

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

- - - - - x  
 :  
 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 5

Wednesday, December 13, 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

Court Reporter:

MR. DAVID A. KASDAN, RDR-CRR  
Worldwide Reporting, L.L.P.  
529 14th Street, S.E.  
Washington, D.C. 20003  
(202) 544-1903  
worldwide.reporting@verizon.net

## APPEARANCES:

On behalf of the Claimant:

HON. S.R. INSANALLY, O.R., C.C.H., M.P.,  
Minister of Foreign Affairs

HON. DOODNAUTH SINGH, S.C., M.P.,  
Attorney General and Minister of Legal Affairs

AMBASSADOR ELISABETH HARPER,  
Director General of the Ministry of Foreign  
Affairs

MR. KEITH GEORGE,  
Head, Frontiers Division, Ministry of Foreign  
Affairs

AMBASSADOR BAYNEY KARRAN,  
Ambassador of Guyana to the United States

MS. DEBORAH YAW,  
First Secretary, Embassy of Guyana to the  
United States of America

MR. FORBES JULY,  
Second Secretary, Embassy of Guyana to the  
United States

SIR SHRIDATH RAMPHAL, S.C.,  
Co-Agent for Guyana

MR. PAUL S. REICHLER,  
Co-Agent for Guyana; Attorney, Foley Hoag, L.L.P.

MR. PAYAM AKHAVAN,  
Co-Agent for Guyana; Associate Professor, Faculty  
of Law, McGill University

MR. PHILIPPE SANDS, Q.C.,  
Professor of Law, University College  
London; Barrister, Matrix Chambers

MR. NICO SCHRIJVER,  
Professor of Public International Law, University  
of Leiden

## APPEARANCES: (Continued)

On behalf of the Claimant:

MR. GALO CARRERA,  
Scientific/Technical Expert, Advisor to the  
Government of Guyana

MR. LAWRENCE MARTIN  
MR. ANDREW LOEWENSTEIN  
MS. SARAH ALTSCHULLER  
MS. NIENKE GROSSMAN  
MS. CLARA BRILLEMBOURG  
Foley Hoag, L.L.P.  
1875 K Street, N.W.  
Suite 800  
Washington, D.C. 20006-1238  
(202) 223-1200  
saltschuller@foleyhoag.com

MS. BLINNE NI GHRALAIGH,  
Barrister, Matrix Chambers

MR. SCOTT EDMONDS,  
International Mapping Associates

MR. THOMAS FROGH,  
International Mapping Associates

## APPEARANCES:

On behalf of the Republic of Suriname:

HON. LYGIA L. I. KRAAG-KETELDIJK,  
Minister of Foreign Affairs and Agent

MR. CAPRINO ALLENDY,  
Deputy Speaker of the Parliament

MR. HENRY ILLES,  
Ambassador of Suriname

MR. WINSTON JESSURUN,  
Member of Parliament

MS. JENNIFER PINAS,  
Ministry of Foreign Affairs

MR. KRISH NANDOE,  
Ministry of Justice and Police

MR. HANS LIM A PO,  
Co-Agent

MR. PAUL C. SAUNDERS,  
Co-Agent, Counsel and Advocate

PROFESSOR CHRISTOPHER J. GREENWOOD, CMG, QC,  
Counsel and Advocate

MR. STEPHEN S. MADSEN  
MS. MICHELLE K. PARIKH  
Cravath, Swaine & Moore, L.L.P.  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019  
(212) 474-1000  
smadsen@cravath.com

MR. DAVID A. COLSON  
MR. BRIAN J. VOHRER  
LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
1875 Connecticut Avenue, N.W.  
Washington, D.C. 20009  
(202) 986-8089  
dacolson@llgm.com

## APPEARANCES: (Continued)

On behalf of the Republic of Suriname:

PROFESSOR SEAN D. MURPHY,  
Counsel and Advocate

PROFESSOR BERNARD H. OXMAN,  
Counsel and Advocate

PROFESSOR DONALD M. McRAE,  
Counsel and Advocate

PROFESSOR ALFRED H.A. SOONS,  
Counsel and Advocate

DR. ALEX OUDE ELFERINK,  
Counsel and Advocate

MR. COALTER LATHROP,  
Cartography Consultant

MR. DAVID SWANSON,  
Cartography Consultant

MS. REBECCA R. SILBER,  
Law Clerk, Cravath, Swaine & Moore, L.L.P.

## C O N T E N T S

OPENING STATEMENTS	PAGE
ON BEHALF OF THE REPUBLIC OF SURINAME:	
By Hon. Lygia L.I. Kraag-Keteldijk	623
By Professor Greenwood	631
By Professor Soons	718
By Dr. Oude Elferink	734
By Professor Greenwood	758

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

2 PRESIDENT NELSON: Good morning. We will now hear the  
3 case presented orally by the Republic of Suriname.

4 Who is going to speak for Suriname?

5 HON. KRAAG-KETELDIJK: Mr.--

6 PRESIDENT NELSON: Before you start, I would like to  
7 make a short statement for the purposes of the record.

8 Further to the Tribunal's order regarding the recall  
9 of Dr. Smith, 7th December, the Tribunal notes that Guyana will  
10 not seek to have Dr. Smith present at the hearing unless or  
11 until he is recalled for rebuttal. Thank you, and my excuses  
12 for stopping you. Please continue.

13 OPENING STATEMENT BY COUNSEL FOR RESPONDENT

14 HON. KRAAG-KETELDIJK: Mr. President, distinguished  
15 Members of the Tribunal, it is an honor and a privilege to  
16 deliver the opening statement of the Republic of Suriname. On  
17 behalf of the government and people of Suriname, I express  
18 heartfelt gratitude to you, Mr. President, and to your eminent  
19 colleagues for taking on the responsibility of this arbitration  
20 and for the courteous and thoughtful attention you are giving  
21 to the presentations of both parties.

22 May I also take this opportunity of extending warm  
23 greetings to our friends from Guyana, in particular my esteemed  
24 colleague Foreign Minister Insanally, who unfortunately could  
25 not be here today.

09:34:04 1           It is also a source of pride and pleasure for Suriname  
2 to be here in this historic headquarters building of the  
3 Organization of American States. The Organization has brought  
4 together in spirit of good neighborliness the countries of the  
5 Americas, and it is particularly fitting that this hearing  
6 should take place in the premises of an organization whose  
7 charter expressly calls for the peaceful settlement of  
8 international disputes.

9           Mr. President, Suriname's case will be presented to  
10 you in detail by our team of counsel. Before I ask you to  
11 invite Professor Greenwood to open our argument, however, I  
12 wish to address two important principles. The first principle  
13 emphasizes good neighborliness, with important elements such as  
14 mutuality and restraint. Suriname prizes that principle and  
15 has observed it in its dealings with Guyana.

16           The second principle concerns the importance of equity  
17 and respect for agreements where international boundaries are  
18 concerned. I begin with the principle of good neighborliness.

19           Although Suriname is a young country with only a  
20 little more than 30 years of independent history, throughout  
21 those years we have been faithful to the principle that  
22 international law must be honored not just in the letter, but  
23 also in the spirit. Indeed, Suriname's Constitution contains  
24 an express requirement that its government promote  
25 international legal order and we have always been mindful of

09:36:02 1 that mandate. Guyana is an important and valued neighbor. We  
2 have both achieved independence within the last generation. We  
3 are both developing countries. We share membership in CARICOM,  
4 the Association of Caribbean States, and the South American  
5 community of nations.

6 We have strong economic, political, and cultural  
7 links, nearly one tenth of the residents of Suriname is of  
8 Guyanese origin. The people of Suriname, whom I have the  
9 privilege to represent, have no doubts that the good neighbor  
10 principle is particularly important in our relations with  
11 Guyana. That principle, Mr. President, has had a very high  
12 priority indeed in the policies we have adopted towards Guyana  
13 regarding the area currently in dispute.

14 Despite the fact that this area forms part of  
15 Suriname's maritime territory, we have always approached the  
16 dispute as a good neighbor, contrary to what Guyana's counsel  
17 have suggested.

18 A critical element of the good neighbor principle is  
19 mutuality. A good example of mutuality in the relations of  
20 Suriname and Guyana is the Presidential meeting held between  
21 the leaders of Suriname and Guyana in 1989. In that meeting,  
22 both parties explicitly acknowledged that there was  
23 disagreement concerning the area of overlapping maritime  
24 claims, but they agreed that opportunities for exploration in  
25 that area should nonetheless be mutually beneficial. It is

09:37:58 1 significant that this understanding was placed in a context of  
2 a vital undertaking to support each other's development,  
3 thereby eliminating a long-standing obstacle to Suriname's  
4 development in the southwestern region.

5 Another element of good neighborliness is restraint  
6 and the avoidance of unilateral action. The agreement reached  
7 in the 1989 Presidential meeting testifies to the understanding  
8 of the parties regarding what constitutes appropriate behavior  
9 in the disputed maritime area. While Suriname never doubted  
10 the strengths of its own title, it also remained mindful of  
11 Guyana's claim and the obligation to work with Guyana until the  
12 issue could be resolved. Regrettably, Guyana did not always  
13 act in a fashion consistent with this element of good  
14 neighborliness.

15 In the dark days of 2000, Guyana decided unilaterally  
16 and without notice to Suriname to authorize the CGX Oil Company  
17 to drill in an area that it knew perfectly well Suriname  
18 regarded as its own. There was no attempt at prior  
19 negotiation, and Suriname had no choice but to respond to this  
20 deliberate provocation; but contrary to what we are told on  
21 Monday, Mr. President, it did so in a restrained manner. There  
22 was no threat of force, let alone use of force. Suriname could  
23 not reasonably be expected to have acted otherwise than as it  
24 did.

25 Suriname immediately began yet another attempt to

09:39:59 1 resolve matters with Guyana in a spirit of cooperation.  
2 Bilateral talks and talks under the good offices of Prime  
3 Minister Paterson of Jamaica proceeded intensely for several  
4 weeks. Those efforts were ultimately unsuccessful because of  
5 Guyana's insistence that Suriname recognizes and gives effect  
6 to all its existing oil concessions in the disputed area, but  
7 the record leaves no doubt that Suriname worked tirelessly to  
8 resolve those issues. In January 2002, President Venetiaan of  
9 Suriname met with President Jagdeo of Guyana; and pursuant to  
10 their agreement, delegates of Suriname then worked diligently  
11 with delegates of Guyana seeking ways and means for entering  
12 into cooperative arrangement with respect to the area of their  
13 overlapping claims. Suriname acted entirely properly during  
14 those negotiations, as will be made clear during these  
15 hearings.

16 It is, therefore, regrettable that Guyana has chosen  
17 to make a wholly unfunded claim regarding the CGX incident, an  
18 incident that was of its own making.

19 It is also unfortunate that Guyana has attempted to  
20 cover up the lack of substance in its claims by adopting what  
21 can only be described as an overly aggressive tone in its  
22 pleadings.

23 Mr. President, Suriname will not reply in kind. We  
24 will simply ask the Tribunal to dismiss the unfounded Guyanese  
25 allegations. I have to say, too, Mr. President that we also

09:42:00 1 regret Guyana's claim that Suriname has failed to seek a  
2 peaceful and practical solution, and we are disappointed with  
3 the tone in which that allegation was made on Monday. We have  
4 tried very hard to engage in negotiations with Guyana, and it  
5 will be obvious to you and to your colleagues once you have  
6 heard from our counsel that negotiations did not bear fruit  
7 only because Guyana had insisted on the freedom to unilaterally  
8 control exploration in the area in dispute.

9           The second principle, Mr. President, concerns the need  
10 for equity and respect for agreements in international boundary  
11 delimitation. Suriname has always believed that these elements  
12 are essential for good relations, for the economic development  
13 of both countries, and for sound, environmentally sensitive  
14 management of the resources of the maritime area.

15           And for many decades Suriname, and prior to its  
16 independence the Netherlands, believed that we had achieved  
17 those objectives with regard to the boundary in the territorial  
18 sea. Even in the absence of a formal agreement, we believed  
19 that we had achieved a resolution that was equitable and that  
20 had been respected as such by both our countries.

21           The 10-degree line is not something conjured out of  
22 the air. It was a boundary line firmly rooted in our history,  
23 and in the diplomacy of the two states and their colonial  
24 predecessors for over 70 years. Suriname has struggled to  
25 understand how and why Guyana has felt able to turn its back on

09:44:01 1 that history, a history of mutual recognition of the  
2 territorial sea boundary.

3           Whatever Guyana's motivation, however, we will prove  
4 here that Suriname was entitled and is entitled to that  
5 maritime boundary. A maritime boundary must start somewhere.  
6 In the present case, it starts with a 10-degree line in the  
7 territorial sea, a line that has long been recognized by the  
8 parties, but Guyana has now turned its back on that line.  
9 Instead, it argues that the boundary, 34 degrees, should begin  
10 at the 1936 Point, which it characterizes as the agreed  
11 terminus of the land boundaries.

12           Now, that simply cannot be right. The 1936 Point  
13 cannot be the terminus of any land boundary for the simple  
14 reason that it is not on the shore, nor was it intended as  
15 such. The purpose of the 1936 Point was not to mark the end of  
16 the land boundary, but to make possible the drawing of a  
17 10-degree line in the territorial sea. That is precisely why  
18 it was developed.

19           But, if this Tribunal should conclude that there is no  
20 10-degree boundary line in the territorial sea, that the  
21 boundary should be a 34-degree line that was never agreed by  
22 anyone, then there is no point on the low-water line from which  
23 such a maritime boundary can begin, nor was there ever an  
24 agreement on such a point. It is for that reason and for that  
25 reason alone that Suriname had raised a preliminary objection

09:45:55 1 to jurisdiction in the present case. Guyana's accusations that  
2 Suriname has been playing games or to use Guyana's co-Agent's  
3 words "filibustering" are nothing but colorful rhetoric. The  
4 Tribunal's attention should not be diverted by such rhetoric  
5 from the reality that the Tribunal cannot have jurisdiction to  
6 decide this case if the situation is as Guyana portrays it to  
7 be.

8           Finally, Mr. President, I would like to say a few  
9 words about the merits. Both countries agree that what is  
10 required is an equitable solution for the maritime boundary.  
11 In Suriname's view, the geography of the relevant coastlines of  
12 Suriname and Guyana is the factor of overriding importance in  
13 determining that equitable solution beyond the territorial sea.  
14 As Guyana's own expert candidly conceded on Monday, the coast  
15 changes direction at the mouth of the Corantijn River.  
16 Guyana's coast faces northeast, and Suriname's coast faces  
17 north or northwest. Therefore, the river's mouth is like a  
18 giant hinge. A line that bisects the angle formed by those  
19 coasts would be the starting point for an equitable solution.  
20 Such a line is based on the general direction of the coast that  
21 faced the area to be delimited. It is not talked about in an  
22 irrational and inequitable fashion by particular features on  
23 the coast of Guyana or on the coast of Suriname.

24           But such a line is also only a starting point and the  
25 Tribunal must consider whether that line should be adjusted in

09:48:04 1 order to achieve the equitable solution required by the 1982  
2 Convention. Suriname submits that the line determined by  
3 bisecting the angle formed by the coast should be adjusted and  
4 that the maritime boundary should follow the 10-degree line not  
5 only through the territorial sea, but also out to the 200-mile  
6 limit.

7 Mr. President, I join our friends from Guyana in  
8 emphasizing the importance of this case to both our countries.  
9 It is important to both of us that this matter be decided in an  
10 equitable and just manner in light of all the circumstances,  
11 and I assure you on behalf of Suriname that we have every  
12 confidence that this distinguished Tribunal will do so.

13 I thank you and your colleagues for the courtesy and  
14 patience with which you have heard me, and I ask you now to  
15 call upon Professor Greenwood to begin Suriname's case.

16 PRESIDENT NELSON: I thank the Minister of Foreign  
17 Affairs of the Republic of Suriname very much for her opening  
18 address to the Tribunal.

19 I now give the floor to Professor Greenwood.

20 PROFESSOR GREENWOOD: Mr. President, sir, Members of  
21 Tribunal, it is both a privilege and a pleasure for me to be  
22 entrusted by the Republic of Suriname with appearing on their  
23 behalf in front of this Tribunal today. Before I turn to the  
24 substance of our submissions, I wonder if I could just deal  
25 with a couple of matters of housekeeping.

09:49:54 1           The first is that you should have before you two  
2 bundles, a slim one containing what we have described as core  
3 documents, and one which is perhaps built more to my  
4 proportions, which contains the documents we are submitting for  
5 the day. Those documents appear behind a series of dividers,  
6 divider A contains 40 tabs. Those are the documents to which I  
7 expect to be referring, although some of them I shall refer to  
8 only very fleetingly.

9           Document B contains the documents that will be  
10 referred to by my colleague and friend Professor Soons when he  
11 speaks after me.

12           Bundle C contains the documents for Dr. Oude Elferink,  
13 and bundle D are the documents that I shall be referring to  
14 when I address you on jurisdiction this afternoon. What we  
15 would suggest, respectfully, is that the core bundle be kept  
16 available for each day's hearings, and we will supplement it  
17 with an additional day bundle as each day goes by. We have  
18 adopted broadly the same format used by our learned friends  
19 from Guyana with this exception, that the letter relates to the  
20 speaker in our case, and the numbers are the individual  
21 documents, whereas they did theirs the other way around. We're  
22 not deliberately trying to be difficult. It's just that once I  
23 started compiling mine, I realized I had more than 26  
24 documents.

25           Now, Mr. President, sir, for the four days of the

09:51:19 1 hearing that you have listened so far, you have heard how our  
2 case has been described as, and I quote, "unarguable," "wholly  
3 lacking in merit," "unfounded," "artificial," and "completely  
4 untenable." Suriname has been accused of acting contrary to  
5 the spirit and the principles as well as the letter of the Law  
6 of the Sea Convention and the Charter of the United Nations.  
7 You have even been told the action of a coastal protection  
8 vessel, which mounted no weapon, telling a drilling rig it must  
9 leave a disputed area was an act of armed intervention by  
10 which, according to counsel for Guyana, Suriname has, and I  
11 quote, "returned the Caribbean to a sea in which armed ships  
12 held sway."

13 I'm only surprised, Mr. President, that Guyana did not  
14 take advantage of the anniversary of Pearl Harbor on the first  
15 day of the hearings to liken what was done to the CGX rig to  
16 the destruction of America's Pacific fleet in 1941.

17 Now, Mr. President, after this heady mixture of  
18 accusation and hyperbole, it's time to look at what this case  
19 is really about; and what I'm going to try to do in this  
20 opening speech is to set the case in its true legal,  
21 historical, and geographical context. I shall then summarize  
22 what are the main issues between the parties and explain how  
23 our team of counsel will address them over the next four days.

24 Let me begin, Mr. President, sir, with the legal  
25 context of the case, and that, of course, is going to involve

09:52:48 1 the relevant provisions of the Law of the Sea Convention in  
2 prime position, and we have put what we thought were all the  
3 central provisions involved in this hearing behind bundle  
4 1--Tab 1 of your core bundle. I'm afraid I left out Article 9  
5 of the Law of the Sea Convention. That appears in my  
6 jurisdiction bundle for this afternoon.

7 I have to confess, Mr. President, to a certain degree  
8 of trepidation in telling this Tribunal what provisions of the  
9 Law of the Sea Convention should be interpreted as meaning. In  
10 a 13th-century case in England in the Court of Common Pleas a  
11 barrister was engaged in a lengthy address to the Court on the  
12 meaning of an act of Parliament and was told by the Chief  
13 Justice, "Do not tell us what the Statute means, boy. We wrote  
14 it." Members of this Tribunal would be in a perfect position  
15 to make the same comment to me.

16 But it is, we say, important to bear in mind from the  
17 outset what was not really addressed in Guyana's submissions  
18 and that is that this is a case governed entirely by the Law of  
19 the Sea Convention. Independent Guyana and Suriname were never  
20 party to the 1958 Conventions on the Territorial Sea or the  
21 Continental Shelf Convention, although there may have been, and  
22 we are not quite sure about this, a period of a few weeks  
23 between--immediately before Guyana became independent in 1966  
24 when the Conventions may have been in force between the U.K. on  
25 behalf of Guyana and the Netherlands, including Suriname.

09:54:24 1 That's a matter of some dispute; but nothing turns on it  
2 because neither Suriname nor Guyana became parties or succeeded  
3 to participation in the Conventions.

4           So, if we turn, then, to the Law of the Sea Convention  
5 which does govern regulations between the parties, the first  
6 thing I would respectfully note is that in the Preamble to that  
7 Convention, the Convention provides that other rules of  
8 international law apply only to matters which are not regulated  
9 by the Convention. Now, that's an important provision which  
10 has to be read alongside the provision on applicable law for  
11 this Tribunal, and our position is that all of the primary  
12 rules to be applied in this case are to be found in the  
13 Convention, all of the rules, that is, this Tribunal has  
14 jurisdiction to apply.

15           This is, of course, only the third boundary case to  
16 have been governed entirely by the provisions of the Law of the  
17 Sea Convention, the other two being the International Court's  
18 decision in Cameroon and Nigeria, and the other arbitration  
19 between Trinidad and Tobago on the one hand and Barbados on the  
20 other. And, of course, there are significant differences  
21 between this case and the other two. The International Court  
22 did not derive its jurisdiction in the Cameroon case from the  
23 Law of the Sea Convention; and in the case of the  
24 Barbados-Trinidad and Tobago Tribunal, it was dealing with a  
25 case between opposite states, where there was no question of

09:55:52 1 land boundaries, land boundary termini, or anything of the  
2 kind.

3           This is, therefore, a unique case, and it is a case  
4 which will be watched very closely by all states that are  
5 parties to or contemplating becoming parties to the Law of the  
6 Sea Convention. It is, indeed, an historic moment for  
7 international law.

8           Now, the first consequence that follows from that, we  
9 say, is that it is the Law of the Sea Convention and the  
10 Convention alone which determines the jurisdiction of this  
11 Tribunal. Although, of course, the Convention has to be  
12 interpreted against the background of the general principles of  
13 international law, the jurisdiction of this Tribunal is plainly  
14 limited by the requirement of consent, and that consent is  
15 governed by Article 288 of the Law of the Sea Convention, and  
16 if I feel a sense of trepidation about addressing you, sir, on  
17 the meaning of the Convention, I feel an even greater sense of  
18 trepidation using a PowerPoint presentation when I do so. I  
19 have always subscribed to the view that just as actors should  
20 never go on stage with animals or children, lawyers should  
21 never address a Court with PowerPoint. This is going to be a  
22 first for me.

23           If one looks at the highlighted passage in Article  
24 288, the critical provision is, of course, paragraph one. "A  
25 Court or Tribunal referred to in Article 287 shall have

09:57:14 1 jurisdiction over any dispute concerning the interpretation or  
2 application of this Convention which is submitted to it in  
3 accordance with this part."

4           And we say that it's necessary to read the provisions  
5 on applicable law that follow that in the light both of that  
6 provision which determines the scope of jurisdiction, and in  
7 the light of the provision in the Preamble which I referred to  
8 a few moments ago. I will develop that point in my submissions  
9 on jurisdiction this afternoon, but I want to make clear at the  
10 outset that Suriname does not accept that there can be  
11 jurisdiction to determine the location of a land boundary and  
12 that a land boundary includes a river boundary. Guyana's  
13 attempt to squeeze such a jurisdiction, whether called  
14 incidental or labeled in some other way out of the provisions  
15 of Article 298 of the Convention are what my learned friend  
16 Professor Akhavan would call colorful and imaginative  
17 submissions, though I have to say that rather more direct  
18 adjectives sprung to my mind when I first heard that  
19 submission.

20           Let me turn from the impact of the Convention on  
21 jurisdiction to its impact on the substance of this case. In  
22 relation to the territorial sea, the governing provision is  
23 Article 15, about which we have heard a great deal. Now, I  
24 won't read the text of Article 15 which will be perfectly  
25 familiar to all of you and on which you will hear both some

09:58:46 1 submissions from me and also from some of my learned friends,  
2 but we say that it is perfectly clear, if one reads Article 15,  
3 that it does not contain a rigid rule of equidistance.  
4 Anything but. Equidistance is provided for as an alternative  
5 position in the absence of agreement and unless it is to be  
6 displaced by historic title or special circumstances, or  
7 modified rather than displaced.

8           We say that this is a case in which the alternative  
9 position of equidistance is simply not reached at all because  
10 there was a boundary in the territorial sea established by the  
11 concordance of the parties and reflecting perfectly special  
12 circumstances. That is the 10-degree boundary line in the  
13 territorial sea which was followed between the two parties for  
14 several decades and on which I will say more later.

15           And then further out to sea we come to the boundaries  
16 of the continental shelf and Exclusive Economic Zone and the  
17 provisions of Articles 74 and 83. Since they are for all  
18 material purposes identical on this point, I will simply  
19 confine myself to Article 3 on the continental shelf. "The  
20 delimitation of the continental shelf between states with  
21 opposite or adjacent coasts shall be effected by agreement on  
22 the basis of international law, as referred to in Article 38 of  
23 the Statute of the International Court of Justice, in order to  
24 achieve an equitable solution."

25           Mr. President, Members of the Tribunal will know

10:00:24 1 better than I that that short sentence was probably the subject  
2 of more consideration in the course of negotiations than any  
3 other sentence in any Treaty currently in force in  
4 international law. It is in marked contrast to the approach  
5 laid down in the old 1958 Convention, Article 6(2), where the  
6 same continental shelf that is adjacent to the territories of  
7 two adjacent states, the boundary of the continental shelf  
8 shall be determined by agreement between them. In the absence  
9 of agreement and unless another boundary is justified by  
10 special circumstance, the boundary shall be determined by  
11 application of the principle of equidistance from the nearest  
12 points of the baselines from which the breadth of the  
13 territorial sea of each state is measured.

14           Now, Mr. President, my learned friend Professor Oxman  
15 will show you there is no accident in this change in the  
16 language. The decision not to include any reference to  
17 equidistance, even as a starting point in the 1982 UNCLOS, was  
18 an entirely deliberate decision; not only is it not there as a  
19 starting point, still less is it referred to as a presumption  
20 or a default rule, and the decision not to include any  
21 reference to equidistance at all was one taken after long and  
22 considered negotiation.

23           Now, Guyana has put squarely before you the question  
24 of what standard Article 83 and the parallel provision in  
25 Article 74 laid down. And its answer was best summed up by

10:01:58 1 Professor Schrijver when he said on day two, equity  
2 means--sorry, "Basically equity means, first of all, the  
3 principle of the equidistance line, corrected if necessary in  
4 view of special circumstances, relevant circumstances, for  
5 respectively the territorial sea and the continental shelf and  
6 Exclusive Economic Zone." That in response to a question from  
7 Professor Smit.

8           Now, if that is right, Mr. President, then the choice  
9 in the Law of the Sea Convention, Articles 74 and 83, of  
10 markedly different language from that which had been employed  
11 only a generation earlier in Article 6(2) of the Continental  
12 Shelf Convention, a choice which was plainly deliberate and  
13 arrived at only after long years of negotiation amounts to  
14 nothing at all. All those labors at the U.N. Convention on the  
15 Law of the Sea produced only a mouse, and a very small mouse,  
16 indeed.

17           Now, Mr. President, we know that that view, despite,  
18 we say, its obvious difficulties, has its adherents. We submit  
19 that they are wrong, and that in accordance with the normal  
20 canons of treaty interpretation, the intention of the parties  
21 manifested in the language they chose in their subsequent  
22 practice, for example, in the agreed delimitations in South  
23 America which the late Judge Aréchaga wrote up, and in the  
24 travaux préparatoires of the Convention, those considerations  
25 have to be accorded more respect than the assimilation of

10:03:37 1 Articles 74 and 83 to the rigidities of the old Article 6(2)  
2 would achieve.

3 Now, we accept that one can take passages from a  
4 number of cases, decisions of the International Court, awards  
5 of other Arbitral Tribunals and invoke them against us on this  
6 point, but it is, we say, important to keep in mind that in  
7 none of those cases, with the exception of the two most recent,  
8 Cameroon and Barbados which are very, very different, in none  
9 of the other cases was the governing standard, the Law of the  
10 Sea Convention, in its entirety and on its own. Instead, those  
11 courts and tribunals operated at least in part under a variety  
12 of other legal texts and legal standards.

13 Now, that means, Mr. President, that their decisions  
14 would not be binding, even if the doctrine of stare decisis  
15 applied in international law, which, of course, it does not,  
16 but the differences in the applicable law mean that those  
17 earlier decisions have to be handled, we say, with an even  
18 greater caution than would usually be the case. And certainly,  
19 they cannot write back into Articles 74 and 83 of the  
20 Convention a presumption or a preference for equidistance which  
21 the parties to that Convention had clearly rejected.

22 Moreover, as Professor Oxman will demonstrate  
23 tomorrow, even without making the allowances I have just said  
24 for the differences in applicable law, the jurisprudence taken  
25 as a whole in no way leads inexorably to the conclusions that

10:05:21 1 have been offered to you by Guyana in its first-round  
2 presentations.

3 I might just add, Mr. President, that we were slightly  
4 amused by the emphasis on equidistance which you heard from  
5 Guyana's counsel in the first part of this hearing, and by the  
6 rather splendid map showing the equidistance line which they  
7 treated you to, and I hope the learned Deputy Registrar is  
8 happier having a little more space to breathe in now. The line  
9 that was presented there for you to gaze upon for four days is  
10 a line which you might have thought from looking at it was the  
11 centerpiece of Guyana's case, but Guyana thought so little of  
12 the provisional equidistance line when it formulated its claim  
13 that it didn't even trouble to put a line to that effect in its  
14 Memorial. As Dr. Smith acknowledged, it was our drawing of the  
15 provisional equidistance line in the Counter-Memorial which he  
16 used as the basis for his calculations, and I will say a little  
17 bit more about those calculations later in this speech.

18 I can't help wondering whether those who drafted the  
19 Memorial on behalf of the Republic of Guyana are perhaps a  
20 little surprised at the way that like so many revolutions, it  
21 has devoured its children quite as early as it has done.

22 Now, we say, Mr. President, that the process of  
23 delimitation under Articles 74 and 83 is much more on any  
24 analysis than simply taking a provisional equidistance line and  
25 then playing around with it a little bit; that it can involve

10:06:52 1 in an appropriate case the adoption of a completely different  
2 methodology, such as the use of a perpendicular or an angled  
3 bisector, and Professor McRae will address you further on this  
4 tomorrow afternoon. I said it involves more than playing with  
5 the equidistance line. It certainly also involves more than  
6 pretending to play with the equidistance line because that is  
7 what Guyana has done. It puts before you what it describes as  
8 an historic equidistance line, but I can remember when I was at  
9 school being told that the Holy Roman empire, wasn't an empire,  
10 wasn't Roman, and certainly wasn't holy. Well, this historic  
11 equidistance line isn't historic, it isn't an equidistance  
12 line. Oh, it is a line. Well, I suppose one out of three  
13 isn't bad, but that's as far as it goes. It's not really a use  
14 of the equidistance principle at all.

