

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

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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 3

Saturday, December 9, 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
 9:32 a.m. before:

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

PROF. THOMAS M. FRANCK, Arbitrator

DR. KAMAL HOSSAIN, Arbitrator

PROF. IVAN SHEARER, Arbitrator

PROF. HANS SMIT, Arbitrator

Permanent Court of Arbitration:

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

Tribunal Hydrographer:

MR. DAVID GRAY

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

2 PRESIDENT NELSON: Good morning. We shall now begin
3 with the presentation of Professor Philippe Sands speaking for
4 Guyana.

5 PROFESSOR SANDS: Thank you very much, Mr. President.

6 Just before I continue where I left off yesterday, a
7 couple of housekeeping matters, well, one housekeeping matter,
8 one correction of my own error. We were asked by counsel for
9 the other side to make available some copies to them of
10 photographs that were displayed with annotations which were not
11 in the Judges' folders, and we have copies of those, and we
12 will make them available to the other side and, of course, to
13 the Tribunal.

14 The second is to correct myself from yesterday. I got
15 the words longitude and latitude mixed up. I'm extremely
16 grateful to the Ambassador of Suriname for pointing that out to
17 me on the stairs yesterday. He is, of course, absolutely
18 right, and the record will be changed in due course.

19 I had finished off yesterday afternoon on the
20 circumstances in which the shift from 28 degrees to 10 degrees
21 had taken place, and I'm going to turn now to a related topic,
22 which is the way in which the 34-degree line emerged, largely
23 from the work that had taken place in London on the computation
24 of a median line or an equidistance line.

25 In 1957, Commander Kennedy of the British Admiralty

09:34:34 1 Office, was given the task of determining the equidistance
2 line, and we think it useful to go over the historical material
3 to try to understand how he went about that process. He did
4 so, as we will see, in reliance on the charts that were
5 available at the time; namely, Dutch Chart 217 and British
6 Chart 1801. And on the basis of those charts, he computed a
7 number of lines which had as a commonality an average line of
8 approximately 34 degrees. And it was on that basis that the
9 United Kingdom in the early 1960s moved towards the 34-degree
10 line as the proposal for the equidistance line; and thereafter
11 the United Kingdom and Guyana adopted that 34-degree line as
12 their equidistance line, both within the territorial sea,
13 initially up to 3 miles, then from 1977, up to 12 miles, but,
14 of course, extending beyond the territorial sea after 1977,
15 along that line.

16 And in the period, of course, during the 1960s Guyana
17 throughout its period of independence has followed that line.
18 At no point did the Netherlands ever object to that 34-degree
19 line.

20 Now, we think the most useful way to approach this is
21 to look at some of the documents, and I appreciate that this is
22 selective because you have a vast volume of material in front
23 of you in the written pleadings, so with that caveat, and these
24 documents that I'm going to refer you to are illustrative of
25 how the process unfolded.

09:36:22 1 The first document that's worth looking at is Tab
2 28(a). It was in yesterday's collection of documents.
3 Tab 28(a). And we are then going to go alphabetically through
4 them, so in the next few minutes it will be just a question of
5 turning the pages.

6 This document, 28(a), is a memorandum from Mr. Gordon
7 Smith, and at the bottom of the page it's dated the 18th of
8 June, 1957, and at the bottom of the page it says, I quote, "I
9 suggest that we ask Commander Kennedy at the Admiralty copying
10 to the Foreign Office to suggest lines which would be in
11 accordance with the ILC's principles." That, of course, that
12 is the International Law Commission. "In the meantime, we
13 could Reply to British Guyana saying that the lines are not
14 acceptable in the areas in question for the reasons set out in
15 this minute, and that we will suggest alternative lines as soon
16 as possible." That is all I want to take you to in that
17 document, simply to indicate that the basis for the computation
18 of the lines was the work of the International Law Commission,
19 which, of course, pointed towards equidistance, and that it was
20 intended to follow international practice.

21 Over the page at Tab B you will see a memorandum or a
22 minute from Mr. Scarlett nine days later, the 27th of June,
23 1957, which summarizes what occurred at a meeting on that date.
24 You will see some familiar names in the list of individuals
25 present at that meeting including Joyce Gutteridge from the

09:38:21 1 legal department, who I know will be known to several people in
2 this room.

3 And then just below the list of attendees, the
4 paragraph begins, and I quote, "We will all agree that it was
5 important that even at the exploration stage, the area should
6 be fully defined and that an attempt should be made to draw the
7 lines of boundaries off the continental shelf in accordance
8 with the principles set out in International Law Commission's
9 Draft Articles."

10 And bear in mind, let us remind ourselves that at this
11 point they are concerned with the area beyond 3 miles, not
12 beyond 12 miles.

13 Then it goes on, and I quote, "Commander Kennedy then
14 explained that he was in considerable difficulty because of
15 absence of reliable and up-to-date charts of the area. He had,
16 by reference to the material available, produced four differing
17 lines at both ends, none of which was unassailable," both ends
18 referring to both the Venezuela end and the Suriname end. And
19 in our pleadings we have identified what those four different
20 lines are, which are based on the different charts, in part,
21 that were available at the time, which were not entirely
22 identical.

23 Then over the page at Tab C, you have Secret Telegram
24 Number 212 of the same date, 27th of June, 1957, the Secretary
25 of State in London to the Governor of British Guiana. And on

09:39:58 1 the second page, if you turn that page over and go to paragraph
2 five of the secret memorandum, you will see a section entitled
3 "Definition of Boundaries," and I quote, "After full discussion
4 with Foreign Office and Admiralty, we are convinced that it is
5 essential to define northwest and southeast limits of
6 operations under License in the absence of agreements with
7 territories on precise definition of boundary of respective
8 continental shelves. We would wish to follow as closely as
9 available data allow the principles set out in International
10 Law Commission Article quoted in my previous telegram." Stop
11 and pause there, the reason, of course, being that British
12 Guiana had received a request for an oil exploration license,
13 as I mentioned yesterday.

14 The crucial point is that in accordance with the
15 practice, the British government is extremely concerned to
16 follow the emergent rules of international law in defining
17 those boundaries.

18 And then the note goes on: "There is considerable
19 practical difficulty here in drawing precise lines on this
20 basis owing to the absence of completely reliable charts. We
21 have, however, adopted for this purpose U.S. Hydrographic
22 Office chart 5728 of 1942 for the Venezuela boundary and
23 Netherlands chart 217 of February 1939 for the Suriname
24 boundary, and on these bases we consider the following lines
25 would be reasonable." We don't need to look at the Venezuela

09:41:30 1 line.

2 Then it goes on to B, for Suriname, from large
3 triangular wooden beacon latitude 5 degrees 59 minutes 53.8
4 seconds north, 57 degrees, eight minutes, 55.5 seconds west, in
5 10 degrees direction to 3 miles limit from coast, thence
6 033-degrees direction to intersection with the 25-fathom line,
7 and that was the first proposal to emerge from the initial work
8 of Commander Kennedy.

9 Over the page you then have a quite lengthy document
10 from Mr. Hildyard on behalf of the Secretary of State to a
11 Mr. Stevens, and this letter sets out really in some detail how
12 they went about proceeding.

13 At the bottom of the first page dealing with the
14 boundary with Dutch Suriname, the situation is complicated
15 because at both ends of the British Guiana coastline, the line
16 of the shore is very inadequately charted, and it is not
17 possible for the Hydrographic Department of the Admiralty to
18 produce an unchallengable median line. In fact, five
19 alternative lines can be drawn from the various charts which
20 vary substantially. It was originally proposed that the area
21 included in the License should stop short of the boundaries
22 with both Venezuela and Suriname by a safe distance, e.g.,
23 about 5 miles. The colonial government, however, felt that it
24 would be a tactical mistake to stop short of the boundary
25 because this might unfavorably prejudice future negotiations

09:43:20 1 with the governments concerned.

2 So, to pause there, the intention was to come up and
3 propose to the other side what was considered to be the true
4 equidistance line.

5 And then going down, halfway down that page, it was
6 agreed the best principle to follow some application of the
7 principle of equidistance set out in the International Law
8 Commission's Draft Articles on the Law of the Sea numbers 14
9 and 72(2). These Articles have yet to be considered by the
10 international conference next year and at present amount to no
11 more than a recommendation in favor of the median line
12 principle. Nevertheless, it was considered the granting of a
13 license within the median lines would be justifiable and would
14 form a suitable precedent for negotiation. There you have the
15 first explicit reference to reliance on equidistance in the
16 licenses.

17 Since the dates available would not provide a--I can't
18 quite read that word actually--"proven" median line, it was
19 agreed to take for the purpose of the License, the line
20 obtained when using on the Venezuelan side an American chart
21 and on the Suriname side a Dutch Chart. The lines thus
22 produced are roughly the means of the various alternatives and
23 as far as possible follow the median line principles.

24 So, there you have a clear confirmation of the
25 practice that is adopted.

09:44:45 1 I take you now to Tab F, F as in Freddie, which is a
2 letter from Mr. Scarlett to a Mr. Anderson of 16th of October,
3 1958. It's about a year later, and at paragraph three
4 concerning the delimitation of the continental shelf, "In
5 practice, this is a matter on which there is plainly no
6 difference of principle between ourselves and the Netherlands
7 authorities. We are both wedded to the principle of the median
8 line, but we have the practical difficulty to which you refer
9 of drawing the line with absolute certainty since some of the
10 data on which it is to be based is not beyond question. On
11 this there are, as I said, two possible courses which we could
12 follow. Namely we could propose the line which Commander
13 Kennedy drew for us last year as being, in our view, the best
14 shot that can be made to it, although we would, of course, for
15 this purpose have to invoke his aid once again projecting the
16 line beyond the 25-fathom line; or, if need be, we could look
17 to a physical survey of the coastal areas so far as may be
18 necessary to establish the line beyond all doubt. Naturally,
19 we would prefer to avoid the expense of an exercise of this
20 nature, if it's at all possible to do so, and I suggest that
21 our best course would be to have the line projected as best we
22 can and put it to the Netherlands authorities as our proposal
23 and see how they react."

24 Clear confirmation that they proceeded on the basis it
25 was a common understanding on the use of equidistance beyond 3

09:46:31 1 miles.

2 And then paragraph five, "I expect you will have heard
3 that the question of the Treaty and specifically the
4 continental shelf came up in discussion which I had with the
5 Netherlands Ambassador and the Suriname Minister at lunch
6 yesterday. On the matter of the continental shelf, we agreed
7 that there was nothing between us on how the line should be
8 drawn, but there might be the difficulty that I have mentioned
9 above."

10 In other words, beyond 3 miles there is no
11 disagreement on the point of principle. It was merely the
12 practicalities of transforming principle on facts of the case.
13 Over the page at Tab G, a note from Commander Kennedy which
14 explains the basis upon which he proceeded and his choice of
15 charts. I think as time is short, I'm not going to read out
16 all of that, I have got plenty of it highlighted. I invite you
17 to read all of the section relating to paragraphs six and
18 seven, and then over the page covering all the way through to
19 Article 3. But that indicates the basis of the approach that
20 he took.

21 And in those circumstances, for reasons I think that
22 were related to an extension beyond 3 miles to include the
23 contiguous zone, he proposed the distance of 6 miles for a
24 10-degree line, but that was subsequently retracted and
25 withdrawn by 1965, as we will see. But it provides a snapshot

09:48:15 1 of his thinking on how one goes about computing the line.

2 Over the page at Tab H is a letter from Scarlett to
3 Kennedy. First paragraph deals with the question of the
4 low-water mark which is, of course, irrelevant and confirms
5 Guyana's approach on the distinction between sovereignty over
6 internal waters and sovereignty over continental land
7 territory.

8 And then the second paragraph is entitled "The Seaward
9 Boundary." As you say, the difficulties in the way of drawing
10 an exact median line are considerable and the best we can hope
11 to do at the moment is to produce a line which the Dutch could
12 be expected to recognize as an honest attempt given the
13 difficulties to follow the principles on which both we and the
14 Dutch are agreed.

15 So, again, it's a mechanical issue, not an issue of
16 principle.

17 And the rest of the documents follow through those
18 discussions into 1958 and 1959, Tab I and Tab J. And that I
19 think gives you the time line of the emergence of the British
20 Government's position.

21 By 1965, we've set out in our written pleadings, the
22 10-degree line had been completely rejected by the United
23 Kingdom because, as we will see, the issue of navigation was
24 shown to be nonexistent. And shortly before Guyana obtained
25 independence, the U.K. proposed a draft treaty which did, in

09:50:04 1 fact, depart altogether from the 10-degree line. It no longer
2 proposed it. It maintained Point 61 as the starting point for
3 the maritime delimitation, and it then proposed the line to be
4 drawn in accordance with the principle of equidistance. The
5 rationale for the departure from the 10-degree line was that
6 the original reasons given by the Netherlands for the 10-degree
7 line navigation were no longer applicable, and you will see
8 that at folder tab 28(k). It's a letter dated May the 3rd,
9 1963 to Mr. Stacpoole from a name that I'm not entirely able to
10 decipher, but I think it may be Grey, Roger Grey.

11 At the bottom of the first page, bottom of paragraph
12 five, and I quote, "With regard to statistics about sizes and
13 numbers of ships using each channel mentioned by Commander
14 White in his letter to Mrs. Hutchinson at the Foreign Office of
15 February 7th, a copy of which Skinner sent to me with his
16 letter of February 18, I'm informed by our customs department
17 that during 1962, 255 coastal ships from British Guiana with an
18 average displacement of 45 tons net used the eastern channel.
19 The eastern channel is the one across the other side of the
20 Corantijn, so to speak, on the Suriname continental land
21 territory side. It is not the western channel. During the
22 same period, 425 Dutch ships used the same channel, but there
23 was no check from our side on their displacement. This figure
24 includes a launch of 10-ton displacement which plies a regular
25 service between British Guiana and Nickerie. I'm told by the

09:52:08 1 marine superintendent of our transport and harbors department
2 that it is the eastern channel that is buoyed and that is used
3 by all save the most local craft"--that is used by all save the
4 most local craft--"On reaching bluff point near the estuary of
5 the Nickerie River, ships veer towards Springlands."

6 Now, that was the point in 1963 at which the British
7 Government undertook the exercise of ascertaining whether or
8 not the western channel was still being used, and the
9 conclusion is that it was no longer being used, and that was
10 the basis for the departure from the 10-degree line,
11 recognizing that the only justification in 1936 had been the
12 buoying of the western channel, the future buoying of the
13 western channel because there is no evidence before the
14 Tribunal that it was actually buoyed in 1936.

15 So, that explains the change, and in particular the
16 British Government took the view there was no longer any need
17 for supervision of the western channel, which was the principal
18 justification for the 10-degree boundary.

19 In its Rejoinder, Suriname claims at paragraph 3.54
20 that, "The United Kingdom walked away from the 10-degree line
21 in order to create negotiating leverage with the Netherlands."
22 Now, we really do reject that, and the evidence is very clear
23 that it was a rational decision taken on the basis of an
24 evidence-based approach to the determination of whether or not
25 the western channel was still being used for navigation.

09:53:43 1 The change of U.K. position in the early 1960s is
2 shown at Plate 15 of Guyana's Memorial. And I apologize, this
3 is rather small scale, but you can see on Plate 15 a number of
4 different lines. This is also at Tab 28(p) of your folder, in
5 case you want to look at it more closely.

6 There are four lines shown. The first line, A to C,
7 is the Dutch 10-degree line, which I'm pointing with the
8 highlighter. That is the first line.

9 And then you have three lines, respectively. The
10 first one is A to D, the second one is A to E, and the third
11 one is A to F.

12 The A to D line, the first one, is the 1961 British
13 line. The A to F is the 1965 British line, and the A to E is
14 the average direction of the 1965 line, 34 degrees, and that is
15 the explanation or the depiction, I should say, of the way in
16 which United Kingdom and Guyana then moved to the 34-degree
17 line. This was a map produced by Guyana in 1976 showing the
18 average direction of the 1965 draft Treaty equidistance line as
19 being 34 degrees east of true north, so it predates these
20 proceedings.

21 Subsequently, Guyana has always followed that
22 34-degree line, and I refer you to its own draft Treaty of
23 1971, oil concessions granted from the 1970s onwards to which
24 Professor Schrijver will refer, and Guyana's maps relating to
25 its maritime boundary.

09:55:50 1 On no occasion did the Netherlands before 1975 or
2 Suriname, after it gained independence that year, until it
3 used--threatened to use military force in 2000, object to the
4 use of that 34-degree line within the Territorial Sea for oil
5 concessions or for the purpose of depicting boundary limits on
6 maps. There was no diplomatic objection to that practice.
7 Suriname, it is true, did articulate a claim that the boundary
8 line should follow the 10-degree line, but there were never any
9 Diplomatic Notes of protest in relation to any of the oil
10 concessions that were offered and issued by Guyana; and
11 following the creation of its own national oil company,
12 Suriname's practice in generating oil concessions generally
13 reflected the use of that same 34 degree historical
14 equidistance line.

15 So, in conclusion on conduct, the position is very
16 clear. Guyana has always used the 34-degree line as an
17 equidistance line. We've referred to it in our pleadings as a
18 provisional equidistance line.

19 I turn next to the issue of the legal framework, and
20 I'm going to say very little about that because it was dealt
21 with fully by Professor Schrijver yesterday. I would just
22 touch on a couple of aspects. One is to refer you to Article
23 24 of the Territorial Sea Convention of 1958 to remind you that
24 unlike Article 12 of the Territorial Sea Convention of 1958,
25 the median line is mandatory in the contiguous zone. There is

09:57:31 1 no exception in relation to special circumstances or historic
2 title.

3 In relation to the current rules on territorial sea
4 delimitation passing on from the early historical material, the
5 matter is, of course, governed by Article 15 of the 1982
6 Convention, which, for all intents and purposes, is identical
7 to Article 12 of the 1958 Convention. It essentially provides
8 for a median line as the rule, rather different from Articles
9 74 and 83, and no requirement to achieve an equitable solution
10 in relation to the territorial sea.

11 There are, of course, exceptions, and the median line
12 rule does not apply where there is a situation of historic
13 title or where there are other special circumstances to delimit
14 the territorial sea.

15 We submit that Suriname chooses to ignore Article 15
16 altogether. It would rather Article 15 didn't exist, and it
17 makes very little reference to that provision in its written
18 pleadings.

19 Article 15 is different from Article 74 and Article
20 83, as Professor Schrijver indicated yesterday. It is not--it
21 does not direct states to achieve through negotiations an
22 equitable solution. And the International Court of Justice in
23 the Qatar-Bahrain case at paragraph 174 explained the rationale
24 for an important difference between the two regimes, the
25 difference which, with respect to our friends on the other

09:59:09 1 side, they seem less comfortable with. And I quote,
2 "Delimitation of territorial seas does not present comparable
3 problems to the delimitation of other maritime areas, since the
4 right of the coastal state in the areas concerned are not
5 functional but territorial and entail sovereignty over the
6 seabed and the superadjacent waters in their column."

7 So, Article 15 imposes a rather different approach
8 from Articles 74 and 83. And the established approach in the
9 international case law on the delimitation of the territorial
10 sea is first to delimit it in accordance--is first to delimit
11 the territorial sea in accordance with Article 15 and then to
12 delimit the areas beyond the territorial sea, and recent
13 examples for that are Qatar-Bahrain and Cameroon-Nigeria.

14 There is also clear established jurisprudence on the
15 steps which will be taken by an international court or Tribunal
16 in delimiting the territorial sea. You begin by drawing a
17 provisional equidistance line, and only then do you consider
18 whether there are circumstances which would lead to an
19 adjustment of that line in accordance with the requirements of
20 Article 15, historical title or special circumstances. And
21 that's Qatar-Bahrain at paragraph 111.

22 And we also say it's also very clear that the concept
23 of a single maritime boundary does not dispense with the need
24 to delimit first and distinctly the territorial sea and then
25 move to the delimitation beyond the 12-mile zone. Suriname has

10:00:47 1 raised no authority to counter Guyana's arguments and
2 acknowledges that international practice supports Guyana's
3 approach. We think our approach is unimpeachable. We are not
4 aware of any authority which supports Suriname's unorthodox
5 approach which would have the effect of doing away with the
6 clear distinctions with Article 15, on the one hand, and
7 Articles 74 and 83, on the other hand.

8 In the case of Qatar-Bahrain, at paragraph 174, the
9 Court, the International Court of Justice made that position
10 very, very clear. "When carrying out that part of its tasks,"
11 said the Court, "it has to apply first and foremost the
12 principles and rules of international customary law which refer
13 to the delimitation of the territorial sea while taking into
14 account that its ultimate task is to draw a single maritime
15 boundary that serves other purposes as well."

16 So, the idea that the common position of the parties
17 on the need for a single maritime boundary allows you to do
18 away with the distinction between Article 15 and Article 74 and
19 83, is, we say, unfounded.

20 Suriname says in that case and in all cases where the
21 single maritime boundary has been established, the two-step
22 procedure was a rational way to proceed, territorial sea first,
23 and area beyond territorial sea second. We disagree to the
24 extent that they say that our approach in this case is
25 irrational. We don't see what the geographic or other

10:02:24 1 circumstances are in this case which would require this
2 Tribunal to depart from that established practice.

