will present its
6 arguments on delimitation of the continental shelf and
7 Exclusive Economic Zone. This presentation will be made
8 jointly by Mr. Reichler and Professor Schrijver. Mr. Reichler
9 will briefly review the development of the law as it relates to
10 the maritime areas beyond the territorial sea. In that
11 connection he will show that it has become the accepted
12 practice in international proceedings to begin with the
13 provisional equidistance line and then consider whether any
14 adjustments to that line are warranted in view of relevant
15 circumstances.

16 Professor Schrijver will discuss the history of the
17 parties' dealings concerning delimitation in this area,
18 beginning from 1958, when the British and Dutch first agreed
19 that the boundary in the continental shelf should be defined by
20 reference to equidistance, and how they developed a historical
21 equidistance line based on then-current charts of the seas
22 adjacent to the Guyana and Suriname coasts, to which they
23 subsequently conformed their conduct in very substantial
24 measure. Mr. Reichler will conclude by demonstrating that the
25 adjustments to the provisional equidistance line in Guyana's

10:27:00 1 favor are warranted by relevant geographical and historical
2 circumstances.

3 And he will further demonstrate that the maritime
4 boundary line following an azimuth of north 34 east to the 200
5 nautical mile limit of the EEZ achieves an equitable result.

6 Following Guyana's presentation on the continental
7 shelf and Exclusive Economic Zone, Guyana will call to the
8 stand an expert witness, Dr. Robert Smith, who previously
9 submitted a written report to the Tribunal which is included as
10 Annex R1 to Guyana's reply, and is included in your Judges'
11 folder at Tab 20. Dr. Smith is, I believe, well-known to you
12 and recently completed 30 years of distinguished service as a
13 geographer with the United States Department of State.

14 Professor Akhavan will then address Guyana's
15 submissions concerning Suriname's unlawful threat and use of
16 force, and he will do so in relation to its maritime boundary
17 with Guyana. He will consider the reliance of Guyana on a
18 long-standing modus vivendi in authorizing exploratory
19 activities, the ample opportunity for Suriname to pursue
20 peaceful means of dispute settlement, the involvement of
21 Suriname's President and military high command in deciding to
22 expel the CGX rig, and a very real and credible threat of
23 lethal force that was issued by the Surinamese Navy gunboats in
24 securing such expulsion, and in doing so in clear violation of
25 the obligation to settle disputes by peaceful means in

10:29:17 1 accordance with Article 279 of the Convention.

2 I then, Mr. President, Members of the Tribunal, will
3 close Guyana's initial presentations with remarks on Suriname's
4 breach of its obligations under international law and more
5 specifically on under Articles 74(3) and 83(3) of UNCLOS.
6 Those submissions will be directed to Suriname's failure to
7 make every effort in a spirit of cooperation and understanding
8 to enter into provisional arrangements of a practical nature
9 pending final agreement of the delimitation of the maritime
10 boundary between Guyana and Suriname and to Suriname's various
11 submissions on that matter.

12 That, Mr. President, will exhaust the lists of issues
13 on which Guyana proposes to address the Tribunal at this stage
14 of the proceedings. We are confident that in doing so we will
15 exhaust neither ourselves nor the Tribunal.

16 And we shall, of course, within the agreed time limits
17 conclude all those presentations. I trust, Mr. President, that
18 this scheme of presentations is acceptable to the Tribunal.

19 As this Tribunal approaches these presentations of
20 Guyana's case, as set out in our Statement of Claim, it is
21 perhaps right that I should affirm that after all written
22 pleadings and interlocutory asides, Guyana respectfully adheres
23 to all those submissions, and does so with an even stronger
24 sense of urgency.

25 All that has happened since Guyana filed its claim

10:31:40 1 under Annex VII of UNCLOS has confirmed, we believe, the wisdom
2 of having done so and pointed up the serious implications for
3 Guyana, for Suriname, for the Caribbean region, and if I may
4 say so with modesty, for the wider cause of maritime dispute
5 settlement had we not taken this course. And it has, ipso
6 facto, emphasized as well the tremendous importance for all of
7 these of your eventual award.

8 Mr. President, Members of the Tribunal, in these
9 proceedings, parties and the Tribunal will be very much
10 occupied with very contemporary events and with jurisdiction
11 and jurisprudence pertinent to them. That is as it should be,
12 but not, and never, to the exclusion of reminders of the path
13 these issues have followed over a long time and the roots that
14 have nurtured them, for in those reminders lie elements
15 pertinent to our quest for resolution of present maritime
16 delimitation issues between Guyana and Suriname.

17 In these introductory remarks to the Tribunal which
18 dwell essentially on overarching issues, I shall therefore
19 allude to some realities of history from which there really is
20 no escape. My purpose is to demonstrate how some elements of
21 history impress the present with the urgency of finally, and in
22 an equitable manner, delimiting the maritime boundary
23 separating Guyana and Suriname, delimiting the maritime
24 boundary to facilitate peaceful and productive relations
25 between two neighbors so that they can properly turn their

10:34:14 1 attention to development of their natural resources, for the
2 advancement of their peoples, instead of remaining locked in a
3 debilitating and destructive stalemate for another 70 years.

4 Mr. President, Members of the Tribunal, the "wild
5 Guyana coast" was among the very last regions of South America
6 to attract European attention, just because it really was so
7 wild and unpromising. Lying between the deltas of the mighty
8 Amazon and Orinoco River systems, it was not a prize discovery
9 full of rich promise of returns. Sir Walter Raleigh, it has to
10 be admitted, did come close to claiming this in his obsessive
11 pursuit of El Dorado. Instead, it took Dutch skills in the
12 empoldering of low-lying land and, sadly, the abomination of
13 slavery to make that wild coast tame and productive.

14 And it took centuries of European wars, many of them
15 fought in Caribbean waters, to resolve which of Europe's
16 maritime powers would control the destinies of the societies
17 they were creating almost unknowingly in the process of
18 accumulating wealth for Europe, from sugar, from rum, from
19 cotton, from indigo, from other crops that were then economic
20 kings in those very distant times. Suriname and Guyana are two
21 such evolved societies; and today's disputes are in a long
22 succession of residual colonial legacies overlaid, it is true,
23 with the complexities of modern developments.

24 Some of these advances are, in fact, high points of
25 20th Century internationalism, as in the Law of the Sea, law

10:37:01 1 replacing anarchy on the seas and allowing neighboring
2 countries today to pursue more institutionalized processes,
3 like those that UNCLOS offers, the process of drawing frontiers
4 in the sea.

5 And those neighbors sometimes actually have more in
6 common than the shared national history that binds their
7 countries in fraternity. My own ancestor, my ancestor in
8 indenture, a brave and desperate widow, served her indenture in
9 Suriname, five years of servitude with her young son, my
10 grandfather. She exercised her right of repatriation to the
11 destitution from which she had originally fled, only to be
12 lured back to indenture in "Demerara" with this false promise
13 that the British planters were less brutal than the Dutch.

14 She came to Demerara, again with her son, bound to the
15 sugar estate of Vreed-en-Hoop, once owned by John Gladstone,
16 whose son was to become Britain's famous 19th-Century Prime
17 Minister, and so to me.

18 I told this story last to the Society of Surinamese
19 Economists in Paramaribo. Why do I mention it now? I do so to
20 convey to the Tribunal that the differences which bring us here
21 today, while real and sharp, are in a larger context of
22 oneness. Identity now sealed, as the Foreign Minister
23 attested, within the family of the Caribbean Community.

24 Guyana's Memorial has set out the relevant facts of
25 the early history. In Chapter Two of Guyana's Memorial, Volume

10:39:53 1 1, paragraphs 2.16 to 2.22, and in Annex 1 of Volume Two of
2 that Memorial. I do not go over the ground here, but a few
3 things are worth repeating.

4 Suriname, in its pleadings, has been somewhat
5 disdainful of history, but even they have gone back to the
6 agreement on the two Governors of Berbice and Suriname in 1799
7 in asserting sovereignty to the Corantijn River. They were
8 Dutch Governors, van Battenburg and de Frederici, answerable
9 just briefly to London with the changing fortunes of war, even
10 as the 18th Century changed into the 19th, and they were
11 confirming what van Battenburg had long argued for: Namely,
12 the enhanced boundaries of Berbice. In their agreement, in
13 that 1799 agreement, they specially confirmed the validity of
14 land grants in Berbice, whose boundary they were agreeing
15 extended eastward right up to the river.

16 As I said, it is on the basis of this agreement that
17 Suriname claimed sovereignty over the river itself. Suriname's
18 claim to the river is not in dispute in these proceedings. The
19 same 1799 agreement that Suriname invokes makes it clear the
20 west coast and the west bank of the river belongs to Berbice,
21 now Guyana. Thus, the land west of the river is and always has
22 been since 1799 under Guyanese sovereignty.

23 This cannot be disputed here, either. I refer the
24 Tribunal specifically to paragraphs 2.18 and 2.20 of Volume 1
25 of Guyana's Memorial at pages 10 and 11, in relation to the

10:42:41 1 1799 agreement and the 1803 Articles of Capitulation.

2 And there are other pertinent implications from the
3 historical working out of that early agreement that Berbice
4 extended to the west coast and the west bank of the Corantijn
5 River, for in due course the colonial powers, Britain and the
6 Netherlands, recognized the need to move beyond the rudimentary
7 Governors' agreement of 1799, and its implicit confirmation by
8 the London Convention of 1814. It was a rather leisurely
9 recognition, but over a century later, starting in 1929, the
10 United Kingdom and the Netherlands embarked on a quite
11 significant effort to negotiate the boundary treaty between
12 British Guiana and Suriname. The history of that effort
13 between 1929 and 1966, when Guyana became independent is set
14 out fully in Guyana's Memorial, in Chapter 3 of Volume 1; and
15 in Guyana's reply, in Chapter 2 of Volume 1.

16 I do not propose to go over it here--Dr. Akhavan will
17 return to these issues--but I do urge on the Tribunal their
18 relevance to present issues. Reading the account of those
19 early efforts of the colonial administrators is, in fact, a
20 quite warming experience of civility, of compromise, and
21 adherence to principle in the settlement of disputes. Britain
22 and the Netherlands in this matter were not just colonial
23 powers treating casually with the borders of their distant
24 colonies. They were, after all, dealing with what they
25 considered their possessions. The negotiations were never

10:45:16 1 one-sided, and they were always meticulous in attention to
2 detail. And eventually, every detail of the draft boundary
3 treaty was agreed between them.

4 The very last modification of the draft is, I think,
5 illustrative of this definitiveness; what was a substitution of
6 the cipher 53.8 for 53.9 in the description of the northern
7 boundary terminal at Point 61, "the beginning of the left bank
8 of the Corantijn River at the sea" was how the draft treaty
9 described it. I invite you to examine Article I(2) of the
10 Treaty in Volume 2 of Guyana's Memorial at Annex 62.

11 This correction was being made on the basis of the
12 Dutch Government's observation that on their original report of
13 the boundary Commissioners, point nine had been altered to
14 point eight, and the alteration--I quote from the Dutch
15 memorandum--"initialed by Messrs. Phipps and Kayser." The
16 British concurred. A small vignette, it is true, of diplomatic
17 nicety, but a commentary among other things, on how definitive
18 of the matter of the landmark Point 61 both governments
19 regarded the determination of the Commissioners themselves.
20 There has been no departure from that point since 1936. Yet,
21 despite all the assembled evidence to the contrary, Suriname
22 now asserts, and I quote, "Guyana's argument that the Boundary
23 Commission definitively fixed the land boundary terminus lacks
24 support." They do so in Suriname's Rejoinder at paragraph 2.23
25 on page 17.

10:48:00 1 Well, let us see. That exercise in marking the land
2 boundary terminus has been comprehensively described in
3 Guyana's Memorial. I invite Members of the Tribunal to
4 specifically remind yourselves of it, for it is crucial to
5 these proceedings. On the 5th of July 1936, when the
6 Commissioners met to finalize their report, met in a building
7 at Point 63, really 63 Village, in a building I remember from
8 my childhood holidays, they described their task in the heading
9 to the report as "the inauguration of the northern terminal
10 point mark of the Suriname-British Guiana boundary."

11 I stress those words, the northern terminal point mark
12 of the Suriname-British Guiana boundary. For this terminal
13 mark, which they also described in their report as "the mark
14 proper," they gave the coordinates that have been respected
15 every since as the boundary between Guyana and Suriname at the
16 seashore, the coordinates of Point 61. Those coordinates were
17 accepted by both Britain and the Netherlands and inserted into
18 the draft treaty, with absolute precision, at Dutch insistence,
19 on the basis of the Commissioners' initial correction, a treaty
20 on whose texts and substance they had reached agreement. You
21 have the text of that draft treaty at Annex 89 and Volume 3 of
22 Guyana's Memorial and in your folder. Its initial articles are
23 instructive and relevant to this day in the context of these
24 proceedings.

25 "Article I: The boundary between British Guiana and

10:50:32 1 Suriname shall be formed by the line of the left bank of the
2 River Corantijn from the sea southward to the point near its
3 source," and all those words follow.

4 "Article IV: The waters--I emphasize the waters of
5 the River Corantijn as defined in Article I above shall,
6 whatever the fluctuations in its volume, be considered as being
7 within the territory of Suriname and the land confining them on
8 the left bank, as defined in Article I, as being within the
9 territory of British Guiana, and consequently, no change of
10 sovereignty over such land shall ensue upon any rise or fall of
11 the waters of the river."

12 On the 25th of November, 1939, a final draft text in
13 English was sent from Britain to the Netherlands with the
14 inquiry whether the Netherlands Government, I quote, "concurred
15 in the draft treaty, and are prepared to proceed to signature,
16 in which event," the note added, a diplomatic acknowledgement
17 that finality had been reached, I quote, "I shall be glad if
18 you would be so good as to furnish me with a Dutch text of the
19 Treaty."

20 It was a Diplomatic Note from the British Secretary of
21 State to the Dutch Minister to the United Kingdom, and I refer
22 you to Volume 1 of Guyana's Memorial at paragraph 317 and
23 footnote 40 on page 20. The rest is truly history.

24 In the Yearbook of the International Law Commission
25 for 1953, in Guyana's Memorial, Volume 1, Chapter 2, footnote

10:52:49 1 46, dealing with information and observations submitted to
2 governments regarding the question of the Delimitation of the
3 territorial sea of two adjacent states, it is reported that in
4 a letter of the 8th of May, 1953, to the Secretary-General of
5 the United Nations, the Netherlands stated that the border
6 between Suriname and British Guiana was, I quote, "settled
7 according to"--I quote again--"a draft treaty between the
8 Netherlands and the United Kingdom, a ratification of which has
9 been interrupted by the last war." The text of the relevant
10 pages of the yearbook is set out at Annex 9 of Volume 2 of
11 Guyana's reply.

12 It is true, war in Europe again reached out to touch
13 the destinies of Guyana and Suriname. By the time the final
14 draft treaty was submitted to the Netherlands, Britain was
15 already at war. The Second World War had started on the 1st of
16 September with the invasion of Poland, and much of Europe was
17 threatened. The Netherlands itself was invaded on the 10th of
18 May, 1940. The German occupation was to last almost five
19 years, until the 5th of May, 1945.

20 As the communication to the U.N. put it in measured
21 language in 1953, that ratification of the settled treaty was
22 interrupted by the war. But eight years after the war ended,
23 15 years after the receipt of that signature-ready treaty, no
24 hint of difference. On the contrary. A Dutch assurance to the
25 United Nations to the world that for them the 1938 draft Treaty

10:55:15 1 provided the relevant boundary information, including the
2 agreed boundary terminus.

3 In Suriname's Rejoinder, paragraph 2.23 of Volume 1 at
4 page 17, there is a paragraph that can only be described as
5 cryptic; but, of course, it is less enigmatic than it seems on
6 the surface. The relevant paragraph, the relevant part of the
7 paragraph reads thus: "By inviting the Tribunal to conclude
8 the work of the boundary Commission was definitive in the
9 north; however, Guyana also seeks to involve the Tribunal in
10 the territorial dispute between the parties in the south. The
11 Tribunal has no jurisdiction to pronounce on that long-standing
12 territorial dispute."

13 I emphasize those sentences from Suriname's Rejoinder.
14 Guyana has not had an opportunity before to refute statements
15 in the Rejoinder that, however unintentionally, might mislead.
16 This is one such, and I must put the record straight. Guyana
17 has not sought. Guyana does not seek to involve the Tribunal
18 directly or indirectly in any territorial dispute with
19 Suriname. It is a non sequitur to assert that for Guyana to
20 argue that the work of the boundary Commissioners at Point 61
21 was definitive in character is to invite the Tribunal to
22 pronounce on, or be otherwise involved with, a territorial
23 issue elsewhere in Guyana or Suriname.

24 Let it be clear beyond peradventure that Guyana issues
25 no such invitation. We have greater respect for the Tribunal

10:57:49 1 than to do so.

2 Now, Suriname dismisses all of the history showing
3 that the parties agreed to a northern boundary terminus at
4 Point 61 and treated it as the starting point for maritime
5 delimitation. They do so, it seems, in a somewhat desperate
6 need to postulate a void. Why? Simply for the purpose of
7 arguing that this Tribunal lacks jurisdiction, and for the
8 purpose in turn of ensuring that the maritime boundary between
9 Suriname and Guyana is not delimited; that the maritime space,
10 as the Minister said earlier, remains in limbo.

11 On Wednesday of this week, the President of Guyana in
12 speaking of the commencement of this oral hearing today, said
13 that Guyana approaches it without recrimination, and he added,
14 and I quote: "In this case, the Tribunal's award delimiting
15 the maritime boundary between Guyana and Suriname will allow
16 both countries to fully explore and exploit their offshore
17 resources with the complete assurance of an internationally
18 binding award. Securing an authoritative line of delimitation
19 will offer significant opportunities for Guyana's economic
20 development, as for Suriname's. In taking this action, these
21 proceedings," the President said, "Guyana sought to bring to an
22 end the differences between Guyana and Suriname which have
23 undermined efforts to develop resources associated with their
24 offshore areas," and I quote, "a deprivation which already poor
25 countries simply cannot afford."