15 That, Mr. President, is the broad legal context in  
16 which this case is set. Let me turn to the historic context on  
17 which I fear I shall have to spend a bit longer, and I also  
18 fear that a certain amount of geography is going to be involved  
19 with it anyway, if it's to make any sense.

20 Now, what is common ground between the parties is that  
21 we start with the 1799 agreement between the Governors of  
22 Suriname and Berbice. That agreement provided, and I quote,  
23 that the west seacoast of the River Corantijn up to the Devil's  
24 Creek, besides the west bank of said river, hitherto considered  
25 belonging to the Government of the Colony of Suriname, be

10:08:30 1 declared and acknowledged henceforth to belong to the  
2 Government of the Colony of Berbice.

3           Now, that provision is more than two centuries old.  
4 It's contained in an agreement between two Dutch colonial  
5 administrations, but it's then effectively given the force of  
6 an international treaty in 1814 by, as the peace settled, part  
7 of the peace settlement that ended the Napoleonic Wars, because  
8 the territory known as Berbice became part of what in due  
9 course became British Guiana and then the independent Republic  
10 of Guyana. In other words, Berbice, with the benefit of this  
11 agreement and the borders that it gave it, then passed to  
12 Britain, whereas Suriname reverted to Dutch supremacy after  
13 1814, Dutch sovereignty after 1814.

14           Now, in some respects at least, the effect of the 1799  
15 agreement is clear enough. First of all, the Corantijn River  
16 is part of the territory of Suriname. If the same state  
17 controls both sides of the river and then cedes one bank of the  
18 river, which is what this Treaty plainly provides, it retains  
19 sovereignty over the river as a whole, and that's not an issue  
20 in these proceedings.

21           Secondly, the land on the west or left bank has become  
22 part of the territory of Guyana, and that's not an issue in  
23 these proceedings, either, although I am going to have to clear  
24 up one misunderstanding which has been put before you by  
25 counsel for Guyana on that point.

10:09:56 1           And thirdly, the frontier between these two  
2 territories after the 1799 agreement is the low-water line.  
3 But what the 1799 agreement doesn't tell you is where the river  
4 ends and the coast begins. Now, that could be the Devil's  
5 Creek, although it's rather difficult to plot where the Devil's  
6 Creek is on a modern map. Certainly there is support in at  
7 least one map published by the British authorities in British  
8 Guiana as late as 1959 for a boundary or rather a terminus  
9 point, a river closing point well to the north of the one that  
10 we have been discussing. If one looks at the map which appears  
11 as Figure 2 in the Preliminary Objections of Suriname and then  
12 the whole map, and I will take my learned friends to the whole  
13 map in a moment, the whole map is reproduced as an annex to the  
14 Preliminary Objections.

15           Now, this map was published by the Department of  
16 Overseas Surveys, which was a British official body. It was,  
17 in effect, the colonial arm of the Department of Ordnance  
18 Survey, which was in those days was a British Government  
19 agency. It was published by them in 1959, and it shows the  
20 boundary really quite helpfully on the west bank of the  
21 Corantijn. It's unfortunate, and I make nothing of it, that,  
22 of course, Professor Brownlie's point, which we entirely  
23 accept, that a boundary is a conceptual line. It has no  
24 breadth. One has to give it breadth in depicting it on a map,  
25 but it is plain that what that map depicts is that the boundary

10:11:35 1 runs along the line of the river.

2 But look at where it ends. The boundary line is shown  
3 there as ending well to the north of the 6-degree line which is  
4 the line that runs, I might show you the larger scale map.  
5 That's the 6-degree line.

6 Now, Point 61 will be just below the 6-degree line,  
7 but on a map of this scale let's treat it as being on the  
8 6-degree line. And there is that quite substantial area shown  
9 as part of the border to the north of that.

10 Now, we don't know how that map was put together. But  
11 what it does show, we say, is two things: First of all, that  
12 as late as 1959, the British were assuming that the point at  
13 which the River Corantijn began has nothing to do with Point 61  
14 at all. It's well to the north of that.

15 Secondly, we drew attention to that map which is, of  
16 course, part of the practice of Guyana's colonial predecessor,  
17 in the very first pleading we deposited, the Preliminary  
18 Objections, it's then referred to in our later pleadings. You  
19 haven't heard anything about it from Guyana. You won't find  
20 anything about it in their written argument, either. They did  
21 give us a little lecture about the importance of maps as laid  
22 down by the International Court in the Temple case, but the  
23 irony of invoking the Temple case when they have themselves got  
24 a map of this kind appears to have been lost on them. No doubt  
25 we will hear about something about it in our next--in their

10:13:12 1 next presentation.

2 We can move to the next slide, please.

3 Now, this is, I'm afraid, on a very small scale. This  
4 is the whole of the map. I will come in a moment to an area  
5 down here which is extremely significant, but I just wanted to  
6 make clear that while we are, of course, citing this map in  
7 relation to what it says about the upper river, we don't accept  
8 one feature of it further south.

9 The Tribunal will have glimpsed in Guyana's speeches  
10 that there is the shadow, the elephant in the room that nobody  
11 really wishes to confront of a rather substantial territorial  
12 dispute further inland. That's in this area here. What Guyana  
13 shows on this map, or rather what the British show on this map,  
14 this line here, which I'm marking with the pointer, is what  
15 Guyana maintains is the boundary in the southern part.  
16 Suriname maintains that it follows this line. The question  
17 really turns on which is the upper reaches of the River  
18 Corantijn. There is a long running dispute which you need not  
19 be concerned with about whether that's the Corantijn and this  
20 is a tributary or whether this is the Corantijn. The point is  
21 that the shaded area that I have shown here is the area in  
22 dispute between the two States.

23 Now, I will refer to that area for the sake of  
24 convenience only as the New River Triangle. Now, the dispute  
25 between the two countries about the New River Triangle is

10:14:48 1 plainly not before this Tribunal; and, indeed, it could not be  
2 brought before this Tribunal on any analysis of jurisdiction  
3 under the Law of the Sea Convention.

4           Moreover, Suriname noted that Sir Shridath Ramphal  
5 said at the opening of these proceedings, and I quote, that,  
6 "Guyana does not seek to involve the Tribunal, directly or  
7 indirectly, in any territorial dispute with Suriname." Now, we  
8 take Sir Shridath at his word. Indeed, it is unimaginable that  
9 anyone would do otherwise. And I want to make it clear that  
10 Suriname equally has no desire to involve this Tribunal,  
11 directly or indirectly, in the dispute in the south. I mention  
12 that dispute for only two reasons, but they're both rather  
13 important ones. First, it is, I believe, common ground between  
14 the parties that it is important that nothing said or done in  
15 this case should be taken as the expression of a position on  
16 that dispute.

17           Secondly, it is an inescapable fact that the various  
18 rounds of negotiations between the United Kingdom and the  
19 Kingdom of the Netherlands and later between independent Guyana  
20 and Suriname involved a range of issues, including both the  
21 maritime boundaries and the dispute in the south.

22           Now, as is invariably the case in negotiations of that  
23 kind, each party contemplated concessions in one matter in  
24 order to achieve gains in another. That's the nature of  
25 diplomacy, and that was--that fact was expressly referred to in

10:16:25 1 at least one rather revealing British document. This is slide  
2 13, which you will find in your bundle of documents at Tab  
3 A(6). It's a letter from Rear Admiral Ritchie, the  
4 hydrographer of the British Admiralty in 1966, to Captain  
5 Cooper of the Royal Australian Navy who was commanding the  
6 survey ship HMS VIDAL. HMS VIDAL was carrying out a survey at  
7 the relevant time.

8 Two draft treaties were prepared some years ago, said  
9 Admiral Ritchie, one British and one Dutch--those are the draft  
10 treaties of 1961 for the British and 1962 for the Dutch--which  
11 provide for a division of the territorial sea and continental  
12 shelf, but differ in their approaches to that problem depending  
13 on the manner in which they dispose of the upper reaches. In  
14 other words, Admiral Ritchie understood perfectly well that  
15 there were two different issues. He, of course, as a sailor,  
16 couldn't have cared less about the New River Triangle. He  
17 wasn't interested in disputes about land, but he was well aware  
18 that what the parties were saying about the sea was necessarily  
19 bound up with the position they were taking about the land.

20 Now, Mr. President, we say that the willingness to  
21 make a concession has to be seen in the context of the overall  
22 deal which was being sought in relation to the boundary between  
23 the two countries, and the simple fact is that no overall deal  
24 was ever concluded. The 1799, 1814 Treaty, remains to this day  
25 the only agreement ever to have entered into force which deals

10:18:04 1 with the substance of the boundary between the two states.

2 There is a 1971 agreement that entered into force providing for  
3 the establishment of a Boundary Commission, but it's  
4 procedural. It doesn't deal with the location of the boundary  
5 itself.

6 Now, let me turn from that, the 1799 Treaty, and the  
7 overall context to the events of the 1930s. I should say that  
8 these will be addressed in more detail by my colleague Dr. Oude  
9 Elferink this afternoon, but it is necessary for me to touch  
10 upon them in order to set the case in its proper context.

11 The discussions between the two parties on the  
12 boundary as a whole begin in 1929, but a useful place for us to  
13 start is the United Kingdom proposal for a draft Treaty which  
14 was first considered internally by the various United Kingdom  
15 authorities. And I use the phrase "United Kingdom authorities"  
16 to include both London and Georgetown at this period. I know  
17 that colonial constitutional lawyers would have taken great  
18 exception to that, but I think it's reasonable in this  
19 environment.

20 Now, in 1934, the British drafted a treaty which you  
21 will find as document A 7 in the bundle, the first Article of  
22 which gives you the indication of where the river boundary is  
23 said to lie. "The boundary between British Guiana and Suriname  
24 shall be formed by the line of the left bank of the River  
25 Corantijn from the sea southwards to its source." Now, that is

10:19:35 1 effectively just building on what's in the 1799 agreement  
2 anyway.

3           We then look at Article 1(2): "The commencement of  
4 the left bank at the River Corantijn at the sea shall be deemed  
5 to be the point"--deemed is quite an important word--"to be the  
6 point at which a line drawn on a true bearing of 28 degrees  
7 from the known landmark or column on the left bank of the River  
8 Corantijn at latitude 6 degrees, no minutes, 25 seconds, and  
9 longitude 57, 8', 10", intersects the shoreline."

10           Now, at that time, the known landmark or column wasn't  
11 there. That was something which the Boundary Commissioners  
12 were to build at a later date; and we know, of course, that  
13 first of all, they chose different coordinates for reasons that  
14 are clear. They didn't, it would appear, have Professor Smit's  
15 confidence in being able to build pillars in the sea. And  
16 secondly, they didn't choose a true bearing of 28 degrees.  
17 Instead, they went for the true bearing of ten degrees. I will  
18 come to the significance of that later, but the basic framework  
19 is there.

20           And then Article 2, "The boundary between the source  
21 of the Cutari and the tri-junction point of boundaries of  
22 British Guiana, Suriname, and Brazil, to be filled in when  
23 Commissioners have fixed tri-junction point"--I think it's  
24 point and not joint--"in accordance with principles already  
25 agreed in notes." Now, that relates to the river to the south,

10:20:57 1 to the tri-junction boundary between Suriname, Brazil, and  
2 Guyana, British Guiana, in the New River Triangle area.

3 And lastly, we have Article 3. "The boundary between  
4 the territorial waters of Suriname and British Guiana is formed  
5 by the prolongation seawards of the line drawn on a true  
6 bearing of 28 degrees from the landmark referred to in Article  
7 1(2) above." So, even at this early stage in 1934, it's plain  
8 that what was being considered was that at the northern end of  
9 the boundary you would erect a pillar. The land boundary  
10 terminus would be on the low-water line at a point identified  
11 by drawing a line on a predetermined bearing from the column,  
12 and that same line would then extend out to sea and provide the  
13 territorial sea boundary. So, there was a very clear linkage.

14 Now, that same approach was followed in the 1935 draft  
15 Treaty which the British sent to the Netherlands authorities.  
16 That appears at document A 7, but I needn't take you through  
17 it. It's the same for these purposes.

18 The Boundary Commissioners were duly instructed. They  
19 worked on this and a host of other boundary matters, all of  
20 which were to be incorporated into a final Treaty, and  
21 eventually they established the fixed point of what is known as  
22 Point 61 to Guyana or the 1936 Point, and you will be pleased  
23 to know that nothing whatever turns on the choice of one name  
24 rather than another.

25 And how they fixed on that point is indicated in the

10:22:30 1 report of the Commissioners, which I won't take you to because  
2 Guyana has already quoted it at length. It's in core bundle  
3 Tab 3.

4 Now, Mr. President, this point, Point 61, is critical  
5 to Guyana's entire case. Sir Shridath spent a large part of  
6 his opening speech by telling you just how important Point 61  
7 is. That makes it all the more surprising that Guyana appears  
8 to be thoroughly confused about where Point 61 is, what it  
9 consists of, and above all, what it was for, what purpose it  
10 was intended to serve and has served for some 70 years.

11 Notice, those matters are so fundamental that I must  
12 take a bit of time to show you what the realities of Point 61  
13 are.

14 There is no doubt about the coordinates of Point 61.  
15 I should say that this map is a simplified version taking away  
16 some of the extraneous detail of the map which my learned  
17 friend Mr. Reichler said, he now acknowledged, showed the  
18 correct location geographically of Point 61. This was the map  
19 that also had Point X, the 1959 point in and so on, and it  
20 shows Point 61 closer to the high-water line than the parallel  
21 map shown by Guyana. All that this is is a simplified version  
22 of one section of that map.

23 Now, there is no doubt about the coordinates of Point  
24 61. It's at 5 degrees, 59 minutes, 53.8 seconds north, and 57  
25 degrees, 8 minutes, 51.5 seconds west. Moreover, each party

10:24:07 1 has shown it in the maps in its pleadings as being on or near  
2 the high-water line. In the Guyanese map, marker A, the red  
3 one, was very slightly inland of where it's shown on this  
4 diagram.

5 But when it came to its presentations to the Tribunal,  
6 Guyana, if I can put it this way, seemed to be all at sea about  
7 exactly what these coordinates meant and where the markers were  
8 actually located, and this is significant enough that we feel  
9 it is important to go at it in some detail. So, where exactly  
10 is Point 61? Well, at one stage Guyana told you it was all  
11 very simple. The facts concerning the historical origin and  
12 fixing of Point 61 are clear and simple. They do not lend  
13 themselves to any of the ambiguity or distortions that Suriname  
14 attempts to introduce. So, it's we who are introducing  
15 ambiguities and distortions.

16 Perhaps it's at the seashore. They gave--that's the  
17 Commissioners--gave the coordinates that have been respected  
18 ever since as the boundary between Guyana and Suriname at the  
19 seashore; namely, the coordinates of Point 61.

20 And the photographs, which were produced to you as  
21 demonstratives make it abundantly clear we were told how close  
22 Point 61 is to the water. "It's on the water's edge. There is  
23 no question about that. "If," said Professor Sands, "I were to  
24 rent a house on Point 61, I would plainly be renting a house  
25 that was right by the water. It couldn't be said that that

10:25:35 1 point is inland."

2 But, on the other hand, perhaps it's not at the  
3 shoreline, because we are also told that after arriving at a  
4 point on the shoreline where they had decided to place the  
5 boundary marker, they discovered that the combination of loose  
6 mud and wet sand wouldn't support a permanent concrete mark.  
7 So, it was this set of circumstances that led to the adoption  
8 of Point 61.

9 Perhaps it's on the grass. The most suitable position  
10 was found to be on a side stretch of grassland below a low sand  
11 dune. Well, if that's the case, it's above the high-water  
12 line.

13 Or perhaps it's in the sand, on the other hand. These  
14 photos show the spot where marker "A" was placed in the sand.  
15 We will look at the photos again in a moment.

16 But perhaps it's actually at the low-water line, not  
17 the high-water line at all. "Both parties agree, and they have  
18 long agreed, that Point 61 is the terminal of the northern  
19 boundary." "They have also long agreed that the boundary lies  
20 along the low-water mark of the west bank of the Corantijn  
21 River." That appears to equate the two.

22 The pole which marks Point 61 is very close to the  
23 low-water line. We will come to that when we actually look at  
24 what the photographs really do depict.

25 "If it's not on the low-water mark," said Professor

10:26:46 1 Sands, "it's very close to the low-water mark." Very close.

2           So "Point 61 is very close to, but not exactly on, the  
3 low-water line."

4           Perhaps it's nowhere near the low-water line. "All of  
5 the continental land territory between Point 61 and the  
6 low-water mark, whatever approach you take, is within the  
7 territory of Guyana," so it doesn't matter.

8           "The proper method, the geographical method, to get  
9 from Point 61 to the low-water line is by the shortest  
10 distance." Well, that does make clear that Guyana doesn't  
11 think it's on the low-water line. There is a bit of a distance  
12 to travel.

13           We will come in a moment to the significance of the  
14 view that the proper method to get from Point 61 to the  
15 low-water line is by the shortest distance because that's not  
16 what's in Guyana's argument. They are shifting their position  
17 on that.

18           Perhaps Point 61, however, should be seen as being at  
19 the high-water line after all. In its Preliminary Objections,  
20 Suriname included a map, Figure 4, placing Point 61 right on  
21 the high-water line. Professor Sands used the same chart in  
22 his presentation yesterday. "We checked the coordinates, and  
23 we have determined that cartographically, Suriname is correct."

24           That's the simplified of the version of map, Figure 4  
25 that I was showing you earlier.

10:28:02 1 "Point 61 was the nearest point both on the western  
2 bank of the Corantijn River mouth and on the part of the  
3 shoreline that was not submerged at the high water tide." Not  
4 submerged at the high tide.

5 But then later on we are told "it's in the intertidal  
6 zone, somewhere between high tide and low tide." "It's easy to  
7 see that the photo in the foreground which marks Point 61 is  
8 very close to the water line. In fact, it's located in the  
9 intertidal zone between the high and low water lines." Well,  
10 of course, there was no evidence of how the photographs were  
11 taken. "The photographs that were on the screen this morning  
12 make it absolutely clear that Point 61 is literally located in  
13 the intertidal zone at a point at which it is on a daily basis,  
14 we say, under water at some point of the day."

15 "Point 61 ends up," we are told, "exactly where  
16 Suriname placed it, on the high-water line. Point 61 is  
17 actually even closer to the water than that."

18 Perhaps the answer is we don't really know. "The only  
19 real issue, if there is one, is how you get from Point 61 to  
20 the low-water mark. Well, assuming, that is, Point 61 isn't  
21 already on the low-water mark or the high-water mark, or  
22 perhaps some other water mark." Who knows?

23 "Suriname now says in its Reply--Rejoinder,  
24 presumably--that Point 61 can't be the starting point because  
25 it is, and I quote, 'located landward of the low-water line.'

10:29:22 1 By now, the Tribunal is fully aware of the circumstances in  
2 which Point 61 was identified."

3 And then the wonderful sentence, "There is no dispute  
4 on that fact, merely a difference of approach to how you  
5 interpret them."

6 Well, precisely which fact, we wonder, is Guyana  
7 offering the Tribunal in respect of that?

8 Here is Guyana's photo number four with annotations.  
9 The gentleman standing telling you as far as we can see, "I  
10 once caught a fish that was this big." He is the gentleman who  
11 is standing at what we are told is the location of marker "A",  
12 the 1936 Point, and then there is a line off which we have  
13 added in yellow to the right, the 34-degree line passing by the  
14 gentleman standing on the water's edge and then another one  
15 north 10 degrees east by the gentleman standing on the water's  
16 edge to the left of the picture, and there is what looks like a  
17 police officer just to the left superintending the whole thing  
18 in his uniform.

19 Now, the reality, Mr. President, is this is a lot  
20 easier than Guyana has made it look. It is the case that the  
21 high tide line has moved a little over time, so the result is  
22 that for marker "A" the location of Point 36, because the 1936  
23 Point had two markers. I will show this to you in a moment.  
24 Marker "A" was the more seaward of the two. That marker  
25 probably is today located either on the high-water line or just

10:30:57 1 past it, and some documents which aren't in the original  
2 bundles but which are tendered by the parties as demonstratives  
3 help to illustrate this point.

4 Now, the first of those documents is one that I was  
5 intending to point to, which is a letter of 1961 from the  
6 British Governor in British Guiana to his Surinamese  
7 counterpart. Last night, my learned friend, Mr. Reichler,  
8 indicated that he wouldn't object to our producing that  
9 document to you, provided that he could produce two other  
10 documents, two other letters which are internal British  
11 communications which preceded the 1961 letter I was going to  
12 refer to, and cast light on what it meant.

13 Now, I have taken the liberty of including those in  
14 our bundle, and I will show you some slides of them because,  
15 given that Guyana's position, as I understand it, is that those  
16 letters clarify the one that we were going to use, it is, in my  
17 submission, only right and proper that I should put the whole  
18 of the correspondence before the Tribunal rather than just  
19 giving you a partial view. It also gives my learned friends  
20 the opportunity to hear what we have to say about their new  
21 material in time for them to respond to it next week rather  
22 than our saving our position for our second round.

23 Now, the correspondence goes like this: The first  
24 one, if I could have slide 88, please. I'm sorry, we better  
25 start with slide 89 I think. No, 87.

10:32:31 1 Slide 87 is a letter from somebody who signs himself  
2 Dennis, although it's not clear to us whether that is a first  
3 name or a surname. He is writing to Mr. Dawson of the Colonial  
4 Office and he's writing from Government House in Georgetown.  
5 What he says is this--the letter is dated June 1981. The main  
6 marker "A" and pillar "A" were both in the Atlantic Ocean at  
7 high tide--1961--I misspoke myself. "The main marker 'A' and  
8 pillar 'A' were both in the Atlantic Ocean at high tide, and in  
9 consequence of action by the sea had been removed out of their  
10 original positions. He"--that is the geographer--"has  
11 suggested that further delay may result in marker 'B' being  
12 disturbed by the sea and, should this happen, it would mean  
13 redefining this part of the international boundary."

14 Over the page in the same letter, the whole letter is  
15 in your bundle at Tab 40, "As this part of the boundary is not  
16 in dispute, I do not think that the replacement of the marker  
17 and the pillar would create any added difficulty in regard to  
18 the proposed Treaty."

19 And then we have another letter. Now, this one, again  
20 to Dawson, this time from the redoubtable Commander  
21 Kennedy--I'm sorry, no, from a Mr. J.C.E. White. This letter  
22 to Dawson at the Colonial Office we have retyped because the  
23 version that we received is almost completely illegible, it  
24 wouldn't make a slide, but I hope my learned friends will check  
25 it and ensure that we haven't distorted their position.

10:34:01 1           As I understand this problem, the prolongation to  
2 seaward of the line joining the buried mark B to the buried  
3 mark A now moved out of its true position, marks the boundary  
4 between the territorial seas of British Guiana and Suriname,  
5 between the low-water mark and the outer limit of the  
6 territorial sea. Provided that the true bearing of this line,  
7 10 degrees east, from "B" is maintained, I see no reason why  
8 the replacement for "A" should not be placed 200-meters further  
9 inland on a bearing of 190-degrees, the reciprocal of 10  
10 degrees east from marker B. The boundary between the  
11 territorial seas will be unaltered, and these boundary stones  
12 are in any case on British Guiana territory and do not purport  
13 to divide the land.

14           Well, Mr. Chairman, Mr. President, that is an  
15 extremely revealing letter, for a state that has been telling  
16 you right the way through these proceedings that Point 61, as  
17 they call it, is the terminus of the land boundary. This is  
18 really rather remarkable.

19           Professor Frank?

20           ARBITRATOR FRANCK: Is this letter in our folder?

21           PROFESSOR GREENWOOD: Yes, it is. I think--because  
22 this had to be added at the last minute, I think it's in Tab  
23 40. Let me just check that. Tab A(40).

24           Yes, the letter--this letter from White to Dawson is  
25 dated the 1st of August, 1961, and it's Tab 40 in your folder.

10:35:29 1 Immediately before that at Tab 39 is the letter of the 22nd of  
2 June 1961 from Dennis to Dawson, and at 12 in this folder, I  
3 hope, yes, Tab 12, because obviously we had this document much  
4 earlier, some days earlier. It was the letter of the 22nd of  
5 December, 1961, which is the letter I will now come to. This  
6 is the moment when we move from internal correspondence between  
7 the various British officials to correspondence with the Dutch  
8 authorities in Suriname.

9 Does that clear the matter up?

10 ARBITRATOR FRANCK: Yes, thank you.

11 PROFESSOR GREENWOOD: Now, if we could turn from that,  
12 please, to the letter of 1961, the 22nd December 1961 letter.  
13 This is a letter from the Governor of British Guyana to the  
14 Governor of Suriname. And I would encourage Members of the  
15 Tribunal to read the whole letter.

16 This is Tab 12. I apologize for the fact that these  
17 letters are not in chronological sequence. We were already  
18 well advanced preparing our bundle for today when we received  
19 the additional letters from our learned friend last night.  
20 Obviously we make no complaint about that, but that's the  
21 reason why they are in the order that they are. The correct  
22 order chronologically is to read 39 first, then 40, and then  
23 12, and that is the order in which I have tried to take you  
24 through them.

25 This is the Governor of British Guiana. "Buried mark

10:37:07 1 A was duly located, but it was found that it had been moved by  
2 action of the sea from its original position. It was also  
3 reported that pillar 'A,' paragraph 5(c) of the Joint  
4 Commission's Report, had been washed away." That is the first  
5 point that is quite important. Let's go back to the slide  
6 showing the photographs. That's slide 42, please.

7           This is, in fact, a different photograph, but it  
8 doesn't terribly matter because this gives you a close-up on  
9 the red and white pole which was described by Mr. Reichler when  
10 he presented these photographs as marking the location of  
11 marker "A".

12           Now, what Mr. Reichler told you, and this is one of  
13 the problems and the reason why I raise this in the hearing  
14 about the use of these photographs without any witness  
15 statement explaining how they had been taken or in what  
16 conditions. What we were told is that that marker marked the  
17 location of--that pole marked the location of marker "A," the  
18 most seaward of the two markers that represent the 1936 Point;  
19 and he said, although I don't have the passage from the  
20 transcript in front of me, but I'm sure that it will be  
21 verified, he said that it was located by following exactly the  
22 directions of the Mixed Commission.

23           Now, that I have to say is difficult to reconcile with  
24 the correspondence of 1961, all of which is emanating from the  
25 British and therefore the Guyanese side. These are not

10:38:31 1 documents we have got. They are their documents.

2           Those documents show that 45 years ago the authorities  
3 in Georgetown considered that marker "A" was no longer in the  
4 position where it had originally been put. What had happened  
5 was, and I will explain this in a moment, the markers were  
6 buried underground, hence the pictures of the chap digging away  
7 in the hole to find marker "B." By then were two small pillars  
8 that were visible provided you got close enough, that were  
9 aboveground. The pillar at marker "A" was gone, that's  
10 described as having been washed away 45 years ago, or, rather,  
11 it was described 45 years ago as no longer being there. At  
12 what point it was washed away, nobody knows.

13           Moreover, the 1961 correspondence says in terms that  
14 the underground marker had moved as well, so we don't know,  
15 with respect, whether that red and white pole represents where  
16 the marker ought to have been or where the marker was. And  
17 whether the statement that was made that we found the marker by  
18 following exactly the coordinates given by the Boundary  
19 Commission, whether that statement reflects the fact that they  
20 dug down and found marker "A" or that they ignored the  
21 underground mark, altogether, and merely looked for the point  
22 following the 10-degree line from marker "B".

23           I don't propose that--

24           MR. REICHLER: That's not what we said.

25           PROFESSOR GREENWOOD: Well, what you said or what

10:40:07 1 Mr. Reichler said in introducing these photographs was that the  
2 red and white pole was placed on the location of marker "A",  
3 but nothing much turns on that.

4 MR. REICHLER: If you like, I can clear that up. What  
5 we said was that we started at marker "B" whose photograph was  
6 shown, and we followed the instructions of the or the report of  
7 the Boundary Commissioners in 1936 by measuring on a 10-degree  
8 angle 220 meters, and we checked the coordinates of that spot  
9 which would have been 220 meters on a 10-degree angle from  
10 marker "B." We did find marker "B," and it was in the location  
11 as prescribed in the Boundary Commissioners' report, according  
12 to the coordinates.

13 Furthermore, as in the document that you so helpfully  
14 provided--by the way, I want to extend my appreciation to the  
15 way you have handled this with respect to the documents, very  
16 professional, very courteous, and I'm sure that that will  
17 continue to characterize our communication from now on into the  
18 future, and I appreciate that--but the document itself that you  
19 have introduced shows that marker "B" was found in 1961, and,  
20 indeed, we found it in precisely the same place, according, and  
21 both matched the coordinates set forth in the 1936 report.  
22 Then we measured exactly 220 meters on a 10-degree angle and  
23 found the point that is marked by that red and white pole, and  
24 we established that the coordinates--we took the GPS  
25 coordinates which were exactly the same, of course, translating

10:41:53 1 from astronomical to GPS, as the Boundary Commissioners'  
2 recorded in their report as the location where they had placed  
3 marker "A" originally. So, we did not say, and we do not  
4 allege that marker "A" at the time we were there in 2004 was at  
5 that point. In fact, quite the contrary. There was no marker  
6 at that point, but what we have said was that the coordinates  
7 of that point matched the point--matched the coordinates in  
8 1936 report as stating where marker "A" was initially put, and  
9 further, that marker "A" is no longer at that point. That's  
10 all.

11 PROFESSOR GREENWOOD: Well, I'm grateful to my learned  
12 friends for his remark about the handling of this material and  
13 also for the explanation he has just given.

14 I have to say, Mr. President, and I hope that neither  
15 he nor you will take this amiss, that that would have come much  
16 better in the form of evidence tendered by a witness who could  
17 have been cross-examined. Mr. Reichler says that he wasn't  
18 there when the photograph was taken, so what you have just seen  
19 is a conversation across the table between two counsel, neither  
20 of whom who has any firsthand knowledge of how these  
21 photographs were taken or where they are. Just from looking at  
22 them, these could be my holiday snaps of my Easter holiday in  
23 Tobago, although I don't think there was a shipwreck visible  
24 off the coast in Tobago. I can't quite recall.

