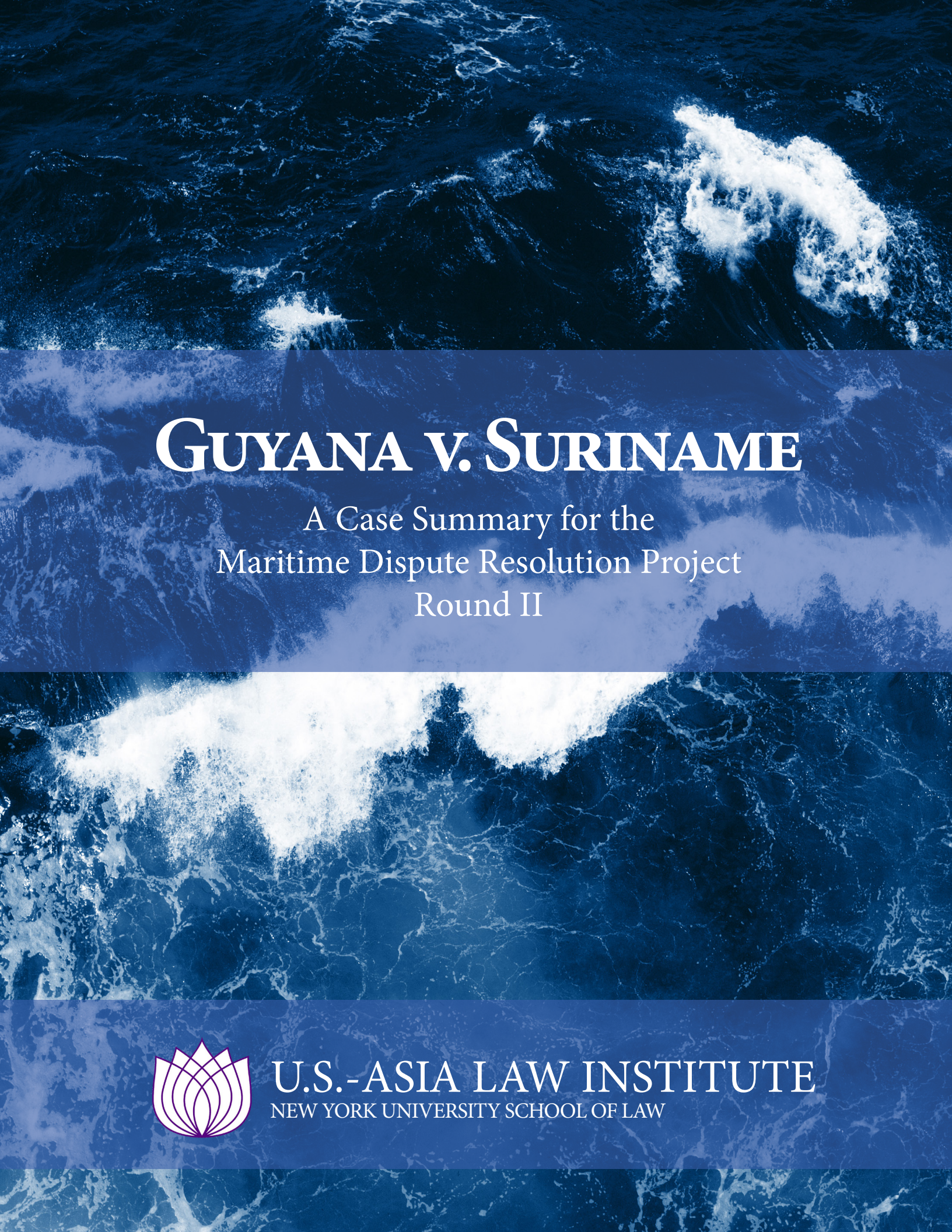

GUYANA v. SURINAME

A Case Summary for the
Maritime Dispute Resolution Project
Round II

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

Maritime Dispute Resolution Project

Arbitral Tribunal Constituted Pursuant to the United Nations Convention on the Law of the Sea *(Guyana v. Suriname)*

Case Summary by Julian Ku*

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

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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:

Arbitral Tribunal Constituted Pursuant to Article 287, and in Accordance with Annex VII, of the United Nations Convention on the Law of the Sea (Guy. vs. Surin.), 30 R.I.A.A. 1 (Perm. Ct. Arb. 2007).

