

# GHANA V. CÔTE D'IVOIRE

A Case Summary for the  
Maritime Dispute Resolution Project



U.S.-ASIA LAW INSTITUTE  
NEW YORK UNIVERSITY SCHOOL OF LAW



Maritime Dispute Resolution Project

Case Concerning  
Maritime Delimitation  
(*Ghana v. Côte d'Ivoire*)

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A research project of the  
U.S.-Asia Law Institute

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\*\* The views expressed herein are those of the author, and do not necessarily reflect the views of the Department of Defense or any agency of the United States government.

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### Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, Ghana v Côte d'Ivoire, Provisional Measures, ITLOS Case No 23, ICGJ 494 (ITLOS 2015), 25th April 2015, International Tribunal for the Law of the Sea [ITLOS]

Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, Ghana v Côte d'Ivoire, Judgment, ITLOS Case No 23, ICGJ 533 (ITLOS 2017), 23rd September 2017, International Tribunal for the Law of the Sea [ITLOS]

### Section I – Background and Summary of the Case

In some ways, the arbitral proceedings brought by Ghana against Cote d'Ivoire in the International Tribunal for the Law of the Sea (the Tribunal or ITLOS) are a lingering vestige of the region's colonial history. Notwithstanding borders interposed by the French and British in the 19<sup>th</sup> century, the peoples of Ghana and Cote d'Ivoire share a substantial political and ethnic history. Peoples of the Akan ethno-linguistic community, for example, are the largest single ethnic grouping in both Ghana and Cote d'Ivoire.<sup>1</sup> Indeed, by the early 19<sup>th</sup> century the Ashanti Empire straddled what is now the land border between Ghana and Cote d'Ivoire.<sup>2</sup>

It is unsurprising, therefore, that the discovery of substantial hydrocarbon reserves in the Gulf of Guinea would once again bring the question of borders to the fore. From 1968 to the early 2000s, there was little hydrocarbon exploration in the Gulf of Guinea, which encompasses the entire maritime domain of both Ghana and Cote d'Ivoire. Indeed, until 2006 only 33 small- to medium-sized oil and gas fields had been discovered in the region.<sup>3</sup> This changed dramatically in 2007, when Kosmos Energy, a Texas-based company, discovered substantial reserves in what came to be called the Jubilee Oil Field. At the time, experts projected that the oil field

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1 "Ethnic Groups of Ivory Coast," WorldAtlas, <https://www.worldatlas.com/articles/ethnic-groups-of-ivory-coast.html>.

2 "Asante Empire," Encyclopaedia Britannica, <https://www.britannica.com/place/Asante-empire>.

3 US Geological Survey, "Geology and Total Petroleum Systems of the Gulf of Guinea Province of West Africa," 2006, [https://pubs.usgs.gov/bul/2207/C/pdf/b2207c\\_508.pdf](https://pubs.usgs.gov/bul/2207/C/pdf/b2207c_508.pdf).

contained 3 billion barrels of total proven reserves.<sup>4</sup> In 2009 a second group of oil fields, collectively known as the TEN development project, were discovered. At the time of discovery, it was projected that the project would yield around 216 million barrels of oil.<sup>5</sup> Ghanaian authorities, in what Ghana claimed to be its Exclusive Economic Zone (EEZ), developed both of these projects.

It was also just around the time of these discoveries that bilateral consultations eventually leading to this ITLOS arbitration began. A joint Ivorian-Ghanaian Commission on Maritime Border Demarcation was established to find a negotiated solution to the overlapping resource claims. By December 3, 2014, however, little progress had been made, and the two countries decided to bring their case to international arbitration. The arbitration can be grouped into four questions:

- (1) Whether a tacit agreement existed between both countries regarding their maritime boundary;
- (2) What the maritime boundary for the territorial sea, EEZ, and continental shelf beyond 200 nautical miles should be;
- (3) Whether Ghana violated the sovereign rights of Cote d'Ivoire by developing the Jubilee and TEN hydrocarbon projects; and

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4 Jacqueline Pardtey, “#10YrsOilProduction: A look at Ghana’s First Oil Field, Jubilee Field,” Reporting Oil and Gas, June 23, 2017, <http://www.reportingoilandgas.org/10yrsoilprodction-a-look-at-ghanas-first-oil-field-jubilee-field/>.

