

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 10

Wednesday, December 20, 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  
 9:34 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:

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MR. DANE RATLIFF

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MR. DAVID GRAY

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

2 PRESIDENT NELSON: Professor Schrijver?

3 PROFESSOR SCHRIJVER: Good morning, Mr. President,  
4 Members of the Tribunal. On Monday we had quite some  
5 discussion on smoke and chimneys, et cetera, and in that  
6 connection please allow me to make one correction. We  
7 discussed the 1949 version of the Dutch Chart 222, especially  
8 the three words which were crossed out. At a certain moment my  
9 colleague, Professor Philippe Sands, called on me to provide  
10 the text in Dutch, and I'm sorry to say that I read one word  
11 not correct. Upon further study with a magnifying glass, we  
12 came to the conclusion that the second word reads "ineen," in  
13 Dutch--I will give the translation in Dutch--it is I-N-E-E-N,  
14 while I stated that it read V-O-O-R, voor, but in English it  
15 makes no substantive difference. It should be read: The  
16 meeting is chimneys on one bearing of 190 degrees, but I would  
17 like to correct it for the record.

18 And I also would like to apologize for any confusion I  
19 may have caused with the Tribunal or with the team of Suriname.

20 Thank you, Mr. President.

21 PRESIDENT NELSON: Thank you very much, Professor  
22 Schrijver.

23 PROFESSOR SCHRIJVER: And the map is also under K23.  
24 I learned by courtesy of my friend Professor Greenwood.

25 PRESIDENT NELSON: Thank you.



09:40:07 1 PROFESSOR GREENWOOD: Thank you, Mr. President, sir.

2 Well, Mr. President, we were promised a smoking gun,  
3 but it seems now even the smoking chimney has gone. I'm much  
4 indebted to Professor Schrijver for correcting that. I can  
5 confirm that that is also our reading using a magnifying glass,  
6 but I cannot tell you how pleased I am that it's he who's  
7 pronounced the words rather than that I have to do so.

8 CLOSING ARGUMENT BY COUNSEL FOR RESPONDENT

9 PROFESSOR GREENWOOD: Mr. President, in the closing  
10 rounds of these submissions, the approach which Suriname wishes  
11 to take is very much one of attempting to assist the Tribunal  
12 by identifying the questions which have to be answered in these  
13 proceedings and the material, both in terms of evidence and  
14 legal argument, with which to answer them. And I should say on  
15 behalf of all of our legal team that we welcome questions from  
16 the Tribunal at any stage, not simply at end of a speech,  
17 whenever you wish to ask them.

18 If I can briefly give a road map and deal with some  
19 housekeeping, you have before you a bundle of documents divided  
20 up into a series, I think, of six separate tabs. The first  
21 tab, behind the date, incidentally, is the list of who will be  
22 speaking and on what subject. I will begin by making a few  
23 prefatory remarks and then dealing with the subjects of  
24 jurisdiction and the territorial sea boundary; and the  
25 documents that I will be referring to are there behind Tab K.

09:41:26 1           Now, I apologize for the fact that there are quite a  
2   number of them, but we were retold repeatedly on Monday that it  
3   was very important that the Tribunal should look at the  
4   evidence. What then followed was a series of submissions on  
5   the territorial sea which in our submission do not properly  
6   reflect the evidence, and therefore I want very briefly to  
7   recall what is in the record before you. All of this is  
8   material you have seen before. They're just put together in  
9   this bundle for convenience.

10           Then Professor Oxman will follow dealing with the  
11   legal principles to be applied to the continental shelf and the  
12   EEZ, and also to make some remarks on rivers. His document  
13   appears behind Tab L.

14           My colleague, Mr. Colson, will then talk about the  
15   flaws in Guyana's methodology, in particular with relation to  
16   vector analysis. His documents are at Tab N.

17           And Professor McRae will deal with geography and the  
18   Suriname line. His documents, his slides appear behind Tab N  
19   in the bundle.

20           That should take us to the lunch break, and then this  
21   afternoon my colleague, Professor Murphy will deal with  
22   Guyana's submissions 3 and 4. His documents appear at Tab O.  
23   I will then make a very brief summary of our conclusions and  
24   invite you to call upon the distinguished Foreign Minister of  
25   Suriname to make our formal submissions and closing speech.

09:42:46 1 Mr. President, I said that I had a couple of prefatory remarks  
2 to make. They concern two subjects. The first is reliance on  
3 expert evidence in these proceedings. Now, both Mr. Reichler  
4 and Professor Sands made much of a supposed lack of evidence on  
5 the part of Suriname because we had not hired an equivalent of  
6 Dr. Smith. In our submission, it's important to realize that  
7 there is abundant evidence in the form of maps, charts,  
8 official documents, interstate correspondence, internal  
9 correspondence; and on matters such as navigation in the  
10 western channel, there are witness statements as well. The  
11 only difference between the parties is not whether we have put  
12 in evidence. It is simply that Guyana has chosen to hire a  
13 geographer to analyze that primary material while Suriname has  
14 submitted its analysis in the form of argument.

15           Now, Mr. President, that is the right of each party.  
16 It's our view that the Tribunal does not need a witness, does  
17 not need an expert geographer to look at the material already  
18 before the Tribunal and tell the Tribunal whether a coast is  
19 convex or concave, whether an equidistance line is affected by  
20 a bulge 22 nautical miles by five jutting out from an otherwise  
21 largely flat coastline, or to say where base points are  
22 located.

23           Still less does it need a witness to tell it precisely  
24 what it has to decide; namely, whether a particular feature  
25 creates unfairness or renders one line rather than another

09:44:20 1 equitable or inequitable. And we are reinforced in that view  
2 by the approach taken by courts and Tribunals in past cases  
3 that the question before this Tribunal is one of law, not one  
4 of scientific fact. If one looks, for example, at the Award of  
5 the Court of Arbitration in the Anglo-French Continental Shelf  
6 Case, let us read the last sentence. "The very fact that in  
7 international law the continental shelf is a juridical concept  
8 means that its scope and the conditions for its application are  
9 not determined exclusively by the physical facts of geography,  
10 but also by legal rules."

11 Or the International Court in Tunisia and Libya, "The  
12 function of the Court is to make use of geology only so far as  
13 required for the application of international law."

14 Now, Mr. President, neither of those statements by the  
15 Tribunal in question makes it in any way improper to call  
16 expert geographical evidence, but it also in our submission  
17 makes it perfectly clear that there is no need to do so.

18 And that is still more true we say of the issues in  
19 this case. The simple fact, Mr. President, is that we put  
20 before the Tribunal all the evidence of the primary  
21 geographical facts necessary to sustain our arguments. We did  
22 not consider it necessary to add testimony about how to analyze  
23 that information. In the end, that is a matter of law for the  
24 Tribunal.

25 But we would say this: That if you choose to call

09:45:54 1 expert evidence on issues of this kind, then you must expect to  
2 have that testimony tested in cross-examination. And just as  
3 well, for both cross-examinations of Dr. Smith were, we say,  
4 very revealing.

5           That is the first remark I would make about experts.  
6 The second is that Mr. Reichler, I have to say, went on to turn  
7 upside down the whole distinction between witnesses and  
8 counsel, between evidence and argument. That was most clearly  
9 demonstrated in the jibe about Professor McRae being a lawyer,  
10 not a geographer, but much more seriously manifested in  
11 Mr. Reichler's comment that he had had the advantage of  
12 Dr. Galo Carrera checking all his figures and telling him what  
13 he could and could not say. Well, that offers a fascinating  
14 glimpse into the inner workings of Guyana's legal team, but in  
15 our submission it's neither relevant nor, I have to say, proper  
16 to make a remark of that kind.

17           We all know that when an advocate speaks in  
18 proceedings, he gives not his own view but the arguments of his  
19 client. That is the critical difference between advocacy and  
20 expert testimony.

21           And the arguments stand or fall by how persuasive the  
22 Tribunal finds them to be. A lawyer who tells the Tribunal  
23 that his submissions on geography have been checked by a  
24 geodesist and therefore carry more weight is no different from  
25 one who tells the Tribunal it should pay more attention to his

09:47:24 1 arguments because he's argued more maritime boundary cases than  
2 anyone else has had hot dinners.

3           We are not going to try and dress up arguments as  
4 evidence, and we're not going to enter into an I have got a  
5 better hydrographer than you bragging competition with the  
6 Guyana legal team. We are grateful for Guyana's concern that  
7 we might have been handicapped by the fact that our  
8 hydrographer from the Royal Netherlands Navy was in The Hague,  
9 rather than in the Guerrero Room, but we will leave it at that.

10           The second prefatory remark I want to turn to concerns  
11 Professor Sands's comment about the importance of areas of  
12 agreement between the parties. Well, we share his views that  
13 areas of agreement are important, and we will try to identify  
14 some that he didn't mention during the course of today, but  
15 some of the areas of agreement he identified turned out not to  
16 have been agreed at all, or at least not to sustain the  
17 conclusions which he sought to draw from them. Two in  
18 particular I would refer to.

19           The first is that despite Guyana's reformulation of  
20 the status of Point 61, which we noticed with some wry  
21 amusement, it is no longer the land boundary terminus; it's now  
22 the northern terminal mark. But despite that reformulation,  
23 Suriname does not accept either that Point 61 is the governing  
24 indication of where the land boundary terminates or that the  
25 location of the land boundary is in any way an issue for this

09:48:54 1 Tribunal. Whatever role Point 61 might have filled had the  
2 1939 Treaty been concluded, no independent treatment on the  
3 terminus of the land boundary was ever reached. The only  
4 agreement was on the maritime boundary, and the relevance of  
5 Point 61 was solely as the means of delimiting that boundary.  
6 Nothing more, nothing less.

7           The second area where the agreement turns out not to  
8 be as clear as it has been suggested is that while Suriname  
9 does, indeed, agree that a boundary is a conceptual line, it  
10 certainly does not accept Professor Sands's inference from  
11 that, that Suriname is not a coastal state on the west bank,  
12 and therefore can have no base points there. We do not claim  
13 any dry land territory on the west bank, but the conceptual  
14 boundary, the boundary with no width on the low-water line  
15 means that each state has a presence on that low-water line,  
16 and thus that each state has a right to locate base points  
17 there.

18           There is also, we say, an important element of  
19 agreement between the parties to which Professor Sands did not  
20 refer in his speech on Monday, and that is both parties are  
21 asking the Tribunal to determine that the boundary follows a  
22 single straight line: A 10-degree azimuth in Suriname's case,  
23 that's 10 degrees east of true north, and a 34-degree azimuth,  
24 34 degrees east of true north in the case of Guyana.

25           At most they acknowledge--and again this appears to be

09:50:40 1 the position of both parties--that there might, and I stress  
2 might, be a different boundary in the territorial sea from that  
3 in the continental shelf and Exclusive Economic Zone. Now,  
4 that element of agreement, that claim in each case for a single  
5 straight line, has important implications, as my colleagues  
6 will demonstrate in the course of their submissions this  
7 morning.

8 Let me turn, Mr. President, to the topic of  
9 jurisdiction. There are four points I want to make about  
10 Suriname's position with regard to the jurisdictional issue.  
11 The first is that rivers are obviously not land. They are  
12 water in the physical sense, but equally, the boundaries in a  
13 river and the boundaries between a river and the dry land are  
14 not something governed by the Law of the Sea. Professor Oxman  
15 will have more to say about this, but let me just make clear  
16 that this point on which we were quite explicit in the first  
17 round is, in fact, the answer to Professor Sands's *inclusio*  
18 *unius exclusio alterius* argument. I quote Professor Sands, and  
19 that's my excuse for using a Latin maxim should I be reported  
20 to the Bar Council for doing so.

21 The Tribunal will remember that Professor Sands argued  
22 that the references to continental and insular territory in  
23 Article 298 of UNCLOS meant that internal waters necessarily  
24 fell within the jurisdiction of an Annex VII Tribunal. Well,  
25 we entirely accept, Mr. President, that there are a number of



09:52:14 1 matters concerning internal waters, for example, the regime  
2 laid down in Article VIII, paragraph 8(2) of the Convention  
3 which are governed by UNCLOS.

4 But there is no support in case law, in literature,  
5 or, I have to say, in common sense for the view that a river  
6 boundary between two literal states has anything whatever to do  
7 with UNCLOS. It is not the Law of the Sea Convention that  
8 determines where the boundary in a river should lie.

9 A second proposition--I should say Professor Oxman  
10 will deal further with that question of rivers in his speech  
11 later this morning--our second submission is that we do not  
12 accept that there is an incidental jurisdiction under Article  
13 288 to decide a dispute regarding a boundary merely on the  
14 basis that resolving such a dispute is a prerequisite to  
15 deciding a dispute which does fall within Article 288. There  
16 is no incidental jurisdiction to determine a dispute which is  
17 not itself governed by the Law of the Sea Convention regarding  
18 the location of a land boundary or sovereignty over land  
19 territory, merely because that is the logical prerequisite to  
20 deciding a dispute about a maritime boundary.

21 That leads on to my third point. Professor Sands put  
22 before you the speech of President Wolfrum to the U.N. General  
23 Assembly in his capacity as President of the International  
24 Tribunal of the Law of the Sea, and that document is to be  
25 found in Guyana's book for Monday. It is our understanding

09:53:54 1 that whether there is, indeed, an incidental jurisdiction in an  
2 Annex VII Tribunal or, indeed, any Tribunal deriving its  
3 jurisdiction from Article 288 to decide questions of  
4 sovereignty over land territory or the location of a land  
5 boundary is a matter of first impression in this arbitration.  
6 Accordingly, it is not clear to us quite what the President of  
7 the Tribunal on the Law of the Sea meant when he said that  
8 ITLOS had given consideration to this issue. The timing of his  
9 remarks is, of course, coincidental, but it would be most  
10 unfortunate to put it at its mildest if this Tribunal were to  
11 consider itself obliged to follow a statement purporting to  
12 reflect a position taken by ITLOS, but taken outside the  
13 context of proceedings between two parties.

14           While he may, of course, express his views on such  
15 subjects, the President of an international court or tribunal,  
16 no matter how prestigious, is not entrusted with the power to  
17 make ex cathedra pronouncements on behalf of that court or  
18 tribunal, still less to foreclose close decisions to be taken  
19 in proceedings before another tribunal. And we would  
20 respectfully suggest that the Tribunal make clear that this  
21 statement played no role in its decision in the present case.

22           My fourth point about jurisdiction is that in the end  
23 all of the argument about incidental jurisdiction falls away  
24 for two very simple reasons. The first is that if there is an  
25 established boundary in the territorial sea, the location of

09:55:37 1 the land boundary and the land boundary terminus quite simply  
2 becomes irrelevant. The Tribunal would plainly have  
3 jurisdiction, and there would be no need for it to make any  
4 finding of fact or of law about the land boundary.

5 The second is that this Tribunal could not decide  
6 where the land boundary terminated in accordance with the 1799  
7 Convention, even if it had jurisdiction to do so, because it  
8 has heard no argument on that Convention, on its proper  
9 interpretation, on what was meant by the term, what was meant  
10 in it by the concept of where the river meets the sea; and with  
11 one exception, which I'm going to go on to show is wholly  
12 unfounded, it has heard no argument on subsequent practice  
13 either.

14 May I have the next slide, please, number four.

15 Now, contrary to what Professor Sands said, Suriname  
16 does not accept that there is jurisdiction to interpret the  
17 1799 agreement. He said this: Suriname now accepts that you  
18 have jurisdiction to ascertain whether the 1799 Agreement  
19 coupled with the practice and the conduct of the colonial  
20 powers gave rise to an agreement to locate the starting point  
21 at the intersection of the 10-degree line and the low-water  
22 mark. Suriname now accepts that if the parties disagree on  
23 that issue, you have the power to resolve it. That was the  
24 gist of their argument. That is what they said.

25 Mr. President, whenever a barrister uses the word gist

09:57:06 1 in relation to the other side's argument, you should be in my  
2 submission immediately suspicious. That was not the gist of  
3 our argument. It is, in fact, the direct opposite of what we  
4 said, and I invite the Tribunal to look at the transcript of  
5 our first round speech on that point. But since the meaning of  
6 what we said was clearly obscure to Guyana, they're not in my  
7 submission to the Tribunal, let me make this clear. We take  
8 the view that the Tribunal has no jurisdiction to determine the  
9 meaning and the application of the 1799 Agreement.

10 But perhaps more importantly, my learned friends have  
11 put before you absolutely no material from which you could  
12 decide what the land boundary was, what that 1799 Agreement  
13 meant. You have never heard any argument on the meaning of the  
14 agreement.

15 Let me turn from jurisdiction to the significance of  
16 Point 61 because this is really the fulcrum on which the  
17 jurisdictional and territorial sea issues rest. We raised a  
18 number of points about Point 61, most of which were not  
19 responded to in Guyana's second round speech on Monday. First  
20 of all, we asked where is Point 61? Guyana has not come back  
21 on this, but it is plain from their second round submissions  
22 that they have abandoned the suggestion made in the first round  
23 that it is on or near the low-water line and accept that it is  
24 actually on or near the high-water line.

25 Let's just look at a few slides that illustrate that

09:58:36 1 point. First we have the chart and the photograph that was  
2 shown before. And it is clear, I would submit to you, from  
3 both of those that the 1936 Point is, in fact, at some distance  
4 from the low-water line. This is our estimate of the  
5 distances. It wasn't questioned by Guyana in its second round  
6 speech. 3,100 meters on a 10-degree bearing to the nearest  
7 point on the low-water line, 1,100 meters at the nearest point  
8 on a 34-degree bearing, and roughly 2,100 meters as the crow  
9 flies between the 10-degree low-water mark and the 34-degree  
10 low-water mark. That's locating Point 61 geographically.

11 Secondly, what is Point 61? Well, on the map there  
12 you see the distances represented. It's a little easier to  
13 follow on the map because of the perspective of the photograph,  
14 but I wanted to show you both.

15 It's also agreed now that Point 61 consisted of two  
16 markers on a bearing of 10 degrees, and with a beacon visible  
17 from the sea, the wooden beacon or houten baken, which is  
18 marked at the bottom of that diagram there. And according to  
19 the South America Pilot, that beacon is still there. There is  
20 a reference there to a beacon. The coordinates fit the beacon,  
21 the coordinates of the houtenbaken standing near the coast on  
22 the west of the river entrance.

23 Thirdly, what is Point 61 for? Now, this is a subject  
24 on which Guyana did have much to say, and it is in our  
25 submission the real question before this Tribunal. Guyana's

10:00:15 1 view, and I hope I do it justice, is that the agreed terminus  
2 of the land boundary--could we go back to slide eight for a  
3 moment--the agreed boundary of the land terminus--slide eight,  
4 the one before that, thank you--is at marker "A." That is the  
5 1936 Point, and that marker "B" was far less important. It was  
6 purely directional. Marker "A" was what really mattered. But  
7 we say that that was plainly wrong. First of all, it's wrong  
8 because there was never an agreement on the land boundary. The  
9 1939 Treaty was simply never finalized, and that has been a  
10 subject of tremendous importance between the two states ever  
11 since the 1930s, and it's no good with respect referring back  
12 to how Major Phipps saw the markers vis-a-vis the land  
13 boundary, because he was simply an official carrying out a task  
14 allocated to him with a view to a treaty being concluded  
15 thereafter. If no Treaty materialized, then his work, in that  
16 sense at least, went for naught.

17           And it's quite interesting, if we could go to slide  
18 10, that Guyana has said nothing about this map which we showed  
19 you in our first round submissions and which was included with  
20 our Preliminary Objections. It has been one of those eloquent  
21 silences on the part of Guyana. In its Reply, and in both  
22 rounds of its oral pleadings, it hasn't mentioned this map at  
23 all. It's mentioned every other map. It's told you how  
24 important maps are in creating an estoppel, it's referred to  
25 the authorities on that, but this map it prefers to forget

10:01:50 1 about.

2 And it's not hard to see why. It is an official  
3 British publication from 1959, and it shows the land boundary  
4 extending well to the north of the 1936 Point. It is plain  
5 that the officials in British Guiana in 1959 did not consider  
6 that the land boundary terminated at the 1936 Point.

7 Now, the second reason why my learned friends'  
8 argument is wrong is if one looks at the 1961  
9 correspondence--now those are the first three letters that when  
10 I put them to you in the first round were in a rather awkward  
11 order. You will now find them in documents K11, K12, and K13,  
12 and they are in the correct chronological order.

13 We begin with K11. This is a letter from  
14 Mr. Dennis--or maybe Dennis was his first name, we don't  
15 know--to a Mr. Dawson of the Colonial Office. Dennis is  
16 writing from Government House in Georgetown in June 1961, and  
17 he's writing to the Colonial Office. And this is where you  
18 first have the indication that marker "A" and pillar A were in  
19 the Atlantic Ocean at high tide, and in consequence of action  
20 by sea have been removed out of their original positions, and  
21 the person who has discovered this has suggested that further  
22 delay may result in marker "B" being disturbed by the sea,  
23 although it turns out that hasn't happened. And should this  
24 happen, it would mean redefining this part of the international  
25 boundary.

10:03:20 1           Now, this is very interesting. Marker "A," according  
2 to Professor Sands, is the key point. Marker "B" is purely  
3 directional. So, if marker "A" has been washed away, that must  
4 be very, very significant indeed.

5           Let's go to K12. What does Dennis propose doing? As  
6 this part of the boundary is not in dispute--I will come in a  
7 minute to what boundary he's talking about--I do not think that  
8 the replacement of the marker and the pillar would create any  
9 added difficulty in regard to the proposed Treaty.

10           In other words, if they replace the now dissolved  
11 marker "A," everything is going to be all right.

12           Let's go on to the next slide. This is document K12,  
13 and this has been retyped because the original that was  
14 provided is very difficult to read. This is from Mr. White,  
15 who is Kennedy's number two, Commander Kennedy's number two at  
16 the Hydrographic Office, again to Mr. Dawson of the Colonial  
17 Office. "As I understand this problem, the prolongation to  
18 seaward of the line joining the buried mark "B" to the buried  
19 mark "A" now moved out of its true position marks the boundary  
20 between the territorial sea of British Guiana and Suriname,  
21 between the low-water mark and the outer limit of territorial  
22 sea." That's what he's talking about, a territorial water  
23 boundary. No mention of a land boundary. "Providing that the  
24 true bearing of this line 10 degrees east from "B" is  
25 maintained, I see no reason why the replacement for "A" should



10:04:45 1 not be placed 200 meters further inland on a bearing of 190  
2 degrees. The reciprocal of 10 degrees east from "B." The  
3 boundary between the territorial seas will be unaltered, and  
4 these boundary stones are in any case on British Guiana  
5 territory and do not purport to divide the land."

6 Now, that led to the letter from Governor Gray of  
7 Georgetown to his opposite number in Suriname, and this appears  
8 at--should be document K13--yes. A further inspection made in  
9 June this year revealed that both buried marker "A" and pillar  
10 A are in the Atlantic Ocean at high tide and have been removed  
11 from their original positions by action of the sea. Buried  
12 mark "B" and pillar B were reported to be undisturbed. Well,  
13 that we know from the earlier letters.

14 And now let's look at the formal British Government  
15 proposal to Suriname. "It has been recommended to me that  
16 physical demarkation of the boundary should be restored by  
17 fixing a new mark inland of mark "B" so as to avoid the action  
18 of the sea. It is proposed that this should be done by placing  
19 a new mark in line with mark "B" on a true bearing of 10  
20 degrees east 200 meters inland. I am advised that this will  
21 not in any way alter the existing boundary between our two  
22 countries since the prolongation to seaward of the line joining  
23 the buried mark "B" to the buried mark "A" now moved out of its  
24 true position, marks the boundary between the territorial seas  
25 of Suriname and British Guiana between the low-water mark and

10:06:20 1 the outer limit of the territorial sea."

2 Well, now, Mr. President, what is one to deduce from  
3 this correspondence? It is important correspondence, and I  
4 therefore want to make clear for the record that although it  
5 was introduced for the first time at the oral hearing, by  
6 agreement between the parties its status is that of evidence.  
7 These are not demonstratives, and that is confirmed in a letter  
8 from Mr. Reichler to my learned friend Mr. Saunders. And we  
9 can provide the letter if it's necessary to do so.

10 It shows, first of all, that the Governor of British  
11 Guiana writes to his opposite number in December 1961 and says  
12 there is an existing boundary in the territorial sea on a  
13 10-degree line, an existing boundary.

14 Secondly, both the Governor of British Guiana and his  
15 officials and the Colonial Office and the hydrographer's  
16 department seem completely unperturbed by the fact marker "A"  
17 has gone, and Professor Sands told you on Monday marker "A"  
18 marked the critical northern terminal point and marker "B" was  
19 just the direction.

20 So, what is the reaction of the British authorities in  
21 1961 when they find that marker "A" isn't there? Do they say  
22 oh, my goodness, the northern terminal mark of our northern  
23 boundary is gone. What are we going to do? We must go out  
24 into the sea and build something new? They're completely  
25 unfazed. They say let's build a new marker on a 10-degree

10:07:49 1 bearing 200 meters inland of marker "B" because that does the  
2 only thing that we need to do. It gives us the bearing for the  
3 territorial sea boundary, the existing boundary. That shows us  
4 what the purpose of Point 61 really is. That's what is the  
5 evidence before you, and that it marked a 10-degree boundary in  
6 the territorial sea is made perfectly clear by the erection and  
7 maintenance of the beacon visible from the sea, useless as a  
8 land boundary mark, and the Notice to Mariners issued by the  
9 Dutch in 1938, to which I will come in a moment.

10           Let me turn, then, to the territorial sea. I have to  
11 say we were puzzled here by Guyana's charge that our approach  
12 had been inconsistent. Suriname's position that there is an  
13 agreed boundary between the two countries' territorial seas has  
14 been perfectly clear from the very start. The title of Chapter  
15 4, Part III of Suriname's Counter-Memorial is, and I quote,  
16 "the Territorial Sea Boundary has been established." And in  
17 the Rejoinder we put it this way, at paragraph 3.37: "The only  
18 agreed line in the history of this maritime boundary dispute is  
19 the 10-degree line in the territorial sea." The only agreed  
20 maritime boundary.

21           Now, Guyana in its second round still challenges this  
22 proposition and tells you that you should decide the matter in  
23 accordance with the evidence. So, Mr. President, we invite you  
24 to decide it in accordance with the evidence as it really is.  
25 You heard from Professor Schrijver. History matters. Well, in

10:09:31 1 our view, real history really matters, and real history is what  
2 you can find in the evidentiary record.

3 Four questions to consider: Did the two colonial  
4 powers establish a boundary in the territorial sea? We say the  
5 evidence is unanswerable on this. It is plain that they did.  
6 Although the 1939 draft Treaty wasn't concluded, the element  
7 relating to the territorial sea boundary was implemented by the  
8 colonial governments and was honored by them for three decades  
9 without any breach whatsoever.

