



**INTERNATIONAL
TRIBUNAL FOR THE LAW
OF THE SEA**

ITLOS JURISPRUDENCE

- I. Merits (contentious)
- II. Advisory opinions
- III. Prompt Release
- IV. Provisional Measures
(article 290 (5))



ITLOS - Jurisdiction

The key provision is article 21 of the Statute:

- The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention (this jurisdiction is subject to the provisions of article 297 and 298).
- It also comprises all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Accordingly, the Tribunal has jurisdiction to deal with disputes (contentious jurisdiction) and legal questions (advisory jurisdiction) submitted to it – relating to the Convention.

Basis for the contentious jurisdiction

Contentious Jurisdiction (adjudication of disputes, judgment is binding upon the parties)

- (a) Declarations under article 287 of the Convention
- (b) Special agreement
- (c) Jurisdictional clauses in international agreements
- (d) Exclusive jurisdiction

(a) On the basis of declarations under article 287

Part XV, section 2, of the Convention: “compulsory procedures entailing binding decisions”

- The Tribunal's jurisdiction becomes compulsory when the parties to the dispute have accepted it by virtue of a declaration made under article 287 of the Convention.
- In this situation, no further consent from the parties is needed in order to submit the dispute to the Tribunal.
- The case is to be submitted to the Tribunal by an application (unilateral request).
- The compulsory jurisdiction of ITLOS, ICJ and arbitral tribunal under Part XV, section 2, is equal.
- The scope of the Tribunal's jurisdiction is to settle disputes arising out of the interpretation or application of the provisions of the Convention (see article 288 of the Convention)

(b) Special agreements

- In the absence of 287 declarations (or of “matching-declarations”), the Tribunal may have jurisdiction over a dispute submitted on the basis of a special agreement concluded between the parties.
- The parties may also decide, by agreement, to transfer to the Tribunal a dispute that has been instituted before an arbitral tribunal established under article 287.

Guide to Proceedings (annex 3)

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Annex 3

Special Agreement Instituting Proceedings before the International Tribunal for the Law of the Sea

[Identity of the parties to the agreement, for example:]

The Government of ... and the Government of ...,
or
The Government of ... and the [International Organisation]

Considering that a dispute has arisen between them concerning [...];

Desiring that this dispute should be settled by a decision of the International Tribunal for the Law of the Sea ("Tribunal") [or by a special chamber of the Tribunal formed pursuant to article 15, paragraph 2, of the Statute];

Have agreed as follows:

Article 1

The Tribunal / [Chamber] is requested to determine [questions submitted to the Tribunal/Chamber].

Article 2

The contracting Parties agree that the written proceedings should consist of:

- (1) a Memorial of the [Government of ...] to be submitted within [...] months of the Notification of the present Agreement to the Tribunal/ [Chamber];
- (2) a Counter-Memorial of the [Government of ...] to be submitted within [...] months of delivery of the Memorial.

[Article 3]

for entities not parties to the United Nations Convention on the Law of the Sea

Both parties agree to comply with the terms of the Statute of the Tribunal, contained in Annex VI to the 1982 United Nations Convention on the Law of the Sea]

[Article 4]

where the dispute is being submitted to a special chamber of the Tribunal

The dispute shall be resolved by a special chamber of the Tribunal, composed of [five] judges, pursuant to article 15, paragraph 2, of the Statute of the Tribunal.

If the parties cannot agree on the composition of the chamber, any party may, after a period of 60 days following the date of the notification of this Agreement to

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the Tribunal, request the President of the Tribunal to determine the composition of the chamber. If the President is unable to act or is a national of one of the parties to the dispute, the composition of the Chamber shall be determined by the next available senior member of the Tribunal who is not a national of one of the parties to the dispute.]

Article 5

The present Agreement shall enter into force upon signature. It shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.

or

This Agreement shall enter into force on the first day of the month following the date of receipt of the last of the notifications by which the parties have informed each other of the completion of their respective formal requirements for the entry into force of this Agreement.

Upon entry into force of the present Agreement, it shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.

or

The present Agreement shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible in [...] and the present Agreement shall enter into force immediately upon the exchange of those instruments.]

Upon entry into force of the present Agreement, it shall be notified to the Tribunal pursuant to article 24, paragraph 1, of the Statute of the Tribunal. The notification may be done jointly or by any party to the Agreement.

Article 6

In witness whereof the undersigned, being duly authorized thereto, have signed the present Agreement.

Done in duplicate at [place], on [date], both texts being equally authoritative.

<i>Name of signatory Position</i>	<i>Name of signatory Position</i>
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(c) Jurisdictional clauses conferring jurisdiction on the Tribunal

- Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (24 November 1993)
- Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (4 August 1995)
- 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (7 November 1996)
- Framework Agreement for the Conservation of the Living Marine Resources on the High Seas of the South-Eastern Pacific (14 August 2000)

(c) Guide to Proceedings (annex 4)

Jurisdictional Clauses

[For inclusion in an Agreement conferring jurisdiction on the International Tribunal for the Law of the Sea or a special chamber of the Tribunal formed pursuant to article 15, paragraph 2, of the Statute]

Clause conferring jurisdiction on the International Tribunal for the Law of the Sea

Any dispute between the contracting parties relating to the interpretation or application of the provisions of this Agreement [which cannot be resolved through negotiations between the parties within [a reasonable period of time] following the notification by one party to the other party of the existence of a dispute] shall, at the request of any party to the Agreement, be submitted to the International Tribunal for the Law of the Sea.

Clause conferring jurisdiction on a special chamber formed pursuant to article 15, paragraph 2, of the Statute

1. Any dispute relating to the interpretation or application of the provisions of this agreement [which cannot be resolved through consultations between the parties within [a reasonable period of time] following the notification by one party to the other party of the existence of a dispute] shall, at the request of any party to the agreement, be submitted to a special chamber of the International Tribunal for the Law the Sea (hereinafter the "Tribunal"), composed of [five] judges, pursuant to article 15, paragraph 2, of the Statute of the Tribunal.

2. If the parties cannot agree on the composition of the chamber, any party may, after a period of 60 days following the date of the request referred to in paragraph 1 above, request the President of the Tribunal to determine the composition of the chamber. If the President is unable to act or is a national of one of the parties to the dispute, the composition of the Chamber shall be determined by the next available senior member of the Tribunal who is not a national of one of the parties to the dispute.

(d) “Exclusive” jurisdiction of the Tribunal:

On the basis of specific provisions of the Convention:

- Provisional measures pending constitution of an arbitral Tribunal (article 290, paragraph 5)
- Prompt release of vessels and crews (article 292)
- Disputes with respect to activities in the Area (Seabed Disputes Chamber according to article 187)

Merits (Judgments)

Arrest of vessels:

Case No. 2: *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)* with provisional measures under 290 (1)

Case No. 18: *The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)* with provisional measures under 290 (1)

Case No. 19: *The M/V "Virginia G" Case (Panama/Guinea-Bissau)*

Case No. 25: *The "M/V Norstar" Case (Panama/Italy)* with preliminary objections

Merits (Judgments)

Fisheries:

Case No. 7: *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile / European Union)* - DISCONTINUED

Maritime delimitation:

Case No. 16: *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/ Myanmar)*

Case No. 23: *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)* with provisional measures under 290 (1)

CHILE/EUROPEAN UNION

- ❑ Submitted by special agreement
- ❑ Case concerning the conservation and exploitation of swordfish stocks in the South-East Pacific Ocean
- ❑ Special Chamber constituted at the request of the parties consisting of 5 Judges
- ❑ Time-limits extended to commence 1 January 2009



M/V „SAIGA“ (No. 2)
(Saint Vincent and the Grenadines v. Guinea)

The case arose from the arrest and continued detention of the *M/V Saiga*, an oil tanker, which had been engaged in providing fishing vessels with gasoil (bunkering) off the coast of Guinea.

Guinea also prosecuted the Master of the tanker.



M/V Saiga (No. 2) Case

- ❑ Submitted by special agreement on 20.02.1998
- ❑ Judgment 01.07.1999
- ❑ Important contributions with regard to issues such as the nationality of claims, reparation, genuine link between the vessel and its flag State, hot pursuit and use of force in law-enforcement activities.



