

# Ghana's Future in the Offshore Oil Business

By Rose Rameau and Abdul Baasit Aziz Bamba

In 2004 the Republic of Ghana, the Ghana National Petroleum Corporation (GNPC), Kosmos Energy Ghana, (Kosmos), and the E.O. Group executed a petroleum agreement for the exploration and, in the event of a commercial discovery, development and production of petroleum offshore Ghana. In 2007, Kosmos announced the discovery of commercial quantities of oil in a field now known as the Jubilee field, located in the Atlantic Ocean 37 miles offshore between the Deep-water Tano and West Cape Three Points blocks in Ghana. *Ghana's Emerging Petroleum Industry*, [http://cesarharada.com/download/20130308Ghana/Ghana\\_Emerging\\_Petroleum\\_Industry.pdf](http://cesarharada.com/download/20130308Ghana/Ghana_Emerging_Petroleum_Industry.pdf). The oil field acquired its name, Jubilee, from the fact that Ghana celebrated its fiftieth year of independence in 2007. Industry experts have described the discovery as "one of the largest recent finds in Africa" and "a world-class sweet oil field." ISHMAEL EDJEKUMHENE ET AL., *GHANA'S EMERGING PETROLEUM INDUSTRY: WHAT STAKEHOLDERS NEED TO KNOW 1* (2010). Estimates for the reserves of the Jubilee field range from 800 million to 1.8 million barrels of oil. Revenues to the Ghana government from the Jubilee field were estimated at about \$1 billion per year on the average, equivalent to the same amount of development assistance Ghana receives per annum. *Ghana: Transparency Snapshot*, NAT. RESOURCE GOVERNANCE INST., <http://www.resourcegovernance.org/countries/africa/ghana/transparency-snapshot>. Production at the Jubilee field commenced in December 2010, three and a half years after the discovery.

## The Jubilee Oil Field

The exploration, development, and production of oil in the Jubilee field invited no ostensible disputes between Ghana and its western neighbor, Côte d'Ivoire, since without doubt the Jubilee falls within Ghana's maritime waters. Since the apparent commercial success of the Jubilee field, Ghana has entered into other petroleum agreements for the exploration, development, and production of offshore Ghana, this time close to its "maritime borders" with Côte d'Ivoire. Three of these fields, Tweneboa, Enyenra, and Ntomme (TEN fields) are held by Tullow, Anadarko, Kosmos, GNPC, and Petro SA. These later discoveries, with first oil projected for mid-2016, were believed to be a clear celebration for Ghanaians

but have now become subject to a challenging border dispute with Côte d'Ivoire. Up until September 22, 2014, the Ghana/Côte d'Ivoire delimitation of the maritime boundary was unknown to the international community mainly because Ghana/Côte d'Ivoire relations, particularly regarding this dispute, had been managed through diplomatic channels between officials of both nations.

While Ghana/Côte d'Ivoire is not the only border dispute in Africa, it is a momentous dispute because the two countries are neighbors and they both share the Gulf of Guinea, touted to contain vast amounts of hydro-carbons. According to the Ocean Data and Information Network for Africa (ODINAFRICA), there are about 400 boundaries that potentially exist worldwide and only 180 have been established. *Status Report on African Maritime Border Disputes*. ODINAFRICA, <http://www.odinafrica.org/news/139-african-maritime-border-disputes.html>. A clear observation of the most recent border disputes in Africa is that once natural resources are discovered, there is a likelihood that border disputes will follow. Ghana, Nigeria, Côte d'Ivoire, Guinea-Bissau, and Togo, among others, share the Gulf of Guinea, and it has been determined that the Gulf of Guinea is an emerging player in the global hydrocarbon industry. Binditi Chitor, *Ghana's Transitional Oil and Gas Industry: Legal, Corporate and Environmental Aspects 132* (2012) (unpublished LLM thesis, Robert Gordon University, Scotland). Thus, by sharing the Gulf of Guinea, these countries have significant interest in the oil and gas resources within the Gulf. Consequently, the international community can expect to see a rise in border disputes in the years to come as oil companies continue to discover natural resources in African countries and in other developing nations.

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Natural resources in the Gulf of Guinea are a sovereign interest for each country that shares the gulf coastline. Article 56(1)(a) of the United Nations Convention on the Law of the Sea (UNCLOS), the statute that regulates maritime boundary issues between states, outlines the sovereign rights of a coastal state in relation to its neighboring states:

In the exclusive economic zone, the coastal State has . . .  
 (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds[.]

While the economic interest of a state to regulate its maritime border is clearly sovereign, a state is not allowed to infringe on another state's economic rights in the same coastal zone. See UNCLOS art. 56(2). This presents a problem because most states have not properly determined their boundaries. Because the boundaries are not determined and oil companies are signing exploration and exploitation contracts with these countries, disputes will continue to arise pending proper delimitation of the bordering states. Ghana and Côte d'Ivoire are parties to UNCLOS. The Convention creates its own tribunal (International Tribunal for the Law of the Sea, or ITLOS), which has jurisdiction over maritime disputes arising between state parties.

### International Tribunal for the Law of the Sea

In September 2014, following unsuccessful attempts at negotiations, Ghana initiated the above-mentioned dispute concerning the delimitation of its common maritime boundary in the Atlantic Ocean with Côte d'Ivoire. In particular, it requested that ITLOS seize the case pursuant to Article 287 and Annex VII of UNCLOS. On December 3, 2014, Ghana and Côte d'Ivoire jointly agreed to refer their dispute to a Special Chamber of the Tribunal pursuant to Article 15, paragraph 2 of the Statute of the International Tribunal for the Law of the Sea. Subsequently, Côte d'Ivoire decided to bring a request for prescription of provisional measures before the Special Chamber pursuant to Article 290, paragraph 1 of the Convention.