3 So, you begin by measuring the provisional
4 equidistance line, and you do so by reference to the relevant
5 coasts. You look to the location of the baselines and the base
6 points, and I refer you back to yesterday's submissions by
7 Mr. Reichler. And in this regard in relation to the
8 territorial sea, I would just wish to point out what appears to
9 be an error in Suriname's approach to the identification of at
10 least one of the base points. We say, of course, base point S1
11 should not be there at all, but at Annex 69 of Suriname's
12 Counter-Memorial are three tables showing base points and
13 turning points for the provisional equidistance line, including
14 S1 and G1, as well as T1. These should be identical, but they
15 are not, and it may be that an error has arisen in that table
16 which perhaps at some point could be explained.

17 What all of this leads to in the context of this area
18 is a provisional equidistance line with which we are now
19 familiar, and on the basis of Article 15 of the Convention, the
20 provisional equidistance line is as shown in Plate R19 on the
21 screen. This is a chart you are now familiar with.

22 The black line is, of course, Guyana's provisional
23 equidistance line, and we say that is the line to take as the
24 starting point for the delimitation.

25 Should the line be shifted? Well, Suriname does not

10:04:03 1 claim historic title, so we can put that on one side. What
2 that leaves is the question of whether there are special
3 circumstances. Special circumstances do include the conduct of
4 the parties, and in particular the existence, if there is one,
5 of a modus vivendi reflected in a pattern of oil and gas
6 concessions, and there is plenty of judicial authority for that
7 being taken into account.

8 Secondly, special circumstances will include the
9 conduct of the former colonial powers. I refer you in
10 particular to the case of Tunisia-Libya at paragraphs
11 84--paragraphs 94 and 119.

12 But the important point to make is the special
13 circumstances in the territorial sea or beyond do not include
14 land mass and geographic and geological factors which pertain
15 to the seabed. Seabed special circumstances do not come within
16 the Article 15 definition of special circumstances and that is
17 long established, since at least 1985, and stated very clearly
18 at paragraph 39 of the Libya-Malta case. That case, of course,
19 was dealing with the continental shelf but the principle
20 enunciated by the Court applies equally to the territorial sea.

21 So, the law, we say and as Professor Schrijver
22 explained very clearly yesterday, points to a rather well
23 established way to the techniques for taking the provisional
24 equidistance line and then deciding what are the circumstances
25 to be taken into account in shifting that line one way or the

10:05:49 1 other.

2 I turn now to how we get to our 34-degree line and why
3 we run it as we do. The starting point, of course, is Point
4 61, and I don't need to say a whole lot more about that. We
5 have already made it clear that our submission is, to the
6 extent that Point 61 is not on or immediately in the vicinity
7 of the low-water mark, the proper approach to getting to Point
8 61 is to follow the closest possible route. Suriname takes
9 another approach, and we have already responded to that aspect.
10 The 10-degree line, we say, is not applicable to getting to the
11 low-water mark for the reasons that we have explained; namely,
12 navigational circumstances cannot justify it and have for many
13 years not justified it.

14 So, that is the starting point, Point 61. What
15 happens once you reach the low-water mark? Well, the
16 delimitation of the territorial sea all the way up to 12 miles,
17 we say, has to be effected in accordance with the
18 equidistance/special circumstances rule of Article 15, and that
19 is an approach that has been followed by the United Kingdom and
20 the Netherlands in their practice since the 1950s.

21 The United Kingdom and the Netherlands signed the 1958
22 Territorial Sea Convention in 1956 and 1960, respectively, and
23 they became bound by it in 1960 and 1966, respectively. At the
24 Marlborough House meeting in June 1966, the Territorial Sea
25 Convention of 1958 was binding on Guyana and Suriname, as

10:07:52 1 expressly accepted by Suriname. The 1958 Territorial Sea
2 Convention and the 1982 Convention after it set out a binding
3 rule of international law which imposes the median line absent
4 special circumstances.

5 If you turn to Tab 6 in your Judges' folder, that's at
6 the beginning, the introductory tabs, the general part, Tab 6,
7 the early section of the Judges' folder, not the day tabs. Tab
8 6 is an Aide Memoire from the Dutch Legation in London dated
9 the 6th of August, 1958; and at the bottom of the page you will
10 see: "It is deemed desirable that such an agreement to be
11 concluded by Netherlands and United Kingdom by an exchange of
12 notes in which the principle of equidistance mentioned in the
13 same Article of the Convention"--this is the Continental Shelf
14 Convention, Article 6, paragraph two--"would be adopted as the
15 determinant of the line dividing the Continental Shelf adjacent
16 to Suriname and British Guyana. The actual dividing line
17 resulting from the equidistance principle would be charted on a
18 map to be annexed to the notes."

19 Now, just to pause there again, I know I labor the
20 point, but it is one that is important. In 1958, when the
21 Netherlands and the British Governments were talking about
22 delimiting the continental shelf, they were talking about the
23 area beyond 3 miles, so the two states that were responsible
24 for the delimitation of the territorial sea and continental
25 shelf of British Guiana and Dutch Suriname in 1958 at the time

10:10:00 1 that note was drafted, accepted and recognized that beyond 3
2 miles delimitation was to be by reference to the equidistance
3 principle, and the Dutch have never departed from that
4 approach. And I'd remind the Tribunal that in the farewell
5 letter of the Dutch Prime Minister of 1975, when he referred in
6 it to his Surinamese counterpart to the 10-degree line, it only
7 refers to the Territorial Sea; and at the time he wrote that
8 letter in 1975, the territorial sea was only up to 3 miles. In
9 other words, there is a consistent practice by the Dutch
10 Government over at least 17 years for which it was responsible
11 for these issues in which it accepted explicitly that beyond 3
12 miles delimitation was by equidistance. There is no
13 conceivable basis for arguing that beyond three miles
14 delimitation could be on anything other than equidistance.
15 Practice of the colonial powers is absolutely clear and admits
16 of no ambiguity.

17 I turn now to the other aspects of the drawing of that
18 provisional equidistance line. I don't feel there is any need
19 to return to the issues of coastlines which have been addressed
20 in some detail. The point has already been made that the
21 coasts of Guyana and Suriname are adjacent. There are no
22 islands, there are no rocks or reefs or other considerations
23 which would have any sort of impact. There are no special
24 circumstances of a geographical character which would influence
25 the delimitation of the territorial sea other than by

10:12:06 1 equidistance lines in that area. And the issue of base points,
2 as I mentioned, was addressed yesterday by Mr. Reichler.

3 The equidistance line which Guyana now relies upon,
4 was as I've said, first calculated in 1957 by Commander
5 Kennedy. It was, if you like, the average of the lines drawn
6 on the various charts which were then available, placing
7 particular reliance on Dutch Chart 217. And it's of interest
8 that the British chose to use the Dutch Charts rather than the
9 British charts.

10 Now, on the screen now you will see a depiction of the
11 equidistance line in the Territorial Sea up to three nautical
12 miles on the basis of the charts which existed in the 1950s and
13 then extending to 12 miles as recognized after 1977. The first
14 picture is on the basis of Dutch Chart 217. The second picture
15 is on the basis of British Chart 1801. And the third picture
16 is on the basis of the U.S. NIMA Charts.

17 These three charts each show lines in slightly
18 different directional averages. On Dutch Chart 217, the
19 general bearing of the equidistance line is 35 degrees. On
20 British Chart 1801, the general bearing is 34 degrees. And on
21 the more recent U.S. NIMA Charts the general bearing is 36
22 degrees. And it is on that basis that we say the historical
23 equidistance line is more advantageous to Suriname than it is
24 to Guyana, but nevertheless we accept that that is the line
25 that we have through our conduct followed, and therefore it is

10:14:22 1 the most appropriate line to take.

2 Now, the next plate on the screen shows a comparison
3 between the equidistance line on the contemporaneous charts,
4 the Dutch Charts, and the modern U.S. and NIMA Charts, and you
5 can see that the charts essentially show in the gold orange
6 color Dutch Chart 217, in blue British Chart 1801, and in
7 purple U.S. NIMA Charts, the more modern ones. They are not
8 identical, but they are reasonably close, and in red
9 superimposed on the top is the 34-degree line which has been
10 followed.

11 This chart shows both the three-mile limit and then
12 the 12-mile limit, the three-mile limit being the one which
13 would have applied up until 1977 and 1978, and the extension to
14 12 miles only thereafter.

15 The next chart you see on the screen is the one with
16 which you are now familiar, which shows the depiction on the
17 basis of the most recent coastal data of the provisional
18 equidistance line showing it up to 12 miles, beyond three miles
19 and up to 12 miles. What is most significant, we say, from
20 this chart is that on their own calculations, at a point
21 approximately 6 nautical miles, and I gave the coordinates
22 yesterday, the lines converge.

23 Now, we say that the historical equidistance line of
24 34 degrees is properly to be taken as the line of delimitation
25 in this case. If there is to be a first plotting of a

10:16:44 1 provisional equidistance line on the basis of the modern NIMA
2 Charts, it would veer within the territorial sea more towards
3 the direction of 36 degrees, and we accept that the 34-degree
4 line, which we have always accepted as the provisional
5 equidistance line, is one which this Tribunal should follow,
6 even if it is marginally disadvantageous to us.

7 The reason that we adopt that approach is that the
8 line of 34 degrees was plotted in good faith from 1957, in the
9 period between 1957 and 1963 to 1964 on the basis of the best
10 charts then available, and it reflected an application of the
11 rules proposed by the International Law Commission and adopted
12 in the 1958 Convention. Those rules became binding on the
13 United Kingdom and the Netherlands by the time of the
14 Marlborough House Agreement.

15 The 34-degree line also reflects the conduct of the
16 parties ever since that time, and in particular in respect of
17 Guyana's oil concessions, coupled with Suriname's failure to
18 protest the use by Guyana of that line and the grant by
19 Suriname of some of its own oil concessions. So, that
20 34-degree line is fully consistent with and reflective of an
21 application of the principles of international law that were
22 adopted in the 1958 Convention and that were recognized by the
23 former colonial powers as binding on them.

24 What are the special circumstances that could justify
25 a departure from the provisional equidistance line? Well,

10:18:54 1 dealing with our line, we accept that our conduct from the time
2 of our independence, but previously British Government conduct,
3 it could be a basis for shifting the line from a modern
4 equidistance line to the historical equidistance line. We
5 don't think there is any basis at all to justify a shift to the
6 10-degree line, and I will come back to explain more about that
7 when I deal with the arguments of Suriname for its 10-degree
8 line.

9 So, in short, putting our case in its positive, we say
10 that the application of the 1958 Convention and the 1982
11 Convention, lead to the delimitation of a 34-degree line. But,
12 if you don't follow us on that, in the alternative, the
13 Tribunal, if it does not want to delimit from Point 61, is able
14 to delimit from a distance of 6.3 nautical miles from the
15 low-water mark closest to Point 61, and that is the point at
16 which the parties' provisional equidistance lines converge.

17 What does Suriname say in response to all of this?
18 Well, it begins by saying that there is no agreement concerning
19 the maritime boundary in the territorial sea, and it then says
20 in the alternative that if the Tribunal accepts Guyana's
21 submission that the northern boundary terminal is situated at
22 Point 61, by parity of reasoning, as it puts it, it must find
23 an agreement along a 10-degree line into the territorial sea up
24 to three miles and then beyond three miles for a distance of
25 12 miles to the outer limit of the modern territorial sea.

10:20:55 1 And Suriname goes on to argue, thirdly, and also in
2 the alternative, if the Tribunal were to decide the matter
3 de novo, a 10-degree line to the outer limit of the territorial
4 sea at a distance of 12 miles would be justified as a special
5 circumstance to depart from the equidistance line, and the
6 special circumstance invoked, coming to Professor Smit's
7 question yesterday, is navigation. That is the special
8 circumstance that is invoked by Suriname.

9 Now, we say that these arguments have no factual legal
10 basis, and they are not capable of displacing the equidistance
11 rule mandated by Article 15 of the 1982 Convention.

12 I will deal with their first point very promptly.
13 They say there is no agreement concerning the maritime boundary
14 starting point in the territorial sea. We disagree, and we
15 explained that already in full, so I don't revert to that
16 issue.

17 I will deal with their second argument, imposing a
18 10-degree line by what they call the parity of reasoning. This
19 is an alternative argument, and Suriname submits that if the
20 Tribunal accepts that the parties have agreed on a northern
21 boundary terminal at Point 61, then by parity of reasoning, the
22 Tribunal must also determine that a maritime boundary was
23 concluded along a 10-degree line to the three-mile limit which
24 existed in 1936, and that that line should then be extended to
25 12 miles, taking into account changes in its own law and

10:22:37 1 changes in international law, as I understand it, is the logic
2 of their argument.

3 We say that argument is not tenable. The direction of
4 the maritime boundary was never deemed to be settled. Initial
5 agreement was on a 28-degree line. That operated for five
6 years from 1931 to 1936, and thereafter the British Boundary
7 Commissioner, Mr. Phipps, made clear that the 10-degree line
8 had a provisional character and that if circumstances changed,
9 then the direction of the boundary marker would also change.
10 So, it was envisaged that the 10-degree line could be changed
11 in accordance with changing circumstances.

12 Suriname argues that the principles of stability and
13 finality embodied in all boundary agreements were lacking from
14 the provisional agreement on the direction of the maritime
15 boundary. Suriname, of course, has a difficulty here because
16 Suriname's position is that there was no agreement, but they
17 seem to accept that if they were wrong on that, the agreement
18 was of a character which was such as to bring it within the
19 category of boundary agreements to which fundamental change of
20 circumstances rules did not apply. Our answer to that, as we
21 have set out in our pleadings, is that that principle does not
22 apply because although there was an agreement on Point 61, the
23 agreement in relation to the 10-degree line had a conditional
24 character and was not vested with the same degree of permanence
25 that then existed.

10:24:35 1 Now, Guyana accepts that for some period of time, the
2 10-degree line was respected by the United Kingdom. Doubts
3 began to emerge in the late 1950s as to whether or not the
4 navigational circumstances which were invoked to justify the
5 10-degree line continued to exist.

6 The 10-degree line was decisively rejected by the
7 United Kingdom before Guyana achieved independence, and the
8 10-degree line has never been accepted by Guyana for any part
9 of the maritime delimitation. I don't think that is in dispute
10 between the parties.

11 So, there has been no agreement or common practice on
12 a 10-degree maritime boundary for more than 40 years. The
13 period of time over which it might have been accepted has been
14 significantly exceeded by the period of time in which it has
15 not been mutually accepted. So, there is not mutual,
16 sustained, consistent, and unequivocal conduct, as Suriname
17 puts it, in relation to the 10-degree line. That's Suriname's
18 own rather exacting standard. And it stands, we say, in rather
19 stark contrast to the mutual, sustained, consistent, and
20 unequivocal conduct in support of Point 61 as the terminal of
21 the northern boundary, uninterrupted for more than 70 years
22 now.

23 So, the argument that there is parity of reasoning as
24 between the two is flawed because the factual circumstances are
25 very different. The conduct is different.

10:26:30 1 To the extent that there ever was any agreement in
2 relation to a 10-degree line, it was, in any event, limited to
3 a distance of no more than 3 nautical miles. At no point
4 during which United Kingdom and the Dutch appeared to have
5 followed the line did the territorial sea ever exceed
6 three miles. The 10-degree line was rejected by the United
7 Kingdom in the early 1960s, well before the extension of the
8 breadth of the territorial sea to 12 nautical miles by Guyana
9 in 1977 and by Suriname in 1978. There are no grounds for now
10 claiming that a 10-degree line should automatically extend 12
11 nautical miles as a result of a change in the law. Suriname
12 relies on arbitral award of 31st of July, 1989, a case between
13 Guinea-Bissau and Senegal. In that case, there had been an
14 agreement in 1960 which adopted a 240-degree line in the
15 territorial sea and in the continental shelf. Of course, at
16 the time that was adopted, the distances for the territorial
17 sea and the continental shelf were different. The law
18 subsequently changed and a dispute then arose as to whether one
19 extended the distance of the continental shelf delimitation
20 along 240 miles to the modern limit, say, up to 200 miles,
21 rather than the earlier limit. And the Tribunal answered that
22 question in the affirmative, but it did so on the basis that
23 the definition taken in the agreement of 1960 envisaged an
24 evolving definition of the continental shelf. The concept of
25 the continental shelf was defined by reference to its

10:28:38 1 exploitability, and on that basis the Tribunal found that you
2 could extend the continental shelf from the law, as it was in
3 1960, to the law as it was in 1989, which allowed for a more
4 extensive continental shelf.

5 But what the Tribunal was doing in that case was
6 giving effect to the intention to the parties to create an
7 evolving concept of the continental shelf. Such agreement does
8 not exist in the present case, and in particular, it is plain
9 from the documents I have taken you to that the United Kingdom
10 never accepted--never accepted--that the territorial sea
11 practice of a 10-degree line could ever extend beyond
12 three miles. No evidence to support that particular claim.

13 But, of course, that award, arbitral award of 1989 is
14 not apposite for another reason, and that is that in that case,
15 we weren't concerned with the delimitation of the territorial
16 sea. We were concerned with the question of the extent of the
17 delimitation of the continental shelf and whether or not it was
18 possible to, on the basis of the 1960 agreement, proclaim an
19 Exclusive Economic Zone and claim rights in relation to that on
20 the basis of the 1960 agreement.

21 And the Tribunal said in relation to the EEZ claim,
22 the answer to that question was no. The Tribunal said, and I
23 quote, "The agreement must be interpreted in light of the law
24 in force at the date of the conclusion," and since the
25 Exclusive Economic Zone concept did not exist in 1960, there

10:30:23 1 was no basis for interpreting and applying that agreement to
2 give effect to rights in relation to an Exclusive Economic
3 Zone.

4 But even more to the point is the fact that the 1960
5 agreement applied to an extended area which, on whichever
6 approach you took, accommodated a three-mile or a 12-mile
7 territorial sea. It didn't make any difference. That wasn't
8 what was at issue in the case. It is plain from the reasoning
9 of the Court, of the Tribunal, that unless you can identify in
10 an agreement or a common practice of the United Kingdom and the
11 Netherlands, or Guyana and Suriname, an evolving conception of
12 the territorial sea so as to give rise to an extension from
13 three to 12 miles automatically with a change in the law,
14 unless you can identify that agreement, it cannot happen. As I
15 said, there is no such agreement before this Tribunal.

16 Let me turn now to Suriname's argument on the
17 10-degree line as a special circumstance, and this really is
18 the heart of Suriname's case, so I want to spend a little
19 moment on it.

20 Suriname's argument is that this 10-degree line is
21 justified as a special navigational circumstance. In the
22 Counter-Memorial, the reference to navigation as a special
23 circumstance is buried away in the pleading. You will find it
24 at paragraph 3.12. This is what it says: "The 10-degree line,
25 was selected as a boundary for the territorial waters because

10:32:21 1 of, to use present day terminology, a special circumstance,
2 namely the need to guarantee The Netherlands sole
3 responsibility for the care and supervision of all shipping
4 traffic in the approaches to a river under its sovereignty."

5 Now, Suriname proceeds to revisit that point at
6 paragraphs 6.51 and 6.52 of its Counter-Memorial, but it's
7 noteworthy that there is no judicial authority for the
8 proposition or arbitral authority for the proposition that
9 navigational factors could be invoked as special circumstances
10 in light of the factors pertaining in this case. If Suriname
11 succeeds in its argument, this would be the very first time
12 that any international Court or Tribunal, any international
13 arbitral or judicial authority, would have accepted a
14 navigational factor as a special circumstance with so decisive
15 an effect as to alter the entire course of the line. I'm
16 choosing my words very carefully. What Suriname proposes is
17 that navigational special circumstances would change the entire
18 course of the line, not just for three miles, not just for
19 12 miles, but all the way up to 200 miles. And we say, for
20 that reason, the Tribunal ought to proceed with particular
21 caution in dealing with this claim of navigation as a special
22 circumstance.

23 The concept of special circumstance is not a modern
24 one, and it dates back at least as far as 1958. Suriname,
25 indeed, has always been very well aware of the concept of

10:34:10 1 special circumstance since it invoked the concept of special
2 circumstances in the Marlborough House Talks in 1966.
3 Suriname's argument is that if the Tribunal is now to delimit
4 the maritime boundary de novo, it would still be pertinent to
5 take into account the navigational considerations at the mouth
6 of the river. That's something we will do in a moment.
7 Navigational considerations at the mouth of the river. On
8 Suriname's own argument, you need to look at that and establish
9 what the situation is today. That's paragraph 6.51 of the
10 Counter-Memorial.

11 Now, if you look at the report of the Boundary
12 Commission in 1936, they said nothing at all about sovereignty
13 over approaches to the river, which was the concept invoked by
14 Suriname. The 10-degree line was proposed simply, and I quote,
15 "to avoid international complications about the buoying of the
16 channel." There is no question of there being in the express
17 words of the Commissioners a desire to do anything about
18 sovereignty in that area. It was a practical matter.

19 The British Boundary Commission made it clear that the
20 10-degree line had a provisional character. If circumstances
21 changed, then the boundary marker would also change. And that
22 was understood clearly at the Marlborough House Talks in 1966.