M/V „SAIGA“ (No. 2) ***(Saint Vincent and the Grenadines v. Guinea)***

The Tribunal held that in the exclusive economic zone, “the coastal State has jurisdiction to apply customs laws and regulations in respect of artificial islands, installations and structures (article 60 paragraph 2)” and that “the Convention does not empower a coastal State to apply its customs laws in respect of any other parts of the exclusive economic zone not mentioned above” (Judgment, para. 127).



M/V „SAIGA“ (No. 2)
(Saint Vincent and the Grenadines v. Guinea)

(See Judgment, paras. 139 to 152)

Are the conditions for hot pursuit under article 111 cumulative?

YES

“the conditions for the exercise of the right of hot pursuit under article 111 of the Convention are cumulative; each of them has to be satisfied for the pursuit to be legitimate under the Convention. In this case, the Tribunal finds that several of these conditions were not fulfilled.” (para. 146)

M/V Saiga – Judgment of 1 July 1999

Use of force: (para. 155)

“Although the Convention does not contain express provisions on the use of force in the arrest of ships, international law, which is applicable by virtue of article 293 of the Convention, requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. **Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.**”

M/V Saiga – Judgment of 1 July 1999

Enforcement operations at sea: (para. 156)

“These principles have been followed over the years in law enforcement operations at sea. The normal practice used to stop a ship at sea is first to give an auditory or visual signal to stop, using internationally recognized signals. Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship. It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force. Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered.”

Case No. 19: The M/V "Virginia G" Case

Bunkering of fishing vessels

Judgment of 14 April 2014:



"the regulation by a coastal State of bunkering of foreign vessels fishing in its exclusive economic zone is among those measures which the coastal State may take in its exclusive economic zone to conserve and manage its living resources under article 56 of the Convention, read together with article 62, paragraph 4, of the Convention. This view is confirmed by State practice which has developed after the adoption of the Convention". (para. 217)

M/V Saiga (No.2) and Virginia Cases: Genuine link

Article 91 (1) of the Convention - Nationality of ships :

“Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. **There must exist a genuine link between the State and the ship.**”

“... the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States”. *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999, p. 42, para. 83; M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014, pp. 44-45, para. 111.*

Genuine link (article 91 of the Convention)

“...article 91, paragraph 1, third sentence, of the Convention requiring a genuine link between the flag State and the ship should not be read as establishing prerequisites or conditions to be satisfied for the exercise of the right of the flag State to grant its nationality to ships” (*M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 44, para. 110).

“...once a ship is registered, the flag State is required, under article 94 of the Convention, to exercise effective jurisdiction and control over that ship in order to ensure that it operates in accordance with generally accepted international regulations, procedures and practices. This is the meaning of ‘genuine link’”. *M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 45, para. 113.

Nationality of claims - Notion of „ship as a unit“

“The provisions referred to in the preceding paragraph indicate that the Convention considers a **ship as a unit**, as regards the obligations of the flag State with respect to the ship and the right of a flag State to seek reparation for loss or damage caused to the ship by acts of other States and to institute proceedings under article 292 of the Convention. Thus the ship, every thing on it, and every person involved or interested in its operations are treated as an entity linked to the flag State. The nationalities of these persons are not relevant.” *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999, p. 48, para. 106; see M/V “Virginia G” (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014, p. 48, para. 48.*

Case No. 18: *The M/V "Louisa" Case*

- Request for Provisional Measures of Saint Vincent and the Grenadines on 24 November 2010

- Judgment (merits) of 28 May 2013:
 - “ the Tribunal concludes that no dispute concerning the interpretation or application of the Convention existed between the Parties at the time of the filing of the Application and that, therefore, it has no jurisdiction *ratione materiae* to entertain the present case”.



Case No. 25: The M/V "Norstar" Case (Panama v. Italy)



Case No. 25: The M/V "Norstar" Case (Panama v. Italy)

“As no State may exercise jurisdiction over foreign ships on the high seas, in the view of the Tribunal, any act of interference with navigation of foreign ships or any exercise of jurisdiction over such ships on the high seas constitutes a breach of the freedom of navigation, unless justified by the Convention or other international treaties” (para. 222)

In the view of the Tribunal, “even acts which do not involve physical interference or enforcement on the high seas may constitute a breach of the freedom of navigation” (para. 223).

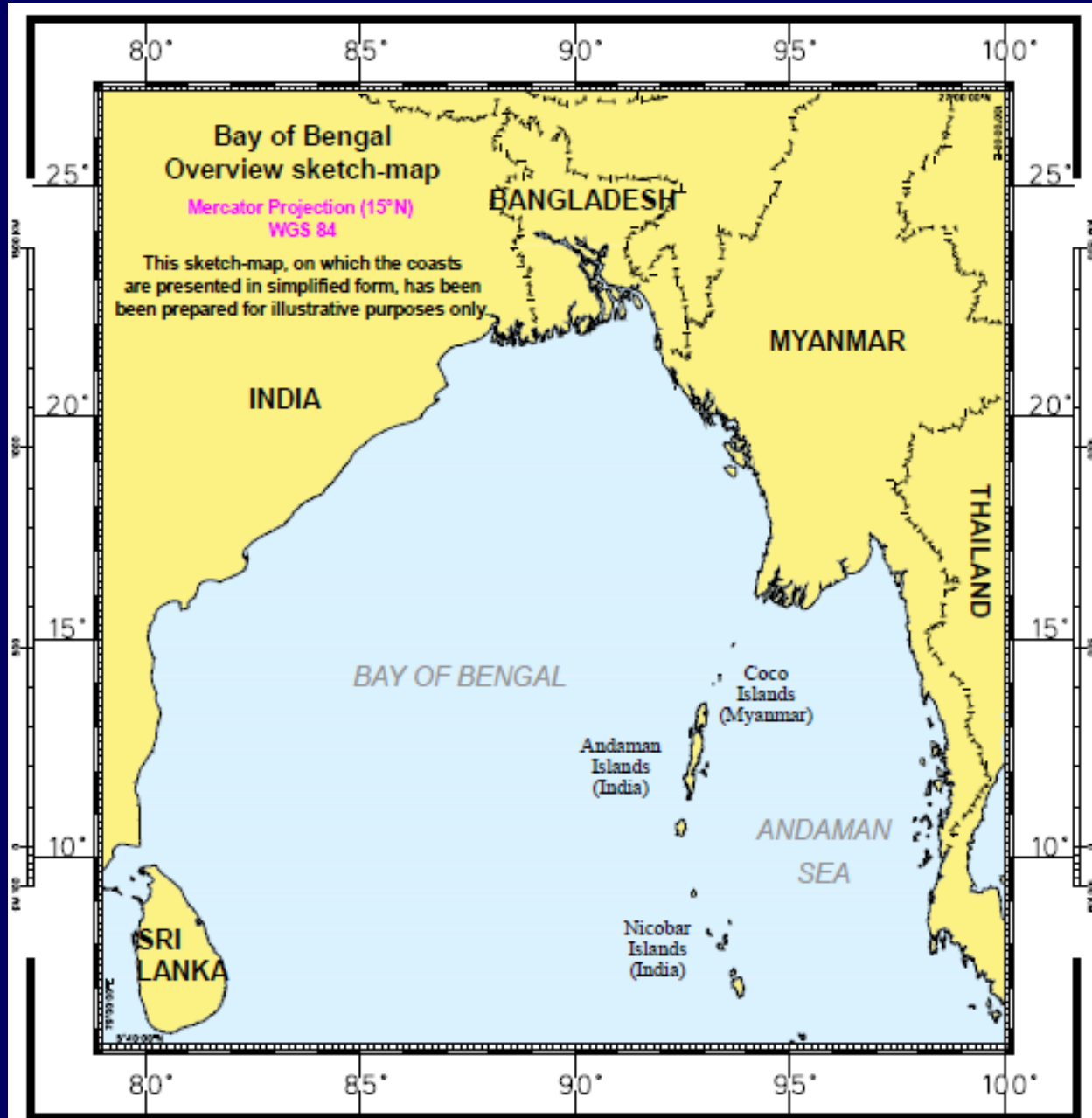
CASE No. 16:

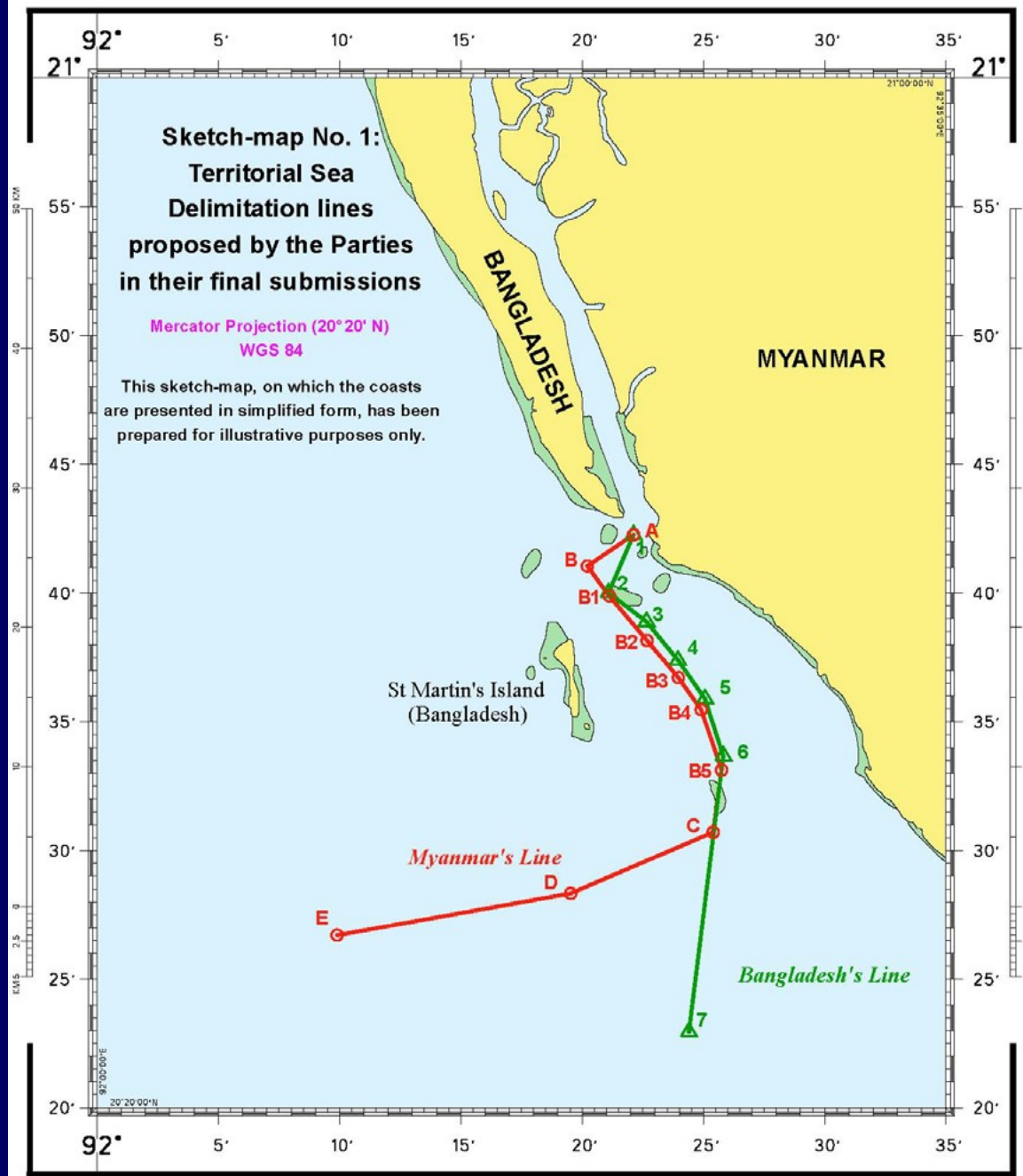
Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/ Myanmar)