In its submission, Côte d'Ivoire requested, among other things, that Ghana be ordered to take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area; that Ghana refrain from granting any new permit for oil exploration and exploitation in the disputed

area; that Ghana be ordered to take all steps necessary to prevent information resulting from past, ongoing, or future exploration activities conducted by Ghana or with its authorization in the disputed area from being used in any way whatsoever to the detriment of Côte d'Ivoire; that Ghana take all the necessary steps to preserve the continental shelf, its superjacent waters, and its subsoil and to 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. Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean, Case No. 23, Request for the Prescription of Provisional Measures, Feb. 27, 2015, ¶ 54, [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). Inevitably, Ghana asked that Côte d'Ivoire's request be denied because it would cause serious and irreparable harm to Ghana.

While this is just a request for preliminary measures, it is critical because the alleged disputed area is about 30,000 km<sup>2</sup> from the coast to the 200 nautical mile line. Noting that Article 77 of the Convention stipulates the sovereign rights of a coastal state over the continental shelf with Article 76 defining the continental shelf to include the seabed and subsoil of the submarine area that extend beyond its territorial sea or to a distance of 200 nautical miles from the baseline, Côte d'Ivoire's claim for the delimitation is based on the geography of the coast. On the contrary, Ghana seems to argue that even though there has never been a formal delimitation agreement, the parties had customarily agreed on a boundary line based on equidistance, thus invoking the principle of estoppel and good faith in its defense to the prescription for provisional measures and arguing that there was the risk of irreparable prejudice to its interest if Côte d'Ivoire's request for provisional measures were granted.

In its ruling of April 25, 2015, the Special Chamber ordered that "Ghana take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area"; "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"; and "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." In addition, 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” and “shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute.” *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean*, Case No. 23, Order of Apr. 25, 2015, ¶ 108, [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).

## There has been neither concerted effort nor the political will to have sea borders properly delimited for Ghana and Cote d’Ivoire.

The Ghana/Cote d’Ivoire dispute raises a number of salient issues worth discussing here. First, although some countries like Ghana have domestic legislation that sets the framework for negotiating and delimiting their borderline with neighboring states, there has been neither concerted effort nor the political will to have, in particular, sea borders properly delimited in the case of Ghana and Cote d’Ivoire. In this context, the Ghana/Côte d’Ivoire dispute is the inevitable result of the failure or neglect of Ghana and Côte d’Ivoire to settle their differences in accordance with international law on the extent of each country’s maritime boundary. In the case of Ghana, the *Border Demarcation Commission Decree, 1968 (N.L.C.D. 235)* had stipulated the legal framework for such demarcation exercises. Pursuant to the provisions of the law, the government of Ghana could appoint a commission “to negotiate with any neighbouring country concerning the border between Ghana and that country, to undertake the physical demarcation of the border line agreed upon and to hold such enquiries as are necessary to solve any human problems occasioned by the border demarcation.” Although Ghana triggered the provisions of this law to negotiate its land borders with Côte d’Ivoire, it was unclear whether the provisions of the law applied to the delimitation of sea borders.

This doubt was removed in 2010 when the *Ghana Boundary Commission Act, 2010 (Act 795)* was passed by Parliament under a certificate of urgency. This Act established the Ghana Boundary Commission, whose objectives include “determin[ing] and demarcat[ing] Ghana’s land boundaries and delimit[ing] Ghana’s maritime boundaries in accordance with accepted principles of international law” through, among other methods, “negotiate[ing] with a neighbouring country concerning a land or maritime boundary between Ghana and that country.” The establishment of the Ghana Boundary Commission Act perhaps indicates that Ghana is beginning to take more seriously the need to proactively address possible future border disputes with its neighbors.

Second, the dispute provides another opportunity for an international tribunal to re-examine the equidistance rule in light of other salient principles of international law such as the principle of estoppel and states acting in good faith. In a number of cases, including the *North Sea Continental Shelf Cases*, 1969 I.C.J. 1 (Feb. 20), and *Guinea/Guinea-Bissau: Dispute concerning Delimitation of the Maritime Boundary*, Feb. 14, 1985, 25 I.L.M. 251, it has been made clear that the equidistance principle is not an inflexible rule. The complexities of the coastal landmass may necessitate the invocation of other principles consistent with the demands of equity and fairness where the application of the “equidistance /special circumstances” rule produces unjust results for any of the two countries.

Finally, how does the principle of estoppel affect the application of the equidistance rule as tempered by other principles where it is found necessary to depart from the equidistance rule to achieve fair results for the disputing countries? Ghana may have received a legal boost to its case when, in a concurring opinion on Côte d’Ivoire’s request for provisional measures, Judge Thomas Mensah appears to cast doubt on Côte d’Ivoire’s case as follows: “I have some doubts about the claim of Côte d’Ivoire to the maritime areas in dispute. In particular, I do not think that this claim has serious prospects of success on the merits.” *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean*, Case No. 23, *Separate Opinion of Judge Ad Hoc Mensah*, Apr. 25, 2015, ¶ 1, [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.23\\_prov\\_meas/C23\\_prov.measures\\_Order\\_25.04.2015\\_SepOp\\_Mensah\\_orig\\_Eng.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/C23_prov.measures_Order_25.04.2015_SepOp_Mensah_orig_Eng.pdf). However, it is yet to be seen whether Ghana’s plea of estoppel would be trumped by any concerns of achieving a fair outcome for the two countries, since “in line with a Decree issued by the then President of Côte d’Ivoire, Ghana has for a very long time (“more than four decades”) regarded the equidistance line as the border between Ghana and Côte d’Ivoire.” *See id.* ¶ 6. ♦