5 “TEN Development Project, Deepwater Tano License,” Offshore Technology, <https://www.offshore-technology.com/projects/ten-development-project-deepwater-tano-ghana/>.

- (4) Whether Ghana violated Article 83 of the United Nations Convention on the Law of the SEA (UNCLOS) regarding delimitation of the continental shelf.

In large part, the resulting judgment tended more towards Ghana's interests than those of Cote d'Ivoire. The decision, unanimous in all regards, found (1) that there was no preexisting tacit agreement between the parties on their maritime boundary; (2) a single equidistance line delimiting the territorial sea, EEZ, and continental shelf; (3) that Ghana did not violate the sovereign rights of Cote d'Ivoire; and (4) that Ghana did not violate UNCLOS Art. 83.

The remainder of this case study will summarize a number of key points regarding this decision. First, it will describe the key procedural steps, and type of arbitral proceedings, agreed upon by both parties. Second, it will provide greater detail as to the legal reasoning behind each of the tribunal's four decisions. Third, it will provide a brief summary regarding how the decisions have been implemented by Ghana and Cote d'Ivoire. Finally, conclusions will be made highlighting lessons that can be learned from this landmark case.

## **Section II – Summary of the Key Procedural Steps**

On November 21, 2014 the Attorney General and Minister for Justice of Ghana transmitted a letter to the President of the Tribunal instituting arbitral proceedings under UNCLOS Annex VII. Consultations between the Tribunal President and representatives of both countries yielded an agreement to constitute a special chamber of the Tribunal pursuant Article 15(2) of the Tribunal's Statute. Article 15(2) of the Tribunal's statute states that "The Tribunal shall form a chamber for dealing with a particular dispute submitted to it if the parties so request." As also

designated by the statute, the Special Chamber was composed of five individuals.

On February 27, 2015, Cote d'Ivoire requested the prescription of provisional measures in accordance with UNCLOS Art. 290(1). This Article provides that a duly constituted tribunal "may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties of the dispute or to prevent serious harm to the maritime environment, pending the final decision." On April 25, 2015, the Special Chamber unanimously stated that Ghana was required to ensure that no new drilling occurred in the disputed area, and that information regarding any exploration activities in the disputed area not be used to the detriment of Cote d'Ivoire. The Tribunal also determined that both parties should take all necessary steps to prevent serious harm to the marine environment and refrain from unilateral action that might aggravate the dispute.

There were subsequently four rounds of written memorials, counter memorials, replies, and rejoinders by both parties over the course of 2016. Nine public sittings took place from February 6 to 16, 2017. The Special Chamber's decision was thereafter released on September 23, 2017.

### **Section III – Summary of Key Substantive Issues**

#### **A. Tacit Agreement on a Maritime Boundary**

The Special Chamber first addressed whether the parties already had a tacit agreement on their maritime boundary such that, as Ghana argued, the Special Chamber would only have to declare its preexistence. In Ghana's estimation, such a "customary" maritime boundary can exist where it reflects a "recognised [sic] and respected [boundary] over the course of more than five decades by their mutual, sustained, and consistent conduct."



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The Special Chamber embarked on a largely factual analysis of this question. The fundamental question, therefore, is what the proper standard of proof should be in such a factual analysis. To this end, the Special Chamber relied on the 2007 *Nicaragua v. Honduras* case decided by the International Court of Justice (ICJ), which found that “evidence of a tacit legal agreement must be compelling.”