23 I want to refer you now to Tab 28(1), 28(1) of the
24 day's folder, L for Lima.

25 And just to be clear, this is not the totality of the

10:36:27 1 minute of the Marlborough House Talks. We've just put in the
2 pages to which we were referring, and I would please refer you
3 to the full document so that can you read its entire context.

4 In fact, I think of all of the documents that I have
5 been most interested in reading, this one may be one of the
6 most pertinent because of the authority of the individuals on
7 both sides who were present, and also the quality of the
8 report.

9 But coming also on a personal note signal, my
10 appreciation for the words of now Judge Shahabuddeen, who was
11 present at the Marlborough House Talks, and you will find in
12 his words as transcribed in this note or minuted in this note a
13 certain resonance with the arguments that are being made over
14 the course of this week by Guyana. The simple point is that
15 the arguments that are put now by Guyana are arguments that
16 were foreseen more than four decades ago by a rather brilliant
17 international lawyer who, of course, has gone on to make a
18 remarkable contribution to public international law. But his
19 words are very clear in this text.

20 If you turn over the first page, at the bottom of the
21 second page, on the left-hand column is Mr. Shahabuddeen
22 speaking. I just want to quote from him. "The original
23 purpose"--this is Tab 28(1), L for Lima, Mr. Shahabuddeen is
24 talking at the bottom of the second page that you have in your
25 insert here about the circumstance in which the 10-degree line

10:38:19 1 was established. At the bottom he says, "The original proposal
2 was not for a 10-degree, but for a 28-degree line. This shows
3 that the line was not intended to have any application beyond
4 the territorial sea. Either the line was not to continue in
5 the contiguous zone or the continental shelf. We accepted the
6 original proposal. It seems that what afterwards happened is
7 the mixed Dutch and British Commission who laid down the two
8 concrete markers in 1936 on the left bank thought that a
9 boundary based on the 28-degree line would intersect the
10 channel and therefore would result in difficulties in
11 controlling it, for example, with respect to the establishment
12 of buoys. The Commission, accordingly, agreed that it would be
13 more convenient to establish a 10-degree line.

14 Seen against this background, the 10-degree line does
15 not assist us to delimit the frontier in the sea. In such
16 circumstances, we should explore the applicable principles of
17 general international law. I have in mind the Geneva
18 Convention of 1958 on the continental shelf, Article VI(1), and
19 the Geneva Convention of 1958 on the territorial sea, Articles
20 12 and 243. These provisions in general provide for
21 demarcation in the Continental Shelf and contiguous zone in
22 accordance with the principle of equidistance. The application
23 of these principles would result in a line running generally at
24 33 to 34 degrees east of true north, which is not vastly
25 different from the 28-degree line proposed by The Hague in

10:39:47 1 1931." And that, of course, is precisely the argument that we
2 now adopt.

3 Circumstances, of course, changed between 1936 and
4 even in that particular period, and this document confirms the
5 delegation from Suriname was aware that a change had taken
6 place, each by 1966.

7 On the top right-hand corner of these documents, you
8 will see some page numbers, three, five, if you could go to
9 page seven, the top right-hand corner, on page seven of that
10 document--I'm not sure if everyone has it. It's Tab 28(1). At
11 the bottom is an intervention by Dr. Calor on behalf of
12 Suriname. I wish to explain further the application of the
13 10-degree rule.

14 And then if you go halfway down the page, he goes on
15 to talk about Guyana's boundary with Brazil, border with
16 Brazil, and then there's a sentence beginning as follows:
17 "Regarding the borderline and territorial water of Suriname and
18 Guyana"--regarding the borderline and territorial water of
19 Suriname and Guyana--"we have first importance given to
20 geographical reality. At one point there is the valley of the
21 river which, just as a hilltop points upwards, a geological
22 reality, the river bends downwards. Just as the hilltop is
23 followed, so should the line parallel to the valley be
24 followed. This is an indication of a geographical
25 consideration with us. This is what we follow. If you cut off

10:41:59 1 the geographical reality entirely, then for the delimitation of
2 the borderline in general, there are no rules for determining
3 the border line left but arbitrary ones. I should like to go
4 to the Article you mentioned, and I should like to point out
5 that the equidistance is not a general rule. I have read and
6 studied the debates which proceeded the making of the
7 Convention. It appears that only an emergency solution was
8 contemplated in the very Article in which there is talk of
9 failing agreement between two States. The Article cannot
10 establish equidistance as the general rule. That rule was
11 intended for cases in which two countries are in a position of
12 such hostility to each other that only an emergency solution
13 can be used."

14 Well, that is one reading, I suppose, of the
15 equidistance rule, but the point that I make is the 10-degree
16 line is no longer premised on navigation. It's been abandoned.
17 It is premised on what Dr. Calor calls geographic reality, what
18 he refers to as the valley of the river. And in 1966, Suriname
19 did not claim navigational circumstances. Why? Well, we can't
20 know precisely what the answer to that question is, but one
21 assumes it is not unconnected to the fact that they knew very
22 well there wasn't any more, any navigation in that part of that
23 river. The western channel of the Corantijn was not being
24 buoyed and was not being used as a navigational channel. And
25 there is no evidence before this Tribunal to explain the

10:43:39 1 contrary. I will come more on to that in a moment.

2 Dr. Essed follows on from Dr. Calor. Since we're at
3 that page just referring to that, I would like to add that the
4 equidistance line is not a general rule. There are exceptions.
5 The general rule is the geographic and natural reality, and if
6 nothing is evident of the geographical situation, then we will
7 use the equidistance line.

8 It's sort of a reversal of modern practice.

9 That is why the provisions of this paragraph do not
10 apply. If there are no special circumstances, then we apply
11 equidistance. That's the way we approach the problem. These
12 points proceed in the preceding debates. That is why in
13 stating our case, we mentioned that the 10-degree line is only
14 an indication of the geographical reality. The 10-degree line
15 is only an indication of the geographical reality.

16 That was Suriname's argument in 1966, and there is
17 nothing in the Marlborough House Talks about the issue of
18 navigation.

19 Now, even assuming navigation could be invoked as a
20 special circumstance, what would have to be shown? We say in
21 the facts of this case it cannot be established that navigation
22 was a special circumstance. The Government of Suriname relies
23 on three sets of authorities on this issue. Firstly, the
24 Beagle Channel award. That is, we say, of no assistance at all
25 in this case because as the Tribunal in the Beagle Channel

10:45:27 1 award said, and I quote their words, the case was, I quote, "in
2 principle a median line." The 10-degree line is not a median
3 line. It was only momentarily shifted for a tiny part where
4 there was evidence showing sustained navigational use.

5 Reference is also made to the debates of the
6 International Law Commission in the 1958 U.N. Conference on the
7 Law of the Sea, and references are also made to the views of
8 Commander Kennedy, but Commander Kennedy's words are to be read
9 very carefully. He wasn't saying that any navigation will
10 justify a navigational special circumstance. There has to be a
11 known navigational channel, an established pattern of
12 navigation. That was not apparently the situation in relation
13 to the western channel at the Corantijn, and it certainly was
14 not the situation in 1966, and it is certainly not the
15 situation in 2006.

16 So, the circumstances envisaged by Commander Kennedy
17 simply are entirely different from the circumstances of this
18 case.

19 And then reference is made also to--by Suriname in its
20 written pleadings to bilateral delimitation agreements between
21 India and Singapore in 1973, and Estonia and Latvia of 1996.

22 Well, we agree that if two states want to delimit a
23 boundary by reference to a navigational channel or special
24 navigational circumstances, they are perfectly free to do so,
25 but the fact that two states have done so doesn't provide any

10:47:09 1 assistance to Suriname to base its argument on navigational
2 circumstances in these cases.

3 Suriname's submissions are devoid of any proper
4 authority for the proposition that in this case, navigational
5 circumstances can be invoked as a special circumstance. But
6 lest there be any doubt whatsoever on this issue, let's look at
7 the Dutch Charts on navigation.

8 We have not been able to find a single chart, British
9 or Dutch, which shows an established navigational channel on
10 the west bank of the Corantijn River. A recent Dutch Chart
11 from probably from the 1980s is on your screen now. That is
12 Dutch Map 2014. And you can see the totality of the area. And
13 then on the left-hand side you can see a red boxed area. That
14 is the mouth of the Corantijn River.

15 And if we focus in on the mouth of the Corantijn
16 River, you will see a line. That is the navigational channel
17 on the Dutch Chart. It follows the eastern channel. It
18 doesn't follow the western channel, which is over here. And
19 one would have expected Suriname to put in charts which show
20 the existence of a navigational channel in this area. There is
21 no evidence before this Tribunal that there has ever been a
22 charted navigational channel in that area.

23 So, this Tribunal finds itself in the remarkable
24 situation having to--being asked to delimit a boundary on the
25 basis of a purported navigational channel in circumstances in

10:49:23 1 which apparently no maritime chart has ever been prepared or
2 published which shows a navigational channel in the area in
3 question. With great respect, that is, we say, really the end
4 of the matter. The burden is on that side of the room to
5 establish the existence of a navigational channel and on the
6 basis of that navigational channel to then make the arguments
7 as to why it should justify a shift in the line. We say that
8 is an impossible burden in light of the evidence and material
9 that is before this Tribunal.

10 For many decades, there has been no justification for
11 a 10-degree line. Even if navigational circumstances might
12 have been considered a special circumstance in the situation
13 pertaining in 1936, they could no longer be considered so in
14 the 1960s and cannot now be so considered. By the early 1960s,
15 the potential navigational channel along the western side of
16 the Corantijn River was known not to be in use by commercial
17 vessels due to the fact they were larger and heavier than those
18 that had operated in the early 1930s.

19 Secondly, the western channel, if it ever was buoyed
20 or had ever been buoyed, certainly was no longer buoyed, and
21 was used by only the most local craft, to take the words of the
22 British memo.

23 And in 1962, according to the British memo, not one of
24 the 680 vessels navigating in the area used the western
25 channel.

10:51:12 1 The sole piece of evidence relied upon by Suriname to
2 establish that control over the navigation in both approaches
3 of the Corantijn River was, in its word, a legitimate interest,
4 and it remains one today, is one statement put in by Mr. Fitz
5 Jim, which is at Annex S.R. 18 of the documents. We've put
6 that in at Tab 28(m). It's worth having a look at that
7 statement. It's a very honest statement. In fact, it's so
8 honest a statement that it is a statement that we could have
9 put in on our side, because on reading it, one wonders who it
10 was who could have concluded that a statement such as this
11 could possibly support the claim of Suriname.

12 Mr. Fitz Jim at paragraph two says as follows:
13 "During my duties at the Harbor and Pilotage Service, I was
14 constantly involved in maritime activities which were taking
15 place in Suriname waters and maritime areas. These waters and
16 areas also include the coast of Suriname at the mouth of the
17 Corantijn. It is known to me that, according to Suriname, the
18 border in the territorial sea at the mouth of the Corantijn is
19 running 10 degrees east from the so-called point 1936 on the
20 west bank of the Corantijn River." That, incidentally,
21 constitutes further support for the Point 61 argument.

22 There are two channels in the mouth of the Corantijn,
23 an eastern and a western channel, a huge mud bank separates the
24 two channels.

25 And then he goes on in paragraph three, "As far as I

10:53:02 1 know, the western channel has never been beaconsed."

2 Stop and pause there.

3 I'm not sure why this has been put in in support of
4 Suriname. That is Guyana's argument: The western channel has
5 never been beaconsed. It has never been beaconsed because it has
6 never been used as a significant navigational channel. The
7 eastern channel has always been beaconsed by the Surinamese
8 Government, the last time in the early 1990s. However, the
9 Harbor and Pilotage Services regularly conducted hydrographical
10 recordings both in the eastern and western channel."

11 Pause there.

12 The recording of hydrographical recordings has not
13 been relied on by Suriname as a justification or a special
14 circumstance for shifting the provisional equidistance line.

15 "In all my years at the Harbor and Pilotage Service,
16 seagoing vessels were mainly using the eastern channel of the
17 Corantijn, but other vessels, including vessels from Suriname
18 and Guyana were often using the western channel. These other
19 vessels included fishing trawlers and small freighters with a
20 draft of three to four meters of water. Seagoing vessels were
21 using the eastern channel not so much because of its better
22 natural state, its breadth and depth, but because of its ease
23 of navigation due to its proximity to the Nickerie River. The
24 Nickerie River is beaconsed, and in its mouth there is a
25 reconnaissance drum which makes navigation easier."

10:54:35 1 Now, that is the totality of Suriname's evidence on a
2 navigation channel. No charts. A very honest statement from
3 Mr. Fitz Jim, not a single piece of evidence that the western
4 channel was ever buoyed or patrolled as a navigational channel
5 or treated as a significant navigational channel, and most
6 significantly no evidence that any larger vessels ever used the
7 western channel of the river.

8 So, in our submission, it makes it abundantly clear
9 that on the basis of the material and evidence before this
10 Tribunal, it is unarguable--unarguable--I put it at that
11 level--that there are navigational special circumstances on the
12 western channel of the River Corantijn.

13 Now, to wrap all of this up, we say there are no
14 special circumstances which Suriname can rely upon to depart
15 from an equidistance line, and the historical equidistance line
16 is the right one to go through. I want to return back to this
17 point that in 1936, the 10-degree line was limited to
18 three miles, and the U.K. never accepted its extension beyond
19 those three miles. If for any reason you are against us on the
20 delimitation from Point 61 following an equidistance line and
21 if for some reason, the basis of which would be difficult for
22 us to understand, a 10-degree line could be justified, there is
23 nothing which could justify it beyond three miles, and any
24 justification for it had disappeared by the time the British
25 Government was preparing for the handover to Guyana in the late

10:56:32 1 1950s and early 1960s.

2 So in conclusion, our submission on the territorial
3 sea is that an application of Article 15 of the 1982
4 Convention, the Tribunal should delimit the territorial sea
5 from Point 61 and thereafter the low-water mark follow a line
6 of 34 degrees up to the 12-mile limit of the territorial sea.
7 Suriname's approach ignores the plain language of the 1982
8 Convention, ignores the practice of international courts and
9 tribunals, as Professor Schrijver explained yesterday, and
10 fails to take any account of the history, of the conduct of the
11 parties, and most decisively its own total absence of evidence
12 to support the one justification it makes on which to base a
13 10-degree line. On that basis, we say the argument for a
14 34-degree delimitation in the territorial sea is absolutely
15 overwhelming.

16 Unless I can assist the Tribunal further, that
17 concludes my submissions on territorial sea. Thank you very
18 much.

19 PRESIDENT NELSON: Thank you very much, Professor
20 Sands.

21 Professor Smit would like to pose some questions to
22 you.

23 ARBITRATOR SMIT: Professor Sands--d correct me if I'm
24 not properly reflecting your argument-- think your argument was
25 there was this agreement in 1936 to have this eastern, this

10:58:20 1 10-degree lines, but that was based on the supposition that it
2 was needed to control the navigable channel, and that no longer
3 is the case.

4 Now, I wonder, I thought that 10 degrees was used to
5 give Suriname control or sovereignty or whatever you want to
6 call it over this whole river area up to the top line; right?

7 Now, is your argument that because the navigable
8 channel is no longer used there, their power and sovereignty
9 over the river has also gone back to what may be the
10 international rules of SOLAS, et cetera, that they no longer
11 have sovereignty over that part of the river up to the coast of
12 Guyana?

13 PROFESSOR SANDS: Suriname's argument, sir, is not
14 based on sovereignty. Suriname's argument is based, as I tried
15 to put it, the decision of the Commissioners in 1936 to move
16 away from a 28-degree line to a 10-degree line. The only
17 rationale that was given for that was the need to buoy a
18 navigational channel. The Commissioners didn't say anything at
19 all about sovereignty. They referred only to navigational
20 requirements. And as I mentioned, the British Commissioner in
21 writing back to the British government made it clear that the
22 10-degree line had been adopted and could be changed relatively
23 simply if circumstances changed. And for that reason, we say,
24 for that reason, we say, there was no permanent agreement to
25 move to a 10-degree line in the territorial sea. That's our

11:00:16 1 submission on the interpretation of the documents.

2 ARBITRATOR SMIT: Yes, but what about the notion that
3 the river up to the Guyana border is Suriname's? Does that
4 fall also?

5 PROFESSOR SANDS: I'm sorry, could you ask the
6 question again?

7 ARBITRATOR SMIT: I thought the argument was we give
8 Suriname the whole river because then they're in control of the
9 river for navigational, for whatever purposes, and therefore
10 Guyana's land territory starts there and their sovereignty
11 starts there, and Suriname's sovereignty starts at that
12 borderline. Now, you say the navigation is no longer true, and
13 I wondered whether the necessary conclusion of that was that
14 the power of sovereignty or control or dominion or whatever you
15 call it of Suriname over the river also has receded because
16 they don't need it to control the navigation on the western
17 side; right?

18 PROFESSOR SANDS: Can I deal with the answer in three
19 points? My first point would be the Commissioners never
20 addressed the question of sovereignty. They addressed the
21 question of the buoying of the river.

22 Secondly, the issue of sovereignty over the river,
23 whatever that may mean, is not an issue that's before this
24 Tribunal. The Tribunal is being asked to delimit the maritime
25 boundary and to delimit the maritime spaces. So the question

11:01:48 1 of sovereignty is one which in the sense that you raised it is
2 not directly before the Tribunal.

3 But the third point is probably the most significant,
4 it's that it's not a question for us of sovereignty being
5 extended or receded or the line moving back and forward. Our
6 argument is that there never was a binding agreement on that
7 10-degree line, and there never was a concordant sustained
8 practice on the 10-degree line, such as to give rise to a legal
9 obligation on the United Kingdom or Guyana to respect a
10 10-degree line. The 10-degree line never crystallized into a
11 binding legal obligation in any form.

12 ARBITRATOR SMIT: Now, the next question: If you use
13 the 10-degree line up to the territorial sea of three miles;
14 right? Assume that do you that--and now comes the extension to
15 12 miles. Do you draw different line to go to the 12 miles so
16 that as a result of doing that Suriname would lose some
17 territorial waters that they theretofore had?

18 PROFESSOR SANDS: Well, apart from the assumption
19 which we don't share that Suriname already has something--

20 ARBITRATOR SMIT: No, but on the assumption that they
21 have it.

22 PROFESSOR SANDS: Let us assume for the purposes of
23 argument that you, Arbitrator Smit, would be willing to draw a
24 three-mile 10-degree line from the low-water mark from
25 Point 61.

11:03:28 1 ARBITRATOR SMIT: Right.

2 PROFESSOR SANDS: What would happen at that point? At
3 that point, we say, you move to equidistance, and you apply an
4 equidistance line along the line.

5 In fact, we would approach this in a slightly
6 different way. We would say you would start with a provisional
7 equidistance line from Point 61, and you would then determine
8 whether there are any special circumstances to justify any
9 shift in that line. On your analysis, perhaps, or on the
10 analysis of Tribunal and certainly on the analysis of Suriname,
11 there would be a justification to shift, let us say for
12 argument's sake only, up to three miles along the 10-degree
13 line. What happens then? You revert to equidistance. It
14 would be a burden falling upon Suriname to demonstrate that
15 beyond three miles on your hypothetical there were special
16 circumstances justifying a shift away from equidistance at that
17 point, and what we have said, of course, is there is no
18 evidence to support that because all the material before the
19 Tribunal shows no navigational special circumstance, so on
20 Suriname's own case, there would be no basis for extending
21 beyond three miles to 12 miles.

22 ARBITRATOR SMIT: Thank you.

23 ARBITRATOR HOSSAIN: I wonder if you would be
24 commenting on Plate 41 in your Memorial. If this is coming
25 later, then I can save my question for when you come to it

11:05:08 1 later. It's facing page 118 in your Memorial. Volume 1.

2 PROFESSOR SANDS: Previously we had put this one up.
3 This is the comparison of the simplified equidistance line of
4 34 degrees on different charts.

5 ARBITRATOR HOSSAIN: If you're coming back to it, I
6 won't trouble you now.

7 PROFESSOR SANDS: Please ask the question.

8 ARBITRATOR HOSSAIN: At this point it seems up to the
9 12-mile limit the N34 simplified line and all the other lines
10 overlap; they are identical. So, for the territorial sea, this
11 is not an issue, whether it's N34 or a simplified equidistance
12 line based on any of the three charts.

13 I mean, is there a correct way to look at it?

14 PROFESSOR SANDS: Well, I point out, sir, that this
15 chart goes obviously significantly beyond 12 miles, as you've
16 obviously seen. The initial part of the four lines which is
17 shown on this chart make it pretty clear that there is a
18 substantial degree of convergence in the first 12 miles.

19 ARBITRATOR HOSSAIN: That's right.

20 PROFESSOR SANDS: Now, we say that the approach to
21 take is to determine which chart one is going to use in order
22 to plot the coordinates, and on the basis of those coordinates,
23 and we've used the American NIMA Charts because they are larger
24 scale but the Tribunal may adopt a different chart, that would
25 plot the provisional equidistance line.

11:07:12 1 But what we are saying is, we are comfortable with the
2 departure from the provisional equidistance line on NIMA, which
3 is about a 36-degree line up to 12 miles back to 34-degree line
4 because that is what we have always followed.