11:00:12 1 In saying so, Guyana's President was reflecting a
2 perception of the positive value of dispute settlement
3 machinery that is widely held. Speaking on the 20th of October
4 of this year, to the Asian-African legal consultative
5 organization, the current President of the ICJ, Her Excellency
6 Judge Rosalyn Higgins, affirmed, and I quote, "There is a
7 strong understanding among Asian and African states that
8 bringing their disputes to the International Court is not a
9 hostile act. Often, the best way to avoid deterioration in
10 good relations between states is to have a dispute between them
11 resolved by an impartial third party such as the International
12 Court."

13 25 years before that, the General Assembly of the
14 United Nations had in the context of the Manila Declaration on
15 Peaceful Settlement of Disputes, only a month before Montego
16 Bay and UNCLOS, urged all states to bear in mind that recourse
17 to judicial settlement of legal disputes should not be
18 considered an unfriendly act between states. All this is
19 specially relevant to this Annex VII Tribunal, and to the
20 spirit that we think should inform these proceedings, a spirit,
21 of course, that pervades the Convention on the Law of the Sea,
22 and particularly Part XV, the settlement of disputes.

23 The Tribunal should feel reinforced, therefore, in
24 fulfilling its mandate under UNCLOS, which, as the Foreign
25 Minister recalled earlier this morning, looks to a legal order

11:02:14 1 for the seas and the oceans which facilitate the equitable and
2 efficient utilization of resources and which takes into account
3 in particular the special interests and needs of developing
4 countries.

5 These sentiments will suffuse the presentations, and
6 Guyana will look confidently to the fulfilment by the Tribunal
7 of the promise of UNCLOS and a vindication of the faith in the
8 judicial process to which Judge Higgins alluded.

9 That, Mr. President, Members of the Tribunal, is all
10 that I think I wish to say at this stage of the proceedings,
11 except perhaps this: In 1982, UNCLOS broke new ground in
12 several ways. One of them was by incorporating in the
13 Convention mechanisms for the settlement of disputes, making it
14 obligatory for a party to the Convention to go through the
15 settlement procedure in case of a dispute with another party.
16 At the final session of the Law of the Sea conference in 1982,
17 the President of the conference, Ambassador Tommy Koh, alluded
18 to this advance in international law in saying, "The world
19 community's interests in the peaceful settlement of disputes
20 and the prevention of use of force in the settlement of
21 disputes between states have been advanced by the mandatory
22 system of dispute settlement in the Convention."

23 From the outset, Guyana attached great importance to
24 this advance. Guyana's Foreign Minister Rashleigh Jackson in
25 his speech to the same final session, subsequently published

11:04:24 1 under the title, "Safeguarding the Security of Small States,"
2 spoke presciently when he said, "The Convention elaborates a
3 regime for the peaceful use of the seas." In this sense,
4 Guyana notes with keen interest the provisions dealing with the
5 peaceful settlement of disputes through compulsory procedures.
6 Guyana is particularly attracted to Article 301 under which
7 states in exercising their rights and performing their duties
8 under the Convention, are enjoined to refrain from any threat
9 or use of force against the territorial integrity or political
10 independence of any state.

11 As a party to that Convention, what did Suriname
12 expect? Frustrate negotiation. Use force to make the maritime
13 space a "no development zone," and yet somehow avoid the
14 dispute settlement procedures of UNCLOS? But so it seems. For
15 even after Guyana has had recourse to the dispute settlement
16 mechanism of UNCLOS, Suriname still acts in a manner consistent
17 with the view that emerged from the post-independence
18 negotiations, that the last thing it wants is to settle the
19 maritime boundary. Faced with the necessity of an Annex VII
20 procedure, Suriname seeks to abort the process, to protract,
21 and if possible, obviate it by its objection to the Tribunal's
22 jurisdiction.

23 Mr. President and Members of the Tribunal, as our
24 pleadings attest and as my colleagues will shortly illustrate,
25 Guyana has made every effort to resolve every aspect of

11:06:37 1 maritime delimitation with Suriname by negotiation. It did so
2 at the highest political level and at every level through which
3 a negotiation was possible--presidential, ministerial,
4 ambassadorial, official--only to be met, as the Foreign
5 Minister has just said, with a technical filibuster in
6 violation of Suriname's obligations under the Convention.

7 As I have indicated, Mr. President, in closing
8 Guyana's arguments, I will speak to Suriname's failure to make
9 every effort to agree provisional arrangements of a practical
10 nature pending resolution of the maritime boundary, including
11 Suriname's rather preposterous assertions advanced for the
12 first time in the Rejoinder that this Tribunal lacks
13 jurisdiction over Guyana's claim in this particular regard.

14 It is, therefore, Mr. President and Members of the
15 Tribunal, with some affront that Guyana has read the 21
16 pages--21 paragraphs--spread over 12 pages of Suriname's
17 Rejoinder on the matter of clean hands. My colleague,
18 Dr. Akhavan, will respond to such of these contentions as are
19 relevant when he addresses the Tribunal on Suriname's use of
20 force. Suffice it here for me to repudiate in limine any
21 suggestion of Guyana having acted improperly with regard to the
22 CGX incident, and in particular that suggestion from Suriname.
23 The best means of defense is attack has its limits even as a
24 military maxim. I suggest it has no place whatever in the
25 legal adjudication of conduct.

11:09:02 1 Thanks to the UNCLOS regime, we now have the
2 opportunity for that rational and equitable resolution for
3 which Guyana strove so long in vain. We look to the Tribunal
4 to vindicate our faith in the process, in what we truly believe
5 to be the interests of the peoples of both Suriname and Guyana,
6 the interests of the Caribbean archipelago, and, of course, the
7 wider interests of international maritime law.

8 I leave it now, Mr. President, Members of the
9 Tribunal, to my colleagues to deal seriatim in the sequence
10 that I outlined at the beginning with the several specific
11 issues which these proceedings entail. First among them is
12 Professor Philippe Sands and Professor Payam Akhavan, who will
13 address the Tribunal on the matter of jurisdiction.

14 Thanks, Mr. President and Members of the Tribunal.

15 PRESIDENT NELSON: Thank you very much, Minister
16 Shridath Ramphal.

17 It seems we are running late. This hearing was
18 supposed to be stopped at 11:00, 11:30, 11:15.

19 MR. REICHLER: I was just going to point that out,
20 Mr. President. You beat me to the punch. Perhaps this would
21 be a convenient time for the midmorning coffee break, if that's
22 acceptable to the Tribunal.

23 PRESIDENT NELSON: With the adjustment of 10 minutes.
24 Thank you very much.

25 (Brief recess.)

11:32:41 1 PRESIDENT NELSON: We will now resume the hearing, and
2 if I'm not mistaken, I give the floor to Professor Sands.

3 PROFESSOR SANDS: Thank you very much, Mr. President
4 and Members of the Tribunal.

5 It's a great honor for me to appear on this occasion
6 before this distinguished Tribunal, and also so many friends
7 and colleagues on the other side, former teachers and former
8 students. It's also a very great privilege for me to appear
9 with the distinguished Foreign Minister of Guyana on behalf of
10 the Republic of Guyana.

11 I'm going to begin by addressing this morning the
12 issues of jurisdiction, and at a certain point I will hand over
13 to my colleague, Professor Akhavan, and then once he is
14 finished, which will probably be after the lunch break, I will
15 resume again for a short period after lunch.

16 Just before we start, it's worth mentioning that I
17 will make occasional reference to documents in the judge's
18 folder. That is a white folder with various tabs in them. And
19 just to explain the way in which these tabs are being worked,
20 and they will be updated each day, I hope the other side also
21 has copies of those tabs, you have a first series of tabs, 1
22 until 21, which are, if you like, what we call core documents
23 that we are going to keep coming back to.

24 Then at Tab 22 you have the outline of our
25 presentations for the day.

11:35:42 1 And then at Tab 23 the additional documents to which I
2 will refer in my presentation this morning, and then at Tab 24,
3 the additional documents to which Professor Akhavan will refer.
4 And each day we will supplement so that from tomorrow onwards
5 it will be 25 onwards, 26, and so on and so forth; so I will be
6 as precise as I can in referring to documents as either 1 to 21
7 or 23 A, 24 A and so on and so forth, but if I get into
8 confusion, which is not impossible, I apologize in advance.

9 In this presentation, as I said, I'm going to address
10 the issue of jurisdiction, and it is an issue which we say is
11 straightforward. Guyana brought this case against Suriname
12 under the 1982 Convention which both Guyana and Suriname have
13 ratified. The case was brought to resolve an outstanding
14 dispute on the maritime boundary, and nothing else. There is
15 nothing in the 1982 Convention which precludes this Tribunal
16 from exercising jurisdiction over any part of the dispute to
17 which Guyana has referred this Tribunal. It is a dispute that
18 relates exclusively to the delimitation of the maritime
19 boundary between the two states, and it concerns principally
20 the interpretation and application of three Articles: Article
21 15, Article 74, and Article 83. There will be other Articles
22 which are also invoked, Article 279, Article 9, Article 301.

23 The resolution of this dispute does not require the
24 Tribunal to address any other matters; and in particular, to be
25 clear, it does not require the Tribunal to resolve or express a

11:38:02 1 view on a nonexistent dispute on nonmaritime matters. Suriname
2 has raised an objection to jurisdiction which is on the facts
3 and on the law wholly without merit, and which is entirely
4 consistent with the general approach to its bilateral maritime
5 relations with Guyana as outlined to you by the distinguished
6 Foreign Minister and by sir Shridath Ramphal. In our
7 submission, respectfully, Suriname's approach undermines the
8 entire purpose of the 1982 Convention.

9 Guyana's full arguments concerning jurisdiction are
10 set out in the written pleadings, and, of course, I don't
11 intend to refer you to absolutely everything, but in particular
12 Chapter 6 of the Memorial and Chapter 2 of the Reply.
13 Suriname's arguments are addressed in its Preliminary
14 Objections, a document dated the 23rd of May, 2005, and in its
15 Rejoinder at Chapter 2, paragraphs 2.1 to 2.80.

16 The issue of jurisdiction and the related issue of
17 admissibility, which will be touched on by other speakers on
18 behalf of Guyana, arose after Guyana had filed its Memorial
19 and, of course, was the subject of a hearing which was held in
20 July 2005 in The Hague, following which the Tribunal adopted an
21 order in which it joined the issues of jurisdiction and
22 admissibility to the merits, and it is this hearing in which we
23 now participate.

24 We begin by making a number of introductory points.
25 Firstly, it's abundantly clear that Suriname is willing to go

11:40:06 1 to very great lengths to avoid the Tribunal dealing with the
2 merits. Secondly, to that end, it has raised its
3 jurisdictional objections, which we say are wholly without
4 merit.

5 Third, contrary to the view expressed by Suriname, the
6 Tribunal is not being asked to delimit anything other than the
7 maritime boundary; it's certainly not being asked to delimit
8 any territory, of land, of continental or insular character,
9 and it has no need to do so in order to delimit all of the
10 maritime spaces which are at issue.

11 Fourthly, also contrary to the view expressed by
12 Suriname there is no requirement for there to be under UNCLOS a
13 formal written agreement between Guyana and Suriname on the
14 location of the terminus, the northern boundary, in order for
15 the Tribunal to exercise jurisdiction over the delimitation of
16 the maritime boundary.

17 Fifthly, in the present case, there is no territorial
18 dispute to resolve. Both parties agree, and they have long
19 agreed, that Point 61 is the terminal of the northern boundary.
20 They have also long agreed that the boundary lies along the
21 low-water mark of the west bank of the Corantijn River, and
22 they have also agreed, and this is of singular importance, in
23 their submissions that if this Tribunal does proceed to a
24 delimitation, the starting point for any maritime delimitation
25 is Point 61. Both the parties agree on that.

11:42:01 1 Sixthly, this Tribunal, we say, is entitled to take
2 account of all of those agreements. Like any International
3 Tribunal, it is entitled to--indeed, it must--interpret and
4 apply the applicable law, the 1982 Convention, on the basis of
5 settled facts in relation to all of these agreements. And it's
6 entitled to rely upon them for the purpose of exercising
7 jurisdiction under Part XV.

8 The seventh introductory point is that even if
9 Suriname is right that there is no agreement on these or any of
10 these points--and, of course, we say they are not right--we
11 strongly resist that argument--that would not preclude the
12 Tribunal from exercising jurisdiction and delimiting a line
13 from Point 61, for three reasons: The Tribunal, firstly, can
14 obviously effect a partial delimitation. Alternatively, the
15 Tribunal can delimit an interpretation and application of
16 Article 9 of the Convention. And thirdly, also in the
17 alternative, the Tribunal can exercise incidental or ancillary
18 or other jurisdiction over territorial matters in circumstances
19 in which a state has not made a declaration under Article
20 298(1)(a)(i). We will come back to that in due course.

21 So, let me put this case in its real context, and in
22 particular the preliminary objection in its real context.
23 Suriname's preliminary objection essentially boils down to an
24 issue of whether or not the Tribunal can or cannot delimit a
25 few miles of territorial sea boundary, and this has been clear

11:44:03 1 from the day Suriname submitted its memorandum on Preliminary
2 Objections. That memorandum included Figure 4 which ought, if
3 the technology is working, to now appear magically on your
4 screen, and it does.

5 This plate is at Tab 23(d) of your documents, if you
6 want to come back to it.

7 Now, the figure is an interesting one because it
8 purports to show the impact on the provisional equidistance
9 line of a shift of the initial point of the boundary from Point
10 61 to a putative Point X. Point 61 down here, Point X up
11 there.

12 It shows that even on that difference of starting
13 point, the provisional equidistance line of both starting
14 points converge up there, and the distance from that point of
15 convergence to the nearest point on the low-water mark, is
16 about 15 nautical miles.

17 That's Point X. Suriname doesn't say you should start
18 from Point X. Suriname says if you have got jurisdiction, you
19 should start from Point 61. And like Guyana, it wants a
20 starting point for the exercise of the delimitation to be from
21 that point. The only real issue, if there is one, is how you
22 get from Point 61 to the low-water mark, assuming, that is,
23 Point 61 is not already on the low-water mark or the high-water
24 mark, a point to which we will return in due course.

25 Now, what's the effect, in practical terms, of the

11:46:19 1 differences of approach? How you get from Point 61 to the
2 low-water mark if that exercise needs to be carried out? You
3 can see that clearly on Plate R19 of Guyana's Rejoinder, and
4 that is a document you will find at Tab 23(e) of your
5 materials.

6 Now, this Plate shows the impact of two different
7 approaches of getting from Point 61 to the point on the
8 low-water mark. Guyana's approach, which is that little point
9 there, you get from Point 61 to the closest point on the
10 low-water mark, and the alternative approach is Suriname's,
11 which is you take a 10-degree line, and you hit the low-water
12 mark along the 10-degree line.

13 What this Plate demonstrates is that here, too, there
14 is convergence, obviously, of the provisional equidistance
15 line, and it converges here. Now, that point, we will provide
16 in due course the precise calculations, is about 6 nautical
17 miles; and, at essence, that is the extent of the difference
18 between the parties, no more and no less. Having agreed that
19 Point 61 is the starting point, essentially what this Tribunal
20 is being asked to do by Suriname is to decline jurisdiction and
21 to delimit nothing because of what it says is a disagreement on
22 the starting point which, on its own analysis--and this
23 approach is not challenged--leads to an issue as to the first 6
24 miles. Putting it another way, the Tribunal can delimit 194
25 miles without difficulty on the basis of this issue, assuming

11:48:22 1 it adopts a provisional equidistance line.

2 Now, of course, Guyana says that you aren't even
3 deprived of the power or the jurisdiction to delimit from that
4 point of convergence to the place on the low-water mark that is
5 closest to Point 61. And the reason that we say that is that
6 the delimitation of that part is not dependent upon the
7 resolution of any dispute over continental land territory.
8 Because all of the continental land territory between Point 61
9 and the low-water mark, whichever approach you take, is within
10 the territory of Guyana. That is not in dispute. Suriname has
11 never claimed that any of that territory falls within its
12 sovereignty, until these proceedings. Indeed, clarified rather
13 helpfully to us, I must say, in a letter dated the 4th of
14 December, 2006, when for the very first time Suriname made
15 absolutely explicit what its intentions were, intentions, I
16 have to say, that seem clearly designed to buttress a
17 jurisdictional objection.

18 But, if you accept as your starting point the premise
19 that none of the land in issue is part of Suriname, and has
20 never been claimed by Suriname, their entire argument on
21 jurisdiction collapses, and that is our principal submission on
22 the issue of jurisdiction.

23 I should just pause here and say parenthetically and
24 on a personal note, these issues do take some time to emerge
25 from the mass of documentation that has been put, and for this

11:50:23 1 reason I want to stress once again our extreme gratitude to
2 Suriname for articulating in their recent letter so very
3 clearly what their real intentions are.

4 But, of course, we say this Tribunal cannot take into
5 account a new dispute, quote-unquote, which has emerged only
6 after these proceedings were initiated, and we look forward,
7 with interest, to seeing Suriname's evidence. There is none,
8 of course, before the Tribunal, which shows that at any point
9 before these proceedings it ever claimed any land territory in
10 an area landwards of the low-water mark of the Corantijn River.
11 There is no such evidence before the Tribunal.

12 So, if the Tribunal were to accede to Suriname's
13 approach, the consequence would be to deprive the International
14 Court of Justice, the International Tribunal for the Law of the
15 Sea, or an Annex Seven Tribunal, of any ability to exercise
16 jurisdiction under Part XV of UNCLOS in any maritime
17 delimitation dispute where there is no formal written agreement
18 reflected in a treaty on the initial point for the delimitation
19 of the sea boundary. That is the consequence of the case
20 Suriname is putting to you.

21 On Suriname's approach, the mere fact of raising an
22 issue related to the coast and a dispute, however
23 unmeritorious, is sufficient to deprive the Tribunal of any
24 jurisdiction. We say that is not in keeping with the object
25 and purpose of UNCLOS or the spirit in which the negotiators in

11:52:20 1 1982 concluded that enormous task.

2 We say the Tribunal should take Suriname's objection
3 for what it really is: A recognition of the fundamental
4 weakness of its case on the merits of the delimitation. As
5 Guyana said during the hearing in July 2005, Suriname faces the
6 very real difficulty that its objection to jurisdiction cannot
7 prevent the Tribunal from exercising at least some
8 jurisdiction, but, of course, we say all jurisdiction in
9 relation to the totality of the dispute brought to you by
10 Guyana.