25 Nothing turns on the question of whether my learned

10:43:23 1 friends dug down to find marker "A" or didn't do so. The point  
2 is that Guyana and its predecessor state have known for 45  
3 years that marker "A" had been moved by the processes of the  
4 tide. One would have expected that that fact would have been  
5 reflected in their pleadings. One would have expected that a  
6 state which comes before you and says, "look, Point 61 is the  
7 answer to absolutely everything, Point 61 is the terminus of  
8 the land boundary," would not be in difficulty telling you  
9 precisely where Point 61 was.

10           And moreover, telling you precisely where it was not  
11 only by reference to GPS coordinates, but more importantly by  
12 reference to the low-water line, because what is crystal clear  
13 is that the 1936 Point, if it is, indeed, marked by that red  
14 and white pole, is nowhere near the low-water line.

15           Now, Dr. Smith said, and I make no criticism of him  
16 for this, these are not his photographs. Dr. Smith, in answer  
17 to a question from Professor Shearer said, "well, looking at  
18 this photograph, the low-water mark would be where the man  
19 indicated by the north 10 degrees east marker is currently  
20 standing," but he was trying to illustrate what was meant by  
21 low water. He was not giving evidence about this photograph.  
22 This photograph, it is perfectly clear, was taken just after  
23 high tide, not after low tide. Mr. Reichler was very candid  
24 about that. The photographs were taken on the 25th of August,  
25 2004, between noon and 1:00.

10:45:08 1            Now, if we could turn to slide 43 and zoom in on it,  
2   please, slide 43 is the tide table, published tide tables, for  
3   this area. Now, the day in question, the 25th of August, being  
4   a leap year, was day 238. Now, if one looks at that  
5   table--tide tables aren't always easy to read, but the even  
6   hours are in that column, and the odd hours of the day are in  
7   that one on a 24-hour clock. Now, what this shows is that high  
8   tide at Nickerie, which is just on the other side of the  
9   Corantijn River, so there will be no significant difference  
10   between the time of high tide at the other side of the  
11   Corantijn, high tide on that day was at approximately 1:00 to  
12   1:15, when the water level was 231 centimeters above low-water  
13   springs.

14            Now, low-water springs is represented by the line  
15   marked as the low-water line on the charts. It's the lowest  
16   that the water gets.

17            Now, on this day, it didn't get anywhere near  
18   low-water springs. The low tide, which is six hours earlier,  
19   is 74 to 75 centimeters above low-water springs. In other  
20   words, about 155 centimeters below the high tide, but still  
21   another 75 centimeters above low-water springs.

22            Now, assuming from the fact that the photographs show  
23   an area of wet sand, these pictures were taken shortly after  
24   high tide rather than shortly before it, one can, I think, put  
25   the time at which the photographs are taken very slightly later

10:46:51 1 than Mr. Reichler suggested. They were probably taken between  
2 one and two rather than between noon and one, but nothing turns  
3 on this. They are not in evidence. They are demonstratives  
4 only.

5 But what do they demonstrate, Mr. President? What  
6 they demonstrate, we say, with crystal clarity, is that if we  
7 could revert to the photograph, please, what they show is that  
8 where that man is standing is nowhere near low water. You can  
9 see from a look at the photograph how shallow that beach is.  
10 For a difference of 155 centimeters to the low water at the  
11 time, let alone a difference of roughly, let's say, 225  
12 centimeters to low-water springs, assuming this picture was  
13 taken just after high tide, the low-water line is going to be  
14 right out on the horizon. It's going to be a very considerable  
15 distance from what is shown here.

16 Now, there is another indication of what's going on  
17 here, and that is if one looks at the shipwreck, which you can  
18 see there, and perhaps we could go to the next slide which  
19 zooms in on it and identifies it rather more clearly.

20 Now, the ship is known; you can see clearly from this  
21 that it is a ship on its side. The ship is the DEBORAH. The  
22 wreck was first reported in 1985, according to a very reliable  
23 source which I will show you in just a moment. Now, if we look  
24 at the chart which shows the position of the DEBORAH, and  
25 you've seen this in the connection with the cross-examination

10:48:22 1 of Dr. Smith, but it is now important for me to say something  
2 about it. There is the wreck, and that, we say, is the  
3 photographic depiction of what is shown there, and you can see  
4 that it is on the low-water line. Moreover that the 10-degree  
5 line, which unfortunately is not marked on this, would pass  
6 just to the right of that wreck.

7 Now, that photograph suggests it passes quite some bit  
8 further to the right, but one can't rely on photographs of this  
9 kind without geographic coordinates being shown in order to get  
10 a bearing. Nevertheless, it does give you an indication that  
11 if that's the 1936 Point, roughly there, let's say a little bit  
12 beyond the high tide line or to be more exact the high tide  
13 line has moved slightly further inland, that's the difference  
14 to the distance to the DEBORAH, and that's the difference,  
15 roughly, to the point where the 10-degree line intersects with  
16 the low-water line.

17 Now, let's have a look at that. Let's have a look,  
18 first of all, at "The South American Pilot." Slide 47. This  
19 is document A 16. "The South America Pilot, Volume 4," is  
20 advice for mariners about the navigation in and out of the  
21 River Corantijn. That indicates that there is a wreck at  
22 coordinates 6 degrees one minute four seconds north, 57  
23 degrees, 8 minutes, 8 seconds west. And with those  
24 coordinates, it would be extraordinary if the picture of the  
25 shipwreck that I have just shown you couldn't, in fact, be

10:49:59 1 located on those coordinates. It is stranded on drying mud  
2 flats on the west shore of the river entrance, reported in 1985  
3 to give a good radar response at up to 20 miles.

4 Incidentally, while we're on this slide, I'd just ask  
5 you to note the point below. A beacon at coordinates 5  
6 degrees, 59 minutes, 7 seconds; 57 degrees, 8 minutes, 9  
7 seconds west, standing near the coast on the west side of the  
8 river entrance, now, that is either the beacon referred to in  
9 the correspondence of the 1930s, which I will come to later, or  
10 its successor in title. So, "The South America Pilot" which  
11 was published in 2004--this is the most recent edition we have  
12 been able to get a hold of--tells you both that there is a  
13 wreck there and also that there is still a navigation beacon  
14 standing near the coast on the west side of the river entrance  
15 at those coordinates.

16 Now, if we could now turn to slide 48, please,  
17 document A 15, and this is the one we have just seen, isn't it?  
18 48. That gives you the 10-degree line. And from that, one can  
19 tell a certain amount about the distances as well, if we can  
20 have slide 49, please.

21 Slide 49 is our attempt to depict the distances  
22 between the various points I have taken you to on the charts,  
23 but to do it on the photograph, and perhaps it's better if I  
24 point them out here. 3,100 meters, just over three kilometers,  
25 is about 1.75 nautical miles, Mr. President. That's from point

10:51:41 1 1936 out to the intersection of the 10-degree line with the  
2 low-water line. 1,100 meters is the distance between the 1936  
3 Point as depicted here, and the intersection with the low-water  
4 line on a bearing of 34 degrees. And 2,100 meters is the  
5 distance between those two intersections with the low-water  
6 line as the crow flies. In fact, if one looks at the chart  
7 again, and the chart is in your bundles at document A 15, if  
8 you look at the chart again, you'll see that it wouldn't be as  
9 the crow flies. The low-water line undulates and undulates  
10 quite considerably.

11           Now, the point here is that Mr. Reichler was saying to  
12 you, "look, the distance between the two chaps standing on the  
13 water's edge, it's minuscule. What is a hundred meters of wet  
14 sand between friends, and it's all our wet sand anyway?" The  
15 reality is completely different. It's not a case of "I caught  
16 a fish this big." The distances are really very considerable,  
17 indeed, if one looks at them. Over 3 kilometers, 2 kilometers  
18 as the crow flies between the two points. Over a kilometer on  
19 the 34-degree line advanced by Guyana out to the low-water  
20 line. If there is an agreed land boundary terminus,  
21 Mr. President, it has got to be on the low-water line. That's  
22 one of the most elementary propositions of international law.  
23 It is therefore at least a kilometer away from the 1936 Point.  
24 If one reads the 1930s documents properly, and, indeed, the  
25 1950s documents and the 1961 correspondence, and perhaps we

10:53:25 1 could just go back to slide 89 for a moment, this is the letter  
2 from White to Dawson. Just remark that in August 1961 what the  
3 British were saying internally. "The prolongation to seaward  
4 of the line joining the buried mark "B" to the buried mark "A"  
5 now moved out of its true position marks the boundary between  
6 the territorial seas of British Guiana and Suriname, between  
7 the low-water mark and the outer limit of territorial sea.  
8 Providing that the true bearing of the this line 10 degrees  
9 east from "B" is maintained, I see no reason why the  
10 replacement for "A" should not be placed 200 meters further  
11 inland on a bearing of 190 degrees, the reciprocal of 10  
12 degrees east from "B," the boundary between territorial seas  
13 will be unaltered."

14 Mr. President, that speaks volumes. What the British  
15 were proposing and the letter at Tab 12 which I would encourage  
16 Members of the Tribunal to read in its entirety makes that  
17 crystal clear. The letter at Tab 12, and I'm afraid I have now  
18 got to dive from one slide to another, I've slightly lost my  
19 place there, so I'll invite you to read the document rather  
20 than going to the slides. What it says is "look, marker 'A' is  
21 gone. There is an easy way we can deal with this. We will  
22 build a new marker, marker 'C,' 200 meters inland of marker 'B'  
23 on a 10-degree line, and then we will still get a nice straight  
24 line out," if we could go back to the chart in the picture  
25 please, "a nice straight line out to--we'll still get our nice,

10:55:07 1 straight, 10-degree line out like that." That's where they  
2 thought the boundary was. That's what they considered the  
3 boundary was. It was a territorial sea boundary. The 1936  
4 Point was the means of calculating that territorial sea  
5 boundary. The British weren't in any doubt about that  
6 whatsoever. It's only when we get to these hearings that  
7 Guyana suddenly says, "oh, no, that's not what was meant at  
8 all. This is what matters." They were agreed on this point  
9 which, by itself, tells you nothing whatsoever. It isn't even  
10 on the land boundary, as we will see after the break. This  
11 point, according to Guyana, stands entirely on its own, picked  
12 for no reason whatsoever, it would seem. It was picked for a  
13 very clear reason. It was picked as the basis on which you  
14 could draw the territorial sea boundary. That's all.

15 Mr. President, sir, is that a convenient moment to  
16 take a break for coffee?

17 Thank you.

18 PRESIDENT NELSON: Thank you very much.

19 We will restart at our usual time of 11:15. Thank  
20 you.

21 (Brief recess.)

22 PRESIDENT NELSON: I take it that Professor Greenwood  
23 will continue?

24 PROFESSOR GREENWOOD: Yes, I'm afraid so, Mr.  
25 President. I have to break that awful news to you, but I

11:19:16 1 needn't say anything more about where Point 61 is. Now we have  
2 a clearer idea of where this place is. Let's look at what it  
3 is.

4           If we could get slide 52, please. This much I think  
5 is common ground between the parties, but it's perhaps useful  
6 to see it in diagrammatic form. Point 61 was marked in this  
7 way, and you will find this document in Tab A(18). It's  
8 actually three separate slides, but I have gone straight to the  
9 third one.

10           Two buried markers, marker "A" there and marker "B"  
11 here, marker "B" 220 meters inland of marker "A"." This is a  
12 rough sketch; it's not intended to be to scale, as you can see.

13           And then immediately three meters in front of marker  
14 "A" there was a pillar aboveground and the same three meters  
15 behind pillar "B."

16           Now, there is an important feature of those pillars.  
17 They were made out of concrete, but they had brass bolts on the  
18 top of them. Now, the reason for that is that in the pre-GPS  
19 era of navigation, that was how you could ensure you could take  
20 a true bearing, so the whole thing was constructed to make it  
21 possible to take a bearing on a 10-degree line. And then there  
22 is this wooden beacon down here. Professor Schrijver noticed  
23 it on the charts and said that where it's marked as the  
24 "houtenbaken," forgive my pronunciation, the wooden beacon in  
25 Dutch. Now, that's also referred to in the Commissioners'

11:20:48 1 documents and I will come to those in a minute, but that's  
2 particularly important. What do you need a beacon for,  
3 Mr. President? You don't put beacons to indicate land boundary  
4 points. You put them as navigational aids. The whole purpose  
5 of the beacon was that it was visible from sea. Why? Because  
6 it was visible from the sea--it enabled you from the sea,  
7 although you would have to be fairly close to land, to take a  
8 10-degree bearing. The beacon was 30 feet high, so it's not  
9 exactly the Washington Monument we are talking about. It would  
10 have been visible, however, from the western channel of the  
11 River Corantijn, and I will come to that in a moment as well.

12 Now, that's what Point 61 is. What's it for? Now,  
13 there is actually no great mystery about this, although Guyana  
14 has tried to shroud it in as much mystery as possible. Point  
15 61 can't be the terminus of the land boundary, and it was never  
16 intended as such. If one follows the principles in the 1799  
17 Treaty, the land boundary is what divides Suriname's river from  
18 Guyana's riverbank, or to be more precise, Guyana's dry land on  
19 the riverbank because, as Professor Brownlie so helpfully had  
20 told us, the boundary line is conceptual. It has no width.  
21 Therefore, a boundary on the bank of a river will mean  
22 that--literally on the low-water line--will mean that both  
23 parties, both states have a presence on the bank. If we turn  
24 to slide 53, document A 19, here you have, first of all, the  
25 simplified order, the simplified low-water line. There is the

11:22:31 1 land boundary, the black line running along the low water  
2 point. We stopped it for the purposes of this illustration,  
3 but the point where the line of 10 degrees drawn from marker  
4 "B" to marker "A" and then continued out to sea intersects the  
5 low-water line because that is what the Commissioners intended.  
6 That's what's in the draft Treaty of 1939 that was sent by the  
7 British to the Dutch and never ratified, never signed for that  
8 matter.

9 Now, the land above the low-water line is all British  
10 in those days, Guyanese now. There is no question about that.  
11 That's plainly what was intended in the 1799 Treaty.

12 So, the point that Guyana claims is the terminus of  
13 the land boundary isn't even on the land boundary. It's not  
14 just that it's not where it ends. The land boundary doesn't  
15 run through it, and Guyana has made a great fuss about  
16 precisely that point in this hearing. It's told you several  
17 dozen times that all the land there is Guyanese.

18 Now, we don't dispute that. We never have disputed  
19 that.

20 If I could have slide 56, my learned friend Mr. Sands  
21 said that we had helpfully clarified our position with a letter  
22 written a couple of days before the hearing started, and I must  
23 confess I was a bit puzzled by what he meant about that. It  
24 can be only this letter. Based on Mr. Reichler's letter--this  
25 was a letter from the Co-Agent of Suriname to the Co-Agent to

11:24:11 1 Guyana about the demonstrative photographs. "Nonetheless based  
2 on Mr. Reichler's letter, it would appear that the taking of at  
3 least some of these photographs must have involved entry by  
4 Guyanese officials into what Guyana itself has repeatedly  
5 described as Surinamese territory (the shore area east of the  
6 1936 Point). For that reason, Suriname must express some  
7 exercise that no attempt was made to inform Suriname of what  
8 was proposed, let alone to request permission for this visit.  
9 Simply courtesy would surely have suggested some prior contact  
10 with Suriname."

11 Now, at that time, the time of writing that letter, we  
12 had no idea what we were being asked to admit. We had no idea  
13 when the photographs had been taken or whether the depiction of  
14 the water line was intended to be low water or high water. We  
15 didn't think it could be low water, but of course we didn't  
16 know what was going to be said about it. But the important  
17 thing is, if we could go back to 52, please, I'm sorry, back to  
18 the map, to 55, the important point here is that taking Guyana  
19 at its word, which perhaps rather unwisely we had done on this  
20 point, we assumed that when they said that this was the  
21 terminus of the land boundary, they must have said the land  
22 boundary at least went to this point, in which case there had  
23 to be some Surinamese land here. We now know that that's not  
24 the case. We now know, Mr. President, that when Guyana says  
25 this is the terminus of the land boundary they don't actually

11:25:35 1 mean this is the terminus of the land boundary. They mean  
2 something rather different. The point, however, is a very easy  
3 one. There is the land boundary. It runs along the low-water  
4 line on the bank of the River Corantijn. Now, how far up it  
5 goes is a source, a subject for discussion, at a later stage,  
6 but that's the boundary, and that's, unfortunately, what Guyana  
7 is asking you to delimit on one version of its case.

8           Now, the result is that the letter of the 4th of  
9 December, where perhaps we pulled Guyana's leg a little about  
10 the fact they should have asked us for permission before going  
11 into our territory or rather into what they said was our  
12 territory has, indeed, provided some helpful clarification, but  
13 it's helpfully clarified Guyana's position on this rather than  
14 our own.

15           Now, let's turn from that to the Treaty text. The  
16 1939 text, which is in core bundle Tab 4 which I'm not going to  
17 show you a slide of, that makes clear that the purpose of Point  
18 61 or the 1936 Point, however you care to frame it, was that it  
19 was the reference point from which the actual terminus of the  
20 land boundary on the low-water line could be calculated. Now,  
21 that was to be done by drawing a line on a predetermined  
22 bearing from the marker that they put out to the low water.  
23 That bearing was originally going to be 28 degrees. That was  
24 what was being envisaged in 1935, and that's why I showed you  
25 the 1934 original British draft.

11:27:09 1           But both sets of Boundary Commissioners accepted that  
2 it should be 10 degrees, and it's clear that the governments  
3 accepted that change because they went on to build the 30-foot  
4 high wooden beacon. Now, that was built in British territory,  
5 and there is a very revealing letter about it, which is in Tab  
6 A(21) of your day bundle and demonstrated here on slide 57.  
7 This is Vice Admiral Kayser, the Dutch Commissioner, writing to  
8 the Dutch Government. A description of the large beacon  
9 visible from the sea and referred to in point five of the  
10 above-mentioned report--that's the joint report of the  
11 Commissioners--as well as a photograph of that beacon--that's  
12 enclosed with the letter, sadly we don't have the  
13 photograph--"The head of the British Commission informed me  
14 that this beacon was established by the British authorities in  
15 Georgetown at," and then it gives the coordinates.

16           As the Dutch and British governments had agreed to  
17 jointly pay for the costs of establishing and maintaining this  
18 beacon--and Mr. President and Members of Tribunal will be well  
19 aware that especially in 1938, the British Government, the  
20 Colonial Office, and the Government House in Georgetown wasn't  
21 going to pay for anything unless it had to. One of the whole  
22 purposes of this argument about the bearing was who was going  
23 to have responsibility for the navigable channels in the river.  
24 British colonial administrators didn't dip into their  
25 collective pockets in order to fund beacons for the fun of it.

11:28:37 1 "As the Dutch and British Governments had agreed to jointly pay  
2 for cost of establishing and maintaining this beacon, I asked  
3 for a statement of the costs, but the head of the British  
4 Commission informed me that he'd been informed by the Colonial  
5 Office that this matter would be dealt with from London. Too  
6 serious to be left to Major Phipps and Vice Admiral Kayser. My  
7 word, the amount of money involved, it probably would have been  
8 enough to pay for, well, a wooden beacon and they had to send  
9 it straight away to London and The Hague to discuss how much  
10 money was involved.

11           Now, that's what this whole exercise was about. The  
12 beacon is a navigation aid for ships at sea. It doesn't have  
13 any other purpose whatsoever. The choice of the 10-degree line  
14 was not because somebody had come along and said--they hadn't  
15 got a Dr. Smith saying--"well, geographically using all the  
16 best information available, the natural river mouth of the  
17 Corantijn appears at such-and-such a point." The whole thing  
18 was determined by reference to drawing a maritime boundary.  
19 That was what Commissioners were engaged in. That's what the  
20 two governments followed up on afterwards.

21           The logic of it was entirely maritime. If we go to  
22 slide 58, document A 22 is the report by Major Phipps, the  
23 British Commissioner, to his instructing authority. With  
24 regard to the northern terminal of the boundary between  
25 Suriname and British Guiana--and incidentally the whole

11:30:05 1 document repays reading since it's clear that they were much  
2 more concerned with the southern boundary--"we have now fixed  
3 this point with the Netherlands Commission. It was found,  
4 however, that the bearing of 28 degrees from the site selected  
5 for the northern terminal pillar would intersect the line of  
6 the navigational channel, which is on a bearing of about 10  
7 degrees east. I did not know of any specific reasons why the  
8 boundary should continue out to sea on a bearing of 28  
9 degrees"--that's revealing as well, isn't it?--"and therefore,  
10 in order to avoid international complications about buoying the  
11 channel, we have placed the direction pillar so that it  
12 indicates the boundary on a bearing of 10 degrees east, in  
13 other words, parallel to the line of the channel."

14           In other words, it was entirely because of maritime  
15 considerations, territorial sea considerations, that the pillar  
16 was placed, or the pillars were placed, where they were. There  
17 was no other logic behind it at all. And that's why the 1961  
18 correspondence involves no fuss or concern whatever about the  
19 fact that marker "A" has disappeared. They just want to make  
20 it possible to go on calculating the 10-degree line with  
21 precision. So what do they suggest when marker "A" is washed  
22 away? Build another marker inland on a 10-degree bearing.  
23 That's the way in which it worked.

24           Now, one other point about the Phipps letter, the one  
25 that's just come up is the 1961 letter from Governor Grey, but

11:31:32 1 we have already looked at that.

2 Phipps went on to say this: "If there was any  
3 particular reason for the bearing of 28 degrees east, it is a  
4 comparatively simple matter to rebuild the direction pillar to  
5 indicate this bearing instead of the 10 degrees east bearing."

6 Of course, you just build another marker "B" and draw  
7 a line at a different angle. It's technically very  
8 straightforward, and technicalities are what these  
9 Commissioners were engaged in.

10 "It would however be necessary to refer the matter to  
11 the Netherlands Government first, presumably, as the  
12 Netherlands Commissioner was very insistent that it was of  
13 vital importance from a navigation point of view to have all  
14 the buoys under one control."

15 Now, my learned friend Professor Sands has told you,  
16 "look, this wasn't a boundary that was intended to last. This  
17 was always open to change." With the greatest of respect, this  
18 letter proves the exact opposite of what it has been cited as  
19 proving by my colleagues from Guyana. What it shows is that,  
20 first of all, Major Phipps recognized that the governments  
21 might not accept the fresh recommendation for 10 degrees. He  
22 said "it's open to you to go back and do something about it."  
23 Not that "it might change at some time in the indefinite  
24 future," but "before we finalize the boundary now you can do  
25 something about changing the bearing."

11:32:56 1           And secondly, it makes it crystal clear that any  
2   change couldn't be changed unilaterally. It would have to be  
3   by negotiation with the Dutch Government. Major Phipps' report  
4   provides not a shred of support for the extraordinary  
5   proposition that after three decades or more, the British and  
6   Guyanese side could simply walk away from the established  
7   boundary of the territorial sea and decide it would be more  
8   convenient to them to have a boundary somewhere else, but it's  
9   very noticeable, Mr. President, that the British Government did  
10   nothing of the kind. The British Government proposed a  
11   different boundary line in a draft treaty in 1965. It didn't  
12   go ahead and adopt a new boundary line unilaterally.

13           Now, another aspect of that is the whole question of  
14   navigation in the western channel, but I would like to come to  
15   that in a couple of moments.

16           Now, we know, Mr. President, that the 1930s process  
17   never resulted in the adoption of a treaty. The British  
18   Government sent a text in 1939, but it wasn't signed, let alone  
19   ratified. What we do know, however, is that by the outbreak of  
20   the Second World War, if not earlier, both parties were  
21   applying the territorial sea provisions of that draft Treaty or  
22   the Territorial Sea provisions discussed between them. Guyana  
23   puts it that way in its Memorial. "By the time the draft  
24   Treaty was delivered to the Netherlands in 1939, both states  
25   were treating Point 61 as the land boundary terminus"--well,

11:34:33 1 that's not quite accurate--"and the north 10-degree east line  
2 as the boundary between British Guiana and Suriname in the  
3 territorial sea."

4 Now, that's from the Guyanese Memorial. So, it's  
5 clear that Guyana considered that by the time the Second World  
6 War started, irrespective of the Treaty process, there was an  
7 agreement on the territorial sea boundary. That's confirmed by  
8 the fact that the beacon was built at joint expense of the two  
9 governments, and you might like to notice the last sentence of  
10 Admiral Case's report: "With this, I would like to consider my  
11 dealings with this beacon as being terminated."

12 Mr. President, you and your colleagues may well share  
13 Admiral Case's sentiments by the time this case is over.

14 It is shown also by a Notice to Mariners, next slide,  
15 this is actually taken from a British Government document which  
16 was put before you, it's in the pleadings anyway, but it was  
17 put before you last week by Guyana. This is a Dutch notice to  
18 mariners. "A pyramid shaped wooden beacon 10 meters in height  
19 has been placed on the left bank of the Corantijn" and then it  
20 gives the coordinates from the Springlands factory chimney,  
21 which is another visible landmark. "The line drawn at 10  
22 degrees from this beacon gives the limits between the  
23 Netherlands and British territorial waters in the mouth of the  
24 Corantijn."

25 Now, the British Admiralty, the hydrographer, queried

11:35:54 1 that in paragraph 3 of this letter. "It appears from this  
2 notice that the Netherlands Government claim all the waters of  
3 the Corantijn River and even some waters in the approaches  
4 which appear to be indisputably British, and any information  
5 which you may have on this matter will be of interest."

6 We don't know what reply he got, but we do know that  
7 the British Government certainly didn't back away from what's  
8 in the Dutch Notice to Mariners, and it makes perfectly good  
9 sense. The river was Dutch, Surinamese today. Therefore, the  
10 navigable channels in the river were Dutch. They were not only  
11 the property of the Netherlands, they were the responsibility,  
12 the problem of the Netherlands. If they needed surveying or  
13 buoying or whatever, it was for the Dutch to do it, but the two  
14 governments would share the expense of building a navigation  
15 beacon on British territory in order to make it possible for  
16 ships at sea to navigate by reference to the 10-degree line.

17 Now, there is an important point about a 30-foot high  
18 wooden beacon. I said it wasn't exactly the Washington  
19 Monument. The Washington Monument, according to the guidebook,  
20 is 555 feet high. You can see it from quite some distance  
21 away. A 30-foot high wooden beacon is only going to be visible  
22 from a fairly short distance out to sea. It was plainly for  
23 shipping in the western channel of the Corantijn, the one  
24 closer to the beacon that this was going to be particularly  
25 important.

11:37:11 1           Now, the joint practice of the parties before the war  
2   in treating 10 degrees east as the boundary of the territorial  
3   sea continued after the war. That's illustrated, for example,  
4   by the Dutch Government's letter to the International Law  
5   Commission in 1953. Now, it's worth noting what this exercise  
6   was all about because my learned friends cited this document  
7   and said "look, here you have the Dutch Government saying our  
8   border between Suriname and British Guiana was settled at its  
9   northern end by a draft treaty in 1939." And they cite that as  
10   proof that the 1936 Point was established as a freestanding  
11   point.

12           The letter is not about that at all. The  
13   International Law Commission was preparing the work that led to  
14   the 1958 Convention on the Territorial Sea and Contiguous Zone.  
15   The inquiry to governments was about their territorial sea  
16   boundaries, and that is what the Dutch Government replied  
17   about. "The western boundary of Suriname has been settled as  
18   follows in a draft Treaty between the Netherlands and the  
19   United Kingdom, the ratification of which has been interrupted  
20   by the last war: The boundary between the territorial waters  
21   of Suriname and British Guiana is formed by the prolongation  
22   seawards of the line drawn on the bearing of 10 degrees east of  
23   true north of the landmark referred to in Article 1(2) above."  
24   That is the Article taken from the 1939 British draft Treaty  
25   which is in the core bundle.

11:38:36 1           In other words, the question asked of the Netherlands  
2   and the answer given was entirely about the territorial sea,  
3   nothing else at all. And it misrepresents this letter, with  
4   respect, to say that it's an answer about a land boundary  
5   terminus. It's an answer about the territorial sea boundary.  
6   It refers to the land boundary only for the purposes of  
7   calculating that territorial sea boundary.

8           Now, the only other point I should note at this stage  
9   is that there were a number of proposals--slide 67, please, or  
10  68--thank you. There were a series of proposals after the  
11  Second World War for a further Treaty. We see in 1949 a  
12  British draft, 1961 a British draft, in 1962, a Dutch  
13  counterdraft, a British draft in 1965, and a Guyanese draft in  
14  1971. Only one of those treaties got anywhere at all, and  
15  that's the first indent under 1971, which was the creation of  
16  the Boundary Commission, the procedural Treaty which did enter  
17  into force. All of the others were drafts and drafts only.  
18  They were proposals, and they were proposals which, in the end,  
19  didn't lead to agreement.

20           Now, how did this territorial sea boundary come to be  
21  established between the two States? Guyana says that it was  
22  done by agreement, and it stresses--it stresses--it is actually  
23  attributed to Professor Schrijver, but my apologies to  
24  Professor Schrijver and to Professor Sands who is speaking.  
25  I'm sorry. "Suriname's general proposition that you need a

11:40:08 1 written formal agreement on the starting point is not supported  
2 by any provision of UNCLOS, and none has been identified."

3           You don't need a written formal agreement. I will  
4 come back to that this afternoon on jurisdiction, but the  
5 critical point is that Guyana is saying you can have an  
6 agreement that's not a written formal instrument. And, of  
7 course, international law recognizes that you can do just that.  
8 And what we say is that if there was, indeed, an agreement on  
9 the terminus point of the land boundary, it was only because  
10 of, and in the context of, agreement about the boundary in the  
11 territorial sea. And that's a critical factor. As Professor  
12 Oxman will show you when he looks at the boundary line  
13 generally, the concerted and consistent practice of the parties  
14 was itself sufficient to demonstrate an agreement on the  
15 territorial sea boundary.

16           It's interesting also that even when the United  
17 Kingdom and later Guyana proposed moving away from the  
18 10-degree line as the boundary in the territorial sea, they  
19 continued to show the intersection of the 10-degree line and  
20 the low-water line as the terminus of the land boundary.  
21 That's true right the way up to a Note Verbale of 2000, only  
22 six years ago, Note Verbale of 3 June 2000.

23           "The Ministry of Foreign Affairs"--this is just after  
24 the CGX incident--"wishes to state the position of the  
25 government of Guyana regarding"--

11:41:50 1            ARBITRATOR FRANCK: Could you give us the reference in  
2 the folder, please.

