

# MIXING OIL AND WATER: THE ROLE OF NATURAL RESOURCE WEALTH IN THE RESOLUTION OF THE MARITIME BOUNDARY DISPUTE BETWEEN GHANA AND CÔTE D'IVOIRE

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**Abstract:** The West African nations of Ghana and Côte D'Ivoire are deeply entrenched in a legal battle over where in the Atlantic Ocean to draw the maritime boundary between them. Further complicating the conflict is the presence of significant quantities of offshore petroleum in the disputed area. In an interim order issued on April 25, 2015, a Special Chamber of the International Tribunal for the Law of the Sea ruled that Ghana may proceed with existing oil-related activity but must take all steps necessary to prevent new drilling, ensure that no information derived from oil exploration be used to the detriment of Côte D'Ivoire, and strictly monitor all activity in the disputed area. While a final decision on the merits with regard to the maritime boundary is not expected until 2017, the order suggests that Ghana's extensive exploration of the area and reliance on the anticipated oil income will play a role in the outcome of the case. This raises the broader question of whether the presence of natural resource wealth and its potential to facilitate economic development should be a relevant consideration in the adjudication of cross-border disputes on a global scale.

## INTRODUCTION

A \$4.9 billion offshore oil project has the capacity to bring eagerly awaited economic stability to the West African country of Ghana.<sup>1</sup> The endeavor appears to be a win-win situation for both Ghana and Tullow, the British firm at the helm of developing the "TEN" field off of the western coast of Africa.<sup>2</sup> Although drilling has already begun and production is ex-

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<sup>1</sup> See Michael Hogan & Matthew Mpoke Bigg, *Ghana Can Continue Development in Ivory Coast Oil Dispute: Tribunal*, REUTERS (Apr. 25, 2015), <http://www.reuters.com/article/2015/04/25/us-ghana-ivorycoast-oil-idUSKBN0NG0IX20150425> [<https://perma.cc/Y849-LLKP>].

<sup>2</sup> See *id.* "TEN" stands for the Tweneboa-Enyenra-Ntomme field. See Andreas Exarheas, *Perfect TEN for Tullow in Ghana*, RIGZONE (Oct. 21, 2015), [http://www.rigzone.com/news/oil\\_gas/a/141209/Perfect\\_TEN\\_for\\_Tullow\\_in\\_Ghana](http://www.rigzone.com/news/oil_gas/a/141209/Perfect_TEN_for_Tullow_in_Ghana) [<https://perma.cc/JP74-AN4Y>].

pected to begin during the summer of 2016, the project—along with the anticipated financial windfall for the developing African nation—has been compromised in light of a maritime boundary dispute with neighboring Côte D'Ivoire.<sup>3</sup>

During the colonial era, the colonizing powers drew the international boundary lines that the West African countries ultimately inherited upon gaining political independence, paying far greater attention to the determination of land boundaries than maritime boundaries.<sup>4</sup> The two African countries similarly showed little urgency in delimitating the boundary line following independence, but this changed upon the discovery and subsequent exploration of offshore petroleum resources in the now-disputed area.<sup>5</sup> The ongoing territorial dispute most recently culminated in an order from the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS), which—without ruling on the merits of the dispute itself—stated that Ghana can continue to develop the offshore oil project throughout the ongoing proceedings but may not undertake any additional drilling.<sup>6</sup> Although a ruling on the merits is not expected until 2017, the order signifies an important step in furtherance of the project, which is expected to ultimately yield up to 80,000 barrels of oil per day for Ghana.<sup>7</sup>

Part 1 of this Comment provides background on the facts of the boundary dispute, specifically in the context of the procedural history of the

<sup>3</sup> See *id.*; Press Release, International Tribunal for the Law of the Sea, Dispute Concerning Delimitation of the Maritime Boundary Between the Republic of Ghana and the Republic of Côte D'Ivoire Submitted to a Special Chamber of the Tribunal, ITLOS/Press 222 (Jan. 12, 2015), [https://www.itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_222\\_EN.pdf](https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_222_EN.pdf) [https://perma.cc/W94D-YK4R]; Tullow: TEN Project Over 80% Complete, CAPEX Reduction in 2016, RIGZONE (Jan. 13, 2016), [http://www.rigzone.com/news/oil\\_gas/a/142464/Tullow\\_TEN\\_Project\\_Over\\_80\\_Complete\\_CAPEX\\_Reduction\\_in\\_2016](http://www.rigzone.com/news/oil_gas/a/142464/Tullow_TEN_Project_Over_80_Complete_CAPEX_Reduction_in_2016) [https://perma.cc/F4AS-EN5T].