5 ARBITRATOR HOSSAIN: Fine. I was wanting to stop here
6 at the territorial sea up to there I see the convergence, and
7 so the discussion on divergence we can defer until you or
8 whoever else deals with it?

9 PROFESSOR SANDS: Yes. And I think Professor
10 Schrijver perhaps might come back after the coffee break to
11 deal with--or Mr. Reichler, I think, one of the two will deal
12 with the issue of convergence and divergence beyond 12 miles
13 because they're going to deal with the continental shelf.

14 ARBITRATOR HOSSAIN: Thank you.

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

17 I think we should now take a break, and the hearing
18 will resume at 11:20. Thank you very much.

19 (Brief recess.)

20 PRESIDENT NELSON: We shall continue the hearing.

21 I give the floor to Professor Schrijver.

22 PROFESSOR SCHRIJVER: Mr. President, Members of the
23 Tribunal, thank you. It's a privilege to appear once again
24 before you.

25 Before the break, my colleague, Professor Philippe

11:28:51 1 Sands, addressed the question of the delimitation in the
2 territorial sea. It falls now on me to take up the issue of
3 the proper delimitation in the continental shelf and the
4 Exclusive Economic Zone.

5 The delimitation of the maritime areas beyond the
6 territorial sea was the subject of Chapter 9 of Guyana's
7 Memorial and Chapter 7 of its Reply. Mr. President, it is
8 notable that in neither the Counter-Memorial nor the Rejoinder
9 does Suriname give the topic separate treatment. As Professor
10 Sands noted first yesterday, Suriname attempts instead to lump
11 together the questions of the territorial sea and continental
12 shelf/EEZ boundaries and apply a single analysis to all
13 maritime spaces. Suriname's purpose is evident: To get the
14 Tribunal uncritically to adopt the 10-degree line it is
15 advocating for the territorial sea, for all purposes, for all
16 areas.

17 Yet, although the analysis for the territorial sea,
18 and the maritime areas beyond may be similar, as I could
19 discuss with you in some detail yesterday, Guyana believes that
20 independent and principled examination of each is nonetheless
21 very much required.

22 In addressing the question of the delimitation of the
23 continental shelf and the Exclusive Economic Zone, it is useful
24 to start with the history of the pertinent legal rules. I can
25 assure you, Mr. President, I have no intention of reviewing the

11:31:09 1 same material I discussed already yesterday with you. I will
2 simply make a few introductory observations to help focus our
3 examination on the particular topic that is the delimitation of
4 the continental shelf and the Exclusive Economic Zone now at
5 hand.

6 As the Tribunal knows very well, prior to 1958
7 international law did not recognize general rights of states in
8 maritime areas beyond their territorial seas. It all started
9 off with the Truman proclamation in 1945, a number of states
10 followed, began unilaterally to assert rights over their
11 contiguous continental shelves, but there were no
12 internationally agreed principles governing this practice at
13 that time. And the absence of international rules explains the
14 reasons why the United Kingdom and the Kingdom of the
15 Netherlands made no effort to delimit the maritime areas beyond
16 the territorial sea, beyond the territorial seas of 3 nautical
17 miles of British Guiana and Suriname.

18 Mr. President, that situation changed in the fifties,
19 in particular in 1958 with the adoption of the 1958 Geneva
20 Convention on the Continental Shelf. General international
21 agreement on rights over the superjacent waters, nowadays we
22 refer to that as the Exclusive Economic Zone, had to wait still
23 longer until the formal adoption of the 1982 Convention.

24 The principles now applicable to the delimitation of
25 both the continental shelf and the Exclusive Economic Zone are

11:33:17 1 the same. The Articles 74, Article 83, they make the goal of
2 the delimitation process for both, we know that phrase very
3 well, an equitable solution, to achieve an equitable solution.

4 Yesterday, we considered the evident textual
5 distinction between Articles 83 and 74 on the one hand for the
6 continental shelf and the Exclusive Economic Zone and Article
7 15 relating to the territorial sea on the other, and whatever
8 meaning the distinction may have in the abstract--the text is
9 different--the practice of the International Court of Justice
10 and also the practice of arbitral tribunals is now very well
11 settled, just as I could discuss yesterday with you.

12 You will recall that I quoted from the former
13 President of the International Court of Justice, Judge
14 Guillaume's speech, to the Sixth Committee of the General
15 Assembly of the United Nations, and I just once again quote
16 from his speech, which in your folder, and the quotation is
17 from page seven. Judge Guillaume stated in report to the
18 United Nations, "In all cases, the Court, as states also do,
19 must first determine provisionally the equidistance line. It
20 must then ask itself whether there are special or relevant
21 circumstances requiring this line to be adjusted with a view to
22 achieving equitable results."

23 The legal rule, Mr. President and Members of the
24 Tribunal, is now clear. It is exactly that approach for which
25 Guyana has advocated from the beginning of this case, from the

11:35:36 1 very moment that we submitted our application, our first
2 Memorial, and which it still consistently advocates.

3 It is interesting to note that in essence, Suriname
4 does not dispute this assessment of the state of the law as
5 expressed in the Guillaume speech. At paragraph 4.10 of its
6 countermemorial, for example, Suriname also states, and I quote
7 in its review of international case law, I quote, "In the,
8 Libya-Malta case decided in 1985, the Court adopted the
9 practice which it has since followed of identifying first a
10 provisional equidistance line, and then considering whether the
11 provisional equidistance line should be adjusted to create an
12 equitable delimitation." End of quote of the Counter-Memorial
13 paragraph 4.10 of Suriname.

14 And it is precisely upon this accepted methodology
15 that Guyana bases its claim to the historical equidistance line
16 of north 34 degrees east. In short, Guyana argues that there
17 are reasons rooted in both geography and history that strict
18 equidistance in the continental shelf, Exclusive Economic Zone,
19 does not yield an equitable result, and thus should be
20 modified, adjusted in order to achieve the goal set in the
21 relevant Articles of the Convention, namely to achieve an
22 equitable solution.

23 Fortunately, the drawing of the provisional
24 equidistance line in this case does not present your Tribunal
25 with any serious difficulties. You will recall the

11:37:52 1 presentation on geography by my good friend Mr. Paul Reichler
2 yesterday, that the parties' two provisional equidistance lines
3 are virtually identical, particularly in the maritime areas
4 which I now examine with you; namely, the maritime areas beyond
5 the territorial sea. Indeed, as we have noted several times
6 for the Tribunal, the parties' two equidistance lines meet just
7 some 6 nautical miles offshore, and then run in tandem all the
8 way to the 200 nautical miles limit.

9 Mr. President, this fact is of central importance for
10 at least two reasons. The first one is that it confirms that
11 even if there were no agreement on the starting point for the
12 delimitation of the territorial sea at Point 61 or the 1936
13 point--we maintain there was agreement--the parties are still
14 in agreement on the course of the provisional equidistance line
15 in the continental shelf and the Exclusive Economic Zone; and
16 as Professor Philippe Sands discussed in connection with
17 Guyana's presentation on jurisdiction on the first day of our
18 hearing and also in the context of his presentation on the
19 territorial sea, Suriname's own pleadings demonstrate that the
20 nominal disagreement as to the location of the northern land
21 terminal very quickly ceases to have any relevance to the
22 delimitation.

23 Figure 4 of Suriname's memorandum on the Preliminary
24 Objections depicts two equidistance lines, one drawn from each
25 of Point 61, and the other one, the hypothetical Point X, so

11:40:26 1 far the most northern location of any potential boundary
2 terminus Suriname has identified in these proceedings. But we
3 cannot exclude further surprises.

4 As Suriname admits in its document SPO, Suriname's
5 Preliminary Objections, paragraph 220, the two equidistance
6 lines meet, I quote, "approximately 15 nautical miles from the
7 coast."

8 Beyond 15 nautical miles, that is nowadays just 3
9 nautical miles into the area I'm now examining with you beyond
10 the territorial sea limit, beyond 15 nautical miles it makes no
11 difference whether the terminal mark is located at Point 61;
12 and by the way, I noted in Dutch on the beautiful map 2015 on
13 the screen during the presentation of Professor Sands that
14 there is a reference to Point 61 to an houten baken, which
15 means wooden marker, wooden beacon on the map of the
16 Netherlands itself. Whether it is located at Point 61, at
17 Point X, or at any point in between, the balance of the
18 provisional equidistance line is the same.

19 The second reason, Mr. President, why the effect of
20 the in tandem running of the two provisional equidistance lines
21 is so significant, that is the similarity of the parties'
22 provisional equidistance lines reflects the ease with which an
23 equidistance-based methodology can be employed in this case,
24 and also thus its objectivity, its certainty, whilst conserving
25 flexibility, important values, if I may say so, important

11:42:53 1 values as I could review with you yesterday by reference to the
2 consistent international case law ever since the 1993 Jan Mayen
3 case, and also by reference to Judge Guillaume's report to the
4 Sixth Committee of the U.N. General Assembly.

5 It too shows convergence at 6 nautical miles,
6 irrespective of which way you go from Point 61.

7 Suriname claims that the provisional equidistance line
8 disadvantages it in this case, that it does not do justice to
9 Suriname, that it does not lead to an equitable solution as
10 required by the Convention in the Articles 74 and 83. In
11 particular, Suriname claims that the median line unfairly cuts
12 off the projection of its coastal front, and on this basis
13 Suriname argues that equidistance should be thrown out
14 altogether in favor of an angle bisector approach based on
15 straight line coastal facades. On the consequences thereof for
16 the continental shelf and the Exclusive Economic Zone will our
17 chief geographer, Mr. Paul Reichler, later address you.

18 Now, in evaluating Suriname's ostensible rejection of
19 equidistance, however, it is interesting to note some of its
20 own statements, especially from its most recent document, the
21 Rejoinder. Mr. Reichler usefully quoted already for the
22 Tribunal paragraph 3.203 of the Suriname's Rejoinder, where it
23 states, for example, "The provisional equidistance line is the
24 result of mathematical method applied to geography. As such,
25 it is objective," end of quotation from Suriname's document.

11:45:33 1 And similarly, to take up another phrase from
2 Suriname's Rejoinder, namely from paragraph 3.201 at the top of
3 your screen, "Equidistance is a commonly used delimitation
4 method in uncomplicated geographical situations." I want to
5 pause for a moment on this quotation in particular. Bearing
6 this quotation in mind, I would like to bring to the attention
7 of your Tribunal another paragraph from Suriname's Rejoinder
8 projected here on the screen taken from paragraph 3.256, where
9 Suriname states, as you can read, I quote, "The broad question
10 raised by this case, our case, is how delimitation is to be
11 effected between adjacent states in circumstances where there
12 are no offshore islands and the coastlines on either side of
13 the land boundary terminus, although, of course, not completely
14 regular throughout their course, do not contain features such
15 as peninsulas, major bays, island fringes, or other such
16 configurations." End of quotation from the Suriname Rejoinder.

17 Mr. President, I submit that these paragraphs--3.201
18 and 3.256--read in conjunction, constitute an
19 admission--perhaps not intended, but nevertheless a clear
20 admission--that equidistance is the appropriate methodology for
21 your Tribunal to use in this case.

22 In paragraph 3.201, Suriname says first that, and I
23 quote, "Equidistance is a commonly used delimitation method in
24 uncomplicated geographical situations," and then in paragraph
25 3.256, also other places, I will not bother you with that, it

11:48:20 1 admits that this is an uncomplicated geographical situation.

2 Thus, the answer to the broad question which Suriname
3 poses itself in that phrase in 3.256 is rather simple. It can
4 only be equidistance.

5 Well, in view of this very recent admission by
6 Suriname, this may be an opportune moment to step back and to
7 review some of the origins of this dispute, particularly those
8 parts of the historical records where the Dutch and Surinamese
9 themselves recognized the desirability of using equidistance to
10 define their boundary in the continental shelf.

11 Mr. President, history matters. History cannot be
12 neglected. As the Tribunal well knows, there was a significant
13 dispute between the parties concerning access to the Dutch
14 archives of the Netherlands Ministry of Foreign Affairs.
15 Suriname had total access to the British archives, but when
16 Guyana sought equal access to the Dutch archives, Suriname
17 resisted.

18 Mr. President, in Guyana's view, it serves no purpose
19 to dwell at length on this, let me call it, peculiar episode in
20 our proceedings. It was a divisive issue, but perhaps all of
21 us shared one common experience, in that it was a major test to
22 our nerves. Ultimately, the Tribunal, acting with the able
23 assistance of Professor van Houtte and also with the full
24 cooperation of the Netherlands Ministry of Foreign Affairs, had
25 to order Suriname no longer to impede Guyana and your Tribunal

11:50:59 1 access to relevant parts of the historical record. Guyana is
2 grateful for the opportunity to have been enabled to review
3 these documents, in addition, of course, to those available in
4 the public domain of both the National Archives in the
5 Netherlands and those of the United Kingdom.

6 Mr. President and Members of the Tribunal, by now we
7 know that the reason for Suriname's resistance is clear. The
8 documents, some of which were not even disclosed until after
9 Guyana had submitted--had to submit its Reply on the 1st of
10 April--these documents revealed beyond all doubt that the
11 Netherlands agreed early on that the continental shelf boundary
12 should be defined by the equidistance line, and the Kingdom of
13 the Netherlands was acting on behalf of and with the consent of
14 Suriname. Only years later did Suriname's current 10-degree
15 claim come into play with respect to the continental shelf, and
16 then, if I may say so, Mr. President, largely as a negotiation
17 tactic.

18 Yet the Dutch Government knew very well that the
19 10-degree line could not be defended, and they said so
20 repeatedly, as we now can read from the documents disclosed to
21 us.

22 Let me take you back. Efforts to delimit the
23 continental shelf started in the mid-1950s. Following the
24 practice of some states to proclaim rights, sovereign
25 exploitation rights on the continental shelf, the United

11:53:14 1 Kingdom adopted the British Guiana Ordering Council in order to
2 include the continental shelf. As I discussed earlier with
3 you, the Netherlands did not do so since it took the view that
4 this was not necessary because a continental shelf accrues
5 automatically to a coastal state. Both the United Kingdom and
6 the Netherlands supported the proposal of the ILC, the
7 International Law Commission, in the 1950s to take the
8 principle of equidistance as the proper method for delimiting
9 the continental shelf. No doubt. Not one single document can
10 be found in which there is no support for what became Article 6
11 of the 1958 Continental Shelf Convention recording the
12 equidistance rule.

13 Around the same time, it was the Dutch themselves who
14 proposed to delimit the continental shelf boundary between
15 Suriname and Guyana in accordance with the prevailing law and
16 the evolving law of the sea at the time.

17 On 6 August, 1958, shortly after the adoption of the
18 1958 Convention on the Continental Shelf, the Netherlands
19 Embassy in London delivered an Aide Memoire--Professor Philippe
20 Sands referred to it extensively this morning--an Aide Memoire,
21 proposing an agreement to the United Kingdom Foreign Office
22 that would establish the Guyana/Suriname continental shelf
23 boundary by a reference to an equidistance line. And what is
24 of great significance is that at this particular time,
25 equidistance was understood to have a general bearing of

11:55:26 1 approximately 34 degrees. This is shown in Plate 40 of the
2 Memorial of Guyana which compares the equidistance line plotted
3 on that contemporaneous Dutch Chart 217 and the 34-degree line.
4 You can see it's in your folder under, I believe, Tab 15--yes,
5 it's in your Judges' folder under Tab 15--and you can see from
6 the Plate that the two lines are almost identical.

7 The text of the Aide Memoire included as Annex 66 to
8 Guyana's Memorial is also worth revisiting here because it so
9 obviously refutes Suriname's argument that the equidistance
10 principle should not be applied in this case. In the pertinent
11 part, this 6 August 1958 document states, "The Convention on
12 the Continental Shelf is considered to lay down acceptable
13 general principles of international law governing the
14 delimitation of the continental shelves." Acceptable.

15 And further on, it is deemed
16 desirable--desirable--that such an agreement concerning the
17 continental shelf be concluded between the Netherlands and the
18 U.K. by exchange of notes in which the principle of
19 equidistance would be adopted as the determinant of the law
20 dividing the continental shelf adjacent to Suriname and British
21 Guiana.

22 Hence, in the Dutch view, 1958, no doubt with the
23 consent of Suriname, it was both acceptable and desirable to
24 adopt the principle of equidistance for the delimitation of the
25 boundary in the continental shelf, and that was reiterated on

11:58:20 1 numerous occasions. I will take you through a few documents.

2 For example, following a bilateral meeting on 15
3 October, 1958--Professor Sands also referred to it--attended by
4 the Netherlands Ambassador to the United Kingdom and the
5 Netherlands Minister with responsibility for Suriname,
6 Mr. Scarlett of the U.K. Colonial Office reported to
7 Mr. Anderson, who by the way, I think, probably later Judge
8 Anderson on the--he's not the same, we have our living
9 encyclopedia on these issues here--a certain Mr. Anderson
10 reported that, I quote, "There is plainly no difference between
11 ourselves and the Netherlands authorities."

12 And Mr. Scarlett continues in his report to
13 Mr. Anderson, and I quote, "We are both wedded to the principle
14 of the median line, and there was nothing between us how the
15 line should be drawn." This document is to be found in
16 Guyana's Memorial, Volume 2, Annex 23; an internal Dutch
17 document which, sorry to say, incidentally, was not given to
18 Guyana until after it submitted its 1 April 2006 Reply. This
19 internal Dutch document makes plain that these contacts with
20 the British Government occurred at the request of Suriname's
21 authorities themselves, Suriname's authorities who hoped to
22 achieve quick clarity on this particular question because of
23 their desire to issue an oil concession to the Colmar Company.

24 We have included this new document in a translation
25 provided by Guyana under Tab 10 of your folder. Specifically

12:00:54 1 in a letter dated 11 March that is under Tab 10, Paramaribo, 11
2 March, 1958, the then-Prime Minister of Suriname, Johan
3 Ferrier, wrote, as you can see, on behalf of the Council of
4 Ministers of Suriname to the Dutch Governor of Suriname, and I
5 quote from the last paragraph, "I would also like to make use
6 of this opportunity to request that Your Excellency invites the
7 Netherlands government to approach the Government of the United
8 Kingdom for the purpose of establishing when the discussions on
9 the delimitation of the continental shelf border, the
10 continental shelf border between Suriname and British Guiana
11 could be held."

12 It was, thus, Suriname itself that asked the Dutch to
13 reach out to the United Kingdom on border issues, and no doubt
14 in 1958 that included the continental shelf boundary. And as
15 you can see at the top of the letter, the Prime Minister of
16 Suriname referred to a memorandum dated 29 January 1958, of the
17 Netherlands Ministry of Foreign Affairs in which this Dutch
18 Minister proposed to postpone the decision on whether to issue
19 a proclamation on the continental shelf of Suriname until after
20 the conclusion of the Law of the Sea conference at that time
21 being held in Geneva.

22 The Dutch Foreign Minister stated, I quote, "The
23 making of such an agreement--that is, an agreement on the
24 continental shelf--needs not in itself cause any difficulties,
25 given that the British Government, as far as is known, also

12:03:17 1 respects the equidistance principle for the lateral
2 delimitation of the continental shelf." So, the Dutch Minister
3 in the memo referred to by the Minister of Suriname, said we
4 have no difference of opinion with the British Government
5 because, as far as I know, the British Government also respects
6 the equidistance principle for the lateral delimitation of the
7 continental shelf.

8 Thus, it is a notable fact that these new documents
9 show that Suriname itself, albeit indirectly, that Suriname
10 itself signed on to this early agreement to delimit the
11 continental shelf by reference to an equidistance line.

12 Hence, Mr. President, among all relevant actors, there
13 was a meeting of the minds about the desirability of defining
14 the continental shelf boundary based upon the principle of
15 equidistance. This meeting of minds continued for several
16 years. For example, documents disclosed in March 2006 by order
17 of your Tribunal revealed that as of 1964, it was the position
18 of the Netherlands government that, and I quote, "It had
19 already been agreed with the British Government that the
20 principle of equidistance would be accepted in this
21 respect"--we have it on the screen--as shown by the Dutch Aide
22 Memoire concerned dated 6 August 1958, and the Reply to this
23 received from the Foreign Office, the British Foreign Office,
24 dated 13 January 1958. This document of 11 March 1964 is
25 reproduced with the translation provided by Guyana in Annex 33

12:05:40 1 of Guyana's Reply, and for your convenience we have also, I
2 hope, yes, we have included it under Tab 11 of your folder.

3 Obviously, Suriname is very uncomfortable with these
4 documents, with these facts. In its Rejoinder Suriname tries
5 to minimize the relevance of the Dutch views by arguing, I
6 quote now from paragraph 3.92, by arguing in its Rejoinder that
7 under the 1954 charter of the Kingdom of the Netherlands,
8 Suriname, I quote, "became responsible for its own Internal
9 Affairs." That is certainly correct.

10 And I may add that this flows from Article 41 of the
11 kingdom charter, which provided that the three constituent
12 parts of the Kingdom of the Netherlands--that is, the
13 Netherlands, Suriname, and the Netherlands Antilles, I quote,
14 "shall conduct their internal affairs autonomously."