3            PROFESSOR GREENWOOD: Yes, I'm sorry. I will, indeed.  
4 It's document A 28. I'm too concerned with finding my slides,  
5 but it was also in the day bundles, if not in the core bundle  
6 put forward by Guyana in their first round hearing. A 28.

7            Now, this is a Note Verbale as part of a protest. The  
8 Government of Guyana states its position regarding the location  
9 of the common maritime boundary between Guyana and Suriname as  
10 follows: "It is the view of the Government of Guyana that the  
11 common boundary commences at the intersection of the seaward  
12 prolongation of the north 10 degree east line between two  
13 concrete marks on the Guyana mainland with the line of mean  
14 low-water springs, and extends thence seawards along the line  
15 of equidistance to the outer limit of Guyana's continental  
16 shelf." In other words, 200 nautical miles and so on.

17           Mr. President, the first point we would make about  
18 that is that the terminus of the land boundary, which follows  
19 from a statement of the maritime boundary, is given as the  
20 intersection between the 10-degree line drawn from the 1936  
21 Point and the low-water line. In other words, the illustration  
22 I gave you a little while ago very close to the shipwreck of  
23 the DEBORAH. It's not until these proceedings that Guyana has  
24 departed from that, suddenly telling that you it was all so  
25 straightforward and no one had ever challenged anything at all,

11:43:23 1 Guyana in its Memorial comes up with the suggestion, "well, get  
2 to the low-water line on the 34 degree bearing instead," giving  
3 by that reckoning something like two kilometers of the river  
4 bank which had previously been dividing the territory of  
5 Suriname from Guyana entirely to Guyana. Fascinating!

6 And then at the oral hearings they depart from that as  
7 well. They suddenly say "actually the easiest thing to do is  
8 just to get from the 1936 Point to the low-water line by the  
9 shortest possible route." "Okay, it's a kilometer. It's not  
10 actually just a few meters of wet sand or the way it was  
11 depicted. It's a kilometer, but nevertheless that will do. We  
12 can get there by that means."

13 Now, Mr. President, that's playing fast and loose with  
14 an international land boundary in a way that I would never have  
15 thought any state would try to do in legal proceedings.

16 There is another point about this Note Verbale which  
17 is why, of course, Guyana has put it in as well. Guyana  
18 maintains it shows their position that there's an agreed  
19 maritime boundary of 34 degrees from the intersection of the  
20 10-degree line with the low-water line. Now that, we say, is  
21 plainly wrong. There has never been any agreement between the  
22 parties on 34 degrees. It may be that this was Guyana's  
23 aspiration, but it certainly hasn't been Suriname's agreement.

24 Moreover, it's based on the hypothesis that Guyana can  
25 pick and choose which bits of the 1936 maritime deal it liked.

11:44:50 1 "Well, we liked the terminus on the land boundary. We don't  
2 like the line in the territorial sea. We are free to walk away  
3 from it and choose another new one." Well, that proposition is  
4 legally completely specious, Mr. President, and it can be seen  
5 through at once. So, that part of the Note Verbale was plainly  
6 wrong, but it's worth noticing that the starting point it takes  
7 is not the starting point that Guyana has told you in this case  
8 is self-evidently right.

9           Could we have slide 72, please. This just shows the  
10 point. I showed you an illustration in the photograph of the  
11 differences between the different points. Of course, drawn on  
12 to the photograph it's fairly crude, because we don't know the  
13 angle from which the photograph was taken, but you can see the  
14 same measurements here on this simplified chart. 3,100 meters  
15 from marker "A" to the point on the low-water line on the  
16 bearing of 10 degrees, 1,100 there, the shortest point, 1,400,  
17 slightly different way of looking at it on a 34 degree bearing,  
18 and then the distance between roughly there and there is about  
19 2,100, though, in fact, you would actually have to go around  
20 like that.

21           I want to just mention three other features of the  
22 postwar period, Mr. President. Now, my learned friend Dr. Oude  
23 Elferink will deal with this in more detail, because he's an  
24 expert on it, but Guyana has made a lot about the documents  
25 regarding negotiations in the 1950s and 1960s, and we say that

11:46:25 1 there are three things which the Tribunal would want to keep  
2 very much at the forefront of its mind when looking at those  
3 submissions. The first is that there is an important  
4 difference between internal and interstate correspondence,  
5 between, on the one hand what the British and later the  
6 Guyanese said to each other, and on the other hand what the  
7 Dutch and the Surinamese said among themselves. That's quite  
8 different from the category of correspondence between the  
9 British or Guyanese authorities and their Dutch or Surinamese  
10 counterparts.

11 Now, interesting as the internal documentation may be,  
12 it cannot create or terminate an agreement. It can't give rise  
13 to an estoppel, and it is far less important than the acts of  
14 one state vis-à-vis the other. That's why, for example,  
15 Governor Gray's letter about building a new marker on the  
16 10-degree line sent to his counterpart in Suriname is more  
17 interesting and more significant than the two internal  
18 documents that precede it, although they all paint the same  
19 overall picture.

20 And it's noticeable that Governor Gray--if we could  
21 have slide 73, please, Governor Grey in that letter of  
22 1961--that's not quite the right one, I'm sorry. Don't worry  
23 about it. Let's leave it.

24 Governor Grey refers in the document in Tab 12, Tab  
25 A(12), to the existing boundary in the territorial sea.

11:47:57 1 Now--it's here now. "I am advised that this will not in any  
2 way alter the existing boundary between our two countries since  
3 the prolongation to seaward of the line joining the buried mark  
4 'B' to buried mark 'A' marks the boundary between the  
5 territorial seas of Suriname and British Guiana." That is more  
6 significant than a similar statement, let alone a contradictory  
7 statement in internal correspondence.

8           So, that's the first point we would ask the Tribunal  
9 not to lose sight of.

10           The second is that even with the internal  
11 correspondence, it's important to keep in mind that what was  
12 being discussed was very largely a question of negotiating a  
13 new boundary settlement covering all of the various boundary  
14 issues, including the highly contentious issue of title to the  
15 New River Triangle. And that the simple fact is neither before  
16 or after independence could the two territorial sovereigns  
17 agree upon such a treaty, and the fact that they were willing  
18 to accept something in relation to one aspect of the boundary  
19 in the context of an overall settlement is not at all the same  
20 as their actually having accepted and become bound by it.

21           Professor Schrijver spoke at page 390 of the  
22 transcript of there being a meeting of minds on the  
23 equidistance line principle in the continental shelf during the  
24 1950s. Now, that phrase, "meeting of minds," is used by common  
25 lawyers in the context of the making of a contract, but it's

11:49:31 1 one of the elementary principles of contract law and it's one  
2 of the elementary principles of the International Law of  
3 Treaties that it doesn't matter how close the minds might get  
4 in negotiating an agreement if there isn't an agreement at the  
5 end of the process. The fact that the two governments might  
6 have considered that an equidistance solution would be  
7 reasonable in the context of an overall settlement is not the  
8 same thing as their agreeing on an equidistance principle.

9           The last point, and I would refer there to document A  
10 6, and I won't show a slide, this is the letter of Admiral  
11 Ritchie who makes the very important point as late as early  
12 1966 on the eve of Guyana's independence, that the positions  
13 taken in the negotiations about the maritime boundary tended to  
14 reflect the views of the two governments on the dispute over  
15 the New River Triangle, the upper reaches, as he calls it.  
16 That's an important and inescapable fact in the background when  
17 looking at those 1950s and sixties developments.

18           And lastly, Mr. President, we say it's important to  
19 see all of this correspondence in the correct temporal context.  
20 The officials who wrote those documents in the fifties and  
21 sixties were the creatures of their time. It was a time when  
22 the law of the sea was radically different from what it now is  
23 under the Law of the Sea Convention, and it's also a time when  
24 a colonial governor, if I could have slide 76, please, Governor  
25 Grey to Mr. Stacpoole--it's a time when a colonial

11:51:16 1 governor--that's Governor Grey to the Governor of Suriname, I'm  
2 afraid--I was afraid PowerPoint was going to go wrong at some  
3 stage in my presentation. It's a difficulty--yes, that's the  
4 one, thank you.

5           This is a slightly difficult letter to read. It  
6 appears as document A 30 in our bundle for today, and again  
7 it's been cited by my learned friends. This is the Governor of  
8 British Guiana to Mr. Stacpoole, an official of the Colonial  
9 Office. The Governor at the time was Sir Ralph Grey. And the  
10 letter is dated the 3rd of May, 1963. He notes there that the  
11 western channel is used by all save--I'm sorry, "the eastern  
12 channel that is buoyed and that is used by all save most  
13 'local' craft." It was a day and age, Mr. President, when a  
14 high colonial official felt able to dismiss in a rather  
15 cavalier way the concerns of local communities, the concerns of  
16 local fishermen, and even to highlight his disdain by placing  
17 the word "local" in inverted commas. We have come a very long  
18 way from that. If we look at the next slide, Mr. Fitz Jim's  
19 witness statement, Mr. Fitz Jim's witness statement has been  
20 cited much by Guyana as well.

21           We were a little surprised to hear Mr. Sands saying to  
22 the Tribunal that he found it extraordinary that such an honest  
23 witness statement had been put forward. Perhaps my experience  
24 of witnesses is a little more favorable than Professor Sands's  
25 is. There is, as I recall, a line in a Gilbert & Sullivan

11:52:45 1 opera about "the witnesses summoned in King's bench, common  
2 pleas and divorce have perjured themselves as a matter of  
3 course." But our witnesses haven't. This is an honest and  
4 straightforward witness statement. "As far as I know, the  
5 western channel has never been beaconsed." It's not in dispute.  
6 "The eastern channel has always been beaconsed by the Surinamese  
7 Government, the last time in the early 1990s. However, the  
8 Harbor and Pilotage Service regularly contacted hydrographical  
9 recordings both in the eastern and in the western channel. In  
10 all my years at the Harbor and Pilotage Service, seagoing  
11 vessels were mainly using the eastern channel of the Corantijn,  
12 but other vessels, including vessels from Suriname and Guyana  
13 were often also using the western channel. These other vessels  
14 included fishing trawlers and small freighters with a draft of  
15 three to four meters of water. Seagoing vessels were using the  
16 eastern channel, not so much because of its better natural  
17 state, its breadth and depth, but because of its ease of  
18 navigation due to its proximity to the Nickerie River. The  
19 Nickerie River is beaconsed, and in its mouth there is a  
20 reconnaissance drum which makes navigation easier."

21 Now, that in no sense amounts to saying the western  
22 channel doesn't matter until you take Sir Ralph Gray's view  
23 that the concerns of local craft can't really be taken terribly  
24 seriously.

25 Now, let me turn from history, Mr. President, to

11:54:04 1 geography. The geographical context I can take in slightly  
2 shorter order, save for one point. Now, geography is important  
3 to maritime delimitation for the obvious reason that it's the  
4 geography and the particular geographic circumstances of each  
5 case that determine the delimitation method that's appropriate  
6 to a particular situation. Now, that's not the way Guyana sees  
7 it. Guyana wants to define the geography by reference to the  
8 delimitation method that is by reference to the equidistance  
9 method. That's contrary to principle. It's the geography  
10 which defines the delimitation method, not the other way  
11 around, and there are two fundamental facts about the geography  
12 in this area which are particularly relevant. The coast of  
13 Guyana faces northeast, and the coast of Suriname faces north.  
14 Where they meet they form an angle. Now, Guyana in its  
15 pleadings has attempted to deny that Suriname's coast faces  
16 north, but their expert, Dr. Smith, accepted this precise point  
17 in his cross-examination. He said that the orientation of the  
18 Suriname coast is to the north, northwest, and it follows from  
19 that that the coasts meet at an angle. You can see that,  
20 though not terribly clearly in this chart. This chart is  
21 rather too small a scale.

22           It also follows from that that the coastal fronts of  
23 the two, although much mockery has been directed by Guyana at  
24 this particular chart, it does illustrate the fact there is a  
25 hinge there at the River Corantijn. Now, Guyana's geographical

11:55:35 1 case is built entirely on the report of Dr. Smith. That's the  
2 contrary evidence on which they rely. It's Dr. Smith that  
3 offers the assessment of the geography of the region, and  
4 critically it's his report and only his report, which offers  
5 any evidence, as opposed to mere assertion, about  
6 proportionality, by reference to Guyana's concept of relevant  
7 coasts.

8 But Dr. Smith, with respect, has been selective in his  
9 appreciation of the geography. He's tried to make value  
10 judgments about geographical facts to move from being a  
11 geographer, which he undoubtedly is, to being a lawyer, which  
12 he said himself he was not. That's bad enough. But there are  
13 further troubling matters about Dr. Smith's report, something  
14 which we only learned through the examination and  
15 cross-examination on Monday of this week. We learned in that  
16 cross-examination that the report was prepared in an incredibly  
17 short period of time, about two weeks to the final version, it  
18 seems, and one week, one week, for the preparation of the draft  
19 report.

20 That's fast, even for someone, who, as he put it, had  
21 just given up on his day job and was able to concentrate on  
22 this.

23 Now, on its own that might not be of any great  
24 consequence. Dr. Smith might just be an exceptionally fast  
25 worker, but the speed seems to have come at the expense of

11:56:57 1 accuracy. Dr. Smith admitted that he made errors in his  
2 report, specifically in respect of the coastal length figures  
3 which, of course, are critical to Guyana's whole  
4 proportionality case, which those figures are set out in the  
5 table in paragraph 49 of his report. Of the six figures given,  
6 three for Guyana, three for Suriname using three different  
7 approaches to measuring the relevant coast, he ended up  
8 revising five of them in an upwards direction.

9 Now, a natural first reaction is it would be wrong to  
10 make too much of that. We all make mistakes. But Dr. Smith's  
11 explanation of his errors was also very troubling to us. What  
12 he said in cross-examination, and, indeed, in  
13 examination-in-chief was that they were errors of mixing miles  
14 and kilometers. He used kilometers sometimes and nautical  
15 miles at others, but he wanted to put the whole thing into  
16 kilometers.

17 Well, that's a reasonable sounding explanation,  
18 although I have to say a little surprising for an experienced  
19 geographer who's used to making calculations of this kind and  
20 who works in both measurements all the time, by his own  
21 admission.

22 But on closer examination, the explanation he gave  
23 seems to have had some really quite serious flaws to it. Some  
24 of the changes he made simply couldn't be the writing down of  
25 nautical miles instead of kilometers. The figures just didn't

11:58:18 1 add up. Let's have a closer look at them. If we could have I  
2 think it's slide 79.

3 Now, this is a document at Tab A(33), and you might  
4 like to have a look at A(33). I'm afraid this is going to be a  
5 case of someone who is no mathematician trying to lead you  
6 through some mathematical material.

7 The table at paragraph 49 was laid out like this.  
8 There was, incidentally, a third column which gave the ratios  
9 of coastal lengths, but there wasn't room to fit that on as  
10 well for the purposes of the slide.

11 Now, the first column here gives you the three  
12 different methods of assessing the relevant coast, single line,  
13 controlling point, low-water line. And then we have the figure  
14 for Guyana. That's the figure originally given in the report,  
15 116, 215, 246. And those are cited as figures in nautical  
16 miles in the original, and there we have the same column of  
17 figures for Suriname.

18 Then we have the corrected figures, 116 converts to  
19 213. 215 there remains the same, so clearly that was a  
20 kilometers figure in the first place. And 246 here is changed  
21 to 264.

22 And then for Suriname, 105 becomes 195, 153 becomes  
23 195. One does wonder how it is Dr. Smith could have failed to  
24 notice that, Mr. President. 153 nautical miles couldn't be 195  
25 kilometers under any circumstances. It doesn't require the

11:59:50 1 expertise of a scientist to see that. A schoolboy could have  
2 told you. But a schoolboy could certainly have picked out the  
3 fact that exactly the same figure had been given as  
4 representing the kilometers equivalent of a totally different  
5 mileage figure in the line immediately above.

6 And then down here, 167 becomes 202.

7 Now, the ratio which Dr. Smith couldn't remember of  
8 nautical miles to kilometers is that a nautical mile, that's  
9 unfortunately not right, either, a nautical mile equals--yes, a  
10 nautical miles equals 1.852 kilometers or 1,852 meters which is  
11 the way I've got it written down in my notes. Now, we've  
12 multiplied the figures in the original column by 1.852, with  
13 the exception of this one, which obviously wasn't intended to  
14 change anyway. We accept that. With the five out of the six  
15 figures that Dr. Smith revised, we have multiplied the figure  
16 in the original by 1.852, and what do we get? Well, that  
17 calculation is correct as near as makes no difference. That  
18 one doesn't alter, but this one, 246 nautical miles, is  
19 described as equivalent to 264 kilometers. It's actually  
20 equivalent to 455.

21 And here, 105 does, indeed, make 195. That line is  
22 right. But 153 nautical miles is 283 kilometers, not 195.

23 And 167 nautical miles isn't 202 kilometers. It's  
24 309.

25 So, what we have come to is this: Six figures were

12:01:30 1 offered up in the original. Only one is consistently right.  
2 Five had to be revised when Dr. Smith reviewed his report in  
3 preparation for being cross-examined, and of the five  
4 revisions, three are patently wrong. At least they're patently  
5 wrong if the explanation of the error which had to be corrected  
6 is the one that Dr. Smith gave you.

7 But he did go a little bit further than that. He also  
8 went on to say that it might be that there were other errors  
9 that had to be corrected, but he couldn't remember whether that  
10 was the case, and he didn't tell you what those other errors  
11 might be.

12 The result is a complete mess, Mr. President. You're  
13 offered a table where, on any analysis half of the figures it  
14 contains are wrong on the basis on which the explanation for  
15 them is given. Now, we don't say there might not be another  
16 explanation, but transparency and reliability would surely have  
17 suggested that that other explanation would have been offered.

18 And then there is another problem. We find it  
19 strange, we must say, that the figure of 153 nautical miles of  
20 Suriname's coastal front here, this is including allowance for  
21 Vissers Bank, that 153, which is given here as the nautical  
22 miles figure is converted wrongly to 195. When the point was  
23 put to him, Dr. Smith said "I would have to say that 195,  
24 without the conversion chart, 195 kilometers is the equivalent  
25 of 153 nautical miles," which is the most extraordinary

12:03:13 1 admission I've ever heard from an expert witness.

2           That figure is, in fact, according to Guyana's  
3 pleadings, according to Guyana's Reply, the correct number in  
4 kilometers, not allowing for Vischers Bank. Now, Mr. President,  
5 what is one to make of this? It does, in our submission, mean  
6 two things: It means, first of all, that absolutely no  
7 reliance can be placed on this table at all. This is a serious  
8 and important arbitration which has been years in the making.  
9 We have heard from Sir Shridath Ramphal how important the  
10 issues are to Guyana, and they are as every bit important to  
11 Suriname. They are matters which could have enormous  
12 implications for the resources available for the development of  
13 these two countries and for the living standards of their  
14 people. And you are being asked to make decisions about the  
15 boundary based on a proportionality analysis, on a set of  
16 figures that would fail O level at school, that don't come  
17 anywhere near being precise, reliable, or properly explained.  
18 And we submit that this Tribunal cannot be influenced by, let  
19 alone guided by, the proportionality analysis because, quite  
20 apart from the legal flaws in that analysis, and I will have a  
21 lot to say about those, and so will my colleagues later  
22 on--quite apart from the legal flaws in that proportionality  
23 analysis, the only evidence that Guyana has put forward in  
24 support of it, the only evidence of coastal lengths, is  
25 Dr. Smith's report, and that evidence, Mr. President, we say,

12:04:58 1 is completely and utterly unreliable. It is discredited.

2           Now, that's the first submission I would make. The  
3 second submission goes wider. This is like the fable of the  
4 clock that strikes 13 times. If a clock strikes on 13  
5 occasions, not only is the 13th chime plainly wrong, it also  
6 makes you wonder about the first 12. In the light of  
7 Dr. Smith's answers about this table, we say that he is simply  
8 not credible as an expert witness in respect of the testimony  
9 he has given generally. And no boundary line, based upon his  
10 report could be regarded as credible.

11           I would add by way of a very small codicil, indeed,  
12 that Guyana claims the support of Dr. Smith in its pleadings  
13 even for things that he doesn't say, quite apart from the  
14 things that he does. We are told, for example, that Guyana's  
15 coast forms a concavity, but Dr. Smith is very careful actually  
16 not to say that, if one reads his report in detail.

17           To revert to the geographical context, a proper  
18 understanding of the geography, we say, involves determining  
19 what are the relevant coasts, deciding whether those coasts  
20 that are to be represented by coastal fronts, whether assessing  
21 features are concave or convex, and understanding how the  
22 coasts project towards the area to be delimited and determining  
23 the relevant area. We will be doing all those things in our  
24 presentation in order to assist the Tribunal in its task. None  
25 of them has been done seriously by Guyana.

12:06:33 1           When the coasts are looked at, it becomes clear that  
2   although the coast of the two states are generally fairly  
3   regular, there are certain features that have an impact on the  
4   drawing of a provisional equidistance line. In particular, the  
5   convex feature on Guyana's coast immediately to the west of the  
6   Corantijn River and just to the north of the 1936 Point has an  
7   effect on the equidistance line which, though it's later  
8   mediated further out to sea, is never fully compensated for.

9           Now, there are alternatives to the equidistance method  
10   that courts and tribunals have used to mitigate the effect of  
11   coastal features on the drawing of a maritime boundary. As we  
12   will show, one such method, that of the angled bisector drawn  
13   to generalized coastal fronts, provides a way to divide the  
14   area equally while eliminating the effect of distorting coastal  
15   features. It achieves the objectives of the equidistance  
16   method without the inevitable consequences that can flow from  
17   the application of equidistance.

18           As Professor McRae will show you, an angled bisector  
19   drawn from the intersection of the coastal fronts of Suriname  
20   and Guyana runs on an azimuth of 17 degrees. That azimuth  
21   should be started from the intersection of the 10-degree line  
22   with the outer limit of the territorial sea. Such a result  
23   would have corresponded to the geographical circumstances of  
24   this case, but there are other circumstances that indicate that  
25   the equitable result would be a continuation of the 10-degree

12:07:59 1 line out to 200 nautical miles. That, Mr. President, is the  
2 true geographical context of this case.

3           Before I try to sum up the issues between the parties  
4 and set out how our submissions will be developed, there are  
5 two matters on which I need to make some brief comments. The  
6 first concerns the restricted archives point. Now, it has been  
7 suggested by Guyana that Suriname's initial refusal of access  
8 to the restricted archives in The Hague showed that we had  
9 something to hide. That allegation, Mr. President, is sheer  
10 nonsense. Suriname resisted opening the restricted archives on  
11 grounds of principle. When the Tribunal allowed Guyana's  
12 application for access with the filter of the independent  
13 expert, Suriname cooperated in full. Out of the 21 files in  
14 question, the expert determined that only documents, not all  
15 the documents, but only some of the documents from six of those  
16 21 files should be disclosed.

17           And what have they disclosed? There is nothing  
18 resembling a smoking gun in the restricted archives. If I can  
19 pay my learned friend Professor Sands a compliment, nobody has  
20 a better nose for a smoking gun than he. If there had been a  
21 smoking gun in the restricted archives, Professor Sands would  
22 have told you all about it. He would have held the document  
23 up, he would have brandished it. He would have spent ages on  
24 it. We didn't get that.

25           There was just the merest hint of triumphalism from

12:09:30 1 one of Professor Sands's colleagues, and it was very ill  
2 merited indeed. All that the 1950s documents show was that the  
3 Netherlands was willing to contemplate an equidistance boundary  
4 outside the territorial sea as part of an overall boundary  
5 deal. Now, that much was already plain from the documents in  
6 the U.K. archives and in the open archives in the Netherlands.

7           The second point I must react to is one comment made  
8 by Professor Sands on the first day. He referred to a passage  
9 in our Rejoinder which spoke of, and I quote, "misconstructions  
10 of the historical and factual record by Guyana." Professor  
11 Sands admonished us in these terms. "We think it is  
12 unfortunate in proceedings between two friendly states to make  
13 that sort of claim, about misconstructions of the historical  
14 and factual record." That did not stop Sir Shridath Ramphal on  
15 the last day of the hearing saying this about Suriname's  
16 position: "Mr. President, Members of the Tribunal, there are  
17 surely limits to how blatantly the facts can be distorted, even  
18 as a tactic of inventing self-canceling allegations. So, what  
19 is the truth?"

20           Well, Mr. President, if it is unhelpful for Suriname  
21 to make comments about distortion, it is presumably also  
22 unhelpful for Guyana. There is this difference. In our case,  
23 the allegation has substance, and it's shown repeatedly through  
24 the pleadings that what Guyana has done is, shall I put it as  
25 kindly as I may, to quote highly selectively from particular

12:10:59 1 documents in order to sustain its own case. Just one example.

2 If we could have slides 91 and 92 from this  
3 afternoon's presentation, please, the very last ones.

4 No, the one before that. Thank you.

5 In the Reply--in the Reply, Guyana says this,  
6 "Suriname's response"--this is the 1989 exchange of Diplomatic  
7 Notes--"unambiguously recognized Point 61 as the land boundary  
8 terminus stating that"--and now look very carefully at where  
9 the quotation marks begin and end--"'The western sea  
10 boundary'"--that's the quotation of Suriname, "is," again a  
11 quotation, "'formed by,'" quotation stops, "a," quotation  
12 begins again, "'line,'" end of quotation. "That is," quotation  
13 begins again, "'drawn from latitude'" and then gives the  
14 coordinates.

15 Now have a look at what the note actually says.

16 "The western sea boundary of the Republic of Suriname  
17 is formed by the line north 10 degrees east drawn from latitude  
18 5-59-53, and longitude 57-8-51." Why not quote a whole  
19 sentence, Mr. President? Why go to the trouble of sticking in  
20 half a dozen extra sets of inverted commas in order just to  
21 pick odd words out. If that is not misconstruing the historic  
22 record, I would like to know what is. And the same is true of  
23 the way in which a number of other documents have been handled.

24 Now, Mr. President, I'm about to conclude. Let me  
25 just say a little bit about the issues that separate the

12:12:35 1 parties. I'm going to say very little about that, I think, in  
2 order to finish in time.

3           There is, first of all, the question of jurisdiction.  
4 Contrary to what Guyana suggests, Suriname is not trying to  
5 frustrate the dispute settlement. We are not engaging in a  
6 tactical filibuster. Our point is a very, very simple one.  
7 This Tribunal could have jurisdiction only to deal with  
8 disputes concerning the interpretation or application of the  
9 Convention. That's what Article 288(1) says. That does not  
10 include determining the location of a land boundary, including  
11 the determination of a river boundary because rivers and lakes  
12 are treated as land territory for these purposes.

13           Now, Suriname's position is that the Tribunal could  
14 not have jurisdiction to determine the claim as it is  
15 formulated by Guyana. Guyana invites you to take as a starting  
16 point a land boundary terminus that isn't a terminus, isn't on  
17 the land boundary in any event. Therefore, you would have to  
18 make a determination about where the land boundary actually  
19 extended to, and that would not be a trivial matter of a couple  
20 of hops, skips, and jumps across some wet sand. It's something  
21 very much more serious than that.

22           Now, we say that there was, indeed agreement between  
23 the parties, emanating not from the Treaty, but emanating from  
24 a separate process, about the 10 degree boundary line in the  
25 territorial sea measured from the 1936 point by drawing a line

12:14:09 1 on a 10-degree bearing to the low-water line and then out to  
2 the limit of the territorial sea. On that basis, the Tribunal  
3 would, indeed, have jurisdiction because it would be able to  
4 start from an agreed delimitation in the maritime area, and it  
5 needn't worry about the location of the land boundary terminus.  
6 But what Guyana is seeking to do is to take the bit of what  
7 happened in the late 1930s that suits it and invite you to  
8 ignore the rest. That is not only bad law on the merits, it's  
9 an impossible position on jurisdiction. If you are looking for  
10 a filibuster, that's where you will find it, not in the  
11 submissions made by Suriname.

12 Secondly, there is the question of the boundary, the  
13 boundary line. Since my learned friends made much of the  
14 distinction between the territorial sea and the rest, I will do  
15 the same. There is, secondly, a division between the parties,  
16 an issue between the parties about the boundary in the  
17 territorial sea. Guyana maintains that both parties are  
18 committed to what it calls its historic equidistance line of 34  
19 degrees. That is certainly not accepted by Suriname.  
20 Suriname's position is that there was an established boundary  
21 in the territorial sea along the 10-degree line that was  
22 certainly established by the 1950s and, in our view, much  
23 earlier than that, and that that boundary extends to what is  
24 today the limit of the territorial sea and, indeed, to the  
25 limit of the contiguous zone of the two parties. And that

12:15:35 1 point will be explained in detail tomorrow by Professor Oxman  
2 and Professor McRae.

3           Moving further out to the rest of the continental  
4 shelf and the Exclusive Economic Zone, Guyana again contends  
5 that there is agreement on its historic equidistance line, or  
6 at least it did. At one stage it was talking about agreement,  
7 modus vivendis, modus operandi, all kinds of interesting terms  
8 were used. It put me in mind a little bit, as did another part  
9 of Guyana's presentation when they were talking about radial  
10 projections, of something Sir Eli Lauterpacht said in another  
11 case I was involved in. After we had been treated to a slide  
12 show of radial projections going in every direction, Sir Eli  
13 said that it reminded him of a beautiful woman performing a fan  
14 dance. Well, I'm not going to embarrass my learned friends  
15 from Guyana in looking to see whether it was Mr. Sands or  
16 Mr. Reichler who represents the fan dancer in these  
17 circumstances. But what was actually going on--

18           MR. REICHLER: That's Mr. Sands, not me.

19           PROFESSOR GREENWOOD: I hope that statement is on the  
20 record, Mr. President. It may be very important in the future.  
21 It makes all the more significant what I was about to say:  
22 It's not so much a fan dance they're performing on the other  
23 side of the hearing room, it's the dance of the seven veils,  
24 one veil after another is being shed. Did I say agreement?  
25 No. Did I say modus operandi? No. We are actually getting

12:16:58 1 down to something rather like special circumstances, something  
2 rather like special circumstances derived from conduct and  
3 nothing more.

4 But, Mr. President, like other dances of the seven  
5 veils, so I am told, while one is conscious of something being  
6 discarded, one is never quite sure what one is seeing and I  
7 would invite the Tribunal to look very carefully indeed at some  
8 of Guyana's submissions on its historic equidistance line.