11 Now, against that background, I'm now going to turn to
12 the legal framework. I will then summarize Guyana's case on
13 why it's patently apparent this Tribunal has jurisdiction, and
14 I will then address each of Suriname's arguments against
15 jurisdiction. The issues of admissibility concerning Guyana's
16 second and third claims will be addressed by counsel presenting
17 those aspects of Guyana's case later on in the week.

18 So, let me turn now to the legal framework, and let me
19 begin with what one might call the substantive rules of
20 international law in the Convention. Under Article 287, the
21 Convention provides that a tribunal constituted has, and I
22 quote, jurisdiction over any dispute concerning the
23 interpretation or application of the Convention, end of quote.
24 This dispute, as we already said, relates to the determination
25 of the maritime boundary between Guyana and Suriname, and what

11:54:07 1 I will say for this part of the presentation deals only with
2 Articles 15, 74, and 83 and not the other issues in relation to
3 Claims 2 and 3.

4 Article 15 deals with delimitation of the territorial
5 sea between states. It's entitled, "Delimitation of the
6 territorial sea between States with Opposite or Adjacent
7 Coasts." Its language is well-known. It ensures that no state
8 is entitled, failing agreement to the contrary, to extend its
9 territorial sea beyond the median line, every point of which is
10 equidistant from the nearest points on the baselines. It's
11 very clear language. There is, of course, an exception where
12 historic title exists. There is no claim here to historic
13 title, or, and I quote, "other special circumstances," and I
14 will come back to that when I deal with territorial sea issues
15 probably tomorrow.

16 Article 74 deals with the delimitation of the
17 Exclusive Economic Zone, and Article 83 deals with the
18 delimitation of the continental shelf, and I don't propose now
19 to take you to those provisions in any detail, but there are
20 one or two aspects of it that are, I think, relevant, and in
21 particular what one might call common subparagraph two of those
22 two provisions. "If no agreement can be reached within a
23 reasonable period of time, the states concerned shall resort to
24 the procedures provided for in Part XV," I emphasize the word
25 "shall," it's not the word "may." The intent of the drafters

11:55:45 1 was to create a system in which resolutions would be brought to
2 an end, and the whole thrust of the Convention is to do
3 precisely that. So that any limitations which exist in
4 relation to the jurisdiction of the Tribunal or any other body
5 empowered to adjudicate disputes in relation to these
6 provisions has to be read in that exceptional circumstance
7 against the background, one might say, of the policy argument
8 in favor of the resolution of disputes.

9 Putting it another way, the burden, we say, is on
10 Suriname to prove that there is no jurisdiction, not on us to
11 prove that there is. And that is quite the correct way to read
12 these particular provisions.

13 There are other provisions which we will come to in
14 due course, including in particular Article 9 of the Convention
15 concerning the determination of the location of the mouth of a
16 river, and I would just briefly there mention in relation to
17 that provision that that is plainly a provision over which this
18 Tribunal can exercise jurisdiction in its interpretation and
19 application. It would divide, in effect, in its exercise,
20 internal waters from territorial sea, and it is plainly
21 envisaged, we say, that a tribunal should be able to determine
22 whether a closing line has been correctly delimited by
23 reference to the requirements of Article 9.

24 And, of course, the dispute relates to the threat to
25 use force by Suriname against Guyana in 2000, and the failure

11:57:29 1 of Suriname to negotiate in good faith, and in this regard it
2 concerns also the interpretation and application of
3 Article 279.

4 Bringing the various threads together, what we say is
5 that the dispute falls squarely within the jurisdiction of an
6 Annex Seven Tribunal, given the provisions of that 1982
7 Convention that the Tribunal is called upon to interpret and
8 apply. Resolving the dispute does not require the Tribunal to
9 resolve any dispute concerning the continental or insular land
10 territory of either state, let alone delimit any part of either
11 state's land territory.

12 As I've already said, Suriname has no continental land
13 territory in the area in question. Its sovereignty ends where
14 the low-water mark begins. Suriname claims sovereignty over
15 the river there located, and at some places to be determined by
16 this Tribunal; it claims sovereign rights over territorial sea,
17 but it has no sovereignty over any land; and UNCLOS treats land
18 and water differently. I will come back to this in a moment in
19 dealing with the procedural obligations to which I now turn.

20 Part XV of the Convention, as we know, establishes a
21 special regime for the settlement of disputes concerning the
22 interpretation and application of UNCLOS. In his closing
23 remarks to the third U.N. conference on the Law of the Sea, the
24 President of the conference, Ambassador Tommy Koh, underscored
25 the singular importance of Part XV, and I quote: "The world

11:59:21 1 community's interest in the peaceful settlement of disputes and
2 the prevention of the use of force in the settlement of
3 disputes between states have been advanced by the mandatory
4 system of dispute settlement in the Convention. We celebrate
5 the victory of the rule of law and of the principle of peaceful
6 settlement of disputes."

7 As above, Article 279 requires parties--requires
8 parties--to seek a solution by peaceful means in accordance
9 with the United Nations charter, and Article 74(2) and 83(2)
10 provide that parties shall have recourse to Part XV to resolve
11 their disputes.

12 It was, of course, Suriname's recourse to the
13 threatened use of force in June 2000 that compelled Guyana to
14 submit the dispute to an Annex Seven Tribunal as a way of
15 resolving the dispute. And I should say, as you have already
16 heard, Guyana very much regrets that Suriname treats these
17 pleadings as a threat rather than as an opportunity.

18 Article 283(1) provides that when a dispute arises
19 between state parties, the parties should proceed expeditiously
20 to an exchange of views to settle, in an attempt to settle, the
21 dispute by negotiation. But it's clear that a state cannot be
22 expected to wait endlessly before submitting a dispute with
23 another state to an international court or tribunal, and the
24 International Tribunal for the Law of the Sea has addressed
25 this aspect in a number of cases. I refer you to the decision

12:01:02 1 in the Southern Bluefin Tuna Cases in its order of the 27th of
2 August, 1999, and I quote, "A state party is not obliged to
3 observe procedures under Part XV when it concludes that the
4 possibilities of settlement have been exhausted."

5 The MOX Plant Case, order of 3rd of December, 2001, I
6 quote, "A state party is not obliged to continue with an
7 exchange of views when it concludes that the possibilities of
8 reaching agreement have been exhausted."

9 And the land reclamation case order of 8th of October,
10 2003, and I quote, "Malaysia was not obliged to continue with
11 an exchange of views when it concluded that this exchange could
12 not yield a positive result."

13 So, Article 281(1) allows recourse to procedures
14 provided for in Part XV, including compulsory procedures in
15 obtaining binding decisions under Section 2 of Part XV where
16 there has been no settlement and where there is no agreement
17 between the parties to exclude any further procedure.

18 Article 286 permits these compulsory procedures to be
19 activated by the submission of the dispute unilaterally by one
20 state to the Court or Tribunal having jurisdiction under
21 Section 2.

22 And Article 287 governs the choice of compulsory
23 procedures. Since no declarations have been made under Article
24 287 by Guyana or Suriname under Article 287(1), both are deemed
25 by operation of Article 287(3) to have accepted arbitration.

12:02:54 1 Now, against that background, it's necessary to turn
2 to the situation concerning exceptions, and I want to refer you
3 in particular to Article 298(1) of the 1982 Convention, which
4 you should now see on the screen.

5 And this provides that upon signature ratification or
6 acceding to this Convention or at any time thereafter, a state
7 may, without prejudice to the obligations arising under Section
8 1, declare in writing that it does not accept any one or more
9 of the procedures provided for in Section 2 with respect to one
10 or more of the following categories of disputes, and it
11 identifies three categories of disputes. For our purposes, we
12 are only concerned with category A(1).

13 Disputes concerning the interpretation or application
14 of Articles 15, 74, and 83 relating to sea boundary
15 delimitations, or those involving historic bays or title,
16 "provided that a state having made such declaration shall, when
17 such a dispute arises subsequent to the entry into force of
18 this Convention, and where no agreement within a reasonable
19 period of time is reached in negotiations between the parties,
20 at the request of any party to the dispute, accept submission
21 of the matter to conciliation under Annex 5, Section 2," and
22 then it goes on: "And provided further that any dispute that
23 necessarily involves the concurrent consideration of any
24 unsettled dispute concerning sovereignty or other rights over
25 continental or insular land territory shall be excluded from

12:04:38 1 such submission."

2 And I just want to emphasize there the words, "over
3 continental or insular land territory." No reference there to
4 internal waters.

5 Now, Guyana and Suriname have made no declaration
6 under this provision, and so in the case of these two states,
7 there is no limitation on the right of the Tribunal to exercise
8 jurisdiction, insofar as it concerns the interpretation and
9 application of Articles 15, 74, and 83, and I assume that both
10 Guyana and Suriname, as prudent, well governed states, took the
11 decision not to make any such declaration, and the Tribunal is
12 entitled to take account of that decision not to make a
13 declaration. It is a fact.

14 The practice of other states is different. We have
15 gone through the exercise of looking at the declarations, and
16 you will find at Tab 23(c) a document which lists, and I hope
17 this is accurate--I apologize if it's not--I think it is--the
18 declarations relating to the 34 states that have made such
19 declarations of one sort or another in relation to Article 298.
20 This is for illustrative purposes to indicate the types of
21 practice that is followed.

22 Now, of these 34 states, 17 have excluded any
23 compulsory dispute settlement under Part XV in relation to
24 maritime delimitations. They include countries like Canada,
25 China, France, the Republic of Korea, and the Russian

12:06:32 1 Federation; and so you will recall in Suriname's Rejoinder in
2 an effort, perhaps, to scare off the Tribunal, they raised the
3 possibility of a dispute between Japan and China over certain
4 islands. Well, it's plain that such a dispute could not go to
5 an Annex Seven Tribunal because China has exercised its right
6 to put in a declaration, in the summer of 2006.

7 11 other states have made declarations excluding
8 dispute settlement before some bodies or some parts of Article
9 298, but it's clear that they have done so with some
10 deliberation. At page 10 of the document, you will see the
11 United Kingdom's declaration, which interestingly excludes from
12 compulsory dispute settlement disputes under 298 1(b) and (c)
13 but not (a). That, one assumes, was a conscious and deliberate
14 choice by the United Kingdom.

15 And then there are six other states that have made
16 declarations reserving their right to make an Article 298
17 declaration at some point in the future, although, of course,
18 the Convention allows them to do that in any event.

19 All of these 34 states have exercised perfectly
20 legitimate rights, and in so doing they have obviously taken
21 the care to look at carefully and then act upon precisely the
22 language of Article 298. But Guyana and Suriname are amongst
23 the 118 states that have not made declarations that touch on
24 Article 298. Nevertheless, Suriname purports to rely on
25 Article 298(1)(a)(i). It claims, and I quote, "The 1982

12:08:21 1 Convention does not confer the power to determine a land
2 boundary on an Annex Seven Tribunal." That's paragraph 2.11 of
3 its Rejoinder, and paragraph 4.6 of its Memorandum on
4 Preliminary Objections; and the one authority that's related to
5 in that memorandum on Preliminary Objections is sitting in this
6 room, and one assumes that may not have been involved at that
7 particular time of the proceedings.

8 But all of this, we say, is irrelevant. This dispute
9 doesn't require the Tribunal to, and I quote, "determine a land
10 boundary," as Suriname puts it. It could be, conceivably,
11 under some scenarios, but the resolution of the dispute by the
12 Tribunal may require to take some account of matters which
13 might pertain to the coast, but that does not denude it of
14 jurisdiction over all of the dispute referred to it by Guyana.

15 So, let me summarize here as carefully as I can
16 Guyana's position in relation to Point 61 and the low-water
17 mark on this question of the need or, as we say, non-need, to
18 address land territory issues. And I will do it in a number of
19 points.

20 First point. It has long been established since the
21 Treaty of 1799 and consistently recognized by both parties that
22 on the west bank of the Corantijn River, Guyana has sovereignty
23 over all of the land, and Suriname has sovereignty over none.
24 Let me take you to Tab 4 in the Judges' folders, Arbitrators'
25 folders.

12:10:22 1 Tab 4 is a letter from the Prime Minister of the
2 Kingdom of the Netherlands to the Prime Minister of the
3 Government of the Republic of Suriname, and it is Guyana's
4 Memorial Annex 46, although I believe the translation is
5 provided by Suriname.

6 Now, down at the bottom of the first page in the
7 penultimate paragraph, and this is a letter we will come back
8 to, it says, and I quote, "The western boundary is formed by
9 the low-water line on the left bank of the Corantijn River,
10 from origin to mouth. The boundary therefore runs from a point
11 to be further determined on the southern boundary to the origin
12 of the Upper-Corantijn, next from this origin along the
13 low-water line on the left bank of the Upper-Corantijn and the
14 Corantijn up to the point where the river bank changes into the
15 coastline and from this point along the line with a direction
16 of ten degrees east of True North."

17 That is a clear confirmation of the location of the
18 boundary, the low-water line. I will come back to that in due
19 course.

20 What that means, as a matter of law, is that
21 Suriname's rights on the river or on the sea extend only up to
22 the seaward side of the low-water line, and these are internal
23 waters. They are not land territory. They are not insular
24 land territory. They are not continental land territory.

25 Second point, UNCLOS draws a clear distinction between

12:12:20 1 land territory and internal waters. On the screen, extracts
2 from Article 2 of the Convention entitled "Legal Status of the
3 territorial sea" and so on, and I quote, "The sovereignty of a
4 coastal state extends, beyond its land territory and internal
5 waters to an adjacent belt of sea described as the territorial
6 sea."

7 A third point follows very clearly. UNCLOS draws a
8 distinction in law between land territory and internal waters.
9 When the drafters wanted to use the words "land territory,"
10 they did so. When they wanted to use the word "internal
11 waters," they did so. UNCLOS makes very clear that internal
12 waters are not to be treated as land territory, and they are
13 not to be assimilated to land territories. Where the drafters
14 of UNCLOS wanted to refer to land territory, they did so. I
15 will turn to a Latin expression that I'm not allowed to use
16 anymore in the English courts because as Professor Greenwood
17 and I know, that has been banned, *expressio unius est exclusio*
18 *alteris*. I have to translate that, being a member of the
19 English Bar into what we would say in the English courts: The
20 expression of one thing is the exclusion of another.

21 So, let's move to the fourth point back to Article
22 298. Article 298(1)(a)(i) is on the matter of internal waters,
23 so that even if that provision could be prayed in aid by
24 Suriname, and we say it can't, it cannot affect any dispute as
25 that may be concerned as to the delimitation of an area, for

12:14:38 1 example, between territorial sea and internal waters.

2 Let's take the logic of that argument further. What
3 it logically means is that a conciliation Commission faced with
4 such a dispute would not be subject to the reservation. That
5 is the logical consequence of words, and as we know, words
6 matter.

7 Fifth point, it's perfectly clear that rights on the
8 landward side of the low-water line are different from those to
9 the seaward side of the low-water line (or the riverine side of
10 the low-water line) and this was certainly expressed by Ian
11 Brownlie, who is a certain authority on these issues, and I
12 apologize because I failed, it's completely my error. Our
13 colleague, Sarah Altschuller has done a terrific job in putting
14 together these documents, and I omitted to give her the extract
15 which I think everyone is entitled to have and which I will
16 pass around now, the extract from Professor Brownlie's--this is
17 an extract from a rather seminal work, "African Boundaries, A
18 Legal and Diplomatic Encyclopedia," published in 1979 by C.
19 Hurst & Company and written by Ian Brownlie.

20 And I have photocopied inside merely a first page of
21 the introduction entitled, "The concept of a boundary."

22 And Professor Brownlie, in this introduction, and the
23 fact that it is in the introduction I think speaks loudly about
24 its importance, talks about the allocational function of
25 boundaries, and in the third paragraph down you will see, and I

12:16:51 1 quote, the bottom of the second paragraph and beginning of the
2 third paragraph, "This reference to allocation as the primary
3 purpose of boundaries is not a reflection of legalism, but
4 accords with the attitudes of the politicians who make
5 territorial arrangements."

6 "It follows that a boundary has no breadth and that a
7 meeting of boundaries involves a point and not a zone of joint
8 sovereignty."

9 Now, that is of singular importance for this case
10 because it explains that the agreement to locate a boundary
11 along the low-water mark precisely distinguishes two separate
12 zones, a zone on the landward side of continental land
13 territory, and the zone on the seaward side of internal waters.

14 So, my sixth point is that this perfectly expresses
15 and encapsulates the proposition that Guyana's rights on the
16 land and Suriname's rights on the river, divided as they are by
17 the low-water line, are separate and distinct and precisely so
18 both in fact and more importantly for our purposes and for the
19 issue of jurisdiction, under the 1982 Convention on the Law of
20 the Sea.

21 The seventh point, it follows, clearly we say, that if
22 any line has to be drawn from Point 61 to the low-water line,
23 it will traverse only land territory. And all of that land
24 territory is part of the sovereignty of Guyana. There is no
25 question of Suriname having sovereignty or, indeed, any other

12:19:04 1 rights over any of the land, irrespective of whether the line
2 goes to the closest point on the low-water line, as Guyana
3 argues, or along the 10-degree line to the low-water line; or
4 it can go 100 miles to the north, 25 miles to the south, it has
5 zero effect on Suriname's entitlement to land territory. One
6 has to be precise about these issues.

7 The eighth point, following this scheme, is that if
8 the Tribunal reaches the point that it considers it necessary
9 in order to resolve this dispute, to go from Point 61 to any
10 place on the low-water line, it can do so obviously without
11 taking any decision that, and I quote Suriname's words,
12 "determines a land boundary." Suriname's argument is logically
13 and factually flawed. It is premised on an approach that is
14 inconsistent with its long-standing position that its
15 sovereignty extends only to the riverine side of the low-water
16 line.

17 In sum, therefore, point nine, the land boundary is
18 settled. In resolving the dispute, the only thing the Tribunal
19 is doing is determining where the river ends and the sea
20 begins. This is exactly as the Treaty of 1799 envisaged, and
21 with which all subsequent practice is concordant, as I shall
22 explain in due course. And determining where a river ends and
23 where the sea begins is something, with respect to Suriname,
24 that plainly falls within the jurisdiction of this Tribunal.