<sup>4</sup> Raymond Bagulo Bening, *The Ghana-La Côte D'Ivoire Maritime Boundary Dispute*, 6 GHANA J. GEOGRAPHY 81, 82 (2014).

<sup>5</sup> See *id.*

<sup>6</sup> See Press Release, International Tribunal for the Law of the Sea, Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D'Ivoire in the Atlantic Ocean (Ghana/Côte D'Ivoire): Special Chamber Prescribes Provisional Measures, ITLOS/Press 229 (Apr. 25, 2015), [https://www.itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_229\\_EN.pdf](https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_229_EN.pdf) [https://perma.cc/Y56Z-X9B4].

<sup>7</sup> Michael Kavanagh, *Tribunal Orders Ghana to Suspend New Drilling in Ivory Coast Dispute*, FIN. TIMES (Apr. 25, 2015), <http://www.ft.com/cms/s/0/05860c4a-eb6f-11e4-9058-00144feab7de.html> [https://perma.cc/4W3X-RLCB]. Ghana's oil industry is relatively young. See GRAIL RESEARCH, FUELLING GHANA'S GROWTH: OIL AND GAS INDUSTRY 7 (2015), <http://www.integreon.com/PDF/Ghana-Oil-And-Gas-Industry.pdf> [https://perma.cc/WS9G-UCBH]. The first offshore oil production and exploration licenses were only granted in 2004 with production officially commencing in 2007. *Id.* In 2012, Ghana's oil industry in its entirety produced 80,000 barrels per day; this figure rose to 99,000 barrels per day in 2013. *Id.* at 5. Thus, the anticipated 80,000 barrels per day from the TEN field alone would account for a significant increase in overall industry production. See *id.* at 23.

legal proceedings of the Special Chamber of the ITLOS. Part II of this Comment discusses the parties' contentions, and the subsequent order set forth by the Special Chamber. Part III examines the boundary dispute within the larger framework of cross-border disputes and economic development—specifically highlighting the notion that although there are a number of potential ways the case may be resolved, Ghana's extensive exploration of the disputed area and reliance on the anticipated oil windfalls will play a role in the final outcome.

## I. BACKGROUND

On September 19, 2014, arbitral proceedings between the Republic of Ghana and the Republic of Côte D'Ivoire commenced under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS).<sup>8</sup> Subsequently, the two parties formed a Special Agreement to submit the maritime boundary dispute to a special chamber of ITLOS.<sup>9</sup> On January 12, 2015, ITLOS granted the request to form a special chamber and on February 27, 2015, received a request for the prescription of provisional measures (Request) from Côte D'Ivoire pursuant to Article 290 of UNCLOS.<sup>10</sup> Under UNCLOS, once a court or tribunal establishes that it has jurisdiction over a dispute, it may prescribe any provisional measures consistent with the goals of preserving the rights of the parties to the dispute and protecting the maritime environment until a final decision is reached.<sup>11</sup> This power arises only where there is a need to avert a real and imminent risk of irreparable prejudice occurring before the delivery of a final decision, which may only be determined on a case-by-case basis.<sup>12</sup>

The Request submitted by Côte D'Ivoire asked that the Special Chamber prescribe provisional measures that Ghana suspend all exploration and exploitation in the disputed area; refrain from granting any new permits that allow exploration and exploitation in the disputed area; prevent information gathered pursuant to exploration in the disputed area from being used in any detrimental way against Côte D'Ivoire; take all steps necessary to preserve the continental shelf, its waters, and its subsoil; and abstain from any unilat-

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<sup>8</sup> U.N. Convention on the Law of the Sea Annex VII, Dec. 10, 1982, 1833 U.N.T.S. 3; Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D'Ivoire in the Atlantic Ocean (Ghana v. Côte D'Ivoire), Case No. 23, Order of Apr. 25, 2015, 2 [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.23\\_prov\\_meas/C23\\_Order\\_prov.measures\\_25.04.2015\\_orig\\_Eng.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/C23_Order_prov.measures_25.04.2015_orig_Eng.pdf) [<https://perma.cc/UQ7W-MSK9>].