10 First of all, the beacon was built and maintained, and  
11 there we have Admiral Kayser's letter talking about it being  
12 the joint action of the two governments--or, rather, the  
13 British built it, and the two governments paid for it together.  
14 We have in the pilot the reference to the fact that the beacon  
15 was maintained thereafter because it's still there. This  
16 is--The South America Pilot dates from 2004. Assuming it was  
17 written in 2003, it's still from 65 years after Admiral  
18 Kayser's letter.

19 The Notice to Mariners was given, document K15 I'm at  
20 now. There you have the notice, and interestingly what's the  
21 text that's put forward of this notice? A letter from a  
22 British Admiralty official saying, Hey, wait a minute, aren't  
23 they laying claim to some of our waters? Shouldn't we be doing  
24 something about that? One can only assume that there was no  
25 response saying there is something wrong with this because if

10:10:59 1 there had been, it would have been in Guyana's possession and  
2 Guyana bears the burden of putting it before you. They haven't  
3 done so.

4           Moreover, in addition to the Notice to Mariners having  
5 been given, we have Guyana's own admission in its Memorial that  
6 by the time of the Second World War, the parties were treating  
7 the north 10 degrees east line as the boundary between British  
8 Guiana and Suriname in the territorial sea. It also makes a  
9 comment about the land boundary terminus we don't agree with,  
10 but that's neither here nor there.

11           After the Second World War we have the Dutch letter to  
12 the International Law Commission saying that the boundary was  
13 settled. What boundary are they talking about? The  
14 territorial sea boundary. Nothing else. No other boundaries  
15 come into this ILC work.

16           Now, the British would have read this. The United  
17 Kingdom is probably better than any other government in the  
18 world at fastening on a statement adverse to its position and  
19 making a formal recorded protest. There isn't one. Again, if  
20 there had been, the burden of producing it was on my learned  
21 friends, and they haven't done that. There's no suggestion  
22 whatsoever of a protest from the British.

23           And then we have the 1961 correspondence to go back to  
24 Governor Gray's letter at K17--sorry, K13. The existing  
25 boundary. So what that means is that in 1953, the Dutch call

10:12:17 1 it the settled boundary. In 1961 the British call it the  
2 existing boundary, and they do it not in internal documents,  
3 not in negotiating gambits, but in public statements to each  
4 other in one case and to the world at large in the other. And  
5 that's confirmed by the fact that even as late as January 1966,  
6 a matter of weeks before the independence of Guyana, Admiral  
7 Ritchie from the hydrographer's office, and this document you  
8 will find in the bundle from day one, I think it's document A6,  
9 Admiral Ritchie writes to one of his colleagues, Captain  
10 Cooper, talking about the 10-degree east line in the  
11 territorial sea.

12           So, that there was an established boundary, an agreed  
13 boundary, we say is plain beyond any contest. If so, and this  
14 is the second question, what was that territorial sea boundary?  
15 Now, on this there is no dispute. Both parties agree that if  
16 there was an established boundary, it was on the 10 degrees,  
17 the line 10 degrees east of true north, so that much we needn't  
18 spend any longer on.

19           Thirdly, is that boundary still in place? Is it still  
20 there today? Well, that question could be reformulated in this  
21 way. Was Guyana entitled to walk away from the established  
22 boundary after it had become established? Now, one only has to  
23 state that question, Mr. President, for the answer to be  
24 perfectly obvious. Of course the answer is no, and there are  
25 four considerations we say which have to take into account

10:13:50 1 here. The first is that on achieving independence, Guyana  
2 succeeded to the rights, but also to the obligations of the  
3 colonial power in respect of its territory and to the  
4 boundaries established prior to independence. That's an  
5 absolutely fundamental principle of international law,  
6 reaffirmed by the International Court of Justice in Cameroon  
7 and Nigeria, but referred to in so many international texts  
8 that nobody has ever contested it.

9 Secondly, it is equally well established that as  
10 Cameroon put it in argument in the Cameroon-Nigeria case,  
11 international law comes down unequivocally in favor of the  
12 stability and permanence of international boundaries, whether  
13 land or maritime. I'm quoting from the Court's summary of  
14 Cameroon's argument at paragraph 253.

15 Now, that's a proposition that the Court never thought  
16 to question in the Cameroon-Nigeria case. There is no concept  
17 of fundamental change of circumstances in relation to boundary  
18 agreements. And we found it extraordinary that Professor Sands  
19 sought to question that principle by arguing it would appear  
20 that it only applied to formal written agreements. This is the  
21 passage in the transcript. Suriname's general proposition that  
22 you--I'm sorry, wrong proposition, forgive me. Page 1309 of  
23 the transcript, Professor Sands said there was no formal  
24 written agreement on the territorial sea boundary; therefore,  
25 the Vienna Convention on the law of treaties principle on

10:15:22 1 fundamental change did not apply.

2 Now, that is in stark contrast to the passage which I  
3 showed a moment ago a little bit earlier than I meant to. This  
4 is from day one of the transcript. Suriname's general  
5 proposition that you need a written formal agreement on the  
6 starting point is not supported by any provision of UNCLOS.

7 Now, this is Guyana's argument, Mr. President. You  
8 don't need a formal written agreement to determine the location  
9 of a land boundary terminus. Therefore, by extension, you  
10 don't need a formal written agreement in order to determine the  
11 location of a land boundary. But you do need a formal written  
12 agreement if each side is not going to be free to depart from  
13 that boundary hereafter. Now, those two propositions simply  
14 cannot be reconciled, Mr. President.

15 The third consideration about fundamental change is  
16 there is nothing whatever in the way this boundary was  
17 established which gives one party a right to withdraw. Now,  
18 Guyana has, in fairness, backed away in the second round from  
19 the suggestion that it was intended in 1936 to '39 that the  
20 boundary should be flexible. The letter from Major Phipps,  
21 which is the only evidence that Guyana relied upon in support  
22 of that proposition, actually proves the exact opposite. It  
23 makes it abundantly clear. I've reproduced it at document K19.  
24 It makes it abundantly clear from the passage here that, first  
25 of all, it was flexible only in the sense that the governments



10:16:54 1 might choose a different boundary. We know that they didn't.  
2 And secondly, that any change had to be by agreement with the  
3 government of the Netherlands. The notion that the British  
4 could simply back away from the 10-degree line was never in  
5 anyone's contemplation.

6 Lastly, Mr. President, Guyana's changed circumstances  
7 case doesn't stand up in fact, in any event. If I could have  
8 slide 39, please. It's quite interesting to look at the  
9 dialogue between Professor Smit and Mr Reichler on the second  
10 day of the hearing. I think it was the second day. It might  
11 have been the first. The question was this: "I understood you  
12 to say that there was an agreement in 1936, but it had been  
13 subsequently repudiated or not honored?" The question was  
14 about an agreement in relation to a territorial sea boundary.

15 And here in a few stages is Mr. Reichler's reply.  
16 Next slide, please. "What I'm saying is that in 1936, the  
17 Boundary Commissioners, in addition to marking the northern  
18 terminus of the boundary at the place we call Point 61, they  
19 also established a maritime boundary to a limit of 3 nautical  
20 miles in the territorial sea along a 10-degree line."

21 But we will take issue with the 3 nautical miles in a  
22 moment, but for the moment let's just look at the fact that  
23 there is an acceptance there that there was an agreed boundary  
24 on the 10-degree line in the territorial sea.

25 That 10-degree line was based on the supposition that

10:18:19 1 there was a westward navigation channel in the Corantijn River  
2 and that it was represented that the 10-degree line would  
3 follow that channel, and therefore allow Dutch navigational  
4 administration over that channel.

5 And here we come to the answer, as far as Guyana is  
6 concerned: As it turned out, there was no such channel, or at  
7 least it fell out of use, if it ever existed, within some short  
8 period of time after 1936, and on that basis the British,  
9 before the independence of Guyana, rejected it and said we  
10 don't agree that there is a 10-degree maritime boundary even  
11 out to 3 nautical miles.

12 Now, Mr. Reichler was, of course, answering a question  
13 put to him in the course of oral argument. He's not reading  
14 from a prepared speech at this point, but with the greatest of  
15 respect, every single feature of that last paragraph is  
16 contradicted by the evidence before this Tribunal. The  
17 evidence that there was a western channel throughout, that it  
18 did, indeed, exist is unanswerable and, indeed, has been  
19 accepted in argument by Guyana. We will look again in a moment  
20 at some of the more recent charts, but they clearly mark a  
21 western channel, and the evidence of Mr. Fitz Jim clearly  
22 adopts that.

23 Secondly, that the channel had fallen out of use  
24 within some short period of time after 1936. Now, Professor  
25 Sands said several times, where is the evidence of use? Well,

10:19:44 1 it comes in two places, first of all, from Guyana. This is  
2 Governor Gray's letter of 1963. I'm told by the Marine  
3 Superintendent of our Transport and Harbors Department that it  
4 is the eastern channel that is buoyed and that is used by all  
5 save the most local craft.

6 The critical point is that the local craft did use the  
7 western channel, and Governor Gray was accepting that fact.  
8 That's in a letter to Mr. Stacpoole of the Colonial Office.

9 Secondly it is our evidence, the evidence of  
10 Mr. Fitz Jim, of which Professor Sands made very friendly  
11 noises indeed. This is a wonderful witness statement he kept  
12 telling you. As far as I know, the western channel has never  
13 been beaconsed. We don't question that. The eastern channel  
14 has always been beaconsed, the last time in early 1990s.  
15 However, the Harbor and Pilotage Service regularly conducted  
16 hydrographical recordings in both channels, and he makes the  
17 point that fishing trawlers and small freighters use the  
18 western channel; and that it is not because the western channel  
19 is inaccessible that larger craft use the east. It's just that  
20 the eastern channel is easier to navigate through.

21 Now, all of that shows that the channel was still in  
22 use in the 1960s, and it was still in use at the time these  
23 proceedings began. It is still in use today. There is no  
24 evidence whatever on the record to contradict that proposition.

25 But there is more to it than that. Look at what

10:21:14 1 Commander Kennedy said. At document K22 in a letter of 1959,  
2 "As the Dutch will in any case possess all the waters of the  
3 river, it would seem reasonable that they should also own the  
4 navigable channels in the approach." Professor Sands teased me  
5 for talking about a newly invented concept of the approach.  
6 It's in his own evidence. "There are banks dividing the  
7 channels in the approach; at present, the channel on the  
8 Suriname side is that more generally used, but in time this may  
9 silt and that on the British Guiana side deepen."

10 Now, Mr. President, we are not springing this letter  
11 on our learned friends. It was referred to and is in the  
12 bundle from Dr. Oude Elferink's speech on the first day of our  
13 first round and it is, in fact, a document submitted by Guyana  
14 in the record, not a document submitted by Suriname. It is not  
15 just existing use that is significant, and that has been  
16 recognized throughout.

17 Lastly, if I may go back to K9, slide 27, the South  
18 American Pilot refers to the tidal streams in the Corantijn  
19 River being noticeable up between 10 and 12 miles offshore. We  
20 were told what's that got to do with the navigable use of the  
21 western channel? Well, since we've had so much baring of the  
22 chest about who has got a good geodesist and who hasn't, who  
23 has got mathematical training and who hasn't, I come from a  
24 naval family, a merchant naval family. My father was a harbor  
25 pilot for many, many years. A pilotage book doesn't put in

10:22:48 1 information that isn't relevant to navigation. That's what  
2 it's for. That's why the book is called "The South America  
3 Pilot." It's not a guidebook to the bird life of the South  
4 American coast or chimneys we have found interesting in our  
5 wanderings around Suriname. This is a guidebook for people who  
6 live on the sea, who navigate. That is why the information is  
7 relevant to navigation.

8 Now, let's turn to the new Dutch map. The three  
9 slides, and I'm afraid we had to work under circumstances of  
10 some difficulty about this. We don't blame our learned friends  
11 for it. These are the three main slides we extracted from  
12 their presentation of Monday. They appear at document Tab K24.

13 Now, if one looks at the map, what is important to  
14 notice, first of all, there's the annotation there, "no buoys  
15 present," and then a reference back to a letter of July 1949.  
16 Then if we go to the next slide, you see the crossings out on  
17 the line, and let's try and indicate it here. This is not, I'm  
18 afraid, easy to see, but there are some crossings out on the  
19 line there, and there is the annotation, and if we could have  
20 the annotation blown up, please, the next slide. The  
21 annotation, and here I do take my life in my hands, reads,  
22 "Schooresteenen ineen," or something roughly like that. I  
23 would doubtless have been shot as a spy in Schrijvinin during  
24 the Second World War, sir.

25 The chimneys are aligned on a bearing of 190 degrees.

10:24:22 1 Now, two things about this. First of all, what is crossed out.

2 If I can go back to the previous slide for a moment, what is  
3 crossed out is not the channel. The alteration to the chart  
4 doesn't suggest there is no channel there. The alteration to  
5 the chart is removing a navigation line of sight. That's the  
6 importance of the reference to the chimneys. Before the Second  
7 World War there were two chimneys, one at Skeldon and one at  
8 Springbank on a bearing of 10 degrees. Very interesting.

9 Now, why did anybody comment on that? If I built a  
10 chimney, if my neighbor builds a chimney, we don't normally  
11 talk about the bearing between the two. The importance of the  
12 bearing was that people using the western channel must have  
13 noticed it and been navigating by it. It's precisely the kind  
14 of local knowledge that gets used. But one of the chimneys has  
15 fallen down, so the annotation has been removed. There is no  
16 suggestion there that is no western channel. There is no  
17 suggestion in this map that the western channel is not in use.  
18 It's not about that. It's simply removing a navigation line of  
19 sight because one of the landmarks on which that navigation  
20 line of sight was dependent has disappeared. It's a perfectly  
21 normal development.

22 Now, let's have a look at a few other maps you will  
23 find behind Tab K25. These are some recent British and Dutch  
24 maps. Well, not that recent in this case. There you have on  
25 Dutch Chart 222 of 1927, the navigational approach line into

10:25:58 1 the western channel, and you can see the depth markers there,  
2 there is the sandbank in the middle that separates the western  
3 channel from the eastern. We've highlighted the annotations to  
4 make them clearer, but everything there is on the original  
5 chart.

6 Now, the next slide, please.

7 That is the corrected Dutch Chart of 1991, and  
8 although the sand banks have moved and shifted a bit, which  
9 tends to happen, there is no question at all but that the  
10 channel is still there, and it's still on a bearing of 10  
11 degrees north of true east, so the 1936 10-degree boundary runs  
12 parallel with it. And then the last chart, please.

13 This is a British chart of the same year, 1999, and  
14 although the markings are slightly different, you again see the  
15 western channel there.

16 Now, all of these charts have been in evidence before  
17 the Tribunal before. None of this is new material.

18 And lastly, it's completely untrue to say that the  
19 British government rejected the boundary in the years before  
20 British Guiana's independence. You see them expressly  
21 reaffirming it in 1961, five years before independence. In  
22 1966, you see Admiral Ritchie referring to that boundary.

23 What the British did do in late 1965, after the  
24 decision on Guyanese independence had been taken, is that they  
25 proposed a new boundary as part of an overall boundary

10:27:20 1 settlement to the Dutch authorities, or rather to the Kingdom  
2 of the Netherlands authorities as it would have been then, but  
3 there is a world of difference between putting a proposal for a  
4 comprehensive change and actually walking away from the  
5 boundary. There is nothing whatever in the record to suggest  
6 that the British authorities walked away from an existing  
7 boundary. It's after independence that Guyana starts to say,  
8 never mind proposals for the future. We are not going to  
9 bother with the existing boundary anyway.

10           So, that takes us on to the final question,  
11 Mr. President. How far does this boundary extend out to sea?  
12 It is common ground that at the time in the 1930s and again  
13 through the '50s and '60s, the Dutch and British governments  
14 claimed three-mile territorial seas. There is no dispute about  
15 that and no need for a long list of quotations to prove the  
16 obvious. But I would make one point. On one of its maps in  
17 its second round submission, Guyana marked a three-mile line in  
18 a way that is just plain wrong. It showed a distance of 3  
19 miles from the 1936 Point. Now, that can't be right on any  
20 analysis because the 1936 Point isn't on the low-water line.  
21 Any territorial sea extent is measured from the low-water line.  
22 By measuring it from the 1936 Point, half of the territorial  
23 sea happens to be on land. 3,100 meters, the first chunk of  
24 it, is entirely between Point 61 and the low-water line, but I  
25 will come back to that when I show you some maps in a moment.



10:28:54 1           The more important point is that, although the British  
2   accepted in the 1930s and thereafter that the territorial sea  
3   only extended to 3 miles, they accepted something else that was  
4   even more important, and that was that as Commander Kennedy's  
5   six-mile proposal shows, it was the distance from the Guyana  
6   coast that was most significant. Commander Kennedy proposed a  
7   boundary that was limited at 6 miles out to sea because that  
8   way it ensured that none of the British sovereignty would  
9   extend east of the 10-degree line. That's a critical principle  
10   which is an important part of the matrix for understanding that  
11   agreement. It's not simply that Suriname's three-mile  
12   territorial sea would extend out along a 10-degree border.  
13   Guyana's would not wrap around it at the top, which otherwise  
14   the contours of the coast would ensure that it did.

15           Moreover, we say that there are three very important  
16   considerations which strongly support Suriname's argument that  
17   the 10-degree line constitutes the territorial sea boundary  
18   right the way up to the 12-mile limit of Guyana's territorial  
19   sea. The first is rooted in the text of the communications  
20   between the colonial powers. The second reason is rooted in  
21   the object and purpose of those communications. And a third is  
22   based in more general considerations.

23           As far as the text, the first consideration is  
24   concerned, the consistent and concerted behavior of the parties  
25   resulting in the establishment of a territorial sea boundary

10:30:32 1 was evidenced by extensive written communications between them  
2 and within each government. Those are likely to have been  
3 drafted by lawyers in the respective Foreign Ministries or to  
4 have had substantial involvement from Foreign Ministry legal  
5 advisors. All of those communications from the 1930s through  
6 the 1950s, including the Netherlands statement to the ILC of  
7 which so much has been made by both parties, referred to  
8 territorial waters with no limits specified. And the plain  
9 meaning of those texts is that they are intended to apply to  
10 the entire territorial sea, whatever limit that territorial sea  
11 might have in accordance with international law.

12           Now, the colonial powers weren't naive. They were  
13 well aware that a precise limit of 3 miles could have been  
14 specified if that was their intention. You can see in an  
15 example of that, for instance, in the 1913 Anglo-German  
16 agreement which was at issue in the Cameroon-Nigeria case.  
17 "The boundary shall follow the center of the navigable channel  
18 of the river as far as the three-mile limit of territorial  
19 jurisdiction." Or in Article 22, "The limit shall be taken as  
20 a line 3 nautical miles seaward of a line joining Sandy Point  
21 and Tom Shot Point." They knew that they could put in a  
22 territorial limitation, a distance limitation, if they wanted  
23 to do so, and they knew perfectly well how to do it.

24           They also knew as early as 1936, that while they were  
25 confident in the territorial sea should not exceed 3 miles,

10:32:07 1 there were plenty of other governments lobbying for a different  
2 position. If they had wanted to be on the safe side, they knew  
3 how to do it; and they knew perfectly well that if they wanted  
4 to be on the safe side, they had a need to put in some other  
5 limitation. They didn't do so.

6 Secondly, the object and purpose--the object and  
7 purpose of the 10-degree line was to protect the effective  
8 exercise of sovereignty by the Netherlands and Suriname over  
9 the entire river by preventing the extension of the territorial  
10 sea of British Guiana over the northerly approaches of the  
11 Corantijn River. Now, that's clear from Commander Kennedy's  
12 letter of 1959, which I took to you earlier. Dutch control of  
13 the approaches followed naturally from Dutch sovereignty over  
14 the river. And the northerly approaches to the river extend  
15 well beyond 3 miles from Guyana's coast. The colonial powers  
16 knew that when they used the 1927 Dutch Chart, and recent  
17 navigational data, such as the South America Pilot, confirmed  
18 the fact that the tidal flow extends well beyond the three-mile  
19 limit.

20 So, the object and purpose of the 10-degree line would  
21 be frustrated if Guyana was permitted to extend any part of its  
22 territorial sea east of the 10-degree line. And as to general  
23 considerations, the general principle is that where an  
24 international agreement uses a phrase such as "the territorial  
25 sea" or "sovereign state territory," it has to be an evolving

10:33:35 1 interpretation which takes account of developments in the law,  
2 and not be frozen in a time warp of 30, 40, 50, or even a  
3 hundred years earlier.

4           There was a brief attempt by my learned friends to  
5 distinguish the International Court of Justice's decision on  
6 precisely this point in the Aegean Sea case. All they  
7 succeeded in doing was to show that the present case is an even  
8 stronger one than the Aegean.

9           And what about that provision in the Chicago  
10 Convention--that Professor Oxman took you to in our first round  
11 speech--of 1944 concluded by states that thought the  
12 territorial waters limit was 3 miles would cause chaos if it  
13 were to be interpreted as limited in that way. What did we  
14 hear from Guyana about it in their second round? Nothing at  
15 all. An eloquent silence if ever there was one.

16           And so, Mr. President, we say the 10-degree line  
17 constitutes the territorial sea boundary under either of the  
18 alternatives to equidistance listed in Article 15 of UNCLOS.  
19 Agreement, and we say that that is established, or special  
20 circumstances which Commander Kennedy had fastened on in his  
21 work in the late 1950s, the special circumstances here being  
22 control over navigational access.

23           Could I in conclusion just take you briefly to a  
24 couple of maps. This first one here demonstrates the area in  
25 question with the 1936 Point, and now if we could build on it,

10:35:01 1 please.

2           There we have the intersection of the north 10-degree  
3 east line with the low-water line. A little bit further out.  
4 There we have the three mile line suggested by Guyana earlier,  
5 but that's a three mile distance from the 1936 Point, and you  
6 can see even on this scale that a very substantial part of that  
7 is over land rather than over water. Now, if we take it out to  
8 3 miles proper, that's the--that was the working assumption in  
9 1936, but now, finally, that is the boundary as it would be if  
10 you accept the submission that we are making, and that, we say,  
11 is the proper understanding of what the two colonial powers  
12 agreed upon. That is the boundary that they operated for more  
13 than three decades without any interruption whatsoever.

14           And I would just add one further point if we could  
15 have the last slide. This is from the document which shows  
16 fisheries interception activity by Surinamese patrol boats. We  
17 haven't blown it up in the territorial sea area before. It is  
18 a diagram which is used to deal with fisheries incidents across  
19 the whole of the area. But there you have quite considerable  
20 evidence of fisheries protection, right the way up to the point  
21 where that 10-degree line intersects with the 12-mile line.  
22 That, we say, Mr. President, is the agreed boundary between the  
23 parties and the boundary justified by special circumstances  
24 even had it not been agreed. Mr. President, sir, could I ask  
25 you now to call upon my colleague, Professor Oxman, to talk

10:36:40 1 about the continental shelf and the EEZ?

2 PRESIDENT NELSON: Professor Greenwood, we would like  
3 to pose a question to you.

4 ARBITRATOR SHEARER: Yes, thank you, Mr. President.  
5 Just a question to you before you pass on to Professor Oxman.  
6 I'm still a little concerned about the relevance of the land  
7 boundary terminus or rather the irrelevance in your argument.  
8 You're saying that the history of the matter shows that the  
9 parties were Britain and the Netherlands--at that time were  
10 concerned only to establish a territorial sea boundary and not  
11 to in any way determine a land boundary terminus. But looking  
12 at the provisions of Article 2 of the 1982 Northern Sea  
13 Convention, it says that the sovereignty of a coastal state  
14 extends beyond its land territory and internal waters to an  
15 adjacent built of the sea, described as the territorial sea.

16 Now, in your argument, because the true terminus of  
17 the land boundary may well be considerably to the west of the  
18 1936 Point, or rather to be more exact, the point at which the  
19 1936 Points lined up bisect the low-water line, by definition  
20 the territorial sea given to Guyana would be adjacent to a part  
21 of the internal waters of Suriname. Have I got that correctly,  
22 and is that not anomalous?

23 And the second part of that question is, why is  
24 Suriname so concerned that we should not draw what to me is the  
25 logical conclusion that this point on the low-water line is the

10:38:36 1 true land boundary terminus between the two countries? Why  
2 should we avoid drawing that implication?

3 Thank you.

4 PROFESSOR GREENWOOD: Well, Mr. President, I'm  
5 grateful for Professor Shearer's question. Let me try to  
6 answer it in stages.

7 First of all, historically there was, of course, an  
8 attempt in 1936 to 1939 to settle all the land boundary  
9 questions, including the land boundary terminus, and there is  
10 no doubt that what was prepared in the draft Treaty of 1939,  
11 amongst many other things, would have included the fixing of  
12 the land boundary terminus at the point on the low-water line  
13 on the 10-degree bearing from the 1936 Point. That is not in  
14 contest. But equally it's not contested that that agreement  
15 was never concluded, and that is a very important issue. It  
16 goes to the point raised by Sir Shridath Ramphal on the very  
17 first day of these hearings. There are other boundary issues  
18 between the parties that were dealt with in that 1939 draft  
19 treaty and which also remained open because the Treaty was  
20 never concluded, and the later attempts of the Treaty also  
21 failed.

22 Now, one bit of the agreement that was implemented and  
23 we say the only bit that was implemented, was the territorial  
24 sea boundary. Now if we are right, that territorial sea  
25 boundary follows that line there. The question of how far out

10:39:51 1 it goes is a pure merits question. We don't raise a  
2 jurisdictional issue about that.

3           What Guyana is seeking to do, with the greatest of  
4 respect, is to get the benefit of a bit of an agreement without  
5 getting any of the obligations. It wants to have its cake and  
6 eat it. What it wants to do is to say--because there was no  
7 independent agreement about the land boundary, not one that  
8 entered into force. What Guyana wants to do is to say, in  
9 order to determine a territorial sea boundary, they did, in  
10 fact, implement part of the 1939 agreement. We would differ  
11 about how far out, but that's not material to this issue.

12           We don't like the territorial sea boundary part of it,  
13 so we're going to back away from that, but we insist that you,  
14 Suriname, stick with the bits that inconvenience you, which is  
15 a land boundary terminus, as we see it, at a point east of what  
16 you might have been able to claim.

17           Now, by accepting a maritime boundary there, Guyana  
18 is, of course--Suriname is, of course, in practice, giving up  
19 any claims to that part of the low-water line. And if you  
20 determine that the maritime boundary is where we say it is, the  
21 practical conclusion is going to be that we are not going to be  
22 able to assert a claim to the low-water line there.

23           But what we say is completely unacceptable is to start  
24 from Guyana's reasoning and say, well, look that's the land  
25 boundary terminus. That was agreed between the parties, though



10:41:21 1 nothing else was, and you can draw a line in whatever direction  
2 you like from there. You can just branch out from the 1936  
3 Point. It's unhistoric. It's plain wrong.