25 Now, the logic of the law, we say, of UNCLOS, is

12:21:28 1 compelling, and it's sufficient to dispose entirely of the
2 flawed rationale of Suriname's ill thought out and late entered
3 jurisdictional objection. But for the sake of completeness,
4 although we don't have to, we can go even further. The
5 Tribunal doesn't need to go further than we are inviting it to
6 go, and certainly we are not encouraging this Tribunal to
7 express any views on these issues it doesn't have to.

8 But what we say is there is nothing in the text of
9 Article 298 to support Suriname's interpretation, even if the
10 Tribunal did have to determine a land boundary. There is
11 plenty of authority for the proposition that some Annex VII
12 tribunals can deal with some land issues, and at document--Tab
13 23(f) of your material, there is an article by Professor Alan
14 Boyle--in fact, we just put in the relevant page, page 49, or
15 the introduction--Tab 23(f), F as in Freddie, and on the second
16 page, on the right-hand side you have got page 49, and
17 about--it's Tab 23(f), it's the second page of that tab, the
18 back page, pages 48 and 49 of an article from the International
19 Comparative Law Quarterly. I haven't put in all the
20 authorities, but there is one from a solid source. Bottom of
21 page 49, on the right inside bottom, and I quote, "In some
22 cases, the delimitation of a maritime boundary may necessarily
23 require a decision concerning disputed sovereignty over land,
24 for example, where an island is used as a basepoint for an EEZ
25 or content or shelf claim. While parties to the Convention do

12:24:10 1 have the option of excluding such disputes from compulsory
2 jurisdiction under Article 298(1), the implication must be that
3 where this option is not exercised, a tribunal, including the
4 International Tribunal for the Law of the Sea may, if
5 necessary, deal with both the land and the maritime dispute.
6 If this is so in compulsory cases, there is no reason why the
7 same should not also hold true in consensual cases."

8 And, of course, the logic that inspires Professor
9 Boyle is unimpeachable. The language of Article 298(1)(a)(i)
10 points plainly to a reading in which the exclusion that is
11 created (or the limitation that is created) in relation to the
12 conciliation Commission doesn't appear to apply in relation to
13 an Annex Seven Tribunal. But we don't need to detain you any
14 further on this because we say, in any event, there isn't a
15 land dispute, and so you don't have to express any view on that
16 issue.

17 In the present case, the Arbitral Tribunal is dealing
18 exclusively with the maritime dispute. Simply being asked to
19 take note, take account of long-standing agreement and practice
20 of both states to treat Point 61 as the starting point for the
21 delimitation of the maritime boundary, simply not called upon
22 to delimit any land territory or to take any decisions which
23 can affect sovereignty over land territory, whether directly or
24 indirectly. It's as simple as that.

25 Let me turn now to the second part of my submissions,

12:26:11 1 and that is on Guyana's arguments specifically.

2 We have made it clear that our principal submission is
3 that the Tribunal is fully competent and has unquestionable
4 jurisdiction to determine the dispute between the parties, and
5 we can summarize the position in four points:

6 One, Guyana has complied rigorously with the
7 procedures set out under Section 15 of a procedural character,
8 thus engaging its right to bring this dispute to this Tribunal.

9 Two, this matter concerns only the delimitation of the
10 maritime boundary between Guyana and Suriname and only the
11 interpretation and application of certain provisions of the
12 1982 Convention.

13 Three, further, or alternatively, if despite Guyana's
14 submissions and the consistent practice of the parties in
15 relation to Point 61 and the position in relation to the
16 distinction between land territory and internal waters, if, in
17 those circumstances, the Tribunal were to find itself unable to
18 find any agreement on the northern terminal, then the Tribunal
19 has jurisdiction to effect a partial delimitation of the
20 maritime boundary for part of the territorial sea under Article
21 15, and for the whole of the Exclusive Economic Zone and the
22 whole of the continental shelf.

23 And four, further, or alternatively, the Tribunal has
24 jurisdiction over incidental and ancillary matters and others
25 related to the land boundary and pursuant to Article 9 of the

12:27:59 1 Convention, or alternatively, it may determine the location of
2 the mouth of the Corantijn River where the parties have
3 historically agreed the land terminal was established, and it
4 can then determine the maritime boundary from that point. I
5 will deal with each of those points in turn.

6 First point, on procedural compliance, I don't think
7 there is much that needs to be said. Suriname is not raising
8 any procedural objections, so we can put that entirely on one
9 side.

10 Second point, the Tribunal has jurisdiction to delimit
11 the maritime boundary starting from Point 61. This dispute
12 concerns the determination of only a maritime boundary between
13 these two states, and three factors are pertinent. The first,
14 there is, on the part of both parties to take Suriname's words,
15 mutual, continuous, and consistent reliance on Point 61 as the
16 point of departure for the delimitation of the maritime
17 boundary.

18 The second point, neither party has ever sought to
19 delimit the maritime boundary from any other point.

20 The third point, the Annex VII Tribunal is not being
21 called upon to determine any dispute concerning continental or
22 insular land territory.

23 It's striking--very striking, we say--that although
24 Guyana and Suriname claim very different maritime boundary
25 lines, Guyana claiming a historical equidistance line of N34

12:29:43 1 east and Suriname a line of N10 east, both of these lines
2 emanate from the same points of latitude 5 59 53.8 north,
3 longitude 57 8 51.5.

4 Guyana refers to this location as Point 61. Suriname
5 refers to it as the 1936 Point, but you should not be confused
6 by the difference. It is precisely the same location. Both
7 parties recognize that if the Tribunal has jurisdiction, then
8 that is the correct starting point, and I invite the Tribunal
9 in due course to read Guyana submission number 2 and Suriname's
10 submission 2(b). Suriname's position, of course, is that the
11 Tribunal doesn't have jurisdiction, but if it's wrong on that,
12 then it invites you to start the process of determining the
13 maritime boundary from Point 61 or the 1936 Point. That
14 agreement, we say, speaks very loudly, indeed.

15 At this point, I would invite you to call on Professor
16 Akhavan to address the history of the settling of the northern
17 terminal at Point 61, but I wonder whether it might more
18 appropriate to break slightly earlier for lunch so that he can
19 have an up interrupted run; or alternatively, if you wish, he
20 can start and then break for lunch and run all the way through.
21 He's got a presentation of about an hour in total, so we are in
22 your hands as to the most sensible way to proceed.

23 PRESIDENT NELSON: Thank you, Professor Sands.

24 I think it may be wise to have the break for lunch at
25 this moment, if that's acceptable.

12:31:47 1 MR. SAUNDERS: No objection.

2 PRESIDENT NELSON: And we will start earlier. 2:15 we
3 will start.

4 Thank you very much.

5 ARBITRATOR SMIT: Will you provide the dates for the
6 Brownlie book?

7 PROFESSOR SANDS: I think, sir, it's 1979 was the date
8 of publication.

9 PRESIDENT NELSON: The hearing is adjourned.

10 (Whereupon, at 12:32 p.m., the hearing was adjourned
11 until 2:15 p.m., the same day.)

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AFTERNOON SESSION

2 PRESIDENT NELSON: Professor Akhavan.

3 PROFESSOR AKHAVAN: Mr. President, Honorable Members
4 of the Tribunal, it is a pleasure to appear before this very
5 distinguished panel. It's also a great privilege to represent
6 the Republic of Guyana in these proceedings today in the
7 presence of the Foreign Minister Rudolph Insanally.

8 I also take this opportunity to pay my respects to my
9 colleagues who are part of the Surinamese delegation, some of
10 whom I have previously known as friends and colleagues.

11 Further to Professor Sands's remarks, I will address
12 the historical origin of the geographic destination and
13 definite fixing of Point 61 by the Anglo-Dutch Boundary
14 Commission in July 1936. In so doing, I will be relying on a
15 number of documents which are contained primarily in Tab 24 of
16 the Judges' folders. Some other documents, because of their
17 fundamental importance, are contained in other tabs. For ease
18 of reference, I will make reference to these. Tab 1 includes
19 the 1936 report of the Mixed Boundary Commission to which I
20 will make frequent reference.

21 Tab 24(h) includes a covering memorandum to a 1935
22 draft Treaty.

23 And Tab 16 includes a 1939 draft Treaty. I will be
24 making frequent reference to these documents.

25 As I will demonstrate, based on these and other

14:20:19 1 documents, an examination of the Commission's history, mandate
2 and work leaves no doubt as to the following points: First,
3 that from the very outset in 1936, the fixing of Point 61 by
4 the Commission reflected an agreement between the Netherlands
5 and the United Kingdom and was intended to be a definitive and
6 permanent exercise.

7 The second point is that Point 61 was intended to
8 designate the Corantijn River mouth where it debouches into the
9 sea and not a random point along the Guyanese coast.

10 The third point is that Point 61 was the nearest point
11 to the high-water line at the west bank of the Corantijn River
12 mouth, where it was practically possible to build concrete
13 boundary markers.

14 And fourth, that the Commission and the respective
15 governments of the Netherlands and the U.K. considered the very
16 short distance that apparently then pertained from Point 61 to
17 the low-water line to be Guyanese land territory in its
18 entirety, and that the parties have deemed so ever since.

19 The facts surrounding the work of the Mixed Boundary
20 Commission are set forth in Guyana's Memorial at pages 14 to
21 18, paragraphs 3.5 to 3.14, and further elaborated in Guyana's
22 Reply at pages 17 to 21, paragraphs 2.9 to 2.20.

23 By way of summary, the Netherlands and the U.K. agreed
24 in 1931 to definitively fix their northern boundary terminus at
25 a specific location on the western bank of the Corantijn River

14:22:30 1 mouth. The parties understood this to mean the point where the
2 river debouches into the sea. They also understood that
3 Suriname would have sovereignty over the waters of the
4 Corantijn River, whereas Guyana would have sovereignty over all
5 land on the river's western bank, irrespective of the rise or
6 fall of waters.

7 This agreement, this agreement in principle in 1931,
8 was incorporated into a 1935 draft Treaty, and demarcation of
9 the exact location compatible with permanence was entrusted to
10 a mixed boundary commission. In 1936, after careful scrutiny
11 and deliberation, the Commission fixed Point 61 as the northern
12 boundary terminus between British Guiana and Suriname. This
13 point was identified by exact geographic coordinates which were
14 agreed upon by both Commissioners and their respective
15 governments thereafter. In furtherance of the parties' desire
16 for permanence of that exact point, it was definitely fixed by
17 a concrete marker and accompanying concrete pillar. Because
18 the banks of the Corantijn were characterized by loose mud and
19 wet sand, Point 61 was the nearest point both on the western
20 bank of the Corantijn River mouth and on that part of the
21 shoreline that was not submerged at the high water tide, where
22 it was practically feasible to place the concrete marker and
23 accompanying pillar.

24 A 1939 treaty that adopted Point 61 as the northern
25 boundary terminus and point of departure for maritime

14:24:29 1 delimitation was not ratified, as Sir Shridath explained
2 earlier today, solely because of the outbreak of the Second
3 World War. Nonetheless, in 1953, the Netherlands submitted a
4 letter to the International Law Commission unilaterally
5 declaring that, "The western boundary of Suriname has been
6 settled, has been settled as follows in a draft Treaty between
7 the Netherlands and the United Kingdom," referring to the 1939
8 draft Treaty, "the ratification of which has been interrupted
9 by the last war."

10 None of these facts are disputed by Suriname.
11 Suriname's challenge to the Tribunal's jurisdiction is based
12 solely, solely on a contested interpretation of those facts.
13 In particular, Suriname maintains at various points in its
14 written pleadings that the Commission was merely mandated to
15 make nonbinding recommendations--this, for instance, is
16 contained at paragraph 2.6 of Suriname's Preliminary
17 Objections--that the Commission was only mandated to make
18 nonbinding recommendations on possible reference points, which
19 is another way in which Point 61 is described in Suriname's
20 pleadings in this case at its Rejoinder at paragraph 2.16.

21 So, this was merely a reference point, according to
22 Suriname, a recommendation to the Netherlands and the U.K. And
23 absent the conclusion of a final treaty, Suriname submits,
24 demarcation of Point 61 has no legal significance whatsoever.

25 Suriname also contends that Point 61 was not located

14:26:19 1 at the point at which the river bank changes into the
2 seacoast--this is at Suriname's Rejoinder at paragraph 2.34 and
3 repeated elsewhere in its written pleadings--and Suriname
4 contends that this point was merely one point within a range of
5 possible points, and we know about the contentions, for
6 instance, relating to Point X. Point 61 was not an exact
7 point, but was merely within a range of possible points on the
8 Guyana coast.

9 Suriname argues further that since Point 61 is,
10 "landward of the high-water line"--this is at Suriname's
11 Rejoinder, paragraph 2.10--that is to say, since it is not at
12 the exact point where Guyana's land territory intersects the
13 low-water line, Guyana is asking the Tribunal to determine a
14 land boundary between Suriname and Guyana; this is at the
15 Rejoinder at paragraph 2.12.

16 Suriname's contentions, we respectfully submit,
17 display exceptional imagination and creativity, but they find
18 no support whatsoever in the evidence before the Tribunal. The
19 facts concerning the historical origin and fixing of Point 61
20 are clear and simple. They do not lend themselves to any of
21 the ambiguity or distortions that Suriname attempts to
22 introduce. And as my colleague, Professor Sands, will further
23 demonstrate, Suriname's own conduct in accepting and relying on
24 Point 61 for the past 70 years has been equally clear and
25 simple. Indeed, Suriname's arguments are without any

14:28:16 1 precedent, at least prior to the commencement of these
2 proceedings.

3 With the Tribunal's permission, I will elaborate upon
4 the history of the Mixed Boundary Commission's work in light of
5 these issues.

6 The prehistory of the Mixed Commission demonstrates
7 that the Netherlands and the U.K. carefully deliberated for
8 several years prior to mandating the fixing and adoption of
9 Point 61 in 1936. By the time the Commission was mandated to
10 fix the northern boundary, there was already a large measure of
11 agreement between the Netherlands and the U.K., and the
12 identification of exact geographic coordinates and demarcation
13 thereof was considered to be a relatively small technical point
14 building on that agreement in principle.

15 As set forth in Guyana's Memorial paragraphs 3.5 to
16 3.14, this process began on 7 August, 1929, when the
17 Netherlands Minister in London delivered an Aide Memoire to the
18 United Kingdom Foreign Office. This Aide Memoire challenged a
19 1927 U.K. map which showed, inter alia, a boundary line running
20 along the Thalweg of the Corantijn River, and the 1929 Aide
21 Memoire is contained at Annex 56 of Guyana's Memorial.

22 The Dutch Aide Memoire asserted that based on the 1799
23 Agreement of Cession between the governors of Suriname and
24 Berbice, to which Sir Shridath made reference in his
25 introductory remarks, that the Corantijn River belonged to

14:30:05 1 Suriname. So it was in reliance on the 1799 agreement that
2 Suriname claimed that the thalweg was not the boundary, but
3 rather, it was the west bank of the Corantijn.

4 The U.K. responded by Diplomatic Note dated 18
5 October, 1930, which is contained in Annex 57 of Guyana's
6 Memorial, and the U.K. indicated that it was willing to accept
7 Dutch sovereignty over the entire Corantijn River, subject to
8 safeguarding certain customary rights for British subjects on
9 the river.

10 In a 4 August, 1931, Aide Memoire--and this is a key
11 document indicating agreement--the Netherlands accepted the
12 British proposal, stipulating that, "It is prepared to
13 recognize the left bank of the Corantijn and the Cutari as the
14 frontier between Suriname and British Guiana." This is at
15 Annex 58 of Guyana's Memorial. Thus the parties agreed, "that
16 the frontier between Suriname and British Guiana is formed by
17 the left bank of the Corantijn and the Cutari up to its
18 source." A covering memorandum to the first draft Treaty which
19 was--this is prior to its submission in the Netherlands, to the
20 Netherlands--in 1934, the U.K. Foreign Office submitted a
21 covering memorandum to the Colonial Office with the draft
22 Treaty, indicating, "that it indicates the large measure of
23 agreement, the large measure of agreement reached between his
24 Majesty's government in the United Kingdom and the Netherlands
25 Government, and further indicating the desirability that this

14:31:49 1 agreement should now be registered in some form." This
2 document is at Annex 6 of Guyana's Memorial.

3 The same approach was echoed in the covering
4 memorandum of 8 July, 1935, from the U.K. Secretary of State
5 for Foreign Affairs to the Netherlands Minister by which the
6 draft Treaty was first conveyed to the Netherlands.

7 Now, the memorandum which is contained at Tab 24(h)
8 notes that it appears desirable to his Majesty's government in
9 the United Kingdom that the large measure of agreement--the
10 large measure of agreement--which has been reached between his
11 Majesty's government and the Netherlands Government on the
12 subject of the delimitation of the boundary between British
13 Guiana and Suriname should now be registered in official form.

14 It indicates furthermore that the draft skeleton
15 Treaty, as it was called, was considered as embodying such
16 points as had already been agreed between the two governments,
17 and including certain small points, small points, which have
18 not been discussed.

19 Thus, after six years of diplomatic exchanges from
20 1929 to 1935, there was an understanding that the 1935 draft
21 Treaty reflected a large measure of agreement, and that certain
22 small points still required clarification, and that the final
23 draft Treaty was intended simply to register in official form
24 the preexisting agreement of the parties.

25 Among the technical or small points that needed to be

14:33:44 1 resolved but on which there was an agreement in principle were
2 the exact geographic coordinates and demarcation of the
3 southern and northern boundary terminus, respectively--termini,
4 respectively. Based on this understanding, the Netherlands and
5 U.K., along with Brazil appointed a Joint Boundary Commission
6 to locate the southern boundary terminus at the source of the
7 Cutari river. As indicated in a 6 November, 1934 letter from
8 the Dutch Commissioner Kayser to the British Commissioner
9 Cunningham, the objective of the Netherlands U.K. Commission
10 was, "the definitive fixation of the boundary," in cooperation
11 with the Brazilian Commission. This document appears in Annex
12 59 of Guyana's Memorial.

13 The expedition to demarcate the tri-junction point was
14 long and difficult. It involved a large crew of surveyors,
15 guides, boatsmen and porters penetrating remote and uncharted
16 territories. It entailed a significant effort and expenditure
17 of resources and great peril to the lives of those involved.
18 It was not until a meeting in Paramaribo between the
19 Netherlands, Brazilian, and British Commissioners which took
20 place between 21 and 28 June, 1936, that a report on the
21 tri-junction point was signed, fixing it at the source of the
22 Cutari River. This is contained in Annex 12 of Guyana's
23 Memorial at Tab 24(d) of the Judges' folders.