<sup>9</sup> See U.N. Convention on the Law of the Sea, *supra* note 8; Ghana v. Côte D'Ivoire, Case No. 23, at 2.

<sup>10</sup> See Ghana v. Côte D'Ivoire, Case No. 23, ¶¶ 1, 5.

<sup>11</sup> *Id.* ¶¶ 36–39.

<sup>12</sup> See *id.* ¶¶ 42–43.

eral activity that would prejudice the rights of Côte D'Ivoire or aggravate the dispute.<sup>13</sup> In response to the Request, Ghana alleged that although no line had been formally delimited, both countries had observed the maritime boundary for decades and that Côte D'Ivoire had made no objection to the oil-related activities that Ghana had been carrying out for many years.<sup>14</sup>

At this stage in the proceedings, the Special Chamber was not charged with resolving the maritime dispute, but rather, it had the task of determining whether or not to prescribe provisional measures.<sup>15</sup> Ultimately, the Special Chamber found that the rights that Côte D'Ivoire claimed and sought to protect were plausible on the merits and that there was a sufficient link between the rights and the provisional measures sought.<sup>16</sup>

The Special Chamber, however, found that Côte D'Ivoire had not sufficiently demonstrated that Ghanaian oil activity created such an imminent risk of irreparable harm to the maritime environment that the only viable way to preserve the parties' rights was to halt completely all unilateral oil-related activity in the disputed area.<sup>17</sup> On the contrary, the Special Chamber accepted Ghana's assertion that shutting down its offshore oil industry would have a detrimental environmental effect because production was so advanced that stopping it would lead to the degradation of the equipment in the waters.<sup>18</sup> The Special Chamber also accepted Ghana's proposition that suspension of drilling already in progress would entail such a substantial financial loss to Ghana as to prejudice its own rights and impose an undue burden.<sup>19</sup>

Thus, until a final decision is reached, Ghana may continue to develop existing oil-related activity but must also take all steps necessary to prevent any new drilling, ensure that no information derived from oil exploration be used to the detriment of Côte D'Ivoire, and strictly monitor all activity in the disputed area.<sup>20</sup> Further, both parties agreed to take all steps necessary to protect the marine environment, to refrain from any unilateral activity that may aggravate the dispute, and to submit initial reports to the Special Chamber by May 25, 2015.<sup>21</sup>

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<sup>13</sup> Press Release, International Tribunal for the Law of the Sea, Côte D'Ivoire Seeks Provisional Measures in the Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D'Ivoire in the Atlantic Ocean (Ghana/Côte D'Ivoire), ITLOS/Press 224 (Mar. 2, 2015), [https://www.itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_224\\_EN.pdf](https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_224_EN.pdf) [https://perma.cc/B2PW-U335].

<sup>14</sup> Ghana v. Côte D'Ivoire, Case No. 23, ¶¶ 52–54.

<sup>15</sup> See *id.* ¶¶ 57–58.

<sup>16</sup> See *id.* ¶¶ 62–63.

<sup>17</sup> See *id.* ¶¶ 67, 99–100.

<sup>18</sup> See *id.* ¶ 99.

<sup>19</sup> See *id.* ¶ 100.

<sup>20</sup> See *id.* ¶ 108.

<sup>21</sup> See *id.*

## II. DISCUSSION

On February 27, 2015, Côte D'Ivoire submitted its request for the prescription of provisional measures to the Special Chamber pursuant to Article 290 of UNCLOS.<sup>22</sup> Côte D'Ivoire alleged that despite an absence of an agreed-upon maritime boundary, Ghana has acted as though the disputed area is its own by granting additional oil contracts, conducting seismic surveys, authorizing drilling, and installing permanent subsea structures in the disputed territory.<sup>23</sup> In the Request, Côte D'Ivoire contends that provisional measures are necessary to ensure adequate protection of its rights pending a final decision in the boundary dispute and that the measures are indispensable in preventing serious harm to the marine environment.<sup>24</sup>