Section I – Summary of the Case

Guyana and Suriname, both located on the northeast coast of South America, have long disputed their adjacent land and sea borders. In 1936, Great Britain and the Netherlands (the colonial powers controlling Guyana and Suriname, respectively) formed a mixed boundary commission to resolve boundary disputes between the two then-colonies. Although that commission determined a maritime boundary for the territorial seas, the commission's determination was never finalized in a treaty between the colonial powers. After the colonies eventually became independent and joined the United Nations Convention for the Law of the Sea (UNCLOS),[1] the unsettled problem of the maritime boundary between the two nations expanded to include questions about the delimitation of each country's exclusive economic zone (EEZ) and continental shelf (CS).

Matters came to a head in 2000 when gunboats from the Suriname Navy ordered an oil and drilling ship operating pursuant to a Guyanese concession to leave disputed waters (the CGX incident). Three years of discussion followed in an effort to resolve the dispute, but no agreement was reached. In February 2004, Guyana filed an application pursuant to articles 286 and 287 of the UNCLOS and in accordance with Annex VII to form an arbitral tribunal to resolve its dispute with Suriname.[2]

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[1] UN Convention on the Law of the Sea, *opened for signature* Dec. 10**,** 1982, 1833 U.N.T.S. 397, *reprinted in* 21 I.L.M. 1261 (1982).

[2] Arbitral Tribunal Constituted Pursuant to Article 287, and in Accordance with Annex VII, of the United Nations Convention on the Law of the Sea in the Matter of an Arbitration between Guyana and Suriname (Guy. v. Surin.), 30 R.I.A.A. 1, para. 157 (Perm. Ct. Arb. 2007).

Guyana sought to have the tribunal determine that "the single maritime boundary which divides the territorial seas and maritime jurisdictions of Guyana and Suriname follows a line of 34° east and true north for a distance of 200 nautical miles." It further alleged that Suriname, during the CGX incident, had unlawfully threatened to use force against Guyana as well as violated its obligations under articles 74(3) and 83(3) of the UNCLOS by failing to make an effort to reach a provisional arrangement and to avoid "hamper[ing]" a final agreement.

Suriname responded with a series of jurisdictional and admissibility objections.[3] In the event that the tribunal reached the merits, Suriname argued that the single maritime boundary should begin along the azimuth of N10ºE from a point determined by the 1936 UK-Netherland mixed boundary commission. Though not confirmed in a formal treaty, Suriname argued that this starting point and related maritime boundary had come to be accepted historically "through tacit or *de facto* agreement, acquiescence or estoppel."[4] It further asserted that this 1936 boundary (the azimuth of N10ºE) should be extended beyond its original three-mile limit to the currently accepted 12-mile boundary line for territorial seas. Suriname further argued that its preferred boundary line was needed to allow it to control and supervise shipping traffic approaching the Corentyne River dividing the two nations, over which Suriname held undisputed sovereignty. This necessity

[3] *Id.* para. 174.

[4] *Id.* para. 282.

constituted a "special circumstance" under article 15 of the UNCLOS.[5]

Finally, Suriname rejected charges that it had threatened the use of force in the 2000 CGX incident or that it had failed in its article 74(3) or article 83(3) obligations.

Section II – Summary of Key Substantive Issues

1. Suriname's Objections to the Tribunal's Jurisdiction and the Admissibility of Guyana's Claims

(1) Jurisdiction

Suriname objected to the tribunal's jurisdiction to resolve Guyana's application for a maritime boundary delimitation. Its main jurisdictional objection claimed that the Guyana-Suriname dispute essentially stemmed from a dispute over whether to accept the 1936 determination of a land boundary terminus for the territorial sea. Suriname argued that this meant it was essentially a land sovereignty dispute, which is beyond the scope of the tribunal's jurisdiction under the UNCLOS.[6]

It also objected to the tribunal's jurisdiction with respect to Guyana's claims concerning the CGX incident on the grounds that article 297 of the UNCLOS limits compulsory dispute settlement where matters "relate to the exercise of a coastal state of its sovereign rights and jurisdiction."[7] Suriname further argued that

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[5] *Id.* para. 285.