24 Now, shortly after the fixing of the southern boundary
25 terminus on 29 June, 1936, on 5 July, 1936, the British and

14:35:36 1 Dutch Commissioners held a meeting at which they signed a
2 "Report on the Inauguration of the Mark at the Northern
3 Terminal of the Boundary Between Suriname and British Guiana,"
4 that being the official title of the report which appears at
5 Tab 1 of your folder.

6 The correspondence between the Netherlands and the
7 U.K. prior to the adoption of the report in 1936, the contents
8 of the report itself and subsequent correspondence demonstrate
9 the parties' clear intentions in the adoption of Point 61 as
10 their northern boundary terminus. These documents confirmed a
11 number of key points. First, they indicate the intention of
12 the parties to achieve a definite, a definite and permanent
13 fixing of the northern boundary terminus.

14 Second, they demonstrate the intention of the parties
15 to fix the terminus at a point that corresponded to the
16 Corantijn River mouth where it debouches into the sea.

17 Third, they demonstrate that given the loose mud and
18 wet sand on the river bank, the intention was to place concrete
19 markers and pillars at a point as close to the high water line
20 of the west bank of the river mouth as practically possible.

21 And fourth, they demonstrate that the entirety, the
22 entirety of the west bank of the river was considered to be
23 Guyanese land territory.

24 With respect to the first point, it is evident that
25 the Commissioners were authorized to definitively fix the

14:37:28 1 northern boundary terminus, that their demarcation of Point 61
2 was intended to be permanent, and that the parties subsequently
3 confirmed the understanding that this had settled the exact
4 location of the northern boundary terminus.

5 As mentioned, the 1935 draft Treaty registered a large
6 measure of agreement and only left small technical points to be
7 resolved by the Commission. This included fixing the exact
8 location of the northern terminus. Suriname's contention that
9 the Commissioners were instructed merely to make a
10 recommendation as to the location of the terminus finds no
11 support whatsoever in the documentary evidence, including that
12 submitted by Suriname itself. The very title of the 1936
13 report as I just mentioned, namely, "Report on the Inauguration
14 of the Mark at the Northern Terminal of the Boundary," the very
15 title indicates that the exercise was intended to be
16 definitive. The covering memorandum from the British Secretary
17 of State to the Netherlands Minister Plenipotentiary in London
18 which conveyed the 1935 draft Treaty indicates that the
19 Commissioners were mandated to finally settle and delimit the
20 land boundary terminus.

21 The memorandum states as follows--and this is in Tab
22 24(h) and in Suriname's Counter-Memorial Volume 2, Annex 1.
23 The memorandum states that, "It does not appear practicable for
24 a treaty to be concluded until a final settlement has been
25 reached regarding those points in the boundary which are to be

14:39:20 1 delimited--delimited--by the boundary Commissioners at their
2 forthcoming meeting."

3 The terms "final settlement" and "delimitation" leave
4 no doubt as to the parties' understanding concerning the
5 Commissioners' mandate.

6 Furthermore, a note concerning the erection of a
7 beacon at the northern terminus indicates that it will be
8 placed on the left bank at a point above high-water mark but as
9 close to the bank as is compatible with permanence.

10 There is no suggestion in the memoranda accompanying
11 the 1935 draft Treaty that the fixing of the northern terminus
12 by the Commission in the following year was intended to be a
13 temporary exercise or a mere recommendation.

14 This understanding among the parties is further
15 corroborated by an explanatory note to Article I(2) of the 1935
16 draft Treaty. This Article provides that the northern boundary
17 terminus shall be a point, "a point at which a line drawn on a
18 true bearing of 28-degrees from a beacon to be erected on the
19 left bank of the River Corantijn," and I will discuss the
20 latitudes which are provided, the point at which this line
21 intersects the shoreline. This, once again, is the document
22 which is in Tab 24(h) of the folders.

23 By way of explanation, the coordinates which are
24 provided in the 1935 draft Treaty, which are astronomical as
25 opposed to geodetic coordinates, which obviously were not

14:41:11 1 available at that time, the coordinates which they provide are
2 60-degrees, zero minutes, 25 seconds latitude, which is an
3 obvious error, if one looks at the 1931 Dutch Aide Memoire from
4 which the coordinates are extracted. That is 6-degrees and not
5 60-degrees. I think our colleagues would accept that the mouth
6 of the river is not somewhere around Greenland, which is where
7 60-degrees would place the river mouth.

8 So, the subsequent and prior correspondence indicates
9 clearly this was 6-degrees, zero minutes, 25 seconds latitude,
10 and 57-degrees, eight minutes, 10 seconds longitude.

11 Now, these coordinates, as I explained, were first
12 proposed in the 1931 Dutch Aide Memoire, which is at Annex 58
13 of Guyana's Memorial, and if you also look at the 1934 letter
14 which first proposed for the internal consumption of the U.K.
15 government the initial draft prior to its transmittal to the
16 Netherlands, you will also see that the coordinates appear as
17 6-degrees.

18 Now, these coordinates were meant to signify the mouth
19 of the Corantijn, as I will explain subsequently. The 1931
20 Dutch Aide Memoire left no doubt that the coordinates reflected
21 the mouth of the Corantijn River. And an explanatory note to
22 the 1935 draft Treaty states that, and I quote, and this is
23 again at Tab 24(h), the quote is that, "These geographical
24 coordinates are only intended to give a guide, only intended to
25 give a guide as to where the beacon is to be erected. When the

14:43:16 1 beacon is erected, its position can be more accurately
2 ascertained, and then the coordinates showed above can then be
3 corrected, if necessary, for the purposes of the final draft of
4 the Treaty." So, this made it clear that the coordinates
5 proposed in the 1931 Dutch Aide Memoire subsequently
6 incorporated in the 1935 draft skeleton Treaty, that they were
7 only meant as a guide to the Boundary Commission, which was
8 then to definitively fix the northern boundary terminus, and
9 that the exact coordinates they determined would then be
10 accepted and registered by the parties in a final Treaty.

11 So, acting on these instructions, the Commissioners
12 invested considerable time and effort in burying a concrete
13 mark, a concrete block below the surface of the ground together
14 with a visible pillar above the ground which identified the
15 exact location of Point 61, and I will return to how the exact
16 coordinates were arrived at, but those exact coordinates which
17 are contained in the 1936 report and the 1939 draft Treaty and
18 every single draft treaty and document afterwards as Professor
19 Sands will explain, those coordinates were 5-degrees 59 minutes
20 53.8 seconds north, 57-degrees eight minutes 51.5 seconds west,
21 that being the exact designation of Point 61, the coordinates
22 which were carefully deliberated and agreed upon by the
23 Commissioners and by the respective governments afterwards.

24 The 1936 report in Tab 1 explains that the concrete
25 block was a 40-centimeter cube with a brass center bolt

14:45:12 1 embedded in the top. It was engraved with the letter A, and
2 the year 1936. The top of the block was buried 10 centimeters
3 below the surface of the ground. The accompanying visible
4 pillar was a truncated pyramid with the sides 40 centimeters at
5 the top and 50 centimeters at ground level. It was buried
6 60-centimeters in the ground and projected 60 centimeters above
7 the ground, with a rounded cap about 5 centimeters high,
8 marking--making the total height above ground about
9 65 centimeters.

10 Two adjacent faces were towards the sea and two
11 towards the land with respect to the pillar, as the 1936 report
12 indicates.

13 Now, the pillar had engraved on its northwest face the
14 words British Guiana and on its northeast face the words
15 Suriname. The nature of the marker and the considerable time
16 and effort invested in laying it at that rather remote point,
17 indicate that the intention was to establish a permanent
18 northern terminus at the Guyana-Suriname boundary.

19 The subsequent conduct of the parties confirms the
20 understanding that the Boundary Commission had definitely fixed
21 the northern boundary terminus. Just four days after the
22 Commissioners jointly adopted the report, and so this is
23 9 July, 1936, the Commissioners having adopted the report on
24 5 July, 1936, four days after the British Commissioner Major
25 Phipps wrote to the U.K. Undersecretary of State for the

14:47:11 1 Colonies as follows, and this document is in Annex 12 of
2 Guyana's Memorial, Major Phipps writes that with regard to the
3 northern terminal of the boundary between Suriname and British
4 Guiana, we have now fixed this point with the Netherlands
5 Commission."

6 Similarly, a few days on 17 July, eight days later,
7 the Netherlands Commissioner, Vice Admiral Kayser, reported to
8 the Netherlands Minister of Colonies on the, "fixing the
9 northern end of the border on the left bank of the Corantijn."
10 This document is in Annex 41 of Guyana's Memorial.

11 So, both Commissioners indicated to the respective
12 ministers that this point had been definitely fixed, in
13 accordance with the mandate which they had received from their
14 respective governments.

15 Consistent with this understanding on 20 August,
16 1938--this document is at Tab 24(i) of the Judges' folders--the
17 Netherlands Commissioner in a letter to the Minister for
18 Colonies speaks of the establishment of the boundary sign in
19 the northern end of the boundary between Suriname and British
20 Guiana, the establishment of the boundary sign. No suggestion
21 whatsoever that this was somehow a mere recommendation or a
22 temporary exercise.

23 Later in 1938, a Netherlands Notice to Mariners
24 contained in Annex 15 of Guyana's Memorial, a Netherlands
25 Notice of Mariners again referred to Point 61 as the, "limit

14:49:00 1 between Netherlands and British territory."

2 Based on the 1936 report of the Boundary Commission,
3 the U.K. revised the coordinates of the 1935 draft Treaty and
4 sent the Netherlands a final draft Treaty, the text of which
5 was completed in 1939. That draft Treaty which is at Tab 16 of
6 the folders, provides in Article I(2)--incorporates the exact
7 geographic coordinates of Point 61 which were contained in the
8 Commission's 1936 report as representing the northern boundary
9 terminus and point of departure for maritime delimitation.

10 Now, Suriname contends that the failure of the parties
11 to ratify the Treaty leads to the necessary legal consequence
12 that there was no agreement whatsoever, and that it is
13 speculative, to quote Suriname's word, it is speculative
14 whether the Dutch would have ratified this Treaty had the
15 Second World War not intervened. This argument, we
16 respectively submit, is untenable, untenable in view of the
17 formal unilateral declaration made by the Netherlands in an
18 8 May, 1953 letter to the U.N. International Law Commission
19 which expressly recognized, as I mentioned previously, that,
20 "The western boundary of Suriname has been settled as follows
21 in a draft Treaty between the Netherlands and the U.K., the
22 ratification of which has been interrupted by the last war."

23 There can be no doubt that so many years after the
24 inauguration of the northern boundary terminus by the
25 Commission in 1936, this statement of the Netherlands is

14:51:04 1 conclusive. And it's noteworthy that the letter of the
2 Netherlands to the International Law Commission specifically
3 considers as settled the point of departure for maritime
4 delimitation fixed by, "the landmark referred to in Article
5 I(2) of the 1939 draft Treaty." That is to say the concrete
6 marker and pillar which specifically designated Point 61.

7 In summary, on this first point, there can be no doubt
8 whatsoever that the Commissioners were authorized by the
9 Netherlands and U.K. to definitively fix the northern boundary
10 terminus; that their demarcation of Point 61 in 1936 with the
11 concrete marker and pillar was intended to be permanent
12 exercise, and that the parties subsequently confirmed the
13 understanding that this demarcation had settled the exact
14 location of the northern boundary terminus and starting point
15 for maritime delimitation.

16 The second point relates to the clear agreement of the
17 parties that the northern boundary terminus and starting point
18 for maritime delimitation should be at the Corantijn River
19 mouth or where the river debouches into the sea. Suriname
20 suggests that Point 61 is merely one point among a range of
21 possible points, and that the river mouth may just as well be
22 situated at the hypothetical Point X, which is indicated in
23 Figure 3 of its Preliminary Objections. There is no support
24 whatsoever for this proposition. Suriname has never
25 adopted--has never adopted--another point. Indeed, in its

14:53:03 1 submissions, it invites the Tribunal to take Point 61 as the
2 starting point for the delimitation of the maritime boundary,
3 provided, of course, that the Tribunal adopts the line at ten
4 degrees.

5 But the parties' definite understanding in 1936, in
6 1931, one should argue, was, and continues to be, that the
7 Corantijn River mouth signified the point where the river
8 debouches into the sea. It may be recalled that the 1931 Dutch
9 Aide Memoire that formed the basis of the eventual fixing of
10 Point 61 clarified that, and I quote, "at the mouth of the
11 Corantijn, at the mouth of the Corantijn, the frontier would be
12 from a point 6-degrees zero minutes 25 seconds latitude north,"
13 and I previously explained that specific coordinates were
14 provided in order to signify where the Dutch believed the mouth
15 of the Corantijn River was, subject to the exact demarcation of
16 a point compatible with permanence and practical considerations
17 by the Boundary Commissioners.

18 As mentioned previously, these coordinates were
19 incorporated in the 1935 draft Treaty as a guide as to where
20 the beacon was to be erected, subject to the technical
21 demarcation of the exact geographic coordinates, and as I shall
22 discuss shortly, this included consideration by the Commission
23 of a location where it was practically feasible to build the
24 concrete markers, this in view of the loose mud and wet sand
25 along the Corantijn River bank. But there was no doubt, no

14:54:47 1 doubt whatsoever that the Dutch coordinates indicated a
2 definite understanding that the river mouth was a specific
3 point and not an arbitrary one to be selected from a range of
4 possible points. The provisional coordinates in the 1935 draft
5 treaties and the final coordinates agreed upon by the
6 Commission in the 1936 report, which were subsequently adopted
7 in the 1939 draft Treaty, all demonstrate an unequivocal
8 understanding that Point 61 was considered to be the point at
9 the Corantijn River mouth where it debouches into the sea.

10 Now, with respect to the third point as to the fixing
11 of Point 61 in those exact geographic coordinates based on the
12 approximate coordinates provided in the 1931 Dutch Aide
13 Memoire, although there was clear agreement as to the fixing of
14 the northern boundary at the river mouth, an important
15 consideration was finding a suitable location on the river bank
16 where markers could be built. This concern was indicated in
17 the covering memorandum to the 1935 draft Treaty which
18 indicates that the beacon, "will be placed on left bank at a
19 point above high-water mark, but as close to the bank as is
20 compatible with permanence." This is in Suriname's
21 Counter-Memorial in Annex 1.

22 So, there is a clear indication that one has to build
23 a marker at a point as close to the bank as is compatible with
24 permanence.

25 The Dutch Aide Memoire had provided certain geographic

14:56:36 1 coordinates which were subsequently incorporated into the 1935
2 draft Treaty, and as previously explained, these were intended
3 to give a guide as to where a beacon is to be erected in the
4 fixing by the Commission of the northern terminus.

5 The 1936 Commission report indicates that the
6 Commission first plotted the latest 1927 Dutch chart of the
7 Corantijn mouth and the coordinates given in their instructions
8 for the proposed site, so the 1931 Dutch Aide Memoire
9 apparently contained coordinates based on a 1927 Dutch chart.

10 When astronomical observations were made by the
11 Commissioners, it was found that the point was actually in the
12 sea, owing to the chart being incorrect as regards longitude.
13 The Commissioners then decided to mark the boundary along the
14 same line of latitude as specified in their instructions, but
15 on the river bank due west of the original longitudinal
16 coordinate that turned out to be in the sea, so the traverse
17 was continued along the coast to the latitude of 6-degrees,
18 zero minutes, 25 seconds west, but as the report indicates,
19 there the land was found to be most unsuitable for the
20 construction of the pillars. Thus, after arriving at a point
21 on the shoreline where they had decided to place the boundary
22 marker, they discovered that the combination of loose mud and
23 wet sand would not support a permanent concrete mark.

24 So, it was this set of circumstances that finally led
25 to the adoption of Point 61 by the Commissioners. The

14:58:34 1 Commission report states that, "The most suitable position was
2 found to be on a wide stretch of grassland below a low sand
3 dune." Behind a low sand dune. "Here, the ground was
4 comparatively firm and did not appear to be subject to the
5 erosion by the sea." Based on the practical requirement of
6 firm ground for erection of the concrete markers, the
7 Commissioners agreed on the following geographic coordinates,
8 which I previously stated are contained in the 1936 report as
9 5-degrees, 59 minutes, 53.8 seconds north, and 57-degrees,
10 eight minutes 51.5 seconds west. These values designated the
11 buried mark A and about three-meters further was the visible
12 pillar, also concrete, which was supporting the buried mark.

13 The concern with location of firm ground is further
14 reflected in the report in relation to the navigation beacon
15 that was yet to be built. Once again, the report quotes as
16 follows: "Owing to the fact there is no stone available within
17 a hundred miles and the ground on which the pillar has to be
18 constructed consists of sand supported on liquid mud, and
19 considered impractical to erect a large concrete mark visible
20 to ships at sea, that, instead, a wooden structure has to be
21 built."

22 Now, another consideration other than terra firma was
23 the proximity of the markers to the river bank. Although the
24 low-water line formed the beginning of the sea boundary, it was
25 the high-water line that determined the practical location of

15:00:19 1 markers and whether they would be submerged and eventually
2 washed away by tidal currents. This explains why the
3 memorandum to the 1935 draft Treaty stipulated that the beacon
4 should be placed on the river bank at a point above the
5 high-water mark but as close to the bank as is compatible with
6 permanence. The 1936 report notes that pillar A is about
7 215-meters from the present low-water mark, but notes that this
8 measurement is of little value as the coast is continually
9 changing here. It is, however, situated on comparatively firm
10 grassland immediately inland of a small sand dune which follows
11 the high-water mark."

12 As it happens, marker and pillar A were both
13 eventually washed away apparently because of tidal currents
14 over the years; but for practical purposes, the exact
15 geographic coordinates of Point 61 have continued from 1936
16 until the present to signify the Corantijn River mouth, and
17 thus, the northern boundary terminus and starting point for
18 maritime delimitation.