Arguing in favor of the prescription of provisional measures, Côte D'Ivoire relies on Article 2, Paragraph 2 of UNCLOS, which states that the sovereignty of the coastal country extends to the bed and the subsoil of the territorial sea.<sup>25</sup> Furthermore, Côte D'Ivoire cites Articles 56, Paragraph 1 and Article 77, Paragraph 1, which both provide that the coastal country has sovereign rights for the purposes of exploring and exploiting the natural resources of the seabed and its subsoil.<sup>26</sup> Côte D'Ivoire contends that in order for a final decision on the merits to be ultimately effective, the Special Chamber needs to ensure that its rights are protected in the interim.<sup>27</sup> Côte D'Ivoire's position is that the Special Chamber's prescription is justified because the unilateral activity of Ghana in the disputed area constitutes an infringement of its sovereign rights.<sup>28</sup>

Côte D'Ivoire points to Ghana's increased drilling and production activities as evidence of infringement upon its exploration rights.<sup>29</sup> Côte D'Ivoire contends that this type of unilateral activity by Ghana prejudices Côte D'Ivoire and makes reaching a final agreement more difficult.<sup>30</sup> Furthermore, Côte D'Ivoire alleges that it has suffered harm as a result of Ghana's acquisition of information related to the natural resources in the disput-

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<sup>22</sup> Request for the Prescription of Provisional Measures Submitted by the Republic of Côte D'Ivoire under Article 290, Paragraph 1, of the United Nations Convention on the Law of the Sea ¶ 2, Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D'Ivoire in the Atlantic Ocean (Ghana v. Côte D'Ivoire), Case No. 23, Feb. 27, 2015, [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.23\\_prov\\_meas/C23\\_Request\\_prov\\_measures\\_translation\\_Reg.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/C23_Request_prov_measures_translation_Reg.pdf) [<https://perma.cc/34TC-RK7J>].

<sup>23</sup> *See id.* ¶¶ 9–10.

<sup>24</sup> *See id.* ¶ 3.

<sup>25</sup> *See id.* ¶ 15.

<sup>26</sup> *See id.*

<sup>27</sup> *See id.* ¶ 16.

<sup>28</sup> *See id.*

<sup>29</sup> *See id.* ¶ 23.

<sup>30</sup> *See id.*

ed area.<sup>31</sup> It is a generally accepted principle that the sovereign rights of the coastal country include the right to possess and control information related to the availability, quantity, nature, location, and economic viability of the natural resources.<sup>32</sup> Côte D’Ivoire contends that Ghana’s possession of such information about the resources in the disputed area constitutes irreparable harm because if a final decision is rendered in Côte D’Ivoire’s favor, the information will have already been circulated, and it will, therefore, be in a weakened negotiating position if it wishes to grant oil contracts and reap the benefits of the resources in the area.<sup>33</sup> Additionally, Côte D’Ivoire points to Ghana’s “sketchy” conditions for awarding oil contracts and alleges that the companies to which the contracts were awarded lack the necessary technical and financial capacity to conduct the extensive operations.<sup>34</sup> Finally, Côte D’Ivoire cites and notes the significance of Article 290, Paragraph 1 of UNCLOS, which explains that provisional measures may be prescribed to protect the marine environment.<sup>35</sup> Côte D’Ivoire supports its proposition by pointing to pollution in the TEN area, the lack of cleanup initiatives, the risk of pollution to the shores of Côte D’Ivoire due to westward winds, and the potential upset of the ecosystems and wildlife in the area.<sup>36</sup>

Ghana submitted a written statement to the Special Chamber on March 23, 2015, calling Côte D’Ivoire’s request for provisional measures “far-reaching and unprecedented” and alleging that Côte D’Ivoire is essentially trying to shut down significant portions of Ghana’s oil industry despite having accepted it for many years.<sup>37</sup> According to Ghana, Côte D’Ivoire’s most recent position abandons a boundary line that had been previously agreed-upon for over forty years.<sup>38</sup> Ghana also specifically refutes Côte D’Ivoire’s contention that its oil operations are being conducted incompetently and with a lack of transparency.<sup>39</sup> Further, Ghana alleges that Côte D’Ivoire’s assertion that Ghana is acting with complete disregard for the marine environment has never been raised throughout the long history of the ongoing boundary dispute.<sup>40</sup> In essence, Ghana takes the position that because Côte

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<sup>31</sup> See *id.* ¶¶ 30–35.

<sup>32</sup> See *id.* ¶ 30.

<sup>33</sup> See *id.* ¶¶ 34–35.

<sup>34</sup> See *id.* ¶ 40.

<sup>35</sup> See *id.* ¶ 46.