4 Now, jurisdictionally, we say that there is no  
5 jurisdiction in this Tribunal to determine whether the land  
6 boundary finished there or around about there, which is roughly  
7 where the 1959 Guyanese map would have put it, but if it is the  
8 case that you find there is an agreed territorial sea boundary  
9 here, and otherwise we don't see how there can be any agreement  
10 of any kind about where the land boundary finishes, then you  
11 don't need to make a finding about the land boundary terminus.  
12 You can simply take the existing maritime boundary as a given,  
13 and neither side has contested the proposition that if there is  
14 an agreed boundary, then the Tribunal's delimitation proceeds  
15 from that. It doesn't ride roughshod over it. You can take  
16 that as the starting point and then continue from there.

17 Now, we would, of course, say you continue the  
18 10-degree line further north, and Professor Oxman will say much  
19 about that, but that is a pure merits question.

20 We are concerned, first of all, by the way in which  
21 Guyana has framed its claim in this case, trying to have the  
22 best of both worlds. We are secondly concerned by the fact  
23 that this Tribunal as a Law of the Sea Tribunal, should not be  
24 dragged into any aspect of the land boundary dispute between  
25 the parties, and we had thought that was what Sir Shridath

10:42:49 1 Ramphal had also said.

2 PRESIDENT NELSON: Professor Smit has a question.

3 ARBITRATOR SMIT: Professor Greenwood, actually one  
4 preliminary point. On that chart you showed that says no buoys  
5 present, the exact translation is buoys not present.

6 PROFESSOR GREENWOOD: Right.

7 ARBITRATOR SMIT: Which on the Dutch might have the  
8 application there were buoys there and they're no longer  
9 present.

10 PROFESSOR GREENWOOD: Well, I'm greatly--

11 ARBITRATOR SMIT: I don't know if that has any bearing  
12 on your.

13 PROFESSOR GREENWOOD: I confess, that was my reading  
14 of it also, and I thought about taking that point, but it  
15 seemed to me that as there is no other evidence of buoys having  
16 been there, and as the case for the use of the western channel  
17 is, in our submission, unanswerable, it would not have been  
18 proper for me to take this point at that late stage.

19 ARBITRATOR SMIT: My second question is the following.  
20 Assume that the Tribunal follows your argument as to how far  
21 the territorial sea reaches, but doesn't follow your argument  
22 that it goes into the continental shelf and the Exclusive  
23 Economic Zone, then draws a line to determine where the  
24 delimitation between these two zones is, which doesn't start  
25 with the intersection of the 12, the northeast line with the

10:44:18 1 territorial sea, how do you draw that line?

2           PROFESSOR GREENWOOD: Well, Mr. President, sir,  
3 colleagues of mine will address precisely that question, but in  
4 our submission, if we follow Arbitrator Smit's reasoning step  
5 by step, first of all, if the Tribunal is with us that there is  
6 an agreed boundary in the territorial sea, and if it is with us  
7 that that agreed boundary in the territorial sea extends to  
8 that point there, which is the intersection of the north 10  
9 degree east line with a 12-mile limit, then in practice any  
10 further delimitation would have to start from there. Now,  
11 there are various directions in which a line might be drawn, if  
12 you rejected our further submissions, and we will show you the  
13 methodology that the step by step methodology which we submit  
14 has to be followed, but in practice that would be the starting  
15 point of any further delimitation.

16           ARBITRATOR SMIT: Another question. In order to avoid  
17 making any determination as to a land border dispute, could the  
18 Tribunal say that in the application of equitable principles it  
19 fixes a reference point for beginning the delimitation line  
20 somewhere off the coast?

21           PROFESSOR GREENWOOD: Well, Mr. President, that is  
22 Guyana's partial delimitation argument. In our submission,  
23 first of all, you don't need to go there anyway. If we are  
24 right about the agreed boundary in the territorial sea, even if  
25 we are not right about its extent, but if we're right that

10:45:54 1 there is an agreed boundary still in place, then all the  
2 disputes about partial delimitation, Article 9, closing lines,  
3 jurisdiction simply fall away. There would be no reason for  
4 fixing a starting point further out to sea than the terminus of  
5 an existing agreed maritime boundary, and neither party is  
6 asking the Tribunal to do that.

7           It is noticeable that I hope I'm doing this from  
8 memory, I hope I won't misquote Professor Sands, but my  
9 recollection is that he said on Monday that if there was a  
10 territorial sea agreed boundary out to 3 miles, which was the  
11 maximum he was prepared to concede could ever be contemplated,  
12 then it would be possible for the Tribunal to draw a line from  
13 the point 3 miles out to sea. Now, we differ over what that  
14 point is, and I don't think Guyana would seriously contest that  
15 it is 3 miles from the 1936 Point rather than 3 miles from the  
16 low-water line, but it's noticeable that there is no suggestion  
17 there that you should abandon that and begin a partial  
18 delimitation somewhere else, and leave, in effect, a gap in the  
19 line which has to be determined at some future stage.

20           ARBITRATOR SMIT: Thank you.

21           PRESIDENT NELSON: Thank you, Professor Greenwood.

22           There is a sort of inquiry I would like to make of  
23 you. The argument was put that fundamental changes  
24 cannot--fundamental change of circumstances has no application  
25 in the case of a boundary treaty in the interest of stability

10:47:29 1 of boundaries. The argument continues that since we are not  
2 dealing here with a ratified treaty, fundamental change of  
3 circumstances cannot apply. I would like you briefly, because  
4 we don't have much time, to speak as succinctly as you can of  
5 the role of unratified treaties in these proceedings.

6 PROFESSOR GREENWOOD: Yes, certainly, Mr. President.  
7 Let me say first of all, by way of preface, that we don't  
8 accept that there has been any fundamental change of  
9 circumstances anyway, and we say the evidence is overwhelmingly  
10 in support of our contention on that point. But leaving aside  
11 for the moment, what is the agreement here? It is not in our  
12 submission, the unratified Treaty of 1939, because there is no  
13 question of the parties having implemented other provisions of  
14 that 1939 Treaty, and any argument about that really is the  
15 hornet's nest of land boundary disputes which both sides have  
16 invited you to keep clear of.

17 What we say and we don't really sense an argument to  
18 the contrary from the other side, is that in 1936 to '39, the  
19 two parties agreed to go ahead with the implementation of  
20 certain parts of the 1939 package. Now, we say that they  
21 decided to go ahead with the territorial sea boundary. That's  
22 why they built the beacon. That's why the Dutch issued the  
23 Notice to Mariners. That's why the British didn't protest the  
24 Notice to Mariners, and that is why subsequently the Dutch and  
25 the British both say there is an agreed boundary in the

10:49:11 1 territorial sea.

2 Our learned friends don't seriously contest that there  
3 was such an boundary in the territorial sea, although they  
4 dispute its extent, but they say that there was also an  
5 agreement on the terminal point of the land boundary.

6 Now, we say there is no reason whatever, and no  
7 evidence to support the notion that there was a separate  
8 free-standing unwritten agreement to implement the terminus of  
9 the land boundary. No independent agreement to that effect.  
10 What there is is an incidental effect on where one would look  
11 at the terminus of the land boundary coming from the agreement  
12 about the territorial sea. It goes back to an answer I gave, I  
13 believe, to Arbitrator Hossain in the first round speech, where  
14 I said that one mustn't put the cart before the horse here.  
15 What one had was an unwritten agreement to implement the  
16 territorial sea aspects. That had implications for the use of  
17 Point 61 rather than saying there was an agreement to implement  
18 the Point 61 element and then the territorial sea followed from  
19 that. And we say the historical record, particularly the  
20 treatment of marker "A" being washed away in the early sixties  
21 is irreconcilable with any other approach. It is not the  
22 effect of an unratified treaty that is significant here,  
23 Mr. President. It is rather the fact that with the Treaty  
24 being unratified, there is a separate free-standing and, we  
25 accept, unwritten agreement to give effect to certain

10:50:37 1 provisions of it.

2           Now, it's possible to have a binding agreement between  
3 two states that is not in writing. There has to be sufficient  
4 evidence of it, but we say that the evidence here is  
5 irrefutable. Both governments saying in public in  
6 international dealings that there is a boundary along this  
7 line. There is no other way of reading the letter from  
8 Governor Gray. There is no other way of reading the Dutch  
9 letter to the International Law Commission. If those two stood  
10 alone, they would be sufficient evidence.

11           And we say that the principle of fundamental change of  
12 circumstances cannot override an international boundary treaty  
13 must be every bit as applicable to an international boundary  
14 agreement that is unwritten. Otherwise, you undermine the  
15 whole principle of the stability of boundaries. It's the  
16 stability of boundaries which leads to that exception to the  
17 fundamental change of circumstances provision in the Vienna  
18 Convention on the Law of Treaties, not the special status of a  
19 Treaty that gives rise to it.

20           PRESIDENT NELSON: Thank you very much, Professor  
21 Greenwood.

22           ARBITRATOR FRANCK: Professor Greenwood, you said in  
23 passing that if the starting point for the demarcation of the  
24 line pertaining to the territorial sea were at that point on  
25 the 10-degree line where the 10-degree line meets the low-water

10:52:09 1 line, that, of course, would mean that Suriname would have  
2 given--this is an answer to perhaps an earlier question asked  
3 by Professor Smit, that that, of course, means that it would  
4 have abandoned the option to put its point X anywhere on that  
5 nonheadland or headland, as the case may be, that is north of  
6 that point, doesn't that constitute what amounts to an  
7 agreement that that is the terminal point of the land boundary?  
8 You can alter it obviously by agreement any time as you can the  
9 territorial sea, but if there were to be a further negotiation  
10 on the land boundary, it would have to start there, wouldn't  
11 it?

12 PROFESSOR GREENWOOD: Well, if we are right about the  
13 territorial sea, yes. But let me make it quite clear. We have  
14 never said that the starting point for delimitation is the  
15 intersection between the 10-degree line and the low-water line.  
16 We say that there was a boundary drawn using those coordinates,  
17 and that was where it met. That's where it met the land  
18 territory. It is not a semantic distinction that I'm seeking  
19 to make, sir, because it is being suggested by the other side  
20 that you can forget the agreement on the territorial sea and  
21 just look at that tiny stretch of land between the 1936 Point  
22 and the 10-degree intersection.

23 In fact, they have thrown that argument away and then  
24 tried to revive it because they said latterly, oh, never mind  
25 about the intersection appointment. You can intersect with it



10:53:56 1 anywhere. Just take the shortest route to the sea, as if you  
2 were taking a group of school children out swimming. You know,  
3 the quickest route to the sea it is. There is simply no  
4 justification for that whatsoever.

5 Now, it is true that by relying on that territorial  
6 sea boundary, you could probably make a case for saying that  
7 the Dutch authorities estopped themselves from claiming any  
8 land further to the northwest. Although it's interesting that  
9 the British Guiana authorities plainly didn't think that or  
10 they wouldn't have drawn that 1959 map the way they did, it is  
11 fascinating that we've heard nothing about that 1959 map from  
12 the government that is the successor in power--successor in  
13 title to the one that drew it. But it all hinges on the  
14 existence of that territorial sea boundary. If there is no  
15 agreement on the territorial sea boundary, then there is no  
16 agreement on anything around there.

17 What the Guyanese side is seeking to do in these  
18 proceedings, sir, is it's seeking to take the rights that it  
19 perceives it got from an unwritten agreement and ditch the  
20 obligations, and it's the most elementary principle of any  
21 legal system that you simply cannot do that.

22 ARBITRATOR FRANCK: Thank you.

23 PROFESSOR SANDS: I don't want at all to interrupt.  
24 We heard a great deal from Professor Greenwood that concerns  
25 what our argument is. I don't know if it's appropriate, and if

10:55:21 1 it's not, I will immediately take the seat again, but there was  
2 one statement in particular for the avoidance of doubt, I want  
3 to make absolutely sure the Tribunal doesn't take his statement  
4 as to what our view is on the existence or not of an agreement  
5 for the purpose of clarification. I'm in your hands as to  
6 whether you wish me to clarify or respond or not, but I  
7 appreciate entirely it's not our day in Court today.

8 PRESIDENT NELSON: That is the point. It may not be.  
9 You had your chance, and I think why don't you allow Suriname  
10 to discharge its part of.

11 PROFESSOR GREENWOOD: Mr. President, sir, I'm indebted  
12 to you. I have taken rather more than my allotted span of  
13 time, although most of it was taken in answering it from  
14 questions from the Tribunal. I hope the Tribunal and my  
15 colleagues will forgive me.

16 May I suggest we take the coffee break there and that  
17 you invite Professor Oxman to speak after the coffee.

18 PRESIDENT NELSON: I quite agree with you. The  
19 hearing is adjourned for 15 minutes.

20 (Brief recess.)

21 PRESIDENT NELSON: I give the floor to Professor  
22 Oxman.

23 PROFESSOR OXMAN: Thank you, Mr. President.

24 Mr. President, with a view to assisting the Tribunal  
25 at this advanced stage in the proceedings, I would propose to

11:22:10 1 make just a very few observations, taking into account some of  
2 the remarks made by our distinguished colleagues from Guyana on  
3 Monday. Needless to say, I would be very happy to respond to  
4 any questions from Members of the Tribunal in this regard at  
5 any time. I'm at your disposal.

6 I plan first to address certain questions regarding  
7 rivers. Then I would plan to comment on the issue of the  
8 sources of law and the content of that law with respect to  
9 maritime delimitation, and finally I would like to make a few  
10 brief remarks on some important policy considerations.

11 Let me begin with rivers. As we all know, the Law of  
12 the Sea Convention characterizes waters landward of the  
13 baseline as either archipelagic waters or internal waters. But  
14 it is important to distinguish between different types of  
15 internal waters. This case involves a river. Rivers generate  
16 territorial seas in the same way as land territory. As  
17 Mr. Greenwood indicated, Guyana's challenge to Suriname's first  
18 base point for drawing the provisional equidistance line  
19 ignores Suriname's sovereignty over the river itself. It is  
20 irrelevant whether that sovereignty along the river bank also  
21 includes the land. Accordingly, Suriname's base point as one  
22 is entirely appropriate, regardless of whether Suriname has  
23 drawn a closing line. Guyana's challenge to the base point is,  
24 to the contrary, inconsistent with its firmly stated position  
25 regarding Suriname's sovereignty over the river.

11:24:07 1           Some internal waters are part of the sea. Rivers and  
2 lakes are not. The regime of rivers and lakes, including their  
3 division between riparian states is not governed by the Law of  
4 the Sea. Boundaries between states and rivers are not maritime  
5 boundaries. For example in his boundary report, in the  
6 boundary report of Judge Aréchaga regarding Argentina and  
7 Uruguay that we looked at last week, Judge Aréchaga  
8 specifically says that the maritime boundary begins at the  
9 river closing line--in that case, a very long river closing  
10 line.

11           Guyana has suggested that the jurisdictional  
12 references to continental and insular land territory in the Law  
13 of the Sea Convention are not meant to embrace lakes and  
14 rivers, or at least rivers. This is breathtaking in its  
15 implications. Is Guyana suggesting that lakes and rivers are  
16 part of the sea, that the Law of the Sea governs the division  
17 of lakes and rivers between riparian states? That there is  
18 accordingly jurisdiction to do so under this Convention? Is  
19 Guyana suggesting, for example, that Iran, which has yet to  
20 become party to the Law of the Sea Convention, that Iran cannot  
21 become party to this Convention without accepting compulsory  
22 jurisdiction or at least compulsory conciliation regarding the  
23 exceedingly sensitive question of sovereignty and control in  
24 the Shatt Al Arab.

25           Quite apart from its other manifest effects, I fail to

11:26:18 1 see how such an interpretation would advance the policy of the  
2 United Nations s General Assembly of promoting universal  
3 ratification of the Law of the Sea Convention.

4           Needless to say, the legality of using any line, be it  
5 a natural line or a closing line or a straight baseline, for  
6 purposes of exercising rights at sea is an entirely different  
7 matter. Of course there is jurisdiction to determine if the  
8 line conforms to the requirements of the Law of the Sea  
9 Convention for the purpose of exercising rights at sea. We  
10 have never questioned that. If there is a dispute as to the  
11 location of the low-water line in a particular area, as there  
12 is in this case with respect to the effect of Vissers Bank,  
13 then, of course, a court with jurisdiction to delimit the  
14 maritime boundary has jurisdiction to decide that question. If  
15 a state draws a river closing line, then the question of  
16 whether that closing line was excessive is, of course, a Law of  
17 the Sea issue. But as the International Court of Justice  
18 indicated in the Anglo-Norwegian fisheries case, it is up to  
19 the coastal state to draw the closing line in the first place.

20           Now, this brings us to some remarks that I had  
21 prepared and that are perhaps also responsive in addition to  
22 what Professor Greenwood said to Professor Shearer's question.  
23 As I indicated last week, the Netherlands and Suriname relied  
24 on the existence of an established territorial sea boundary at  
25 the 10-degree line. They relied upon the existence of that

11:28:07 1 boundary for decades. The effect is that Guyana's territorial  
2 sea may not extend east of the 10-degree line. From that it  
3 also follows that Suriname would be precluded from challenging  
4 Guyana's sovereignty over the territorial sea from the  
5 low-water line west of the 10-degree line. And I hope that  
6 that adds some measure of further clarification with respect to  
7 Professor Shearer's question.

8 Let me turn next to the question of the sources of law  
9 in this case and their meaning. The Law of the Sea Convention  
10 is the source of law in this case. Articles 74 and 83 of that  
11 Convention contain their own references to international law.  
12 There is no need to consider any other reference to  
13 international law in the Convention in connection with those  
14 two Articles. The meaning of the reference to international  
15 law in Articles 74 and 83 is necessarily informed by the  
16 interpretation of those Articles in light of their context and  
17 history. That history precludes the kind of substantive  
18 priority for equidistance that Guyana suggests, and it  
19 precludes it even if Guyana were otherwise able to find such a  
20 substantive priority in international law, which it cannot do.

21 Guyana relies on the comments of Judge Guillaume in  
22 this regard. Suriname has the greatest respect for Judge  
23 Guillaume. We do not for a moment question the fact that his  
24 views on the subject of maritime delimitation are worthy of  
25 attention. We do not believe that Guyana's counsel correctly

11:30:13 1 understands the import of Judge Guillaume's remarks, but even  
2 if their reading were correct, we could not accede to the  
3 intimation that statements by the President of the Court  
4 designed to apprise the United Nations General assembly of the  
5 work of the Court are to be understood as informing the meaning  
6 and juridical effect of cases decided by the International  
7 Court of Justice. It is for this Tribunal, we submit, to  
8 determine what those cases mean and what weight is to be  
9 accorded those cases.

10           It would appear that Guyana wishes to have it both  
11 ways in criticizing Suriname's analysis of those cases as well.  
12 On the one hand Guyana alleges that Suriname is incorrect in  
13 suggesting a distinction between opposite and adjacent coasts.  
14 On the other hand, Guyana alleges that Suriname has failed to  
15 characterize other delimitations as based on a relationship of  
16 adjacency. Both criticisms misperceive Suriname's position.  
17 Suriname does not contend that there is an a priori distinction  
18 between the delimitation principles and rules applicable to  
19 opposite and adjacent states. What it has tried to demonstrate  
20 is that experience both in state practice and in case law,  
21 experience teaches us that certain types of problems are more  
22 likely to arise with an equidistance line in the case of  
23 adjacent states, for example, where there is a convex or  
24 concave feature close to the terminus of the land frontier.  
25 Those geographic facts and that accumulated learning cannot be

11:32:11 1 wished away.

2           Thus, Suriname stands by its view that this is the  
3 first case in which an Annex VII Tribunal is being asked to  
4 establish a lateral maritime boundary between adjacent states.  
5 And this means that this is the first time that an Annex VII  
6 Tribunal has been called upon to address the particular  
7 problems that can arise in that context, such as distorting  
8 effects on an equidistance line of a convexity or concavity  
9 near the terminus of the land frontier. Clearly, this problem  
10 cannot arise between islands that are a over a hundred miles  
11 apart.

12           Suriname doesn't question that some kinds of problems  
13 associated with an adjacency relationship can arise as between  
14 states whose territory is not adjacent. Indeed, we pointed  
15 that out ourselves. This is the slide I used last week. Let's  
16 take the Barbados-Trinidad and Tobago case.

17           According to the Award in that case, Barbados is  
18 situated 116 nautical miles northeast of Tobago. It is evident  
19 that they are not adjacent, that there is no common land  
20 frontier, and that the entirety of the maritime boundary is at  
21 a substantial distance from both coasts.

22           The Barbados-Trinidad and Tobago Tribunal nevertheless  
23 abandoned equidistance and used a different line for the  
24 eastern or Atlantic segment of the boundary. It did this in  
25 order to avoid a cut-off the frontal projection of the coast of



11:34:00 1 Trinidad and Tobago. This is shown clearly in the slide I used  
2 last week, and we included this again at Tab L1.

3           This is, of course, the kind of coastal front cut-off  
4 problem that can arise in the case of coasts whose relationship  
5 to the area being delimited is one of adjacency. We don't  
6 maintain that the problems with equidistance are limited to  
7 lateral boundaries between states with a common land frontier.  
8 Indeed, they arose in the Qatar-Bahrain case. My distinguished  
9 colleague Mr. Sands cannot conjure an equidistance line into  
10 existence simply because the particular circumstances that  
11 caused the Court to deviate from equidistance in the  
12 Qatar-Bahrain case are, in his view, different from the  
13 circumstances in this case. It all depends on the  
14 circumstances.

15           We, of course, recognize that a small boundary segment  
16 between Cameroon and Nigeria was an equidistance line.  
17 Suriname's position is not that equidistance line is never  
18 appropriate as between adjacent states. Suriname's position is  
19 that an equidistance line is not appropriate in the geographic  
20 circumstances of this case, and that the accumulated learning  
21 on the subject beginning with the North Sea cases and extending  
22 through the Barbados-Trinidad and Tobago Award clearly explains  
23 why.

24           The Tribunal may recall in our review last week of  
25 each of the South American lateral boundaries, equidistance was

11:35:44 1 not generally the method of choice between adjacent states, but  
2 we also noted that where the direction of the adjacent coasts  
3 of the two states is generally the same and where there are no  
4 distorting features near the land frontier, then a  
5 perpendicular to the general direction of the coasts that the  
6 land frontier will ordinarily not vary too much from an  
7 equidistance line. And, of course, it is that Judge Aréchaga  
8 was contrasting with the situation with regard to the use of  
9 parallels of latitude on the west coast of South America in the  
10 extracts cited by Professor Schrijver.

11 Suriname contests Guyana's attempts to convert a  
12 method of analysis into a substantive priority for  
13 equidistance. No such substantive priority exists in the law,  
14 in our view. In the Barbados-Trinidad and Tobago case, the  
15 Tribunal made clear in paragraph 306 that the use of a  
16 provisional equidistance line is an initial procedural step, an  
17 hypothesis. It did not suggest that equidistance enjoys  
18 substantive preference over any other method, and specifically  
19 said that no case had so held. Suriname believes that sound  
20 reasons should be adduced for using any method of delimitation.

21 In the Barbados-Trinidad and Tobago case, the Tribunal  
22 observed that neither of the parties asked for an alternative  
23 method of delimitation. In this case, Suriname has.  
24 Suriname's pleadings in this case have, in fact, anticipated  
25 the procedural and analytical steps indicated in the

11:37:47 1 Barbados-Trinidad and Tobago Award with respect to the  
2 selection of a method of delimitation. Let's go through those  
3 steps.

4 Suriname was the first to submit a provisional  
5 equidistance line in this case. That provisional equidistance  
6 line was indicated in its Counter-Memorial. That line was  
7 drawn by Suriname's hydrographic experts, the Hydrographic  
8 Service of The Royal Netherlands Navy, who have been  
9 consistently consulted by Suriname's legal team in the course  
10 of its work.

11 Suriname then explained what it perceived to be the  
12 defects of the equidistance approach in the geographic  
13 circumstances of this case. We demonstrated why we believed  
14 that a strict equidistance line drawn with reference to only a  
15 few parts of the coast is distorted by their relationship to  
16 each other. We also explained why we believed that Guyana's  
17 approach entails a subjective search for coastal features that  
18 are to be discounted in modifying the equidistance line.

19 We continued by showing why we believe the use of a  
20 line that bisects the angle formed by the general direction of  
21 the respective coasts of the parties better reflects the  
22 geographic circumstances of this case and explained why we  
23 think it produces a more equitable result in light of those  
24 circumstances. We explained our view that a disciplined  
25 determination--a disciplined determination--of the general

11:39:31 1 direction of the coasts of the parties affords greater  
2 objectivity, and that the angle bisector is a more objective  
3 simplified equidistance line rooted in the geographic  
4 relationship between the coasts of the parties.

5 Accordingly, Suriname believes it has thus more than  
6 satisfied the well-founded justification criterion articulated  
7 by paragraph 306 of the Barbados-Trinidad and Tobago Award for  
8 the use of its proposed method of delimitation.

9 Mr. President, let me conclude with some brief  
10 comments on underlying policy concerns. Guyana is entirely  
11 correct when it pointed out that the stability of international  
12 frontiers is an important policy in forming international law  
13 that should be respected. What divides the parties is the  
14 application of that principle in this case. With regard to the  
15 territorial sea, as Mr. Greenwood pointed out, the colonial  
16 powers, by virtue of their consistent and concerted behavior  
17 over many decades, established a territorial sea boundary at  
18 the 10-degree line. Together, they physically marked its  
19 location by reference points emplaced on land, and together  
20 they implemented it at sea with a navigational beacon and  
21 official Notice to Mariners. Suriname believes that the policy  
22 of stability of international frontiers is unquestionably  
23 engaged by these facts.

24 On the other hand, no boundary was ever established by  
25 the parties with respect to the continental shelf. A fleeting

11:41:31 1 confluence of opinion regarding the content of the applicable  
2 principles of international law does not establish an  
3 international boundary. Neither does oil leasing practice  
4 unilaterally conducted by one party.

5           Suriname also shares Guyana's concerns about the  
6 impact of the award in this case on the future disputes between  
7 other states, including our neighbors in the Caribbean; but  
8 again, the parties differ as to what that means. States that  
9 are able to agree on equidistance lines do so. Most serious  
10 maritime boundary disputes divide states that are generally  
11 content with equidistance from states that believe equidistance  
12 will produce a seriously inequitable boundary. From the  
13 perspective of international public order, the important thing  
14 is that those maritime boundary disputes be resolved  
15 peacefully. The introduction into maritime delimitation  
16 adjudication of slavish obedience to equidistance with the  
17 prospect of little more than some fiddling at the margins would  
18 be likely to discourage states that have problems with  
19 equidistance from agreeing to submit their maritime boundary  
20 disputes to third party settlement.