[6] *Id.* para. 174.

[7] *Id.* paras. 411-12.

exercising sovereign rights to non-living resources does not fall within the limits imposed by article 297.

The tribunal rejected both of these jurisdictional arguments. First, it held that its delimitation of a maritime boundary would not have any implication for the parties' sovereign land rights and would not exceed the scope of the UNCLOS.[8] Second, it held that article 293 grants the tribunal jurisdiction to arbitrate disputes concerning the "interpretation and application of" the UNCLOS, subject to article 297(3)(a)'s specific limitations, none of which apply in this case.[9]

(2) Admissibility

Suriname further argued that Guyana's second and third claims, alleging failure to reach a provisional arrangement and to avoid hampering a final agreement as well as the unlawful threat of use of force, should be deemed inadmissible due to Guyana's lack of good faith and lack of "clean hands." In this view, since Guyana had authorized drilling in the disputed waters, its actions should render its claims of wrongfulness by Suriname inadmissible. Finally, Suriname argued that because the location in which the CGX incident occurred was disputed, any claim under the UNCLOS should be rendered inadmissible.[10]

The tribunal rejected all of these admissibility objections. It noted that the "clean hands" doctrine has never been held to bar admissibility by other international tribunals. It also rejected Suriname's claim of an exclusion for activities in disputed

[8] *Id.* para. 308.

[9] *Id.* paras. 413-16.

[10] *Id.* para. 417.

territories, which would undermine the ability of international bodies to protect principles such as the bar on the threat or use of force.[11]

2. Maritime Boundary Delimitation

(1) The Parties' Arguments

Guyana sought a single maritime boundary that would divide the territorial seas, EEZs, and CS belonging to the two parties. Agreeing with Suriname that the 1936 land terminus should be the starting point, it then proposed a line from that point along an azimuth of N34°E out to the limit of the 200 miles EEZ and CS. It argued that this boundary satisfied the "equidistance" principle applicable to maritime boundary limitations under the UNCLOS.[12]

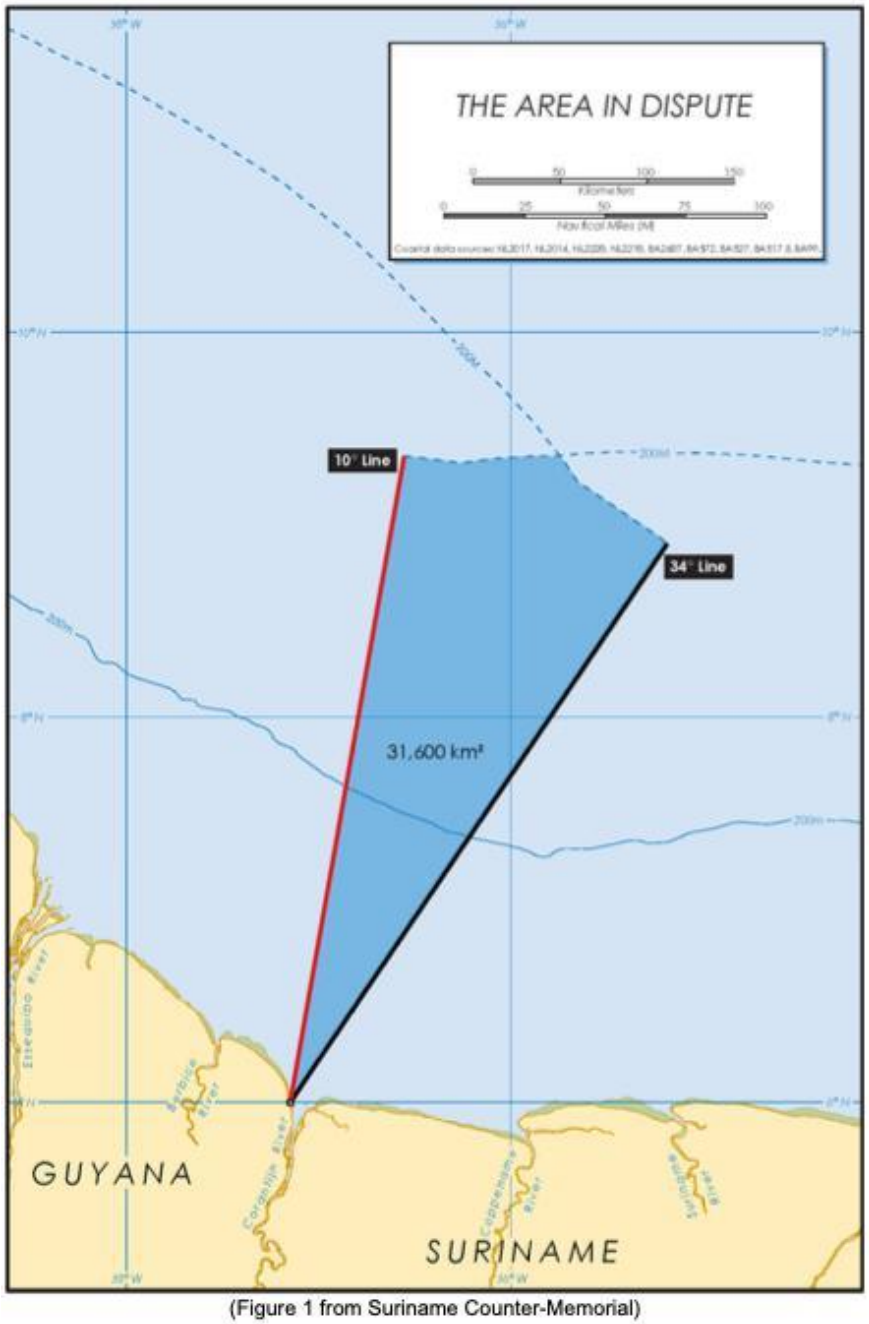
Suriname also agreed that there should be a single maritime boundary for all three UNCLOS maritime entitlements and that the boundary should start at the 1936 land terminus. But it then argued that the boundary ought to follow the azimuth of N10°E due to the historical de facto acceptance of that boundary and the special circumstances arising from Suriname's need to control shipping traffic into the Corentyne River.[13]

