

GHANA FLASH NOTE

ITLOS' Preliminary Ruling - Devil in the Details

*It was predictable that the Tribunal's decision withholding blanket approval of Cote d'Ivoire's cannily maximalist demands¹ would be hailed as a victory both Tullow Oil (desperate to shore up its crumbling share price) and the fiscally beleaguered Ghanaian authorities. However it becomes apparent, from even a cursory reading, that the Order on a Request for Provisional Measures filed by Côte d'Ivoire, published on April 25th, represents **anything but a victory for the Ghanaian side.***

2) After determining that it has *prima facie* jurisdiction to adjudicate the dispute (Para. 58), the Tribunal “finds that Côte d'Ivoire has presented enough material to show that the rights it seeks to protect in the disputed area are plausible (paragraph 62)”. The **Tribunal then proceeds to rule in Cote d'Ivoire's favour on almost all the substantive points at issue.**

3) Thus it **agrees that “the exploration and exploitation activities, as planned by Ghana, may cause irreparable prejudice to the sovereign and exclusive rights invoked by Côte d'Ivoire [...], before a decision on the merits is given by the Special Chamber, and that the risk of such prejudice is imminent (paragraph 96).”**

4) In one of the only concessions² granted to Ghana, the Tribunal finds that “an order **suspending all exploration or exploitation activities conducted by or on behalf of Ghana in the disputed area, including activities in respect of which drilling has already taken place, would cause prejudice to the rights claimed by Ghana and create an undue burden on it** (Paras 100 & 101).”

5) However, even this accommodation is then immediately circumscribed by a requirement that Ghana “take all the necessary steps to **ensure that no new drilling either by Ghana or under its control takes place in the disputed area** (paragraph 102).”

6) Spelled out in the Order's operative paragraph 1, **the Provisional Measures that the Tribunal prescribes constitute an unambiguous setback for the Ghanaian side**, as illustrated by the first two items, each adopted unanimously:

¹ Cote d'Ivoire had requested the Tribunal to order that Ghana -

- take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area;
- refrain from granting any new permit for oil exploration and exploitation in the disputed area;
- generally, take all necessary steps to preserve the continental shelf, its superjacent waters and its subsoil; and
- desist and refrain from any unilateral action entailing a risk of prejudice to the rights of Côte d'Ivoire and any unilateral action that might lead to aggravating the dispute.

² In the other, which addresses an obvious ‘straw man’ presented by the Ivorians, the Tribunal “finds that Côte d'Ivoire has not adduced sufficient evidence to support its allegations that the activities conducted by Ghana in the disputed area are such as to create an imminent risk of serious harm to the marine environment (paragraph 67)”.

(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 ...;

(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;

7) When the market pauses to look beyond the glib headlines of the ITLOS story, *the euphoria that has propelled the price of TLW 15% above its April 24th close is likely to evaporate in short order.* The same can be said for those attempting to forecast Ghana's medium-term fiscal revenues.

In other words, *caveant emptores.*

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