<sup>36</sup> See *id.* ¶¶ 47, 49–52.

<sup>37</sup> See Written Statement of Ghana ¶ 2, *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D’Ivoire in the Atlantic Ocean* (Ghana v. Côte D’Ivoire), Case No. 23, Mar. 23, 2015, [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.23\\_prov\\_meas/Vol.\\_I\\_-\\_Written\\_Statement\\_of\\_Ghana\\_FINAL.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/Vol._I_-_Written_Statement_of_Ghana_FINAL.pdf) [<https://perma.cc/RSY7-U8ND>] [hereinafter *Written Statement of Ghana*].

<sup>38</sup> See *id.* ¶¶ 13–14.

<sup>39</sup> See *id.* ¶ 4.

<sup>40</sup> See *id.*

D'Ivoire previously accepted the current boundary line and because Ghana subsequently relied on Côte D'Ivoire's acceptance of the line and non-objection to Ghanaian oil activity in the now-disputed area, granting Côte D'Ivoire's request and implementing the provisional measures sought would cause Ghana severe, irreparable harm at this stage in the proceedings.<sup>41</sup>

Thus, the issue before the Special Chamber was whether or not Côte D'Ivoire had demonstrated such a real and imminent risk of irreparable harm to its rights that the prescription of provisional measures was warranted.<sup>42</sup> In making its determination, the Special Chamber relied heavily upon prior cases in which provisional measures were sought in the midst of an international dispute.<sup>43</sup> It cited the reasoning of the International Court of Justice (ICJ) in the order pursuant to *Certain Activities Carried Out by Nicaragua in the Border Area* in order to highlight the requisite link between the rights that a country is claiming and the provisional measures it seeks.<sup>44</sup> In that case, Nicaraguan troops were occupying an area that was the subject of a territorial dispute with Costa Rica over Nicaragua's right to dredge the San Juan River.<sup>45</sup> The ICJ found that the rights associated with Costa Rica's claim to sovereignty over the disputed area were plausible.<sup>46</sup> Consequently, there was a sufficient link between the rights it sought to protect and the provisional measures it asked the ICJ to impose—namely prohibiting Nicaragua from stationing troops in the disputed territory.<sup>47</sup>

The Special Chamber also looked to Articles 192 and 193 of UNCLOS in making its determination as to whether Côte D'Ivoire had demonstrated that the activities conducted by Ghana in the disputed area constituted an "imminent risk of serious harm" to the marine environment, citing the obligation of countries to exercise their exploitation rights in a manner that protects and preserves the marine environment.<sup>48</sup> Ultimately, it found that Côte D'Ivoire failed to provide sufficient evidence to show that Ghanaian oil activities met this standard and posed such a risk.<sup>49</sup>

In finding that Côte D'Ivoire had demonstrated a sufficiently strong link between its rights and the measures it sought while also rejecting the conten-

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<sup>41</sup> See *id.* ¶ 14.

<sup>42</sup> Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D'Ivoire in the Atlantic Ocean (*Ghana v. Côte D'Ivoire*), Case No. 23, Order of Apr. 25, 2015, ¶ 74, [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.23\\_prov\\_meas/C23\\_Order\\_prov\\_measures\\_25.04.2015\\_orig\\_Eng.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/C23_Order_prov_measures_25.04.2015_orig_Eng.pdf) [<https://perma.cc/UQ7W-MSK9>].

<sup>43</sup> See *id.* ¶¶ 63, 69, 72–73.

<sup>44</sup> See *id.* ¶ 63.

<sup>45</sup> *Certain Activities Carried Out by Nicaragua in the Border Area* (*Costa Rica v. Nicar.*), Order of Mar. 8, 2011 I.C.J. 6, ¶¶ 4–5.

<sup>46</sup> See *id.* ¶¶ 60–61.

<sup>47</sup> See *id.* ¶¶ 60–61, 86.

<sup>48</sup> *Ghana v. Côte D'Ivoire*, Case No. 23, ¶¶ 67, 69–70.