9 Lastly we come to submissions 3 and 4. I'm going to  
10 say almost nothing about those, Mr. President. Insofar as  
11 submission three alleges violations of the U.N. Charter, it's  
12 outside the jurisdiction of this Tribunal, anyway. Insofar as  
13 it alleges violations of the Law of the Sea Convention, it's  
14 outside the jurisdiction of this Tribunal unless the procedures  
15 have been followed, and those procedures are prerequisites to  
16 seizing this Tribunal.

17 But more to the point, I have never heard a thinner or  
18 more threadbare case in respect to the use of force. One only  
19 has to hold it up, hold the facts up against any of the other  
20 use of force cases that have been put before International  
21 Tribunals to see how preposterous this is. The CGX rig was  
22 plainly in the disputed area. The patrol boat in question was  
23 dwarfed by the size of the rig. It wasn't mounting armament.  
24 It didn't threaten to use force. It didn't use force. The  
25 suggestions that force would have been used if the rig hadn't

12:18:18 1 left are entirely speculative, and the notion that those  
2 speculations were the cause of great trauma to those on the rig  
3 is ridiculous because they're based on material that nobody on  
4 the rig would have known about anyway. It must be the most  
5 ill-advised claim on resort to force ever to have been put  
6 before an International Tribunal.

7           What about submission four on which we heard from Sir  
8 Shridath on the closing afternoon of Guyana's first round?  
9 That's based largely on two propositions. The first is that if  
10 Suriname doesn't give Guyana exactly what it wants, it's being  
11 uncooperative and not agreeing to enter into practical  
12 arrangements. The second is that it's true that Guyana  
13 proposed joint development, but it also insisted that Suriname  
14 must agree to joint exploitation, not merely exploration,  
15 refused to share its existing seismic data with Suriname,  
16 refused to disclose the terms of its existing License  
17 arrangements and required Suriname to recognize all existing  
18 licenses granted by Guyana. And refusing those terms, you are  
19 told, puts Suriname in breach of its obligations under Articles  
20 74 and 83. Well, Mr. President, come on.

21           Now, my learned friend, Professor Murphy, will deal  
22 with those points in detail. I'm not going to waste time on  
23 them now.

24           Let me just say briefly what the plan of campaign is.  
25 In a moment I will sit down and give the Tribunal much relief

12:19:37 1 in that regard and invite you to call upon Professor Soons who  
2 will talk about the constitutional position of Suriname, which  
3 in the period between 1954 and 1975 was not the same as the  
4 position of Guyana in the period 1945 to 1966.

5 Then, after the lunch break I would invite you to call  
6 on Dr. Oude Elferink to talk about historical background, and  
7 then I'm afraid to invite you to call on me again to talk about  
8 jurisdiction.

9 Tomorrow, Professor Oxman in the morning will deal  
10 with the applicable law and the delimitation of a single  
11 maritime boundary, and Professor McRae in the afternoon will  
12 talk about geography and method.

13 And then on Friday I would ask you to invite  
14 Mr. Colson to speak on conduct and the Suriname line, and  
15 Professor Murphy on submissions 3 and 4.

16 On Saturday, the final day of the Suriname first  
17 round, Professor McRae and Mr. Colson will sum up our case on  
18 the maritime boundary, and I will then offer you a few short  
19 general conclusions.

20 Mr. President, unless the Tribunal has any questions,  
21 that concludes my opening submissions, and I would invite you  
22 to call upon Professor Soons.

23 PRESIDENT NELSON: Thank you, Professor Greenwood.

24 There is only one question of a very general nature.  
25 It seems a long time since we started, and when you started you

12:20:58 1 spoke of the applicable law, and I think you referred to  
2 Article 293 of this Convention which says, "A Court or Tribunal  
3 having jurisdiction under the section shall apply this  
4 Convention and other rules of international law not  
5 incompatible with this Convention."

6 Now, if I recall rightly, you tended to confine the  
7 applicable law only to the Convention on the Law of the Sea. I  
8 don't know if this is the time because this is a big question,  
9 what other rules of international law? What is the impact of  
10 that addition?

11 PROFESSOR GREENWOOD: Mr. President, I was going to  
12 deal with that precise issue in my submissions on jurisdiction  
13 this afternoon, but let me give you a brief trailer of what  
14 will be said then. First of all, in one sense this provision  
15 states the obvious, that there are certain matters such as, for  
16 example, principles of treaty interpretation, principles of  
17 state responsibility, for which the Tribunal in the exercise of  
18 its jurisdiction would necessarily have to look to rules of law  
19 outside the scope of the U.N. Convention on the Law of the Sea.

20 But, we submit that there are two very important  
21 qualifications to be kept in mind. The first is that Article  
22 293 does not enlarge the jurisdiction of the Tribunal. It  
23 merely points you to the sources of law you may apply in the  
24 exercise of the jurisdiction created by Article 288. So, there  
25 is no jurisdiction to decide a dispute about the application of

12:22:45 1 Article 2(4) of the U.N. Charter, for example. Nor is there,  
2 in my submission, jurisdiction to determine the location of a  
3 land boundary or a land boundary terminus.

4 Secondly, the provision in Article 293, and I perhaps  
5 took this rather too quickly, has, we say, to be read in the  
6 light of the provision in the Preamble about the overarching  
7 effect and intentions of the U.N. Convention on the Law of the  
8 Sea. I'm not suggesting that one can't look to other rules of  
9 law. Of course, the applicable law provision makes clear that  
10 one can, but only in the exercise of a jurisdiction which is  
11 more closely tied to the provisions of UNCLOS.

12 PRESIDENT NELSON: Thank you very much.

13 ARBITRATOR SMIT: Mr. Greenwood, assume that the  
14 Tribunal accepts your proposition that the beginning point of  
15 the delimitation line is where the line drawn on the northeast  
16 10 degree meets the coast--are you with me?

17 PROFESSOR GREENWOOD: I'm with you, although that's  
18 not quite my submission, sir.

19 ARBITRATOR SMIT: Well, what is your submission?

20 PROFESSOR GREENWOOD: My submission is that the only  
21 basis on which there is a starting point on the low-water line  
22 at all is in the context of an existing delimitation of the  
23 territorial sea boundary. The starting point would be where  
24 that delimitation finishes, which is the edge of the  
25 territorial sea.

12:24:12 1            ARBITRATOR SMIT: Okay. Assume that the Tribunal  
2 accepts that proposition. Do you still contest that the  
3 Tribunal has jurisdiction?

4            PROFESSOR GREENWOOD: No, Mr. President, sir. We made  
5 clear, I hope, in our submissions in writing, and I will make  
6 clear this afternoon that we say that the Tribunal has no  
7 jurisdiction over Guyana's claim the way Guyana has formulated  
8 it. We offered an alternative basis of jurisdiction, but we  
9 are the Respondent in this case. It is not for us to establish  
10 the Tribunal's jurisdiction.

11           ARBITRATOR SMIT: Okay. The next point is, the only  
12 reason there would be any significance to a second marker would  
13 be to arrive at your line because, if you proceed as Guyana  
14 would argue and take 61 and then the shortest route to the  
15 coastline, you don't need the other mark; is that correct?

16           PROFESSOR GREENWOOD: It is, indeed, Mr. President,  
17 entirely correct. And, of course, the notion that one doesn't  
18 need a second marker flies in the face not only of what  
19 happened in the thirties but also in the early 1960s.

20           ARBITRATOR SMIT: Thank you.

21           PROFESSOR GREENWOOD: Any further questions?

22           PRESIDENT NELSON: Not yet. Thank you very much,  
23 Professor Greenwood.

24           And I now give the floor to Professor Soons.

25           PROFESSOR SOONS: Mr. President, Members of the

12:25:45 1 Tribunal, it is an honor for me to appear before you on behalf  
2 of the Republic of Suriname. My task will be to deal with  
3 Suriname's constitutional position within the Kingdom of the  
4 Netherlands until its independence and, in particular, to  
5 demonstrate that after 1954 Suriname's views determined the  
6 positions of the Kingdom of the Netherlands with respect to the  
7 delimitation of Suriname's maritime boundaries.

8           The reason for Suriname to deal with this issue in  
9 some detail and at this early stage of our oral argument is  
10 this: Guyana has, on several occasions, in both its written  
11 and oral pleadings, argued that in these proceedings Suriname  
12 is somehow bound by positions taken by the Netherlands before  
13 Suriname's independence. In this context, Guyana frequently  
14 but often incorrectly refers to positions taken by the  
15 Netherlands as those of the so-called colonial power in  
16 relation to Suriname. In order to avoid confusion, it is  
17 useful to briefly explain to the Tribunal the position of  
18 Suriname within the Kingdom of the Netherlands during the  
19 various phases of the history of the discussions concerning  
20 delimitation of the maritime boundary with Guyana.

21           Guyana carelessly refers to the Netherlands' position  
22 in proceedings before the International Court of Justice in the  
23 North Sea Continental Shelf Case, to correspondence between the  
24 Netherlands and the United Kingdom, and to internal memoranda  
25 and correspondence both within the Netherlands Ministry of

12:27:25 1 Foreign Affairs and between the Ministry of Foreign Affairs and  
2 the Suriname Government and tries to derive conclusions from  
3 these materials to bolster its argument that Suriname became  
4 bound by particular positions. These instances will be further  
5 examined by several of my colleagues in their presentations.  
6 My presentation will show that the conclusions Guyana draws are  
7 simply incorrect in the light of Suriname's constitutional  
8 position.

9           The constitutional position of Suriname within the  
10 Kingdom of the Netherlands in 21 years leading up to its  
11 independence was quite complex, indeed. And the memorandum  
12 which was attached to Suriname's Rejoinder, Annex 44, and which  
13 has been unfairly criticized by Guyana was intended to assist  
14 the Tribunal in appreciating the essentials of the  
15 constitutional position as far as relevance to the present  
16 dispute. We have included a copy of the memorandum for your  
17 convenience in your daily Judges' folder under Tab B(1).

18           I will, of course, not repeat the contents of that  
19 memorandum, but will emphasize its key elements with reference  
20 to actual positions taken in the course of the discussions on  
21 the maritime boundary.

22           Mr. President, Members of the Tribunal, before I do  
23 this, it is useful to start with a very brief historical  
24 review. Suriname became a Colony of the Republic of the United  
25 Netherlands in 1667 when by the Peace Treaty of Breda concluded

12:28:53 1 after the Second Anglo-Dutch War it was obtained from Great  
2 Britain in exchange for the Dutch North American Colony of New  
3 Netherlands, the present New York. At that time Suriname's  
4 neighboring colonies of Essequibo, Demerara, and Berbice  
5 already were or soon thereafter came under the authority of the  
6 Dutch West India Company. During the Napoleonic Wars, because  
7 of the occupation of Holland by France, these Colonies changed  
8 hands a number of times between the Dutch and the British, but  
9 in the Convention of London of 1814, Britain agreed to return  
10 Suriname to the Dutch; that is, the newly constituted Kingdom  
11 of the Netherlands, and the Colonies to the west of Suriname  
12 were ceded by the Netherlands to Britain. As a consequence,  
13 the boundary between Suriname and Berbice which had been  
14 changed by the 1799 Agreement of Cession between the two  
15 Governors of those two Dutch Colonies, an agreement that has  
16 been referred to often in these proceedings, became an  
17 international boundary, and as Professor Greenwood has told  
18 you, that agreement is still the only binding instrument  
19 between Suriname and Guyana defining their common boundary.

20 Suriname was governed as a Colony until shortly after  
21 the Second World War, when there began a process of devolution  
22 through a series of roundtable conferences involving all  
23 overseas territories as well as the Netherlands in Europe. It  
24 was interrupted by the revolution in the Netherlands East  
25 Indies which resulted in that Colony seceding and becoming the

12:30:25 1 independent state of Indonesia in 1949.

2           The process of devolution then continued with the  
3 remaining territories of the Netherlands Antilles and Suriname.  
4 Suriname attained a large measure of self-government in 1950  
5 and on 15 December 1954, when the Charter for the Kingdom of  
6 Netherlands entered into force, a momentous occasion for  
7 Suriname on its long road to independence, Suriname became a  
8 fully autonomous part of the Kingdom which, in effect, as a  
9 result of this reconstruction, acquired the features of a  
10 Federal state. From that day, the Kingdom, as the sole subject  
11 of international law, consisted of three formally equal parts  
12 called countries consisting of the Netherlands--that is the  
13 country in Europe--the Netherlands Antilles, and Suriname.

14           It is important to note that as a result of its new  
15 status, Suriname no longer was considered by the United Nations  
16 to be a nonself-governing territory. The achievement of its  
17 new status was regarded as an exercise of its right of  
18 self-determination by opting for integration in the Kingdom of  
19 the Netherlands while the option of future independence  
20 remained open.

21           Thus, under the new constitutional arrangement after  
22 1954, the country the Netherlands, the country in Europe, could  
23 no longer be considered the "colonial power" in respect of  
24 Suriname, since Suriname has become an equal part of the  
25 Kingdom of the Netherlands.

12:32:03 1 Under the Charter for the Kingdom of the Netherlands,  
2 the constituent parts are fully autonomous with respect to  
3 their internal affairs. Consequently, Suriname was exclusively  
4 competent with respect to, among others, its natural resources  
5 policy, and this meant, for example, that the exploration and  
6 exploitation of the natural resources of the continental shelf  
7 was a matter for the Suriname government.

8 The Kingdom, not to be confused with the constituent  
9 country the Netherlands, was exclusively competent for defense,  
10 foreign relations, nationality matters and a few others, the  
11 so-called Kingdom affairs. Thus, the Ministries of Defense and  
12 Foreign Affairs were organs of the Kingdom. And although  
13 located in the Hague in the formulation of execution of the  
14 Kingdom's policies, they always needed to consider the  
15 interests of all three parts of the Kingdom on an equal  
16 footing. As the record shows, this was not always easy, and  
17 certainly during the first years of its new status, Suriname  
18 had to make great efforts to ensure that its interests were not  
19 subordinated to those of the country the Netherlands, as had  
20 happened during the colonial past. I will illustrate this with  
21 the example of continental shelf delimitation in a moment.

22 The conclusion of international agreements was, by  
23 definition, a Kingdom affair. All international agreements  
24 were therefore always formally concluded by Kingdom, even if  
25 they affected exclusively one of the countries of the Kingdom.

12:33:46 1 The provisions of the Kingdom's Charter addressing  
2 international agreements, Articles 24 to 28, taken together  
3 resulted in the following situation. And for your ease of  
4 reference, you can't read them there, but there is the text of  
5 an English translation of these provisions of the Kingdom  
6 Charter in your daily Judges' folder under Tab B(2). This is a  
7 copy of Annex 4 to the Article by Sondaal mentioned in footnote  
8 12 of the memorandum on Suriname's constitutional position.

9 First, all international agreements to be concluded by  
10 the Kingdom affecting Suriname needed the approval of  
11 Suriname's Parliament, as you can find in Article 24.

12 Second, Suriname must be consulted in the preparation  
13 of agreements with other states that would affect it, Article  
14 27.

15 And thirdly, less important here but illustrative of  
16 Suriname's position, Article 28, says that Suriname could  
17 accede to membership of an international organization on the  
18 basis of an agreement concluded by the Kingdom. And, in  
19 effect, Suriname did become a member or associate member of  
20 several international organizations.

21 In other words, Mr. President and Members of the  
22 Tribunal, these provisions of the Charter had the effect that  
23 Suriname could prevent any agreements concluded by the Kingdom  
24 that affected Suriname from becoming binding on the territory  
25 of Suriname, since its Government's or Parliament's approval

12:35:21 1 would be required, and had to be consulted in the preparation  
2 of international agreements affecting it.

3 Stated more positively, as a result of its  
4 constitutional position, the views of the Government of  
5 Suriname would determine the policies of the Kingdom in respect  
6 of matters affecting it. When those policies also affected the  
7 interests of other parts of the Kingdom and vice versa,  
8 coordination was required which was done through the Ministry  
9 of Foreign Affairs.

10 Mr. President, Members of the Tribunal, in the  
11 practice that developed soon after 1954, this meant that  
12 Suriname's officials were involved from an early stage in the  
13 negotiations of international agreements affecting Suriname,  
14 and that when the agreement exclusively concerned Suriname, its  
15 government would get the lead in the negotiations, and there  
16 are numerous examples of international agreements in the field  
17 of, for example, taxation or air transport negotiated and  
18 concluded by the Caribbean countries of the Kingdom.

19 This practice is illustrated clearly by the  
20 negotiations on the territorial dispute with Guyana, a matter  
21 of utmost importance to Suriname. The Ministry of Foreign  
22 Affairs of the Kingdom had to act pursuant to policies  
23 determined by the Government of Suriname in Paramaribo. It is  
24 clear from the records that officials in the Ministry of  
25 Foreign Affairs and officials of Suriname might at times have

12:36:51 1 had different views on the preferred positions to be taken, but  
2 the simple fact is that The Hague could not have struck a deal  
3 with London. It was the government in Paramaribo which had to  
4 be given the last word, no matter what officials in The Hague  
5 thought the position should be.

6 By 1952, it had become clear, because of a resolution  
7 adopted by its Parliament, that Suriname would not accept the  
8 entire 1939 draft Treaty prepared during colonial times, which  
9 explains why the 1949 British initiative to revive this draft  
10 did not get a positive response from The Hague. The  
11 delimitation of the continental shelf was an entirely new issue  
12 for the Government of Suriname in the 1950s, when capacity  
13 building in this country in order to fully exploit its newly  
14 acquired status had only recently begun.

15 As Guyana has mentioned, in August 1958, the Kingdom  
16 of the Netherlands initiated discussions with the United  
17 Kingdom on the Guyana-Suriname continental shelf boundary,  
18 referring to Article 6(2) of the recently adopted Geneva  
19 Convention on the Continental Shelf, as providing the basis for  
20 the drawing of the boundary. That is Annex 66 to Guyana's  
21 Memorial. This will be explored further by my colleague,  
22 Mr. Colson, in a later presentation, who will show that there  
23 is no evidence to suggest that this proposal was understood by  
24 Suriname to mean its acceptance of a strict equidistance line.

25 Suriname's adoption of the 10-degree position is

12:38:29 1 reflected in a 1962 proposal for a draft Treaty by the Kingdom  
2 of the Netherlands--Annex 91 in Guyana's Memorial--which was  
3 the result of the Suriname Government position responding to  
4 the 1961 British proposal.

5           The Diplomatic Note of the 3rd of February 1966 by the  
6 Kingdom of the Netherlands to the United Kingdom--of which you  
7 will find a copy in Annex 68 to Guyana's Memorial--is also a  
8 perfect example of the situation I outlined before. It  
9 reflected Suriname's position with respect to the boundary line  
10 for the continental shelf. It is helpful to look at this  
11 episode of the mid 1960s in more detail. It was an episode  
12 marked by intensive discussions in which the anticipated  
13 independence of Guyana as well as the dispute between the  
14 Netherlands and Germany over the delimitation of the  
15 continental shelf in the North Sea were important factors.

16           The Kingdom Ministry of Foreign Affairs was involved  
17 in a delicate balancing act. This is one example of a  
18 situation where the Kingdom had to coordinate the interests of  
19 its various parts and found it difficult to do so, and perhaps  
20 for a while might have been seen as not speaking with one  
21 voice. In the dispute with Germany, which came before the  
22 International Court of Justice, it was in the interests of the  
23 country the Netherlands, but not necessarily Suriname, to  
24 advance a strict equidistance approach leaving little room for  
25 special circumstances. At the same time, the Kingdom squarely

12:40:17 1 stood behind the position of Suriname in respect of its  
2 continental shelf boundary with Guyana, as can be seen clearly  
3 from the report on a discussion held on the 30th of  
4 November 1965 at the Ministry of Foreign Affairs in The Hague.

5 A translation of extracts from this report was  
6 included by Guyana in its Memorial, Annex 43. At this meeting,  
7 the Secretary-General of the Ministry of Foreign Affairs  
8 stated--and the Secretary-General is the highest civil servant  
9 of the Ministry--stated to the delegation from Suriname at the  
10 start of the meeting that, and I quote, "The Ministry of  
11 Foreign Affairs, as instructed by Minister Luns, will do  
12 everything possible to defend as vigorously as possible before  
13 the British and British Guiana Governments the Surinamese  
14 standpoint on the demarcation of the border between Suriname  
15 and British Guiana as adopted by the Surinamese Parliament on  
16 the 7th of October 1965." And that is what happened: The  
17 Kingdom endorsed Suriname's position, as is demonstrated by the  
18 3rd of February 1966 Diplomatic Note to the United Kingdom I  
19 just referred to, and henceforth.

20 Mr. President and Members of the Tribunal, the  
21 position of the Netherlands in the North Sea Continental Shelf  
22 Case is now largely of historic interest, and for your purposes  
23 it is irrelevant. It was rejected by the ICJ. At this point,  
24 it is interesting to note that eventually Suriname's views on  
25 the law applicable to delimitation of the continental shelf

12:42:07 1 consistently and vigorously expressed since 1961 were  
2 vindicated by the ICJ judgment and subsequent developments,  
3 including the U.N. Law of the Sea Convention.

4           The 1966 Marlborough House Talks with representatives  
5 of the newly independent Guyana were conducted by Suriname on  
6 behalf of the Kingdom, and we know what that position--what  
7 position Suriname advanced there. In preparing for these  
8 talks, Suriname knew it was not constrained by earlier  
9 diplomatic exchanges of the Kingdom with the British, and this  
10 had been confirmed by Foreign Minister Luns, the same Minister  
11 I referred to already, of the Netherlands who had in a meeting  
12 with the Prime Minister of Suriname in 1966 explicitly  
13 expressed the view that the Kingdom, and thus Suriname, was not  
14 legally bound by earlier diplomatic correspondence with the  
15 British on the Guyana-Suriname boundary issues. An English  
16 translation of the report on this meeting is in Annex 8 to  
17 Guyana's Reply.

18           Apparently, there is some misunderstanding here.

19           ARBITRATOR SMIT: Where is it in the bundle?

20           PROFESSOR SOONS: It's a document where the Minister  
21 clearly says what I already referred to, that Suriname is not  
22 legally bound by earlier diplomatic correspondence. That's  
23 almost a literal quote from this Annex 38 to Guyana's Reply. I  
24 don't have the slide, apparently, at the moment.

25           Annex 38 of Guyana's Reply. That's where the document

12:44:34 1 is.

2 Another highly relevant example in this context of  
3 Suriname negotiating and concluding a treaty on behalf of the  
4 Kingdom of the Netherlands is the 1971 agreement for the  
5 establishment of the Suriname-Guyana Commission. A copy of  
6 that agreement was attached by Suriname to its Memorandum on  
7 Preliminary Objections as Annex 10.

8 To conclude the historical review, on the 25th of  
9 November '75, Suriname became independent, and thus its  
10 constitutional position within the Kingdom of the Netherlands  
11 ended; and on the 4th of December 1975, it was admitted as a  
12 member to the United Nations.

13 Mr. President, Members of the Tribunal, I now come to  
14 my conclusions. The first is that it is incorrect and  
15 inappropriate to refer to any positions taken by the Kingdom of  
16 Netherlands after 1954 as being those of the colonial power in  
17 regard of Suriname.

18 The second is that at least since 1954, the views of  
19 Suriname determined the position of the Kingdom of the  
20 Netherlands in respect of the boundary issues between Guyana  
21 and Suriname. Any agreements to be concluded by the Kingdom  
22 were always subject to eventual approval of Suriname and, as we  
23 have shown, since the mid 1960s, actually Suriname took the  
24 lead in the negotiations.

25 And finally, Suriname is in no way bound, as Guyana

12:46:18 1 argues, by views that may have been expressed by officials of  
2 the Ministry of Foreign Affairs of the Kingdom of the  
3 Netherlands and internal discussions or discussions with  
4 officials of the Government of Suriname. Those are of merely  
5 historical interest. Professor Greenwood has already earlier  
6 mentioned this as well. What counts here for the purpose of  
7 determining the position of Suriname on the international law  
8 are the views expressed externally by the Kingdom, and as I had  
9 just demonstrated, these were the views of Suriname, views that  
10 it has consistently held during all the years of this dispute.

11           Mr. President, Members of the Tribunal, this concludes  
12 my presentation. I think this is right in time for the  
13 officially planned lunch break. I thank you for your  
14 attention. Mr. President, unless I can be of further  
15 assistance to the Tribunal, I propose that after the lunch  
16 break you would give the floor to my colleague, Dr. Oude  
17 Elferink, who will continue the presentations on behalf of  
18 Suriname.

19           ARBITRATOR FRANCK: Professor Soons, you have  
20 enlightened us on the constitutional position regarding foreign  
21 policy within the Kingdom of the Netherlands prior to  
22 Suriname's independence in 1975, but you have not enlightened  
23 us as to the international law position pertaining to the right  
24 of the Kingdom of the Netherlands to take actions that  
25 pertained to a constituent part of what you described as a

12:48:10 1 Federal system. Should we not hear a bit about the  
2 international law that pertains to the governments of Federal  
3 systems to commit parts of the Federation with or without the  
4 consent of that federated part?

5 PROFESSOR SOONS: Thank you for that question.

6 I think the extent that the constituent parts could  
7 act externally is entirely determined by the Constitution of  
8 the Kingdom of the Netherlands, and externally, as the sole  
9 subject of international law, it was the Kingdom and the  
10 Kingdom's position that counted internationally. Nationally,  
11 these were determined in the way I described, and I think that  
12 for our purposes, looking at what happened, and in what way  
13 Suriname as the constituent part of at that time the Kingdom of  
14 the Netherlands was bound by any positions, those are the  
15 positions expressed externally by the Government of the Kingdom  
16 of the Netherlands.

17 ARBITRATOR FRANCK: Thank you very much, Professor  
18 Soons.

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

21 These hearings will be resumed this afternoon at  
22 14:30. Thank you very much.

23 (Whereupon, at 12:49 p.m., the hearing was adjourned  
24 until 2:30 p.m., the same day.)

25

12:49:46 1

## AFTERNOON SESSION

2 PRESIDENT NELSON: Again we shall hear Professor  
3 Greenwood.

4 PROFESSOR GREENWOOD: Yes, but not for very long this  
5 time, Mr. President. Just a couple of matters of housekeeping,  
6 if I may.

7 First of all, you should have now received a diagram  
8 or plan showing which number of the Suriname team is speaking  
9 on what subject and at what stage in the next four days. That  
10 was done over lunchtime, and I believe it has been handed in.

11 Secondly, there was a question just before we rose for  
12 the lunch adjournment about one of Professor Soons's documents.  
13 I'm sorry, despite our best efforts over lunch, it has not been  
14 possible to get this document copied for you, but we will put  
15 it in the Judges' book tomorrow, and I would suggest it should  
16 go in as document C(3). We have it on screen at the moment.  
17 That is the document in question, Annex R38, but we will have  
18 it copied and put in your bundles.

19 And the third point which I neglected to say at the  
20 beginning of my speech this morning is that there is a table of  
21 contents for each of the blocks of documents within your  
22 bundle. So, if you turn behind Tab A, there is the Table of  
23 Contents for my 40 documents, and then there is a similar short  
24 Table of Contents behind Tab B, and so forth. Again, it's  
25 following the practice that Guyana--following the excellent

14:36:44 1 example Guyana set us.

2 Mr. President, if I could ask you to call on Dr. Alex  
3 Oude Elferink to give our next submission.

4 PRESIDENT NELSON: Thank you, Professor Greenwood.

5 And now I call upon Dr. Alex Oude Elferink. I hope I  
6 got the pronunciation right.

7 DR. OUDE ELFERINK: Yes, you did, Mr. President.  
8 Thank you, Mr. President.

9 Mr. President, Members of the Tribunal, it is an honor  
10 for me to appear before you today to speak on behalf of the  
11 Republic of Suriname.

12 Mr. President, you already have had a taste of the  
13 historical context of this case from Professor Greenwood. I  
14 shall now address the historical material in a bit more detail  
15 as it is relevant both to the question of jurisdiction and to  
16 the merits of the case, should the Tribunal find that it has  
17 jurisdiction.

18 My presentation will consist of three parts. First, I  
19 will deal with the 30-year period in which the 10-degree line  
20 was respected as the boundary in territorial waters. Second, I  
21 will say something about the Marlborough House Talks which took  
22 place in 1966. And the last part of my presentation will deal  
23 with developments after the Marlborough House Talks.

24 Mr. President, as you heard this morning, the land  
25 boundary between Suriname and Guyana has its origins in the

14:38:16 1 1799 agreement between the Governors of Suriname and Berbice.  
2 Under that agreement, Suriname ceded territory on the western  
3 bank of the Corantijn River to Berbice, which is now part of  
4 Guyana. Professor Greenwood has mentioned that to you, of  
5 course, this morning already in quite some detail. What is  
6 essential to note here is that the river itself remained part  
7 of the territory of Suriname and that the Agreement of Cession  
8 did not define the end point of the western Bank of the  
9 Corantijn at sea, but only distinguished between the river bank  
10 and the seacoast.

11 Mr. President, to illustrate the difficulty involved  
12 in establishing the end point of the western bank of the river,  
13 let me show you a figure of the geography of the mouth of the  
14 Corantijn. This figure was already included in Suriname's  
15 Preliminary Objections, and what you see here, and that is the  
16 arc which is indicated here, that indicates more or less the  
17 extent of the western headland of the Corantijn, and that, we  
18 submit, in Suriname's view, is the area which is relevant for  
19 determining at which point the river bank might change into the  
20 seacoast, as is provided for under the 1799 agreement. The  
21 methodology behind this headland is explained further in Annex  
22 35 to the Preliminary Objections of Suriname.

23 Thus far, Guyana has not made any comments on this,  
24 but let me say something further about it. As can be seen on  
25 this headland, there is not really a point at which the

14:40:06 1 headland sharply changes direction. That makes it difficult to  
2 establish a point at which the river bank changes into the  
3 seacoast at a point that sharply changes direction. In its  
4 Preliminary Objections, Suriname presented one possible method  
5 to establish the point at which the river bank changes into the  
6 seacoast. That exercise was used to illustrate that the  
7 location of the end point of the river makes a difference in  
8 any maritime delimitation. Guyana has mistakenly assumed that  
9 that point, which was identified as Point X, is the most  
10 northern starting point possible. It is not. As you see now,  
11 Point X is indicated on the screen, and it is somewhere in the  
12 middle of the headland. It certainly is not a point indicating  
13 the extremity of the headland.

14           You also see point 1936 which, as you can see, is at  
15 the southern end point of the headland approximately.

16           As was also explained in the Rejoinder at paragraph  
17 2.67, all of the headland represents the area in which the  
18 terminus of the land boundary can be located. To establish the  
19 point under the 1799 agreement, however, it would be necessary  
20 to interpret the 1799 agreement. I will not go into that  
21 matter.