15 But then a rather remarkable interpretation of the
16 powers of autonomous Suriname is provided in the next
17 sentences. I quote from the same paragraph 3.92 of the
18 Rejoinder: "Suriname determined its own Treaty relationships,
19 and therefore also its own boundary positions. As a result,
20 the officials of the Netherlands Foreign Ministry might advise
21 Suriname on boundary policy, but they did not formulate it."
22 Same paragraph 3.92 of Suriname's Rejoinder. Mr. President,
23 Members of the Tribunal, that is really a far-stretching
24 interpretation of the 1954 kingdom charter in which at the time
25 not even the principle of self-determination could be included.

12:08:13 1 And for further explanation, your Tribunal is referred
2 to a brief overview of what is entitled the constitutional
3 position of Suriname within the Kingdom of the Netherlands
4 between 15 December 1954, the date of the kingdom charter, and
5 25 November 1975. You can find that in Volume 2 to Suriname's
6 Rejoinder, the very last Annex, Annex 44.

7 What can we learn from this memorandum? Although
8 informative, it is somewhat, if I may say so, of an
9 encyclopedic nature. And what kind of document is it? It
10 carries no date. No source is indicated. No name of an author
11 is provided. It has references in footnotes, but where is the
12 standard work of Professor Oud on the constitutional law on the
13 Kingdom of Netherlands, the standard book of 1967? Where is
14 the very insightful and very academically solid book of
15 Dr. Ooft from Suriname entitled in English translation, "The
16 Evolution of the Constitutional Law of Suriname" published in
17 1972, a very good book.

18 With due respect to my colleagues and friends of
19 Suriname, the paper does not convey the impression to have been
20 written by a lawyer. For example, it states in paragraph four
21 that the matters for which exclusively the kingdom was
22 competent, the so-called kingdom affairs, are listed
23 exhaustively in Article 3(1) of the charter. However, this
24 does not follow from the text, and I may add in terms of
25 Article 31 of the Vienna Convention on the Law of Treaties

12:10:43 1 neither from the context, here I have learned a lot from
2 Dr. Ooft from Suriname on this. First of all, the Article
3 starts with the phrase, "without prejudice to provisions
4 elsewhere in the charter."

5 Second, the text of Article 3 of the kingdom charter
6 includes the word "include." That is not really a word
7 connotating an exhaustive list. "Include."

8 And to make it completely clear, its paragraph two
9 states that other matters may be added. Thus, it is not
10 sustainable to say, as Suriname does, that the kingdom matters
11 are listed exhaustively.

12 Furthermore, it clearly provides that the main kingdom
13 affairs include, I quote, "a maintenance of the independence
14 and the defense of the kingdom." In its ordinary meaning, this
15 makes the defense of the territorial integrity, including
16 boundary matters, certainly a kingdom affair. Dr. Ooft refers
17 to the fact, yes, Suriname may be autonomous as far as border
18 guards are concerned, but that is, of course, something
19 different than Treaty relationships, boundary positions,
20 Foreign Affairs, defense, territorial integrity. Common sense
21 has it that these are kingdom affairs. Article 3(1)(b)
22 designates, I quote, "Foreign relations" as kingdom affairs.
23 Indeed, the conclusion of international agreements was by
24 definition a Kingdom affair. This was regulated by Articles 24
25 up to and including 28 of the charter. Article 27 stipulates

12:13:00 1 that Suriname shall be consulted under the 1954 charter in the
2 preparation of agreements with other states that affect it.
3 And I agree. Guyana agrees with the assessment in the
4 memorandum that this 1954 provision had the effect that
5 Suriname had to be consulted in respect of treaties--in respect
6 of boundary positions that would affect them.

7 But, Mr. President and Members of the Tribunal,
8 doesn't this mean that Suriname must have been consulted before
9 the Aide Memoire of 1958 was sent? Paragraph 12 of the
10 memorandum of Suriname, last Annex, also states that, "In the
11 practice that emerged after 1954, this meant that when the
12 agreement exclusively concerned Suriname, its government would
13 have the lead in the negotiations."

14 Once again, this is a very far-stretching
15 interpretation of the kingdom charter, but perhaps more
16 important was the insight of notes of history. It is also
17 certainly not what history, at least until the mid-1960s,
18 teaches us.

19 What does history, Mr. President, teach us? At least
20 until the 1966 Marlborough House Talks, all negotiations with
21 the British took place through the Netherlands Ministry of
22 Foreign Affairs, through the Netherlands Kingdom Ministry of
23 Foreign Affairs. No doubt, since 1954, upon consultation with
24 the Government of Suriname, and we just saw evidence of that
25 with the interesting letter of Prime Minister Johan Ferrier,

12:15:18 1 but whatever the internal dynamics may have been, the Ministry
2 of Foreign Affairs for the Kingdom of the Netherlands thus
3 spoke for Suriname, on behalf of Suriname, on boundary matters,
4 and its views must be considered as Suriname's own, at least
5 until the Marlborough House Talks.

6 As a matter of fact, it can simply not be denied that
7 during the period 1954, 1958, if you like, until the mid-1960s,
8 there was no difference of opinion between Suriname and the
9 Netherlands as regards the delimitation of the continental
10 shelf by reference to the equidistance principle. Suriname's
11 express agreements to equidistance lasted for at least several
12 years. According to a 21 June 1966 briefing note to the Dutch
13 Deputy Prime Minister, who at the time traditionally was in the
14 cabinet the one who holds responsibility for the overseas
15 territories, in a brief note for this Dutch Deputy Prime
16 Minister for a meeting with the Netherlands Parliamentary
17 Committee, and we have attached that already as Annex 44 to our
18 Memorial, but you can also find that under Tab 30, I believe
19 30(a) of your documents--this is what we found, by the way, in
20 the public domain, namely in the National Archives which
21 contain the archives of the Deputy Prime Minister, and in this
22 document you can see the phrase, "Suriname had already agreed
23 to the equidistance line being used to determine the border on
24 the continental shelf, but then changed its mind." Suriname
25 had already agreed on the equidistance line being used to

12:17:57 1 determine the border on the continental shelf, but then changed
2 its mind.

3 Mr. President, at what particular moment changed
4 Suriname its mind? That's not exactly clear. In any event, it
5 is clear that by 1965, Suriname had determined to take a
6 different approach. We agree on that. For example, on 7
7 October 1965, with Guyana's independence on the horizon, the
8 Surinamese Parliament passed a resolution, an interesting
9 resolution, noting that, and I believe the text is included in
10 Annex 102 to our Memorial, and perhaps I have to ask our team
11 also in the folder, otherwise I apologize that we don't have
12 included it in this folder, but it's an interesting resolution.
13 I will read a few phrases from it. The Surinamese Parliament
14 notes that, I quote, "It is customary that the boundaries of
15 such future independent territory be defined at the time of the
16 granting of independence." And the Parliament declares, "Any
17 demarcation of the borders of British Guiana ignoring the
18 sovereign rights of Suriname on its territory, will be regarded
19 as an unlawful act."

20 Therefore, the Parliament of Suriname decided to urge
21 the government to take all possible steps to ensure that the
22 sovereign rights of the country and its territory are not
23 trifled with in any way whatsoever and it moves to the order of
24 the day. Annex 102 to our Memorial, Volume 3.

25 The next month, in November 1965, ministers of

12:20:28 1 Suriname met with their Dutch counterparts to discuss boundary
2 matters. Suriname's chief spokesman, Dr. Frank Essed, a former
3 Minister and at the time the Director of the Planning Office
4 Foundation of Suriname--and in my personal assessment one of
5 the greatest leaders of Suriname and very effective in the
6 process of nation building--he stated emphatically that, "After
7 the motion of the Surinamese Parliament on 7 October 1965,
8 compromises are no longer possible. This motion forces the
9 government to go for broke. It is everything or nothing.
10 Hence, no compromise on the border along the western Bank of
11 the Corantijn New River, nor on the triangle in the Southwest.
12 The situation regarding the border delineation on the
13 continental shelf is different." That is very interesting.
14 "The situation regarding the border delineation on the
15 continental shelf is different as no agreement was made on this
16 border in the border treaties of 1799 and 1816. The
17 possibility of negotiating on this border is therefore still
18 open."

19 Thus, Suriname's claim to a 10-degree maritime
20 boundary line on the continental shelf was intended as an
21 element in its negotiation strategy. Having decided not to
22 budge on any of its land boundary claims, Suriname had only one
23 card to play with Guyana; namely, the maritime boundary on the
24 continental shelf.

25 It was only by means of a concession to Guyana there

12:22:26 1 that Suriname could hope to obtain Guyana's agreement for
2 Suriname's land claims which Suriname regarded as more
3 important.

4 Suriname's change of position with respect to the
5 maritime boundary generated tremendous tension with the Dutch.
6 That is evident in the records of meetings between them. I
7 refer the Tribunal to Annex 37 submitted in connection with
8 Guyana's Reply, R37. This document, also recently obtained by
9 order of this Tribunal, is a November '65 Dutch memorandum
10 written in advance of the meeting between Dutch and Surinamese
11 officials I just referred to. In it, the Secretary-General of
12 the Netherlands Foreign Ministry, as you can see, in a rather
13 grumbling way wrote that, and I quote, "There is an extremely
14 exaggerated and unrealistic idea on the part of Suriname about
15 the 'rights' which the Netherlands (Suriname) can claim in
16 certain border areas." Exaggerated and unrealistic ideas about
17 so-called rights.

18 I'm quoting from the memorandum from Mr. Baron van
19 Boetzelaer on border arrangement Suriname/British Guiana 19
20 November 1965, also available under Tab 12 more in the
21 beginning of your folder, Tab 12 of your folder.

22 The memorandum continues, "In this context, there was
23 a plan for a discussion to take place which I would chair with
24 the Surinamese delegation which would be attended from our
25 part," and he refers to a number of internal departments and

12:24:37 1 advisors, the legal office also, JURA, the directorate of the
2 Western Hemisphere, as well as a representative of the cabinet,
3 of the Deputy Prime Minister, Mr. Biesheuvel, in order to
4 obtain a clear insight into the wishes of Suriname, and on the
5 other hand, "to try to convince Suriname of the weakness, not
6 to say the impossibility, of achieving (part of) their claims."

7 Equally interesting are the Dutch minutes of the
8 meeting which were not produced until after Guyana's April
9 Reply was submitted. The Dutch minutes of that meeting, and it
10 reflects the following exchanges. You can find it under Tab 13
11 of your folder. There is a reference to S, and that means
12 Secretary-General of the Netherlands Ministry of Foreign
13 Affairs. He reiterated that the Surinamese standpoint adopted
14 by the kingdom will be, of course, strongly defended against
15 either the British or British Guyanese government. However, he
16 personally feels that the government of the kingdom sees itself
17 as having to defend a weak case for Suriname, which cannot be
18 won solely by powerfully expressed words, as urged by
19 Mr. Calor, a member of Parliament of Suriname and council
20 advisor to the Prime Minister, Prime Minister Pengel at the
21 time. He therefore regards it as useful now to warn the
22 Surinamese delegation again, in order to avoid unjustified
23 disappointment in retrospect against unfounded optimism.

24 Suriname argues in its Rejoinder, paragraph 3.96-97,
25 that it was not the Surinamese who were jockeying for

12:27:02 1 negotiating leverage during this period, but rather the
2 British. Suriname cites here to two internal British documents
3 that express the concern that Suriname's lingering interest in
4 the New River Triangle threatened to impede the conclusion of
5 the comprehensive boundary treaties the parties had all but
6 signed just before the onset of World War II.

7 Whatever the case, whether it was Suriname or Guyana
8 that was maneuvering for bargaining strengths, it is not an
9 issue on which we ask the Tribunal to take sides,
10 Mr. President, but however viewed, it is clear that in any case
11 in 1958, and lasting for a period of years thereafter, the
12 parties had a meeting of the minds. There was no difference
13 between them as to the fact that equidistance was the right
14 method to determine the continental shelf boundary between
15 them. It was equally clear that an equidistance line drawn on
16 contemporaneous maps ran along a general bearing of north 34
17 east.

18 Complications to this otherwise simple issue only
19 arose when the parties' land boundary dispute over the New
20 River Triangle entered the picture. Suriname, of course, would
21 very much like to deny the relevance of any of this history,
22 but in Guyana's view, it is very much relevant to the task of
23 the Tribunal; namely, to achieve an equitable solution in view
24 of all the relevant circumstances. The case law clearly
25 supports Guyana's position. We have the somewhat older Temple

12:29:15 1 case, Cambodia versus Thailand, a judgment of 15 June 1966
2 which you can find in ICJ reports 1962 at page 22, 23, where it
3 states, I quote, "It has been contended on behalf of Thailand
4 that this communication of the maps by the French authorities
5 was, so to speak, ex parte, and that no formal acknowledgement
6 of it was either requested of or given by Thailand. In fact,
7 as will be seen presently, acknowledgement by conduct was
8 undoubtedly made in a very definitive way. But even if it were
9 otherwise, it is clear that the circumstances were such as
10 called for some reaction within a reasonable period on the part
11 of the Siamese authorities. If they wish to disagree with the
12 map or have any serious question to raise in regards to it,
13 they did not do so, either then or for many years and thereby
14 must be held to have acquiesced."

15 And in the Tunisia-Libya case of 1982, for example,
16 the ICJ in its judgment stated in paragraph 118, "It is evident
17 that the Court must take into account whatever indicia are
18 available of the line or lines which the parties themselves may
19 have considered equitable or acted upon as such." Paragraph
20 118 to Tunisia-Libya.

21 And this point was reiterated in Libya-Malta,
22 paragraph 25, where the Court stated that it is appropriate to
23 consider evidence of conduct when it provides, I quote, "a
24 helpful indication of any view of either party as to what would
25 be equitable differing in any way from the view advanced by

12:31:36 1 that party before the Court." Libya-Malta.

2 And in the Jan Mayen case, too, the Court left open
3 the possibility, ICJ reports 1993, paragraphs 37, 38, that
4 sufficiently clear diplomatic exchanges might be sufficient to
5 preclude the party from denying the acceptability of a median
6 line.

7 Here, Suriname's Rejoinder is ambivalent, to the point
8 of being self-contradictory on the relevance of the parties'
9 conduct. On the one hand, we have statements like the
10 following, and I quote from paragraph 3.145 Rejoinder, "Conduct
11 is legally relevant only if it indicates, notwithstanding the
12 formal positions of the parties, an express or tacit agreement
13 on the location of the boundary."

14 Or another one, paragraph 3.149, I quote, "If conduct
15 reveals no agreement, it may not be taken into account in the
16 delimitation." But then, on the other hand, we have in
17 paragraph 3.81 Suriname expressly endorsing as a fair summary
18 Guyana's statement that conduct may be relevant, I quote,
19 "because it may tend to prove or disprove a party's contentions
20 about the equitableness of the boundary line it is advocating
21 or opposing." And to similar effect is Suriname's statement
22 paragraph 3.145 that, and I quote, "It is evident that
23 international courts and tribunals may not simply ignore facts
24 that could bear on their assessment of the parties' arguments
25 and claims, or on the ultimate task of delimiting a boundary

12:33:52 1 that provides an equitable solution."

2 Guyana submits that these later statements by Suriname
3 are the ones that are consistent with the law as stated in the
4 Temple case, in Libya-Tunisia, and Libya-Malta cases.

5 The evidentiary rule that Guyana advances is, of
6 course, not unique in maritime delimitation proceedings. The
7 larger concept is really a form of party admission or statement
8 against interest, which is recognized as a general principle
9 applicable in interstate proceedings.

10 The idea is simple. The most probative evidence of
11 what really happened or as in this case what a party really
12 thinks are the parties' own statements made outside of the
13 adversarial context. In the Nicaragua-United States case, for
14 example, the International Court was confronted with what the
15 Court identified, I quote, "as a marked disagreement between
16 the parties not only as to the interpretation of the facts, but
17 also as to their very existence." Paragraph 57 of the
18 Nicaragua judgment 1986. To determine the facts, the Court
19 looked, in part, to public statements made by officials of the
20 parties. And the Court stated, from paragraph 64, "The Court
21 takes the view that statements of this kind emanating from
22 high-ranking official political figures sometimes of the
23 highest rank are of particular probative value when they
24 acknowledge facts or conduct unfavorable to the state
25 represented by the person who made them. They may be construed

12:35:56 1 as a form of admission."

2 And later, in this judgment, the Court reiterated the
3 probative value of such statements against interest. At
4 paragraph 69 it stated, "In the general practice of courts, two
5 forms of testimony which are regarded as prima facie of
6 superior credibility are, first, the evidence of a
7 disinterested witness; secondly, so much of the evidence of a
8 party as is against its own interest." The enduring validity
9 of this point was very recently reaffirmed in the Court's
10 December 2005 Congo-Uganda decision at paragraph 78, 79, in
11 which it cited these portions of the Nicaragua opinion and
12 again invoked a party's statement against interests to
13 determine the truth of a disputed fact.

14 It is exactly in this sense that Guyana invokes the
15 early history of the parties' dealings concerning the
16 continental shelf. The Dutch and Surinamese unambiguous
17 agreement to the use of equidistance principles to determine
18 the continental shelf boundary and the recognition that the use
19 of such principles was "acceptable" and "desirable," I quote
20 the words from the key Dutch documents. "They constitute very
21 strong statements against interests that undermine Suriname's
22 central contention in this case; namely, that equidistance is
23 so unfair that it should be discarded altogether as a
24 delimitation methodology.

25 In fact, Guyana submits that these early statements

12:38:12 1 and actions constitute significant admissions that the
2 principle of equidistance can form the basis of an equitable
3 solution in this case, as required under Article 74 and 83 of
4 the Law of the Sea Convention. The parties' agreement in
5 principle to delimit their continental shelf boundary by means
6 of an equidistance line was manifested in their actual conduct.
7 I now propose that I deal with the conduct of the parties and
8 also their predecessor states. My estimation is that it may
9 easily take me half an hour, so I'm in your hands,
10 Mr. President, whether you would like to make a start with it
11 now, or that we run somewhat into the lunchtime, considerably
12 into the lunchtime or that you may wish to break earlier and to
13 resume somewhat earlier.

14 PRESIDENT NELSON: I think I will adopt the latter
15 option, break earlier and start earlier.

16 PROFESSOR SCHRIJVER: We are in your hands,
17 Mr. President.

18 PRESIDENT NELSON: Yes. I think we should stop now,
19 and we ought to stop at 12:45. Yes, you continue after lunch,
20 and therefore at 1:45.

21 PROFESSOR SCHRIJVER: Thank you, Mr. President.

22 (Whereupon, at 12:39 p.m., the hearing was adjourned
23 until 1:45 p.m., the same day.)

24

25

12:40:32 1

AFTERNOON SESSION

2 PRESIDENT NELSON: Let us begin, and I give the floor
3 to the representative of Suriname.

4 MR. GREENWOOD: Mr. President, thank you. I'm sorry,
5 I have a very brief proposal application to make, or to be more
6 precise two applications.

7 First of all, this morning, my learned friend
8 Professor Schrijver, in his speech, made reference to a
9 document that appears at Tab 10 in your bundle. This is a
10 document from what is described as the "restricted archive."

11 Now, this was not one of the documents that we were
12 notified in advance were going to be used at the hearing. We
13 don't make any objection to that. We realize that there are
14 difficulties over preparing for a hearing like this, but it
15 does refer in the body of the letter to the memorandum of 29
16 January 1958. That is a document part of which my learned
17 friends had said they wished to produce at this hearing. In
18 the circumstances we would like to reserve our right to produce
19 the entirety of the 29 January 1958 memorandum. It's a
20 memorandum of three pages.

21 PRESIDENT NELSON: Thank you.

22 MR. GREENWOOD: My second application is to request to
23 have a copy of doubtless scaled down the rather tremendous map
24 the Tribunal has been treated to the last three days. Although
25 the area around the mouth of the Corantijn, there is a map just

13:48:44 1 like that in the pleadings, this particular map, as far as we
2 can tell, doesn't appear. We think, therefore, it would be
3 appropriate for it to be put in formally.

4 PRESIDENT NELSON: Thank you, Professor Greenwood.

5 PROFESSOR SANDS: Thank you, Mr. President.

6 We, of course, have absolutely no objection in respect
7 to the first application such as it is, and if the letter
8 listing the materials as to which we intended to make reference
9 excluded that particular document, of course, we apologize to
10 the Tribunal, and we have no objection at all to the
11 reservations.

12 As far as the chart is concerned, I take refuge in
13 Professor Greenwood's reference that he wants a scaled down
14 version. If he had asked for a full-size version, that may
15 have presented more difficulties but we will give him something
16 between a pocket sized postcard version and the one you see
17 over here.

18 Thank you very much.

19 MR. GREENWOOD: Very grateful, Mr. President. I don't
20 require a full-sized version. My walls are well covered
21 already.

22 PRESIDENT NELSON: Thank you very much, gentlemen.

23 I now give the floor to Professor Schrijver.

24 PROFESSOR SCHRIJVER: Thank you very much,
25 Mr. President, Members of the Tribunal.

13:49:56 1 I would like to start that part of my presentation
2 which deals with the conduct of the parties and predecessor
3 states.