21           What we are likely to achieve under an approach  
22 according substantive primacy to equidistance is the illusion  
23 of order coupled with the greater number of unmanageable  
24 disputes.

25           Mr. President, the United Nations Convention on the

11:43:30 1 Law of the Sea represents the first realistic opportunity in  
2 the history of international law, and the only plausible  
3 opportunity for the foreseeable future to establish a truly  
4 global regime for the oceans in which all states participate.  
5 Among the Convention's many achievements is a signal advance in  
6 the obligation of states to arbitrate or adjudicate unsettled  
7 disputes. Guyana's positions in this arbitration are unlikely  
8 to advance these goals. Guyana invites this Tribunal to  
9 stretch the bounds of compulsory jurisdiction under the Law of  
10 the Sea Convention to embrace disputes between neighboring  
11 states regarding sovereignty over land and rivers, and Guyana  
12 urges this Tribunal to restrict the resolution of disputes  
13 regarding maritime boundaries to a cosmetic exercise in  
14 equidistance.

15           Those positions may well have two undesirable  
16 consequences. They may well discourage additional  
17 ratifications of the Law of the Sea Convention, and they may  
18 well encourage both new and existing parties to exercise their  
19 right under the Convention to exclude maritime boundary  
20 disputes and perhaps other disputes from compulsory  
21 jurisdiction under the Convention. That process,  
22 unfortunately, is already underway.

23           By rejecting those positions, this Tribunal has the  
24 opportunity at a crucial time in the development of our  
25 understanding of the implications of the Law of the Convention

11:45:22 1 to contribute to the furtherance of the rule of law in  
2 international affairs. We urge it to seize that opportunity.

3 Mr. President, that concludes my prepared remarks. If  
4 the Members of the Tribunal have any questions, I'd, of course,  
5 be happy to respond.

6 ARBITRATOR SMIT: Professor Oxman, as a relative  
7 novice to this subject matter, I was intrigued by the survival  
8 of the equidistance principle after apparently it had been  
9 rejected by the Court and also by the Conventions, but it has a  
10 certain appeal. If you want to decide where the line lies, you  
11 take an equidistance. But especially in light of what  
12 President Guillaume said, that the advantage was certainty, I  
13 started wondering about that certainty. In this case, we have  
14 heard that there is uncertainty as to where you put the  
15 baselines; right? S1, S2, and S14 are in contention.

16 Two, there is uncertainty where exactly you put it.  
17 In fact, when you have accretion and evulsion, it may not be  
18 clear where exactly you begin. That may be the Visser's Bank  
19 problem or not.

20 Then you must make adjustment for geographical  
21 oddities, like the bulge, the Berbice Headland or the other one  
22 that had the bulge. Is there also a problem as to where you  
23 start making these equidistance configurations? Or does the  
24 equidistance configuration necessarily lead you to a starting  
25 point?

11:47:36 1           In any event, are there any other problems that arise  
2   in connection with the application of the equidistance  
3   principle? Have I properly assessed all the ones, at least in  
4   this case?

5           PROFESSOR OXMAN: I would certainly agree that the  
6   ones that you have assessed are definitely problems with an  
7   equidistance line. I would like to indicate that in this case  
8   it is Guyana that has indicated that an equidistance line  
9   should be used, and should then be modified. We fail to see  
10   how the processes of modification of the equidistance which  
11   will inevitably as it did engage, as it did in this case,  
12   involve one party saying you should discount features on the  
13   other party's coasts, and we both said that, how that is  
14   objective or a certain process.

15           What happens is that you start out with what appears  
16   to be a mathematical process that isn't, in fact, a  
17   mathematical process for the reasons that you indicated that  
18   involves a great deal of uncertainty and legal judgment, and  
19   then the moment we start talking about adjusting the  
20   equidistance line, we get into what even the Barbados-Trinidad  
21   and Tobago Tribunal identified as a subjective process.

22           Our view is that, faced with that kind of a problem in  
23   this case--in this case--it would be more objective for the  
24   Tribunal to say, instead of getting involved in this kind of a  
25   process, we are going to determine, presumably in consultation



11:49:23 1 with the Tribunal's expert, what constitutes an objective  
2 characterization of the general direction of the coasts of both  
3 parties, and then proceed to establish what is, in fact, an  
4 equidistance line. The angle bisector, once the Tribunal is  
5 satisfied it has identified the general direction of the coast  
6 of the parties is the equidistance line between those two  
7 general directions. And we think that in the circumstances of  
8 this case, not every case, that will produce a higher level of  
9 objectivity, predictability, and a lesser level of  
10 subjectivity.

11 Now, I can't maintain that the process of identifying  
12 the general direction of the coast is one that is absolutely  
13 certain, but it is one, we believe, where the Members of the  
14 Tribunal, in consultation with their expert, can look at the  
15 coast and can reach a reasonable legal judgment as to what  
16 constitutes the general direction. And a reasonable legal  
17 judgment in which they're focused on what the legal objective  
18 is, which is the establishment of a boundary that is equitable  
19 in light of the geographic relationship between the coasts.

20 By way of contrast, we believe that the process of  
21 starting with an equidistance line and then fiddling with it  
22 gets the Tribunal diverted into what's a convexity, where's a  
23 concavity, who is pushing the line, which way, and is it fair  
24 when you say our feature pushes the line back because the line  
25 wouldn't be there in the first place if your feature hadn't

11:51:05 1 pushed it in that direction. And I leave it to Mr. McRae to  
2 correct whether that is or is not a fair characterization of at  
3 least one aspect of what is happening here. To portray that as  
4 an objective process not even the Barbados-Trinidad and Tobago  
5 Tribunal would defend.

6 We do agree that equidistance, the provisional  
7 equidistance line has the virtue of focusing the mind to  
8 starting with on the most important factor, which is the  
9 geography of the coast. We have never suggested that this  
10 delimitation depart from being focused on the geography of the  
11 coast. We believe that the best way to produce an equidistance  
12 line that fairly reflects the geography of the coast in this  
13 case is to transcend these disputes about this feature, that  
14 feature, and this distortion and that distortion, and for the  
15 Tribunal to decide for itself what it believes to be a fair  
16 representation, an accurate representation, an objective  
17 representation of the general direction of the coasts of the  
18 parties.

19 We have submitted to the best of our ability with our  
20 experts an indication of what we think that is, but we do not  
21 suggest the Tribunal is bound by that determination. It is for  
22 the Tribunal to decide what it believes to be the accurate  
23 general directions of the respective coasts of the parties. I  
24 hope that is responsive, sir.

25 ARBITRATOR SMIT: Well, you anticipated my second

11:52:42 1 question, and that is that in the angle bisector method, there  
2 is also a measure of uncertainty, but that is primarily, if not  
3 exclusively, in the direction of the lines you draw; right?

4 PROFESSOR OXMAN: Exactly.

5 ARBITRATOR SMIT: And the desirability of doing that  
6 depends, to a certain extent, on how much water you cross in  
7 drawing this line and not on either side of the line, does it  
8 not?

9 PROFESSOR OXMAN: It would depend. A line  
10 representing the general direction of the coast will inevitably  
11 have some land on the seaward side and some water on the  
12 landward side; and, of course, it depends upon a perception of  
13 what is, in fact, an accurate representation.

14 ARBITRATOR SMIT: Right. But, for instance, in the  
15 example we have seen, you said, okay, we will go this far and  
16 then maybe we go up, this hockey stick effect, but it would  
17 also be possible to take the next high point and draw a line  
18 that way which would change the angle somewhat.

19 PROFESSOR OXMAN: It's possible--it's possible--to  
20 imagine different lines that would constitute the general  
21 direction of the coast that determines, that accurately  
22 reflects that part of the coast that is relevant to the  
23 determination of the maritime boundary, but it is our view that  
24 if one looks at the coast carefully and considers a variety of  
25 alternative hypotheses regarding the general direction that one

11:54:26 1 will arrive at a general direction that accurately represents  
2 the general direction of the coasts for purposes of an angle  
3 bisector.

4           Now, in saying that, let me distinguish another point  
5 which is where that diagram that we drew showing the little  
6 line jumping up at the Essequibo River appeared. That was not  
7 drawn for purposes of representing the general direction of the  
8 coast. It was drawn for purposes of establishing what  
9 constitutes the area of delimitation for purposes of  
10 determining proportionality, which is a different question, and  
11 the two questions are, in fact, entirely separate. The lines  
12 in question that would produce the angle bisector are lines  
13 that simply represent the general direction of the coast. As I  
14 pointed out in my remarks last week, their length as such will  
15 not change the angle. The importance of getting their lengths  
16 right is so that there is a fair representation of the general  
17 direction of each party's coasts.

18           But, for example, in the Gulf of Maine case, the line  
19 representing the general direction of the United States coast  
20 was much longer than the line representing the general  
21 direction of the Canadian coast at the angle, but that didn't  
22 change the position of the bisector. Once one has to proceed  
23 to a test of the equitableness of the resulting line, and one  
24 of those tests is proportionality, then one has to perform an  
25 entirely different geographic exercise, which is to try and

11:56:12 1 figure out what is the area delimited in order to figure out  
2 which state got which proportion in proportion to what part of  
3 the coast, and in this case, as in virtually all maritime  
4 delimitation cases, the parties have submitted substantially  
5 different figures on that question.

6 ARBITRATOR SMIT: Thank you.

7 The last question: In the North Sea Shelf Case, the  
8 ICJ said that there are two principles that bear upon the  
9 equitable solution, and that is to the extend the natural  
10 prolongation and to achieve as little encroachment upon the  
11 natural prolongation of the other state. Does the angle  
12 bisector approach lead to more acceptable result in those  
13 regards than an equidistance approach?

14 PROFESSOR OXMAN: We believe that in the circumstances  
15 of this case it does. That natural prolongation is understood,  
16 as it was, indeed, applied in the Tunisia-Libya, Gulf of Maine,  
17 and other cases as the projection seaward of the coastal front,  
18 and we believed that in this case the effect of the angle  
19 bisector is not to eliminate the area of overlap of the coastal  
20 frontage--that's impossible when the coasts meet at an  
21 angle--but to minimize it so that each case, each state starts  
22 out retaining as much of its coastal front projection as  
23 possible. There is an overlap between the two projections, and  
24 the angle bisector, in fact, will divide those equally.

25 Now, once that is done--that is a mathematical

11:58:08 1 exercise--then it is, of course, for the Tribunal to decide  
2 whether that resulting geographic line is equitable. Suriname  
3 has of course argued that for reasons of equity, that angle  
4 should be shifted somewhat to the west.

5 ARBITRATOR SMIT: Thank you.

6 ARBITRATOR FRANCK: Professor Oxman, I think the  
7 exchange between you and my colleague, Professor Smit, may not  
8 have clarified, may have added to confusion about the  
9 perception of the nature of the role of the equidistance line.  
10 Professor Smit's questions elicited from you the response that  
11 the line is highly subjective, confusing, full of odd variables  
12 that cannot be predicted and that lead to outside results. So,  
13 I'm going to ask you a series of questions which perhaps you  
14 can answer in a word.

15 Is there any confusion in the law as to where on the  
16 coast the base points must be located?

17 PROFESSOR OXMAN: The definition of the equidistance  
18 line is a line every point of which is equidistant from the  
19 nearest points on the respective coasts.

20 ARBITRATOR FRANCK: No confusion about that?

21 PROFESSOR OXMAN: There may be some confusion as to  
22 where the coast is.

23 ARBITRATOR FRANCK: No, no, I'm asking you about the  
24 law, not the geography at this point.

25 PROFESSOR OXMAN: Yes.

11:59:33 1            ARBITRATOR FRANCK: And the reason I'm doing that is  
2 because every law inevitably has gray areas that need to be  
3 construed, but there's no--we are not in doubt as to what the  
4 law says here as to where the base points must be located. Is  
5 there any confusion in the law as to where on the coast the  
6 farthest base point from the land boundary may be located? Are  
7 we left in doubt as to how far the sides can spread out from  
8 the boundary between them to locate their base points?

9            PROFESSOR OXMAN: I'm not--the equidistance line  
10 extending to the limit of jurisdiction, which in this case  
11 would be 200 miles, will consistently depend upon the nearest  
12 points on the respective coasts. There is no limitation with  
13 respect to how far they may be as long as the nearest points on  
14 the respective coasts are equidistant from that point on the  
15 equidistance line, which is a geographic definition.

16           ARBITRATOR FRANCK: Well, what I was asking you,  
17 because it grew out of the sort of aura about the  
18 indefiniteness of the equidistance line is whether the law has  
19 anything to say about how far towards French Guiana Suriname  
20 may extend its base points or how far towards Venezuela British  
21 Guiana may--I'm sorry, Guyana may extend its base points. In  
22 other words, is there a legal principle here or are we simply  
23 left to put them anywhere that seems to be advantageous?

24           PROFESSOR OXMAN: The base points for measuring the  
25 equidistance line--the equidistance line is a mathematical

12:01:36 1 concept which has been incorporated into the law. It's not as  
2 such a legal concept which the International Court, of course,  
3 pointed out. The points need to be equidistant from the  
4 nearest points on the territory of the respective states.  
5 That's what the equidistance line is. The question of the  
6 distance of those points from the land frontier is not itself  
7 relevant as long as they are the nearest--as long as they are  
8 the nearest points, and that is purely mathematical construct.  
9 The legal element, of course, is that the points need to be on  
10 the respective coasts of the parties.

11 ARBITRATOR FRANCK: So there is no confusion there.

12 Any confusion in the law as to how the line is drawn  
13 from the base points to intersect to create an equidistance  
14 line shall be drawn? Can it be any angle at all, or is it  
15 pretty clear in the law how those intersecting lines are drawn?

16 PROFESSOR OXMAN: The construction line used to create  
17 an equidistance line follows its mathematical definition. That  
18 is that you consistently look for points on the respective  
19 coasts that are equidistant from the point on the equidistance  
20 line. Their distance from the land frontier is itself not  
21 relevant to constructing the equidistance line it. It may be  
22 relevant to the equity of the equidistance line.

23 ARBITRATOR FRANCK: Precisely. That would be my last  
24 point, that we have conflated, have we not, two concepts, that  
25 is, the equitableness of the line and the certainty of the



12:03:16 1 line. The line is not in the least subjective or uncertain.  
2 Its equity is an entirely separate matter. It may be a  
3 starting point for determining whether the line happens to be  
4 equitable or not, and then you get into confusion, that's true,  
5 as you do in any line. Does this, in fact, proportionately  
6 divide along equitable principles the allocation of territorial  
7 sea and the economic zone as between the parties? But there is  
8 no confusion as to how to draw an equidistance line.

9 Your exchange with Professor Smit left it as if you  
10 could draw an equidistant line almost anywhere; there was  
11 really no way of determining what an equidistance line is. It  
12 is absolutely clear what an equidistance line is, isn't it, I  
13 mean, as witness to the fact that you and the other side came  
14 up with the same line essentially?

15 PROFESSOR OXMAN: There can be, and I grant that  
16 that's a legal point. The problem is what happens when we move  
17 a mathematical concept into the law, and there is always a  
18 headache in doing that. Indeed, it affects this delimitation.  
19 The notion that the continental shelf was a geological concept  
20 has almost completely disappeared, not entirely, from the law.  
21 I mean, 200 miles has nothing to do with geology. Moving a  
22 mathematical concept into the law will nevertheless require the  
23 Tribunal, as a matter of law, to decide what the base points  
24 are. There is a dispute in this very case with respect to the  
25 provisional equidistance line with regard to Visser's Bank, so

12:05:05 1 that there will be a measure of legal confusion. There is also  
2 a legal disagreement between the parties of some significance  
3 regarding precisely what the situation is in the immediate  
4 vicinity of the land frontier. So, there can be some  
5 differences, but in general absolutely. In general, one could  
6 create the mathematical construct.

7 The difficulty is what happens next. If one looks--

8 ARBITRATOR FRANCK: Mr. Oxman, I concede that. I  
9 understand that there are lots of problems about equitable  
10 distribution of a resource, any resource, and that's not what I  
11 was asking you about. All I wanted to do was to clarify what I  
12 thought might have been perceived as your answer that there is  
13 no mathematical--that is to say, objective way--to create an  
14 equidistance line, that's really all, and you've answered that.

15 Thank you.

16 I didn't mean to cut you off. It's your time, if you  
17 want, but I think the question of equitable distribution is a  
18 totally separate issue which we are delighted to hear you on.

19 PROFESSOR OXMAN: I would only like to add that I  
20 agree, and what I meant to say is that once you reach the  
21 question of what you do next, the problem is that the  
22 equidistance line is simply a mathematical construct. There  
23 are two possibilities. One, the Tribunal will look at it and  
24 say, we think this completely equitable, and that's that. The  
25 other possibility is that they will look at it and say there is

12:06:40 1 something wrong here.

2           Now, there are two ways to go about fixing it if there  
3 is something wrong. One is to adjust the equidistance line  
4 itself or move it wholesale, which is what happened in the  
5 Libya-Malta case. The other is to say we think of another way  
6 of looking at this, or if you will, of constructing a different  
7 kind of arithmetic or geometric line that is an equidistance  
8 line would be better suited. And the point I was making is  
9 that equidistance as a mathematical method promises certainty  
10 only if the conclusion is that it's equitable. If the  
11 conclusion is that it is not equitable, one is left with a  
12 highly subjective set of problems in adjusting the equidistance  
13 line. We believe that those problems in this case are more  
14 objectively addressed by using the angle bisector. But that is  
15 to agree with you, Professor Franck, not to disagree.

16           ARBITRATOR SMIT: It becomes kind a discussion among  
17 the members of Tribunal, but I would like to have the benefit  
18 of your enlightenment. Sure, the method of determining the  
19 equidistance line is clear, but the application of the method  
20 in a particular factual context is not clear; right? In other  
21 words, once we determined where the baselines are properly put,  
22 we can make the computation, but the question is where do we  
23 put the base lines properly? And that you can say is also an  
24 application of the law, but that in the context of a particular  
25 situation creates--may create a problem as this case

12:08:45 1 demonstrates.

2           PROFESSOR OXMAN: I think that's right. In the  
3 Qatar-Bahrain case, as I recall, there was a problem with  
4 straight baselines. There would be a problem in this case with  
5 respect to Visser's Bank. There can be legal questions that are  
6 not necessarily easy to resolve that involve an identification  
7 of the base points in the--at the start of my remarks it seems  
8 like a small question, but we think that the issue that Guyana  
9 raised with respect to point S1 goes to a fundamental question  
10 in this case, which is Suriname's sovereignty over the river,  
11 and we believe that Guyana's challenge to that point is  
12 inconsistent with the position it stated at the start of these  
13 proceedings regarding Suriname's sovereignty over the river.  
14 So that there can be legal questions that are not necessarily  
15 easy that have to be resolved in order to figure out where the  
16 coast is for the purpose of then constructing with mathematical  
17 certainty the line that Professor Franck described. So that  
18 there would first be a set of legal determinations, then there  
19 would be a mathematical exercise, and then one would have to  
20 superimpose the law on that again, and then say, well, what do  
21 we think of that?

22           ARBITRATOR SMIT: And then it is the configuration of  
23 the coasts that determines whether there is a variation to be  
24 made in the--for the purpose of equity or maybe for the purpose  
25 of just taking into account the peculiarities of the coast;

12:10:16 1 right?

2 PROFESSOR OXMAN: Absolutely.

3 ARBITRATOR SMIT: And that also involves questions  
4 that are not immediately resolved. For instance, should the  
5 Berbice Headland be taken into account or should it not be  
6 taken into account. So, again, application of that principle  
7 of to what extent we take the coastline into account as it  
8 affects the equidistance line?

9 PROFESSOR OXMAN: Absolutely, and there is no  
10 mathematical certainty to that. The parties in this case have  
11 spent a great deal of time, and will continue to, demonstrating  
12 why they believe there are certain features that distort the  
13 equidistance line. One of the virtues--one of the virtues of  
14 an angle bisector is that it permits the Tribunal to transcend  
15 those quarrels and make a determination for itself of what it  
16 thinks the general direction of the coast is.

17 Another advantage of the angle bisector is that the  
18 Tribunal in using an angle bisector in satisfying itself as to  
19 what the general directions of the coast is doesn't have to  
20 worry about precisely where it puts particular base points and  
21 it can thereby avoid some otherwise sticky questions regarding  
22 their location.

23 ARBITRATOR SMIT: But it also doesn't have to make any  
24 adjustments anymore. Once you determine the general direction,  
25 then any adjustment because of peculiarities to the coasts are

12:11:53 1 not considered.

2 PROFESSOR OXMAN: The angle bisector, once identified,  
3 would be subject to the test of equitable result. Suriname,  
4 for example, has identified a 17-degree angle bisector which we  
5 believe should then be adjusted to a 10-degree line for the  
6 reasons that we argued.

7 But any geographic line, including the angle bisector,  
8 would then be subject to additional considerations of whether  
9 the result is equitable. We do believe, however, that the  
10 angle bisector will, insofar as the geography of the coastline  
11 itself is concerned, get you substantially closer to an  
12 equitable result than an equidistance line would under the  
13 circumstances of this case because the equidistance line is  
14 unreasonably distorted by the convexity close to the land  
15 frontier on Guyana's side and what we considered to be the  
16 concavity close to the land frontier on Suriname's side.

17 ARBITRATOR SMIT: Thank you.

18 PRESIDENT NELSON: Professor Oxman, I'm sorry to  
19 prolong this interrogation. Would you agree or disagree with  
20 the proposition that in the last decade or so there has been a  
21 turning point with regard to the status of equidistance or the  
22 principle of equidistance?

23 PROFESSOR OXMAN: No, I disagree with that. I think  
24 what has happened--and Suriname didn't challenge this--I in my  
25 own remarks explained the reason why it happened is that a

12:13:36 1 degree of analytical discipline has been introduced into the  
2 process by the practice, I wouldn't say it's the rule, but by  
3 the practice of starting with a provisional equidistance line  
4 and taking a look at it. We have no problem with that. We  
5 were the first to put the provisional equidistance line before  
6 the Tribunal in this case.

7           The advantage is that the Tribunal is no longer just  
8 staring at a blank map. It's staring at the map with, to use  
9 the language of the Barbados-Trinidad and Tobago Award, a  
10 hypothesis. It's nothing more than a hypothesis, but it  
11 orients the mind, and it focuses the mind on the coast and the  
12 configuration of the coast, which is where it ought to be.  
13 That has been a more recent change in the law.

14           What we do not think has occurred, what Guyana we  
15 believe is arguing has occurred is that the law has changed to  
16 favor equidistance as a matter of substance. We find no  
17 support for that in the Convention, and we find no support for  
18 that in the cases.

19           PRESIDENT NELSON: Thank you, Professor Oxman.

20           ARBITRATOR FRANCK: May I ask one?

21           PRESIDENT NELSON: Yes, of course.

22           ARBITRATOR FRANCK: Professor Oxman, this is very  
23 helpful, I think, to us. We have now reached the point where  
24 we seem to agree that there is a mathematical formula, and that  
25 there is an alternate mathematical formula that happens to be a

12:15:06 1 sort of geometric formula. It seems to be your point that the  
2 geometric formula, which is the angle bisector formula,  
3 requires less in the way of exercise of undetermined discretion  
4 by the Tribunal in order to reach equity than does the  
5 mathematical formula, and I wonder if you would tell us why  
6 that is. It's been said by my colleague, Professor Smit, that  
7 if you were to adopt the angle bisector formula, you would  
8 eliminate much of the need for discretionary activity by this  
9 Tribunal in order to get from the line achieved by it to  
10 equity, and I'm asking you whether, in fact, that does involve  
11 us in less exercise of discretion. For example, to get from  
12 the 17-degree line that you posit on the basis of a very  
13 discretionary coastal front that you are urging on us, we would  
14 then have to move--even after that we would have to move the  
15 line to 10 degrees. That is a lot of discretion for us to  
16 exercise. It is certainly perfectly all right for us to  
17 exercise that discretion in the name of equity because that's  
18 what the Law of the Sea's Treaty asks to us do. It's simply a  
19 question of how much of this discretion we have to exercise,  
20 and are you happy with the thought that Professor Smit seemed  
21 to advance that there is less discretion for us, less equitable  
22 discretion for us if we use angle bisector, than there is  
23 equitable discretion that we would have to exercise in revising  
24 the equidistance line? And if so, why?

25 ARBITRATOR SMIT: Maybe I should say I did not suggest



12:17:21 1 that. I just suggested that the angle bisector line eliminates  
2 the need for making the adjustments in the equidistance line  
3 that are prompted by the coastline. I did not in any way  
4 suggest that once you have drawn the equidistance line  
5 following the angle bisector approach, that the authority of  
6 the Tribunal to adjust that line for any reason it sees fit is  
7 lesser, so maybe that clarification will permit to you answer  
8 the question more effectively.

9 PROFESSOR OXMAN: Let me start at the far end. Any  
10 line drawn with reference only to coastal configuration,  
11 whether it is an equidistance line or what I might call a  
12 geometric simplified equidistance line, the angle bisector, any  
13 such line will then be subject to an appreciation of whether  
14 the result is equitable. For example, the Tribunal, if it  
15 follows the practice of other tribunals, would want to test it  
16 against standards of proportionality, and there is a lot of  
17 case law on that. The parties have spent a lot of time on it.

18 There might be other factors that would influence the  
19 question of whether the result is equitable. For example,  
20 Suriname has relied on the statements by the International  
21 Court of Justice that the direction of the land frontier is a  
22 factor to be taken into account in the direction of the  
23 boundary.

24 Those kinds of considerations and, of course, in the  
25 Jan Mayen case--I don't think that's an issue in this case--the

12:19:15 1 Court, of course, took account the location of a summer fishing  
2 ground in determining the location of one segment of the line.  
3 Those kinds of factors will exist, whether you use equidistance  
4 line, a modified equidistance line as Guyana would have it  
5 modified, or our version of what we might call a geometric  
6 modified equidistance line. That is all the same.

7           The question is the question of what next once one  
8 takes a look at the provisional equidistance line, and I think  
9 the Tribunal can assess from this litigation the issue of what  
10 next. As Guyana has presented its case, it says what next to  
11 produce a line that is equitable with respect to coastal  
12 configuration, not the other factors, launches the Tribunal  
13 into a debate on which there has been ample disagreement on  
14 both sides as to where is there a convexity, where is there a  
15 concavity, does the convexity distort as Jaenicke said it  
16 distorts or doesn't the convexity distort as Jaenicke says it  
17 distorts, and if one takes these seriatim, are we right with  
18 respect to Berbice Headland, if I'm allowed to use that term,  
19 is Guyana right with respect to some other feature? Our  
20 feeling is can lead to a highly subjective result in which the  
21 Tribunal is diverted from the primary focus, which is to  
22 produce a line--in that case a modified equidistance line--that  
23 is an accurate representation of the coastal configuration and  
24 the relationship of the coasts to each other.