19 The final point relates to the nature of the land
20 between the marker and the river bank. As observed in the 1936
21 Commission report, because of practical consideration, the
22 marker placed at Point 61 was 215-meters from the low-water
23 line. The Commissioners presumed at the time that this was
24 sufficiently far from the high-water line so that the concrete
25 marker and pillar would not be submerged underwater and washed

15:02:11 1 away. There is no indication of the distance from the
2 high-water line, which would obviously have had to have been
3 less than 215-meters. There is no indication of what that
4 distance is. Despite the Commissioners' efforts, marker A and
5 its supporting pillar have since been washed away. Due to
6 tidal action over the past 70 years, the distance between Point
7 61 and the shoreline may be different today than it was in
8 1936, but whatever the distance, whatever the distance to the
9 low-water line may have been then and whatever it may be today,
10 it was abundantly clear between the parties that the land on
11 the western bank of the Corantijn River was entirely under
12 Guyanese sovereignty, and the same holds true today, despite
13 Suriname's novel and wholly untenable argument raised in
14 Suriname's Rejoinder for the first time ever in the long
15 history of discussions between the parties that it somehow has
16 sovereign rights over both banks of the river. This
17 last-minute argument that determination of where the line is
18 projected from Point 61 to the sea along the short stretch of
19 lands involves a land boundary dispute between Guyana and
20 Suriname is a measure of Suriname's desperation to avoid the
21 delimitation of a maritime boundary by this Tribunal. It is
22 not, we respectfully submit, a credible argument. It may be
23 recalled that in asserting its claim to sovereignty over the
24 Corantijn River, the 7 August, 1929 Dutch Aide Memoire relied
25 on the 1799 agreement, whereby the west bank of the Corantijn

15:03:57 1 River was declared and acknowledged henceforth to belong to the
2 government of the Colony of Berbice.

3 The implication of this agreement was clear: Thus,
4 Article 1(1) of the 1935 draft Treaty provided that, "The
5 boundary between British Guiana and Suriname shall be formed by
6 the line of the left bank of the River Corantijn from the sea
7 southwards to its source." Article I(2) further provided that,
8 "The commencement of the left bank of the River Corantijn at
9 the sea shall be deemed to be the point at which a line drawn
10 on a true bearing of 28-degrees from the known landmark or
11 column of the left bank of the River Corantijn intersects the
12 shoreline."

13 For present purposes it is important to emphasize
14 Article 4 of that draft Treaty which stipulated that, "The
15 waters of the River Corantijn shall, whatever the fluctuations
16 of its volume, be considered as being within the territory of
17 Suriname and the land confining them on the left bank as being
18 within the territory of British Guiana, and no change of
19 sovereignty over such land shall ensue upon any rise or fall of
20 the waters of the river."

21 The language of Article 4 which was retained in
22 subsequent draft treaties was the result of a deliberate and
23 considered choice. Telegram number 62 from Leigh-Smith of the
24 U.K. Foreign Office to the Colonial Office dated 17 March,
25 1936, which appears at Guyana's Memorial Annex 8 and Tab 24(c)

15:05:53 1 of your folder, this telegram indicates that the Netherlands
2 Charge d'Affaires suggested an addition to that provision the
3 effect of which would be, "that changes of sovereignty might
4 ensue upon a rise or fall of the waters of the river which was
5 not due to the normal recurring seasonal fluctuations of its
6 volume, or in any case to leave in doubt what the effect of
7 such rises and falls would be."

8 But it was clearly based on this document, "desirable
9 to preserve the simple principle that no rise or fall of the
10 water makes any difference so far as sovereignty is concerned."

11 Following on the work of the Mixed Commission in 1936
12 and consistent with the approach taken in the 1935 draft
13 Treaty, the 1939 draft Treaty replicated the exact same
14 language and left no doubt, no doubt whatsoever, that the
15 slight landward location of Point 61, which at that point was
16 approximately 215-meters, left no doubt that this does not
17 provide a claim of Surinamese sovereignty over land territory
18 on the west bank of the river. Consistent with the 1935 draft
19 Treaty, the 1939 version also provides that the boundary
20 between British Guiana and Suriname shall be formed by the line
21 of the left bank of the River Corantijn from the sea southwards
22 to a point near its source. Article I(2) stipulates similarly
23 that the beginning of the left bank of the River Corantijn at
24 the sea shall be the point at which the prolongation of the
25 line joining two concrete marks on the left bank of the River

15:07:45 1 Corantijn intersects the shoreline.

2 And Article 3 further provides that the boundary
3 between the territorial waters of Suriname and British Guiana
4 is formed by the prolongation seawards of that line drawn on a
5 bearing of ten degrees east of true north as the draft
6 stipulated then, of the landmark referred to in Article I(2),
7 meaning to say Point 61.

8 Now, it was obvious that Surinamese sovereignty over
9 the Corantijn River ends at the left bank of the river, which
10 is wholly Guyanese territory, and Article 4 of the 1935 draft
11 Treaty, replicating the exact same provision of the 1935
12 Treaty, leaves no doubt whatsoever as to this understanding.
13 It provides in relevant part that the waters of the river shall
14 be considered as being within the territory of Suriname, and
15 the land confining them on the left bank as being within the
16 territory of British Guiana, and consequently no change of
17 sovereignty over such land shall ensue upon any rise or fall of
18 the waters of the river. As my colleague, Professor Sands,
19 explained, the line where the water meets the land has no
20 breadth. It is not a geographic zone. It is merely a
21 conceptual line.

22 Professor Sands will show how this statement that the
23 waters of the river shall be considered as being within the
24 territory of Suriname and the land confining them on the left
25 bank as being within the territory of British Guiana. He will

15:09:33 1 explain how this statement represented Suriname's official
2 immutable position for the next 70 years until it filed its
3 Rejoinder in this case.

4 By way of conclusion, Mr. President, following at
5 least seven years of deliberations beginning in 1929, the 1936
6 Mixed Boundary Commission was mandated by the Netherlands and
7 the U.K. to definitively fix the northern boundary terminus and
8 starting point for maritime delimitation. This point was fixed
9 by the placing of a concrete marker and pillar at Point 61,
10 representing exact geographic coordinates agreed upon by the
11 parties and subsequently incorporated into the 1939 draft
12 Treaty that the Netherlands subsequently declared in 1953 to
13 have settled the boundary.

14 Both parties understood that Point 61 was intended to
15 represent the mouth of the Corantijn River where it debouches
16 into the sea. The exact demarcation of Point 61 was influenced
17 by practical considerations relating to mapping and the
18 location of suitable firm ground for building the concrete
19 marker and pillar. The intention, however, was to situate
20 Point 61 at the nearest possible point in relation to the river
21 mouth. It was clearly understood by the Commission and the
22 Netherlands--by the Commission and by the Netherlands and the
23 U.K. that the waters of the Corantijn were under Surinamese
24 sovereignty, whereas the west bank was entirely under Guyanese
25 sovereignty, irrespective of fluctuations in the water level.

15:11:26 1 The short stretch of land on the west bank of the
2 river between Point 61 and the low-water line was always
3 understood to be Guyanese. There was never a suggestion that
4 Suriname would have any sovereignty over land territory on the
5 west bank of the river. There is no basis for any such claim,
6 and there can be no serious dispute about this.

7 As Professor Sands will now elaborate, the definitive
8 fixing of Point 61 in 1936 and its unconditional acceptance by
9 the Netherlands and the U.K. was followed by 70 years of
10 mutual, consistent, sustained, and unequivocal conduct. The
11 Tribunal need not determine that an agreement exists as to the
12 precise location of the starting point for maritime
13 delimitation before it can exercise jurisdiction in the present
14 case. Nonetheless, there can be no doubt that such an
15 agreement does, in fact, exist both in view of the mandate and
16 work of the 1936 Boundary Commission, as well as 70 years of
17 subsequent conduct.

18 Mr. President, Honorable Members of the Tribunal, I
19 thank the Tribunal for its indulgence. My colleague, Professor
20 Sands, will now address the conduct of the parties since 1936
21 and the implications thereof on the jurisdiction of the
22 Tribunal.

23 ARBITRATOR SMIT: There are two things that occurred
24 to me. You said the war in 1939 interrupted the follow-up
25 execution of the Treaty, but Holland was liberated in '45.

15:13:20 1 Didn't it occur to anybody afterwards, "Hey, we have this
2 treaty that we still haven't ratified. Hasn't the time come to
3 verify it?"

4 You say in '52 the government said with respect to one
5 point we affirm this, but it raises an interesting question,
6 this unilateral declaration takes the place of the ratification
7 of the Treaty?

8 PROFESSOR AKHAVAN: Did you have a second question as
9 well, sir?

10 ARBITRATOR SMIT: The second question is, you know,
11 I'm a Dutchman, and I never thought that it was any problem for
12 a Dutchman to put a pillar in water somewhere, and I thought it
13 would be rather simple to put it in water so that it would stay
14 there, but maybe I'm too optimistic as to the capabilities of
15 the Dutch. But if they then decided to bring it a little
16 inland, they could have put a little plaque on there and say,
17 you know, it's here, but it's supposed to be somewhere else,
18 but they didn't do that either; right? And if it is of such
19 significance, would one not have expected that an indication of
20 that kind would have been given?

21 PROFESSOR AKHAVAN: Yes, these are very appropriate
22 questions, and I believe that my colleague, Philippe Sands,
23 will be addressing them in his presentation. The only point
24 that I wish to make for present purposes is that it's a matter
25 of speculation what the condition of the Netherlands was after

15:14:49 1 liberation and whether the first point of order was to resolve
2 the British Guiana-Suriname boundary. But what is very clear
3 is that by 1953, the Netherlands had by way of a unilateral
4 declaration accepted that boundary as settling the matter, and
5 there is no reason, in principle, why we should not give effect
6 to that declaration of the Netherlands.

7 ARBITRATOR SMIT: Even though one might take the
8 positional that though it's a unilateral declaration of the
9 Netherlands and the United Kingdom isn't bound to it because
10 they haven't been asked to agree to that proposition.

11 PROFESSOR AKHAVAN: Well, my colleague, Philippe Sands
12 will be addressing the subsequent conduct, but, of course,
13 there are precedents including the--

14 ARBITRATOR SMIT: So, it's not the ratification of the
15 Treaty but a principle of estoppel that governs in the
16 premises?

17 PROFESSOR AKHAVAN: Well, as I said, it's a question
18 of 70 years of subsequent conduct which will be addressed,
19 including what the legal basis would be for making this
20 binding, but I will merely conclude by saying that there is a
21 basis for a unilateral declaration to be binding and this is
22 contained among other places as in the Nuclear Tests case
23 before the International Court of Justice, but I will defer to
24 my colleague, Philippe Sands, on that issue.

25 PRESIDENT NELSON: Thank you very much. Thank you,

15:16:24 1 Professor Akhavan.

2 We call now on Philippe Sands.

3 PROFESSOR SANDS: I have one-and-a-half hours maximum.
4 I could start now and have a break at the scheduled moment, or
5 we could break now and I could go all the way through it. It's
6 whatever you prefer.

7 PRESIDENT NELSON: Yes, I think we better have a break
8 now. We will resume after the break.

9 PROFESSOR SANDS: Okay.

10 PRESIDENT NELSON: Thank you.

11 (Brief recess.)

12 PROFESSOR SANDS: Sir, you had just heard from
13 Professor Akhavan on what the situation was in the 1930s. I'm
14 going to take the situation forward and look at some of the
15 material to support our submission that Point 61 has been
16 recognized as the point of departure for the maritime boundary
17 by the United Kingdom and the Netherlands, and then by Guyana
18 and Suriname once they attained independence continuously,
19 uninterruptedly and unequivocally, for 70 years.

20 The documentary evidence before this Tribunal clearly
21 demonstrates, without any distortion or misconstruction, as
22 Suriname puts it in its Rejoinder at paragraph 2.2, that since
23 1936 the parties have--and here I'm happy for this purpose to
24 use Suriname's own rather exacting standard--on a mutual,
25 consistent, sustained, and unequivocal basis, accepted Point 61

15:43:52 1 as the point of departure for the maritime boundary. Both
2 parties have referred to that location, and only that location,
3 as the point of departure.

4 And in order to deal with this perhaps in a slightly
5 unorthodox way, let's start backwards with the history, and
6 let's start in 2000, around the time that the events which
7 catalyzed the circumstances that led to this arbitration being
8 constituted occurred. And can I take you first to Tab 8 of the
9 Judges' folder.

10 Tab 8 is a letter dated 31st of May 2000, sent from
11 the Ambassador of Guyana to Suriname to the Minister of Foreign
12 Affairs of Guyana in the period immediately after the CGX
13 incident, and it reads as follows: "Dear Minister, I was
14 summoned hastily to the Ministry of Foreign Affairs this
15 afternoon. His Excellency, Mr. Errol Snijders, Minister of
16 Foreign Affairs, handed me the attached note. Also present
17 were Ambassador Hasrat, Drs. Ali-Mohamed, Director in the
18 Ministry of Foreign Affairs and another official from the
19 Ministry."

20 Just to pause there before we look at the attachment,
21 it's plain from those present at the meeting, and from the
22 provenance of the note--no less the Minister of Foreign
23 Affairs--that this attachment must have considerable authority
24 vested in it.

25 Let me turn over, and we see the note which is number

15:46:10 1 2566/HA/eb, and over the page is the date, Paramaribo, 31st of
2 May 2000, and it starts with the presentation of compliments
3 and then turns to the question regarding
4 exploration/exploitation activities in the northwest offshore
5 area within the territory of the Republic of Suriname, and
6 wishes to communicate the following. It's the next paragraph I
7 really want to take you to, and I quote: "The Ministry of
8 Foreign Affairs wishes to draw the attention of the Government
9 of Guyana to the long-standing fact that the Corantijn River
10 constitutes an integral part of the territory of the Republic
11 of Suriname, and therefore falls within its sovereignty."

12 Pause there.

13 Note the formulation: The Corantijn River. There was
14 no reference to any continental land territory.

15 The next paragraph reads: "The Government of the
16 Republic of Suriname wishes to reiterate to the point mark
17 latitude 5 degrees 59 minutes 53.8 seconds north, longitude 57
18 degrees 8 minutes 51 seconds .5 west, the direction of the
19 boundary line in the territorial waters is on true bearing of
20 10 degrees east."

21 Just to pause there for present purposes, reliance on
22 what is Point 61 at a moment of crucial importance in the
23 relations between the two countries. So, it stands for two
24 propositions which we submit are important. There is no claim
25 to any land territory beyond or inland from the low-water mark,

15:48:15 1 so to speak, and there is confirmation as to 61 point being the
2 crucial place at a crucial and sensitive moment.

3 Now, if you turn over the page to the next tab, you
4 will see Tab 9, and it has a rather unhappy faded gray map of
5 Suriname, and then it says underneath on the first page,
6 "Documentation provided by the delegation of the Republic of
7 Suriname at the Twenty-First meeting of the conference of Heads
8 of Government of the Caribbean Community, Canouan, St. Vincent
9 and the Grenadines, 2-5 July 2000." So, it's immediately
10 thereafter, five or six weeks, after the Diplomatic Note of the
11 31st of May. Again, I just pause to say that this is
12 documentation provided at the highest regional level, so it's
13 vested with considerable authority.

14 And over the page, the document is entitled
15 "Description of the western boundary of the Republic of
16 Suriname," and then when you go over the page, you get to the
17 actual note, and I quote, "The western boundary of Suriname,
18 with the neighboring country of Guyana, both on the South
19 American continent and the Atlantic ocean, from the south to
20 the north is constituted as follows: The shortest line from a
21 point yet to be determined on the southern boundary with a
22 neighboring country of Brazil, to the source of the Upper
23 Corantijn river. Subsequently from this source, along the west
24 bank of the Upper Corantijn and the Corantijn Rivers to the
25 point mark latitude 5 degrees 59 minutes 53.8 seconds north,

15:50:13 1 and longitude 57 degrees 8 minutes 51.5 seconds west, where
2 therefore said shoreline cuts the coast line in the sea. And
3 then it proceeds to make the point that from this marked point,
4 the boundary continues along the 10-degree line, and it goes on
5 in the third paragraph to say, and I quote: "The above
6 determination of the boundary is based on ratified treaties and
7 agreements as such, such as," and it identifies the Governors'
8 Agreement of 1799, to which Sir Shridath made reference this
9 morning, which subsequently became a ratified Treaty, namely
10 the Peace Convention of 1814.

11 So, for our purposes at this stage of the
12 proceedings--and we will deal with other aspects in due
13 course--two points: Firstly, public authoritative affirmation
14 that Point 61 is the starting point.

15 Second point, its treatment, and I quote, or the
16 treatment as the place where I quote, "the aforesaid shoreline
17 cuts the coastline in C."

18 And third point, which we draw from this that the line
19 along the boundary follows "along the west bank of the Upper
20 Corantijn and the Corantijn Rivers," and that, we say, coming
21 at an absolutely crucial moment in relations between the two
22 countries, is completely dispositive of the issue, 64 years
23 after the boundary marker was established.

24 Against that background, we say it is simply
25 unarguable for Suriname--unarguable for Suriname--to deny the

15:52:06 1 existence of an agreement between the two states on Point 61 as
2 the starting point for the practice of delimitation.

3 Now, I could give you a whole other list of examples
4 that are referred to in our Memorial and in our reply. For
5 example, in 1989, you will find a Note Verbale from the Embassy
6 of the Republic of Suriname to the Ministry of Foreign Affairs
7 of Guyana making essentially the same points. That is Annex 13
8 of Guyana's Rejoinder--of the Reply Annex.

9 And I could take you perhaps now to Tab 5 of the
10 documents. This is 1988. We do think it's particularly
11 important to focus on the period after Suriname had achieved
12 independence, because that is the time at which its practice
13 obviously becomes most significant.

14 Tab 5 is a document entitled "Suriname Planatlas," and
15 over the first page--and this is Annex 47 of our Memorial--you
16 will see who produced this Planatlas. If you turn over the
17 page, on the back of the cover sheet, on the right-hand side it
18 says "Prepared by the National Planning Office of Suriname
19 (SPS) Regional Development and Physical Planning Department
20 (HARPRO) with the technical assistance of the Organization of
21 American States, Executive Secretariat for Economic and Social
22 Affairs, Department of Regional Development, Washington, D.C.,
23 1988."

24 And then on the right-hand side is the text which I
25 would like to draw your attention. It's headed "Regional

15:54:12 1 Location and Trade," and in the first paragraph it says, "One,
2 the Surinamese territory, 1.1, Land and Sea area. Suriname has
3 a land area of approximately 164,000 square kilometers. It's
4 not possible to calculate the area precisely. Also, Suriname's
5 boundaries have not been finally established, and the coastline
6 fluctuates constantly due to tidal action." That refers back
7 to my colleague, Professor Akhavan, in relation to the placing
8 of the marker.