4 The August 1958 Aide Memoire about which I spoke
5 before lunchtime references active steps the Royal Dutch Navy
6 was taking even then to implement the parties' understanding to
7 prepare a new map of the relevant area on which I quote from
8 the memorandum under Tab 6 in your folder, on which the actual
9 dividing line resulting from the equidistance principle would
10 be chartered. Indeed, even before this 1958 Dutch Aide
11 Memoire, and even before the Convention on the Continental
12 Shelf was adopted, the British had made a preliminary effort to
13 develop an equidistance on the continental shelf to delimit
14 British Guiana's concession to California Oil Company.

15 That line on which the Dutch were advised and
16 specifically informed that it was without prejudice to the
17 joint development of an agreed equidistance line, that line
18 commenced at Point 61, and generally follows an azimuth of
19 north 32 east out to the 25-fathom line, more or less
20 approximately 70 miles from the coast.

21 Neither the concession nor the definition of the
22 concession area prompted any protest from either the Dutch or
23 the Surinamese. Indeed, the historical record suggests that
24 the only response from the Dutch to this initial concession was
25 the Aide Memoire just a few months later, namely in

13:52:12 1 August 1958.

2 By a Diplomatic Note from November 1958, the United
3 Kingdom responded positively to the Dutch Aide Memoire. I
4 quote from it from the response: "Her Majesty's Government
5 learns with great pleasure that the Netherlands Government
6 would welcome an agreement on this question based on the
7 principle of equidistance." It added that the Government of
8 the United Kingdom is, at present, preparing a draft Treaty for
9 the delimitation of the boundary between British Guiana and
10 Suriname, and it states, the British Foreign Office response,
11 "It is intended that the draft Treaty should contain provisions
12 for the delimitation of the continental shelf based on the
13 accepted principle mentioned above." You could find the
14 document in Annex 67 to the Memorial of Guyana.

15 Now, in preparing the draft Treaty, the United Kingdom
16 turned, as we have discussed several times, to Commander
17 Kennedy, an internationally respected expert on maritime
18 boundary delimitation for the elaboration of an equidistance
19 line on the continental shelf as agreed between the United
20 Kingdom and the Netherlands. Commander Kennedy prepared such a
21 line using Dutch Chart 217. Professor Sands referred to that
22 this morning, discussed that with you, that they felt that if
23 they would make a good effort to use the Dutch Chart, that
24 perhaps they could more easily arrive at an understanding and
25 an agreement on how to draw the line.

13:54:16 1 The United Kingdom's draft boundary treaty was
2 submitted to the Dutch in December 1961, and based on Commander
3 Kennedy's work, the draft included a provision delimiting the
4 continental shelf by means of a segmented equidistance line
5 with an average bearing of N34E out to the 200-meter isobath.
6 Now, this 34-degree line thus represented the United Kingdom's
7 best efforts building on Dutch Chart 217 and the work of
8 Commander Kennedy to give practical effect to the parties'
9 existing agreement that the continental shelf boundary should
10 be delimited by means of an equidistance line drawn in
11 conformity with the newly established rule under the 1958
12 Continental Shelf Convention.

13 In its Counter-Memorial at paragraph 3.27, Suriname
14 harps on Guyana's use of the term "historical equidistance
15 line" to describe the 34 line on the ostensible grounds that it
16 is neither historical nor an equidistance line. But, as I have
17 examined with you today, and as it is described in much greater
18 detail in Guyana's written pleadings, Guyana's actions since
19 '61 were at all times predicated on the understanding that the
20 34 line was an equidistance line. There was no distinction.
21 There was simply no distinction between equidistance and the 34
22 line.

23 Thus, for example, Guyana's lead spokesman at the
24 Marlborough House Talks in 1966, Solicitor General Shahabbudeen
25 invoked "applicable principles of general international law,"

13:56:33 1 and by referring to the two relevant 1958 Conventions, he said
2 these provisions in general provided for demarcation on the
3 continental shelf and contiguous zone in accordance with the
4 principle of equidistance. The application of these principles
5 would result in a line running generally at 33-34
6 degrees--33-34 degrees--east of true north. These were already
7 the words of Shahabbudeen at the Marlborough House Talks in
8 1966.

9 To be sure, more recent maps reflect a variance
10 between a strict equidistance line and what we called the 34
11 historical equidistance line, particularly beyond the 200-meter
12 isobath. Guyana itself has repeatedly recognized this fact
13 before the Tribunal, but that does nothing to change the
14 character of the 34 line as both historical and an equidistance
15 lines or, to put it in the words of the Convention, as a
16 "relevant circumstance."

17 Moreover, as shown in much greater detail in Chapter 4
18 of both Guyana's Memorial and Reply, the parties' subsequent
19 conduct--perhaps not always Suriname's words--has been
20 consistent with Commander Kennedy's historical equidistance
21 line, still further reflecting their understanding that the 34
22 line represented an equitable solution on the continental
23 shelf.

24 Let me now address, Mr. President, the actual conduct
25 of Guyana in this particular field. In 1965, for example,

13:58:58 1 British Guiana issued another oil concession in the boundary
2 area, and this one to Royal Dutch Shell. The eastern limits of
3 the concession area proceeded from Point 61 along an azimuth of
4 north 33 east, closely approximating the segmented equidistance
5 line with an average bearing of 34 drawn by Commander Kennedy
6 in 1961. And although this concession was well
7 publicized--and, of course, Royal Dutch Shell was obviously
8 well-known to the Dutch and well-known in Suriname as
9 well--there was no protest either from the Netherlands or from
10 Suriname.

11 To the contrary, when Royal Dutch Shell later drilled
12 the Abary I well in the area licensed to it by Guyana,
13 logistical support for it was provided from Paramaribo.
14 Suriname tries to minimize this uncomfortable fact by
15 suggesting--and I quote from the Counter-Memorial of Suriname
16 paragraph 5.23--that since Shell also had an interest in
17 Suriname's Colmar concession, the Abary I well was drilled
18 under the authority from both countries. But the record is
19 clear that authority for the drilling came from Guyana, from
20 Georgetown, and only from Guyana.

21 Guyana's oil practice is similarly consistent with the
22 34 east historical equidistance line. We have here a table
23 which we took from our Reply from paragraph 4.47, and you can
24 see in the first column that it spans some considerable number
25 of years ranging from 1965 up to 1999 in the first one. In the

14:01:39 1 second one, you see a variety of licensees: Royal Dutch Shell,
2 Major Crude, Lasmco, et cetera. You can see the names of the
3 licences over there. More significant, all these licensees
4 border more or less approximately the 34 historical
5 equidistance line.

6 It is true that not every one of Guyana's concessions
7 reached the 34 east line, as you can see, but the majority,
8 namely six out of the ten concessions, extended to the east as
9 far as or even beyond north 33 east line. The rest extended at
10 least to 31 degrees, as you can see. At any rate, the
11 operative point to make is that they are all broadly consistent
12 with the historical equidistance line of Commander Kennedy.

13 In addition, as described in its Memorial, namely
14 paragraphs 4.4, Guyana conducted extensive oil exploration
15 activity, including seismic testing, throughout all of these
16 concession areas right up to the 34 line. Seismic testing is,
17 of course, also a legitimate activity under the Articles
18 relating to the sovereign rights on the continental shelf and
19 the Exclusive Economic Zones Articles 56 and 77.

20 By contrast, Surinamese licensees generally did not
21 traverse beyond the 34 line. This fact is graphically depicted
22 on Guyana's Plate 13, Plate 13 included in our Memorial, which
23 is an overlay showing the parties' conduct of seismic testing
24 activity. Guyana's actions combined with Suriname's inaction,
25 Mr. President, are thus consistent with the parties' mutual

14:04:14 1 understanding that the 34 line represented a credible solution.

2 Suriname also suggests that certain aspects of
3 Guyana's conduct do not support its claim to the 34 historical
4 equidistance line. In support of this argument, Suriname's
5 Counter-Memorial identifies, in essence, two principal items:
6 First, Guyana's 1997 Maritime Boundaries Act; and second,
7 Guyana's practice with respect to fisheries. In reality,
8 neither of these detracts from the conclusion that Guyana's
9 conduct manifests its understanding that the limitation
10 produced by the historical equidistance line is equitable.
11 Consistent with the '58 Convention on the Continental Shelf,
12 Guyana's 1977 Maritime Boundaries Act defines Guyana's maritime
13 boundaries by reference to equidistance in the absence of an
14 agreement with neighboring states.

15 Suriname suggests that this manifests an inconsistent
16 commitment to the historical equidistance line, and to underpin
17 this argument, the Counter-Memorial of Suriname includes three
18 Figures--number three, four, and five--that depict what they
19 call the so-called 1977 Maritime Boundaries Act line. And
20 together, Suriname attempts to create the impression that the
21 act included such a line, but it did not. The act neither
22 included, described, nor made reference to a particular
23 boundary line, let alone that the map was attached to it
24 depicting such a line.

25 Mr. President, Suriname's 1977 Maritime Boundaries Act

14:06:35 1 line is thus a fiction, a lawyer's fiction. In reality, the
2 1977 Maritime Boundaries Act and its use of equidistance are
3 best understood by reference to what had come before. History
4 matters, as I told you this morning.

5 As Guyana's Solicitor General, Mr. Shahabbudeen stated
6 at the Marlborough House Talks, Guyana understood that
7 application of equidistance principles yielded, and I quote
8 from Shahabbudeen, "yielded a line running in a general
9 direction 33-34 east of true north." This was not just
10 Guyana's subjective interpretation. As I have examined, an
11 actual equidistance line drawn on historical Dutch Charts ran
12 along the general bearing of north 34 east.

13 Guyana's subsequent Petroleum Act of 1986 was based on
14 the same understanding. The Petroleum Act, together with the
15 regulations promulgated thereunder, codified Guyana's maritime
16 boundary with Suriname as a line commencing at Point 61 and
17 extending seawards for 200 nautical miles along the azimuth of
18 34 degrees. Guyana's laws are thus fully consistent with its
19 claim to the historical equidistance line and its understanding
20 that the delimitation produced by the 34-degree line is
21 equitable. So, I hope I have resolved this misunderstanding.

22 Now, as regards to fisheries, Guyana acknowledged in
23 its Memorial that its fisheries enforcement zone did not extend
24 as far east as the 34-degree line. Guyana does not dispute the
25 statement in Suriname's Counter-Memorial that its fisheries

14:08:59 1 zone limit--and I quote from the Counter-Memorial from
2 Suriname--"broadly coincides with the equidistance line and has
3 no relation to this 34-degree line." Ironically--and we thank
4 our friends for that--Suriname's own pleadings provide the
5 reason. As the Counter-Memorial explains, I quote, "While
6 Suriname does not have the resources to engage in constant
7 fisheries surveillance throughout its claimed waters, that does
8 not mean that it has renounced its claim to the 10-degree line
9 Mutatis mutandis, Guyana agrees, and adds that the same is true
10 for Guyana with regard to its claim of the 34 line.

11 Mr. President, I now proceed to a discussion of the
12 actual conduct of Suriname.

13 As I discussed with you earlier this morning, by late
14 1965, Suriname appears to have changed its mind about the
15 desirability of an equidistance boundary on the continental
16 shelf at least as a matter of its public posture. In 1966, it
17 explicitly rejected Guyana's proposal put forward by
18 Shahabbudeen at the Marlborough House Talks for an equidistance
19 boundary line of, I quote, 33-34 degrees.

20 It is very interesting to note, however, that even as
21 it's publicly a formal claim to 10 degrees, its conduct
22 generally continued to be respectful of the historical
23 equidistance line. Its conduct is thus consistent with
24 Guyana's view that Suriname's claim to the 10-degree line was
25 intended from the very beginning to be negotiated away as part

14:11:17 1 of its effort to achieve its other boundary objectives. It is
2 also consistent with the view that both parties understood the
3 34 line to be an equitable solution.

4 Mr. President, in the period prior to the 1982
5 Convention, for example, Suriname issued three oil concessions:
6 To Colmar, to Staatsolie, and to Gulf. As initially issued in
7 1960, the Colmar concession extended to Suriname's western
8 boundary with British Guiana without specifying where that
9 boundary was. The 10-degree line was specifically but
10 belatedly inserted as the boundary in '64-65, exactly at the
11 time Suriname first decided to claim such a line on the
12 continental shelf. In its Counter-Memorial at paragraph 5.25,
13 Suriname asserts that this concession remained active, in whole
14 or in part, throughout the period lasting until 1982. In
15 reality, however, the Colmar concession was never active to the
16 west of north 34 east at the historical equidistance line, and
17 at best it was dormant, if it existed at all.

18 As Guyana described in its Memorial, paragraphs 4.26
19 up to 4.28, such drilling as took place in the concession area
20 occurred well to the east, and that is to say on the Surinamese
21 side of the 34 line. In addition, whatever seismic testing was
22 done was limited either to the eastern side of the historical
23 equidistance line or it occurred at a time beyond the 200-meter
24 isobath that represented the seaward limits of the line at that
25 time.

14:13:51 1 Nowhere has Suriname made any effort to deny these
2 facts. Consequently, far from supporting Suriname's claim that
3 the conduct was consistent with its claim of the 10-degree
4 line, the actual conduct of the Colmar concession shows
5 Surinamese respect for, tacit recognition of, the fairness of
6 the 34-degree line. So far for the Colmar concession.

7 The same holds true for Suriname's concession to
8 Staatsolie in 1980. Inasmuch as Staatsolie is Suriname's
9 state-owned oil company, this was, in effect, a concession by
10 Suriname to itself. In Dutch we say, you offer a cigar from
11 your own box. Although Suriname's Memorial presents a paper
12 trail creating and describing the concession in minute detail,
13 it is striking that Suriname produces no evidence of any actual
14 conduct undertaken by Staatsolie to effectuate its formal
15 concession west of the 34-degree line. The only thing it did
16 during the pre-1982 period was to issue a service contract to
17 Gulf in 1980. This short-lived concession included only a
18 small wedge lying west of the north 34 east line. All of it
19 was located in the near shore area very close to the coast.

20 Well, there is some suggestion that Gulf conducted
21 limited seismic testing. The record is undisputed that Guyana
22 protested this activity, and that Staatsolie responded by
23 advising Guyana that the concession had lapsed and that it
24 would not be reissued. I may refer the Tribunal here to what
25 is stated in paragraph 4.28 of the Memorial of Guyana.

14:16:25 1 Mr. President, in the period after 1982, Suriname
2 issued five concessions in the area between the 10- and
3 34-degree lines. In three most recent of these, namely the one
4 to Burlington in 1999, to Repsol in 2003, and to Maersk in
5 2004, the western boundary line coincided with the line of 33
6 degrees, N33E, measured from Point 61. That is just 1 degree
7 to the west of our historical equidistance line.

8 The two remaining concessions, mainly the one to
9 Staatsolie and PECTEN that was made in 1993, existed on paper
10 only. Staatsolie never engaged in any activities of its own in
11 its concession area. Rather, it only issued service contracts
12 to others, including the concessions to Burlington, Repsol and
13 Maersk that had a western boundary line of 33 degrees. And
14 with regard to PECTEN, the record shows that no exploratory
15 activity was ever contemplated. This was only a paper
16 concession in the purest sense. The purpose was merely to
17 assemble and analyze data that had previously been collected by
18 other licensees.

19 Mr. President, members of the Tribunal, to what extent
20 is this conduct relevant? Understandably, Suriname attempts to
21 downplay the significance of the parties' conduct, particularly
22 its own. As I indicated earlier, Suriname argues at least some
23 of the time that conduct is only relevant to the extent it
24 reflects an express or tacit agreement. In making its
25 argument, Suriname relies, in part, on the ICJ decisions in the

14:18:50 1 Cameroon-Nigeria case. Suriname suggests in its
2 Counter-Memorial at 4.40 that that decision renders irrelevant
3 the oil concession practice of both parties because the
4 practice does not manifest a tacit agreement on the boundary
5 line.

6 But the two cases are not at all the same. In each
7 case, Nigeria argued that the maritime boundary should take, I
8 quote, "into account the wells and other installations on each
9 side of the line established by oil practice, and should not
10 change the status question in this respect." Para 256.

11 In effect, Nigeria argued that the maritime boundary
12 was defined by the two states' oil concession practices,
13 without more. The ICJ rejected that argument, and the Court
14 stated in paragraph 304, and I quote, "Oil concessions and oil
15 wells are not in themselves to be considered as relevant
16 circumstances justify the adjustment or shifting of the
17 provisional delimitation line. Only if they are based on
18 express or tacit agreement between the parties may they be
19 taken into account," from the ICJ decision in Cameroon-Nigeria.

20 Guyana is not contending in these proceedings, as
21 Nigeria did before the Court, that the parties' respective oil
22 concessions in and of themselves define the course of their
23 maritime boundary. To the contrary, as I stated above,
24 Guyana's view is that the conduct of the parties as a whole,
25 including their oil concession practices, shows that they each

14:21:05 1 understood that a delimitation of their maritime boundary by
2 means of an equidistance line would be equitable.
3 Interestingly, Suriname appears at other times to concede this
4 simple evidentiary point. For example, at paragraph 3.145 of
5 its Rejoinder, Suriname admits, I quote--3.145 of the
6 Rejoinder--it is evident that international courts and
7 tribunals may not simply ignore facts that could bear on their
8 assessment of the parties' arguments and claims or on the
9 ultimate task of delimiting a boundary that provides an
10 equitable solution." That is a rather helpful statement.

11 In this connection, Guyana considers as deeply
12 significant that the line of 33-34 that separates the parties'
13 oil concessions was originally drawn on contemporaneous Dutch
14 charts, and was designed to give effect to the parties'
15 agreement to use equidistance to delimit their continental
16 shelf boundary. Professor Sands discussed with you the tactics
17 of Commander Kennedy and the British Foreign Office behind the
18 use of this map in order to facilitate the reaching of an
19 agreement.

20 Now, the fact that the respective oil concessions of
21 Guyana and Suriname crystallized around the same line
22 demonstrates that by their conduct, they considered it
23 equitable, even if they never reached a tacit agreement as
24 such. Their mutual conduct does constitute probative indicia,
25 and may I quote from Tunisia-Libya, the ICJ decision, "indicia

14:23:21 1 of the line or lines which the parties themselves may have
2 considered equitable or acted--or acted--upon as such." And
3 that's per the ICJ's decision in paragraph 118, and there the
4 Court states the Tribunal must take that into account.

5 Neither is this case like the one recently decided by
6 the Arbitral Tribunal in Barbados-Trinidad and Tobago. There,
7 Barbados argued that Trinidad and Tobago was prevented from
8 arguing for something other than the equidistance line in the
9 eastern sector because Barbados had conducted petroleum
10 exploration activities in the areas claimed by Trinidad and
11 Tobago without protest. But the Tribunal rejected Barbados's
12 argument because the conduct on which Barbados attempted to
13 base its argument was entirely unilateral, consisting only of
14 Barbadian oil concessions and seismic testing activities that
15 tracked the provisional equidistance line.

16 Here, however, the conduct of both parties was
17 respectful--both parties, Guyana and Suriname--was respectful
18 of the N34E historical equidistance line. Thus, the Tribunal
19 is not being asked to attach legal consequences to one side's
20 unilateral conduct, but simply to recognize the appearance, the
21 simple fact that the parties' mutual conduct in this case
22 demonstrates that they both understood the historical
23 equidistance line, the 34-degree line, to be an equitable
24 solution.

25 Mr. President, I come to some conclusions. They

14:25:46 1 include six. One, under the 1982 Convention, the goal of the
2 delimitation process on the continental shelf and in the
3 Exclusive Economic Zone is to achieve an equitable solution.

4 My second conclusion, at the very moment
5 internationally agreed rights on the continental shelf came
6 into being in the 1950s, then, in 1958, the Netherlands posed
7 to the United Kingdom that the delimitation based on
8 equidistance would not only be, I quote from the Dutch Aide
9 Memoire, "acceptable," but in fact, "desirable." And
10 obviously, Mr. President, Members of the Tribunal, this was
11 from the 3-mile limit of the territorial sea.

12 Third, Suriname itself accepted this approach for at
13 least several years before it changed its mind in the light of
14 its other interests.

15 Conclusion four, to give effect to the parties'
16 agreements to define their maritime boundaries in the areas
17 beyond the territorial sea by reference to equidistance,
18 Britain's Commander Kennedy drew an equidistance line on
19 contemporaneous Dutch Charts that lay along the bearing of
20 N34E.

21 Five, even after it later changed its public mind,
22 Suriname's conduct for the last nearly 50 years has continued
23 to be respectful of Commander Kennedy's historical equidistance
24 line.

25 And six, lastly, these facts are very much relevant in

14:27:55 1 the post maritime and under other international case law
2 because they show what Suriname really thinks about the merits
3 of its case outside the context of this hearing, and thus
4 constitute very probative statements against interests.

5 Mr. President, Members of the Tribunal, could I
6 request you now to give the podium back to my colleague,
7 Mr. Paul Reichler, who will address you on the equitableness of
8 the various delimitation lines that the parties have presented
9 in their pleadings so far.

10 Thank you very much.

11 PRESIDENT NELSON: Thank you, Professor Schrijver.

12 We now call on Mr. Reichler.

13 MR. REICHLER: Thank you.

14 Mr. President, good afternoon. Good afternoon,
15 Members of the Tribunal. I wish to assure you that, as
16 promised, Guyana will complete its presentation this afternoon
17 before the 3:30 deadline.