25           We think that there is less danger of subjectivity

12:21:13 1 involved, but it is not completely eliminated. We have never  
2 alleged that it was completely eliminated. There is no way to  
3 avoid it. There is less danger of subjectivity involved if the  
4 Tribunal is able to satisfy itself as to what constitutes the  
5 general direction of the coats of the parties and uses that as  
6 the basis for constructing an equidistance line.

7 But, I would be far from saying that either approach  
8 is mathematical. The only thing that it produces more or less  
9 mathematical certainty, as you've indicated, Professor Franck,  
10 is once we've decided all the legal issues necessary to decide  
11 where the base points are, the mathematical construct of the  
12 equidistance line itself is there, but that is simply a  
13 mathematical construct. The law confers no special status on  
14 that mathematical construct.

15 PRESIDENT NELSON: Thank you very much, Professor  
16 Oxman.

17 PROFESSOR OXMAN: I leave it to you, Mr. President, as  
18 to whether you would like to break at this point for lunch, or  
19 Mr. Colson could possibly carry us.

20 PRESIDENT NELSON: I think we will now hear  
21 Mr. Colson.

22 Thank you.

23 MR. COLSON: Mr. President and Members of the  
24 Tribunal, it's a pleasure to appear before you again this  
25 morning, and I do so to address three issues. And I would be,

12:23:19 1 like other counsel, just happy to answer any questions that you  
2 might have. The first of the issues I want to address is the  
3 mistake that I purportedly made concerning vector analysis. I  
4 think it's a very important matter, and I would like to come  
5 back to that.

6 The second is I would like to discuss very briefly  
7 what Professor Schrijver had to say about the Netherlands 1958  
8 proposal for a continental shelf boundary.

9 And the third item I would like to address is a few  
10 comments in response to what Professor Sands had to say about  
11 how equidistance provides certainty and stability, particularly  
12 with reference to the Caribbean region.

13 Now, as to the first point, on Monday Mr. Reichler  
14 said, "I made a mistake in my discussion of vector analysis and  
15 Guyana's position," and in particular he referred to the  
16 question of Professor Smit and my response to that first  
17 question.

18 Now, I'm very glad that I have the last word here.  
19 Before going to law school, for a time--before I went to law  
20 school for a time I taught math, and in that same time I also  
21 in another life had a life as a military surveyor, so lines and  
22 angles and bearings and links of lines are something that I  
23 take quite seriously, and I was therefore relieved when I read  
24 the transcript and saw that I had made no mistake.

25 The issue arose in the course of my presentation last

12:25:12 1 Saturday during which I had the opportunity to address Guyana's  
2 methodology which, for lack of a better term, I could call the  
3 average equidistance line segment methodology. My argument  
4 was, and is, that Guyana has not applied its own methodology  
5 properly. Guyana presents its methodology as being based on  
6 Commander Kennedy's work. Guyana refers to its line to the  
7 200-mile limit as the historic equidistance line on the basis  
8 of the work of Commander Kennedy, so I chose in my discussion  
9 last Saturday to call upon Commander Kennedy to assist me in  
10 that work.

11 Now, on the screen we are putting up a blank base map.  
12 It shows the 200-meter isobath, sometime calls the 100-fathom  
13 depth contour, and it shows the 200-mile limit. In 1961, the  
14 100-fathom depth contour was generally regarded as the outer  
15 limit of the continental shelf. The limit was found in Article  
16 I of the 1958 Convention along with the exploitability test.  
17 Roughly speaking, that 100-fathom depth contour is about half  
18 of the distance that you need to go to produce the line that  
19 you are being asked to do to get out to the 200-mile limit.

20 Now, as I entered into the discussion last Saturday,  
21 which you can find at pages 1204 to 1211 of the transcript, I  
22 was careful to emphasize that Commander Kennedy never talked  
23 about a 34-degree line. He never talked about averaging the  
24 bearings of the equidistance line, and that in his work he went  
25 out so far as the 200-meter isobath.

12:27:45 1           Then I referred to the 1961 British proposal, and as  
2 we know, based upon Commander Kennedy's work, the U.K. set  
3 forth a line in that proposal that was 10 degrees for 6 miles,  
4 thereby applying the territorial sea agreement at the time and  
5 then his version of the equidistance line for the continental  
6 shelf, and that was a 33-degree line for 35 miles, a 38-degree  
7 line for 28 miles, and then 28 degrees to the 200-meter  
8 isobath, a three-segment equidistance line from the end of the  
9 territorial sea boundary, as he saw it, to the 200-meter  
10 isobath.

11           Next I compared this 1961 proposal, what Commander  
12 Kennedy had done, with Guyana's position in this case, which it  
13 refers to as a historic equidistance line, a case that calls  
14 for delimitation to the 200-mile limit. And I noted three  
15 things: First, Guyana proposed a one-segment line to the  
16 200-mile limit, and that is still its submission. Commander  
17 Kennedy didn't do that.

18           Second, Guyana abandoned the 10-degree line  
19 altogether. Commander Kennedy didn't do that, either.

20           And third, to identify its historic equidistance line,  
21 Guyana simply created the numerical average of the bearings of  
22 the equidistant line segments out to the 200-meter isobath.  
23 Commander Kennedy didn't do that, either.

24           And I went on then to note that if Commander Kennedy  
25 had been asked to average the length of the line segments of

12:29:58 1 any equidistance line segments, whether it had been his line  
2 segments or any other equidistant line segments, he would have  
3 considered the length of each of those line segments before he  
4 began to average the numerical values of the numbers, the  
5 vector analysis point.

6 Then, after I discussed vector analysis very briefly,  
7 I returned to the criticism of Guyana's position. I noted that  
8 Guyana's mathematical procedure was improper because it had not  
9 undertaken a vector analysis in reaching its 34-degree  
10 position, and--and here is the important point--that it had  
11 limited its flawed procedure to just the area out to the  
12 200-meter isobath. Barely half of the distance that this  
13 Tribunal must deal with in this case.

14 And then I said, and this is at paragraph 1205 to 1206  
15 of the transcript, and I apologize for reading it, but I think  
16 it's very important. I said, "Guyana's procedure is so  
17 obviously improper, it's hard to imagine where it came from.  
18 Certainly Commander Kennedy, if he were here, I believe he  
19 would be embarrassed to be associated with it. If he were here  
20 and one were to ask him to identify the average bearing of the  
21 equidistance line, he would say, Look, there are basically two  
22 ways to do this. If you are interested in the average bearing  
23 of the equidistance line, you can identify the various line  
24 segments that the equidistance line is made up of throughout  
25 its length, give them a weight depending on the length of each

12:32:02 1 segment, and then create one weighted average through a  
2 vector--process of vector analysis, a trigonometric or  
3 algebraic process."

4 I said he would tell you about that. Or he might tell  
5 you there is really a simpler method. If you know the starting  
6 point and the ending point, all you need to do is run the  
7 straight line that connects those two points. And here is the  
8 last sentence of what I read or what I spoke on that day,  
9 Saturday: "In the world of geodesy, there may be a small  
10 difference between those answers, but the single segment  
11 straight line to the intersection of the 200-mile arcs at the  
12 200-mile limit is the ultimate averaged equidistance line,  
13 which in this case would run at about 22 or 23 degrees."

14 Mr. President, that is what I said. It is accurate.  
15 It is not a mistake. The line I referred to is now being shown  
16 on the map. This is the averaged out, straightened out  
17 equidistance line using Guyana's provisional equidistance line  
18 data that it has produced to create its provisional  
19 equidistance line. It extends from the starting point to the  
20 200-mile limit. If I made a mistake in describing this line, I  
21 did so by describing it as a 22- or 23-degree line. In fact,  
22 using the data that Guyana uses to construct its provisional  
23 equidistance line, this line, in fact, is a 21.5-degree line.

24 Now, on Monday Guyana admitted that vector analysis is  
25 the correct way to go about averaging a series of line



12:34:22 1 segments. That's in the transcript at page 1344, and further,  
2 at Tab 42 of its book from Monday, Guyana did its own vector  
3 analysis, but the vector analysis that it did was simply of the  
4 Kennedy line out halfway, out to the 200-meter isobath.

5 And interestingly, the analysis that it did didn't  
6 show a 34-degree angle. It actually showed that a proper  
7 vector analysis was 31.5. Now, presumably, it is on this basis  
8 that Guyana says that I made a mistake. However, I believe the  
9 record is clear that I never said nor implied that I was doing  
10 a vector analysis line on Kennedy's line out to the 200-meter  
11 isobath. I said that a properly done averaging of the  
12 equidistance line to the 200-mile limit would result in one  
13 straight line running from the starting point at about 22  
14 degrees.

15 Now, the average equidistance line is not Suriname's  
16 position, as was suggested on Monday, and the average  
17 equidistance line is not set forth here for the purpose of  
18 indicating what Suriname might think of as to be an acceptable  
19 compromise, as was also suggested. The average equidistance  
20 line is simply set out here to identify the logical  
21 consequences of Guyana's position. Suriname does not believe  
22 that this creates an appropriate boundary for the purposes that  
23 we have expressed in our pleadings to date and for which we  
24 will continue for the rest of the morning. We simply put this  
25 forward to show that Guyana's own method, if it was applied

12:36:32 1 properly, in our view, would demonstrate this line out to the  
2 200-mile limit.

3 Now, for the record, the ingredients to construct this  
4 line are in the pleadings. Again, you don't need to take our  
5 word for this. I think that you would find the information,  
6 the hydrographer, the Tribunal's expert, can find the  
7 coordinates of the turning points of the provisional  
8 equidistance lines for Suriname at the Counter-Memorial at  
9 Annex 69, and at Guyana's Reply Annex R26.

10 Our calculations indicate, and these are calculations  
11 as was said that were done by the Netherlands Hydrographic  
12 Office and Mr. Lathrop. They indicate that using vector  
13 analysis, the average bearing of Suriname's provisional  
14 equidistance line which we have submitted out to the 200-mile  
15 limit is 22.5 degrees, and the average bearing of Guyana's  
16 provisional equidistance line based upon the data that it has  
17 submitted is 21.5 degrees.

18 Let me move to a different subject, and that's the  
19 1958 proposal. On Monday, Professor Schrijver returned to the  
20 1958 proposal. His theme being that history makes a  
21 difference. Now, this is a far cry from the position of  
22 Guyana's Memorial that the conduct of the parties demonstrates  
23 an agreement or a modus vivendi, or the position of Guyana's  
24 Reply that there is in the practice of the parties an indicia  
25 of a line that the parties treated as equitable and acted upon

12:38:34 1 as such, or even a special circumstance or admission against  
2 interests, which were new ideas introduced by Guyana in the  
3 first round. Guyana's conduct argument is gone, and we are  
4 left only with a reference to the 1958 proposal in the refrain  
5 that history makes a difference.

6 In 1958, the Netherlands proposed that the continental  
7 shelf boundary be based on Article 6.2 of the Continental Shelf  
8 Convention. Thus, the Netherlands proposal was to follow a  
9 method, the method that is set out in that Article, and that  
10 method requires first an effort to reach agreement, and then to  
11 do so in appreciation of both the equidistance line and special  
12 circumstances. And that effort was intended to yield a line to  
13 be drawn on a map. That is what was proposed.

14 Now, there is nothing in the record to show that the  
15 U.K. and the Netherlands Hydrographic Offices ever agreed on  
16 any line, let alone what might be called the provisional  
17 equidistance line. Apart from the fact that no line was  
18 produced at a joint technical level, there is no record of any  
19 meetings between the Hydrographic Offices of those two European  
20 countries for this purpose, nor is there anything in the record  
21 that the governments even tried to set up a meeting between  
22 those Hydrographic Offices for this purpose. There is  
23 absolutely nothing.

24 And within a few short years, the 1958 proposal was  
25 dead, and it was certainly dead by 1962, when the Netherlands

12:40:34 1 made a comprehensive Treaty proposal proposing that the  
2 10-degree line should run in the territorial sea and on the  
3 continental shelf at a 10-degree bearing. If history makes a  
4 difference, Suriname submits that the 40-plus years of history  
5 which demonstrate a continental shelf boundary dispute, 40-plus  
6 years that include the attainment of independence by Suriname  
7 and Guyana, their adherence to UNCLOS and convention that took  
8 the law far beyond where it was in 1958, that this is more  
9 meaningful and relevant to the task of the present Tribunal  
10 than the general proposal made nearly half a century ago by one  
11 interested European state to another. It has been Suriname's  
12 position since the beginning of this case that the conduct of  
13 the parties in the area beyond the territorial sea only  
14 demonstrates a dispute and offers no guidance toward an  
15 equitable solution. And we would believe that over the last  
16 few days Guyana too has come around to that point of view.

17 Now, this brings me to my last subject. At page 1272  
18 and 1273 of Monday's transcript, Professor Sands invited the  
19 Tribunal, and here I quote, "to resist Suriname's invitation to  
20 abandon established international practice."

21 He went on to say, and again I quote, "If the Tribunal  
22 accedes to Suriname's request, it will introduce confusion and  
23 uncertainty into the law of delimitation."

24 Then he went on, and again I quote, "I don't need to  
25 tell you, Mr. President, how many maritime boundary

12:42:46 1 negotiations are currently underway in the Caribbean and  
2 elsewhere."

3           Now, what is the difference between the parties here?  
4 And this somewhat goes back to the in exchange that the  
5 Tribunal just had with Professor Oxman. Suriname submits that  
6 it has followed what has been called established practice, such  
7 as it is. In the Counter-Memorial Suriname presented and  
8 analyzed the provisional equidistance line. We set forth our  
9 views about why we thought it was inequitable, and we proposed  
10 a different delimitation method. That is what is being called  
11 established practice. Guyana's position is not established  
12 practice. It infuses the provisional equidistance line with  
13 legal content. It gives it a legal role. It sets it forth as  
14 a presumption that must be overcome and confines a tribunal to  
15 tinkering around the edges of the equidistance method with no  
16 scope for substituting an appropriate method, a different  
17 method, if the circumstances require. Now, after all the work  
18 that was done in constructing Article 74 and 83 at the Third  
19 United Nations Conference on the Law of the Sea, Guyana argues  
20 that we have come full circle. Guyana proposes a rigid,  
21 mechanical approach to delimitation, but in our view, that is  
22 not what Articles 74 and 83 require. It is an equitable  
23 solution that is required, and there is no method that has a  
24 legal priority.

25           We were particularly struck by Professor Sands's

12:44:43 1 reference to the Caribbean. It is a perfect example of a  
2 region where equidistance, its methodology has been  
3 mischievous, and the qualities of equidistance in the Caribbean  
4 and those mischievous qualities are manifest. We're going to  
5 put up a map. This is simply a map of the Caribbean region.  
6 It's from Volume Five of American Society's International  
7 Boundary Book, and in full disclosure, both Dr. Smith and I are  
8 co-editors of that book, and we simply put it forward here.

9 I would like to take you on a tour of the Caribbean,  
10 I'm sure it will be quite pleasant, I'm sure, but we are not  
11 going to do that. And you may just find this for your ease of  
12 reference, and I'm not going to spend a lot of time looking at  
13 this particular map.

14 I want to note that we have added the--the Suriname  
15 team has added to this map the line that was created by the  
16 Tribunal in the Barbados-Trinidad and Tobago Award that did not  
17 appear in Volume Five.

18 Now, it is widely known that the delimitations between  
19 the Netherlands and the United States and France with Venezuela  
20 in this region which, as they pertained to the eastern  
21 Caribbean, those lines are largely equidistance lines, and they  
22 have created significant difficulties for the small island  
23 states of the eastern Caribbean. Those small island states  
24 must not only face to the west Venezuela's claims, but in many  
25 cases they face Barbados to the east. If overlapping radial

12:46:45 1 projections creating equidistance lines is all that matters,  
2 those small island states lose. They lose badly, and they lose  
3 inequitably.

4           On Monday, Professor Schrijver came back to the  
5 President's question of him of under what circumstances, if  
6 any, can a coastal state be justified in completely abandoning  
7 the equidistance method, even as a starting point? And I take  
8 it the starting point was the important part of that question.  
9 And Professor Schrijver in his answer on December 8th, in the  
10 transcript at pages 272 and 273, and again on Monday in the  
11 transcript at 1421, he said in no circumstances.

12           Now, on Monday, Professor Schrijver did go on to allow  
13 a modest exception when he said that one cannot exclude the  
14 possibility that in some enormously complex geographic  
15 configurations, it may not be possible to apply equidistance.  
16 Suriname submits that the law is more agile than that, and,  
17 indeed, the practice of courts and tribunals should be more  
18 agile than that. The equitable solution called for by the  
19 Convention is one that gives priority to no method, that  
20 creates no presumptive rules and no exceptions to those rules,  
21 and it requires the application of equitable principles and  
22 taking into account of all relevant circumstances. To say, as  
23 Guyana says, that in the obvious and difficult situations in  
24 the Caribbean, the law requires recourse to the equidistance  
25 method or even to take it as a starting point in an analysis

12:49:00 1 requiring one state to bear the burden of arguing for an  
2 adjustment or an abandonment, is exactly the kind of situation  
3 that Articles 74 and 83 were meant to eliminate.  
4 Mr. President, that brings me to the end of this presentation.  
5 I would be happy to answer any question, but I know we are  
6 probably past the coffee break or the lunch break.

7 PRESIDENT NELSON: Mr. Colson, when you are coming to  
8 the podium the first time, you said something of the infamous  
9 Gulf of Maine case. What were you referring to? What aspect  
10 of this was infamous?

11 MR. COLSON: Mr. President, I think what I was  
12 referring to is the criticism that we have received from the  
13 Guyana team about our many references to the Gulf of Maine  
14 case. It is a case that we have found--that the rigor of  
15 analysis in that case and, indeed, the rigor of analysis in the  
16 North Sea case and Libya-Tunisia and the Gulf of Maine case  
17 have informed the way that courts and tribunals subsequently  
18 have gone about the delimitation process. It is not that the  
19 law has set aside that work. Indeed, in 1982, when the  
20 Convention was being concluded, it was just the North Sea and  
21 the Anglo-French case really at that time that the Convention  
22 was looking at. Everything, including the Libya-Tunisia case,  
23 has really come since the close of the negotiations. The Gulf  
24 of Maine case is a case that, of course, a number of us have  
25 had some participation in, including myself and my colleague,



12:51:14 1 Don McRae, on this side, and, of course, Dr. Smith on the other  
2 side, so it's not a case that is unknown to us.

3 But, in our view, and the only reason that I used the  
4 word infamous is that we were on several occasions criticized  
5 for using the old case law rather than the new case law.

6 PRESIDENT NELSON: Thank you. I thought you were  
7 referring to other aspects of the case. Thank you.

8 My other question is that boundary that you spoke  
9 about in the Caribbean as if the equidistance was the dominant  
10 feature there. What about the role of Aves? Isn't the  
11 question that Aves should not have enjoyed the status of an  
12 island?

13 MR. COLSON: There are two issues here. Of course one  
14 is the delimitation issue, and one is the role that a  
15 geographic feature might play in a delimitation, and again, I  
16 think this gets back in some way to the discussion that the  
17 Tribunal was having with Professor Oxman. There is no doubt  
18 that anyone involved in a maritime boundary situation, whether  
19 they are advocates or negotiators or lawyers is going to want  
20 to look and know where the equidistance line is. There is no  
21 doubt about that. That's always been the case. The question  
22 is, is there a burden put on someone that wants to argue  
23 against equidistance?

24 And the situation of Aves brings into the analysis,  
25 one, is it necessary to put a burden on a state that wishes to

12:53:25 1 argue that Aves should not be given full effect or that  
2 equidistance, indeed, in any respect is an appropriate method  
3 of delimitation in those circumstances? It also raises--again,  
4 these are these points about is equidistance an objective  
5 method or is it not? And again, it's one of those questions  
6 that one has to take, yes, at one sense. In one sense it is an  
7 objective method, but you know, if we go back to the  
8 Libya-Malta case, when the Court said we are now applying the  
9 equidistance line, before they drew that first equidistance  
10 line they threw out one of Malta's islands, the Island of  
11 Filfa. So there is always a subjective criteria that goes into  
12 any of these judgments. The judgment could be we are going to  
13 use the normal baseline for determining the equidistance line.  
14 The judgment could be we are not going to use the straight  
15 baseline system that one state has as opposed to another state  
16 for determining a straight baseline system. There are many  
17 judgments that into go into even creating the provisional  
18 equidistance line. We have seen that back 40 years ago  
19 Commander Kennedy wasn't sure about the chart. We have heard  
20 about arguments between these parties about the proper charts  
21 to be used. We have seen that those charts, while not in a  
22 large measure, but they end up giving you a different answer in  
23 many respects. And, of course, we get into more significant  
24 questions, then, when one of the features has a rule like Aves  
25 both with respect to the delimitation, but also is it entitled

12:55:17 1 at all to delimit maritime space or to--or is it entitled to  
2 maritime space beyond perhaps the territorial sea.

3 Those are key questions, and I would submit that in  
4 that and other kinds of situations if the issue was either a  
5 matter of negotiation or a matter of adjudication, that, of  
6 course, a tribunal is going to look at where the equidistance  
7 line might be in those circumstances, but then to go on and say  
8 that's the starting point for our analysis of a situation where  
9 it is so manifestly inequitable to one state to be put in a  
10 position of even having to articulate and argue against  
11 equidistance, that might be one of those situations where it is  
12 not a starting point for the analysis.

13 PRESIDENT NELSON: I give the floor to Dr. Hossain.

14 ARBITRATOR HOSSAIN: Mr. Colson, I always tend to be  
15 an optimist, and I have been seeing a lot of convergence and  
16 common ground throughout this hearing. When I saw Suriname's  
17 Counter-Memorial Figure Number 32, it was provisional, three  
18 sections of the provisional equidistance line. The first  
19 section I found was a straight line. In the second section I  
20 found a little bending to the left, and that was the effect of  
21 Hermina Bank, and then you saw in the third section a little  
22 bending out to the right, and that was the push from the  
23 Berbice point. So, that clearly you had a provisional  
24 equidistance line on which both sides could agree that this is  
25 the equidistance line. So, this sort of seeming controversy

12:57:03 1 about, you know, which baselines and subjectivity doesn't seem  
2 to be coming from your own Counter-Memorial. All of us could  
3 agree that this is the provisional equidistance line.

4           The question which we are then faced with is how does  
5 this need to be adjusted or corrected to give us an equitable  
6 solution? And then you have your coastal front and coastal  
7 lengths and then we have, of course, to consider what you say,  
8 and Professor McRae will follow you, we will certainly try to  
9 follow the logic of why you are saying the equidistance  
10 solution requires consideration of those matters that you will  
11 draw to our attention.

12           Guyana equally have said that this is the equidistance  
13 line, but then you need to adjust it by reference to matters  
14 that they are bringing to our attention.

15           So, there is common ground, you know, with this  
16 provisional equidistance line. We have to see which way we go.  
17 Instead of opening up the whole thing to say that the initial  
18 approach has to be fundamentally divergent.

19           Leaving that to one side, my other question is when  
20 you talked of vector analysis, is the vector analysis being  
21 applied to this provisional equidistance line, the one that you  
22 give in your Counter-Memorial Figure Number 32?

23           MR. COLSON: Yes, sir. We, as I mentioned in my  
24 statement, there are--technically, you have two provisional  
25 equidistance lines before you, and a great deal has been made

12:58:47 1 of the fact that these two provisional equidistance lines drawn  
2 largely by the mathematical method that anyone is going to do,  
3 that those two provisional equidistance lines are very, very  
4 similar.

5 Now, the technical data that was used by Guyana and  
6 was used by Suriname, I mentioned in my statement, and there in  
7 the Annexes to the pleadings, and the technical expert can get  
8 to them. The map that you just pointed to, we did the vector  
9 analysis on that line, and it is a 22-and-a-half degree line.  
10 We did the vector analysis on the Guyana line, and that is a  
11 21.5-degree line.

12 Now, the Tribunal's expert can verify those numbers if  
13 the Tribunal is interested in looking at this point, but I hope  
14 that the Tribunal will also in the afternoon when Professor  
15 McRae speaks take note of the fact that there is a substantial  
16 difference between the equidistance line and the straightened  
17 out equidistance line that I have shown you. There is going to  
18 be a substantial difference between the provisional  
19 equidistance lines that you are looking at there that relate to  
20 the question, and this 21-and-a-half, 22-and-a-half line, and  
21 Professor McRae will take you through the reasons for those  
22 differences.

23 ARBITRATOR HOSSAIN: Just one more question because we  
24 have been introduced to the vector analysis approach by  
25 reference to the Kennedy exercise saying that it goes from--it

13:00:45 1 changes direction from section to section, and then you said to  
2 straighten it out you did the vector analysis because that line  
3 went for so many miles in one direction and then changed  
4 direction, and then changed direction again.

5 So, I had gotten the impression that you applied the  
6 vector analysis to that line, but, in fact, what you're now  
7 clarifying that your vector analysis is in relation to this  
8 line and not the Kennedy line.

9 MR. COLSON: Let me be abundantly clear again because  
10 this may have been the source for the statement that I had made  
11 a mistake. We make--Guyana has looked at the Kennedy line out  
12 to the 200-meter isobath, about halfway out, and in their book  
13 on Monday they did an analysis of the Kennedy line out to the  
14 200-meter isobath and showed that that was about 31.7 degrees.  
15 We don't take issue with that analysis of the vector analysis  
16 on the Kennedy line out to the 200-meter isobath.

17 Your charge is to draw a line to the 200-mile limit,  
18 and our submission is simply that if you were looking at these  
19 issues and were interested in these propositions, that a  
20 properly constructed provisional equidistance line, if you  
21 average it using the vector analysis, is going to give you a  
22 line of 22, 21, or 22 degrees.

23 ARBITRATOR HOSSAIN: Thank you very much.

24 PRESIDENT NELSON: Thank you very much, Mr. Colson.

25 PROFESSOR GREENWOOD: Mr. President, Members of the

13:02:39 1 Tribunal have certainly accepted with alacrity our invitation  
2 to ask questions, and we are, of course, delighted by that. We  
3 trust that the alacrity with which you will accept other  
4 invitations we'll put to you in our final submissions will be  
5 great.

6 I wonder, Mr. President, whether it would be  
7 acceptable if we were to shorten the lunch break and come back  
8 at 2:00? We will still not exceed the total amount of time  
9 allotted to us, but that will mean that we will be able to  
10 finish without interfering with the reception arrangements for  
11 later.

12 PRESIDENT NELSON: Yes, I take it we start at 2:00.  
13 Is that all right?

14 Thank you.

15 (Whereupon, at 1:03 p.m., the hearing was adjourned  
16 until 2:00 p.m., the same day.)