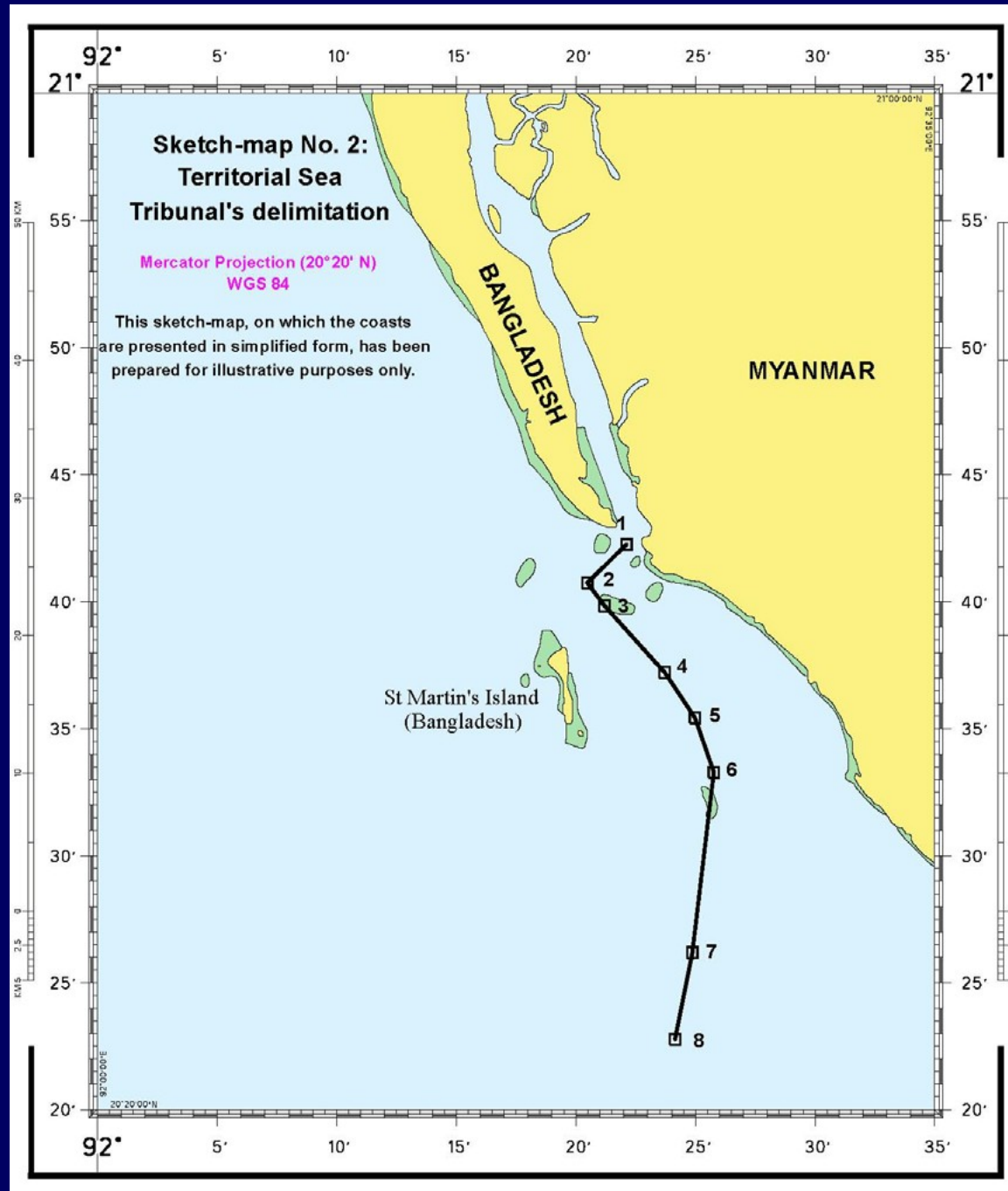


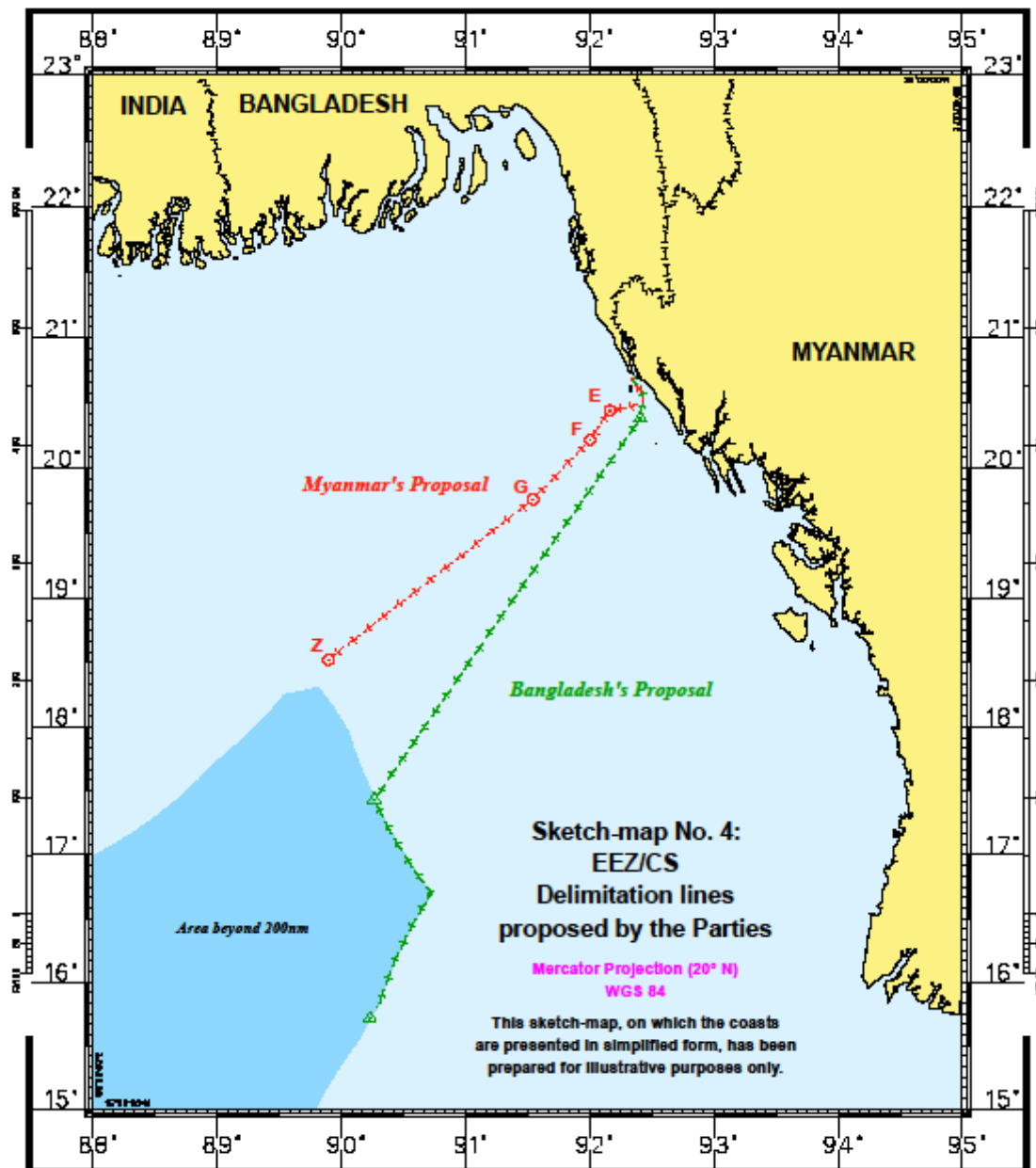
CASE No. 16:

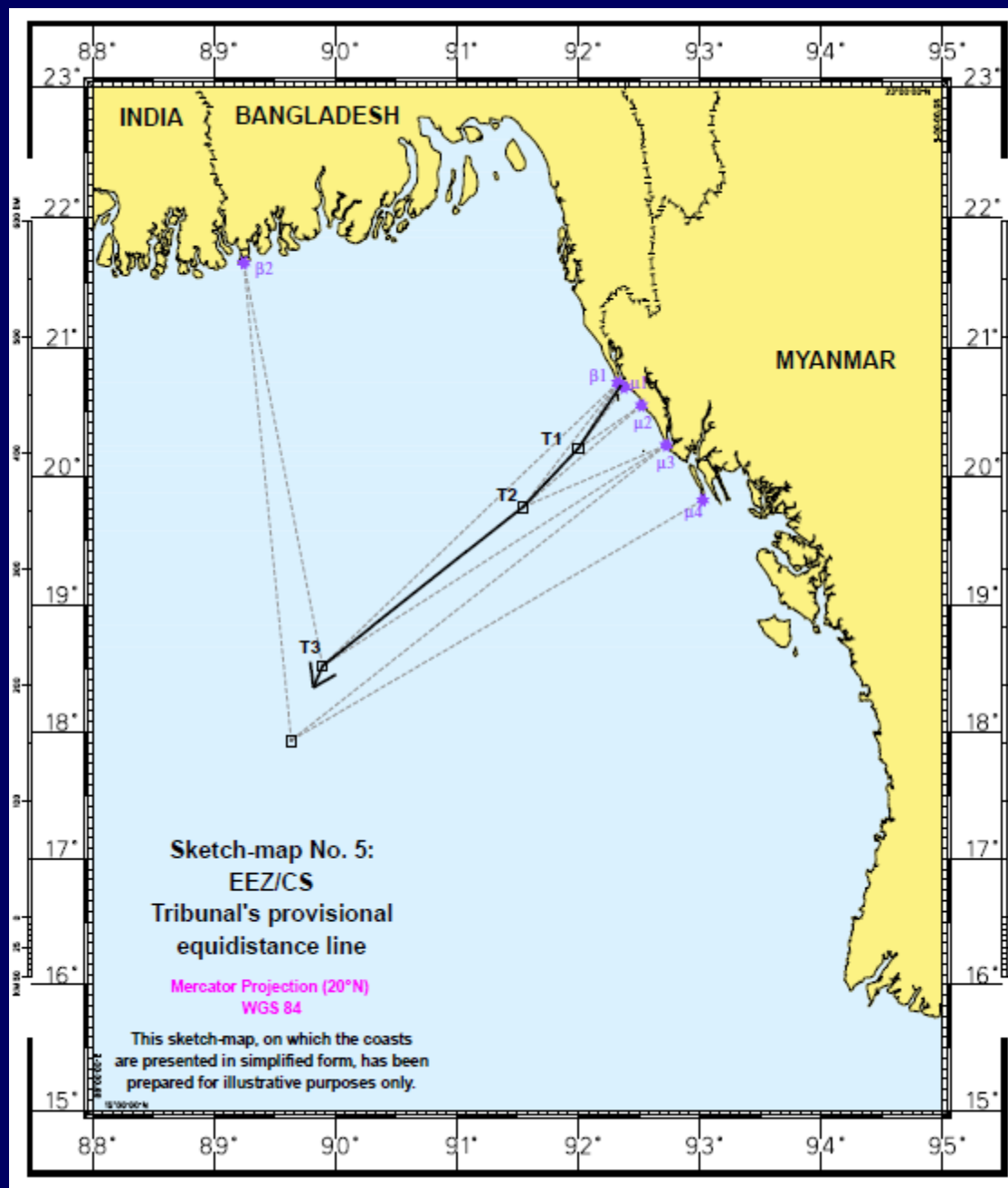
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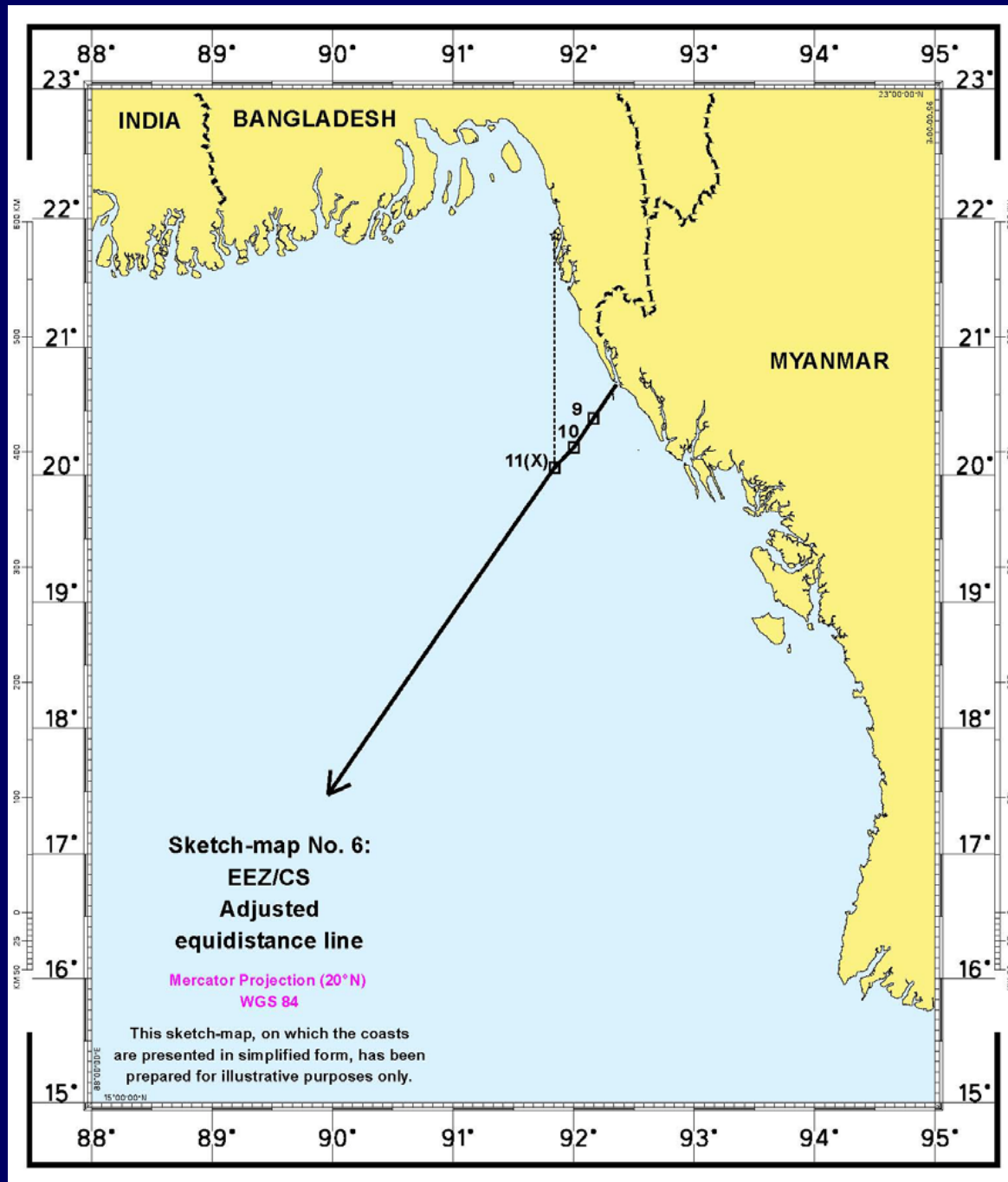