9 And then at the end of that first paragraph, "The
10 territorial sea and Exclusive Economic Zone occupy
11 approximately 129-and-a-half thousand square kilometers, an
12 area almost 79 percent of Suriname's land area."

13 And then 1.2 is entitled "The Boundaries." And if you
14 go to the last paragraph of that section, 1.2.1, the seaward
15 boundary, it reads as follows, and I quote: "The sea with
16 dividing line in the west, however, it raises some problems.
17 As the full width of the Corantijn River is in Surinamese
18 territory, irrespective of the water-level fluctuation"--just
19 pause there. That is exactly the same form of words as was in
20 the draft Treaty of 1939 in terms of the intent. There is no
21 departure in 49 years in terms of the approach--"the
22 equidistance line method cannot be applied. Therefore, in
23 1938," and I assume that's simply a typographical error, "a
24 Dutch-British Frontier Commission established a point on the
25 west bank of the Corantijn River, the so-called Kayser-Phipps

15:56:02 1 point, and it provides the coordinates again for Point 61, as
2 the most northern point on Suriname's border on Guyana, as well
3 as the point departure for dividing line between both
4 countries." It then goes on again to mention the 10-degree
5 line.

6 If you go down to 1.2.4, you will see it says, "By
7 virtue of an agreement reached in 1799-1800 between the two
8 acting Governors, Governor Battenburg of Berbice and Governor
9 Frederici of Suriname, the west bank of the Corantijn River
10 from the source to the mouth has been established as Suriname's
11 western boundary."

12 Again, I draw from this precisely the same point.
13 There is no claim to the territory, the continental land
14 territory, beyond the low-water mark on the coast of Guyana,
15 and there is affirmation once again in 1988 of the Point 61 as
16 the starting point for the delimitation.

17 I have already referred to you to the document at Tab
18 4 which is the letter from the Dutch Prime Minister of 1975, so
19 I don't propose to go back to that.

20 And that covers, really, the entirety of the period in
21 which Suriname was independent. There is no evidence before
22 this Tribunal to show that any other point has been chosen, and
23 there is no evidence to support the existence of any claim to
24 continental land territory on the landward side of the
25 low-water mark. And I stress the word "evidence." There may

15:57:53 1 be a claim, but it is unsupported by any evidence, and this is
2 a tribunal of law in which evidence counts for a great deal.

3 I could go on backwards in time and point of linkage
4 with Professor Akhavan's presentation is 1953, the letter to
5 the International Law Commission which confirms a clear
6 expression of Dutch view. We rely upon it simply to indicate a
7 consistency of practice over time. It is a further marker
8 indicating the absolute consistency of approach.

9 Now, there is support to be found in other practice,
10 private acts backed by public authority, and I'm thinking in
11 particular of a whole raft of oil concessions. Those are dealt
12 with very fully in our pleadings, so I don't propose to take
13 you to them in any detail, but I refer you to three in
14 particular. At Suriname's Counter-Memorial, Figure 6,
15 following page 66, there is a map indicating the concession
16 area of the Colmar Suriname Oil Company--that starts at Point
17 61--Figure 22 of the Suriname Counter-Memorial after page 76,
18 the Staatsolie-PECTEN concessionaire does the same thing.

19 Then perhaps most interesting of all--and it is one of
20 the wonders of all governments that the achievement of
21 consistency in practice between different departments is not
22 always easily attainable--the survey of concession agreements
23 between the Republic of Suriname and Staatsolie 24th of
24 February 2004, which is at Annex 56 of the Counter-Memorial of
25 Suriname that also takes, as the starting point, Point 61.

16:00:10 1 So, we say the conduct of the parties overwhelmingly
2 and irrefutably demonstrates that Guyana and Suriname have
3 always treated Point 61 as the point of departure for the
4 maritime boundary. In fact, we are not aware of any evidence
5 before the Tribunal in which Guyana or Suriname have ever
6 adopted any other point as the formal point of departure for
7 the delimitation of the maritime boundary at any time during
8 their independent existence as States. There were a couple of
9 examples prior to independence of these two States when other
10 possibilities were mooted. For example, in 1959, there was a
11 Dutch proposal to treat the Corantijn as a juridical bay by
12 drawing a 10-mile closing line that was immediately opposed by
13 the United Kingdom as being inconsistent with international
14 law, and it was immediately abandoned by the Netherlands and
15 did not figure again.

16 Then, in 1966, there was apparently a passing effort,
17 although the record is somewhat inconsistent, during the
18 Marlborough House Talks to raise another possibility, but that,
19 too, in the end was not adopted, and the head of delegation of
20 Suriname confirmed--had already confirmed the status of Point
21 61 in 1965. But those examples predate independence. And, of
22 course, there are examples which never got off the ground.

23 Over the next 40 years after the Marlborough talks,
24 the issue was simply never raised again as to the starting
25 point, until these proceedings, and the dreaming up for the

16:02:08 1 purpose of the Preliminary Objections phase of Point X which,
2 it appears, Suriname seems now not to be relying upon having
3 regard to submission 2(b) which invites the Tribunal, if it has
4 jurisdiction, to delimit from Point 61.

5 Suriname says in its Rejoinder at paragraph 2.24, and
6 I quote, "It has occasionally referred in passing to the 1936
7 Point as though it were the actual land boundary terminus." I
8 think this formulation gives another meaning to the word
9 "understatement." We can't find any other practice.

10 So, we say, on that basis, that is the starting point,
11 and for the reasons I already indicated, that is the place to
12 start, and it falls within your jurisdiction.

13 Now, let's turn to alternative approaches to the
14 delimitation of the maritime boundary. Let's assume for the
15 purposes of hypothetical argument that Guyana is wrong as to
16 the existence of an agreement on Point 61 as the starting point
17 for the delimitation of the maritime boundary. We have already
18 explained that we do not believe that means the Tribunal is
19 without jurisdiction to delimit the maritime boundary, in part
20 or in whole. We say there is no need for there to be a written
21 agreement for the Tribunal to exercise jurisdiction over the
22 maritime boundary, and the fact that we have identified
23 alternative arguments--and I want to stress this--is not
24 intended to undermine the force of our principal and only real
25 argument on which we are convinced it cannot be responded to in

16:04:12 1 a decisive way.

2 But if you're against us, the Tribunal will have to go
3 through each of these alternative approaches and form a view as
4 to their merits or demerits. I'm going to focus in particular
5 on the delimitation of a partial maritime boundary, but I will
6 refer you also to the materials in our pleadings on two other
7 approaches which are available to the Tribunal, and which we
8 would invite you to address only if you find our principles on
9 jurisdiction are not well-founded, but we make it clear that if
10 you accept our principal argument, we do not invite you to
11 address these other arguments.

12 So, starting with delimitation of a partial maritime
13 boundary, this is something that we have indicated in our Reply
14 is available to the Tribunal. In fact, we made the argument
15 very clearly and succinctly, I believe, in the hearing in
16 July 2005, and it's premised on the following propositions: At
17 a certain distance from the low-water mark, the provisional
18 equidistance line is not affected by the precise location of
19 the point at which any line drawn from Point 61 may cross the
20 low-water mark, if that exercise has to be carried out, and
21 Suriname itself has recognized that in its provisional
22 objections documentation, but also in its Rejoinder.

23 The second point is that it makes no difference for
24 your purposes whether the point of departure for the maritime
25 boundary is to be found at Point 61 or at a novel, hypothetical

16:06:10 1 and wholly unsupportable Point X as floated by Suriname but not
2 now apparently followed up on. That, too, leads to a
3 convergence at a certain distance at about 15 nautical miles
4 from the low-water mark.

5 In fact, the parties agree that Point 61 is the
6 starting point, if you have jurisdiction. The only
7 disagreement--the only disagreement--is on the direction of the
8 line to be taken from there and the place where it reaches the
9 low-water mark if, indeed, it is not on the low-water mark, and
10 this is shown at Plate R19, which you already saw earlier
11 today, and which indicates very clearly the convergence of the
12 two provisional equidistance lines, in black Guyana's
13 provisional equidistance line, and in dotted blue Suriname's
14 provisional equidistance line, and the point of convergence is
15 at that point there which is located just approximately 6
16 nautical miles of the low-water mark, so well within the
17 territorial sea.

18 I'm told by our mapping experts, Scott Edmonds, that
19 the distance, the area in there, and he's calculating for us,
20 and we will provide you the figures in due course, is about 33
21 square miles. So, in the scheme of the whole delimitation,
22 you're talking about a rather miniscule area.

23 We say you can therefore delimit from the point of
24 convergence all the way onwards up to the 12-mile territorial
25 sea and beyond to the end of the continental shelf that is to

16:08:00 1 be delimited.

2 Now, we are not aware of any rule or principle or
3 practice by international courts and tribunals which prevents a
4 partial delimitation of the maritime boundary in this manner,
5 and it has been effected in one case, although by
6 agreement--and I will come back to that--in the Gulf of Maine
7 case. And what we say is, as a matter of acting consistently
8 with the object and purpose of the 1982 Convention, it must
9 surely be preferable to delimit 194 miles than no miles.

10 I turn now to the question of the delimitation of the
11 maritime boundary and application of Article 9 of the 1982
12 Convention. This again is an argument that we make by way of
13 alternative argument which we say allows the Tribunal to
14 determine the location of the mouth of the Corantijn River
15 where both parties agree that the terminal was established.
16 And in our written pleadings, we have set out particular in our
17 reply at pages 27 to 29 paragraphs 2.37 to .41 the way in which
18 this can be done. And in short, what we say is that the
19 determination under Article 9 would lead to the same conclusion
20 as that established by the conduct of the parties for the past
21 70 years--namely, that Point 61 is located at the mouth of the
22 river--and there can be no doubt, we say, that the dispute
23 relating to the interpretation or application of an Article 9
24 closing line would fall within the jurisdiction of Annex VII
25 Tribunal, assuming such a line had been drawn, which it hasn't

16:10:09 1 in this case, and it follows from that that there can be no
2 reason in principle why the Tribunal could not itself draw such
3 a line. We don't invite you to do so because we think there is
4 no need to do so, but that residual or alternative jurisdiction
5 is there.

6 The third alternative, which I already referred to
7 this morning, arises only in the extremely unlikely case that
8 you come to the conclusion that the area of land--or whatever
9 it may be entitled--or zone between Point 61 and a low-water
10 mark, it is in dispute as to its sovereignty or that Suriname
11 has title to it, which we say is simply unarguable on the basis
12 of the positions adopted by Suriname up until now.

13 We say even in those circumstances, the language of
14 Article 298(1)(a)(i) and the fact that Suriname and Guyana have
15 made no declarations restricting jurisdiction, point inevitably
16 to a jurisdictional power in this Tribunal to delimit that area
17 if necessary as an incidental or ancillary power to the
18 delimitation of the maritime spaces, having particular regard
19 to the fact that even on Suriname's own argument the distances
20 are minuscule. I believe that the distance between Point 61
21 and the low-water mark on the NIMA chart, which may or may not
22 be accurate, is about 0.62 nautical miles. So you are not
23 talking about very great distances, and we say it would be
24 extraordinary if two states that are parties to UNCLOS that
25 have purposely decided not to enter declarations limiting the

16:12:26 1 jurisdiction of a tribunal to delimit maritime spaces would be
2 prevented from doing so by reason of a nonmaritime space of
3 that limited distance.

4 But, of course, we say you don't have to go there.
5 That really is a point of last resort because we say our first
6 and principal argument is really unanswerable. But just to be
7 clear, if for some reason you're not with us on that, then we
8 do think it will be the responsibility of the Tribunal to
9 express a view on that issue and to address that particular
10 claim.

11 Let me turn now to address Suriname's arguments in
12 response to Guyana's arguments. At least Suriname's arguments
13 can be summarized, we think, in five propositions.

14 Proposition one, the Tribunal has jurisdiction if, and
15 only if, there is an agreement on the land boundary terminus.

16 Proposition two, the Tribunal has no jurisdiction to
17 establish the maritime boundary between Guyana and Suriname as
18 there is no agreement on the land boundary terminus.

19 Proposition three, in the absence of agreement on the
20 land terminus boundary, the Tribunal cannot effect a partial
21 maritime delimitation.

22 Proposition four, in the absence of such agreement,
23 the Tribunal cannot effect a delimitation in application of
24 Article 9 of UNCLOS.

25 And proposition five, in the absence of an agreement,

16:14:03 1 the Tribunal cannot deal with any aspect of the land boundary
2 and is therefore precluded from exercising jurisdiction. These
3 are obviously arguments in the alternative.

4 Let me deal with the first argument. The Tribunal's
5 jurisdiction, we say, is not dependent on the existence of a
6 formal agreement on the northern terminal. That is a rather
7 formal argument made by Suriname--I have already dealt with it,
8 and I don't propose to belabor the point. I would simply say
9 that Suriname's claim as to what Guyana's position is has been
10 regrettably misrepresented. It says at paragraph 2.7 of its
11 Rejoinder, and I quote, "Guyana appreciates that for this
12 Tribunal to have jurisdiction over Guyana's maritime
13 delimitation claim, Guyana must show that the parties have
14 agreed on the location of their land boundary terminus." I
15 have no idea where the support for that proposition comes from,
16 but it is wrong, and it is not what we argue, and I just wanted
17 to make that absolutely clear.

18 Equally, I want to make clear on behalf of the
19 Republic of Guyana that Suriname's general proposition that you
20 need a written formal agreement on the starting point is not
21 supported by any provision of UNCLOS, and none has been
22 identified.

23 And I want to go further and make the point that
24 Suriname's general proposition on the need for a formal written
25 agreement is not supported by the travaux preparatoires of

16:15:36 1 UNCLOS, and none has been identified.

2 Suriname's general proposition is simply inconsistent
3 with the language, provisions, object, and purpose of the 1982
4 U.N. Convention on the Law of the Sea. It would lead to the
5 absurd result that no UNCLOS dispute settlement body could ever
6 exercise jurisdiction where the land boundary between two
7 states had not been delimited by Treaty or other formal
8 agreement, and where one of those states invoked a dispute,
9 however bogus it may be. That proposition's utility speaks for
10 itself.

11 The second point made by Suriname is that there is no
12 agreement on the northern terminal boundary. That has been
13 dealt with in full by my colleague, Professor Akhavan, and I
14 don't propose to return to it in any detail. I simply would
15 refer you back to the very same documents that I have just
16 taken you to and to the relevant parts of our written
17 pleadings, but again, I just want to clear up one claim made by
18 Suriname at paragraph 2.2 of its Rejoinder, and the
19 unfortunate, we say, allegation that Guyana has engaged in what
20 Suriname calls, and I quote, "misconstructions of the
21 historical and factual record." We think it is unfortunate in
22 proceedings between two friendly states to make that sort of
23 claim. It's unsupported by any evidence. We have given you
24 the evidence today that is to be relied upon, and we think the
25 evidence speaks for itself.

16:17:26 1 As I have already described, Suriname has continuously
2 accepted Point 61 as the point of departure, as recently as
3 2000, and even after this dispute first arose in the summer of
4 2000. Although, as Suriname claims in its Rejoinder, the
5 documents to which we refer may also on occasion refer to the
6 10-degree line as the maritime delimitation boundary, that
7 doesn't detract from the fact that they clearly establish Point
8 61 as the point of departure for any such boundary, and I will
9 return to the relationship between Point 61 and the 10-degree
10 line in my presentations tomorrow.

11 And, of course, against that background, it is
12 striking that Suriname's submissions do not identify any place
13 other than Point 61 as the starting point for the delimitation
14 of the maritime boundary. So, in these circumstances, we,
15 speaking very respectfully, find it very difficult to see the
16 basis upon which Suriname can reasonably claim the absence of
17 any agreement. There has never been a dispute between
18 Suriname-Guyana on the starting point. We say the Tribunal
19 cannot resolve a dispute that does not exist.

20 Let me turn now to a related point, the question of
21 the precise location of Point 61, and the argument by Suriname
22 that the fact that it may not be precisely located on the
23 low-water mark should not cause it to be abandoned. In its
24 Rejoinder, Suriname for the first time claims that Point 61
25 cannot be what it calls the land boundary terminus because it's

16:19:18 1 not on the low-water line. It's curious to us that 70 years
2 from the date on which the northern terminal was agreed and in
3 the face of its consistent practice throughout its entire
4 period of independence, Suriname now attempts to escape the
5 agreement on the basis of a somewhat novel argument. But my
6 colleague, Professor Akhavan explained how even in 1936, it was
7 not possible, for practical reasons, to place the marker on the
8 low-water line in what was described by the participants as
9 liquid mud, and I'm going to quote this again, I think, in
10 regard to Professor Smit's question, and I quote: "The land
11 was found to be most unsuitable for the construction of the
12 pillars. The most suitable position was found to be on a wide
13 stretch of grassland behind a low sand dune. Here the ground
14 was comparatively firm and did not appear to be subject to the
15 erosion by the sea. In fact, it appeared it be building up
16 here, if anything."

17 Now, it's really not for us to second-guess why the
18 two Commissioners chose the approach that they did. I note
19 that one of them, Vice Admiral Kayser, was a Dutchman, and one
20 assumes that he was aware of all of the options that were
21 available. I think it is worth pointing out this was 1936.
22 This was an area that was virtually inaccessible and in which
23 the raw materials necessary to engage in the type of activity
24 that was eventually carried out would have required pretty
25 extraordinary efforts, so we can only on the basis of the

16:20:55 1 material before this Tribunal that both sides have put in, base
2 ourselves on the arguments given by the individuals who were
3 involved in the exercise, and I think it is very difficult
4 certainly for me to second-guess their expertise and the
5 diligence with which they did or did not carry out their
6 exercise. The history and the facts are what we have, and we
7 say they speak for themselves.

8 That point, Point 61, was approximately in their eyes
9 215-meters from the present low-water mark, but they did add
10 that the measurement was, and I quote, "of little value as the
11 coast is constantly changing here," and, indeed, it does seem
12 that the marker was washed away, and history has taken its toll
13 on that aspect.