The Special Chamber began by assessing the probative value of oil activities, seismic surveys, drilling activities, and oil concession maps. After adducing this evidence, the Special Chamber observed that both parties, over the course of many decades, did indeed respect an equidistance line extending from the coast. However, the Chamber also noted that Cote d’Ivoire repeatedly objected to “invasive activities” in the disputed area. The Special Chamber also noted that Ghana referred to private and public concession maps, which the Chamber deemed insufficient to authoritatively define a maritime boundary. Additionally, given the geographically constrained nature of these oil activities, the Special Chamber was skeptical as to their probative value in establishing a single maritime boundary for the territorial sea, EEZ, and continental shelf. Finally, the Special Chamber determined that “oil practice, no matter how consistent it may be, cannot in itself establish the existence of a tacit agreement on a maritime boundary.”

The Special Chamber then assessed national legislation regarding a maritime boundary, but found that such unilateral State acts were largely irrelevant in establishing what Ghana argued was an agreed-upon demarcation. Submissions before the Commission on the Limits of the Continental Shelf and the content of bilateral negotiations, from a factual perspective, were no more helpful. The Special Chamber also inquired, *sua sponte*, as to whether fisheries arrangements could be adduced to address this question. Once again, there was no evidence to suggest that the equidistance line, though followed in fisheries matters, was recognized as a maritime boundary.

Lastly, the Special Chamber assessed whether Cote d'Ivoire was estopped from challenging the purported tacit boundary. In its analysis, the Special Chamber recalled the Bangladesh/Myanmar case, where it was found that estoppel “exists when a State, by its conduct, has created the appearance of a particular situation and another State, relying on such conduct in good faith, has acted or abstained from an action to its detriment.” Since the Special Chamber already determined that the various indicia above did not prove the existence of a tacit agreement, Cote d'Ivoire did not manifest the “clear, sustained and consistent” representation required for estoppel.

In sum, therefore, the Special Chamber could not find “compelling” evidence that a tacit maritime boundary existed, and embarked on its own determination of the proper demarcation.

### B. Delimiting the Territorial Sea, EEZ, and Continental Shelf

First, the Special Chamber had to determine whether the same methodology would be used to demarcate the boundary in the territorial sea, EEZ, and continental shelf. Given the lack of sovereignty-based questions in any of the disputed zones, the Special Chamber decided to use the same methodology in each zone.

Second, Ghana and Cote d'Ivoire disagreed as to the method of demarcating the maritime boundary. While Ghana argued for the equidistance methodology, Cote d'Ivoire spoke for the angle bisector methodology. In its analysis, the Special Chamber first noted that neither UNCLOS Articles 74(1) nor 83(1) specify which methodology should be used. Instead, it is left for the Chamber to decide on a method that achieves the most equitable solution in light of the general circumstances. After assessing the geography at hand, and comparing it to the decisions of past tribunals, the Special Chamber found that the equidistance methodology would

be most appropriate. As such, it would construct a provisional equidistance line, being drawn from the coastline, and thereafter alter that line on an equitable basis, as needed. The Special Chamber then embarked on an extended analysis of the proper base points to construct such an equidistance line. The Special Chamber eventually settled on seven base points, all rooted in the specific geography at hand.

### C. Violation of Cote d'Ivoire's Sovereign Rights over the Continental Shelf

Cote d'Ivoire founded its argument on the principle that "States should refrain from any unilateral economic activity in a disputed area pending a definitive delimitation." In Cote d'Ivoire's estimation, this principle is based on three characteristics of sovereign rights, namely that (1) rights pertaining to exploration and exploitation of the continental shelf are exclusive; (2) those rights exist *ipso facto* and *ab initio*; and (3) delimitation does not create those rights, but only clarifies their scope.

The Special Chamber went to great lengths to distinguish issues of fact and law. Regarding issues of fact, the judges noted that there was a disagreement as to when Ghana should have been aware that a delimitation dispute existed. There was a separate legal disagreement as to the proper consequences of such knowledge. For our purposes, the legal dispute is most interesting. Regarding this issue, the Special Chamber found that where entitlements to the continental shelf overlap, only a delimitation decision establishes which part of the disputed area appertains to which State. As such, maritime activities taken before an international judgment or decision has been made cannot be considered a violation of the sovereign rights of the other State. To support its argument, the Special Chamber noted the ICJ's 2012 *Nicaragua v. Colombia* case, where the ICJ also found that a violation of sovereign rights could not be established before a maritime boundary was settled.