<sup>49</sup> *Id.* ¶ 67.

tion that Ghana's activity posed a severe, urgent threat to the local marine environment, the Special Chamber ultimately found a middle ground in rendering the order.<sup>50</sup> The Special Chamber prescribed provisional measures but also accepted and explicitly acknowledged Ghana's assertion that suspending all ongoing drilling-related activities would create a significant risk of considerable financial loss and impose an undue burden.<sup>51</sup> By granting Côte D'Ivoire's request for the prescription of provisional measures with the caveat that Ghana may continue its existing oil-related operations, the Special Chamber was able to preserve both countries' sovereignty while also signaling that the related economic development would not be impeded.<sup>52</sup>

### III. ANALYSIS

The order set forth by the Special Chamber on April 25, 2015, by no means signifies a final decision on the merits, which is not expected until 2017.<sup>53</sup> Although the order is meant only to preserve the status quo and protect the rights of both Ghana and Côte D'Ivoire in the interim, it raises important questions about the final outcome and highlights the tension between state sovereignty and economic development, which lies at the heart of the dispute.<sup>54</sup>

Generally speaking, the absence of precisely delimited boundaries hinders development and increases tension among the parties involved, especially in the context of Africa, where only 30% of African boundaries are clearly demarcated.<sup>55</sup> Therefore, resolution of boundary disputes—whether formally or via settlement—is crucial to utilize effectively the valuable nat-

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<sup>50</sup> See *id.* ¶¶ 62–63, 67, 108.

<sup>51</sup> See *id.* ¶¶ 99–100, 108.

<sup>52</sup> See *id.* ¶¶ 104, 108; Hogan & Bigg, *supra* note 1.

<sup>53</sup> See generally Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte D'Ivoire in the Atlantic Ocean (Ghana v. Côte D'Ivoire), Case No. 23, Order of Apr. 25, 2015, [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.23\\_prov\\_meas/C23\\_Order\\_prov.measures\\_25.04.2015\\_orig\\_Eng.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/C23_Order_prov.measures_25.04.2015_orig_Eng.pdf) [<https://perma.cc/UQ7W-MSK9>] (explaining that the order is not meant to prejudge the actual merits of the larger boundary dispute, and that the respective rights of both states are left unaffected); Kavanagh, *supra* note 7 (noting that the next phase of the dispute is projected to last until 2017).

<sup>54</sup> See Ghana v. Côte D'Ivoire, Case No. 23, ¶¶ 103–04, 108; Hogan & Bigg, *supra* note 1.

<sup>55</sup> OCEAN DATA AND INFO. NETWORK FOR AFR., STATUS REPORT ON AFRICAN MARITIME BORDER DISPUTES (2014), <http://www.odinafrica.org/news/139-african-maritime-border-disputes.html> [<https://perma.cc/HD92-GHJL>]. African borders today are largely the same as they were when European colonizing powers drew them in the 18th and 19th centuries. See Max Fisher, *The Dividing of a Continent: Africa's Separatist Problem*, ATLANTIC (Sept. 10, 2012), <http://www.theatlantic.com/international/archive/2012/09/the-dividing-of-a-continent-africas-separatist-problem/262171/> [<https://perma.cc/3W87-KENP>]. Although national borders in other parts of the world, such as Slovenia and Croatia, have shifted to represent more accurately ethnic, linguistic, and religious divisions, many African borders still reflect arbitrary colonial-era decisionmaking, sparking numerous conflicts across the continent. See *id.*



ural resources and to ensure that their subsequent financial windfalls reach the economies that rely on them.<sup>56</sup>

### A. Potential Options in Resolving the Dispute

Because UNCLOS does not provide a specific formula for delimitating boundaries, there is a wide range of possibilities available to the Special Chamber in reaching its final decision on the merits.<sup>57</sup> For example, in the territorial and maritime dispute between Nicaragua and Colombia, the ICJ employed a creative solution using mixed delimitation techniques in order to draw a single boundary line among seven different maritime features over which both countries claimed sovereignty.<sup>58</sup> Although the resulting line in that dispute was complex and seemingly unorthodox, the ICJ's decision demonstrates the flexibility of adjudicating bodies in reaching fair outcomes in maritime disputes.<sup>59</sup> Under UNCLOS, delimitation should be carried out with the effect of achieving an equitable solution.<sup>60</sup> Though courts tend to favor an equidistance approach, the lack of a clear definition or guidelines as to what constitutes an "equitable solution" gives international bodies a considerable amount of leeway in formulating their decisions.<sup>61</sup> Thus, the Special Chamber has the discretion to take the economic circumstances of this case into account when making its final decision.<sup>62</sup>

The presence of oil may very well affect the determination as to what an "equitable solution" represents in the dispute between Ghana and Côte D'Ivoire.<sup>63</sup> If both countries prefer not to wait for the final decision in 2017, it is possible that an alternative agreement may be reached with regards to the disputed area.<sup>64</sup> For example, the countries could enter into a joint-development agreement while waiting for a final decision, which would allow them to share exclusive rights to the natural resources in the disputed area without deviating from their claims.<sup>65</sup> Further, joint-development agreements

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<sup>56</sup> See Fisher, *supra* note 55; Hogan & Bigg, *supra* note 1.