This graphic, provided by the tribunal, illustrates the difference between the two parties' submissions.

[11] *Id.* para. 418.

[12] *Id.* para. 288.

[13] *Id.* para. 285.



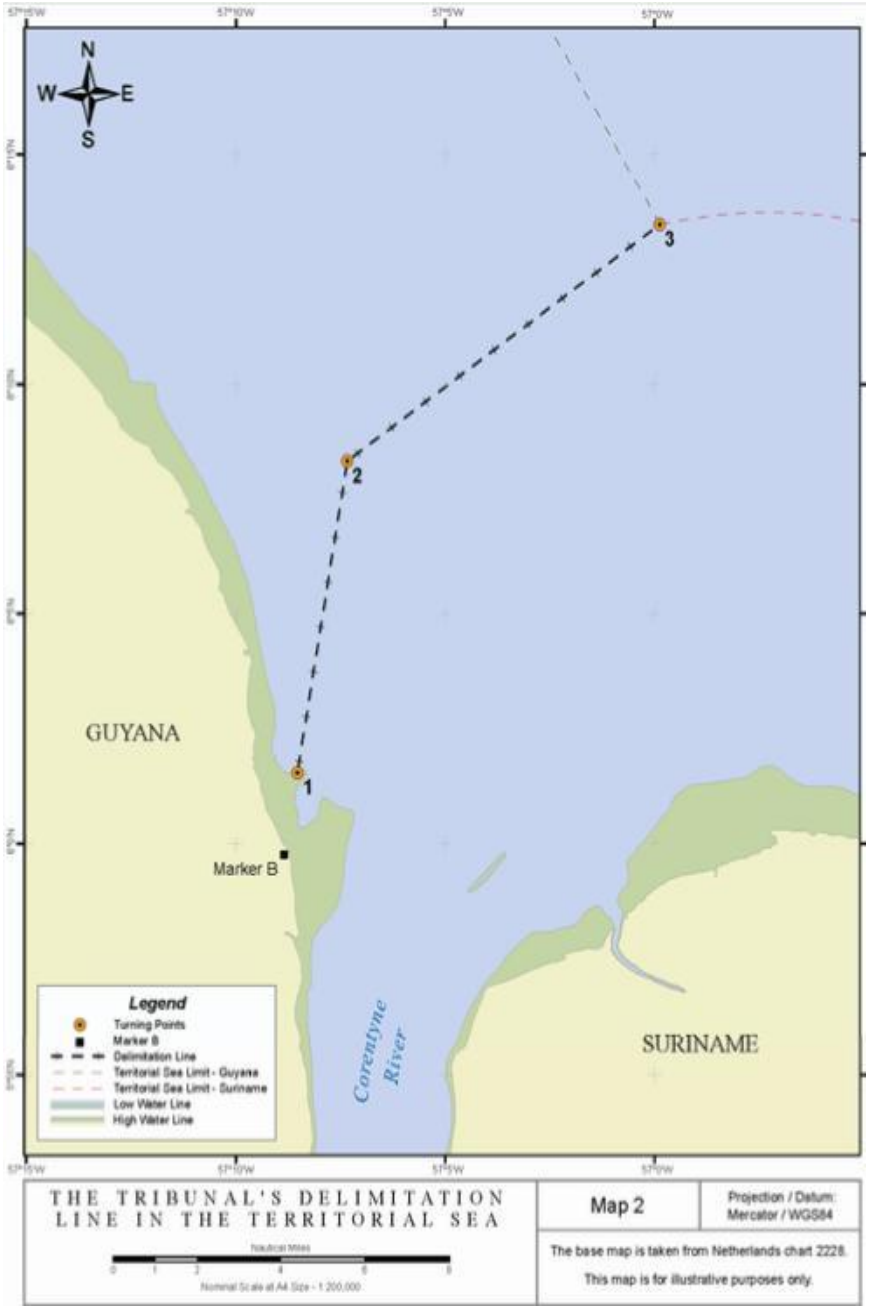
(Figure 1 from Suriname Counter-Memorial)