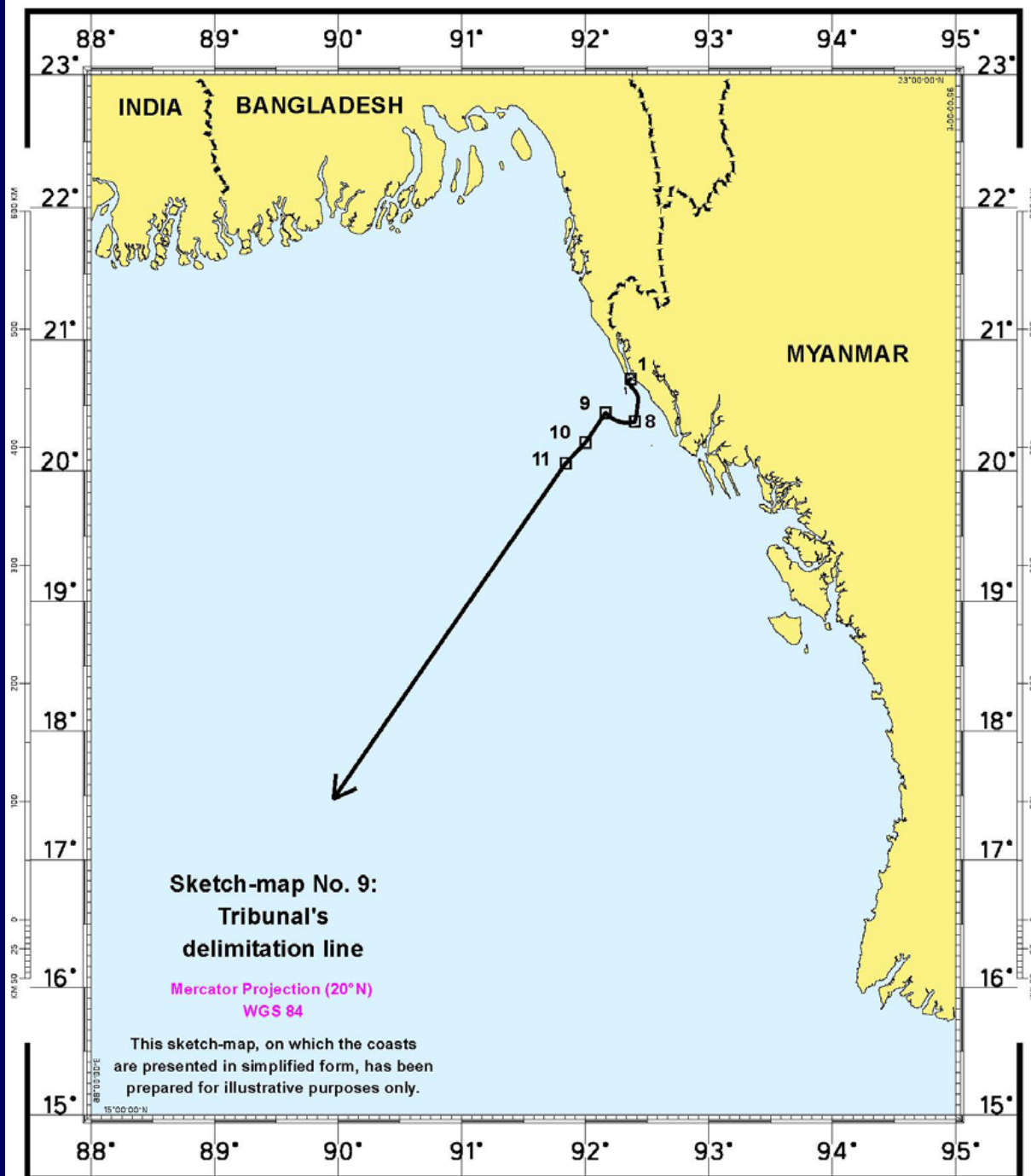










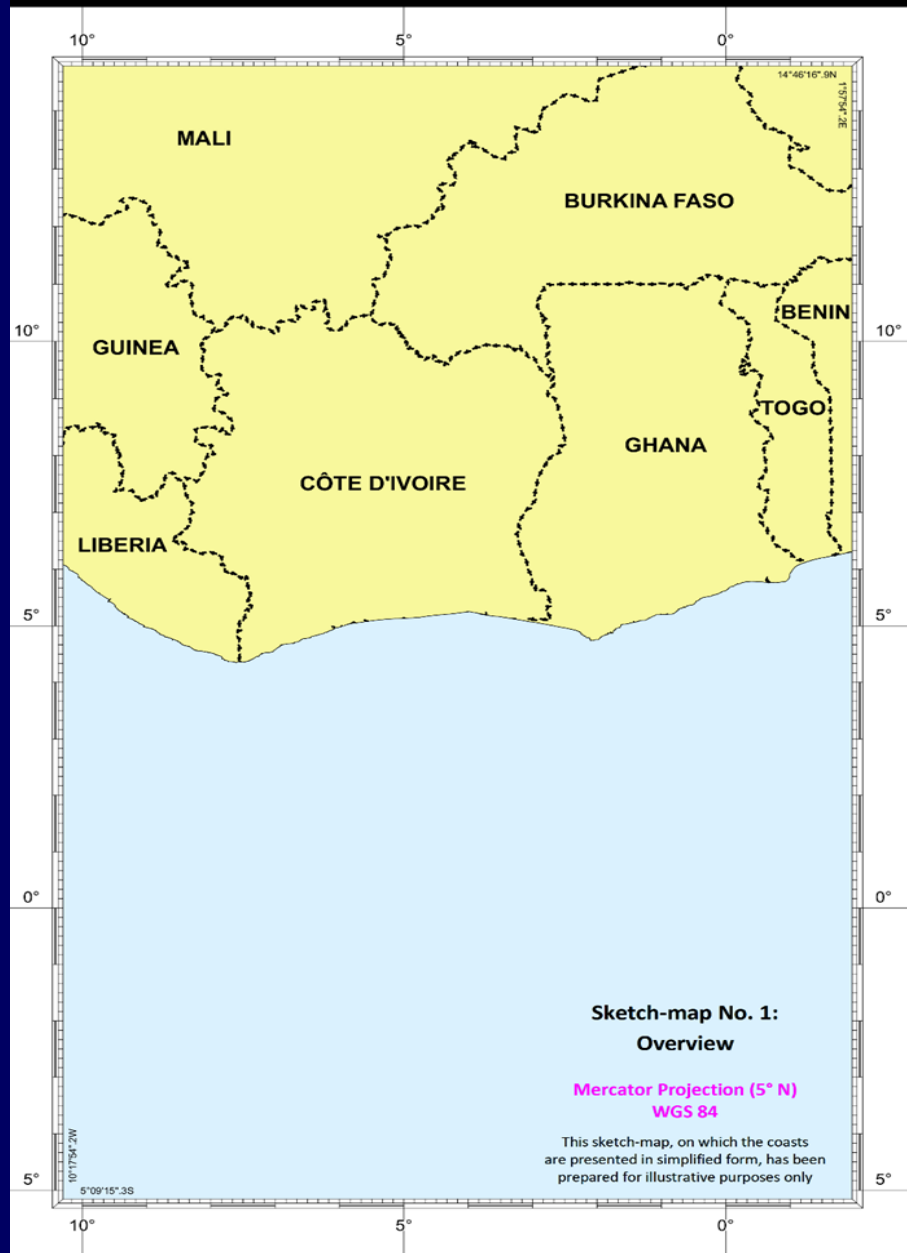


Case No.23: *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana / Côte d'Ivoire)*

Special Chamber of the Tribunal - composition



Case No. 23:
***Dispute
concerning
Delimitation of
the Maritime
Boundary
between Ghana
and Côte d'Ivoire
in the Atlantic
Ocean (Ghana /
Côte d'Ivoire)***



Order on provisional measures

(1) Unanimously

Prescribes, pending the final decision, the following provisional measures under article 290, paragraph 1, of the Convention:

(a) Ghana shall take all necessary steps to ensure that **no new drilling either by Ghana or under its control takes place in the disputed area** as defined in paragraph 60;

(b) Ghana shall take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire;

(c) Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment;

(d) The Parties shall take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its superjacent waters, in the disputed area and shall cooperate to that end;

(e) The Parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute.

...

Judgment - Does a tacit agreement exist?

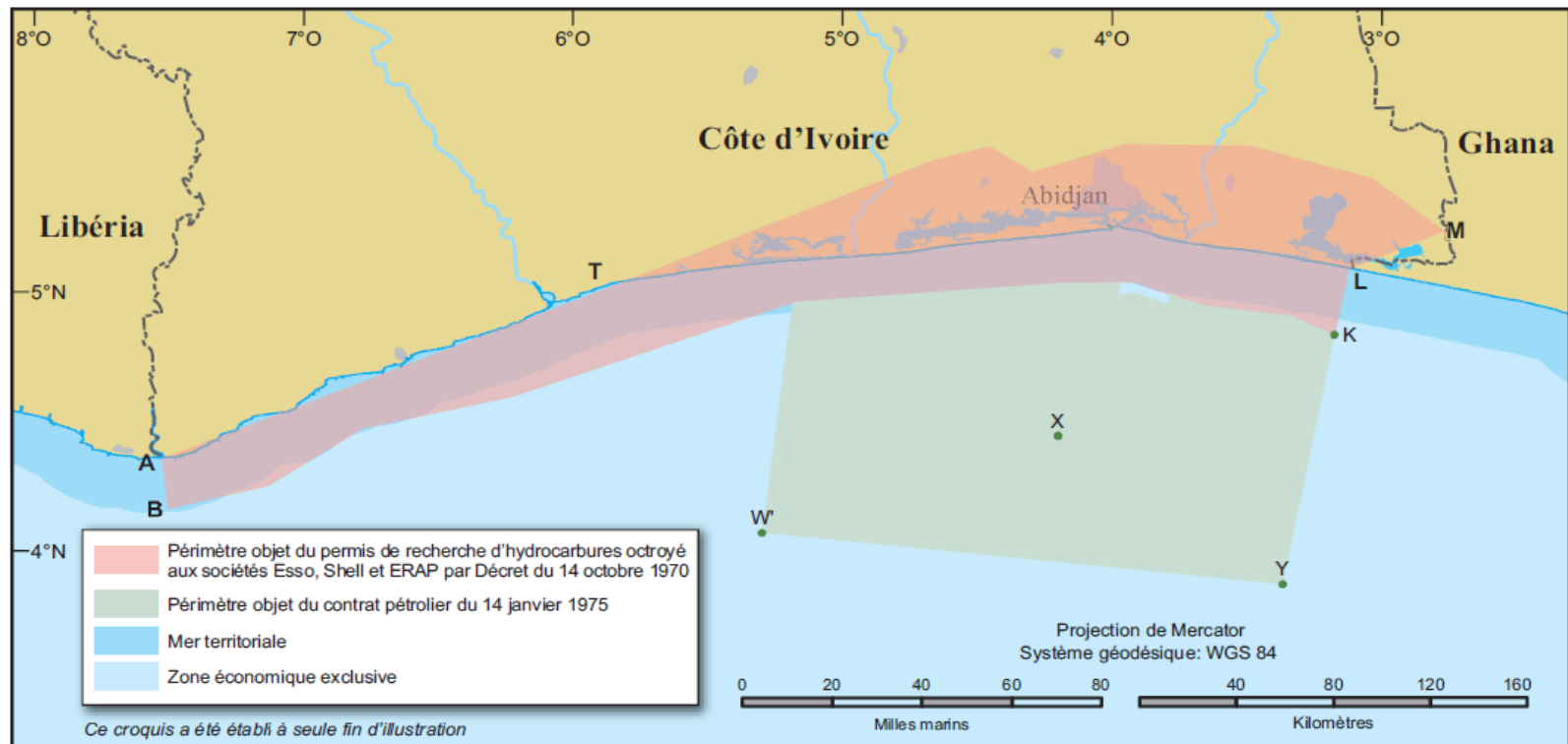
- Whether the Parties have already effected by agreement the course of their maritime boundary in the territorial sea, the exclusive economic zone and the continental shelf both within and beyond 200 nm (see para. 100)

Thus, either the Special Chamber should declare the existence of a maritime boundary (as claimed by Ghana), or, decide on the maritime delimitation in the area concerned, resolving the overlapping claims (as claimed by Côte d'Ivoire).