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## AFTERNOON SESSION

2 PRESIDENT NELSON: I give the floor to Professor  
3 McRae.

4 PROFESSOR McRAE: Thank you, Mr. President.

5 Mr. President, Members of the Tribunal, I'm going to  
6 address you again, and it is my great privilege to do so, on  
7 the subject of geography and delimitation method. Now, I'm not  
8 going to go back over the pleading on this subject of last  
9 week, but I will be responding to certain arguments made by  
10 counsel for Guyana on Monday. And in doing so, I will  
11 concentrate on the key issues that the Tribunal will wish to  
12 consider when it comes to the delimitation of the boundary, and  
13 of course, the focus of my remarks will be on the delimitation  
14 beyond 12 nautical miles.

15 Now, as a preliminary manner, I would like to comment  
16 on the way that counsel for Guyana have characterized the  
17 approach of the parties to geography and delimitation method.  
18 They like to paint Guyana's approach as objective, and  
19 Suriname's approach as subjective. Of course, this is an  
20 allegation that's easy to make, but it is meaningless in  
21 content.

22 Guyana's claimed objectivity is based on their view  
23 that their position is based on the law, although, as they put  
24 it, it is the more recent cases from which they borrow, and we  
25 would suggest borrow selectively. History matters, as we've



14:05:14 1 heard, except when it comes to the case law, the past does not  
2 seem to matter.

3           Now, Guyana's claim to objectivity also seems to be  
4 based on the idea that the Tribunal can rely on them because  
5 they have had the benefit of a geographer and a geodesist to  
6 provide the objectivity to their views, and Professor Greenwood  
7 has already dealt with on this matter. And I would only  
8 comment that the test in this case is not whether one party  
9 claims that its views are objective, but rather on whether its  
10 arguments make sense on the facts and are grounded in the law,  
11 and we would suggest that on both counts Guyana's arguments are  
12 found wanting.

13           Now, a key element, if I can turn to geography for the  
14 minute, the key element in Suriname's assessment of the  
15 geography in this case is that the coasts of Suriname and  
16 Guyana form an angle where they meet at the mouth of the  
17 Corantijn River. As we have pointed out, Guyana's coast  
18 generally space faces northeast, and Suriname's coast faces  
19 north.

20           Now, Guyana's expert, Dr. Smith, avoided recognizing  
21 this change in direction in his report, characterizing the  
22 Suriname coast as part of a northeasterly-facing coast of South  
23 America, and it was one of the reasons that we felt that  
24 Dr. Smith's report should not be relied upon. But on Monday  
25 Dr. Smith appeared to have a change of heart. He gave three

14:06:42 1 different directions for the Suriname coast, and he said, and  
2 it's on your screen, "Well, the northwest-facing part of the  
3 Suriname coastline is that portion immediately adjacent to the  
4 river, Corantijn River mouth is northwest, and then as it  
5 swings around that headland. I perhaps did not give as  
6 complete an answer as I should because it goes northwest,  
7 north, and then back to northeast."

8           So, from a northeasterly-facing coastline in his  
9 report, Dr. Smith came to a multidirectional-facing coastline  
10 in his cross-examination. But what was he referring to when he  
11 said that? I think you will see he was referring to the mouth  
12 of the river, and then to Turtle Bank, and then to the coast  
13 heading towards the Coppename River.

14           So, from a macrogeographical perspective in his  
15 report, Dr. Smith came down to a microgeographical perspective  
16 in his testimony. But if the coastline of Suriname can be  
17 viewed in this microgeographical way, why not treat the  
18 coastline of Guyana in such a microgeographical way? Surely,  
19 by the same microgeographical standard, the coast of Guyana  
20 faces east, and then northeast, and then north. And then  
21 northeast again, and on so on.

22           Now, of course, nothing much turns on all of this.  
23 Dr. Smith was obviously trying to defend the position he had  
24 taken in his report that the coasts of Suriname and Guyana  
25 combined form a concavity and to admit that Suriname's coast

14:08:18 1 faced north alone would undermine this and force recognition of  
2 a change in coastal direction of the Corantijn River.

3           Mr. President, the point is that I would suggest that  
4 when you are considering Guyana's claim, that their view of  
5 geography is objective because it is based on Dr. Smith's  
6 views, you are entitled to ask yourselves which views of  
7 Dr. Smith should be considered? Those in his report or those  
8 in his subsequent testimony? For as I'm sure the Tribunal will  
9 have noticed, Dr. Smith said things in his testimony that were  
10 not in his report, and some of those things were, in fact,  
11 favorable to the position of Suriname, and I will come to those  
12 shortly.

13           In any event, the fact that the coast changes  
14 direction at the mouth of the Corantijn River is, in our view,  
15 incontestable. What seems to be contested, however, is the  
16 nature of the feature on the Guyana coast between the Corantijn  
17 and Berbice Rivers. Now, my use of the term Berbice Headland  
18 in my argument last week caused something of a firestorm on  
19 Monday. The Berbice Headland was, according to Mr. Reichler, a  
20 complete and utter fiction, and in a triumph of postmodernism,  
21 Professor Sands claimed that the Berbice Headland could not  
22 exist because he could not find it on Google. All of this  
23 seemed to suggest that because the feature did not have a name,  
24 it could not be taken into account.

25           But all of that misses the point. It's not whether

14:09:53 1 the feature has a name that is important. What is important is  
2 whether the feature has any impact on the equidistance line and  
3 whether that impact should be taken into account in deciding  
4 the appropriate delimitation method. And, indeed, perhaps  
5 counsel for Guyana should have listened more closely to their  
6 geographical expert before rushing in to creating a  
7 nomenclature theory of geography under which unnamed features  
8 turn out to be fictions.

9 Dr. Smith showed much more common sense. In  
10 describing the direction of the Suriname coast, Dr. Smith said,  
11 and this is a slide I had up before, he refers to the  
12 coast--Corantijn River mouth is northwest, and then it swings  
13 around that headland. It swings around that headland. And  
14 what was that headland that Dr. Smith was referring to? Well,  
15 it would appear to be Turtle Bank. So, if the named Turtle  
16 Bank is what a geographer would call a headland, then so too is  
17 the unnamed Berbice bulge. As Mr. Reichler so rightly said,  
18 lawyers should stick to being lawyers and not try to be  
19 geographers.

20 And Dr. Smith was also helpful in giving us some sense  
21 of the size of the Berbice headland. In his cross-examination  
22 he measured the feature as it appeared in Figure 10 of his  
23 report, and indicated that it was 25 or 26 nautical miles long  
24 and 5 nautical miles wide.

25 Now, 5 nautical miles, Mr. President, was, in fact,

14:11:34 1 the height or width, however way you put it, of the headland  
2 used in the Jaenicke diagram in the United States pleadings in  
3 the Gulf of Maine case to demonstrate the diversion effect, and  
4 that was, of course, the version adopted by the Dr. Smith in  
5 his article in 1989.

6 So, Mr. President, there is no doubt that whatever you  
7 call it, the area between the Corantijn and Berbice Rivers is  
8 an identifiable feature and in relation to the coast of  
9 Suriname, it is a feature that protrudes. Now, as I mentioned  
10 in my oral argument last week, the argument that Guyana makes,  
11 based on Dr. Smith's report that the Berbice Headland lies at  
12 the back of a concavity, simply has no support or credibility.  
13 The features at the back of a concavity can have no effect on  
14 an equidistant line. Yet, as we have seen, and as I will  
15 discuss shortly, the Berbice Headland does have an effect on  
16 the provisional equidistance line. Indeed, a significant  
17 effect.

18 Now, as I mentioned earlier, Guyana claims that its  
19 approach to geography is objective because it is grounded in  
20 the law, but as we have pointed out in fundamental respects,  
21 Guyana has sought to draw conclusions from the geographical  
22 setting that simply have no basis in law, or may be  
23 contradicted by the law.

24 Let me give one quite central example. Guyana has  
25 consistently refused to recognize that courts and tribunals

14:13:10 1 have developed the concept that coasts face into the area to be  
2 delimited and that this has implications for the determination  
3 of relevant coasts. And we heard about it again from  
4 Mr. Reichler on Monday. Why, he asked, was the Guyana coast  
5 from Devonshire Castle Flats not to be regarded as a relevant  
6 coast? After all, it faced northeastwards, he said, just as  
7 did the coast from the Corantijn River to the Essequibo River?  
8 But, of course, we had pointed out the answer several times.  
9 The coastline from Devonshire Castle Flats west may face  
10 northeastwards, but it does not face into the area to be  
11 delimited. It does not face into the area where the potential  
12 where the coastal projections of the two states meet and  
13 overlap.

14           And the idea behind that was expressed clearly in the  
15 Tunisia-Libya case at paragraph 75, where the Court stated, "It  
16 is clear from the map that there comes a point on the coast of  
17 each of the two parties beyond which the coast in question no  
18 longer has a relationship with the coast of the other party  
19 relevant for submarine delimitation. The seabed areas off the  
20 coast beyond that point cannot therefore constitute an area of  
21 overlap of the extensions of the territories of the two  
22 parties, and are therefore not relevant to the delimitation."

23           And the same notion has been at the heart of the way  
24 subsequent courts and tribunals have looked at the relevant  
25 coasts and identified the area of delimitation.

14:14:53 1           Mr. President, our alleged subjectivity is based on  
2 the law, but, of course, Tunisia-Libya is an older case, and  
3 Guyana claims that its position is based on more recent cases.  
4 The law of maritime boundary as it stands today is the way that  
5 Guyana puts it. But even the more recent cases are rejected by  
6 Guyana when it is convenient to do so. Guyana has, as we have  
7 seen, defined its relevant coasts by reference to the base  
8 points for the construction of an equidistant line. And it did  
9 so relying on the report of Dr. Smith. But Guyana has never  
10 explained how this squares with the law. Take what was said in  
11 the most recent case of maritime boundary delimitation,  
12 Barbados-Trinidad and Tobago, and there the Tribunal said from  
13 paragraph 329, and I have highlighted the extracts, "The  
14 Tribunal is not persuaded by arguments that would give base  
15 points a determinative role in determining what the relevant  
16 coastal frontages are."

17           And it went on to say, "but relevant coastal frontages  
18 are not strictly a function of the location of base points."

19           Nothing, Mr. President, could be clearer. If Guyana  
20 were truly following the law of maritime delimitation as it  
21 stands today, it would not ignore what was said by the Tribunal  
22 in Barbados-Trinidad and Tobago. A truly objective approach,  
23 as Guyana claims that its approach is, would follow the law of  
24 maritime delimitation, not fly in its face. Moreover, an  
25 objective approach would not try to put aside the large-scale

14:16:37 1 nautical chart produced by one of the most highly regarded  
2 hydrographic services in the world, the Hydrographic Service of  
3 the Royal Netherlands Navy, trying to turn the drawing of an  
4 equidistant line into a battle in each case between  
5 hydrographers and/or cartographers. An approach to maritime  
6 delimitation claimed by counsel for Guyana as one that  
7 contributes to certainty and stability would not ignore the law  
8 of Article 5 of the 1982 Convention which leaves the  
9 determination of base points to large-scale charts recognized  
10 by the coastal state.

11           Mr. President, I would now like to turn to questions  
12 of delimitation method. Much has been said about--has been  
13 said by Guyana about the differences between the parties with  
14 respect to the two-step approach of starting with a provisional  
15 equidistant line. But as my colleagues who have preceded me  
16 this morning have pointed out, we do not disagree with the  
17 practice of starting with the provisional equidistant line.  
18 Indeed, we're the first to do so in this case, and we do not  
19 disagree that it must be then determined if the provisional  
20 equidistant line produces an equitable solution or whether some  
21 other adjustment should be made. But where we do part company  
22 with Guyana is over whether or over what is meant by  
23 adjustment. To Guyana, as we have pointed out, adjustment  
24 means tinkering. To Suriname, adjustment means that, where  
25 appropriate, an alternative delimitation method is to be used.



14:18:17 1           Now, no one is contesting that in order to choose an  
2   alternative method there must be a well-founded justification,  
3   but Guyana's approach is that the provisional equidistance line  
4   start must mean an equidistance finish, and such an approach  
5   simply has no basis in the law.

6           Let me turn, then, Mr. President, to what really lies  
7   at the heart of this case, the effect of Berbice Headland on  
8   the provisional equidistance line. Now, as the Tribunal is  
9   aware, Suriname has argued that the Berbice Headland has a  
10   profound effect on the drawing of an equidistant line. It sets  
11   the path for that line. Other features have a subsequent  
12   effect, but their effect is less because they are affecting a  
13   path, a line whose path was determined by the feature at the  
14   outset, the feature that started it off, the Berbice Headland.

15           And on Monday, Mr. Reichler took us through the first  
16   section of the line seeking to show that the Berbice Headland  
17   did not have the effect on the line that we claimed. What I  
18   think he was showing was that the base points on the Guyana  
19   side were balanced by base points on the Suriname side, and he  
20   used terms like equipoise and equilibrium to describe the  
21   result. I'm not sure if the term equipoise is a technical term  
22   of geography, hydrography, or geodesy, but in any event what  
23   did Mr. Reichler really show?

24           I think what he showed was quite self-evident. An  
25   equidistant line is always balanced by base points on either

14:20:08 1 side, and you can look up the line and see base points on one  
2 side balanced by the base points on the other side. That is  
3 the very nature of an equidistant line, a line drawn so that  
4 every point is equidistant from base points on the coasts of  
5 both parties. What could be more balanced. But that,  
6 Mr. President, is simply not the point. The question is  
7 whether a line drawn in such a balanced way actually cuts  
8 across the coastal front of one party, and this, of course, is  
9 the point being made by Mr. Saunders in his cross-examination  
10 of Dr. Smith.

11 Now, the Tribunal will recall that Mr. Saunders handed  
12 Dr. Smith a diagram showing a straight line drawn through the  
13 first four turning points of the provisional equidistant line,  
14 and we introduced it in the judges' folder as Tab 11, and we  
15 produced a more precise version of that diagram here on the  
16 screen, and I apologize to my colleague Mr. Saunders for  
17 calling our version here more precise than his hand drawn line,  
18 but nevertheless Mr. Saunders is a lawyer, not a cartographer.

19 Mr. Saunders put the following question to Dr. Smith,  
20 and the question was, "If there were no feature there, that is  
21 if no Berbice headland, the line that I drew would be the  
22 straight-line extension of the first four turning points on the  
23 provisional equidistance line, would it not?

24 "ANSWER: Correct.

25 "QUESTION: And the only reason it's not

14:21:37 1 co-extensive with the provisional equidistance line is  
2 because of the effect on of the base points on the  
3 Berbice bulge; correct?

4 "ANSWER: Right. I mean, I think that's the  
5 definition of creating a provisional equidistance  
6 line. Coastal features on both sides are going to  
7 swing segments back and forth."

8 MR. REICHLER: Professor McRae, in interest of  
9 transparency and full disclosure to the Tribunal, I would  
10 appreciate it if you would read to the end of this line of  
11 questioning, rather than cutting it off in the middle. It's  
12 only seven lines and it continues right where you left off at  
13 line one on page 1405. It's lines 2 to 9 on the same page.  
14 One more question and one more answer. It's really the  
15 completion of Mr. Saunders's line of questioning, this very  
16 line of questioning. And if you feel uncomfortable reading it,  
17 I would be happy to do it very quickly.

18 PROFESSOR McRAE: Mr. President, I understood that  
19 this day was reserved for Suriname and not for Guyana. I did  
20 not stand up and ask my colleague in the middle of his  
21 presentation, nor did we at all. It's a matter for you if you  
22 wish to give Mr. Reichler the floor and ask us to go further  
23 and look at matters that he would like to take out of the  
24 transcript rather than matters that Suriname would like to take  
25 out of the transcript.

14:22:55 1 MR. REICHLER: Mr. President, I only raise this  
2 because I would not make a comment about argument, but when one  
3 side reads selectively from the transcript and attempts to  
4 portray a witness's testimony in a certain fashion, it's  
5 standard practice to allow the other side to point out just a  
6 small bit to finish the line of questioning so that it's before  
7 the Tribunal and the Tribunal can see all the questions and all  
8 the answers on this, in case the Tribunal feels that the next  
9 question and answer shows something different. It's seven  
10 lines.

11 PRESIDENT NELSON: On this point, I think I would  
12 allow Mr. Reichler's request. I shall be very careful. I  
13 shall--one has to be very careful. As we stated this morning,  
14 this is your turn and not Guyana's turn, but on this particular  
15 point I would like you to read it.

16 PROFESSOR McRAE: We're getting a copy of our  
17 transcript.

18 PRESIDENT NELSON: Before you start, I would like to  
19 repeat my injunction that this is Suriname's day and not  
20 Guyana's.

21 Thank you.

22 PROFESSOR McRAE: I'm waiting for the extract. I  
23 believe the version here has been found.

24 The next question, and I think that Mr. Reichler's  
25 request was the next question and answer or was it the rest of

14:25:09 1 the page?

2 MR. REICHLER: Just the next question and answer,  
3 lines 2 to 9.

4 PROFESSOR McRAE: The question is:

5 "QUESTION: So, if you wanted to neutralize the  
6 effect of those coastal features, you would use some  
7 method of delimitation other than the provisional  
8 equidistance, would you not?

9 "ANSWER: Assuming you have a coastline that  
10 doesn't do it by itself, which I think you do--here  
11 you do. If you had absolutely a straight coastline à  
12 la--it says à la the Jaenicke diagram, then perhaps  
13 you can give some thought about whether there's a  
14 method other than equidistance."

15 Mr. President, the point I was trying to make, which  
16 is quite a different point from the point that Mr. Reichler was  
17 trying to make is that Dr. Smith was confirming exactly what  
18 Mr. Saunders had said. The Berbice Headland does have an  
19 impact on provisional equidistance line. And as you can see,  
20 it does push it towards Suriname. The point Mr. Reichler  
21 wanted to make was in answer to Mr. Saunders's question about  
22 how do you neutralize the effect of a feature on the  
23 equidistant line. My point was does the feature have an effect  
24 on an equidistance line, and there's all sorts of subsequent  
25 discussion about the effect of Hermina Bank that was not my

14:26:28 1 point, so I appreciate Mr. Reichler having the time to bring  
2 another point to the attention of the Tribunal, but it wasn't  
3 really the point that I was making.

4 Now, to be fair to Dr. Smith, the extract that I  
5 quoted from was not entirely consistent with what he said  
6 earlier where he said that Guyana's base points were well  
7 balanced geographically by the base points on Suriname's side.  
8 And in his examination in the first round, and that on page  
9 1380 earlier in his testimony. His examination the first round  
10 of Guyana's argument, he said that there was geographic parity.

11 But we still have not been able to discover what he  
12 meant by geographic parity. If we look at the geography of the  
13 area, we see the Berbice Headland rising to the north and then  
14 to the northeast. On the Suriname side we see first Turtle  
15 Bank, and here we can see some form of parity, although Turtle  
16 Bank is a much smaller headland, and here I use Dr. Smith's  
17 term headland than that Berbice Headland. But after that, even  
18 the most generous definition of parity does not occur once  
19 Turtle Bank disappears because after Turtle Bank, the coast of  
20 Suriname starts to fall away to the southeast. So while the  
21 Guyana coast rises to the north and then northeast, the  
22 Suriname coast recedes south and east, and there simply can be  
23 no parity here. And that is why we said that it's not just the  
24 Berbice Headland that distorts the line. It is the fact that  
25 the Berbice Headland, coupled with the receding Suriname coast

14:28:14 1 pulls the equidistant line across in front of the Suriname  
2 coast, and that is why the line is inequitable to Suriname. As  
3 we have said, it is a classic example of the Jaenicke effect.

4 But Mr. Reichler and Dr. Smith come at it another way.  
5 Mr. Reichler said that there could not be a Jaenicke effect  
6 because the provisional equidistant line is a straight line.  
7 On Monday Mr. Reichler said, and this is from the transcript,  
8 and I believe I have the only relevant part here, "Now, if  
9 there were actually a headland or other protruding feature on  
10 one side of the river but not the other, the turning points  
11 affected by that feature would begin to display the parabolic  
12 curve predicted by and depicted on the now famous Jaenicke  
13 diagram."

14 And Dr. Smith in his examination on Monday referred to  
15 the Jaenicke diagram as one where, and I quote him, "you have  
16 the parabolic curve created where you have a headland not being  
17 counterbalanced by any opposing feature on state B." And that  
18 was in the transcript at 1381.

19 Well, Mr. President, is this correct? Must the  
20 Jaenicke effect always be expressed in the form of a parabolic  
21 curve? Were we wrong all along about the Jaenicke effect? To  
22 borrow Mr. Reichler's metaphor of Monday, have we parried the  
23 Reichler tilt only to be floored by the parabolic curve? Well,  
24 let's look at the Jaenicke diagram, and here we are again using  
25 the version of the Jaenicke diagram that we used in the earlier

14:29:57 1 part of the pleading found in the U.S. pleadings in the Gulf of  
2 Maine, and it does, indeed, show a parabolic curve. So, why  
3 was this? Well, there are two things to note. First, the  
4 Jaenicke diagram is based on a coastline that is a straight  
5 line. In our case, the coasts meet at an angle. And secondly,  
6 as the Tribunal will recall, the original Jaenicke diagram uses  
7 a rectangle to simulate a headland. By contrast, our headland  
8 at Berbice is rounded.

9           So, what happens then in our case? The line is first  
10 affected by Turtle Bank, which flattens out the curve. Then as  
11 the coast falls away towards the mouth of the Coppename River,  
12 the base points pull the equidistant line into a straight line  
13 and away from any parabolic shape. So, if the Suriname coast  
14 had continued as a straight line along the due east or six  
15 degree line, the equidistant line in the first section would  
16 indeed have assumed a parabolic curve. But, of course, the  
17 actual geography results in a different configuration. It  
18 forced the line into a single direction. In fact, a parabolic  
19 curve would have been more beneficial to Suriname. So, there  
20 is still a Jaenicke effect, even though the equidistant line is  
21 not a parabolic curve.

22           The real point is that the Jaenicke diagram showed the  
23 Jaenicke effect in theory. The equidistant line here shows the  
24 Jaenicke effect in practice in the real world, and in the real  
25 world the Jaenicke effect can be a straight line.



14:31:54 1           Now, Mr. President, Guyana's assumption that the  
2 straight line in the first section of the provisional  
3 equidistant line is not the result of the Jaenicke effect,  
4 causes it to conclude that Hermina Bank has a substantial  
5 impact on the line to Guyana's disadvantage, as if the first  
6 section of the line is somehow thrown off its natural course by  
7 Hermina Bank. But, of course, the natural course is not a  
8 natural course at all. It is a course that has been determined  
9 from the outset by the Berbice Headland. Nothing illustrates  
10 this more clearly than the diagram that Mr. Colson showed this  
11 morning when he showed the averaged one-segment equidistant  
12 line. And this was a simplified equidistant line, a straight  
13 line out to the intersection of the 200-nautical-mile arcs.  
14 And if you compare that with the equidistant line, it responds  
15 to particular coastal features. It becomes immediately clear  
16 that the distortion is caused by the Berbice Headland, not by  
17 Hermina Bank.

18           Now, Mr. President, I would like to say a few words  
19 about proportionality. I will not dwell on it because by now  
20 it will be clear to the Tribunal that relying on  
21 proportionality tests for anything other than a general sense  
22 of whether a solution is equitable is hardly a sensible course  
23 of action and thus courts and tribunals have steered away from  
24 seeking solutions through tests of proportionality. But since  
25 we were accused of manipulation in the construction of our area

14:33:36 1 for testing proportionality, I thought I would explain again  
2 the construction of that area, for it seems that our colleagues  
3 on the other side were not paying close attention when we dealt  
4 with proportionality in the first round.

5 To start with, Mr. Reichler confused the relevant area  
6 with the area in which the proportionality was to be tested.  
7 We did not say we were defining a relevant area or a  
8 delimitation area when we set out the area for testing  
9 proportionality. And we constructed the area in this way. We  
10 drew the perpendiculars that we had used for defining the  
11 relevant area. Then we dropped perpendiculars from the outer  
12 limits of those lines to the coasts of both States. It was not  
13 the relevant area that we had identified earlier, although it  
14 was built onto that relevant area. It was not intended to be.  
15 It was not claimed to be, and it was not the relevant area.

16 Guyana objects because the area that we showed was not  
17 co-extensive with the relevant coasts of the parties that we  
18 were using to test proportionality. Of course, it was silent  
19 on the fact that the relevant maritime area that they were  
20 using to test proportionality also did not coincide with the  
21 lengths of their relevant coasts.

22 In any event, as we pointed out, the key variable in  
23 any proportionality test is not really the area in which the  
24 lines are tested. It is the length of the relevant coasts, and  
25 I'm sure it would not have been lost on the Tribunal that when

14:35:20 1 each side used its own version of the relevant coasts for  
2 proportionality models, it tended to do better with its own  
3 line.

4 And Guyana also seems to be unaware of the fact that  
5 the best proportionality result that we obtained with our line  
6 was actually on the basis of the proportionality model that  
7 they put forward, not on the area that we proposed.

8 And so, the expressions of high dudgeon that we heard  
9 on Monday were either misdirected or based on a  
10 misunderstanding of what we were doing, or both.

11 Mr. President, I would now as a final part of my  
12 presentation, like to move to the application of the bisector  
13 method. Now, in all of Guyana's pleading on Monday about  
14 delimitation method, what was missing was any discussion of the  
15 true relationship between the angle bisector method and  
16 equidistance. Because, as we have said, an angle bisector is  
17 simply an equidistant line drawn to generalized coasts. It  
18 avoids the disadvantages that result from coastal features that  
19 distort or coastal features that pull an equidistant line in  
20 one direction or another. It is a line that provides for an  
21 equal division, and thus it is a line that can contribute to an  
22 equitable solution.

23 I would just like to make the point, Mr. President, we  
24 just didn't hear any comment from Guyana on this aspect this  
25 morning. They wished to characterize what Suriname is

14:36:57 1 proposing as a complete abandonment of equidistance. Which, of  
2 course, completely mischaracterizes the nature of an angle  
3 bisector.

4           And I'd also like to make a brief comment about some  
5 of the discussion this morning of delimitation methods, about  
6 the difference between equidistant and angle bisector method,  
7 and the point that the angle bisector involves the drawing of  
8 coastal front directional lines, and that this involves some  
9 element of subjectivity. And, of course, we have acknowledged  
10 that drawing of coastal direction lines from which the angle  
11 bisector must be measured does involve an element of  
12 judgment--that is true--but it is not complicated. Now, we  
13 have seen in a number of examples in this particular case a  
14 number of coastal front lines have been drawn. Dr. Smith drew  
15 coastal front lines. Guyana showed us coastal front lines  
16 drawn by the Johns Hopkins Laboratory of Applied Physics. We  
17 showed how those coastal front lines could actually be  
18 shortened to meet the relevant coasts. We drew coastal front  
19 lines. All involved matters of judgment and definitely  
20 involved a question that had to be decided about which  
21 direction the line would be.