<sup>57</sup> See John Donaldson & Alison Williams, *Understanding Maritime Jurisdictional Disputes: The East China Sea and Beyond*, 59 J. INT'L AFF. 135, 141 (2005); Nienke Grossman, *International Decisions: Territorial and Maritime Dispute* (Nicaragua v. Columbia), 107 AM. J. INT'L L. 396, 402 (2013).

<sup>58</sup> See Grossman, *supra* note 57, at 396, 402 (describing the ICJ's use of weighted base points, geodetic lines, parallels of latitude, and enclaving to delimit the maritime boundary).

<sup>59</sup> See *id.* at 402.

<sup>60</sup> See Donaldson & Williams, *supra* note 57, at 141.

<sup>61</sup> See *id.* at 142.

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See Marc Sonntag & Felix Lüth, *Who Owns the Arctic? A Stocktaking of Territorial Disputes*, GLOBAL J. (Dec. 21, 2011), <http://theglobaljournal.net/article/view/439/> [<https://perma.cc/3TMC-PSFL>].

<sup>65</sup> See *id.*

do not have to split the rights evenly between both parties; for example, after a long dispute between Senegal and Guinea-Bissau, the countries decided to divide their resources 85:15 in favor of Senegal for oil resources, and 50:50 for fishing rights.<sup>66</sup> This could be a viable solution in the case of Ghana and Côte D'Ivoire because rights could be allocated in a manner that would give Côte D'Ivoire access to valuable resources while also accounting for the fact that the vast majority of oil operations have been conducted by Ghana.<sup>67</sup> Even a 90:10 split would not be unprecedented.<sup>68</sup> On the other hand, Ghana may be willing to bide its time and wait for a final decision at the cost of stalled oil operations, given its extensive unilateral presence in the disputed area and entrance into various contracts with multinational oil companies.<sup>69</sup>

### *B. Prior Cases and the Role of Economic Development*

The Special Chamber's order in the case of Ghana and Côte D'Ivoire struck a balance between preserving both countries' sovereignty by prohibiting new drilling and facilitating continued economic development by allowing Ghana to carry on with its existing oil-related activities in the disputed area.<sup>70</sup> This raises a larger question with implications for the final decision: To what extent does economic development factor into international courts' decision-making when delimiting territorial and maritime boundaries?<sup>71</sup>

Currently, the presence of natural resources and their economic value in deciding boundary disputes is unclear.<sup>72</sup> Circumstantial evidence, however, points to the conclusion that international adjudicatory bodies are not ignorant to these considerations; for example, in the first phase of deciding a territorial dispute between Eritrea and Yemen, the tribunal did not refer to oil exploration activities in reaching the first-phase award.<sup>73</sup> Prior to the second-phase award, though, Eritrea argued that its people would be adversely affected if precluded from exercising their traditional fishing rights

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<sup>66</sup> Kaj Hober, *Territorial Disputes and Natural Resources: The Melting of the Ice and Arctic Disputes*, OIL & GAS J. (Feb. 6, 2011), <http://www.ogj.com/articles/print/volume-109/issue-6/exploration-development/territorial-disputes-and-natural-resources.html> [https://perma.cc/TH4D-FDXM].

<sup>67</sup> See *Ghana v. Côte D'Ivoire*, Case No. 23, ¶ 46; Written Statement of Ghana, *supra* note 37, ¶¶ 2–3; Hober, *supra* note 66.

<sup>68</sup> Hober, *supra* note 66.

<sup>69</sup> See Written Statement of Ghana, *supra* note 37, ¶¶ 2–3; Hober, *supra* note 66.

<sup>70</sup> See *Ghana v. Côte D'Ivoire*, Case No. 23, ¶¶ 103, 108.