22           What should be clear from the figure is that Point X  
23 is certainly not the most northern point on the headland of the  
24 Corantijn. There are clear implications for the delimitation  
25 at sea. If it is rejected that the 10-degree line delimits the

14:42:00 1 territorial waters, as Guyana now does, it is not possible to  
2 simply pretend that one can use Point X or, for that matter,  
3 the 1936 Point, to arrive at an alternative starting point at  
4 sea.

5           Professor Greenwood has already told you about the  
6 1934 and 1935 draft treaties and the establishment of the  
7 Boundary Commission. The Netherlands and British Commissioners  
8 took up their work at the mouth of the Corantijn in 1936.  
9 Observations at the mouth of the river revealed that the  
10 28-degree line, which had originally been envisaged as the  
11 territorial sea boundary, did not guarantee that the  
12 Netherlands would have the sole responsibility for the care and  
13 supervision of all shipping traffic in the approaches to the  
14 river. The Netherlands Commissioner raised this issue when the  
15 Commissioners inspected the location to erect a beacon in 1936.  
16 That is recorded in the report on the work of the Commissioners  
17 at the mouth of the Corantijn, which was also prepared in 1936.  
18 I intended to read the whole paragraph to you, but as it has  
19 already been brought to your attention before, I think it's  
20 sufficient to point out to you that the relevant paragraph is  
21 paragraph two, which is now on the screen.

22           Counsel for Guyana has made much of the fact that the  
23 western channel has not been buoyed. However, the report of  
24 the Commissioner states that the 10-degree line is intended to  
25 leave the navigational channel in the territorial waters of

14:43:43 1 Suriname. The laying of buoys is only one aspect of  
2 controlling and taking care of shipping traffic in a  
3 navigational channel. The report of the Commissioners also  
4 points out that the Netherlands Commissioner was concerned  
5 about the navigational channel throughout its length, so that  
6 is not only in the territorial waters of Suriname, but also in  
7 the waters beyond. In just a moment, I will refer you to a map  
8 prepared by the Dutch head of delegation, Vice Admiral Kayser  
9 that also proves that point. The 10-degree line was intended  
10 to leave all of the navigational channel under the control of  
11 the Netherlands and to prevent the territorial sea of British  
12 Guyana to extend east of that line.

13           As Professor Greenwood has shown, the location of the  
14 10-degree line was fixed by the creation of two markers on a  
15 bearing of 10 degrees, a line joining them and extended  
16 seawards then gave the terminus of the land boundary on the  
17 low-water line and extended further to sea as the boundary  
18 between the territorial sea of British Guiana and Suriname.

19           The Netherlands and the United Kingdom heads of the  
20 mixed Commission reported to their respective governments on  
21 their work. The Netherlands head of the Commission, Vice  
22 Admiral Kayser, explained to the Minister for the Colonies in a  
23 letter of 20 June, 1937, and this is included at Annex 14 of  
24 the Counter-Memorial, the letter indicates that only the most  
25 seaward marking of mark "A" had been erected in 1936. The

14:45:31 1 other boundary marks and the wooden beacon had not been placed.  
2 The Commission had agreed that both governments should first  
3 accept the proposal of the Commission in respect of the  
4 delimitation in the territorial waters.

5 A chart enclosed with the 20 June, 1937, letter of  
6 Vice Admiral Kayser which I referred to before indicated that  
7 10-degree line in the territorial waters. And that is now on  
8 the screen. It is not indicated very clearly, but we have  
9 enhanced this a bit, so if that could be brought on, but it's  
10 actually shown is first the Red Cross--

11 PROFESSOR SANDS: Sorry, sir, just a question. On the  
12 other Annex documents here at the tab, there is a reference as  
13 to which Annex it is in the Counter-Memorial or the Rejoinder,  
14 and I wonder if you could just tell us as we are having trouble  
15 locating it in the Counter-Memorial and Rejoinder. I'm sure  
16 that it's there, but--

17 DR. OUDE ELFERINK: I'm sorry, to which document?

18 PROFESSOR SANDS: The chart that's on the screen right  
19 now, if you could just direct us to where it is in the  
20 pleadings, we would be very grateful.

21 DR. OUDE ELFERINK: I'm sorry about that. If I'm not  
22 mistaken, it's either Annex 12 or Annex 13 of the  
23 Counter-Memorial.

24 As you can see, the chart shows a cross, which is  
25 marker A or 1936 Point, Point 61, and then the boundary, in

14:47:04 1 territorial waters was indicated by a line running in a  
2 10-degree direction, and what can we establish about it is that  
3 the boundary runs for about 6.5, 6, 6.5 miles in that direction  
4 and that is explained by the fact that at 6 miles the boundary  
5 is 3 miles from the coast of British Guiana.

6 Mr. President, let me return to the work of the  
7 Boundary Commission in 1936. Major Phipps, the head of the  
8 British Commission, explained he proposed to delimit the  
9 territorial waters by a 10-degree line in a letter to the  
10 Undersecretary of State for the Colonies. This letter can be  
11 found at Tab 4 of the core documents of Suriname. That letter  
12 of Major Phipps also refers to the possibility that the marker  
13 could be moved back, and Professor Greenwood has also referred  
14 to this matter.

15 The letter indicated that the 10-degree line could be  
16 moved back to a 10-degree line, if the--to a 28 degree line if  
17 the 10-degree line were not accepted by both governments.  
18 Guyana has referred to the letter of Major Phipps to argue that  
19 the 1936 Point was not intended to be final or that the 1936  
20 point was intended to be final, but the 10-degree line was not.

21 On screen, we have now the part of the letter of Major  
22 Phipps to which Guyana refers. The letter says only that it  
23 would be relatively easy to rebuild the direction pillar if the  
24 10-degree line were not acceptable for some reason. It does  
25 not say that the 10-degree line could be changed in the future

14:49:00 1 if circumstances changed. In fact, the 10-degree line was not  
2 changed. The United Kingdom did express the desire--did not  
3 express a desire to the 28-degree line. Instead, as is also  
4 set out in paragraph 3.9 of the Counter-Memorial, the  
5 Netherlands and the United Kingdom accepted the proposal for a  
6 10-degree line. Following that acceptance, the Commissioners  
7 finalized their work at the mouth of the Corantijn. In 1938  
8 they erected the wooden beacon on the 10-degree azimuth running  
9 through boundary marks A and B. That work is reported in the  
10 minutes--included in Annex 2 to the Preliminary Objections and  
11 can also be found at Tab C(5) of your Judges' folder.

12 Counsel for Guyana has also argued that the  
13 communications of the Commissioners to their respective  
14 governments indicate that the other end point of their land  
15 boundary had been definitively fixed by the Commissioners.  
16 That is not correct. The Commissioners had been asked by their  
17 governments to fill in certain details of a draft Treaty.  
18 After they had done this, they reported on their work to their  
19 respective governments. Their work was only preparatory, and  
20 the preparatory nature of the Commission's work is confirmed by  
21 the letter of Major Phipps.

22 And this document can be found at Tab A(22) of today's  
23 folder. And the letter reads in the part which is now on the  
24 screen, "Incidentally, the Netherlands Commissioner  
25 inadvertently confirmed my suspicions that he wished to leave

14:50:47 1 the Cutari boundary--this concerns the dispute in the south  
2 over the New River Triangle to which Professor Greenwood  
3 referred earlier, the letter reads, "wished to leave the Cutari  
4 boundary uncertain in order to provide an excuse to reopen the  
5 New River question. He explained that the question whether we  
6 had found the correct Cutari was, in his opinion, of little  
7 importance because he himself and many other people in Holland  
8 were convinced that the New River was the boundary. However,  
9 his instructions were to fix the tri-junction point at the  
10 source of the Cutari, and he was prepared to do no and to leave  
11 the question of the New River in the Dutch Parliament to  
12 decide." In short, the Commissioners knew that their work was  
13 not intended to be binding.

14           After the Commission had completed its work, the  
15 United Kingdom submitted a new draft Treaty to the Netherlands  
16 in 1939. That draft Treaty provided in its Article 3, the  
17 whole Treaty is available at the core documents binder at Tab  
18 4. Article 3 which now is on the screen provides that a  
19 boundary of the territorial waters was formed by the 10-degree  
20 line. Article 1(2) of the draft Treaty, to which Article 3  
21 refers, makes clear that the starting point of the boundary of  
22 the territorial waters is the point at which the 10-degree line  
23 intersects with the shoreline, not the 1936 Point. And as we  
24 have seen this morning, there is a considerable distance  
25 between the low-water line and the mark "A."

14:52:32 1           So, the 1936 Point is only one of the two reference  
2 points also in this Treaty to establish that starting point for  
3 the 10-degree line in territorial waters.

4           The 1939 draft Treaty was never finalized. The  
5 negotiations were interrupted by the outbreak of the Second  
6 World War, but as you already heard this morning, the beacon  
7 was built, mariners informed, and both governments acted on the  
8 basis that the boundary in the territorial sea was at the  
9 10-degree line. In 1949, the United Kingdom proposed  
10 resumption of negotiations submitting a new draft Treaty to the  
11 Netherlands, and that Treaty can be found at Annex 9 of the  
12 Preliminary Objections. The provisions on the delimitation of  
13 the territorial waters between Suriname and Guyana was the same  
14 as that contained in the 1939 draft; but, certain other  
15 provisions differed between the two treaties. The Netherlands,  
16 as has already been said, apparently did not reply to this  
17 proposal; however, the Netherlands did indicate its position on  
18 the boundary of the territorial waters between Suriname and  
19 British Guiana in a letter to the International Law Commission  
20 in 1933, which is contained at Tab 6.

21           Guyana has argued that this letter confirms, and that  
22 has already been mentioned, that the starting point for the  
23 maritime delimitation had been fixed. During day one of the  
24 hearings, Guyana has again referred to the ILC letter as  
25 expressing support for acceptance of the 1936 Point by the

14:54:18 1 Netherlands and of a purported acceptance of all the boundary  
2 contained in a draft Treaty which was concerned with all of the  
3 land boundary between Suriname and Guyana. However, if you  
4 look at the letter, it only says that it gives the view of the  
5 Netherlands on the delimitation of the territorial sea between  
6 adjacent states, and specifically for the case of Suriname it  
7 says that the western boundary of Suriname has been settled in  
8 a draft Treaty between the Netherlands and the United Kingdom,  
9 the ratification of which has been interrupted by the last war,  
10 and then it refers to the fact that the boundary is delimited  
11 by the 10 degree east of true north line from the landmark  
12 referred to in Article 1(2) above. And, of course, that only  
13 is the territorial waters boundary.

14           The letter is thus very specific. It notes that the  
15 text is contained in a draft Treaty that has not been ratified.  
16 And second, it notes that the delimitation in the territorial  
17 waters is along the 10-degree line, a fact that Guyana never  
18 mentioned when it talks about the letter.

19           Dr. Oxman will have more to say about this in due  
20 course.

21           In the second half of the 1950s, interest in oil and  
22 gas on the continental shelf of Suriname and British Guiana had  
23 developed, and both countries started to grant concessions to  
24 oil companies. As far as the 1936 Point and the 10-degree line  
25 are concerned, the oil concession practice of the parties

14:56:05 1 reveals that Suriname has always used the 1936 Point in  
2 combination with the 10-degree line. Guyana, on the other  
3 hand, delinked the 1936 Point from the 10-degree line and has  
4 employed various lines to the east of the 10-degree line to  
5 indicate the eastern limit of its concessions.

6           Shortly after the conclusion of the 1958 Geneva  
7 Conference on the Law of the Sea, the Netherlands proposed to  
8 the United Kingdom the delimitation of the continental shelf  
9 between Suriname and British Guiana. As has already been set  
10 out in detail in the written proceedings, experts at the  
11 hydrographic offices in both the Netherlands and the United  
12 Kingdom looked at the technical aspects of this matter, but  
13 there is nothing in the record to show that the two governments  
14 ever agreed on anything.

15           First, I would like to refer to the document in Tab  
16 C(7). This is a letter of Commander Kennedy of the United  
17 Kingdom Hydrographic Office to a Mr. Stacpoole of the Colonial  
18 Office of 15 January, 1959. In this letter, and the specific  
19 section is on page 2 of the document, Commander Kennedy  
20 suggested wording to be inserted in a draft Treaty. In the  
21 territorial sea, his proposal respected the 10-degree line.  
22 That line would continue to the outer limit of the territorial  
23 waters from the low-water mark. As Commander Kennedy  
24 indicated, that resulted in a 10-degree line measuring about 6  
25 nautical miles. Again, that is 3 nautical miles from the coast

14:57:51 1 of Guyana to the north of the 1936 Point.

2           The Netherlands Hydrographic Office prepared a map  
3 showing various lines in the mouth of the Corantijn in 1959.  
4 This is the Dutch Chart 222 that figured already in earlier  
5 stages of this proceeding. There are two copies of this chart  
6 in the record before you. One is at Figure 1 of the  
7 Preliminary Objections, and this is presumably a copy of what  
8 was given to the British Government. And the other version of  
9 the map is contained at Annex 14 of the Preliminary Objections  
10 and includes handwritten notations from 1959.

11           The chart basically shows that the Dutch side was  
12 looking at various options. Before putting the chart up on the  
13 screen, I would like to refer you to the letter in which the  
14 preparation of that map was requested, and you can find that  
15 letter at Tab C(8) of the Judges' folder. This concerns a  
16 letter of the head of the Legal Affairs Department of the  
17 Netherlands Ministry of the Navy to the head of hydrography of  
18 15 December, 1958.

19           A couple of points should be noted about this letter.  
20 To establish a starting point for the equidistance line, the  
21 Head of the Legal Affairs Department proposed drawing a closing  
22 line in the mouth of the Corantijn. The letter instructs the  
23 Head of Hydrography to take into account the maximum length of  
24 10 nautical miles, the maximum extent accepted by the  
25 Netherlands at that time. The letter indicates what they knew

14:59:39 1 for 1958, maximum length of 24 nautical miles was still under  
2 discussion. The letter also observes that the distance between  
3 the low-water lines at the natural entrance points of the river  
4 may exceed 10 nautical miles. In that case a closing line of  
5 10 nautical miles should be drawn on the inside of the natural  
6 entrance points of the river in such a way that the closing  
7 line closes off the maximum possible amount of water. That  
8 closing line can be seen on the figure that now is on the  
9 screen.

10 As you can see, the 1936 Point, which is indicated, is  
11 to the south of that closing line.

12 Moreover, this is a closing line of 10 nautical miles,  
13 and as the letter of the Head of Hydrography, the letter to the  
14 Head of Hydrography indicated, that was the maximum limit that  
15 could be used. If you would take into account the maximum  
16 permissible extent that can be used today to establish a  
17 closing line, you could draw a closing line which is well to  
18 the north of Point X, which has been shown to you before.

19 The Netherlands presented the 1959 map to the United  
20 Kingdom, and Guyana has made much of the fact that the British  
21 officials questioned certain aspects of the map, and it's  
22 certainly true that the British side had quite a lot to say to  
23 one another about this chart, but it is not clear that they had  
24 anything to say to the Dutch side about it. The British did  
25 not provide the Netherlands with any of the charts that

15:01:28 1 Commander Kennedy may have been working on at this time, nor is  
2 there any indication that the British side made any comments to  
3 the Netherlands about this chart 222.

4           Only in 1961, the United Kingdom presented a further  
5 draft boundary Treaty to the Netherlands, and this can be found  
6 in the binder of core documents at Tab 5.

7           For the delimitation of the territorial sea, this  
8 draft adopted the approach that had been proposed by Commander  
9 Kennedy in the 1959 letter to which I just referred you to.  
10 Article 1(2) of this draft Treaty indicates that the 10-degree  
11 line running through the concrete marks and the wooden beacon  
12 erected in the 1930s is used to establish the beginning of the  
13 left bank of the Corantijn on the shoreline. Article VII of  
14 the draft Treaty provides the maritime boundary for 6 nautical  
15 miles from the most seaward of the marks. That is, the 1936  
16 point follows the 10-degree line.

17           It was this boundary which the Governor of British  
18 Guiana described to his Suriname counterpart in the letter  
19 shown to you by Professor Greenwood and included as Tab B(12)  
20 as, and I quote, "the existing boundary."

21           The draft Treaty prepared by the United Kingdom was  
22 not acceptable to Suriname, and in 1962, the Netherlands  
23 proposed a new draft Treaty to the United Kingdom, and this  
24 treaty can be found in your binder of core documents at Tab 6.  
25 This draft Treaty used mark "A" and "B" erected by the Boundary

15:03:35 1 Commissioners as a reference point to establish a 10-degree  
2 maritime boundary.

3           The United Kingdom did not attempt to abandon the  
4 10-degree line until 1965. In that year it submitted a further  
5 draft treaty to the Netherlands that for the first time  
6 provided that the boundary of all maritime zones was to be an  
7 equidistance line, and this Treaty can be found at Tab 7 of the  
8 core documents binder.

9           The draft Treaty used the 1936 Point to define the  
10 starting point of that equidistance line. Guyana has  
11 argued--and Professor Greenwood has referred to this this  
12 morning--that the British proposal to delimit the territorial  
13 sea applying the equidistance method was a consequence of  
14 changed circumstances. To support that contention, Guyana has  
15 referred to the letter from the Governor of British Guiana,  
16 Mr. Grey, to Mr. Stacpoole.

17           Before shortly referring to this letter, let me make a  
18 couple of preliminary observations. First, as was already  
19 noted, changed circumstances cannot be invoked to reject an  
20 existing boundary. Second, neither the Kingdom of Netherlands  
21 nor Suriname accepted the British proposal to use an  
22 equidistance line. Instead, they adhered to the existing  
23 territorial sea boundary.

24           Third, the British did not tell the Netherlands that  
25 their proposal was based on the concept of changed

15:05:11 1 circumstances if, indeed, it was. One may assume that the  
2 United Kingdom was not convinced that such an argument would  
3 carry any weight. In reality, the United Kingdom was not  
4 putting forward this new line as representing the existing  
5 legal position. It was advancing it as part of a proposal on  
6 the boundary as a whole, both land and sea.

7           The letter to which Guyana referred to substantiate  
8 this position that the boundary could be changed because of  
9 changed circumstances, and that there were changed  
10 circumstances or rather the letter only referred to supposed  
11 changed circumstances, can be found at Tab B(30). And what is  
12 perhaps most surprising about this letter, of course, is that,  
13 considering it is invoked to argue that there is no navigation  
14 in the western channel of the Corantijn, but the letter  
15 actually establishes beyond any doubt that the western channel  
16 was, in effect, being used. The care and supervision of  
17 shipping traffic concerns all vessels, not just larger vessels  
18 that used the eastern channel of the Corantijn, but also  
19 smaller vessels that used the western channel. Guyana seems to  
20 be arguing that the control and supervision of local shipping  
21 traffic, as opposed to seagoing traffic at the mouth of the  
22 Corantijn, is of no concern to Suriname. That is, of course,  
23 absurd.

24           Guyana, also, of course made reference to the  
25 statement by Mr. Fitz Jim, and he indicated that most of the

15:06:59 1 shipping traffic in the eastern channel was, indeed, local  
2 traffic, smaller vessels, but he also said that larger seagoing  
3 vessels were mainly using the eastern channel as indicated by  
4 Mr. Fitz Jim.

5           The 1965 draft Treaty was not acceptable to Suriname  
6 and the Netherlands. The Netherlands reacted to the British  
7 draft proposal in a Note Verbale from the Netherlands  
8 Ambassador in London to the principal Secretary of State for  
9 Foreign Affairs of 3 February, 1966, and that can be found at  
10 Tab 10. The Note Verbale confirmed that the position that the  
11 boundary in the territorial sea and the continental shelf  
12 should run from the left west bank of the Corantijn with a  
13 bearing of 10 degrees east of true north.

14           Now I turn shortly to the Marlborough House Talks.  
15 The delimitation of the territorial sea was one of the subjects  
16 of the Marlborough House Talks in June 1966. The importance of  
17 those talks, which provided the first opportunity for the  
18 representatives of Suriname and Guyana and to engage in direct  
19 discussions on all matters related to their mutual boundary has  
20 been stressed by both parties in these proceedings, and again  
21 by Guyana during its oral presentation. Suriname agrees.  
22 Notes on the meeting prepared by both sides have been put in  
23 the record, and they can be found at the core documents binder  
24 Tabs 9 and 10. The notes generally convey the same story. I  
25 will be referring to the notes prepared by Suriname as well as

15:09:07 1 those of Guyana. A comparison of both at times provides a  
2 better understanding of exactly what was said. Guyana made an  
3 argument about the 10-degree line at the Marlborough House  
4 Talks. On the screen we have the English translation of part  
5 of the notes prepared by Suriname. Mr. Shahabuddeen is  
6 speaking. Of course, he needs no further introduction.

7           He presents Guyana's views on the genesis of the 1936  
8 point and the 10-degree line. Reference is made to the  
9 concrete marks laid down by the Boundary Commission in 1936 and  
10 the 10-degree line. In the first sentence of the second  
11 paragraph--in the first sentence of the second paragraph it is  
12 noted that the 10-degree line was intended to limit the  
13 boundary in territorial waters.

14           Next, Mr. Shahabuddeen notes that against this  
15 background, the 10-degree line offers no support for fixing the  
16 boundary in the contiguous zone and the continental shelf.

17           What do the Guyanese notes of the Marlborough House  
18 Talks have to say on this point? This text also starts by  
19 recalling the genesis of the 10-degree line. As you can see,  
20 after explaining this, the second paragraph states that, "Seen  
21 against this background, the 10-degree line does not assist us  
22 to delimit the frontier in the sea."

23           That might seem like a complete rejection of the  
24 10-degree line. However, just a couple of lines down, the same  
25 reference to only the contiguous zone and the continental shelf

15:11:00 1 that we just saw in the Suriname notes is made. No reference  
2 is made to the territorial sea. Thus, it is clear that at the  
3 Marlborough House Talks Guyana conceded that the 10-degree line  
4 running through the concrete marks laid down by the Mixed  
5 Boundary Commission is relevant to the delimitation of the  
6 territorial sea.

7 I come now to the period after the independence of  
8 Suriname. Suriname became independent on 25 November 1975, and  
9 on that day the Prime Minister of the Netherlands wrote a  
10 letter to the Prime Minister of Suriname defining the territory  
11 of Suriname. That letter can be found at the core documents  
12 binder at Tab 12.

13 That letter includes a reference to the boundary as  
14 follows: The western boundary is formed by the low-water line  
15 on the left bank of the Corantijn, from its origin to mouth.  
16 Up to the point where the river bank changes into the coastline  
17 and from this point along a line in the direction of 10 degrees  
18 east of true north through the territorial sea, without  
19 prejudice to the rights which, according to international law,  
20 belong to the sovereign Republic of Suriname as a coastal  
21 state.

22 Guyana has argued that the letter only refers to the  
23 boundary in the territorial sea. That is not quite correct.  
24 The letter explicitly states that it is concerned with the  
25 territory of Suriname, not maritime zones beyond the

15:12:55 1 territorial sea. That is set forth in paragraph one--in the  
2 first paragraph of the letter. But, as we just saw, the letter  
3 provides that a definition of the western boundary of the  
4 territory of Suriname, including the territorial sea is without  
5 prejudice to the rights of Suriname in the maritime area beyond  
6 the territorial sea. And the letter confirms that in this  
7 maritime area, the boundary is also formed by the 10-degree  
8 line. The letter refers to the continuation of the same line,  
9 that is the 10-degree line.

10 Mr. President, counsel for Guyana have also argued the  
11 1975 letter only was concerned with a 3 nautical mile  
12 territorial sea. However, the letter itself does not refer to  
13 the breadth of the territorial sea, be it three or 12 nautical  
14 miles, and by 1975 a 12-nautical-mile limit was, of course,  
15 already broadly accepted at a Third United Nations Conference  
16 on the Law of the Sea. To assert, as Guyana does, that the  
17 1975 letter only had relevance for a 3 nautical mile  
18 territorial sea, shows a lack of understanding of the  
19 historical context in which the letter was written.

20 In recent decades, Suriname has repeatedly brought it  
21 to the attention of Guyana that Suriname considers that the  
22 maritime boundary between itself and Guyana follows the  
23 10-degree line linked to the 1936 Point. For instance, a  
24 Diplomatic Note of the Embassy of Suriname in Guyana to the  
25 Ministry of Foreign Affairs of Guyana observed, and this is at

15:14:48 1 Tab 11, and the note states, "The western sea boundary of the  
2 Republic of Suriname is formed by the line north 10 degrees  
3 east drawn from latitude and then a reference is made to the  
4 coordinates of mark "A" established by the Boundary Commission.

5 I will not take you in detail through all the other  
6 instances in which Suriname refers to the 1936 Point and the  
7 10-degree line. Let me just mention a few. Just before the  
8 CGX rig moved into the disputed area in June 2000, Suriname  
9 sent a Diplomatic Note to Guyana, and that was on 31 May, 2000.  
10 This document can be found at Tab 12, Tab C(12). At the  
11 CARICOM meeting, from 2 to 5 July, 2000, at which the incident  
12 with the rig that happened a month earlier was on the agenda,  
13 President Wijdenbosch of Suriname made a statement in which he  
14 set out the position of Suriname on the land and maritime  
15 boundary between Suriname and Guyana. At that meeting of all  
16 the heads of the Government of CARICOM, the delegation of  
17 Suriname also presented the report that was drawn up by the  
18 Mixed Netherlands United Kingdom Boundary Commission in 1936.  
19 That document and the work of the Commission have been  
20 discussed before. They confirmed Suriname's position that the  
21 1936 Point is a reference point to define the 10-degree line  
22 maritime boundary.

23 Mr. President, let me conclude by pointing out some of  
24 the most salient points of this overview of the history. The  
25 1936 Point was proposed for reasons of convenience entirely

15:16:49 1 related to the construction of the boundary in territorial  
2 waters.

3           Second, there is an agreement between the parties that  
4 the 1936 Point and the 10-degree line were adopted in the 1930s  
5 to safeguard the navigational interests of the Netherlands and  
6 to ensure that the British were not responsible for any aspect  
7 of navigation in the Corantijn.

8           To safeguard navigational interests of the Netherlands  
9 and to leave the navigational channel throughout its length  
10 under the control of the Dutch, the 10-degree line delimited  
11 all of the territorial waters of the Netherlands and the United  
12 Kingdom. That is clear from the chart showing the 10-degree  
13 line prepared by the head of the Boundary Commission, Vice  
14 Admiral Kayser, which was shown to you earlier.

15           It's also clear from the work of Commander Kennedy.  
16 His work recognized that the British Guyanese territorial sea  
17 could not extend east of the 10-degree line.

18           Finally, the 1936 Point is a reference point that is  
19 not itself located on the boundary. The 1936 Point, or Point  
20 61, or mark "A" was aligned on a 10-degree azimuth as a second  
21 mark, mark "B," and a wooden beacon to delimit territorial  
22 waters. Viewed in isolation, the 1936 Point had no  
23 significance for the boundary between Suriname and Guyana.  
24 There is no indication in the work of the Boundary Commission  
25 or anywhere else that the 1936 point could be severed from the

15:18:29 1 10-degree line. The 1936 point was one of three points marked  
2 "A," "B," and the wooden beacon visible from the sea, that  
3 served to identify the boundary in territorial waters. As we  
4 have seen, Guyana recognized as much during the Marlborough  
5 House Talks in 1966. At Marlborough House, Guyana admitted  
6 that the 1936 Point and the 10-degree line were linked. Guyana  
7 admitted that the adoption of the 1936 Point implied the  
8 10-degree line the limit of the territorial sea. If Guyana  
9 insists on the 1936 Point, then nothing could be clearer than  
10 that the boundary in the territorial sea is a 10-degree line  
11 starting from that point. Mr. President, that concludes my  
12 presentation. I suggest that maybe, if there are no questions,  
13 that this might be a good time to break for coffee, but I leave  
14 that to you, of course.

15 PRESIDENT NELSON: We have a question.

16 ARBITRATOR SMIT: What is the support for the  
17 proposition that even if one assumes that the northeast  
18 10-degree line defined the territorial sea up to a limit of 3  
19 miles that when the territorial sea was extended to a limit of  
20 12 miles, the line would continue along the northeast 10  
21 degree?

22 DR. OUDE ELFERINK: Professor Oxman will be dealing  
23 with that in more detail. But one of a couple of points that  
24 can be mentioned is the work of the Commissioners and also the  
25 draft Treaty, Treaty of 1939, do not specify a specific end

15:20:30 1 point. It only refers to the fact that all of the territorial  
2 waters are delimited by the 10-degree line. And also the  
3 navigational channel and navigation in the river extend beyond  
4 the 3 nautical mile limit seawards.

5 Thank you.

6 ARBITRATOR SMIT: Thank you.

7 PRESIDENT NELSON: Dr. Oude Elferink, whether the  
8 question is we stop here, you suggest that we stop here and  
9 have a coffee break of 15 minutes.

10 Thank you.

11 (Brief recess.)

12 PRESIDENT NELSON: I now give the floor to Professor  
13 Greenwood.

14 PROFESSOR GREENWOOD: Thank you very much,  
15 Mr. President. Thank you both for the floor and also for the  
16 fact that I can occupy it without having the background noise  
17 of the cocktail parties of the OAS, which will make my task  
18 simpler and probably shorter.

19 Mr. President, what I want to do before close this  
20 afternoon is to deal with the jurisdictional objections, or at  
21 least deal with a part of the jurisdictional objections, the  
22 larger part. There are, of course, separate Preliminary  
23 Objections in relation to Guyana's core submission, submission  
24 number 2, about the maritime boundaries claim for a boundary at  
25 the 34-degree line, and the issues raised in Guyana's claims

15:44:03 1 with submissions 3 and 4.

2 Now, with regard to submissions 3 and 4, Professor  
3 Murphy will deal with those along with the merits of those  
4 claims, if the word "merits" isn't putting it too high when he  
5 addresses it on Friday afternoon. I'm going to deal  
6 exclusively with Suriname's jurisdictional objection with  
7 respect to submission 2.

8 Now, this has attracted an enormous amount of concern,  
9 if I could put it that way, from my colleagues from Guyana.  
10 Let me make it quite clear, as I hope I did this morning, that  
11 Suriname is certainly not seeking to frustrate the working of  
12 this Tribunal, of UNCLOS in general, or of Part XV or any other  
13 part of UNCLOS in particular. What we are seeking to do is to  
14 ensure that this Tribunal exercises only such jurisdiction as  
15 it possesses.