22           But, Mr. President, the subjectivity, if you may call  
23 it that, or the judgment that is involved in drawing a coastal  
24 direction line is substantially less than the subjectivity that  
25 is involved in trying to reduce or eliminate the weight to be

14:38:36 1 given to particular coastal features and trying to adjust that  
2 weight and adjust a line in the direction of a line in the  
3 light of balancing those coastal features, and that is  
4 particularly so in the case of adjacent states.

5           Moreover, in this case, the angle bisector method  
6 avoids a number of other difficulties that have been raised  
7 about the drawing of an equidistant line, in particular  
8 questions that have been raised about the base points on  
9 Vissers Bank and S1. So that while there is an element of  
10 judgment involved in drawing the coastal direction lines, there  
11 are many more questions of subjectivity and judgment that are  
12 involved in adjusting an equidistant line.

13           Let me turn, then, Mr. President to the question of  
14 how the angle bisector is to be constructed in this case. As  
15 we pointed out, the angle formed by the intersection of the  
16 coasts is bisected. That produces a bisector line on an  
17 azimuth of 17 degrees. That azimuth is then adjusted to start  
18 from the existing boundary in the territorial sea, that is, the  
19 10-degree line from the land boundary terminus to the outer  
20 limit of the territorial sea. That produces a two-segment  
21 boundary comprised of a 10-degree line and a 17-degree line.

22           However, for reasons that I pointed out in my  
23 presentation on Saturday, in Suriname's view, the equitable  
24 solution in this case requires a further adjustment so that the  
25 boundary would run for its full length at 10 degrees out to 200

14:40:22 1 nautical miles.

2 Mr. President, that concludes my presentation. Unless  
3 there are questions, I would ask you to call on Professor  
4 Murphy to continue on with Suriname's submissions.

5 ARBITRATOR SMIT: Professor McRae, you haven't tried  
6 to quantify the deviation from the provisional equidistance  
7 line caused by the oddities of the geographical ocean front;  
8 right? I mean, you have not tried to quantify the influence of  
9 the Berbice Headland not only on the direction of the  
10 provisional line, but also on the territory?

11 PROFESSOR McRAE: Thank you for the question,  
12 Professor Smit.

13 We have not done area calculations of the effect, as  
14 you're suggesting, and the reason for that is it does depend  
15 upon what you're measuring it against.

16 Now, you saw the slide that we had indicating the  
17 provisional equidistant line in relation to the line that  
18 Professor Colson mentioned, the single segment equidistant  
19 line. And it certainly would be possible to measure the area  
20 in between that line and the equidistant line.

21 You could think of other lines that you could compare  
22 it against. So, the reason we haven't done it is that we are  
23 not sure that you can necessarily say there is one absolutely  
24 true line you should measure it against, and therefore you  
25 should take an area calculation. And, of course, the effect as

14:42:16 1 we pointed out, the effect of Berbice, because it has so many  
2 points, is affected by factors on the Suriname coast again  
3 because Turtle Bank in the initial phases, counterbalances  
4 Berbice; as it goes it does not. Hermina has some  
5 counterbalancing later on.

6 So it never was entirely clear to us, when you think  
7 about it, what exactly would be the standard in order to  
8 measure it against in order to produce that area of  
9 calculation.

10 ARBITRATOR SMIT: Thank you.

11 PRESIDENT NELSON: Thank you very much, Professor  
12 McRae.

13 PROFESSOR MURPHY: Thank you very much, Mr. President.

14 I will be addressing this afternoon in my presentation  
15 Guyana's submissions 3 and 4. In listening to Guyana's  
16 presentation on Monday, Suriname came away thinking that the  
17 only way Guyana is able to maintain this submission 3 is to  
18 make repeated assertions about the facts that simply are not in  
19 the record and, we submit, are not true. And let me provide  
20 four examples of this muddling of the facts. In doing so I do  
21 reiterate that the burden is on Guyana to prove this claim, not  
22 on Suriname.

23 First, counsel for Guyana said on Monday that the  
24 drilling of the CGX site would not have commenced for 45 days,  
25 and therefore, there was ample time for negotiation without

14:44:01 1 sending out the patrol boats. Indeed, counsel for Guyana  
2 stated that this was the central issue before this Tribunal.  
3 That's at the transcript at page 1440.

4 Now, in support of this assertion, counsel for Guyana  
5 directed the Tribunal to the declaration of the Rig Supervisor,  
6 Mr. Netterville. Yet, when you look at Mr. Netterville's  
7 declaration at paragraph five, he says the rig had already  
8 begun to drill prior to the arrival of the patrol boats. So,  
9 we have counsel for Guyana representing that no drilling would  
10 have occurred for 45 days, while Guyana's own declaration  
11 expressly states that the drilling had already commenced. If  
12 this is the central issue for submission number 3, then it  
13 appears submission number 3 must fail.

14 Second, counsel for Guyana said that there were guns  
15 mounted on the boat. Yet Guyana's evidence says no such thing.  
16 Neither of Guyana's declarants who were on the CGX rig say  
17 anything about seeing guns mounted on the patrol boats.  
18 Indeed, the only thing that one of the declarants reported  
19 seeing were search lights from the patrol boats that were  
20 shined on the rig. That's at Guyana's Memorial Annex 176,  
21 paragraph four. By contrast, Suriname's evidence establishes  
22 that the boats themselves were not armed, which means the  
23 vessels were not mounting guns. And I would directed you to  
24 our Rejoinder at Annex S.R. 19, paragraph two, where Captain  
25 Galong states, "At the time of the CGX incident in June 2000,



14:45:48 1 the patrol boats were not yet armed."

2 Third, the counsel for Guyana said the guns were  
3 brandished about. Yet again, Guyana's evidence says no such  
4 thing. Neither of Guyana's declarants who were on the CGX rig  
5 say anything about seeing guns waved about by the men on the  
6 patrol boats. By contrast, Suriname's evidence shows that the  
7 crews of both patrol boats were expressly instructed not to  
8 wave their sidearms or group weapon about.

9 Now, Mr. President, on points such as this, all I can  
10 say is that something that is not in the evidence and that is  
11 not true does not become evidence and does not become true  
12 simply because opposing counsel says over and over again that  
13 it is true.

14 The fourth issue on the facts, counsel for Guyana said  
15 that, and here I quote, "The most incriminating fact, the most  
16 incriminating fact is that Suriname does not provide a  
17 photograph of the actual gunboat, indicating the size of the  
18 mounted weapons and surely this was available to counsel.  
19 Instead, we are treated to a photo of a boat that resembles a  
20 yacht."

21 We submit that statement is very interesting for two  
22 reasons: First, the photo to which the Tribunal was treated  
23 is, in fact, a photograph of one of the actual patrol boats.  
24 This is the photograph that was included in Suriname's first  
25 round Judges' folder at Tab H3, along with various

14:47:31 1 specifications concerning the boat. The photograph and the  
2 specifications come from a Hamilton Jet News Release dated  
3 April 2000. That's just two months before the CGX incident.  
4 The news release is reporting that the government of Suriname  
5 had purchased patrol boats from Hamilton Jet.

6 Now, you'll note here that the patrol boat bears the  
7 marking P02, which, as I noted in my first-round presentation,  
8 was the patrol boat commanded by Captain Bolah that went out to  
9 the CGX rig.

10 Now, I suppose we did not note to the Tribunal the  
11 size of the mounted guns in this photograph because there are  
12 no mounted guns in the photograph, and there were none at the  
13 time of the CGX incident.

14 The second thing and perhaps more interesting thing  
15 about counsel for Guyana's statement is that he looked at this  
16 photograph and immediately thought it looks like a yacht. In  
17 other words, when he gazed upon it, he said, gee, this is not a  
18 threatening boat; right? This is like the "Love Boat" or  
19 something like that.

20 Now, one wonders whether Guyana's two declarants, had  
21 they, too, seen the patrol boats in the light of day, would  
22 have had the exact same reaction. They would have gazed upon  
23 them and said, gee, those are two pretty unimpressive yachts.

24 Conversely, one wonders whether Guyana's two  
25 declarants, like counsel from Guyana, based upon no factual

14:49:08 1 foundation whatsoever somehow conjured up in their minds an  
2 image of two phantom battleships bristling with weapons and  
3 crewed by crazed Surinamese gunslingers. But I suggest,  
4 Mr. President, that we move away from the realm of nighttime  
5 phantoms and into the realm of the facts before you in this  
6 case. Indeed, counsel for Guyana says that it is the objective  
7 circumstances, the objective circumstances which are central in  
8 determining whether a use of force occurred. Those objective  
9 circumstances, based on a fair reading of what is actually in  
10 the record are as follows: Guyana unlawfully authorized a CGX  
11 rig to deploy to the area of overlap. Suriname's 1996 Mining  
12 Decree, which is in our Counter-Memorial at Annex 54, precluded  
13 oil exploration in maritime areas claimed by Suriname.

14           Two, Surinamese patrol boats under very careful  
15 instructions so as to avoid any use of force deployed to the  
16 location. These patrol boats and the crews are the same boats  
17 and crews that regularly engage in maritime law enforcement for  
18 Suriname. Upon their arrival, the boats indicated to the CGX  
19 rig that they were from the Surinamese Navy and that the rig  
20 was in Surinamese waters without authority to conduct economic  
21 activities.

22           The boats asked the rig to leave, stating that it if  
23 it did not do so, the consequences would be yours, while at the  
24 same time explicitly assuring the rig that the boats had no  
25 intention of harming it. The rig then left. No one was hurt,

14:51:12 1 no shots were fired, no guns brandished, no boarding, no  
2 inspection, no arrests. The rig just left.

3 As we indicated in our first round, and we were not  
4 rebutted by Guyana on this, no Tribunal, whether the  
5 International Court of Justice in the Spain-Canada fisheries  
6 case or the International Tribunal for the Law of the Sea in  
7 the Saiga case, nor any scholar looking at this type of action  
8 would call it a use of force within the meaning of Article 2(4)  
9 of the Charter, nor would it be viewed as a threat to use  
10 force. There was no explicit or implicit promise that force  
11 would be used if the rig did not comply with the demand. In  
12 short, we submit that when you put all the facts together, the  
13 real facts, not the facts being conjured up, the real facts, we  
14 maintain that no one would look at this type of enforcement  
15 action as a violation of the Law of the Sea Convention Articles  
16 279 or 371.

17 Let me turn to a few points relating to the law  
18 because I think here, too, counsel for Guyana muddled the  
19 waters a bit.

20 First, drilling for oil in a disputed maritime zone  
21 violates a state's obligations under the Law of the Sea  
22 Conventions Article 74(3) and 83. We were puzzled when counsel  
23 for Guyana made so much out of an article published in 1992 by  
24 Churchill and Uhlstein, and this they submitted to you in Tab  
25 45B of the December 18th hearing folder. Now, it is true at

14:53:09 1 the beginning of this article--it's actually a chapter in a  
2 book--it's true that at the beginning of the excerpt that  
3 they've given to you the authors speculate that if one focuses  
4 solely on the obligation to negotiate a final delimitation  
5 agreement, they speculate, and they note that that obligation,  
6 as it exists under Article 6 of the 1958 Continental Shelf  
7 Convention, they speculate that perhaps at some point a duty to  
8 negotiate lapses and a party might be able to proceed to drill  
9 in a disputed area. That is an initial conjecture they make,  
10 but they don't stop the analysis there. They then consider  
11 additional principles of international law that they think are  
12 relevant, principles relating to a coastal state's rights to  
13 exploit its resources and the obligation not to take any step  
14 to aggravate a dispute. They look at these other principles.  
15 Then they look at relevant case law, including the Aegean Sea  
16 case that we mentioned in our first round, and then they also  
17 contemplate the effect of the pending entry into force of the  
18 Law of the Sea Convention because, as of 1992, it's not yet in  
19 force.

20 Putting all of those sources together, Churchill and  
21 Uhlstein reach the exact opposite conclusion that counsel of  
22 Guyana is pressing upon you. I won't read all the text here,  
23 but they are saying there is a lot of evidence to show that it  
24 is a rule of customary international law that you can't  
25 unilaterally engage in exploration for oil in a disputed

14:54:41 1 maritime area, and towards the end of this slide you're seeing  
2 that they are saying that this basic rule will be strengthened  
3 when the Law of the Sea Convention enters into force. They  
4 specifically refer to Articles 74 and 83, and they specifically  
5 are saying here they think it is unlawful to engage in this  
6 unilateral drilling.

7           So, we think it's rather hard to see why Guyana thinks  
8 that this article supports its unilateral decision to authorize  
9 a rig to drill in a disputed maritime area.

10           Let me turn to a second point of law that I think we  
11 need to straighten out a little bit.

12           Since the CGX incident occurred in the area of dispute  
13 or area of overlap, we have submitted to you that it cannot be  
14 said that the action taken by Suriname was a use of force  
15 against Guyana's territorial integrity. Now, counsel for  
16 Guyana said that, well, wait a minute, the CGX incident  
17 occurred on the western side of the provisional equidistance  
18 line, yet that provisional equidistance line has never, never  
19 been central to Guyana's case, at least it wasn't in the  
20 application, wasn't in the Memorial that they submitted. At  
21 the point when they're formulating submission 3, that  
22 provisional equidistance line is totally irrelevant. Both  
23 parties' formal submissions to you in this case remain the  
24 10-degree line or the 34-degree line, and if you set aside what  
25 the parties have said formally in this case and instead you go

14:56:16 1 back to what were the facts on the ground in June of 2000, it's  
2 clearly the situation that the facts were you had an area of  
3 overlap between those two lines, 10 and 34, you could go back  
4 to the 1991 minutes, agreed minutes, and you see clearly  
5 referred to there, area of overlap between these two lines.

6 And you will also recall that the evidence you have  
7 before you shows that there was coastal management of fisheries  
8 in this area of overlap by Suriname and largely not by Guyana.  
9 So, to the extent that any kind of coastal management is going  
10 on, it's Suriname conducting it, at least with respect to this  
11 issue of fisheries. As such, we would submit that the incident  
12 of June 2000 cannot possibly be said to have occurred in waters  
13 that were under Guyana's territorial control or jurisdiction.

14 Let me turn to a third point of law that we think  
15 requires some clarification, and that is, since the CGX  
16 incident concerned a vessel not flagged to Guyana or companies  
17 that were of the nationality of a third state, it cannot be  
18 said as a matter of law that the action by Suriname was a use  
19 of force, if one were to conclude that it was a use of force,  
20 against Guyana's nationals or its property.

21 Now, in response to a question by Professor Shearer on  
22 this issue, counsel for Guyana said, you will have noticed from  
23 the claim for damages that we are not seeking damages for,  
24 let's say, costs incurred by Reading and Bates or by the CGX  
25 Energy, but only damages which are directly relevant to Guyana.

14:58:06 1 Well, actually, if you go look at their evidence on damages  
2 that they think were incurred, that's not true.

3 The affidavit of Mr. Newell Denison, who worked for  
4 Guyana's Geology and Mines Commission, is the source of  
5 evidence for Guyana's damages with respect to submission number  
6 3. Among the things that Mr. Denison states is the following.  
7 You have it there on slide 10. On 2-3 June, 2000, Suriname  
8 used military force to expel the CGX rig from the area. I  
9 understand from information provided to me by CGX that  
10 Suriname's action caused CGX to lose at least \$5,500,000, which  
11 it had invested in preparing to drill the exploratory well.

12 Now, Denison then takes that amount in his affidavit  
13 and adds other costs that were purportedly incurred by three  
14 oil companies, all to reach a total figure of \$30 million, some  
15 \$30 million which is the basis for their claim for damages with  
16 respect to submission 3.

17 In other words, while counsel for Guyana says that  
18 Guyana is only seeking damages to Guyana, Guyana's evidence is  
19 based, at least as we see here, on damages to companies like  
20 CGX. Yet the country with standing to bring a claim for an  
21 alleged use of force that caused damage to CGX, the country  
22 that can do that is not Guyana, it's Canada, and Canada is not  
23 in this case.

24 My fourth point on issues of law is that this  
25 Tribunal, as I'm sure the members are well aware, is bound by



15:00:01 1 the jurisdictional provisions set forth in the Law of the Sea  
2 Convention. We have identified two fatal defects in  
3 jurisdiction over submission number 3. Guyana's only response  
4 in its second round was to label our arguments as rigid  
5 formalism. Well, we stand by those jurisdictional arguments.  
6 Guyana cannot just wish away the conditions and limitations set  
7 forth in Part XV before resorting to compulsory procedures.  
8 Article 283, paragraph one clearly requires that the aggrieved  
9 state must inform the other state of the alleged violation of  
10 the Law of the Sea Convention, and must provide an opportunity  
11 for negotiation.

12 Now, last week, we essentially challenged Guyana to  
13 show the Tribunal where in the record Guyana ever informed  
14 Suriname that it believed Suriname, by its conduct in  
15 June 2000, violated either Articles 279 or 301 or just violated  
16 the Convention at all. You will recall that Tab H 4 in our  
17 Judges' folder to you where we said here is a table of all the  
18 evidence showing that they informed us that there was a dispute  
19 under the Convention, and the table was empty.

20 Guyana had no response to that, other than to baldly  
21 assert that Suriname had adequate notice that the incident was  
22 substantially related to the Law of the Sea Convention, yet  
23 where is that notice found? There is no evidence of any kind  
24 that Guyana ever approached Suriname regarding the CGX incident  
25 as having been a violation of the Law of the Sea Convention.

15:01:53 1 We submit that to uphold jurisdiction over this submission  
2 would basically write Article 283 out of the Convention, thus  
3 making it less likely that disputes can be resolved without  
4 resort to arbitration. Doing so would severely diminish the  
5 likelihood that states might first resort to conciliation under  
6 Article 284 and Annex 5. And it would signal that the  
7 carefully calibrated conditions and limitations on dispute  
8 settlement under the Law of the Sea Convention at the end of  
9 the day are not to be taken seriously.

10 Separately, we also argued that under Section 3 of  
11 Part XV, you have a clear carve-out from the compulsory dispute  
12 settlement procedures of matters concerning a coastal state's  
13 enforcement of its sovereign rights with respect to nonliving  
14 resources. Counsel for Guyana again did not address this  
15 point, other than to characterize it as rigid formalism, but we  
16 submit that since Suriname's conduct with respect to the CGX  
17 rig was an exercise of its sovereign rights as a coastal state  
18 with respect to nonliving resources that conduct is not covered  
19 under Part XV Section 2.

20 My fifth and final point relating to the law of  
21 submission number 3 concerns the issue of admissibility. We  
22 argued in our opening round that delimiting contested--when  
23 delimiting contested territory, tribunals simply do not issue  
24 findings concerning a state's preceding conduct in that  
25 territory. Now, counsel for Guyana persisted in arguing that

15:03:50 1 the International Court of Justice in the Cameroon-Nigeria case  
2 declined to issue a ruling on Nigerian responsibility for  
3 occupying the Bikasi Peninsula due to a lack of evidence. That  
4 apparently is their opinion. Yet the Court's opinion does not  
5 support that interpretation. In paragraphs 320 to 324 of the  
6 Court's opinion, it is true that the Court finds a lack of  
7 evidence for other acts that Nigeria allegedly committed, but  
8 on the question of Nigerian state responsibility for its  
9 occupation of the Bikasi Peninsula, the Court concluded in this  
10 paragraph that you have on the screen, paragraph 319, that the  
11 Court's delimitation in favor of Cameroon was sufficient for  
12 addressing Cameroon's claim for an unlawful use of force. No  
13 issue here of lack of evidence.

14 We submit that the same reasoning should guide the  
15 Tribunal in this case no matter what boundary the Tribunal  
16 might ultimately delimit.

17 I must also note that counsel for Guyana also referred  
18 to the Ethiopia-Eritrea dispute resolution process in support  
19 of Guyana's position. This is at the transcript pages 1448 and  
20 1454. Yet, the Ethiopia-Eritrea Boundary Commission, which was  
21 charged with delimiting the border between Ethiopia and  
22 Eritrea, and it did that in a decision rendered April 2002,  
23 that Commission has issued no findings whatsoever on issues of  
24 state responsibility. Hence the process that was embarked on  
25 by that Boundary Commission is completely consistent with our

15:05:46 1 general proposition that tribunals engaged in delimitation of  
2 contested territory do not issue findings regarding a state's  
3 preceding conduct in that territory.

4 Now, it is also true there is a completely separate  
5 Ethiopia-Eritrea Claims Commission that is charged with  
6 handling issues of state responsibility, and it did address an  
7 issue concerning use of force. It did so years after the  
8 delimitation decision was taken.

9 What I would like to note about that Commission's  
10 decision on use of force is that in rendering its decision, it  
11 paid absolutely no attention whatsoever to the new boundary  
12 that had been delimited by the Boundary Commission because  
13 doing so would have given an ex post facto application of that  
14 new boundary to the circumstances that existed back when the  
15 alleged actions occurred. And we submit that on similar  
16 reasoning, it would be inappropriate for this Commission in  
17 delimiting a boundary today or in 2007 to apply that boundary  
18 back to June of 2000 as a means of reaching some kind of  
19 conclusion with respect to submission number 3.

20 Mr. President, in concluding my comments on submission  
21 number 3, I note that Suriname fully stands by all of the  
22 arguments that we have made in our written and oral pleadings,  
23 including our own submission number 2(c) regarding Guyana's  
24 conduct. At the same time Suriname also submits that once all  
25 the dust settles around the various arguments that have been

15:07:41 1 placed before you, certain rather simple propositions seem to  
2 emerge.

3 First, the language of Articles 74(3) and 83(3)  
4 implicitly prohibit a state from engaging in unilateral  
5 exploratory drilling in a maritime area. That, we think is  
6 quite clear, even from the scholarship pointed to by Guyana.

7 Second, resort to unilateral drilling in a disputed  
8 maritime area anywhere in the world by one party will  
9 invariably trigger a response by the other party which  
10 demonstrates why such unilateral action should not be taken in  
11 the first place.

12 Third, if a party to the Law of the Sea Convention  
13 believes that it has exhausted efforts to reach agreement on a  
14 maritime boundary, the first party should first resort--the  
15 parties should first resort to the dispute settlement  
16 procedures of the Law of the Sea Convention rather than  
17 initiate action in the area of dispute.

18 Fourth, in this case, since Guyana did not at any time  
19 prior to filing its application inform Suriname of the alleged  
20 violations of the Law of the Sea Convention, the procedure set  
21 up under Part XV has not been followed, and there is no  
22 jurisdiction over this submission.

23 And finally, if there is no jurisdiction over Guyana's  
24 submission number 3, then there would appear to be no  
25 jurisdiction over Suriname's submission 2(c), since Suriname's

15:09:31 1 submission was offered in the alternative in the event that the  
2 Tribunal found jurisdiction over Guyana's submission concerning  
3 the CGX incident.

4           Let me turn with a few brief comments with respect to  
5 submission number 4. Here the parties are in agreement on a  
6 few things. They agree that a violation of the Law of the Sea  
7 Convention by one side to the Convention--they agree that a  
8 violation of the Law of the Sea Convention by one side, an  
9 argument that one side has violated the Law of the Sea  
10 Convention can only relate to conduct that postdates 1998.  
11 Now, Guyana said there is some relevance to the earlier conduct  
12 in understanding the post-'98 conduct, but the reality is the  
13 Convention only entered into force as between the two states in  
14 August of '98, and it's only thereafter that conduct that  
15 occurred could be regarded as a violation of the Convention.

16           The parties also appear to agree that Articles 74(3)  
17 and 83(3) do not require a Law of the Sea Convention party to  
18 actually enter into a provisional arrangement.

19           And finally, the two sides appear to agree that  
20 Articles 74(3) and 83(3) require Law of the Sea Convention  
21 parties to negotiate in good faith toward a provisional  
22 arrangement.

23           So, those points seem to be common between the two  
24 sides. Where the parties differ is on how one should  
25 characterize the post-August '98 negotiations. Guyana thinks

15:11:24 1 that Suriname did not make qualitative efforts in those  
2 negotiations. Suriname thinks Guyana did not make qualitative  
3 efforts in those negotiations. But how is the Tribunal really  
4 to judge whether a state is making a qualitative effort to  
5 enter into a provisional arrangement of a practical nature?  
6 Now, in his presentation on Monday, and this is in the  
7 transcript at pages 1463 to 64, counsel for Guyana pointed to a  
8 statement of the Guyanan President Jagdeo in July 2000 as an  
9 explanation for why Guyana did not accept the proposal made by  
10 the CARICOM facilitator, Prime Minister Patterson of Jamaica.  
11 We are not sure how that statement exactly demonstrates that  
12 Guyana was making every effort or making a qualitative effort  
13 to reach a provisional arrangement since from our perspective  
14 the document makes clear that Guyana would not consider any  
15 next step unless it involved the return of the CGX rig to the  
16 disputed area. To Suriname, that's pretty good evidence of a  
17 country whose negotiating posture is basically, "agree with us  
18 and then we have a deal." Yet, even if one accepts Guyana's  
19 proposition that President Jagdeo's statement establishes the  
20 true status of negotiations between the two countries, then  
21 what is one to make of the joint statement of both Presidents  
22 18 months later in January 2002? Here on slide 14, you have  
23 President Jagdeo asserting he is satisfied with the progress  
24 made by Suriname and Guyana towards creating an atmosphere  
25 conducive to discussions on border issues and on provisional

15:13:27 1 arrangements of a practical nature. President Jagdeo was  
2 satisfied. He was satisfied as of January 2002, with the  
3 progress of both sides. We submit that Guyana's assertion that  
4 this Tribunal--to this Tribunal that there has been a  
5 stonewalling or a failure to engage in qualitative efforts  
6 cannot be sustained in the face of this kind of a statement  
7 made at the highest level by the Government of Guyana.

8           Mr. President, in concluding my comments on this  
9 submission, submission number 4, I again note that Suriname  
10 stands fully by the arguments it has made to you in the written  
11 and oral pleadings, including our own submission 2(d) regarding  
12 Guyana's conduct, but again, I think once you push aside the  
13 smoke and confusion of the arguments relating to this  
14 submission, a few basic propositions again emerge.

15           First, Articles 74(3) and 83(3) of the Law of the Sea  
16 Convention do require states to engage in good faith  
17 negotiations towards the reaching of a provisional arrangement  
18 pending a final delimitation of the maritime boundary.

19           Second, parties to the Law of the Sea Convention who  
20 believe that negotiations for reaching a provisional  
21 arrangement have reached an impasse are free to take the  
22 dispute to the dispute resolution procedures of the Law of the  
23 Sea Convention.

24           Third, on the evidentiary record in this case, there  
25 appear to have been myriad meetings, exchanges of proposals,



15:15:20 1 and requests for information that occurred between the parties  
2 from 1998 to 2004, and I direct to you our Tab H 5 of  
3 Suriname's first round Judges' folder.