### D. Delimitation of the Continental Shelf and UNCLOS Art. 83

Cote d'Ivoire alleged that Ghana violated its obligation under Article 83(1) "to negotiate in good faith" regarding delimitation of the continental shelf by unilaterally exploiting hydrocarbon reserves, being inflexible in negotiations, and closing off all other avenues for peaceful resolution. Ghana argued, in response, that Cote d'Ivoire did not allege any specific actions, on Ghana's part, that were contrary to Article 83(1).

Though the Special Chamber reiterated the importance of the obligation to negotiate in good faith, they were quick to note that the obligation is one "of conduct and not one of result." As such, the existence of negotiations over six years, with 10 meetings between 2008 and 2014, satisfied the "good faith" standard, as there were no "convincing arguments" that the negotiations were not meaningful.

In the alternative, Cote d'Ivoire argued that Ghana's hydrocarbon projects violated its obligation under Article 83(3) to not jeopardize or hamper the conclusion of an agreement regarding the continental shelf. The Special Chamber began by interpreting Article 83(3). It found that the Article contains two linked obligations – (1) "to make every effort to enter into provisional arrangements of a practical nature" and (2) "during this transitional period, not to jeopardize or hamper the reaching of the final agreement." Regarding the first obligation, the Special Chamber found that the wording "does not amount to an obligation to reach an agreement on provisional arrangements." Only a duty to act in good faith towards negotiating such an arrangement is required. Regarding the second obligation, the Special Chamber found that it is also one of good-faith conduct, since it is connected to the first obligation by the word "and." Given that Cote d'Ivoire did not initiate negotiations to agree on provisional arrangements until the arbitration began, and since Ghana stopped hydrocarbon activities



once the provisional arrangements entered into force, the Special Chamber found that Ghana did not violate UNCLOS Art. 83(3).

### **Section IV – Implementation of the Tribunal’s Decision**

Though this arbitral decision is still of relatively recent provenance, there is reason for optimism regarding its full implementation by both Ghanaian and Ivorian authorities. On September 23, 2017, the same day as the tribunal’s decision was announced, both countries released a joint statement “expressing their special gratitude” to the Special Chamber and “accept[ing] the decision in accordance with the statute of ITLOS.”<sup>6</sup> Even before the decision was announced, in May 2017, Ghanaian President Akufo-Addo paid a three-day visit to Cote d’Ivoire to start negotiations on a new joint strategic partnership.<sup>7</sup> Mere weeks after the decision was released, President Ouattara of Cote d’Ivoire returned the favor, visiting Ghana to release a joint communiqué that “expressed their commitment to ensure the smooth implementation of the ruling by the Special Chamber of the International Tribunal of the Law of the Sea.”<sup>8</sup> To this end, the joint communiqué established a Joint Committee for the Implementation of the ITLOS judgment.<sup>9</sup>

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<sup>6</sup> Graphic Online, “Ghana Cote d’Ivoire joint statement after ITLOS judgement,” [sic] Sept. 23, 2017, <https://www.youtube.com/watch?v=814hzVuqRxI>.

<sup>7</sup> “Cote d’Ivoire’s president, Alassane Ouattara to visit Ghana Monday,” CITIFM ONLINE, Oct. 15, 2017, <http://citifmonline.com/2017/10/15/cote-divoires-president-alassane-ouattara-to-visit-ghana-monday/>

<sup>8</sup> “Full Statement of the Joint Communiqué,” [http://www.ghana.gov.gh/images/joint\\_communique.pdf](http://www.ghana.gov.gh/images/joint_communique.pdf)