16 Now, the jurisdictional issue that has arisen in this  
17 case is entirely of Guyana's own making. Guyana has chosen to  
18 proceed by bringing a unilateral application against Suriname.  
19 It's not an agreed recourse to arbitration. We make no  
20 complaint about that. Guyana is entitled under the Law of the  
21 Sea Convention to bring such a claim, but it means that it must  
22 show that the case falls within the provisions by which states  
23 have accepted jurisdiction under UNCLOS.

24 Now, what it has done instead is to frame its claim by  
25 reference to a so-called "land boundary terminus" which it now

15:45:31 1 appears to be somewhat embarrassed about itself. Well, that  
2 so-called "land boundary terminus," which isn't even on the  
3 land boundary, and then it has insisted that everything else  
4 must start from there.

5           Now, if it's put that way, this Tribunal, we say,  
6 cannot have jurisdiction. The maritime boundary has got to  
7 start somewhere. The normal place for it to start would be the  
8 terminus of the land boundary, if it's a boundary between two  
9 adjacent States. But the land boundary itself is not a matter  
10 that falls within the jurisdiction of an Annex VII Tribunal.  
11 It is not a matter which is governed by the Law of the Sea  
12 Convention, and therefore its determination cannot be a matter  
13 of the interpretation or application of the Law of the Sea  
14 Convention.

15           So, the way we put it is that there is no jurisdiction  
16 over Guyana's claim as formulated by Guyana. Now, we are  
17 therefore placed in a difficult position. Suriname is the  
18 Respondent in these proceedings. The proceedings are not of  
19 our choosing. We didn't have any hand in framing the claim  
20 before you. What we say is that there is a territorial sea  
21 boundary established between the parties as a result, first of  
22 all, of the activities of the 1930s, and then the practice  
23 extending beyond that period for several decades.

24           Now, if we are right about that, then the parties have  
25 already determined the boundary between them in the territorial

15:47:06 1 sea, leaving for the moment the issue raised by Professor Smit  
2 in his question to my learned friend Dr. Oude Elferink about  
3 what is the limit of the territorial sea for these purposes?  
4 Can one get from 3 miles to 12? That is a matter that will be  
5 addressed by Professor Oxman tomorrow, although I'm obviously  
6 more than happy to answer questions on it, should you wish me  
7 to do so.

8 But what we say is once it is established that there  
9 is a maritime boundary between the two States out to whatever  
10 point, then, of course, how you get from there to 200 miles is  
11 a matter governed by the Law of the Sea Convention. So, if we  
12 are right in the way we framed our Counter-Memorial, our  
13 defense in these proceedings, then there would indeed be a  
14 jurisdictional basis for this Tribunal. But what we say there  
15 cannot possibly be is jurisdiction on the grounds claimed by  
16 Guyana. Put succinctly, Guyana's case is the 1936 Point  
17 provides the terminus of the land boundary. It was agreed  
18 between the parties as a freestanding agreement quite distinct  
19 from anything in relation to the territorial sea. We say that  
20 is palpably wrong. It flies in the face of what was said at  
21 the time. It flies in the face of the reasons why the 1936  
22 Point was constructed as it was, why the angle taken from it  
23 was placed the way it was.

24 Everything that was done in the creation of the 1936  
25 Point was oriented towards a territorial sea boundary, and we

15:48:44 1 say quite simply, if there is no agreement over the territorial  
2 sea boundary, there was no agreement over the 1936 point, and  
3 if that is the case, then, with respect, this Tribunal has no  
4 jurisdiction, and that's the argument that I would like to  
5 develop.

6 And I would just like in passing to mention one aspect  
7 of the significance of 10 degrees as a line for maritime  
8 purposes. There have been a number of questions about the  
9 extent of the territorial sea at different times, but I would  
10 just make this point: One of the key features of the concerns  
11 in 1936 to '38, if one looks at the contemporary documents, was  
12 whether there would be any British sovereignty east of the  
13 10-degree line. The Dutch wanted complete control over the  
14 area to the east of the 10-degree line. The British did not  
15 want responsibility for what was happening east of the  
16 10-degree line.

17 Now, if one looks at the South American Pilot, which I  
18 put before you this morning--I'm afraid I haven't got that  
19 bundle of documents from this morning with me, but you will  
20 find it very clearly labeled in there--I think it's probably  
21 document 14 or something like that--if one looks at the South  
22 American Pilot, one finds that the channels of the river are  
23 described as having an effect upon the sea, a discoloring  
24 effect--the effect of the current is felt--between 10 and  
25 12 miles off the mouth of the Corantijn.

15:50:20 1           Now, of course, if one looks at the situation in the  
2 late 1930s, when the maximum extent of the territorial sea for  
3 these two States was only 3 miles, so long as the British  
4 didn't go east of 10 degrees, it didn't matter that the Dutch  
5 sovereignty didn't extend further out because nobody else could  
6 claim responsibility, nobody else could claim jurisdiction out  
7 there. But once the territorial sea becomes more extensive,  
8 the picture is different. As I say, my learned friend  
9 Professor Oxman will deal with that when he addresses you on  
10 the applicable law and the boundary tomorrow.

11           Let me turn back to jurisdiction. Although it may be  
12 a little cumbersome, Suriname's position on jurisdiction or  
13 Suriname's argument can be summed up in, I think, eight  
14 propositions. The first proposition is that, unlike any other  
15 International Tribunal, this Tribunal has jurisdiction only if,  
16 and to the extent that, the States before it have consented to  
17 that jurisdiction. So, that's the first proposition. The  
18 Tribunal's jurisdiction rests upon the consent of the parties.

19           Secondly, that consent, as manifested in UNCLOS, gave  
20 this Tribunal jurisdiction only in respect to the dispute  
21 concerning the interpretation and/or the application of the Law  
22 of the Sea Convention.

23           Thirdly, the location of a land boundary is not  
24 something governed by the Law of the Sea of the Convention, and  
25 is therefore outside the jurisdiction of the Tribunal.

15:51:57 1           Fourthly, sovereignty over a river is not governed by  
2 the Convention, nor are the boundaries either within a  
3 river--for example, along the thalweg--or at a river bank. It  
4 follows that the Tribunal has no jurisdiction to determine the  
5 boundary between Suriname's sovereign territory in the River  
6 Corantijn, which extends up to the west bank, and Guyana's  
7 sovereign territory on the land which extends down to the west  
8 bank of the Corantijn.

9           Fifth proposition, there is no evidence whatsoever to  
10 sustain Guyana's argument that the colonial powers agreed upon  
11 the terminus of the land boundary in isolation from an  
12 agreement upon the boundary in the territorial sea. And I have  
13 set out the conclusion we draw from that.

14           Sixthly, Guyana's argument that there is an incidental  
15 jurisdiction in this Tribunal to determine disputes over land  
16 territory, if it has to do so, in order to determine a dispute  
17 over a maritime boundary, is based, we say, on a fundamental  
18 misconception about the text, the purpose, and the principles  
19 of the Law of the Sea Convention.

20           Seventhly, Guyana's argument that the Tribunal can do  
21 what Suriname has not done and draw a closing line across the  
22 mouth of the river, and then determine the maritime boundary  
23 out from that, is plainly unsustainable.

24           And my eighth and last point, nor can the Tribunal  
25 effect a partial delimitation from either of the two points put

15:53:38 1 forward by Guyana for that purpose.

2           And Mr. President, sir, I will develop each of those  
3 arguments in turn in just a minute, but first a word about  
4 Guyana's argument that the burden is on Suriname to show that  
5 there is no jurisdiction. With great respect, there is, in our  
6 submission, a confusion of concepts in the making of that  
7 remark. There is obviously a burden of proof on any party in  
8 proceedings to prove any facts which it asserts and on which it  
9 wishes to rely, but it's meaningless to talk about a burden of  
10 proof in respect of an argument of law on jurisdiction.

11           Now, in the case of the jurisdictional issues in these  
12 proceedings, the only issue of fact which is seriously in doubt  
13 is the one being asserted by Guyana, namely that the colonial  
14 powers agreed on a land boundary terminus at the 1936 Point.  
15 That is their assertion, and the burden of proving it is on  
16 Guyana, and we have to say Guyana has failed dismally in that  
17 regard. Every single item of evidence it has invoked,  
18 including its own practice right down to the bringing of these  
19 proceedings, is that the two States did not treat the 1936  
20 Point as the terminus of the land boundary. At most, they  
21 treated it as the means, the reference point, from which the  
22 terminus of the land boundary could be determined for the  
23 purpose of drawing a boundary line out to sea.

24           But the core assertion which Guyana has to prove in  
25 order to get home on its approach to jurisdiction is that the

15:55:31 1 colonial powers agreed on something completely different, that  
2 they agreed on the 1936 Point as the ending of the land  
3 boundary, irrespective of what was going to happen at sea. We  
4 say there is simply not a shred of evidence to sustain that.  
5 It's true, that from time to time during the 1950s and 1960s,  
6 Dutch/Surinamese and British/Guyanese authorities might have  
7 considered varying the territorial sea boundary as one of the  
8 pieces in a negotiation about the boundary issues as a whole.  
9 But there is a world of difference between what you are  
10 prepared to give up in order to achieve an overall boundary  
11 settlement and what you think the existing boundary is, and all  
12 the evidence is that, right the way up to independence for  
13 Guyana, the British authorities considered that the boundary in  
14 the territorial sea was at 10 degrees, and they did not rely  
15 upon the 1936 Point for anything else.

16           Now, Mr. President, with that background issue in  
17 mind, let's turn to the eight propositions. My first  
18 proposition, if I can repeat it, is that like any other  
19 international tribunal, this Tribunal is dependent upon the  
20 consent of states for jurisdiction. There has got to be that  
21 consent, and the limits of that consent determine the limits of  
22 the jurisdiction. That's one of the most elementary principles  
23 of international law, constantly reaffirmed by the  
24 International Court and by every other variety of International  
25 Tribunal. Indeed, only this year the International Court in a

15:57:17 1 decision that was almost unanimous rejected an argument that it  
2 could sidestep, as it were, the consent principle of  
3 jurisdiction on the basis that the alleged wrong was a  
4 violation of a norm of jus cogens. In the Congo-Rwanda case,  
5 the International Court held by a huge majority that it doesn't  
6 make any difference which rule is being violated. The  
7 principle of consent to jurisdiction remains sacrosanct. And  
8 the provisions of UNCLOS, with great respect, are no exception  
9 to that.

10           Guyana did put forward an argument which I confess I  
11 had some difficulty in understanding when I first heard it, but  
12 I hope I have now grasped, if I can have slide one, to deal  
13 with language of Article 74(2) and the parallel provision in  
14 Article 83. Article 74(2) provides that if no agreement can be  
15 reached within a reasonable period of time, the states  
16 concerned shall resort to the procedures provided for in Part  
17 XV.

18           And Professor Sands made much on the opening day of  
19 the fact that the language there is mandatory, that it says  
20 "shall" resort to the procedures provided for in Part XV. But,  
21 Mr. President, with respect, that doesn't advance the debate  
22 one iota. If one looks at it, first of all, the reference  
23 there is to Part XV as a whole, not just, and not specifically,  
24 to Part XV Section 2 on the compulsory settlement of disputes.

25           And secondly, to the extent that there is there a

15:58:56 1 reference to Section 2 of Part XV, it is a reference every bit  
2 as much to the limits of jurisdiction of a tribunal under  
3 Section 2 of Part XV as it is to the powers of such a tribunal.  
4 Now, those limits include the limits laid down in Article  
5 288(1) of UNCLOS, which I mentioned this morning, and this we  
6 say is the defining provision on jurisdiction. A court or  
7 tribunal referred to in Article 287 shall have jurisdiction  
8 over any dispute concerning the interpretation or application  
9 of this Convention, which is submitted to it in accordance with  
10 this part. Suriname in no sense wishes to avoid its  
11 obligations under that provision. We are a party to UNCLOS, we  
12 are proud to be a party to UNCLOS. But what we do say is that  
13 this Tribunal's jurisdiction is limited by that provision, and  
14 that Article 74(2) and Article 83(2) make no difference  
15 whatsoever. Neither of them can increase the jurisdiction of  
16 this Tribunal any more than Article 33 of the Charter of the  
17 United Nations, with its reference to the duty to settle  
18 disputes by peaceful means, can override the limitations on  
19 jurisdiction of the International Court of Justice or of any  
20 other international tribunal, standing or ad hoc.

21 Let me turn from that, then, to my second proposition.  
22 UNCLOS gives this Tribunal jurisdiction only in respect of a  
23 dispute concerning the interpretation and/or the application of  
24 UNCLOS. Now, we say that proposition is clear beyond a shadow  
25 of doubt. You see it there in the text of Article 288, and

16:00:50 1 that is the provision which governs jurisdiction.

2 Now, one has to read that, as you, Mr. President,  
3 pointed out to me in your question this morning in the light of  
4 the applicable law provision in Article 293. A court or  
5 tribunal having jurisdiction under this section shall apply  
6 this Convention and other rules of international law not  
7 incompatible with this Convention. But, Mr. President, that is  
8 a provision about the sources of law which an Annex VII  
9 Tribunal can apply in deciding a dispute. It's not a  
10 jurisdictional provision. It doesn't confer upon a tribunal a  
11 jurisdiction to resolve a dispute that is not about the  
12 interpretation or application of the provisions of the  
13 Convention. It tells you where to look for your law, how big  
14 the tool kit might be, but it doesn't tell you anything about  
15 the job that you have to tackle.

16 And what I think one has to be very wary of in this  
17 context is attempts to broaden out the scope of jurisdiction  
18 provisions in specialist treaties of the kind you have in Part  
19 XV of UNCLOS. It's a tendency which one notices in a number of  
20 areas of international law, perhaps most obviously in the field  
21 of human rights. There appear to be enthusiasts with a  
22 desperate desire to go out and paint the whole staircase and  
23 landing of a house by putting a paintbrush through the letter  
24 box and decorating everything that way, that one finds a  
25 specialist Treaty provision, and through that one somehow finds

16:02:31 1 the Holy Grail, one finds the answer to everything that one  
2 might have wanted.

3 The Law of the Sea Convention has to take its place  
4 within the framework of international law as a whole. Within  
5 that framework, a tribunal operating under the jurisdictional  
6 provisions of UNCLOS has a jurisdiction limited to a specific  
7 field, even though it can look at other rules of international  
8 law in order to help it decide disputes within that  
9 jurisdiction.

10 It's also important, we say, to look at the provisions  
11 of the Preamble, and again I referred to this obliquely this  
12 morning. The final paragraph of the Preamble of the Convention  
13 affirms that matters not regulated by this Convention continue  
14 to be governed by the rules and principles of general  
15 international law, matters not regulated by this Convention.  
16 But if a matter is regulated by this Convention, it is the  
17 provisions of the Convention which will be definitive.

18 Now, Guyana made much of what they described as our  
19 unfounded argument that a tribunal of this kind has to observe  
20 a principle of prudence, and that was the cause of Professor  
21 Sands's remark that only the Southern Bluefin Tuna case could  
22 support that. The way he put it reminded me of the old maxim  
23 of the 19th Century English barristers, that you can open an  
24 appeal from one particular judge by saying, "This is an appeal  
25 from a judgment of Mr. Justice Keckewitch, and my second round

16:03:58 1 of appeal is as follows." The Southern Bluefin Tuna case might  
2 not perhaps be the Mr. Justice Keckewitch of this area, but  
3 certainly Professor Sands is portraying it as such.

4 But our point, Mr. President, is a much broader and a  
5 much more fundamental one than that. Because there is no  
6 principle of compulsory jurisdiction in international law,  
7 because jurisdiction has to be derived from the consent of  
8 States, it is therefore particularly important that any  
9 International Court or Tribunal is careful about not exceeding  
10 the limits of its jurisdiction--careful not timid--I didn't say  
11 "timid"--careful about not exceeding those limits. One sees  
12 that, for example, in a line of authorities that both sides  
13 have referred to in relation to what I always called the  
14 Monetary Gold principle, that a tribunal dealing with a case  
15 between state A and state B should not rule on the rights of  
16 state C, if that state is not present before it.

17 Now, that principle of prudence is being reaffirmed by  
18 the International Court only in the 1990s, and, of course, it's  
19 also a principle of considerable significance in the context of  
20 the Law of the Sea. Indeed, it's a principle Guyana itself  
21 prayed in aid, because if one looks at the Barbados and  
22 Trinidad and Tobago case, we see this comment made in passing  
23 at paragraph 40: "The President of the Tribunal was sent a  
24 letter by the Foreign Minister of Guyana, which provided  
25 information to the Tribunal regarding the outer limit of

16:05:28 1 Guyana's Exclusive Economic Zone. The President responded to  
2 the Foreign Minister, acknowledging his letter and noting that  
3 it had been brought to the attention of the Members of the  
4 Tribunal."

5           Now, Mr. President, there is a limit to how  
6 much--there is a limit to what I can say about that. I was one  
7 of the counsel in Trinidad and Tobago and Barbados, and I read  
8 Guyana's letter, but I'm not able to disclose the contents of  
9 that letter, nor can I comment upon it. It is up to Guyana to  
10 put it before us if they wish to do so. But what I would wish  
11 to suggest to you is the fact the letter was written, whatever  
12 it said, is an indication of Guyana putting down a marker in a  
13 case between two other states, that its own rights had to be  
14 watched for, its own rights had to be considered, and that, of  
15 course, is a jurisdictional, not a merits matter. It's simply  
16 part and parcel of a general principle that International  
17 Tribunals are cautious, careful not to exceed the limits of  
18 their jurisdiction.

19           My third proposition is that the location of a land  
20 boundary is not something governed by the Law of the Sea  
21 Convention, and therefore it's outside the jurisdiction of the  
22 Tribunal. Now, that proposition, to be frank, hardly needs  
23 stating at all. It must be one of the most obvious and  
24 self-evident propositions in this case. The Law of the Sea  
25 Convention, as its name suggests, is the law of the sea, not

16:06:52 1 about determining every boundary dispute between States on  
2 land.

3           And it's noticeable that Guyana recognized that in its  
4 Memorial when it said in terms--and I'm afraid I have no slide,  
5 but the document in question appears as document D(1), this  
6 particular extract from the Memorial in the day bundle today,  
7 and I will read you what Guyana said: "This dispute is  
8 exclusively concerned with the maritime boundary between Guyana  
9 and Suriname. Guyana's application does not concern, either  
10 directly or indirectly, any claim or other issues relating to  
11 the determination of any boundary other than the maritime  
12 boundary. Guyana's application does not require the Annex VII  
13 Tribunal to make any findings of fact or law as regards the  
14 land or riverine boundary between the two States." That is  
15 paragraph 615 of the Memorial, and I hope I have quoted it  
16 accurately. If I haven't, I'm sure that that will be pointed  
17 out. Any findings of fact or law as regards the land or  
18 riverine boundary between the two States, and we say: Quite  
19 right. It's not simply that you don't have to. It's that,  
20 with the greatest of respect, you cannot make findings of that  
21 kind.

22           Then the fourth proposition, sovereignty over a river  
23 is not something governed by the Law of the Sea Convention, and  
24 nor are the boundaries within a river or at a river bank. Now,  
25 rivers and lakes are equated to land territory, not to the sea.

16:08:28 1 They are not regulated by the Law of the Sea Convention. For  
2 example, the border between Canada and the United States of  
3 America along the river and the Great Lakes are nothing  
4 whatever to do with the Law of the Sea Convention. They are,  
5 in fact, regulated by an existing agreement, but if they were  
6 not, it would be extraordinary for anyone to suggest that an  
7 Annex VII Tribunal or the International Tribunal on the Law of  
8 the Sea could be asked to determine the river and lake boundary  
9 between those two countries. And there is a host of disputes  
10 around the world which involve riverine boundaries. There was  
11 never any intention, we say, that those should have anything to  
12 do with the Law of the Sea Convention at all.

13 Let me in that context look briefly at Guyana's  
14 argument based on Article 298, and here I'm going to be in  
15 difficulty, if I can't read that text without my reading  
16 glasses or that text without my larger set of glasses. Let's  
17 try these ones, first. I haven't yet managed bifocals, I'm  
18 afraid.

19 Now, that provision which I won't try and read to  
20 you--I know my limitations at least as far as eyesight is  
21 concerned--that provision which you will be well familiar with  
22 is a complicated one, to say the least. What it does, if you  
23 wish to look at the provision, it's in the core bundle at Tab  
24 1. It's one of the Articles we have reproduced there.

25 Now, that provision entitles a State, first of all, to

16:10:08 1 opt out of the compulsory settlement of disputes machinery in  
2 respect to certain categories of dispute. Then it places a  
3 default or a fallback position that if that opt-out is  
4 exercised, then there are nevertheless circumstances in which  
5 recourse to a conciliatory procedure is compulsory. But that  
6 recourse to conciliatory procedure cannot include disputes  
7 concerning insular and land continental or insular land  
8 territory: "Involving the concurrent considerations of any  
9 unsettled dispute concerning sovereignty or other rights over  
10 continental insular land territory shall be excluded from such  
11 submission."

12           Now, on the basis of that, Guyana has attempted to put  
13 forward a proposition which goes rather like this: If you make  
14 an Article 298 declaration, then you can avoid any compulsory  
15 resolution by any means whatever of disputes concerning  
16 sovereignty or other rights over continental insular land  
17 territory. But if you do not make an Article 298 declaration,  
18 it must follow that you are subject to compulsory settlement of  
19 disputes, and because there is no similar exclusion in the  
20 provisions of Part XV, Section 2, that jurisdiction would  
21 include disputes concerning sovereignty over other rights over  
22 continental or insular land territory.

23           Well, that, Mr. President, is the thinnest of grounds  
24 on which to hang an argument about the jurisdiction of this  
25 Tribunal. There is very good reason to believe that what is

16:12:01 1 there at the end of Article 298(1)(a)(i) is there out of an  
2 abundance of caution, because of the somewhat looser approach  
3 to jurisdictional issues which is being traditional in  
4 conciliation procedure; and that there was no intention  
5 whatever to confer upon tribunals exercising the jurisdiction  
6 under Article 288, no intention to confer upon tribunals of  
7 that kind, jurisdiction over disputes about land territory and  
8 land boundaries, including river boundaries. And one only  
9 imagines how much fun counsel on either side might have had if  
10 we were expected to address a body like the Senate of the  
11 United States about the merits of ratifying this Treaty, if we  
12 were going to tell them that by doing so they were giving an  
13 Annex VII Tribunal jurisdiction to determine, for example, such  
14 questions as Mexico's claims to territories north of the Rio  
15 Grande or Canada's claims in the Great Lakes. It's simply a  
16 nonstarter.

17 Now, what I must do in connection with that is to  
18 correct--it is a mistake, but it's a mistake which I hope you  
19 will regard as pardonable in Suriname's Rejoinder. In our  
20 Rejoinder, which went to press in August of this year, we made  
21 reference to the possibility of China being embroiled in a  
22 dispute before an Annex VII Tribunal, and we said there that  
23 China had not made a declaration under Article 298. As has  
24 been pointed out by my learned friends, China has now made such  
25 a declaration. It made it after we had checked the relevant

16:13:45 1 Web site while preparing the Rejoinder, but shortly before the  
2 Rejoinder was published.

3 Now, I apologize for the fact we did not pick up on  
4 this. It doesn't, in fact, make any difference to the  
5 substance of the argument. Indeed, one might well think that  
6 one of the reasons why China was so determined to guard itself  
7 against the possibility of compulsory dispute settlement under  
8 Article 288 was precisely because of the kind of arguments that  
9 one has heard from Guyana in this case.

10 Now, it's plain, we say, that what is at issue along  
11 the River Corantijn is the land boundary between Suriname and  
12 Guyana. I showed this to you, the slide to you, this morning.  
13 That is the land boundary, the dotted black line along the  
14 low-water line, finishing for these purposes at that  
15 intersection point. Now, I say finishing for these purposes.  
16 I'm not making any concessions about that.

17 The key point there is that is a boundary between the  
18 River Corantijn, which is Surinamese, and the land above the  
19 low-water line which is Guyanese. It is a conceptual line. It  
20 has no thickness. At one point, when I wondered after seeing  
21 the photographs that had been tendered as demonstratives by  
22 Guyana, I wondered if we were going to be told that the  
23 photograph was actually taken at low water. I didn't think it  
24 could have been, but I did wonder if it was being taken at low  
25 water, in which case one has the rather strange sight of a

16:15:16 1 Guyanese official holding a pole and presumably straddling the  
2 conceptual line that Professor Brownlie identified. But that  
3 is unequivocally a land boundary, and if you decide that its  
4 terminus is there rather than there or there rather than there,  
5 then you are determining a question of sovereignty over land  
6 territory, namely the river round here, and that, we say, is  
7 something which this Tribunal, with great respect, does not  
8 have jurisdiction to do, because those questions of title are  
9 not governed by issues or by the provisions of the Law of the  
10 Sea Convention.

11           The fifth proposition is that there is no evidence  
12 whatever to sustain Guyana's argument that the colonial powers  
13 agreed on the terminus of the land boundary in isolation from  
14 an agreement on the boundary in the territorial sea.

15           Now, Mr. President, I'm not going on spend any time on  
16 this because I have already covered it in my opening speech,  
17 and Dr. Elferink covered it in his speech this afternoon. It  
18 is, we say, plain, first of all, that in 1936 the work of the  
19 Boundary Commissioners was not free-standing. Major Phipps and  
20 his colleague Vice Admiral Kayser may have talked about fixing  
21 a mark, but they were technical people entrusted with a  
22 technical task. We were, incidentally, slightly amused by  
23 Professor Sands saying these were senior officials whose word  
24 carried great weight. Major Phipps was, of course, an  
25 extremely reputable engineer--one has no doubt--but there are

16:16:56 1 seven ranks, I believe, senior to major in the British Army  
2 which were operative at the time in the Corps of Royal  
3 Engineers. It was not a decision taken at the cabinet level.

4           If one looks at successive drafts of the Treaty, it is  
5 obvious what was being requested. The Commissioners were to do  
6 the technical work. They were to fix the points. The States  
7 were then to agree to a treaty. And as Major Phipps recognized  
8 in that telling passage that Dr. Oude Elferink took you to  
9 earlier this afternoon about the New River Triangle area, it  
10 was always the intention that the Dutch Parliament on the Dutch  
11 side would have the final say over whether to approve or reject  
12 the deal, and on the British side the procedures used for  
13 ratifying the Treaty under the Ponsonby Rules would have been  
14 followed in the United Kingdom. There was no question of the  
15 Commissioners being entrusted with the power to determine for  
16 themselves to take binding decisions on aspects of the  
17 boundary. The whole project was to be confirmed or not, as the  
18 case may be, by treaty.

19           Secondly, in any event, the 1936 Point was plainly not  
20 intended as the terminus of a land boundary. It was fixed, as  
21 I showed you earlier, exclusively by reference to maritime  
22 considerations. That's why it's where it is. It's why it's  
23 constructed the way it is. It's why there is a beacon. That's  
24 why it was followed up with a Notice to Mariners. The logic of  
25 using a 10-degree line rather than a 28-degree line was

16:18:29 1 entirely because of the maritime concern over navigable  
2 channels in the Corantijn, and that reflects perfectly sensibly  
3 the logic of the 1799 Treaty which we go back to, or the  
4 1799-1814 Treaty.

5           Could I have the map again, please.

6           If one goes back to 1798, all of this belongs to the  
7 Dutch Province of Suriname, the Dutch Colony of Suriname.  
8 Berbice is well over here.

9           The cession gives Berbice everything down to the  
10 low-water line, but it leaves the rest with Suriname. Now, if  
11 you have navigable channels, that is an important part of the  
12 resources and the responsibilities of the riverine sovereign,  
13 and it makes perfectly good sense to determine the territorial  
14 sea boundary by reference to that. But one should be under no  
15 doubt about it, that is what they were doing. They fixed on  
16 this, and the two States subsequently, even though the draft  
17 Treaty wasn't concluded, operated on the basis that what was  
18 proposed here would be applied anyway. The two States operated  
19 on that basis exclusively out of concern for the territorial  
20 sea. There is no indication that there was any attempt  
21 scientifically to fix upon the mouth of the River Corantijn,  
22 and there is no suggestion that anybody was desperately  
23 concerned about mangrove resources or anything like that down  
24 there. It was what happened here at sea that was what was of  
25 concern to them. And that's why we say, that if you follow

16:20:26 1 Guyana's logic that there is no agreement on the territorial  
2 sea boundary, then there is no agreement on the terminus of the  
3 land boundary, either. It's both or it's neither. And that  
4 both has jurisdictional and merits implications.

5 Now, I'm more than happy to answer questions about  
6 that issue, but I imagine Members of the Tribunal might have  
7 heard quite enough already about why the 1936 point was fixed  
8 as it was.

9 PRESIDENT NELSON: Thank you, Professor Greenwood.

10 ARBITRATOR FRANCK: Professor Greenwood, I follow you,  
11 and if, indeed, you are correct in your proposition that what  
12 you call the 1936 Point is a directional indicator, and there  
13 are other directional indicators, all of which coincide on the  
14 10-degree line, then it would follow that that line was a line  
15 achieved by consensus of the parties.

16 If one does not accept that, and one, instead, goes  
17 back to marker "A" and draws a line now in a vacuum because you  
18 have no agreed line, but you draw a line based on contiguity to  
19 the low-water mark, you seem to be saying that that becomes a  
20 territorial delimitation, but both sides of that line, wherever  
21 you draw it, would be and would remain Guyanese territory. The  
22 line would still be indicative line rather than a territorial  
23 delimitation line.

24 So, however you get--you may be right about the  
25 10-degree line or you may be wrong, but however one gets to the

16:22:42 1 low-water mark, it's either by agreement or by something else,  
2 but in no way would it in either case be a territorial  
3 delimitation.

4 PROFESSOR GREENWOOD: Well, sir, with respect, we  
5 don't accept that. If one goes to mark "A", the 1936 Point,  
6 and then does what Guyana is now saying and takes the shortest  
7 route to the low-water line and then draws the maritime  
8 boundary out from there, that can only be the starting point  
9 for a maritime boundary, if it is also the terminus of the land  
10 boundary.

11 Now, this is easier to demonstrate graphically. If  
12 one takes for the moment the 10-degree dotted red line--I  
13 accept that's not the line Guyana is contending for, but if one  
14 looks at the dotted red line, we quite accept that the area  
15 colored green on this side, the eastern side, is Guyanese  
16 territory, and on this side is Guyanese territory. At one  
17 point we did think that Guyana was suggesting otherwise. We  
18 did think that the talk about the 36 point as a terminus of the  
19 land boundary was intended to imply that there was some  
20 Surinamese territory to the east, but that's plainly not what  
21 is being suggested and that matter has now been helpfully  
22 clarified.