(2) The Tribunal's Determination

The tribunal accepted that when it delimits territorial seas, it should use the median line between the relevant basepoints along the coastlines of the adjacent states. This line would normally have been closer to Guyana's proposed line, but the tribunal agreed with Suriname that special circumstances justified a departure from that line. In particular, the tribunal drew a distinction between the median line for dividing the adjacent parties' territorial seas and dividing the EEZ entitlements.[14]

Accepting both of Suriname's contentions about special circumstances relating to historical practice and navigational traffic management concerns, the tribunal agreed to follow Suriname's proposed line along the azimuth of N10°E for three nautical miles (nm) only. After reaching the mark of three miles, the tribunal held that both of Suriname's special circumstances diminished in importance. This was so because there was no historical practice beyond the traditional 3 nm line and the need to manage navigational traffic also diminished beyond that line. The tribunal thus imposed a gradual transition after 3 nm toward the traditional median proposed by Guyana as illustrated in the graphic below.

[14] *Id.* para. 296-97.


N
W
E
S
1
2
3
GUYANA
Marker B
SURINAME
Corentyne River
Legend
Turning Points
Marker B
Delimitation Line
Territorial Sea Limit - Guyana
Territorial Sea Limit - Suriname
Low Water Line
High Water Line
THE TRIBUNAL'S DELIMITATION LINE IN THE TERRITORIAL SEA
Map 2
Projection / Datum: Mercator / WGS84
The base map is taken from Netherlands chart 2228.
This map is for illustrative purposes only.

The tribunal then turned to the delimitation of the maritime boundary with respect to the EEZ and CS. Acknowledging that the legal regimes for determining boundaries for the EEZ and CS are different from the territorial sea regime, the tribunal agreed with both Suriname and Guyana that a single maritime boundary should exist. The tribunal noted that "the concept of the single maritime boundary does not have its origin in the Convention but is squarely based on State practice and the law as developed by international courts and tribunals".[15]

To resolve this issue, the tribunal followed the two-stage approach of first following the "provisional equidistance line", and then adjusting that line for special circumstances. This approach differed sharply from Suriname's proposed "bisector drawn between coastal fronts" that extended its historical line.

In determining the provisional equidistance line, the tribunal was required to first determine the relevant coastlines of each state. Guyana proposed that the tribunal use the outermost points along each party's baseline that "control the direction of the provisional equidistance line to a distance of 200 nm". In other words, only the coastline that would affect the maritime areas under delimitation should be used to determine the provisional equidistance line. Suriname argued for a much narrower conception of the relevant coasts that would be limited to "coasts that face onto or abut the area to be delimited".[16] In this view, coasts that face in different directions from the area to be delimited should not be part of the delimitation.