4 Fourth, while we stand by our position that Guyana  
5 should have been more flexible in its negotiating position, we  
6 can see the difficulty for the Tribunal in finding that either  
7 party acted in bad faith. Indeed, the leaders of both parties  
8 regarded the negotiations as of 2002 as making satisfactory  
9 progress.

10 Fifth, and finally, if either party can be said to  
11 have acted in bad faith, then the other party's submissions  
12 should be accepted by the Tribunal. But if neither party can  
13 be found to have acted in bad faith, then neither Guyana's  
14 submission number 4 nor Suriname's submission 2(d) should be  
15 accepted.

16 Mr. President, that concludes my presentation on  
17 submissions 3 and 4. I would be happy to answer any questions  
18 that you have, and if not, I would ask you to invite Professor  
19 Greenwood to come to the podium.

20 PRESIDENT NELSON: Thank you.

21 I give the floor to Professor Smit.

22 ARBITRATOR SMIT: Professor Murphy, at the time that  
23 Suriname learned that this rig was on the way to the place  
24 where it eventually ended up, was there, in effect, as within  
25 the party an obligation to negotiate a solution of a practical

15:17:08 1 nature provisionally?

2 PROFESSOR MURPHY: I think, Professor Smit, that at  
3 the point where both parties joined the Law of the Sea  
4 Convention, they at that point had an obligation to engage in  
5 good faith negotiations towards a provisional arrangement with  
6 respect to a disputed maritime area. The fact that ultimately  
7 one side began to authorize a rig to go into the area and the  
8 other side felt that it needed to react to it doesn't augment  
9 that basic obligation.

10 I suppose if one were thinking about what further ways  
11 one's obligations under the Convention are engaged in the sort  
12 of lead up to June 2000, I do think that once you become aware  
13 of something about to happen, it makes sense that you would  
14 need to contact the other side and seek information about this  
15 matter, and that's exactly what Suriname did.

16 ARBITRATOR SMIT: Well, you mean you sent those two  
17 boats there to find out what happened?

18 PROFESSOR MURPHY: No, I mean that as soon as in  
19 May of 2000 the government of Suriname became aware through  
20 media reports and discussions with the state oil company and  
21 whatnot, became aware that there was some information out there  
22 that a rig was about to be deployed to the disputed area,  
23 Suriname immediately sent a Diplomatic Note to the Government  
24 of Guyana saying we have heard reports of this nature, please  
25 tell us what is about to happen. A note comes back to the

15:18:50 1 Government of Guyana saying it's basically none of your  
2 business. This is happening in our waters, and there is an  
3 exchange of notes going back and forth during which both sides,  
4 including Suriname, say let's sit down and discuss this matter.  
5 Unfortunately, what then unfolded was Guyana continued to allow  
6 the rig to go into the area, precipitating the need for  
7 Suriname to respond.

8 ARBITRATOR SMIT: Are there copies of that  
9 correspondence in the file?

10 PROFESSOR MURPHY: Yes. In fact, I would direct you  
11 to our Judges' folder at Tab H-1. It's the very first tab in  
12 my presentation from last week, where I provided you with a  
13 table that contains about half a dozen or so sources in the  
14 evidence of exchanges between the governments in the lead up to  
15 the incident, and our position on that was that Guyana should  
16 not have been deploying the rig. We were giving Guyana every  
17 opportunity to talk to us about this before the rig entered the  
18 area. Nevertheless, it let the rig come into the area  
19 precipitating Suriname's reaction.

20 ARBITRATOR SMIT: And after the two boats showed up  
21 and told the rig to leave, did Suriname contact Guyana or  
22 Guyana contact Suriname to inquire what was going on?

23 PROFESSOR MURPHY: Yes. Indeed, both sides then were  
24 immediately in contact with each other, and on that I would  
25 direct you again to the collection of documents from my

15:20:34 1 presentation last week, but this time the appropriate tab would  
2 be H5. What you're going to find in the aftermath of the  
3 incident is an assertion by Guyana initially that they were  
4 upset about this incident, but then thereafter it's completely  
5 a discussion about trying to figure out a provisional  
6 arrangement, so the parties pretty quickly, at least in their  
7 interactions with each other, aren't any longer talking about  
8 the CGX incident as an incident. They're talking about how can  
9 we find a way to do a provisional arrangement.

10 ARBITRATOR SMIT: Thank you.

11 PRESIDENT NELSON: Thank you very much, Professor  
12 Murphy.

13 PROFESSOR GREENWOOD: Mr. President, I'm entirely in  
14 the Tribunal's hands about this. The Foreign Minister and I,  
15 between us, will not take not more than half an hour; in fact,  
16 probably quite a considerable bit less. We could take a break  
17 now if you wish to do so, or if you prefer us to finish a  
18 little bit earlier, we could soldier on now and take the break  
19 when the whole hearing is concluded.

20 PRESIDENT NELSON: Can I take the latter option?

21 PROFESSOR GREENWOOD: Mr. President, as President of  
22 the Tribunal, you could take whatever option it pleases you.

23 PRESIDENT NELSON: Thank you.

24 Please go on.

25 PROFESSOR GREENWOOD: Thank you very much,

15:22:12 1 Mr. President.

2 Mr. President, sir, before the Foreign Minister makes  
3 Suriname's formal submissions, it falls to me briefly--and I  
4 emphasize "briefly"--to sum up our arguments. It has to be  
5 said, Mr. President, that counsel on both sides of this case  
6 have in one respect sent rather mixed signals to this Tribunal.  
7 One minute counsel tells you that this case is very  
8 straightforward, and the next we tell you how difficult the  
9 task before the Tribunal is.

10 The truth, Mr. President, is that the case has its  
11 difficult aspects. Most maritime boundary disputes do. But it  
12 also has a number of aspects which are really very simple, and  
13 in summing up I want to try to sort one from the other and  
14 suggest some answers to both.

15 So, let us begin with the simplest of aspects of the  
16 case, and those really must be Guyana's submissions 3 and 4.  
17 Each of these submissions stands or falls entirely by itself.  
18 The answer to each depends neither on the answer to the other,  
19 although they are, of course, related in certain respects, nor  
20 on the answer to the questions posed about the maritime  
21 boundary. Now, that might seem surprising for at first sight  
22 it appears that whether the CGX incident took place in an area  
23 awarded to Suriname or one awarded to Guyana, would seem to be  
24 decisive, but Suriname submits that Guyana's submission number  
25 3 has to fail whatever the outcome of the maritime boundary

15:23:46 1 delimitation, and it has to fail for the reasons given by  
2 Professor Murphy.

3           First, it is plain that Guyana has simply failed to  
4 comply with the prerequisites to jurisdiction laid down in the  
5 Convention, and those are prerequisites to jurisdiction. They  
6 cannot be dismissed as formalities merely because Guyana now  
7 finds them inconvenient.

8           Secondly, Mr. President, the claim represented by  
9 submission number 3 is inadmissible, again for the reasons that  
10 Professor Murphy has given.

11           Thirdly, even if there were jurisdiction, and even if  
12 the claim were admissible, it quite simply fails on its facts.  
13 Whatever the definition of use of force or threat to use force,  
14 this is not it, and it doesn't come anywhere near being it.  
15 And having heard a repeated refrain from Guyana on Monday about  
16 the importance of their case being decided by reference to the  
17 evidence, what you have just heard from my friend Professor  
18 Murphy is an indictment that shows that the submission about  
19 the CGX incident is simply not based on the evidence. It's  
20 miles adrift from it.

21           That takes me, then, to Guyana's submission number 4.  
22 With great respect, and acknowledging the eloquence with which  
23 that claim was advanced, we say that it, too, is quite hopeless  
24 and should be dismissed for the reasons given by Professor  
25 Murphy. Only matters which took place after UNCLOS entered

15:25:30 1 into force for both States can be relevant to this claim, but  
2 what did we hear as the most powerful argument advanced in its  
3 support? A reference to something that was said at the time of  
4 the 1966 Marlborough House Talks 30 years before UNCLOS entered  
5 into force between Guyana and Suriname.

6 And again, the record, the evidence before this  
7 Tribunal, simply doesn't sustain the finding that Sir Shridath  
8 Ramphal invited you to make that Suriname had stalled in  
9 respect of negotiations on these issues because of the  
10 situation in relation to the land boundary further south.

11 So, if submissions 3 and 4 must fail, I then turn to  
12 the maritime boundary claim which is what this case is really  
13 all about.

14 Now, before I turn to the issues which you have to  
15 decide with regard to the boundary, there are three features of  
16 the case which I wish to emphasize. The first is that both  
17 parties have asked this Tribunal to draw a single maritime  
18 boundary separating all the maritime spaces, whatever their  
19 status, on the Suriname side from those on the Guyanese side.

20 Secondly, Mr. President, both parties have maintained  
21 in their submissions that that single maritime boundary should  
22 take the form of a single segment line from the starting point  
23 to a distance of 200 miles.

24 Thirdly, Mr. President, there is no dispute--and we  
25 submit there could be no dispute--that to the extent that the

15:27:12 1 parties are already bound by an existing boundary agreement in  
2 any part of the maritime space, that boundary will not be  
3 altered by the Tribunal, but will rather constitute the point  
4 of departure for any delimitation to be effected by the  
5 Tribunal.

6           Mr. President, it is no longer seriously disputed that  
7 the only agreed maritime boundary which has ever existed  
8 between these two States is the 10-degree boundary in the  
9 territorial sea. That boundary was agreed at the official  
10 level in the course of 1936-38, and although the overall  
11 boundary Treaty which was contemplated was never concluded, the  
12 parties nevertheless went ahead and implemented the boundary in  
13 the territorial sea. The Netherlands and Suriname have treated  
14 it as the territorial sea boundary without any deviation  
15 whatever since the late 1930s, a period of some 70 years; and  
16 on the Guyanese side, the British side as it was, it was  
17 honored as the boundary until a newly independent Guyana  
18 unilaterally repudiated it in the late 1960s. As I say,  
19 Mr. President, that is the only agreed maritime boundary which  
20 has ever existed between these two States and their colonial  
21 predecessors. Of course, the 1799 Agreement determines the  
22 boundary, but it is a land boundary, not a maritime one, in the  
23 River Corantijn itself.

24           Now, Mr. President, Guyana no longer seems to be  
25 pursuing its original argument that there was ever any



15:28:53 1 agreement on its claimed 34-degree line, and it is difficult to  
2 see how any such argument could have ever been regarded as  
3 tenable. I stress this element of agreement, sir, because, in  
4 our submission, it provides the key to the whole dispute, and  
5 it offers the Tribunal a starting point both juridically and  
6 geographically for its task. It is the juridical starting  
7 point because, if Suriname is right that there was such an  
8 agreed boundary--a fact Guyana does not contest--and that that  
9 boundary remains in place which Guyana does contest but on  
10 grounds that don't begin to stand up as a matter of  
11 international law, then the jurisdictional issues regarding the  
12 boundary simply fall away. The location of the land boundary  
13 terminus becomes irrelevant, and the Tribunal's exercise of  
14 delimitation begins from the point at which the agreed boundary  
15 ends. It is in that sense that the agreed boundary provides  
16 the geographical as well as the juridical starting point.

17           For those reasons, Mr. President, Suriname would  
18 invite the Tribunal to address the questions of the existence  
19 and the extent of the agreed boundary in the territorial sea  
20 first. In making that suggestion, we are not resiling from our  
21 Preliminary Objections. We continue to maintain that if the  
22 facts are as Guyana represents them to be, then the Tribunal  
23 has no jurisdiction to determine the maritime boundary, but the  
24 facts are not as Guyana represents them, and we see no need for  
25 the Tribunal to address difficult questions of law and fact

15:30:41 1 relating to the jurisdictional issue, if it is not necessary to  
2 do so.

3           Now, if the Tribunal begins with the territorial sea  
4 boundary, there are, in my submission, only two questions to be  
5 decided on that part of the boundary. There is no dispute that  
6 the boundary was agreed upon in the 1930s, and there is no  
7 dispute that it followed a line drawn on a bearing of 10  
8 degrees east of true north, from the point at which a line on  
9 that bearing from the two markers of the 1936 Point intersected  
10 the low-water line.

11           So, the first question that does have to be decided is  
12 whether the agreed boundary which the parties had observed for  
13 some 30 years was terminated by Guyana's unilateral  
14 repudiation, and we say that that cannot be the case. There  
15 weren't the criteria for abandoning a boundary as a matter of  
16 law because no such criteria exists. There is no right to walk  
17 away from an agreed boundary. And in any event, the facts, the  
18 evidence simply does not sustain the argument, even if the  
19 argument were sound in law, which it is not. I won't repeat my  
20 submissions any further.

21           The second question is, what was the extent of the  
22 boundary? How far did it reach? And again, I dealt with that  
23 in my submissions this morning. Suriname maintains that the  
24 agreed boundary extends throughout the territorial waters of  
25 both States; in other words, that Guyana's territorial waters

15:32:18 1 do not extend east of the 10-degree line. Correspondingly,  
2 Suriname's territorial sea does not extend west of that line,  
3 and that is irrespective of how far either State's territorial  
4 sea might extend from its coastline. That, we say, was the  
5 bargain that was struck on which each party relied for a  
6 considerable period of time, in the case of the Netherlands and  
7 Suriname to its detriment.

8           Now, the result, Mr. President, is that the boundary  
9 line starts as follows, and these are all slides which as far  
10 as I can recall Professor McRae has shown to you. If we start  
11 with the area in blank and take the territorial sea boundary,  
12 if you would like to add the territorial sea boundary out to  
13 12 miles, please--that's out to 200 miles. I'm afraid what you  
14 should have seen--no, I'm sorry, it's my fault because I'm not  
15 wearing my glasses. That is the territorial sea boundary out  
16 to 12 miles. The line necessarily includes to its east a part  
17 of the contiguous zone of Suriname as Commander Kennedy  
18 recognized in the 1950s. Now, where, then, does the line go  
19 from there? That would be the next question which the Tribunal  
20 would have to determine.

21           Now, Guyana has made clear that even from this point  
22 which, of course, it does not accept, the line should be an  
23 azimuth of 34 degrees, but such a line is not supported by  
24 equity, by history, or by geography. It has never been the  
25 subject of any agreement, and it is not even sustained by the

15:34:04 1 very methodology, flawed as it is, which Guyana invokes.  
2 Suriname maintains it cannot be accepted. Suriname's position  
3 is that the geographical realities of the coastline and the  
4 need to achieve an equitable solution mean that the appropriate  
5 method, having first drawn a provisional equidistance line as  
6 Suriname has done right from the start, is to take a bisector  
7 of the angle formed by the two coasts at the mouth of the  
8 Corantijn. This gives an azimuth of 17 degrees east. That  
9 line should then be moved over to the point at which the agreed  
10 boundary between the two territorial seas terminates. And it  
11 should then, because for equitable reasons outlined by  
12 Professor McRae in his first-round submissions, and the fact  
13 that both parties have sought a single segment boundary, those  
14 considerations then point to the line being further adjusted to  
15 a 10-degree azimuth.

16 Now, Mr. President, let me just try to clear up one  
17 matter which arose in the course of today's hearings, which was  
18 about the concept of an overlap. There are two quite different  
19 senses in which that word has been used in these proceedings.  
20 There is an area of overlapping claims. That lies between the  
21 10-degree east line, which is Suriname's claim, and the  
22 34-degree line, which is Guyana's. That is where the two  
23 claims overlap, and it's in that overlapping area which  
24 Professor Murphy has just shown you that the CGX incident takes  
25 place. But there is another, and we say more important,

15:35:50 1 concept of overlap, and that is the area of overlap of coastal  
2 front projections, and that is broader than the area of  
3 overlapping claims.

4           The point is significant, Mr. President, because any  
5 suggestion that an equidistance line, even if it is  
6 straightened out, amounts to equal division of the area of  
7 overlapping coastal front projection is quite simply wrong. It  
8 would be a division which would be very much to the prejudice  
9 of Suriname and very much to the benefit of Guyana, and that  
10 was vividly illustrated by one of the diagrams shown of the  
11 coastal front projections and the way Suriname's projection was  
12 cut off in Professor McRae's first speech.

13           So, Mr. President, this constitutes Suriname's claim  
14 in the present case. We say that the answer is first to look  
15 at the territorial sea, and that when you do, the issue of  
16 jurisdiction falls away; that the extent of the agreed boundary  
17 in the territorial sea is to 12 miles from the coast of Guyana;  
18 and that that is then the starting point for the rest of the  
19 delimitation exercise. But that delimitation exercise should  
20 be accomplished by the use of an angle bisector, and that the  
21 angle bisector should then be corrected by a move from 17  
22 degrees to 10 degrees, giving an azimuth of 10 degrees east of  
23 true north out to the 200-mile line.

24           Mr. President, before I invite you to call on the  
25 distinguished Foreign Minister of the Republic of Suriname, it

15:37:26 1 remains only for me to thank you, sir, and your colleagues for  
2 the patience and courtesy with which you have listened to  
3 Suriname's counsel, and also, if I may, to extend the thanks of  
4 that team of counsel to the excellent support team with whom we  
5 have had the privilege of working, and whose labors have been  
6 no less important for having been carried out behind the  
7 scenes.

8 Mr. President, may I ask you, sir, to invite the  
9 Foreign Minister to conclude Suriname's submissions.

10 PRESIDENT NELSON: Thank you, Professor Greenwood.

11 I now call upon the Minister of Foreign Affairs of the  
12 Republic of Suriname, Honorable Kraag-Keteldijk.

13 HON. KRAAG-KETELDIJK: Mr. President and Distinguished  
14 Members of the Tribunal, it was an honor and a privilege to  
15 deliver the opening statement of the Republic of Suriname, and  
16 it is now a particular honor for me to deliver the closing  
17 statement of the Republic of Suriname, and also to be the last  
18 person permitted to address you in these proceedings.

19 As you may have noticed, Mr. President, I have  
20 attended these hearings in their entirety. For that reason, I  
21 can state not merely as a courteous formality, but from my own  
22 observation that you have conducted these proceedings in an  
23 exemplary manner. I am confident that you and your  
24 distinguished colleagues will serve as a model to all who may  
25 be called upon in the future to decide important maritime

15:39:19 1 disputes.

2 I also take this opportunity to renew my warm  
3 greetings to our friends from Guyana, whose presentations I  
4 have heard with interest. In my concluding remarks, I wish to  
5 recall the principles that I referred to in my opening remarks:  
6 The first is good neighborliness; and the second, the need for  
7 equity and respect for agreements, particularly in  
8 international boundary delimitation. In these proceedings,  
9 both parties have made clear efforts to act as good neighbors.  
10 Specifically, I refer to the frequent and candid concessions by  
11 members of the Guyanese delegation that Suriname, and Suriname  
12 alone, has sovereignty over the Corantijn River. In the same  
13 spirit, Suriname has repeatedly acknowledged Guyana's  
14 sovereignty over the land on the west bank of the Corantijn  
15 River.

16 Similarly, both parties have exhibited good  
17 neighborliness through their repeated assurances that these  
18 proceedings are utterly separate from the territorial issue in  
19 the South that has long divided the parties. I refer to what  
20 is being called by Suriname the dispute over the "Upper  
21 Corantijn Triangle" and by Guyana the "New River Triangle."  
22 Suriname accepts Guyana's assurances that however the Tribunal  
23 may resolve the present dispute, that resolution will not have  
24 any effect whatever on the position of either party with  
25 respect to the territorial dispute in the South, and it gives

15:41:16 1 its own assurances to that effect.

2           In other regards, however, Mr. President, Guyana's  
3 presentations in these proceedings have been disappointing. I  
4 have listened patiently as distinguished representatives of the  
5 Republic of Guyana have accused Suriname of abandoning the  
6 principle of mutuality and of acting without restraint. I am  
7 confident, however, that the evidence before this Tribunal  
8 shows that those accusations are without foundation. On the  
9 contrary, I would submit to you that the record before this  
10 Tribunal demonstrates that it is Guyana which has avoided any  
11 solution characterized by mutuality and has acted so as to  
12 aggravate tensions between our neighboring countries. Nowhere  
13 is this clearer than in the presentations by Guyana's  
14 representatives concerning the CGX incident. Suriname is being  
15 accused by Guyana of using force in violation of the United  
16 Nations Charter and international law, when Suriname has done  
17 no more than to use its modest coastal enforcement vessels to  
18 prevent CGX from drilling a well in Suriname's maritime zones.

19           To be sure, Guyana also claims those maritime zones,  
20 but between neighbors, unilateral action such as that which  
21 Guyana authorized is not acceptable. Such conduct is  
22 provocative and would inevitably aggravate existing tensions.  
23 Perhaps these features of Guyana's presentation are mere  
24 rhetorical flourishes, but just as history matters, so do words  
25 matter and have power. Such words used in this historic



15:43:19 1 context are inconsistent with the atmosphere of fair and honest  
2 discussion that should characterize solemn proceedings such as  
3 these.

4 I turn now to the principle concerning the need for  
5 equity and respect for agreements in international boundary  
6 delimitation. For at least two generations, Suriname and  
7 previously the Netherlands believed that the question of the  
8 location of the boundary in the territorial sea had been  
9 settled. Even in the absence of a formal agreement, we  
10 believed that we have achieved a resolution that was equitable,  
11 and I have heard Guyana acknowledging that that resolution was  
12 followed by both countries for many, many years after the  
13 1930s. It is therefore most regrettable that Guyana has chosen  
14 in these proceedings to abandon its long-standing acceptance of  
15 the 10-degree line as the boundary for the territorial sea,  
16 thus causing the jurisdiction of this Tribunal to be called  
17 into question. As I said in my opening remarks, that question  
18 would have been avoided if Guyana had lived up to its  
19 agreement.

20 On the subject of equity, Mr. President, Suriname  
21 continues to believe that the geography of the relevant  
22 coastlines of Suriname and Guyana is the factor of overriding  
23 importance in determining an equitable solution. You do not  
24 need an expert geographer to tell you what the maps themselves  
25 will reveal, nor do you need an expert to tell you whether a

15:45:08 1 given solution is or is not equitable. That is for you alone  
2 to decide.

3 As an observer of these proceedings for the last two  
4 weeks, it is apparent to me that Guyana's true aspiration rests  
5 with the provisional equidistance line, which they exhibited to  
6 you during the entire four days of their opening round.

7 Mr. President, Members of the Tribunal, I must stress  
8 that Suriname does not regard equidistance as an equitable  
9 solution. Equidistance is not an equitable solution in this  
10 case. On the contrary, the bulging feature on the coast of  
11 Guyana at the mouth of the Corantijn River pushes the  
12 equidistance line eastward in front of Suriname's coast. To  
13 achieve equity, a different delimitation method must be used.  
14 Suriname continues to believe that a fair and equitable  
15 solution is one which continues the 10-degree line from the  
16 outermost edge of the territorial sea to the 200-mile limit.

17 Mr. President, I join our friends from Guyana in  
18 emphasizing the importance of this case to our countries. I  
19 join them as well in thanking you and your colleagues for the  
20 work which you have done so far, and for the thoughtful,  
21 careful work that I know you will do in the future. You have  
22 from the people of Suriname their deepest respect and their  
23 heart-felt good wishes in your historic endeavor.

24 I wish to stress, Mr. President, that your endeavor  
25 is, indeed, historic. This is an historic moment not only for

15:47:11 1 the parties before you, but for the entire Caribbean Community  
2 and, indeed, for the development of the law and of mechanisms  
3 for resolving international disputes. Truly, Mr. President,  
4 you write for the ages. In this connection, however, I wish to  
5 stress that in the here and now, your award will not represent  
6 an end of all differences between Suriname and Guyana. Between  
7 Suriname and Guyana there still remains much hard work to do.  
8 Suriname is committed to doing that hard work in the spirit of  
9 good neighborliness, having regard for the interests of Guyana  
10 as our neighbor, and with appropriate mutuality and restraint.  
11 We expect no less from Guyana. We believe that your award will  
12 serve as a platform from which both sides can and must continue  
13 their efforts to resolve their remaining differences in the  
14 future.

15           Mr. President, Members of the Tribunal, at this time I  
16 formally place before you Suriname's submissions as they appear  
17 at page 152 of Suriname's Rejoinder. I thank you for the  
18 courtesy and patience with which you have heard me. On behalf  
19 of the President and people of Suriname, I extend to you and to  
20 our friends in the Guyanese delegation the warmest expression  
21 of our thanks and appreciation.

22           PRESIDENT NELSON: I thank the Foreign Minister of  
23 Suriname for her concluding address.

24           As we come to the end of these proceedings, I think it  
25 behoves me to make some brief concluding remarks. It is seldom

15:49:24 1 the case that an international court or tribunal has been so  
2 privileged to hear such a splendid display of forensic skill  
3 and eloquence. On behalf of the Tribunal, I thank the  
4 representatives of the parties, and I am extremely grateful for  
5 the spirit of cooperation, goodwill, and courtesy which has  
6 prevailed during these hearings.

7           The important institutions to which both Guyana and  
8 Suriname belong make in their constituent instruments the  
9 obligation to settle disputes by peaceful means a leitmotif, a  
10 central theme. I refer here to the Charter of the United  
11 Nation, the Bogota Charter, The Hague Peace Conventions, and  
12 the Chaguaramas Pact. Above all, I should refer to the  
13 Convention on the Law of the Sea which stipulates, and here I  
14 quote, "States Parties shall settle any dispute between them  
15 concerning the interpretation or application of this Convention  
16 by peaceful means in accordance with Article 2(3) of the  
17 Charter of the United Nations, and to this end shall seek a  
18 solution by means indicated in Article 83(1) of the Charter,"  
19 and that, as you know, is Article 279.

20           This obligation to settle disputes by peaceful means,  
21 be it remembered, has long been a fundamental principle of  
22 international relations of the members of the South American  
23 community which may now be referred to as the Latin American  
24 and Caribbean Group. The parties have thus followed a hallowed  
25 tradition, a tradition which was inspired long ago by the great

15:51:55 1 liberator Simon Bolivar. Here, I take this opportunity to  
2 thank the Secretary-General of the OAS for putting at our  
3 disposal the facilities of this organization. The task of the  
4 Tribunal is now to settle this dispute, and the parties can be  
5 assured that this Tribunal shall make every effort to produce a  
6 just, fair, and equitable solution.

7           And now, I have the great pleasure to invite the  
8 representatives of the parties, in particular Foreign Minister  
9 Kraag-Keteldijk of the Republic of Suriname, and Ambassador  
10 Illes also of the Republic of Suriname, and Ambassadors Harper  
11 and Karran of the Republic of Guyana to attend the reception  
12 immediately following this hearing at 4 p.m. in the atrium  
13 downstairs in this building.

14           I thank you, and I wish you well.

15           (Whereupon, at 3:52 p.m., the hearing was adjourned.)

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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.

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DAVID A. KASDAN