- Main differences between the Parties
- In order to answer this first question, the Special Chamber proceeds to clarify a number of specific issues including the parties' oil activities

Oil activities (oil concessions, seismic surveys, drilling activities and the question of protest, oil concession maps)

[Counter-Memorial, fig. 2.4, Vol. II, p.26]



Croquis 2.4 PÉRIMÈTRE objet du contrat pétrolier du 14 janvier 1975

Conclusions: “there is no tacit agreement between the Parties to delimit their territorial sea, exclusive economic zone and continental shelf both within and beyond 200 nm” (para. 228)

- Oil activities of the Parties: the Special Chamber acknowledges the existence of a mutual, consistent and long-standing practice and adjoining oil concessions limits
- However, this oil practice “might reflect the existence of a maritime boundary, or might be explained by other reasons” (an oil line is to be distinguished from an international boundary; it may be the expression of caution by the Parties)
- Referring to ICJ jurisprudence: “the proof of the existence of a maritime boundary requires more than the demonstration of longstanding oil practice or adjoining oil concession limits” (para 215)

Conclusions: “there is no tacit agreement between the Parties to delimit their territorial sea, exclusive economic zone and continental shelf both within and beyond 200 nm” (para. 228)

The Special Chamber gives other reasons:

- Caution and prudence: “It is not unusual for States to align their concession blocks with those of their neighbouring States so that no areas of overlap arise. They obviously do so for different reasons, but not least out of **caution and prudence to avoid any conflict and to maintain friendly relations with their neighbours**” (para. 225)
- Single maritime boundary: “evidence relating solely to the specific purpose of oil activities in the seabed and subsoil is of limited value in proving the existence of an all-purpose boundary which delimits not only the seabed and subsoil but also superjacent water columns” (para. 226)

Delimitation of the territorial sea, exclusive economic zone and continental shelf

(1) Methodology: Equidistance (Ghana) \neq Angle bisector (Côte d'Ivoire)

For the whole process:

The Special Chamber finds that:

“the international jurisprudence concerning the delimitation of maritime spaces in principle favours the equidistance/relevant circumstances methodology”

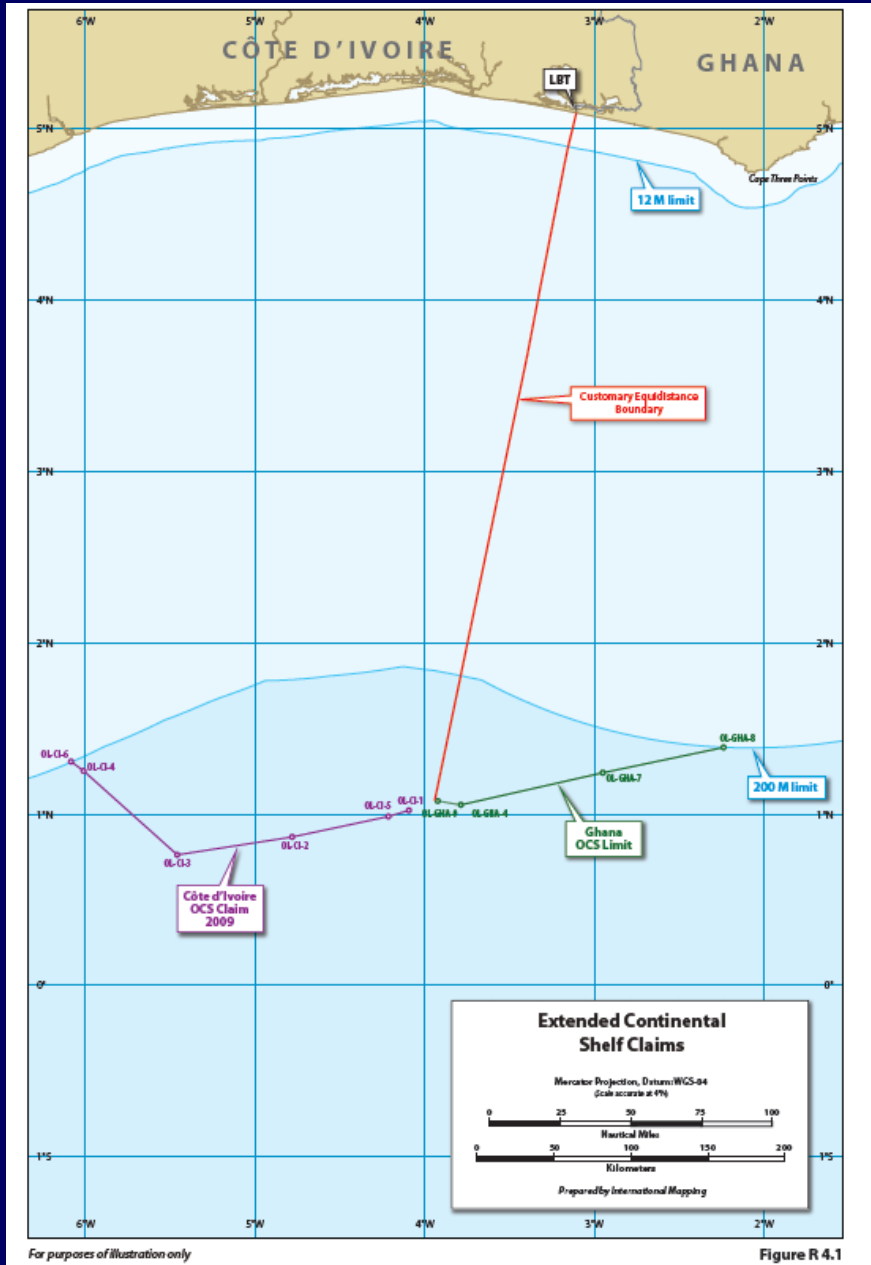
“the international decisions which adopted the angle bisector methodology were due to particular circumstances in each of the cases concerned”

“This international jurisprudence confirms that, in the absence of any compelling reasons that make it impossible or inappropriate to draw a provisional equidistance line, the equidistance/relevant circumstances methodology should be chosen for maritime delimitation. ...”

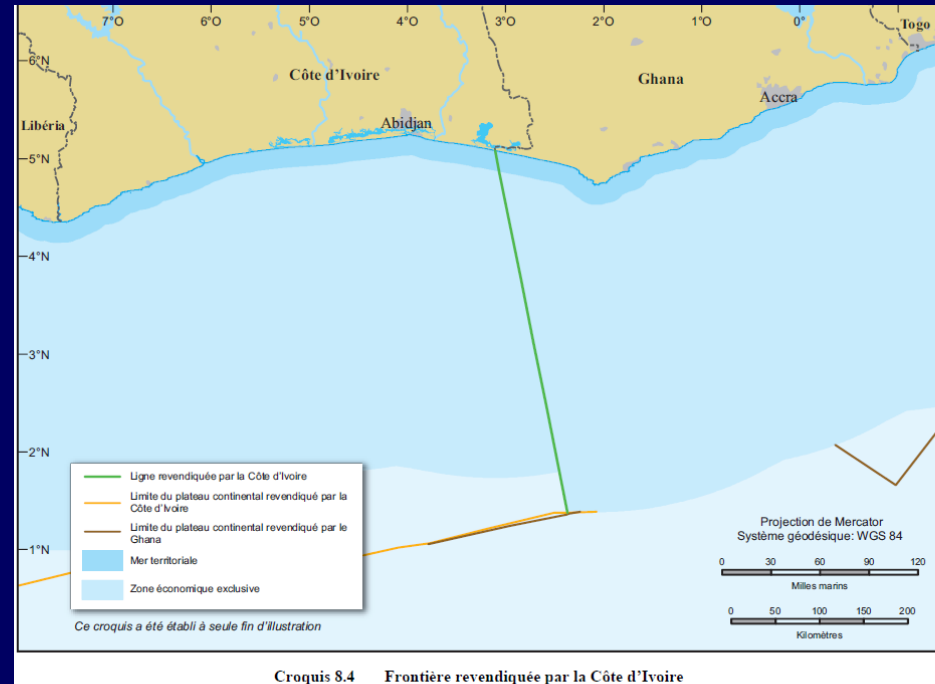
it would be “in contradiction of the principle of transparency and predictability invoked above (para. 281) to deviate, in this case, from a delimitation methodology which has been practised overwhelmingly by international courts and tribunals in recent decades”

(para. 289)

Ghana (Reply, Vol II, fig R.41, p. 48)