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[15] *Id.* para 334.

[16] *Id.* para. 349.

The tribunal agreed with Guyana in whole and rejected Suriname's position completely, finding little support for the latter in international practice or precedent. The tribunal then went on to reject any further adjustments to the provisional equidistance line based on the geographical character of the coastline or the historical conduct of the parties. In the end, the tribunal drew its boundary as an equidistant line from the relevant basepoints from the territorial sea limit out to 200 nm without any further adjustment for special circumstances, as illustrated in the graphic below.

3. The Threat of Using Force

After dispensing with the admissibility objections, the tribunal considered whether the Suriname Navy's actions during the 2000 CGX incident constituted a "threat of the use of force" in violation of the UN Charter and the UNCLOS' requirements for the peaceful settlement of disputes. The specific threat to the CGX vessel during the CGX incident follows:

> This is the Suriname navy. You are in Suriname waters without authority of the Suriname Government to conduct economic activities here. I order you to stop immediately with these activities and leave the Suriname waters.[17]

Suriname offered witness testimony from its naval officers stating that there were no plans to use force if the CGX vessel had not departed as ordered.[18] Suriname further argued that its actions were legal countermeasures. But the tribunal had little trouble rejecting all of Suriname's submissions on this issue. It found that the order to leave the waters, given by an armed naval vessel in those circumstances, constituted a "threat of the use of force" and no such use of force could ever constitute a lawful countermeasure.[19]

Nonetheless, the tribunal also found that Guyana failed to show it suffered any damages from the unlawful threat of the use of force. It awarded no reparations to Guyana for this claim.

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[17] *Id.* para 436.

[18] *Id.* paras. 437-38.

[19] *Id.* para. 439.

4. The Breach of the Obligations under Articles 74 (3) and 83 (3)

Guyana and Suriname each accused the other of failing to comply with their UNCLOS obligation to "make every effort to enter into provisional arrangements of a practical nature" pursuant to article 74(3) and "not to jeopardize or hamper the reaching of the final agreement" pending delimitation of the EEZ or the CS pursuant to article 83(3).

The tribunal had little difficulty finding that Suriname's unlawful threat for the use of force violated both article 74(3) and article 83(3).[20] More notably, it found that Guyana also violated article 74(3) when it licensed oil exploration in the disputed waters without first seeking to engage Suriname in discussions.[21]

Importantly, however, the tribunal refused to find that Guyana's authorization of "seismic exploration" by CGX violated article 83(3). The tribunal opined that any article 83(3) violation usually required one side to commit physical damage.[22] Thus, while oil drilling would violate this provision, mere seismic exploration would not.

Section III – Implementation of the Tribunal's Decision

The much-anticipated tribunal award was cheered by leaders in both Guyana and Suriname. Then-President Bharrat Jagdeo of

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[20] *Id.* para. 474.

[21] *Id.* para. 477.

[22] *Id.*

Guyana gave a long address explaining how Guyana had prevailed on the "core issues" and noted:

> Both Guyana and Suriname are pledged and obliged by International Law to accept and respect the Tribunal's Award. I have already explained how satisfied Guyana is with the Award on every one of the core issues before the Tribunal. I have deliberately not spoken of 'winners and losers;' that would not have been appropriate because in a very important sense both Guyana and Suriname are winners.[23]

Suriname's leadership was less joyous, but its then-president also issued a statement stating that it was "delighted and relieved that the maritime dispute with Guyana has been settled."[24]

Although tensions between the two nations have not gone away, there is no indication that compliance with the 2007 tribunal award has been questioned. As a later report discussing negotiations over the extended CS noted, "officials in both Guyana and Suriname appeared optimistic that the demarcation of the maritime jurisdiction of the two countries significantly enhanced their respective prospects of economically significant oil finds."[25]

Indeed, both nations have partnered with such international oil companies to continue to explore for hydrocarbon resources. In

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[23] *Frontiers: The Guyana- Suriname Maritime Boundary Award*, STABROEK NEWS, Oct. 30, 2007, https://www.stabroeknews.com/2007/10/30/guyana-review/frontiers-the-guyana-suriname-maritime-boundary-award/.