18 ARBITRATOR SMIT: That's a very good beginning.

19 MR. REICHLER: Maybe I should stop there and call it a
20 day.

21 There is one administrative matter, I just wanted to
22 assure the Tribunal and Mr. Greenwood that his request has been
23 honored, and his delegation has been provided with copies of
24 the annotated photographs that were displayed yesterday during
25 my presentation, but had not at that time been included in the

14:29:50 1 Judges' folder. But since they have now been produced to our
2 friends from Suriname, we have added them to the Judges' folder
3 at Tab 32.

4 MR. GREENWOOD: Mr. President, I'm most grateful to my
5 learned friend for providing them.

6 PRESIDENT NELSON: Thank you.

7 MR. REICHLER: My presentation this afternoon follows
8 upon and follows from Guyana's last three presentations
9 starting yesterday morning: On the geographical circumstances
10 of this case delivered by myself, on delimitation in the
11 territorial sea, delivered by Professor Sands, and on
12 delimitation on the continental shelf and Exclusive Economic
13 Zone just completed by Professor Schrijver.

14 Now that you have heard Guyana's views on the
15 geographical circumstances and on the parties' respective
16 delimitation claims in the territorial sea and in the
17 continental shelf and Exclusive Economic Zone, it falls to me
18 to present Guyana's views on the equitableness of the
19 provisional equidistance line in this case, and of the various
20 delimitation lines proposed or displayed by the parties.

21 I shall begin with a consideration of the delimitation
22 lines presented or proposed by Suriname in their written
23 pleadings. I will then assess the equitableness of the
24 provisional equidistance line, and I will conclude by
25 addressing the equitableness of the delimitation line of 34

14:31:42 1 degrees--that is, north 34 degrees east--proposed by Guyana.

2 Starting with Suriname's pleadings.

3 Suriname claims that its angle bisector approach,
4 which I described yesterday, produces a delimitation line of
5 17-degrees and that this line is equitable. To demonstrate the
6 equitableness of the 17-degree line, Suriname takes its
7 arbitrarily straightened coastal front lines, the same ones it
8 used to create the angle bisector, and it projects these lines
9 seaward--in this case, northward or northeastward--in a linear
10 direction along perpendicular axes to the 200-mile limit of the
11 Exclusive Economic Zone. This is depicted in Suriname's Figure
12 33 of its Counter-Memorial, which is reproduced on the screen
13 before you exactly as it was presented by Suriname in its
14 Counter-Memorial.

15 The expanse of sea enclosed within these perpendicular
16 lines extending from the straightened coastal facades, and
17 within 200 nautical miles of these straightened coastlines, is
18 called by Suriname the maritime area relevant to the discovered
19 delimitation or the relevant maritime area.

20 Suriname claims that its 17-degree line, which is not
21 depicted in this chart, when taken out to the 200-nautical-mile
22 limit, divides this area equally between Guyana and Suriname
23 and is, therefore, equitable. This approach suffers from the
24 same flaws as Suriname's method for constructing the angle
25 bisector in the first place, and then some.

14:33:59 1 As I described yesterday, what Suriname calls the
2 maritime area relevant to the delimitation or the relevant
3 maritime area for Suriname, is entirely a function of its
4 "generalized," or, "simplified representations" of the Guyana
5 and Suriname coastlines. That is, the entirely arbitrary
6 straight-line depictions of these coastlines. The relevant
7 maritime area for Suriname is simply a projection of these
8 arbitrary coastlines seaward along perpendicular axes for 200
9 nautical miles.

10 Here we have the coastlines again, or the coastal
11 facades, according to Suriname, and you can see how they can
12 project along perpendicular axes, and this is the way their
13 relevant maritime area, alleged relevant maritime area, is
14 constructed.

15 Logically, if these simplified coastlines are flawed,
16 so are the maritime areas that they purportedly define. And we
17 know that the simplified coastline that Suriname has attributed
18 to Guyana is an arbitrarily chopped off version of its real
19 coastline; that the direction of that coastline does not match
20 the natural course of Guyana's actual coastline, and that at
21 its end point, it does not meet or form an angle with
22 Suriname's simplified coastline, and we know as well that
23 Suriname's simplified coastline has been arbitrarily lengthened
24 by Suriname. These distortions of the lengths and directions
25 of the parties' coastlines, when projected seaward along

14:36:04 1 perpendicular lines, cannot help but enclose a maritime area
2 that is just as flawed and distorted as the coastlines that
3 define it.

4 Further, even if, arguendo, the simplified coastlines
5 were defensible, what is Suriname's rationale for projecting
6 them seaward only in one direction, only along perpendicular
7 lines? Assuming for argument's sake--and it's a big
8 assumption--that the simplified or generalized coastal facades
9 were defensible, why not project them radially in all seaward
10 directions? It is axiomatic.

11 And both Guyana and Suriname agree that the land
12 dominates the sea. A state's coastal front or coastline or
13 coastal facade can be projected seaward for 200 nautical miles
14 in all directions, not just one.

15 Now, the map on the screen illustrates one of the
16 problems in Suriname's rigid perpendicular method of defining
17 the relevant maritime area when the simplified coastal front is
18 projected only in one direction along a straight line. The Xs
19 on the screen mark areas that are within 200 nautical miles of
20 both states, within the area of entitlement of both states, but
21 nevertheless are excluded from Suriname's relevant maritime
22 area because they are outside the straight-line borders of this
23 arbitrary area that Suriname's linear methodology has created.

24 By extending the coastal front seaward in only one
25 direction, Suriname's linear approach artificially shrinks the

14:38:16 1 maritime area that is relevant to the delimitation, and leads
2 to false or misleading conclusions when this shrunken and
3 misshapen area is divided by the provisional equidistance line
4 or the various delimitation lines proposed by the parties.

5 Here is another illustration of the problem with
6 Suriname's approach. Let us suppose that Suriname were to use
7 the same approach with its other neighbor, French Guiana, to
8 define the maritime area relevant to a delimitation of their
9 boundary. We start, as in the image before you, with
10 simplified straight line coastal fronts, as Suriname did in the
11 case of the Suriname-Guyana boundary, and following Suriname's
12 approach in this case, we project them seaward in linear
13 fashion along perpendicular axes exactly as Suriname has done
14 in the case of Guyana. As you can see, there is no area of
15 overlapping entitlements. And there is a significant and
16 expanding area directly in front of the land boundary terminus
17 to which, by Suriname's approach, neither Suriname nor French
18 Guiana would have any entitlement.

19 In Guyana's view, the relevant maritime area should be
20 defined not by a linear projection of the parties' coastal
21 fronts along straight-line perpendicular axes, but by their
22 radial projection. By radial projection we mean their
23 projection in all seaward directions by means of an envelope of
24 arcs. This is consistent with the rule that the land dominates
25 the sea. It is also the very method that is used for

14:40:31 1 determining the limits of a coastal state's 12-mile territorial
2 sea and its 200-mile Exclusive Economic Zone. Suriname itself
3 recognizes this. In its Rejoinder paragraph 3.16, it cites
4 favorably to the recent Barbados Trinidad arbitral award,
5 quoting the Tribunal as follows: "The reason for coastal
6 length having a decided influence on delimitation is that it is
7 the coast that is the basis of entitlement over maritime areas,
8 and hence constitutes a relevant circumstance that must be
9 considered in light of equitable criteria. To the extent that
10 a coast is abutting on the area of overlapping claims, it is
11 bound to have a strong influence on the delimitation, an
12 influence that results not only from the general direction of
13 the coast, but also from its radial projection in the area in
14 question." That is from paragraph 239 of the Barbados Trinidad
15 award, and it is cited favorably by Suriname at paragraph 3.16
16 of its Rejoinder.

17 Even without reference to the Barbados Trinidad
18 Arbitral Tribunal, Suriname itself expressly endorses radial
19 projection of the coastline as an appropriate method to
20 determine the relevant maritime area, and I will read you from
21 the Rejoinder at paragraph 3.198, quote, and this is Suriname's
22 Rejoinder, "In the jurisprudence of maritime boundary
23 delimitation, international courts and tribunals have referred
24 to both radial and directional projection of coastal fronts.
25 These two different ways of looking at coastal projections have

14:42:40 1 their appropriate place in particular geographic
2 configurations, and for particular purposes."

3 Still quoting from Suriname.

4 "Radial is a way of understanding, generally, how
5 coasts generate entitlement. Directional is a way of
6 understanding, not the full possible extent of a single coast's
7 maritime entitlement, but the maritime area upon which a
8 particular relevant coast abuts."

9 Now, Suriname and Guyana agree that in determining
10 whether a particular delimitation line is equitable, it is
11 useful to define a relevant maritime area and examine whether
12 the delimitation line in question divides the area equitably.
13 And Suriname agrees with Guyana that an appropriate way to
14 define the relevant maritime area is by projecting the relevant
15 coastline radially in all seaward directions for 200 nautical
16 miles.

17 Guyana does not agree with Suriname that it is also
18 acceptable to define the relevant maritime area directionally,
19 as Suriname calls it, by which it means, apparently, projecting
20 the relevant coastline seaward only along a perpendicular or
21 linear access for the reasons we have just explained and
22 depicted.

23 Guyana's view is that it is the radial projection of
24 the coastline that leads to the relevant maritime areas and not
25 a quote-unquote directional or perpendicular projection, and

14:44:23 1 that is consistent with the views of the independent expert
2 consulted by Guyana, Dr. Robert Smith. At paragraph 51 to 52
3 of his report, Dr. Smith writes--by the way, Dr. Smith's report
4 is at Tab 20 of your Judges' folder. This is how Dr. Smith
5 expressed it at paragraphs 51 and 52 of his report.

6 "Not only is Suriname's description of the relevant
7 coastlines flawed in how it characterizes the coastal
8 geography, but so is its projection of the coastal fronts
9 seaward to create what is supposedly the area to be delimited
10 in this case. Suriname suggests that the projection of each
11 state's maritime jurisdiction is to be depicted by creating
12 perpendicular lines to the coastal fronts it has defined, and
13 this is shown in Figure 33." I'm reading from paragraphs 51
14 and 52 of Dr. Smith's report. And I will continue reading.
15 "It has already been shown that the method used by Suriname to
16 create the coastal fronts is not based on any appropriate or
17 reasonable application of the geography in the area." Since I
18 see some that Members of the Tribunal are looking for this, I
19 don't want to confuse you by reading from the document while
20 you're looking for the appropriate page, so maybe I should
21 pause for a drink of water here so I can avoid confusion. Once
22 again, this is at Tab 20, and I have the paragraph number, not
23 the page number. It's paragraph 51 and 52 right near the end
24 of Dr. Smith's report. Page 14, thank you.

25 And I will pick up right from where the words Figure

14:46:32 1 33 are, so I don't read over it twice, but, "It has already
2 been shown that the method used by Suriname to create the
3 coastal fronts," which I described yesterday, "is not based on
4 any appropriate or reasonable application of the geography in
5 the area. But, then to conclude that a State's maritime
6 entitlement only projects in one direction, (e.g., the
7 perpendicular lines), plainly misrepresents reality. A
8 maritime claim projects in all directions from the coastline.
9 To state that the, 'land dominates the sea,' means that
10 maritime jurisdiction flows in all directions from the land and
11 not in just one direction."

12 Guyana has analyzed the way Suriname's 17-degree line
13 divides the relevant maritime area by projecting the coastlines
14 radially in all seaward directions by means of an envelope of
15 arcs. The radial projection is of the parties' actual
16 coastlines; that is, the radial projection by Guyana is of the
17 parties' actual coastlines, not of simplified or generalized
18 straight-line coastal fronts.

19 Now, what you will see on the screen shortly is the
20 way Guyana has depicted the relevant maritime area; and you
21 will see this more specifically and, frankly, in more detail
22 because we don't want to take up more of your time today than
23 we have to in Guyana's Reply, and particularly in a series of
24 maps at Plate R10, specifically 10A, 10B, and 10C, where we
25 demonstrate in a transparent manner the methodology and the

14:48:55 1 step-by-step approach to depicting the relevant maritime area
2 which I will summarize here.

3 We start with the relevant coasts, using the actual
4 coasts, and then we will project them radially to determine the
5 maritime areas appurtenant to each of these coasts, and then we
6 will see where the appurtenant maritime areas of Guyana and
7 Suriname overlap. This is the maritime area appropriately
8 defined as relevant to the delimitation to be effected in this
9 case.

10 Starting with Guyana, you will see the relevant
11 portion of Guyana's coastline. It is the length of Guyana's
12 coastline that contributes to the construction of the
13 provisional equidistance line to a distance of 200 nautical
14 miles. No other portion of Guyana's coastline affects the
15 equidistance line out to 200 miles. This section runs from
16 west to east from the first coastal base points at Devonshire
17 Castle Flats in the west to the boundary terminus at Point 61.
18 The length of Guyana's relevant coast is 215 kilometers.

19 While the determination of the relevant coastline is
20 an automatic byproduct of the determination of a provisional
21 equidistance line, by means, of course, of an objective
22 mathematical technique. The underlying legal principle that
23 provides justification for its application is one of
24 entitlement to national jurisdiction up to 200 nautical miles.

25 Coastlines or portions of coastline located at a

14:51:03 1 distance greater than 200 nautical miles from the outer edge of
2 the overlapping maritime entitlements of the parties are not
3 relevant to the delimitation of their maritime boundary up to a
4 distance of 200 nautical miles.

5 I'm sure I don't have to remind the Tribunal, but the
6 parties have stipulated that its mandate is to award the
7 parties, assuming it finds jurisdiction, a maritime boundary up
8 to a distance of 200 nautical miles, but not beyond. It is
9 Guyana's view that only the coastlines that provide legal
10 entitlement to national jurisdiction up to a distance of 200
11 nautical miles from the outer edge of the overlapping maritime
12 spaces are relevant to the delimitation of this maritime
13 boundary.

14 As Dr. Smith stated--and we are back in his report at
15 Tab 20, this time at paragraphs 45 and 46--"If one were to
16 employ a single line to represent an entire coastline for two
17 states that share a land boundary, it would seem appropriate
18 and reasonable to have a common terminal point as one end of
19 each coastal front line, and this common point should be Point
20 61, the land boundary terminus. Thus Guyana's coastal front
21 should be altered from Suriname's depiction and brought land
22 word to point landward to Point 61." As you will recall, he's
23 referring to Figure 33, and Suriname's depiction of Guyana's
24 simplified straight-line coastal front which terminates 20
25 kilometers seaward of Point 61.

14:52:58 1 The other ends of each coastal front should have some
2 rational basis behind their placement as well. In this case,
3 since it is the provisional equidistance line that is being
4 analyzed for its appropriateness, it would seem reasonable that
5 the last controlling coastal point on each state's coastline
6 would provide the appropriate end point.

7 Another advantage of defining the relevant coastline
8 in terms of the length of coastline that controls the
9 provisional equidistance line is that it is objective. There
10 is no room for subjectivity or contrivance, especially where
11 the parties agree on the location of the base points.

12 In fact, there is no debate about which portion of
13 Guyana's coast controls the provisional equidistance line.
14 Both Guyana and Suriname agree that it is the portion between
15 Devonshire Castle Flats on the west and Point 61 in the east.

16 Now, projecting radially this relevant coast for
17 200 miles in all seaward directions, we have Guyana's
18 appurtenant maritime area or the maritime area appurtenant to
19 Guyana. This is the area to which Guyana would be entitled to
20 claim entitlement if it were existing alone, if it had no
21 neighbors.

22 As I said, this has been developed by projecting
23 Guyana's relevant coastline radially in all seaward directions
24 to a distance of 200 nautical miles by means of an envelope of
25 arcs. This is the entire area of Guyana's maritime entitlement

14:54:58 1 based on the principle that the land dominates the sea. Not
2 all of this area of appurtenance or entitlement, if you will,
3 is relevant to the delimitation, however. Only that portion of
4 it that is also appurtenant to Suriname and to which Suriname
5 may claim an entitlement. That is, the maritime area that is
6 relevant to the delimitation is where the areas appurtenant to
7 both Guyana and Suriname overlap. Another way of putting it is
8 it is where the areas of entitlement of Guyana and Suriname
9 overlap. Guyana here uses the terms area of appurtenance and
10 area of entitlement interchangeably.

11 On the screen, the area to the northwest that is
12 slightly darkened is appurtenant to Guyana because it is within
13 200 nautical miles of Guyana's coast, but it is not appurtenant
14 to Suriname. This area is appurtenant to Guyana because it is
15 within 200 nautical miles of Guyana's relevant coast, but it is
16 not appurtenant to Suriname because it is beyond 200 nautical
17 miles from Suriname's coast as we shall see. Therefore, while
18 appurtenant to Guyana, it is not relevant to the delimitation.

19 In order to be relevant to the delimitation, the area
20 in question has to be appurtenant to and within the areas of
21 entitlement of both states, and we'll come back to this in a
22 moment. But first we need to depict Suriname's relevant
23 coastline and its area of appurtenance or entitlement. Once
24 again, this will be seen in more detail, in more explanatory
25 material at maps 10A, B, and C of our Reply.

14:57:30 1 Now using the same criteria as we did to depict
2 Guyana's relevant coastline, Suriname's relevant coastline,
3 which should appear any second, extends from Point 61 in the
4 east to Hermina Bank in the west, and yesterday I spent some
5 time during my presentation on the relevant geographical
6 circumstances explaining why the easternmost base point which
7 Suriname is entitled to claim is at Hermina Bank, base point
8 S13, and this relevant coastline is reflected by the red line
9 that you can see on the chart. As I said, Suriname's relevant
10 coastline extends from Point 61 to the last point along its
11 coast that controls the provisional equidistance line. This
12 point is at Hermina Bank. If you recall the alleged base point
13 S14 at Vissers Bank, which is farther to the east, turned out
14 to be four kilometers north of the low-water line, somewhere in
15 the water, and therefore it's not a true base point. So we
16 stop at Hermina Bank, which is the last base point that
17 actually is on Suriname's coast, and the distance is 153
18 kilometers.

19 So, we can now compare and point out that Guyana's
20 relevant coastline is longer than Suriname's by a margin of 215
21 kilometers to 153 kilometers. Again, the length of coastline
22 defined by that portion of the coastline that controls the
23 direction of the equidistance line to a distance of 200
24 nautical miles. This ratio, 215 kilometers to 153 kilometers,
25 a ratio which I will come back to, is 1.4 to 1 in favor of

14:59:32 1 Guyana.

2 Now, we can proceed to depict Suriname's appurtenant
3 relevant area, now that we have its relevant coastline, and
4 here it is. We have used precisely the same methodology and
5 criteria to create, and project, Suriname's appurtenant
6 maritime area as we did for Guyana. We have projected
7 Suriname's relevant coastline seaward in all directions for 200
8 nautical miles by means of an envelope of arcs.

9 Now, as with the depiction of Guyana's area of
10 appurtenance, this chart shows that Suriname's area of
11 appurtenance includes portions that are not appurtenant to
12 Guyana because this portion--again in the darkened portion,
13 this time to the northeast, is appurtenant to Suriname. It is
14 sea over which Suriname can claim entitlement because it is
15 within 200 miles of its coast, but it is beyond 200 nautical
16 miles of the Guyana coast which you can see here reflected in
17 this or depicted in--this is a 200-mile line from Guyana, so
18 this blue line, so everything to the northeast and east of this
19 blue line is appurtenant to Suriname. It's an area over which
20 Suriname can claim entitlement, but it is not that for Guyana.
21 This is beyond any appurtenance of Guyana, it is beyond any sea
22 to which Guyana can claim entitlement.

23 Now, we will project on the screen a chart that
24 overlays the appurtenant maritime areas of Guyana and Suriname
25 on top of one another. This is really simply the appurtenant

15:01:42 1 maritime area of Guyana, developed as we explained a couple of
2 charts ago, placed on top of the appurtenant maritime area of
3 Suriname, which was the immediately prior chart. The shaded
4 area in the center is the maritime states--maritime space where
5 both states' areas of appurtenance area overlap. It's where
6 they both can claim appurtenance and entitlement. It is within
7 200 nautical miles of both coasts.

8 Put another way, it is the area of overlapping
9 entitlements of Guyana and Suriname. And this is, in Guyana's
10 view, the maritime area that is relevant to this delimitation.
11 This area is easier to visualize when we excise the parts that
12 are appurtenant to only one of the two states, but not to both,
13 and therefore are not relevant to the delimitation.

14 Now, a very interesting feature of this methodology,
15 and one which we submit highly recommends it, is that you will
16 arrive at this same relevant maritime area, the one depicted on
17 the screen in front of you and the one behind me, regardless of
18 how you define the relevant coastline and regardless of the
19 length that is attributed to the relevant coastline. In other
20 words, whatever definition or length you give to the relevant
21 coastline, whatever portion of the coastline you consider
22 relevant, you will always end up with the same relevant
23 maritime area if you follow this procedure. That is, if you
24 develop the appurtenant maritime areas of the two adjacent
25 states by radial projection of their coasts by means of an

15:03:43 1 envelope of arcs and then take the area of overlapping
2 entitlements, the area where both states' areas of appurtenance
3 overlap--that is, the area that is within 200 nautical miles of
4 the coast of both states--as the relevant maritime area for the
5 boundary delimitation.