<sup>71</sup> See *id.*; Jan Paulsson, *Boundary Disputes into the Twenty-First Century: Why, How . . . and Who?*, 95 AM. SOC'Y OF INT'L L. 122, 125 (2001).

<sup>72</sup> See Paulsson, *supra* note 71, at 125.

<sup>73</sup> See *id.*

in the Red Sea.<sup>74</sup> In making the second-phase award, the tribunal specifically recognized a continuing right of Eritrea's fishermen to fish beyond the newly delimited boundary, right up to Yemen's shores.<sup>75</sup> More recently, the ICJ awarded Peru a segment of territory in the Pacific Ocean rich in fishing and other natural resources while also allowing Chile to retain eighty miles of offshore territory in order to preserve the economic prosperity of Chile's northernmost large city and major fishing port.<sup>76</sup> Again, this decision points to the ICJ's awareness of and sensitivity to economic circumstances rather than its reliance on a purely geographic method of calculating a fair boundary line.<sup>77</sup>

In considering what impact the oil wealth in the disputed area will have in the arrival at a final decision, it is also useful to consider past precedent.<sup>78</sup> In a case before ITLOS similar to the one involving Ghana and Côte D'Ivoire, Bangladesh and Myanmar sought delimitation of their maritime boundary after a thirty-eight-year dispute and no possibility of a bilateral agreement.<sup>79</sup> The tribunal awarded Bangladesh exclusive economic control of 111,000 square kilometers in the Bay of Bengal, which is rich in natural gas, various types of minerals, and fish.<sup>80</sup> Perhaps not coincidentally, Bangladesh had been suffering from a power crisis, and the need for natural gas had become a major political issue domestically.<sup>81</sup> Again, although it is unclear how much formal deference was paid to these concerns within the tribunal's deliberations, this prior ITLOS case highlights a correlation between the presence of natural resources and what constitutes an equitable resolution to a maritime boundary dispute.<sup>82</sup>

## CONCLUSION

Although the role of natural resources in determining final decisions in maritime boundary disputes is still unclear, it is apparent that the economic

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<sup>74</sup> See *id.*

<sup>75</sup> See *id.*

<sup>76</sup> Adriana Leon & Chris Kraul, *Peru Wins Maritime Border Dispute with Chile over Key Fishing Grounds*, L.A. TIMES (Jan. 27, 2014), <http://articles.latimes.com/2014/jan/27/world/la-fg-wn-peru-territorial-dispute-chile-20140127> [<https://perma.cc/K8G3-4SBH>].

<sup>77</sup> See *id.*

<sup>78</sup> See Pranab Kumar Panday, *Bangladesh and Myanmar Resolve Longstanding Maritime Dispute*, E. ASIA F. (Apr. 26, 2012), <http://www.eastasiaforum.org/2012/04/26/bangladesh-and-myanmar-resolve-longstanding-maritime-dispute/> [<https://perma.cc/R6MX-MHJ9>].

<sup>79</sup> See *id.*

<sup>80</sup> See *id.*

<sup>81</sup> See *id.*; see also *Bangladesh Prevails in Maritime Dispute with Myanmar*, BUS. WIRE (Mar. 14, 2012), <http://www.businesswire.com/news/home/20120314006516/en/Bangladesh-Prevails-Maritime-Boundary-Dispute-Myanmar> [<https://perma.cc/PH4L-3L66>].

<sup>82</sup> See Panday, *supra* note 78; see also Donaldson & Williams, *supra* note 57, at 142; *Bangladesh Prevails in Maritime Dispute with Myanmar*, *supra* note 81.

realities of the countries engaged in these disputes are difficult for international adjudicating bodies to ignore. In the maritime boundary dispute between Ghana and Côte D'Ivoire, the associated economic development for Ghana is far from speculative in light of its substantial exploitation and drilling efforts and entrance into contracts with multinational oil companies.

Given the magnitude of the financial windfall at stake and Ghana's reliance on its continued oil activities, economic development will be a factor in the outcome of the boundary dispute—whether its resolution comes in the form of a settlement that allows Ghana to proceed, a joint-development agreement, or a final decision on the merits. If the case is ultimately resolved in 2017 as anticipated, it is likely that the Special Chamber's final ruling will be structured in a way that takes these circumstances into account by preserving Ghana's offshore oil industry and facilitating continued economic development.