[24] Bert Wilkinson, *Suriname-Guyana: Maritime Settlement Sparks Oil Rush,* INTER PRESS SERVICE (Sept. 21, 2007), http://www.ipsnews.net/2007/09/suriname-guyana-maritime-settlement-sparks-oil-rush/.

[25] *Suriname's maritime expansion not alarming*, STABROEK NEWS, May 6, 2011, https://www.stabroeknews.com/2011/05/06/news/guyana/suriname's-maritime-expansion-not-alarming/.

2015, Exxon Mobil announced that a discovery in the Guyanese CS contains "so much oil that by the mid-2020s Guyana, with a population of about 778,000, will probably produce more crude per citizen than any other country."[26] Similarly, in January 2020, one of Suriname's international partners announced a major find "just seven miles from the Guyana maritime border."[27]

Reflecting upon the case, Guyana's ambassador to Suriname in 2018 credited the 2007 tribunal award for making the fabulous 2015 Exxon discovery possible. He stated that the discovered oil block "is just a few kilometres away from where Suriname itself was claiming and Exxon would have been even more fearful because of what Suriname did in June 2000; it used its gunboats."[28]

Section IV – Conclusions

There appear to be at least two broader legal precedents set by the award.

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[26] Kevin Crowley, *The World's Newest Petrostate Isn't Ready for a Tsunami of Cash* BLOOMBERG MARKETS (Aug. 13, 2019), https://www.bloomberg.com/news/features/2019-08-13/guyana-isn-t-ready-for-its-pending-oil-riches-but-exxon-is.

[27] Jordan Blum, *Apache stock soars on Suriname discovery*, HOUSTON CHRONICLE, Jan. 7 2020, https://www.houstonchronicle.com/business/energy/article/Apache-stock-soars-on-Suriname-discovery-14957321.php

[28] *Guyana-Suriname maritime boundary dispute settlement influenced ExxonMobil's oil search*, UNIVERSITY OF GUYANA (Feb. 6, 2018), https://www.uog.edu.gy/tags/maritime-boundary-dispute.

First, the award applied the equidistance method to establish a single maritime boundary for the EEZ and CS of the two states pursuant to UNCLOS articles 74(1) and 83(1).

Yet neither provision actually refers to the equidistance method that the tribunal applied without much hesitation. As one scholar noted, "A remarkable feature of this Award is that the Tribunal applied the equidistance method to establish the single maritime boundary under articles 74 (1) and 83 (1) of the Convention. It is common knowledge that these provisions omit any reference to a method of delimitation because of the need for a compromise."[29]

Second, the award went out of its way to draw a distinction between exploratory drilling for hydrocarbons, which would have violated article 83(4), and other economic activities related to drilling for hydrocarbons that did not constitute such a violation. The award, drawing on ICJ precedents, held that a violation would occur only when the risk of physical damage to the seabed or soil arises. At least one commentator has concluded that this part of the award has not been followed in subsequent decisions.[30]

Although the legal significance of the award can be questioned, it can be rightly seen as a practical triumph settling a difficult dispute in a way that has benefited both parties and advanced the cause of

[29] Yoshifumi Tanaka, *The Guyana/Suriname Arbitration: A Commentary* 2 HAGUE JUSTICE JOURNAL 28, 31 (2007).

[30] Youri van Logchem, *The Rights and Obligations of States in Disputed Maritime Areas: What Lessons Can Be Learned from the Maritime Boundary Dispute Between Ghana and Côte d'Ivoire?*, 52 VAND. J. TRANSNAT'L L. 121, 141–42 (2019).

international dispute settlement.[31] It seems likely, however, that the specific characteristics of the Guyana-Suriname dispute will make it difficult to replicate the award's success elsewhere. Neither nation had a serious military advantage over the other, yet both had enormously strong economic incentives to reach some binding legal settlement. This formula may be good for peaceful international dispute settlement, but it is far from common.

[31] *See* Stephen Fietta, *GUYANA/SURINAME. Award, UN Convention on the Law of the Sea Annex VII Arbitral Tribunal, September 17, 2007*, 102 AM. J. INT'L. L. 119 (2008).

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