6 Now, to be sure, the length of the relevant coastline
7 will affect the size of the area of appurtenance of either of
8 the parties, but once the parts of those areas that are not
9 appurtenant to both parties drop out, it makes no difference
10 what the coastal lengths are. The remaining area, the area
11 relevant to the dispute will always be the same however the
12 concept of relevant coastlines is defined.

13 Now, this is an advantage because it diminishes the
14 impact of any dispute the parties might have or might have had
15 over what portions of the relevant coastlines or what portions
16 of their respective coastlines are relevant. Suriname and
17 Guyana dispute how one defines relevant coastline. As I
18 mentioned yesterday, they have a concept called facing
19 coastline. They don't tell us how they decide what portion of
20 the coastline is facing, as I mentioned yesterday, but their,
21 quote, relevant coastline is not related to the length of the
22 coastline that is used in projecting the equidistance line.
23 Ours is, but whichever depiction you use, whatever definition
24 you use, following this methodology you end up with the same
25 area of appurtenance, the same area of overlapping

15:05:36 1 entitlements. You define the same area by the fact that it is
2 where both states can claim entitlement because this is the
3 part of the sea that is within 200 nautical miles of both
4 coasts.

5 Now that we have the relevant maritime area, we can
6 see how the various delimitation lines that have been discussed
7 by the parties, as well as the provisional equidistance line,
8 divide the relevant maritime area, how these lines apportion
9 the relevant maritime space between the parties. And since I
10 have been discussing first Suriname's 17-degree line, we will
11 start with that.

12 Here is the same relevant maritime area described or
13 defined or developed in the way I have described for you over
14 the last few minutes, and it is divided by the 17-degree line,
15 Suriname's angle bisector line. And you can see the raw
16 numbers of the way the space is divided. I think I will go
17 through it with just the first one but won't necessarily do it
18 with every one to save time. You can see on the Guyana or
19 western side of the line there would be 73,956 square
20 kilometers as compared to, on the Suriname side of the line,
21 92,775 square kilometers. The area ratio, if you take Guyana
22 first and Suriname second, is 0.80 to 1, and the coastal length
23 ratio, if we use as relevant coastlines the portions of the
24 coastline that are used in constructing the provisional
25 equidistance line, is 1.4 to 1 in Guyana's favor, but you could

15:07:35 1 see it's the reverse in terms of the way the maritime space is
2 divided using Suriname's 17-degree line.

3 Now, this chart is included in your Judges' folder for
4 today at Tab 31(a). And, in fact, all of the charts with the
5 proposed boundary delimitation lines you will find at Tab 31,
6 and they will be A through F, because I will end up showing you
7 six of them. But, it will be a faithful depiction of what you
8 see on the screen right here.

9 This confirms, in Guyana's view, that the 17-degree
10 line is very unfair to Guyana. It is not an equitable
11 solution.

12 Now, Suriname does not ask the Tribunal to accept its
13 17-degree line. That is not Suriname's claim. It's worse.
14 Suriname asks for an adjustment of its so-called "median line."
15 Remember, it characterizes the 17-degree line as a median line.
16 It asks for an adjustment of its so-called median line to a
17 line of 10 degrees. Well, it's not surprising, or it shouldn't
18 be surprising, that if a line of 17 degrees is very unfair to
19 Guyana, then a line of 10 degrees, which is 7 degrees further
20 west towards Guyana, is even worse.

21 Here on the screen you can see how a 10-degree line
22 would divide the relevant maritime area. The actual
23 measurements of the divided maritime space are on the Plate. I
24 won't take up your time by reading it because this chart is at
25 Tab 31(b), and it's also in Guyana's Reply at Plate R17 Map A.

15:09:42 1 But the ratio, so we can make comparisons easier, in giving
2 ratios I will always give the Guyana proportion first and
3 Suriname projection second, alphabetically, not to show any
4 favoritism, but the area ratio you could see is 0.64 to 1,
5 Guyana to Suriname, meaning very much in Suriname's favor.
6 Again, the coastal ratio is 1.4 to 1 with Guyana with a longer
7 coastline. It's obviously very, very unfair to Guyana.

8 Nevertheless, Suriname blithely states at the
9 Rejoinder, paragraph 3.278--"the 10-degree line"--and I'm
10 quoting--"the 10-degree line reflects a line of delimitation
11 that is in proportion to the geographical relationship between
12 the neighboring coasts, the extension of those coastal fronts
13 into the sea and the division of the area of the overlap of
14 those coastal front projections. It meets the proportionality
15 test." Suriname offers no support of any kind for this
16 statement. There are no charts, no calculations, no
17 ratios--nothing. There is nothing to support this.

18 Now, as you have heard from my colleagues, prior to
19 the mid 1960s, Suriname's 10-degree claim pertained only to the
20 territorial sea, and then only for a distance of 3 nautical
21 miles, which was the full extent of the territorial sea. In
22 that era, the line was not advanced or defended on the basis of
23 its equitableness, but as a means of facilitating Dutch
24 administration of a so-called "western navigation channel" at
25 the mouth of the Corantijn River. By the 1960s, that

15:11:39 1 justification for the line had ceased to exist because a
2 10-degree navigational channel had never come into use, at
3 least by any seagoing vessels.

4 Modern Dutch Charts of the mouth of the Corantijn show
5 no 10-degree or other western or secondary navigation channel.
6 They show only one navigation channel line to the east, near
7 Suriname's coast. Professor Sands showed you this single
8 eastern channel on the very Dutch Chart that is projected on
9 the screen. Professor Sands left it to me to tell you the
10 direction of that navigation channel. It is north 34 degrees
11 east. Actually, it's north 34.3 degrees east. It is a
12 34-degree line. It has the same bearing as Guyana's proposed
13 delimitation line.

14 At the Marlborough House Talks in June 1966, Suriname
15 stated a claim to a 10-degree boundary line in the continental
16 shelf as well as a territorial sea for the first time. As
17 Professor Sands said, the rationale offered was not based on
18 the existence of a navigational channel, but on the supposed
19 direction of the river valley of the Corantijn River. In
20 response to Suriname's statement, Guyana's then Solicitor
21 General Mohammed Shahabuddeen, who went on to become one of its
22 most distinguished citizens, observed, quoting Judge
23 Shahabuddeen, "Assuming, but not conceding, that the direction
24 of the valley of the river is a special circumstance, this is
25 so only in relation to the territorial sea. We do not see any

15:13:41 1 geographical significance in the river valley beyond the limits
2 of the territorial sea."

3 The territorial sea at that time in 1966--I need not
4 remind this Tribunal--was 3 nautical miles for both Guyana and
5 Suriname. It is interesting that neither Suriname's
6 Counter-Memorial nor its Rejoinder make an effort to revive
7 Suriname's prior and original argument and explain why the
8 direction of the river valley should dictate the direction of
9 the maritime boundary for any distance, even within the
10 territorial sea, let alone without it.

11 Judge Shahabuddeen put it best, as he often does: "We
12 say with respect that to project the river valley beyond the
13 river proper to a hundred miles out to the continental shelf is
14 an artificial procedure which fails to bring us to grip with
15 the realities of the situation."

16 Having looked at Suriname's proposed lines, we can now
17 examine how fairly or unfairly the provisional equidistance
18 line constructed by the established mathematical and
19 cartographic processes, and based on the actual natural coastal
20 geography, divides the relevant maritime area. This is how the
21 provisional equidistance line constructed by Guyana divides the
22 relevant maritime area. As shown on the screen, it apportions
23 84,909 square kilometers to Guyana, 81,842 square kilometers to
24 Suriname. This is a ratio of 1.04 to 1, slightly, very
25 slightly, in favor of Guyana. This, of course, is

15:15:39 1 substantially less favorable to Guyana than the ratio of
2 coastal lengths, which is 1.4 to 1 in Guyana's favor.

3 This chart, by the way, you can view on the screen or
4 it is also in your Judges' folder at Tab 31(c), but it's
5 identical to what's on the screen.

6 A major reason for the disparity between the area
7 ratio and the coastal length ratio is the disproportionate and
8 distorting influence on the provisional equidistance line that
9 is caused by the convex headland along Suriname's coast at
10 Hermina Bank, just where its relevant coastline ends in the
11 east, and where the very last of Suriname's coastal base points
12 significantly push the equidistance line west toward Guyana
13 over the entire last half of the line covering more than a
14 hundred miles, and as we have said, giving an extra 4,000
15 square kilometers of maritime space to Suriname at Guyana's
16 expense. In Guyana's view, the provisional equidistance line,
17 as we stated yesterday, does not produce an equitable solution
18 for this reason.

19 Guyana submits that an adjustment to the provisional
20 equidistance line is warranted at least, but not only for this
21 reason, to eliminate the distorting effects of Hermina Bank
22 that Guyana detailed in its presentation yesterday on the
23 geographical circumstances which I will not repeat today.
24 There is support in prior maritime boundary delimitation cases
25 for such a result. In the North Sea Continental Shelf cases at

15:17:35 1 paragraph 91, the Court said: "It is therefore not a question
2 of totally refashioning geography, whatever the facts of the
3 situation, but given the geographical situation of
4 quasi-equality as between a number of states of abating the
5 effects of an incidental special feature from which an
6 unjustifiable difference of treatment could result." And this
7 as decided approvingly by the Court again years later in
8 Cameroon-Nigeria, paragraphs 294 and 295.

9 Similar comment in Libya-Malta at paragraph 64 of the
10 Court's decision: "The equitableness of an equidistance line
11 depends on whether the precaution is taken of eliminating the
12 disproportionate effect of certain islets, rocks, and minor
13 coastal projections. That was the language cited from the
14 Court's opinion in North Sea cases but cited again, or used
15 again in Libya-Malta.

16 As Suriname itself points out in its Counter-Memorial,
17 it is not unusual for the court or arbitral tribunals to adjust
18 provisional equidistance line to eliminate the effects of
19 precisely such features. In fact, as Suriname correctly
20 states, there is only one case--only one case--Cameroon versus
21 Nigeria--in which there were no adjustments to the provisional
22 equidistance line. In all of the other cases, as Suriname
23 says, in Counter-Memorial paragraph 4.2, adjustments were made
24 to the provisional equidistance line in order to achieve an
25 equitable solution.

15:19:24 1 In this case, the only feature of these otherwise
2 unremarkable coastlines that can be described as an incidental
3 special feature with disproportionate effects is the convex
4 headland at Hermina Bank. Suriname itself recognizes the
5 special characteristics of Hermina Bank. It states, for
6 example, in its Counter-Memorial, "the second section of the
7 provisional equidistance line starts shortly after it crosses
8 the 200-meter depth contour, where it takes a sharp turn to the
9 north. This is the first pronounced change in direction of the
10 provisional equidistance line. This change of direction is
11 caused by the fact that the eastern headland of the Suriname
12 concavity (Hermina Bank) begins to take effect on the line.

13 Suriname argues in its Counter-Memorial, paragraph
14 2.18, that "geographic peculiarities" can justify a shift in
15 the provisional equidistance line. Indeed, its argument that
16 the provisional equidistance line is unfair turns on the
17 ostensible distorting effect that alleged convexities or a
18 headland on Guyana's coast have on the provisional equidistance
19 line. Guyana has now proved that no such convexities exist on
20 its own coast, but the important point is the principle.
21 Suriname agrees that headlands, like the one it admits exists
22 at Hermina Bank, can distort the provisional equidistance line
23 and should be compensated for in adopting the final
24 delimitation line.

25 As Dr. Smith stated in his concluding paragraph, Tab

15:21:19 1 20, paragraph 54, "In the Guyana-Suriname situation, if the
2 equidistance methodology is used, it would be Guyana, not
3 Suriname, that would be disadvantaged. Suriname has an area of
4 convexity where the few coastal points have a significant
5 impact on influencing the direction of almost half the length
6 of the equidistant line in Suriname's favor and to the
7 disadvantage of Guyana. To best reflect the northeastward
8 facing coastlines in this region of South America, and to
9 discount Suriname's convex coastline as a pivotal point in the
10 calculation of the provisional equidistance line...the
11 direction of the provisional equidistance line depicted in
12 "Section 1" should be continued seaward." The direction of the
13 provisional equidistance line depicted in Section 1 should be
14 continued seaward.

15 As Suriname itself has calculated, this would result
16 in an adjusted equidistance line of 28 degrees. Here is how a
17 28-degree boundary line would divide the relevant maritime
18 hearing, and you can find this in your Judges' folder at Tab
19 31(d). The division would be as follows, 88,774 square
20 kilometers to Guyana, 77,976 square kilometers to Suriname.
21 The ratio is 1.14 to 1 slightly in favor of Guyana. This is a
22 little better than the provisional equidistance line, but the
23 division of the relevant maritime area still overcompensates
24 Suriname at Guyana's expense.

25 Guyana has claimed that to achieve an equitable

15:23:08 1 solution, the provisional equidistance line should be adjusted
2 not only for relevant geographical circumstances such as
3 Hermina Bank, but historical circumstances, including the
4 conduct of the parties over 50 years, to a line of 34 degrees
5 north, 34 degrees east from Point 61 to the 200 nautical mile
6 limit of the Exclusive Economic Zone. And there it is.

7 This is how Guyana's proposed 34-degree line of
8 delimitation divides the relevant maritime area. The results
9 are 94,621 square kilometers for Guyana, and 70,130 square
10 kilometers for Suriname. This is at Tab 31(e) of the Judges'
11 folder. This is a ratio, area ratio, of 1.38 to 1 in favor of
12 Guyana, which is almost identical to the ratio of coastal
13 lengths, which is 1.4 to 1 in favor of Guyana also.

14 Guyana submits that the 34-degree line of delimitation
15 is fair both to Guyana and Suriname and that it represents an
16 equitable solution. Guyana presented this chart and
17 demonstrated the equitableness of the delimitation effected by
18 its proposed 34-degree line in its Reply. Suriname reacted in
19 its Rejoinder to the near exact fit of the 1.38 to 1 ratio of
20 the divided maritime space, and the 1.4 to 1 ratio of the
21 coastal lengths by stating at paragraph 3.199 of the Rejoinder
22 "such perfection cannot go unnoticed," to which Guyana's
23 response is: Amen. Guyana agrees with Suriname and trusts
24 that these precise calculations and this transparent and
25 appropriate methodology that resulted in these calculations

15:25:41 1 will not go unnoticed by the Tribunal.

2 It is, of course, not Guyana's fault that using the
3 appropriate methodology in a perfectly transparent way, it has
4 demonstrated that a 34-degree line divides the relevant
5 maritime area equitably between Guyana and Suriname. Suriname
6 may not like the result, but it has failed to demonstrate that
7 there is anything wrong with Guyana's methodology or the manner
8 in which Guyana has applied it. About as close as Suriname
9 comes to criticizing Guyana's methodology is to accuse Guyana
10 of "reviving proportionality as a method of delimitation."
11 That's in their Rejoinder at paragraph 3.199. But this is not
12 true. Guyana does not regard proportionality as a method of
13 delimitation. For Guyana, the proper method of delimitation is
14 the equidistance method. This means that the provisional
15 equidistance line must first be drawn and then tested to
16 determine if it is equitable. If it is not, it must be
17 adjusted to achieve an equitable solution. Proportionality is
18 the concept that is used, and has been used by Guyana here to
19 test the equitableness of the delimitation effected by the
20 provisional equidistance line and by all of the other
21 delimitation lines proposed by the parties, including Guyana's
22 own 34-degree line. Guyana submits that this is a proper use
23 of proportionality and, indeed, it has been used in this
24 fashion by the ICJ and Arbitral Tribunals in prior maritime
25 delimitation cases, including most recently in the

15:27:32 1 Barbados-Trinidad case.

2 To be perfectly clear, Guyana is not suggesting that
3 the provisional equidistance line should be adjusted to a line
4 of 34 degrees because a 34-degree line divides the relevant
5 maritime area in near exact proportion to the ratio between the
6 relevant coastlines of Guyana and Suriname. Guyana believes
7 the Tribunal should adjust the provisional equidistance line to
8 a line of 34 degrees because of the geographical factors that I
9 have discussed both yesterday and this afternoon, and because
10 of the historical factors discussed by Professor Sands and
11 Professor Schrijver, including the conduct of the parties over
12 the last five decades, all of which demonstrate that a line of
13 34 degrees would be an equitable solution to this delimitation
14 case.

15 The disproportionate and dramatic influence of Hermina
16 Bank, of a convex headland on an otherwise concave relevant
17 coastline which sharply turns the provisional equidistance line
18 back toward Guyana for over a hundred miles, the agreement of
19 the U.K. and the Netherlands that the boundary in the
20 continental shelf which started at Mile 3 when they had these
21 discussions, that the boundary in the continental shelf should
22 be based on equidistance and the development of a historical
23 equidistance line of approximately N34 east that formed the
24 boundary of the parties' mutual oil concessions to which
25 neither objected over many years, Guyana's assertion of the

15:36:59 1 historical equidistance line as the boundary immediately upon
2 its independence at the Marlborough House Talks in 1966 and its
3 steadfast adherence to that line as the boundary ever since,
4 and the general conduct of both parties, including Suriname
5 after it became independent, whose actual conduct manifested
6 its appreciation that the 34-degree historical equidistance
7 line was an equitable solution--all of these are factors which
8 demonstrate, which establish, which prove convincingly the
9 equitableness of the 34-degree boundary line.

10 And the proportionality test that we just performed in
11 which it is demonstrated that the 34-degree line divides the
12 relevant maritime area in a manner that almost perfectly
13 reflects the parties' entitlements to it based on the lengths
14 of the relevant coastlines confirms that a maritime boundary of
15 34 degrees produces an equitable solution.

16 I have two minutes in which to complete my
17 conclusions.

18 First, the 17-degree line created by Suriname by means
19 of its angle bisector approach does not provide an equitable
20 solution. It is grossly unfair to Guyana. Although Suriname
21 characterizes it as a median line, it is no such thing. It was
22 not constructed by the established equidistance methodology but
23 by means of an entirely arbitrary and subjective approach that
24 finds no support in law or geography.

25 Second, the 10-degree line that Suriname proffers as

15:37:34 1 its claimed boundary line in this case is even worse. It
2 divides the relevant maritime area in a way that is terribly
3 unfair to Guyana. The 10-degree line was never considered to
4 represent an equitable delimitation, even by Suriname. For 30
5 years, starting in 1936, it extended only to the 3 nautical
6 mile limit for the purpose of leaving an alleged navigation
7 channel under Dutch administration.

8 In 1966, Suriname purported to extend it to the
9 continental shelf on the ground that it paralleled a western
10 thalweg in the Corantijn River. In this case, Suriname throws
11 out the direction of the Corantijn River Valley and revives the
12 old moribund and discredited navigational channel argument and
13 seeks to extend the 10-degree line to the 200 nautical mile EEZ
14 limit. There is no serious potential that such a claim--that
15 such a claim--can lead to an equitable solution.

16 Third, the provisional equidistance line created by
17 the established mathematical and cartographic methodology is
18 the appropriate starting point for delimitation of the
19 Guyana-Suriname maritime boundary in the continental shelf and
20 the EEZ as well as the territorial sea. However, it too is
21 unfair to Guyana and requires adjustment in order to achieve an
22 equitable solution, taking into account relevant geographical
23 and historical factors, including the conduct of the parties.

24 Fourth, a boundary line of 28 degrees would eliminate
25 the distorting and disproportionate effects of Suriname's

15:38:03 1 convex headland at Hermina Bank which severely disadvantages
2 Guyana by skewing the provisional equidistance line sharply
3 back toward Guyana and robs Guyana of over 4,000 square
4 kilometers of maritime space. The 28-degree line comes closer
5 to achieving an equitable solution, but it still divides the
6 relevant maritime area in a way that favors Suriname.

7 The boundary line that divides the relevant maritime
8 area most fairly to Guyana and Suriname and that does achieve
9 an equitable solution is a line of 34 degrees which coincides
10 with the course of the historical equidistance line, the line
11 that Guyana has claimed as the boundary since independence in
12 1966 and the British claimed as far back as 1961, and the line
13 that, by their conduct, both Guyana and Suriname have
14 recognized as equitable. Guyana therefore submits that in the
15 continental shelf and Exclusive Economic Zone and in the
16 territorial sea as described by Professor Sands, the maritime
17 boundary between Guyana and Suriname should be defined as a
18 line commencing at Point 61 and extending seaward on an azimuth
19 of north 34 east to the 200 nautical mile limit of the
20 Exclusive Economic Zone.

21 This concludes Guyana's presentation for today. Thank
22 you very much, Mr. President and Members of the Tribunal, for
23 your kind and courteous attention.

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

25 As we agreed yesterday, there will be a preliminary

15:38:07 1 meeting of hydrographers.

2 I give the floor to the Registrar as to housekeeping.

3 THE REGISTRAR: The preliminary meeting of the
4 hydrographers will take place in the Bolivar Room downstairs.
5 The participants can meet me just outside the hearing room
6 after the hearing.

7 PRESIDENT NELSON: Thank you very much, Mr. Registrar.

8 I wish you all a pleasant weekend. The hearing is
9 adjourned until Monday.

10 (Whereupon, at 3:38 p.m., the hearing was adjourned
11 until 9:30 a.m., Monday, December 11, 2006.)

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CERTIFICATE OF REPORTER

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

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

DAVID A. KASDAN