23 But this here in the area that looks like a molar  
24 tooth, that bit of the river, that's Surinamese. Now, if one  
25 draws a line like this out to sea on whatever bearing, be it

16:24:08 1 provisional equidistance at that point, be it a straight  
2 34-degree line or whatever, then one would be determining a  
3 land boundary because one would be deciding that everything  
4 north of the red dot--that's this area here--which we regard as  
5 Surinamese is, in fact, not Surinamese at all, but Guyanese.

6 Mr. President, I believe Mr. Hossain has a question.

7 ARBITRATOR HOSSAIN: A number of documents you  
8 referred to show that there has been agreement since way back  
9 on the starting point to the territorial water limits, starting  
10 from the same point, so that the starting point seems to be one  
11 on which there has not been any dispute--there is agreement  
12 that this is the starting point of the territorial waters, at  
13 least up to the three-mile limit. If that is so, then, of  
14 course, there is no jurisdictional issue at all. What you then  
15 deal with is what happens from there, whether the line from the  
16 starting point, the 10-degree line is the right line or whether  
17 you put some other line, but then we get into the merits.  
18 They're saying that the 10-degree line needs to be re-examined  
19 in the light of other evidence that they are putting forward,  
20 about navigation and the buoys that they placed, but that's  
21 merits. I mean, you may well prevail in the end, but it's not  
22 an issue of jurisdiction because there is no disagreement on  
23 the starting point.

24 PROFESSOR GREENWOOD: Well, sir, it may very well be  
25 that this ends up as a merits issue rather than a

16:25:42 1 jurisdictional one, but let me just explain where the  
2 jurisdictional issue lies. With respect, it's not that there  
3 was agreement on a starting point. That's to put the cart  
4 before the horse. What there was agreement on was a boundary  
5 in the territorial sea. Now, that boundary had to be measured  
6 from somewhere, and so a starting point, or rather a method of  
7 calculation, nothing is happening around here on this area  
8 between the low-water line and the high-water line. There is  
9 no indication of any activity of any kind. What mattered to  
10 both governments was what was happening at sea. So, they fixed  
11 on a 10-degree boundary in the territorial sea, and both Phipps  
12 and Kayser are perfectly clear about this. That's what they  
13 were interested in. They wanted to get the maritime side of it  
14 sorted out. And they fixed on marker "A" and then marker "B"  
15 in order to provide on land as they thought at the time in an  
16 area where permanence could be guaranteed. In fact, it turned  
17 out that permanence could not be guaranteed for marker "A" at  
18 any rate because of the shift of the coast.

19           They fixed on those points, not so as from there they  
20 could calculate the territorial sea. They fixed on them in  
21 order to give effect to what was already agreed about the  
22 territorial sea.

23           Now, of course, the Commissioners did not have the  
24 power to take a binding decision on any aspect of this. We  
25 think, with respect, that Guyana is quite wrong in suggesting

16:27:11 1 otherwise. But if one looks at what happened after the  
2 first--after the markers were put in place, both governments  
3 immediately implemented the provisions on the maritime  
4 boundary. That's demonstrated perfectly clearly by the  
5 building of the beacon. The beacon has only a maritime  
6 significance. It is of no importance for the land boundary  
7 whatsoever, and no suggestion to the contrary has been made.  
8 And it was built at the joint expense of both parties. That's  
9 not something that would have been undertaken lightly, and the  
10 reason was the two parties were prepared to implement the  
11 territorial sea boundary, even though there was, as yet, no  
12 progress on the overall boundary settlement in the Treaty.

13           So, while in one sense I'm accepting the proposition  
14 that you put to me, sir, I would actually say that the  
15 priorities have to be put the other way around, that it's the  
16 maritime boundary that was determined, and that that had--this  
17 was a necessary part and parcel of it. It didn't have any  
18 autonomous, any free-standing significance.

19           Now, if I'm right about that, if Suriname is right,  
20 then the whole jurisdictional problem fades away, save, perhaps  
21 for a question about whether a jurisdictional basis can be  
22 supplied by the defendant in an arbitration rather than as is  
23 more commonly the case by the Claimant. Because if there was,  
24 indeed, a territorial sea boundary agreed and established  
25 between the parties, then this Tribunal would have jurisdiction

16:28:46 1 to delimit the rest of the maritime boundary from whatever  
2 point that marine boundary concluded, and you would also have  
3 jurisdiction to determine where was the point at which the  
4 maritime boundary concluded.

5 But, what, with respect, you do not have jurisdiction  
6 to do is to determine for yourselves, as Guyana is inviting you  
7 to do, where the land boundary terminates because that's a  
8 matter if one looks at it in terms of pure international law  
9 that's governed by the 1799 Treaty, it's matter of  
10 interpretation or application of that Treaty, not the  
11 interpretation or application of the provisions of the Law of  
12 the Sea Convention.

13 ARBITRATOR SMIT: Professor Greenwood, having noticed  
14 a somewhat un-British predilection for Cartesian syllogisms, I  
15 want to put two propositions to you and have your comments on  
16 them. One, a claim for a territorial--a maritime delimitation  
17 that is based on a potential dispute as to land mass is beyond  
18 the jurisdiction of the Tribunal.

19 Second, since no claim has been propounded to the  
20 Tribunal on any other basis, the claim is not admissible on the  
21 merits. It goes to your point that the jurisdiction is not  
22 normally provided by the defendant; right?

23 PROFESSOR GREENWOOD: Quite so.

24 ARBITRATOR SMIT: And if there is no jurisdiction to  
25 hear Guyana's claim, and since their claim is based only on

16:30:46 1 what you say is a jurisdictionally improper basis and they have  
2 not asserted any other claim, can this Tribunal nevertheless  
3 decide what the maritime delimitation is, especially since you  
4 have not counterclaimed for maritime delimitation on the basis  
5 that you deem appropriate?

6 PROFESSOR GREENWOOD: Well, if I could answer the  
7 second half of that question first, whether this is displaying  
8 a predilection for Cartesian syllogisms, I'm not sure. But if  
9 I can deal with the second part that question, the  
10 counterclaim, of course in a maritime boundary dispute one  
11 would not make a formal counterclaim in the way in which one  
12 would over a dispute about, for instance, state responsibility  
13 for a violation of a boundary. But we have in our  
14 Counter-Memorial, and then again in our Rejoinder, asked the  
15 Tribunal if you decide that you have jurisdiction to find that  
16 the boundary follows a particular course, namely the 10-degree  
17 line, so I suppose for those purposes that amounts to a  
18 conditional counterclaim. It's a counterclaim made in the  
19 event of this Tribunal finding that it has jurisdiction.

20 Now, the Tribunal, of course, has the--I always hate  
21 using the phrase competence de la competence because it seems  
22 to me it's a perfectly self-evident proposition in English, and  
23 we dress it up by speaking it in French or German in order to  
24 make it sound better, but this Tribunal has the jurisdiction to  
25 determine its own jurisdiction. It does so, of course, within

16:32:17 1 very well established limits of international law, but given  
2 the way in which this issue has been argued, and it is a  
3 necessary consequence of it being argued in a hearing which  
4 deals with merits and Preliminary Objections together, given  
5 the way in which this issue has been argued, it is, of course,  
6 for the Tribunal to determine whether Guyana's case about the  
7 1936 Point is right, whether our case about the territorial sea  
8 boundary is correct. What we are saying, however, is that this  
9 is not an argument which goes simply to the merits. It is an  
10 argument which also has a clear jurisdictional dimension, and  
11 that is what we tried to set out in our pleadings.

12 ARBITRATOR SMIT: Another question?

13 PRESIDENT NELSON: Yes.

14 ARBITRATOR SMIT: I would like to have you respond to  
15 the argument that since the motivation for the adoption of the  
16 northeast border was to deal with navigational issues, it is  
17 not appropriate to extend the territorial sea border beyond 3  
18 miles because at that time, no state had any responsibility  
19 beyond 3 miles for the navigational concerns.

20 PROFESSOR GREENWOOD: Well, sir, that is very much a  
21 matter which is going to be covered by Professor Oxman and my  
22 colleagues. It is a very detailed answer that has to be given  
23 to that because it would have to look, first of all, at the  
24 question of what is meant by the limits of the territorial sea  
25 and then to the question of whether there is a ground for

16:33:51 1 extending beyond the limits of the territorial sea.

2 I should make it clear we are not making a case that  
3 there was an agreed boundary beyond the territorial sea. We  
4 are not in that respect doing what Guyana did in its written  
5 argument, but has backed away from in these oral hearings.

6 But we do say that there are good grounds in order to  
7 achieve an equitable solution, if you find you have  
8 jurisdiction, to begin not with the provisional equidistance  
9 approach, but with an angle bisector and then to adjust that  
10 angle bisector to take into account relevant equitable  
11 circumstances in the area.

12 Now, in terms of how one gets, as it were, beyond 3  
13 miles, just three propositions about that which I hope will  
14 suffice rather like the trailers in a cinema to whet your  
15 appetite for the main film that Professor Oxman will show you  
16 tomorrow morning. The first is that although it was true that  
17 neither Britain nor the Netherlands claimed beyond 3 miles in  
18 the 1930s, the notion that the territorial sea could not extend  
19 beyond 3 miles was already being challenged at that stage.

20 Secondly, it's clear that the British understanding  
21 all the way along was that their territorial sea from the  
22 Guyana side would not go east of the 10-degree line.

23 Now, although it's rather complicated to show either  
24 on this map or the other one, which I think there is now no  
25 point in my showing you, because of the contours of the coast,

16:35:22 1 one would reach from 3 miles from Suriname territory much  
2 earlier than one would reach 3 miles from the territory of  
3 Guyana. Yet the British authorities always accepted that the  
4 limit was their three-mile line, not ours. In other words,  
5 they accepted that there should be no British sovereignty to  
6 the east.

7           Moreover, if one looks, for example, at "The South  
8 America Pilot," it's plain that the navigable channels have an  
9 effect at least 10 miles out from the mouth of the Corantijn.  
10 In other words, if one takes for these purposes the mouth of  
11 the Corantijn as being around here, you would go a good 10,  
12 possibly 12 miles further out to sea, and you would still be  
13 able to notice the discolored water, the disturbances caused by  
14 the current from the river.

15           Now, if one looks at the navigation concerns, if the  
16 objective is to ensure that the Netherlands and no other state  
17 has control over the navigable channels, in the context of the  
18 1930s that is achieved by providing that out to the three-mile  
19 line from the Guyana side, the boundary follows the 10 degrees  
20 line. That's enough for the Netherlands. There is no state in  
21 the area that could possibly have claims on it. But once the  
22 territorial sea extends to 12 miles, if the British territorial  
23 sea or now the Guyanese one wrapped round the top of the Dutch,  
24 then, you would, in fact, have another state exercising a  
25 sovereign power in a part of the navigable channel. It's not

16:37:07 1 simply a matter of ensuring that the Netherlands should have  
2 sovereignty. It's a matter of ensuring that no other state,  
3 which means for these purposes, Britain and subsequently Guyana  
4 should have sovereignty to exercise there.

5           So that's why we say--that's amongst the reasons why  
6 we say that when the parties established a boundary of the  
7 territorial sea, what was meant and what it means today is that  
8 the territorial sea of Guyana should not go east of the  
9 10-degree east line.

10           Now, getting from there out to the 200-mile line we  
11 accept is a different exercise, and Professor Oxman and my  
12 colleagues will address you on that in the course of the next  
13 two days, but I hope that gives some indication of the flavor  
14 of our arguments on the point.

15           ARBITRATOR SMIT: Thank you.

16           PRESIDENT NELSON: There are two more in the queue.  
17 Should we have a break now? Or you would like--

18           PROFESSOR GREENWOOD: It's now 25 minutes to five,  
19 sir. If I had simply gone through the notes in my speech, I  
20 would probably be finished in about five minutes' time, but in  
21 the circumstances it hardly seems worthwhile to take a second  
22 break, but I'm of course in the Tribunal's hands.

23           PRESIDENT NELSON: I give the floor, then, to  
24 Professor Shearer.

25           ARBITRATOR SHEARER: Just a very brief question. The

16:38:31 1 answer may not be so brief, but I think it could be. I just  
2 want a point of clarification about your saying that this  
3 Tribunal does not have the power to create any decisions about  
4 a land terminus.

5           If one looks at that map and one accepts your argument  
6 that marker "A" and marker "B" establish a reference point from  
7 which a 10-degree east line is projected to the low-water mark  
8 which one sees up there and then up through the territorial sea  
9 and perhaps beyond, an implication of that is a clear  
10 implication to me is that where that dotted red line breaks the  
11 shore, the low-water mark, everything to the right of that is a  
12 riverine boundary; right, within? And the waters--

13           PROFESSOR GREENWOOD: Yes.

14           ARBITRATOR SHEARER: --Surinamese, and to the westward  
15 Guyanese.

16           Now, would that point where the red line breaks the  
17 low-water mark, would that not be the land terminus?

18           And one cannot draw a line in the sea without it being  
19 anchored to a point on land, so is that it? That's the point?

20           PROFESSOR GREENWOOD: We say that that is, indeed, the  
21 point, sir, but one has to understand that it was established  
22 on the basis of establishing a territorial sea boundary at the  
23 time. What my learned friends are seeking to do, and they have  
24 done it in many respects very cleverly, indeed, is to work  
25 around to saying--there are various ways in which they do

16:40:07 1 it--that the land boundary terminus might be there, might be  
2 there, might be there. It doesn't really matter. Once you get  
3 there, you can then determine the maritime boundary. But why  
4 is the land boundary terminus at that point, where the red line  
5 crosses the black line? It's there because of the agreement of  
6 the parties through the period from the late 1930s to  
7 independence for Guyana.

8           That agreement was an agreement about the boundary in  
9 the territorial sea. If they didn't agree on the boundary in  
10 the territorial sea, then they didn't agree on the starting  
11 point either because it's all the same practice. It's all the  
12 same material, and that's why the starting point, the land  
13 boundary terminus and the territorial sea boundary stand or  
14 fall together. You can either have both or neither. What is  
15 not open is what was suggested at one point by Guyana, and I  
16 believe the 1971 draft Treaty will take that as the terminus  
17 and then will draw the boundary line out this way on a  
18 34-degree line.

19           My use of the pointer is not mathematically exact.

20           Now, that's playing fast and loose with the history,  
21 sir. The simple fact of the matter is what the parties agreed  
22 was a territorial sea boundary on 10 degrees. That's why that  
23 red line is there. That's why it intersects the low-water line  
24 at that point, rather than here or here or, indeed, why they  
25 didn't put the boundary further north. There are plenty of

16:41:36 1 places further north for which there would be a very powerful  
2 geographical argument to treat that as the mouth of the  
3 Corantijn, and, indeed, the British Guyana map of 1959, rather  
4 interestingly, did put the boundary further north, quite some  
5 little way further north.

6 PRESIDENT NELSON: Professor Greenwood, I would like  
7 to go back to Article 288, which speaks of a court or Tribunal  
8 referred to in Article 287 shall have jurisdiction over any  
9 dispute concerning the interpretation or application, and I  
10 read, of the provisions of this Convention.

11 Now, there are certain Articles like Article 9, 10,  
12 47, dealing with archipelagic baselines, part 10 dealing with  
13 access, landlocked states which come under the scope, the reach  
14 of 288. I'm wondering especially when we speak of application,  
15 I know that may be one process, but when we speak of  
16 application, what the role of the Tribunal with respect to  
17 these provisions, and how do you limit its role when it applies  
18 these provisions?

19 PROFESSOR GREENWOOD: Well, sir, we say that the  
20 Tribunal would have jurisdiction over a dispute about the  
21 interpretation or the application or a dispute about both in  
22 respect of, for example, Article 9, Article 47, any of the  
23 Articles of the Convention. We don't dispute that. And I'll  
24 come in a minute to the reserve argument, the alternative  
25 argument that Guyana has put forward about Article 9 and

16:43:42 1 drawing a closing line across the mouth of the river. I want  
2 to take just a couple of minutes to deal with that, if I may.  
3 But this is different.

4           If there were no practice at all in the 1930s, if  
5 there were nothing and one were writing on a completely clean  
6 sheet, if somehow we could transport ourselves back to 1926  
7 with the Law of the Sea Convention just having entered into  
8 force, let us say, and Guyana brings this dispute, the question  
9 would be what is the terminus of the land boundary between the  
10 two countries? The terminus of the land boundary of the two  
11 countries is the point at which the River Corantijn ends and  
12 the seacoast begins. How does one determine what that is? One  
13 determines it by reason of the application and interpretation  
14 of the 1799 agreement, not by reasons of the interpretation or  
15 application of UNCLOS.

16           Now, Mr. President, we say there is an easy way, in a  
17 sense, an easy way out of this. If it is indeed the case, and  
18 this is Suriname's argument that the parties agreed on a  
19 boundary line in the territorial sea, then all of the these  
20 jurisdictional arguments fall away, save, perhaps for the one  
21 that Professor Smit put to me and which I had canvassed about  
22 who has to raise the question of jurisdiction. That's a  
23 complicated procedural issue for the Tribunal.

24           But if there is no agreement on the territorial sea,  
25 there is no agreement on the 1936 point. If there is no

16:45:13 1 agreement on the 1936 Point, then there is a dispute between  
2 the parties, possibly not yet formulated because we both worked  
3 on a rather different assumption, but there is a dispute about  
4 the boundary between Suriname's river and Guyana's river bank.  
5 That, with respect, is not a matter governed by the provisions  
6 of the Law of the Sea Convention, and therefore we say it's not  
7 a matter which can be resolved by this Tribunal. If it can't  
8 be resolved by this Tribunal, then it's not possible for the  
9 Tribunal to draw a boundary line.

10 If, on the other hand, we are right and there is,  
11 indeed, an agreed boundary in the territorial sea, whether out  
12 to 3 miles or 12, and Professor Oxman will address you on that,  
13 then the terminus of that maritime boundary provides a  
14 perfectly adequate starting point and every issue that this  
15 Tribunal would have to decide would be governed by the  
16 provisions of the Law of the Sea Convention.

17 PRESIDENT NELSON: Thank you.

18 ARBITRATOR SMIT: I used to teach a lot more procedure  
19 than international law. That may be reflected by my questions.

20 Isn't an issue--isn't the question of whether the  
21 Court has jurisdiction under 288(1) a question that is to be  
22 decided by the Tribunal under 288(4)?

23 PROFESSOR GREENWOOD: It is, indeed, a matter that has  
24 to be decided by the Tribunal in the exercise of its  
25 jurisdiction to determine its own jurisdiction. But that

16:46:50 1 invariably has to be a good faith application of the provisions  
2 of Article 288(1), and essentially that's how you exercise your  
3 power in 288(4), is what we have been addressing you on this  
4 afternoon and what Guyana's counsel addressed you on for  
5 something like a day in the course of their first round  
6 submissions.

7           It turns--288(4) gives the Tribunal the power to  
8 answer that question, but the question is framed by 288(1).

9           ARBITRATOR SMIT: Thank you.

10           PROFESSOR GREENWOOD: Sir, if I may, it is now quarter  
11 to five, I can still finish before 5:15. I'll take it perhaps  
12 a little bit faster than I had originally intended.

13           My sixth proposition, because that's where I'd got to,  
14 is dealing with Guyana's argument that there's an incidental  
15 jurisdiction in the Tribunal to determine disputes over land  
16 territory. In other words, you have jurisdiction to determine  
17 a maritime dispute. You can't deal with a pure land dispute,  
18 but if you have to resolve disputes over the sovereignty over  
19 land in order to resolve a dispute over a maritime boundary,  
20 you can do so.

21           The authority for that argument is entirely the  
22 article of Professor Boyle in the "International Comparative  
23 Law Quarterly." As much as I Revere Professor Boyle, I would  
24 point out two things about the article. The first is that  
25 there is no reasoning in support of that proposition

16:48:09 1 whatsoever. It's merely asserted.

2           Secondly, it is certainly not shared by many other  
3 commentators, at least as distinguished as Professor Boyle. If  
4 one could turn to slide eight, please, one looks, for example,  
5 at the article by Judge Guillaume, writing, of course, in his  
6 extrajudicial capacity.

7           Now, in deference to Judge Guillaume, who is the most  
8 stalwart defender of the use of the French language that I have  
9 ever come across, I will not try and read this quotation, with  
10 or without my reading glasses I will merely mutilate the  
11 pronunciation of the language, but we say the point is clear  
12 enough. "In respect of a tribunal deriving its jurisdiction  
13 from the Law of the Sea Convention as opposed to International  
14 Court of Justice, there would be no jurisdiction, incidental or  
15 otherwise, to determine a land boundary question."

16           And then if one looks at slide 10--I'm sorry, the  
17 Guillaume article is in document D-2 in your folder today. I  
18 should have said that at the outset. And the article that I'm  
19 about to refer to by Professor Robin Churchill is document D 3.

20           And here we have Professor Churchill, a well-known  
21 writer on the Law of the Sea, making the same point.

22           Now, there is also the question of what is exactly  
23 meant by an incidental jurisdiction or perhaps what are the  
24 limits of an incidental jurisdiction. You have to determine a  
25 maritime boundary, one little island with just a couple of palm

16:49:40 1 trees, how about two islands? What about a whole archipelago.  
2 Does it matter whether they are inhabited or uninhabited? What  
3 a river mouth? What about a headland? Could the Tribunal, for  
4 example, determine that Devil's Creek is the mouth of the River  
5 Corantijn and that therefore the Netherlands is entitled to  
6 sovereignty along the low-water line right the way around to  
7 Devil's Creek.

8 Is three kilometers the difference between the 1936  
9 Point and the intersection of the low-water mark too much? 30  
10 kilometers? 300 kilometers? Describing it as an incidental  
11 jurisdiction, with respect, doesn't really take one anywhere at  
12 all. It would still involve the Tribunal determining a dispute  
13 which wasn't about the interpretation or application of the  
14 Convention on the Law of the Sea at all. It would be  
15 determining a dispute that was governed by quite different  
16 rules of law as the prelude to determining a dispute on the  
17 interpretation or application of the provisions of the  
18 Convention, and that, we say, is something which the Tribunal  
19 doesn't have jurisdiction to do.

20 Then there is--there are the two alternative arguments  
21 put forward by my learned friends, the Article 9 closing line  
22 argument, first of all, if I could have slide seven, please.  
23 Article 9 is in the bundle of documents. I'm afraid this is  
24 the Article that I left out of the core tab, and I apologize  
25 for that. It wasn't intended to be derogatory in any way. But

16:51:08 1 that's the Article, it's short and to the point. If a river  
2 flows directly into the sea, the baseline shall be a straight  
3 line across the mouth of the river between points on the  
4 low-water line of its banks.

5 In its written argument, Guyana has suggested, well,  
6 you can draw a closing line of that kind. There isn't one at  
7 the moment, but the Tribunal can draw it, and then you can work  
8 the maritime boundary out from there.

9 Now, interestingly, this is not an argument that has  
10 been pressed in the oral hearings. It managed all of  
11 three-and-a-half lines in something like a 700-line transcript.  
12 Three-and-a-half lines in which Professor Sands said he didn't  
13 feel he needed to add anything to what was in the written  
14 pleadings and the written pleadings are concise to the point of  
15 being exiguous on this point as well.

16 We say the argument is flawed in two fundamental  
17 respects. The first is that the drawing of any baseline is for  
18 the coastal state and not for a court or Tribunal. If one  
19 turns to slide nine, the fisheries case, which you will find in  
20 your bundle under--I forget which tab under D, but it's there,  
21 the fisheries jurisdiction case between Britain and Norway, the  
22 Court said there, although it is true that the act of  
23 delimitation is necessarily a unilateral act because only the  
24 coastal state is competent to undertake it, the validity of the  
25 delimitation with regard to other states depends upon

16:52:27 1 international law.

2           Now, one would have to read rather more of the case to  
3 understand the full significance of that, but what the  
4 International Court is saying is that it is for the coastal  
5 state to draw closing lines, baselines, not for tribunals to do  
6 so, though they may, of course, find the manner in which they  
7 have been drawn by a coastal state is contrary to some rule of  
8 international law. The second point is that the Tribunal would  
9 have to determine if it was going to draw a closing line where  
10 the mouth of the river was. Low-water lines somewhere near the  
11 1936 Point, Point X, the 1959 Dutch point, the point shown on  
12 Guyana's 1959 map, the Devil's Creek. This is simply the land  
13 boundary issue coming round in another form. The Article 9  
14 argument doesn't, in fact, provide an answer to that problem at  
15 all.

16           Now, Guyana, of course, says that there isn't any  
17 problem because there is an agreement on Point 61; but that  
18 agreement, as we have shown, is, in fact, not an agreement on  
19 Point 61 at all. It's an agreement on the territorial sea  
20 boundary. And the reality is that if the Tribunal rejects  
21 Guyana's main argument, the Article 9 closing line argument  
22 will have to fall as well.

23           As it hasn't been developed further by Guyana, I will  
24 do no more than saying that it's dealt with at some length in  
25 our Rejoinder and leave it at that.

16:53:56 1           We say the Tribunal cannot effect partial delimitation  
2   from either of the points suggested by Guyana.

3           Now, in its Reply, Guyana suggested that there is a  
4   point approximately 15 nautical miles out to sea at which the  
5   provisional equidistance line, which, of course, Guyana has  
6   suddenly discovered as an interesting feature in the Reply  
7   having not thought it was worth mentioning in the Memorial, but  
8   the provisional equidistance line, once you get out to 15  
9   nautical miles would not be affected by the choice of base  
10   points on the west bank of the Corantijn, the choice of the  
11   Surinamese base point.

12           In his speech to the Tribunal, my learned friend  
13   Professor Sands took a point somewhat closer into land, just  
14   over 6 nautical miles out, on the basis of drawing a  
15   provisional equidistance line from the point where the  
16   10-degree line intersects with the low water, and another one  
17   from the point where the 34-degree line intersects with the  
18   low-water line, and then seeing at what point those two  
19   provisional equidistance lines came together.

20           With the greatest of respect, this is not a valid  
21   approach at all. Again, it is a fundamentally flawed one. It  
22   presupposes, first of all, that you can delimit from the point  
23   at which the disputed parts of the land boundary would no  
24   longer affect the equidistance line, but that is to make the  
25   method of delimitation determine the starting point of the

16:55:19 1 line, to make the method determine the geography, and that's  
2 putting the cart right before the horse. The reality is it's  
3 the geography which determines the method to be used. It's the  
4 same flaw but at a rather more fundamental stage or rather  
5 earlier stage in the proceedings that one sees in Guyana's  
6 relevant-coasts argument. Guyana's relevant-coast argument is  
7 based on the principle that you choose the relevant coasts by  
8 application of the equidistance principle, and oh, look, that  
9 then suggests you have to apply the equidistance principle to  
10 delimitation; whereas, the reality is you choose the relevant  
11 coasts and then determine what is the principle of  
12 delimitation, the method of delimitation, to follow. Well, the  
13 same problem arises here.

14           Equidistance, as Professor McRae will show, is only  
15 one of the methods which this Tribunal can use. It is not  
16 mandated to use it. What the Tribunal is mandated to use if it  
17 finds it has jurisdiction to decide the case on the merits is  
18 the achievement of an equitable solution. Equidistance may be  
19 a method of achieving that solution, but it's certainly not the  
20 only method, and even those who are strong supporters of it,  
21 such as the President of the Barbados and Trinidad and Tobago  
22 Arbitration Tribunal made clear in that award, for instance,  
23 that it's not the only method by any means.

24           The second point is that in relation to the argument  
25 about 15 miles, Point X is a hypothetical point selected by

16:56:51 1 geometric methods as one of a range of possible points which  
2 might mark the end of the river mouth. It's not the furthest  
3 claim that Suriname could make, and therefore it's not a valid  
4 starting point for determining how you get to the beginning of  
5 your partial delimitation area.

6 And lastly, a brief word about the Gulf of Maine case  
7 and what my learned friend said about that. Now, in the Gulf  
8 of Maine case, the two States in question agreed on partial  
9 delimitation starting at a point out to sea. Of course, two  
10 States can agree upon that, but the fact that two States can  
11 agree that a maritime delimitation shall start at a point out  
12 at sea doesn't begin to establish that, if there isn't such an  
13 agreement, the Tribunal can proceed on that basis. If  
14 anything, the fact that an agreement was considered necessary  
15 in the Gulf of Maine case reinforces our argument that this is  
16 not something which can be done unilaterally.

17 Now, Mr. President, those are our submissions on  
18 jurisdiction. They have been grossly misrepresented in the  
19 written pleadings of Guyana and in some of the statements made  
20 in the oral pleadings before you. So, let me in conclusion  
21 make our position completely clear. Suriname is not trying to  
22 avoid the exercise of the Tribunal's jurisdiction under Article  
23 288, but we are insisting that it must exercise only the  
24 jurisdiction that it possesses, and we are resisting Guyana's  
25 attempt to have the Tribunal decide matters which are not

16:58:28 1 within that jurisdiction.

2           Secondly, we are not saying that you have jurisdiction  
3 to find in our favor but not jurisdiction to find against us  
4 which is the caricature, a rather silly one, if I may say so,  
5 which is being offered to you by Guyana, and which clearly  
6 still appeals to some members of the Guyana team, judging by  
7 the body language I see on the other side. What we are saying  
8 is that if you apply the terms of Article 288 by which your  
9 jurisdiction is determined, then there has to be a starting  
10 point for the maritime boundary. That starting point cannot be  
11 the 1961 point, nor the 1961 point plus some point on the  
12 low-water line to which a line can be drawn from it. Only if  
13 there is an agreed starting point, only if there is an  
14 established starting point, can this Tribunal proceed.

15           If there is an established starting point, using the  
16 1936 Point, it is because there is an agreed boundary in the  
17 territorial sea. To take the 1936 Point in isolation from the  
18 boundary in the territorial sea is to destroy the entire basis  
19 for that agreement, and it isn't made any stronger by selective  
20 quotations from documents which picks out the bits of the  
21 sentence that appeal because they refer to the 1936 Point, but  
22 leaves out what is said about the territorial sea boundary.

23           Mr. President, that concludes our submissions in  
24 relation to jurisdiction, and unless members of the Tribunal  
25 have any questions for me, that concludes our submissions for

17:00:06 1 today.

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

4 The hearings will resume tomorrow at 9:30. Thank you.

5 (Whereupon, at 4:59 p.m., the hearing was adjourned  
6 until 9:30 a.m., the following day.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## 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