<sup>9</sup> *Id.*

This joint committee met three times over the course of 2018. During these meetings, delegates from both countries plotted the maritime boundary based on the ITLOS decision, and signed a joint communiqué ratifying these coordinates as the maritime boundary.<sup>10</sup> Further talks are planned to take the good will engendered by these bilateral negotiations and expand cooperation beyond the maritime boundary. Such discussions will focus on cooperation in the extraction of hydrocarbons and other natural resources.<sup>11</sup> As Ghanaian Senior Minister Yaw Osafo-Marfo pointed out, “Let’s not forget that some of these hydrocarbons [belonging to either country] are liquid and gas which may straddle the boundary at both sides . . . We don’t want any situation where we discover natural resources on both sides of the boundary that brings confusion.”<sup>12</sup>

### Section V – Conclusions

To what extent can these amicable proceedings be replicated in other contexts? As is often the case, it is difficult to extricate the arbitral proceedings from their broader political context. The years leading up to 2014 were ones of great political instability for Cote d’Ivoire. The First Ivorian Civil War, from 2002 to 2004, left the country largely divided between a Muslim north and government-held Christian south. An uneasy peace perpetuated this bifurcation until much-delayed presidential elections in October 2010, when

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<sup>10</sup> “Ghana and Cote d’Ivoire agree on the maritime boundary,” *Ghana News Agency*, Aug. 10, 2018, <http://www.ghananewsagency.org/politics/ghana-and-cote-d-ivoire-agree-on-the-maritime-boundary-136985>.

<sup>11</sup> “Ghana, Cote d’Ivoire agree on delimiting maritime boundary,” *GhanaWeb*, Aug. 13, 2018, <https://www.ghanaweb.com/GhanaHomePage/business/Ghana-Cote-d-Ivoire-agree-on-delimiting-maritime-boundary-676235>.

<sup>12</sup> Id.

the Independent Electoral Commission declared Alassane Ouattara, from the north, the winner.

Violence resumed when the loser, former President Gbago, refused to surrender control, and continued until Gbago's arrest in 2011.

For a time, some of Gbago's allies found support in Ghana, where some members of Ghana's ruling National Democratic Congress Party welcomed them.<sup>13</sup> But Ghanaian President John Dramani Mahama, soon after ascending to the presidency in 2012, indicated that, "the territory of Ghana will not be used as a platform to destabilize Ivory Coast."<sup>14</sup> Indeed Presidents Mahama and Ouattara reportedly had a very close personal relationship – a confraternity that persisted notwithstanding the institution of arbitral proceedings.<sup>15</sup> This mutual interest in maintaining regional stability to foster economic growth was likely an important reason why the arbitral proceedings proceeded amicably.

Additionally, it is clear that both countries saw this maritime dispute as only one part of a much broader political and economic relationship. The same joint communiqué that agreed to implement the Tribunal's decision also highlighted a number of other areas for

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13 Olivier Monnier, "Cote d'Ivoire-Ghana: No hiding place for Laurent Gbago's allies," May 15, 2013, <http://www.theafrica-report.com/West-Africa/cote-divoire-ghana-no-hiding-place-for-laurent-gbagbos-allies.html>.

14 "Ghana will not be used to destabilize Cote d'Ivoire," GhanaWeb, Sept. 5, 2012, <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Ghana-will-not-be-used-to-destabilize-Cote-d-Ivoire-Prez-Mahama-249646>.

15 "Taking Ivory Coast to ITLOS was Mahama's toughest call – Former Minister," GhanaWeb, Sept. 25, 2017, <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Taking-Ivory-Coast-to-ITLOS-was-Mahama-s-toughest-call-Former-Minister-584420>.

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cooperation, ranging from security to cocoa and cashew production to transportation and mining.<sup>16</sup> By broadening the scope of the relationship, the existence of a maritime dispute, notwithstanding the sizable oil reserves up for grabs, became less of an existential crisis for bilateral relations. Aside from the precedential import of this arbitration from a legal perspective, this case study may also be valuable in showcasing the benefits of situating arbitrations within a broader bilateral political and economic agenda.

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<sup>16</sup> “Ghana, Cote d’Ivoire to Deepen Relations Despite ITLOS Maritime Judgment,” Government of Ghana, <http://www.ghana.gov.gh/index.php/news/4082-ghana-cote-d-ivoire-to-deepen-relations-despite-itlos-maritime-judgment>.





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