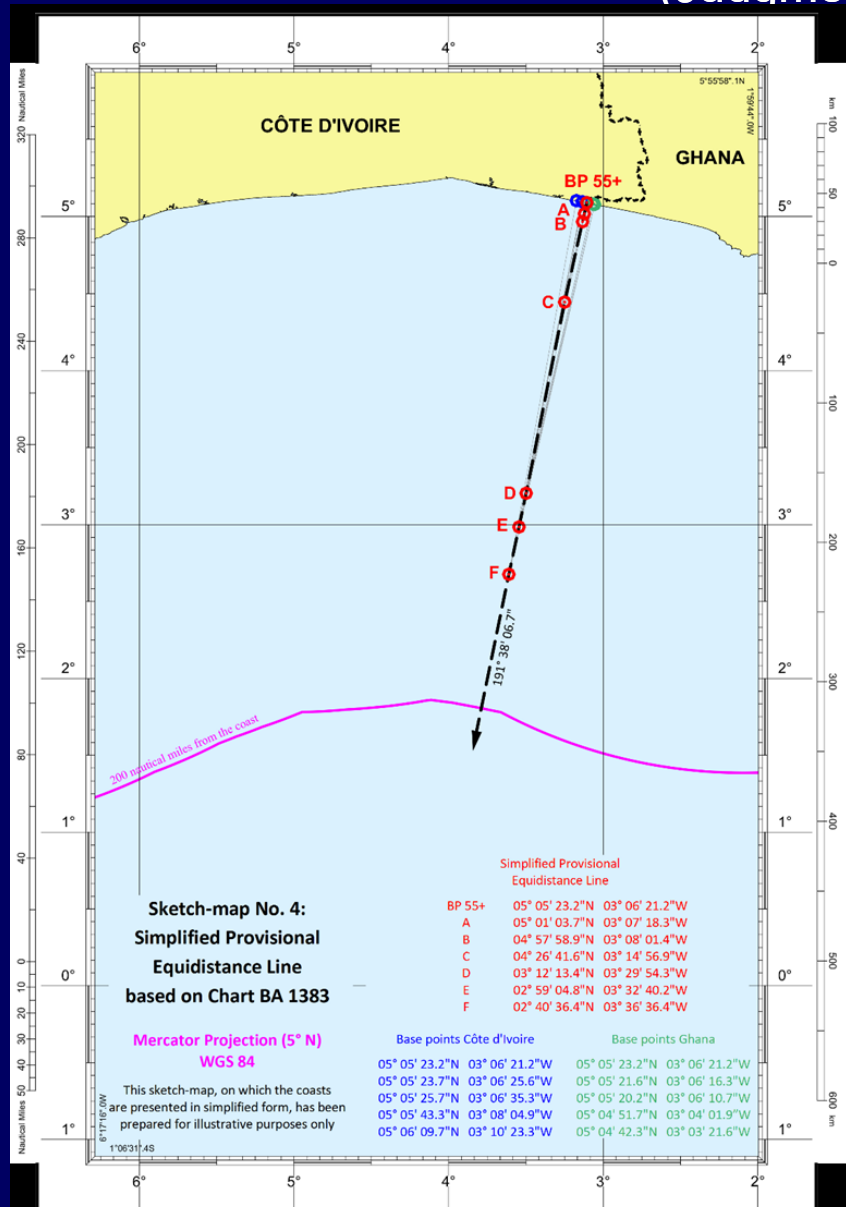


Côte d'Ivoire (Counter-Memorial, Vol II, fig 8.4, p. 54)



Delimitation of the territorial sea, exclusive economic zone and continental shelf – Simplified equidistance line

(Judgment, sketch-map No. 4)



Delimitation of the territorial sea, exclusive economic zone and continental shelf – Relevant circumstances

- **Côte d'Ivoire** invokes:
 - the concavity of the Ivorian coast and the convexity of the coast of Ghana
 - the geography of Jomoro
 - location of resources
- **Ghana** invokes:
 - the conduct of the Parties

Conclusion of the Special Chamber:

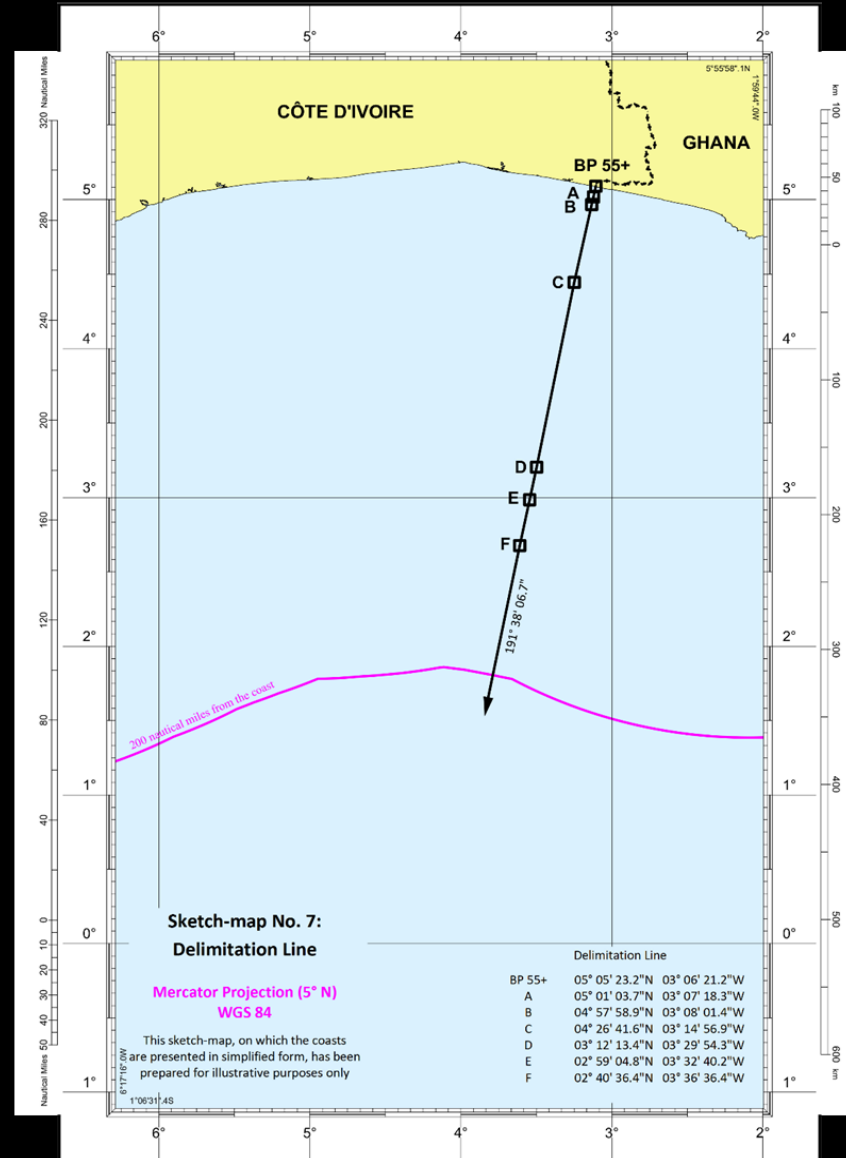
“... there is no relevant circumstance in the present case which would justify an adjustment of the provisional equidistance line” (para. 480)

Delimitation of the continental shelf beyond 200 nm

- Jurisdiction
 - Agreement of the Parties
 - Examination proprio motu
- Entitlements to a continental shelf beyond 200 nm
- Methodology

Conclusion on delimitation

(Judgment, sketch-map No. 7)



Remarks

- Judgment was adopted unanimously
- Two separate opinions (Judge Paik, Judge ad hoc Mensah)
- Joint statement of the two countries

Concluding remarks:

- The Tribunal has broad jurisdiction to deal with a variety of disputes and legal questions relating to the law of the sea.
- It offers flexible procedures for parties to settle their maritime disputes according to the rule of law.
- The Tribunal has established a reputation for the expeditious and efficient management of cases.

Concluding remarks:

- Recent cases have diversified the Tribunal's judicial work. This certainly marks an important development (new cases were complex and cover a broad range of issues).
- The Tribunal has made an important contribution to the interpretation of the Convention, the development of international law, and peaceful settlement of disputes
- Looking forward to future work: the Tribunal will continue discharging the functions which the Convention has assigned to it.

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