14 But the fact that it's not on the low-water mark for
15 the reasons that I have already explained cannot without more
16 defeat and undo the parties' long-standing agreement that the
17 point of departure for the maritime boundary is situated at
18 Point 61 on the west bank of the Corantijn River where, in the
19 eyes of the Commissioners, it meets the sea, and where, until
20 very recently, Suriname believed it meant the sea. I will come
21 back to these issues tomorrow when I deal with the delimitation
22 of the territorial sea.

23 Even in the absence of an agreement on the northern
24 terminal, Point 61, we disagree for the reasons I have already
25 indicated with Suriname's contentions, that there is no

16:22:40 1 jurisdiction to effect a partial delimitation of the maritime
2 boundary, or to effect a maritime boundary delimitation
3 pursuant to Article 9, or to exercise ancillary or incidental
4 or other jurisdiction over land territory, if that, indeed, is
5 what it is.

6 Suriname puts a lot--well, puts a number of paragraphs
7 into the question of the jurisdiction of the Tribunal to effect
8 a partial delimitation of the maritime boundary. They claim
9 that this is something that you are not entitled to do. In
10 response to the argument based on Suriname's arguments about
11 Point X and the famous graphic at Figure 1 of the Preliminary
12 Objections memorandum, and in its Rejoinder, Suriname has now
13 denied that it has had any second thoughts about Point X, and
14 confirms that it has not abandoned that figure or the Point X
15 principle. We are grateful for that confirmation because it
16 does reflect the confirmation of the parties of the convergence
17 of a provisional equidistance line.

18 Let's assume for purposes of argument that there is no
19 agreement on Point 61. The evidence showed that the Suriname
20 invoked Point X and Guyana invoked Point 61. In such
21 circumstances, would the Tribunal be precluded from delimiting
22 the maritime boundary, if, as Suriname argues, it could not
23 resolve the dispute on the point of departure for that
24 boundary? We say of course not. As Figure 4 and the plates I
25 showed you earlier this morning made clear, there are points on

16:24:28 1 which the provisional equidistance lines converge, and on the
2 starting point argument of both states at Point 61, that
3 convergence is as close as 6 nautical miles to the territorial
4 sea.

5 Is there a principle or rule of international law
6 which acts to preclude a tribunal from exercising jurisdiction
7 over the areas that lies seaward of that point or points or
8 putting it another way, the area that lie seaward at the point
9 of convergence? Since those areas fall squarely within the
10 maritime boundary to be established by the operation of
11 Articles 15, 74, and 83, Guyana submits that the burden is on
12 Suriname to explain on what basis the Tribunal cannot exercise
13 jurisdiction in respect of those areas, and up until now, it
14 hasn't done that. It hasn't provided any explanation as to why
15 there cannot be a partial maritime delimitation.

16 Its arguments really are very thin in its Rejoinder.
17 It invokes the Gulf of Maine case, and it relies on the Gulf of
18 Maine case to support the proposition that there is a need for
19 an agreement between states to effect a partial maritime
20 delimitation. That's paragraph 2.69.

21 Now, that's a curious reading of the Gulf of Maine
22 case in which it is a reflection of the facts that states can
23 enter into such an agreement, but how can that practice of two
24 states, Canada and the United States, support the proposition
25 that there is a necessity to enter into an agreement as a

16:26:14 1 condition for a partial delimitation? After all, there are
2 plenty of examples of partial delimitations being effected for
3 other reasons. I stress, for other reasons. But the
4 principles are analogous. Suriname itself refers to one such
5 case, Libya-Malta, for the proposition that the Court declined
6 to delimit all of those two states' maritime boundaries on the
7 grounds that Italy, a vital party, was not before the Court.
8 You have got that judgment at Tab 23 G. I don't think there is
9 any point in taking you to it, but let me quote from what the
10 Court said. "A decision limited in this way...signifies simply
11 that the Court has not been endowed with jurisdiction to
12 determine what principles and rules govern delimitations with
13 third states or whether the claims of the parties outside that
14 area prevail over the claims of those third States in the
15 region." So in other words, faced with that situation, the
16 International Court didn't say, oh, well, we can't delimit any
17 of it because there is a jurisdictional issue in relation to a
18 part of the dispute. They went ahead and delimited those parts
19 in respect of which the jurisdictional issue did not arise.

20 That happened again in the case of Cameroon versus
21 Nigeria, where the International Court of Justice made it very
22 clear that although it could not rule on Cameroon's claims
23 insofar as they might affect the rights of Equatorial Guinea
24 and Sao Tomei and Principe, and I quote, "The mere presence of
25 those two states whose rights might be affected by the decision

16:27:58 1 of the Court does not in itself preclude the Court from having
2 jurisdiction over a maritime delimitation between the parties
3 to the case before it; namely Cameroon and Nigeria, although if
4 must remain mindful, as always in situations in this kind, of
5 the limitations on its jurisdiction that such presence
6 imposes."

7 Now, I'm not saying that is precisely the same
8 situation. It's not. But it is a situation in which the Court
9 decides that its jurisdiction is limited, and in such
10 circumstances, the approach of the Court is not to abandon the
11 totality of the delimitation, but to press ahead with the
12 delimitation which it can make within its jurisdiction, and we
13 say that is precisely what ought to happen in the unlikely
14 circumstance that this Tribunal feels unable to delimit from
15 Point 61 as a starting point.

16 The only other argument that Suriname makes is that a
17 partial delimitation would create, and I quote, "the additional
18 problem that such an approach would leave the parties without
19 any resolution regarding the location of the boundary through
20 the entire territorial sea and part of the maritime zones."

21 Now, I just pause there. That is quite a remarkable
22 argument to make. They are saying you should not delimit 185
23 miles or 194 miles because that would create an additional
24 problem, the nondelimitation of the last six or 15 miles, or
25 the first six or 15 miles, depending on how you look at it.

16:29:51 1 We think that is putting logic on its head. We accept
2 the proposition that it is the function of the Tribunal to
3 resolve problems, and we do not see how the resolution of this
4 problem by walking away from it altogether can inspire itself
5 to you as a policy or a legal argument. It is logic inverted.
6 The function of the Tribunal is to resolve disputes. If it
7 can't resolve all of the dispute, it can at least resolve some
8 of it. That's the gist of our argument.

9 In short, there is nothing in Suriname's Rejoinder
10 which explains in law or in policy why this Tribunal cannot
11 effect a partial delimitation.

12 As regards the arguments on the Article 9 delimitation
13 and on the delimitation by exercise of incidental and ancillary
14 jurisdictional powers, we have set those arguments out in our
15 written pleadings, and there is little that I can add to them
16 at this stage. I do invite the Tribunal to read very carefully
17 in relation to the argument based on the effect of Article
18 298(1)(a)(i), to read very carefully what that provision
19 actually says. It plainly implies that in the absence of any
20 declaration, as in the present case, that UNCLOS dispute
21 settlement body does have jurisdiction over, and I quote, "any
22 dispute that necessarily involves the consideration of any
23 unsettled dispute concerning sovereignty or other rights over
24 continental or insular land territory."

25 So, the plain meaning of that provision is against

16:31:55 1 Suriname. The fact that there is distinguished academic
2 authority reflected in the article to which I drew your
3 attention today, and there are several more, if this argument
4 lights up, we would be happy to take you to, I think provides
5 considerable support for Guyana's position. Suriname relies on
6 just one academic article in support of the proposition that
7 the jurisdictional implication that flows from 298(1)(a)(i) is,
8 and I quote, "a mere drafting point." With great respect, we
9 say it's not enough to make that type of argument. The
10 drafting point came at the instance of a particular delegation
11 which indicated its particular view, and that position is no
12 doubt for that state and perhaps for other states a legitimate
13 view, but it's not one that seems to have found very great
14 favor, and it's not one that is consistent with the plain
15 meaning of what that provision actually says.

16 Suriname has provided nothing from the travaux
17 preparatoires of UNCLOS in support of its argument on this
18 point. Unlike the situation of China and Japan to which
19 reference is made, of course, China has now put in an Article
20 298(1)(a)(i) declaration, Guyana and Suriname have agreed on
21 the northern boundary and on its terminal, and they have also
22 agreed long ago to locate the northern terminal to small
23 distances they then thought it was from the low water mark
24 because, and only because, of the changing nature of the muds
25 and sands in the area in question.

16:33:39 1 Assuming that the Tribunal wishes to proceed beyond
2 the partial delimitation and to delimit also from Point 61, the
3 only question then is whether it's entitled to exercise
4 jurisdiction from Point 61 to the nearest low-water mark which
5 on Guyana's argument is less than 1 nautical mile on some
6 charts or to the low-water mark along the 10-degree line, which
7 on Suriname's argument is only a little more than 1 nautical
8 mile on those same charts. You will be shown some photographs
9 tomorrow, which you may already have seen, which make it
10 abundantly clear how close Point 61 is to the water. It's on
11 the water's edge. There is no question about that. If I were
12 to rent a house on Point 61, I would plainly be renting a house
13 that was right by the water. It could not be said that that
14 point is inland.

15 Let me come, then, to my general conclusions on behalf
16 of Guyana on this issue. In preparing for this hearing, as one
17 does, I carefully read and re-read all of the pleadings, and in
18 all of Suriname's writings there is one paragraph that has
19 stayed at the forefront of my mind, and that is paragraph 4.12
20 of its arguments on provisional objections, and I think it's
21 worth reading out. I quote, on the jurisdictional issue.
22 "This raises the question of the scope of the Tribunal's
23 authority to decide this jurisdiction in the present case.
24 Suriname submits that this authority is limited to examining
25 whether there is an unsettled dispute concerning sovereignty

16:35:29 1 over land territory, more specifically concerning the location
2 of the land boundary terminal, the resolution of which is
3 required before a maritime boundary can be delimited. If it
4 finds that there is such a dispute, it has no jurisdiction to
5 proceed any further."

6 Now, at the hearings in July 2005, we responded to
7 that argument as follows: "But let me take a related point,
8 and I just note, addressing the Tribunal, in relation to
9 paragraph 4.12, that it leads to this rather curious situation:
10 That if you, the Tribunal, agree with Suriname's argument on
11 Point 61, and the 10-degree parallel, then curiously you have
12 jurisdiction to deal with the rest because there will be no
13 disagreement between the parties. There will have been a
14 common position. So, there is a curious internal illogicality
15 of the argument that's run by Suriname. If you agree with us,
16 they are entitled to say we are wrong, and you do not have
17 jurisdiction, and that cannot be right." It was, as we said
18 then, a very curious situation and a very curious argument.

19 The Tribunal can determine its own competence. That
20 is agreed by the parties, and it's a point that Suriname
21 accepts, and yet 18 months on we remain puzzled by the logic of
22 Suriname's argument.

23 On the issue of jurisdiction, their argument is
24 essentially, if there is no disagreement on Point 61 in the
25 10-degree line, then you have jurisdiction. If there is

16:37:11 1 disagreement, then you don't. We disagree with that
2 proposition for all of the reasons I have now addressed. There
3 is an agreement on Point 61 and the location of the point of
4 departure for the maritime delimitation. It's a long-standing
5 agreement. Suriname has a very real problem in how it gets
6 around the fact that in its entire existence as an independent
7 state, it has never identified any place other than Point 61 as
8 the starting point for the maritime claim. In our submission,
9 that fact alone and its submission in these proceedings
10 disposes of Suriname's objection to jurisdiction, but, as we
11 already explained, if you're not with us on that, there are
12 three other arguments on which you can rely.

13 Just before I conclude, I would like to say something
14 briefly about Suriname's attempt to align its approach with
15 that taken by other UNCLOS dispute settlement bodies. There
16 have been a number of other cases in which jurisdictional
17 issues have arisen. Suriname argues that Guyana is inviting
18 this Tribunal to depart from what it calls the prudence and
19 caution evident in the approach taken by what it says is every
20 other Tribunal that has exercised compulsory jurisdiction over
21 the merits of a dispute. It refers to some cases, but not all
22 of them, for example, SAIGA No. 2.

23 There's only one authority which may be said to be a
24 reasonable one in support of their contention and that is, of
25 course, the award of the Annex VII Tribunal in the infamous

16:38:46 1 Southern Bluefin Tuna case, but with very great respect to that
2 Tribunal, with very great respect to that Tribunal, the
3 decision in that case has been very widely discredited. I have
4 been only able to find a very small number of Law Review
5 articles that seem to be persuaded by the reasoning, and the
6 most remarkable feature of those Articles is that they all seem
7 to be written by the same person.

8 By contrast, there are more than 20 Law Review
9 articles that have been extremely critical of the award. I
10 would be very happy to provide a list. And speaking
11 personally, I find it very hard to find fault in the critique
12 of that award written by my good friend David Colson which
13 appears in Volume 34 of Ocean Development and International Law
14 at page 34. And in particular the conclusion that the Annex
15 VII Tribunal in that case simply lost sight of the context in
16 which the UNCLOS dispute settlement provisions were adopted,
17 and it lost sight of the fact that at the end of the
18 negotiations, the Third Convention Conference on the Law of the
19 Sea, a number of important issues remained subject to
20 compulsory dispute settlement.

21 In the MOX Plant Case the issue was not whether there
22 was jurisdiction as such. The issue was whether the
23 jurisdiction was vested in the Annex VII Tribunal or the
24 European Court of Justice. The European Court of Justice has
25 now spoken on that in the judgment of 31st of May this year in

16:40:30 1 which it has said that the subject matter of that dispute is
2 very largely within the jurisdiction of the European Court of
3 Justice, but rather unhelpfully, it has not specified which
4 very large parts are within its jurisdiction and which are
5 within the jurisdiction of an Annex VII Tribunal, so it has
6 left the parties on the European Commission with some
7 considerable difficulty in trying to work it out, but it's not
8 a question that there is no jurisdiction over the subject
9 matter or over the dispute between one of those institutions.
10 It's just a question of which one. That issue simply doesn't
11 arise in this case.

12 And, of course, the land reclamation case, we say,
13 provides no assistance to Suriname. For whatever reason, the
14 Annex VII Tribunal there did hand down an agreed award, and
15 there is nothing in the Award of the Tribunal or the early
16 award of the Tribunal for the Law of the Sea on provisional
17 measures that provides any assistance to Suriname, and I think
18 the same may be said of the case for Barbados versus Trinidad
19 and Tobago. It is true that the Annex VII Tribunal declined to
20 exercise jurisdiction on one aspect of Barbados's case, but
21 that was only because the Tribunal found that the claim did not
22 fall within the dispute originally submitted by Barbados. That
23 is, again, a very different situation from the one that you now
24 face.

25 So, we say the idea that somehow going through those

16:41:54 1 authorities you are able to divine some principle of prudence
2 and caution is simply not borne out by a careful consideration
3 of those cases, and the one authority which may provide some
4 petrol for Suriname's argument is, I think many people in this
5 room would agree not an authority which is a particular happy
6 one, and therefore not one, we say, which the Tribunal which is
7 presently sitting would want to be inspired by. There is no
8 principle of prudence and caution to be invoked by Suriname on
9 these issues. The question of jurisdiction falls to be
10 determined exclusively by reference to the rules of the 1982
11 Convention, and we say those rules point unambiguously and
12 clearly in favor of this Tribunal having the power to exercise
13 jurisdiction over all aspects of the dispute referred to it by
14 Guyana.

15 Acceding to Suriname's request and declining
16 jurisdiction would be a major setback for the 1982 Convention
17 and for dispute settlement. Guyana is confident, confident and
18 hopeful, that the Tribunal will give effect to the spirit that
19 imbued the 1982 Convention to which my very good friend Sir
20 Shridath Ramphal alluded earlier in the day.

21 Mr. President, that concludes my presentation on the
22 issue of jurisdiction and all of Guyana's arguments on
23 jurisdiction. Unless I can assist further, we would propose
24 that it would be better to start the next topic tomorrow
25 morning to allow a full run on the geographical issues given

16:43:48 1 their importance to this case.

2 PRESIDENT NELSON: Thank you very much, Professor
3 Sands.

4 I agree with you that we ought to adjourn this meeting
5 at this time and return to our task tomorrow morning at 9:30.
6 Thank you very much.

7 MR. GREENWOOD: Mr. President, I'm sorry, sir, before
8 you rise, tempted as I am to enter into a discussion about how
9 you can make petrol from Bluefin Tuna, a novel suggestion to
10 me, there was a small procedural matter I wanted to raise.

11 The Tribunal has ordered that Dr. Smith be sequestered
12 until the time when he gives evidence. I wonder if I could ask
13 you, just to make clear, that that includes a requirement that
14 he not read the transcript?

15 PRESIDENT NELSON: That he not?

16 MR. GREENWOOD: That he should not read the
17 transcripts of the hearings.

18 PRESIDENT NELSON: Yes, I think that's--is that
19 reasonable?

20 MR. REICHLER: It's not only reasonable, but we had
21 already assumed that, and we certainly agree to that.
22 Certainly.

23 MR. GREENWOOD: Thank you very much.

24 PRESIDENT NELSON: I would read parts of a decision
25 that the Tribunal took today. The Tribunal requests that at

16:45:05 1 the earliest possible time the Tribunal hydrographer meet with
2 the parties' respective hydrographic experts to discuss any
3 possibility to provide responses to the following questions of
4 a technical nature. The Tribunal hydrographer will prepare
5 minutes of the meeting.

6 Now, there are a certain sort of questions that have
7 been raised, quite a lot of them, and they are all of a
8 technical nature, and that is for the Tribunal's expert
9 hydrographer and others--the respective hydrographer experts to
10 discuss and if possible to provide responses to the questions.
11 It would be helpful if the agents of the parties were to choose
12 the experts who should attend.

13 PROFESSOR SANDS: I think what I'm instructed to say
14 is that we are, of course, very open to that. Before
15 committing ourselves to any particular course, I suspect our
16 team would like to see, and the technical folks would like to
17 see precisely what the requests are. I'm sure there will be no
18 problem.

19 PRESIDENT NELSON: This would be sent to the agents of
20 the parties.

21 Thank you very much.

22 MR. GREENWOOD: Mr. President, on behalf of the
23 Republic of Suriname, we would like to see the questions, if we
24 may, and then respond to the Tribunal's suggestion tomorrow
25 morning.

16:46:44 1 PRESIDENT NELSON: Thank you very much.
2 If that is agreed, the meeting is adjourned.
3 (Whereupon, at 4:45 p.m., the hearing was adjourned
4 until 9:30 a.m. the following day.)
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CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN, RDR-CRR