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The PRESIDENT: Please be seated. The sitting is open and I give the floor to Professor Jean-Pierre Quéneudec to continue with his presentation.

Mr. QUENEUDEC: Thank you, Mr. President. Mr. President, Members of the Court, during yesterday afternoon's sitting we examined the points of disagreement between Qatar and Bahrain concerning the actual concept of delimitation and the question of the low-tide elevations of Dibal and Jaradh and the island of Janan. It is now necessary to turn to the third and final part of this presentation concerning the irrelevance of certain of Bahrain's maritime claims.

III. The irrelevance of certain of Bahrain's maritime claims

57. Mr. President, we now come to what is no doubt the most extraordinary of the arguments raised by Bahrain concerning the maritime delimitation to be effected between itself and the State of Qatar. Bahrain sees its situation as one of a multi-island State whose vocation is to exercise sovereignty over the smallest islet, the smallest rock, the smallest reef, shelf or sandbank to be found within the area of delimitation. And in Bahrain's eyes, Qatar is, on the contrary, an essentially land-bound State — if one can call it that — turning its back on the delimitation zone and whose status as a peninsula thus tends to be obscured, or even eradicated.

This point of view propounded by Bahrain relies on the premise that Bahrain has an intrinsically archipelagic status. From this premise flow, we are told, "many important implications" (Reply of Bahrain, para. 276). In particular, this "archipelagic factor" (Reply of Bahrain, para. 343) is supposedly important for determining any question of sovereignty over what Bahrain refers to as "maritime features" [*«caractéristiques géographiques maritimes»*], which, for the most part, are in reality rocks and low-tide elevations. In its own mind, owing to its "archipelagic nature" (Reply of Bahrain, para. 354), Bahrain automatically has title to these rocks and low-tide elevations. It therefore comes up with such peremptory statements as that to be found in, for instance, paragraph 357 of Bahrain's Reply, where it is stated that:

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"even were some of the maritime features closer to Qatar than to Bahrain, they would still pertain to Bahrain based . . . on the fact that an archipelagic State is confronting an exclusively mainland State" (Reply of Bahrain, para. 357).

In sum, if my understanding is correct, the simple fact that the delimitation is to be between a self-proclaimed archipelagic State and a State described as "exclusively mainland" should inevitably result in a recognition that these "maritime features" [*«caractéristiques géographiques maritimes»*] form an integral part of the territory of the archipelagic State. And, of course, the entirety of the maritime areas surrounding them and within which they are included could only be subject to the sovereignty of that State.

58. The fallacious character of such a submission is so obvious that it neither calls for nor deserves much commentary. I shall therefore confine myself to demonstrating that not only do the various features existing in the maritime area concerned, whether they be simple islets or low-tide elevations, not all belong to Bahrain, but they are also not significant features and are therefore irrelevant for purposes of the delimitation. Likewise, I shall then show that the archipelagic claim put forward by Bahrain has no real relevance for the solution that the Court has been called upon to find with regard to the issue of delimitation.

1. The irrelevance of islets and shoals

59. Let us first address the question of what Bahrain refers to as "*maritime features*" [*«caractéristiques géographiques maritimes»*]. This expression is perhaps a convenient shorthand label, but it is fully open to and has moreover been the subject of criticism in Qatar's Reply (Reply of Qatar, para 7.11 *et seq.*). A multitude of island formations, composed of rock, coral or sand, are indeed to be found in the delimitation area.

We have already dealt with some of these features — those which are the most important — namely: the Hawar Islands and Janan island, located in the southernmost part of the area, and the low-tide elevations of Fasht Dibal and Qit'at Jaradah, on either side of the line dividing the sectors of the delimitation area.

60. Apart from these, there are many islets, rocks and low-tide elevations, all of which are located in the southern sector between the coasts of the two States and whose main characteristic, as we shall see, is that they are of little significance because of their small size, their location and, in the case of the low-tide elevations, their legal characterization.

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Driven by a veritable predilection for photographic illustrations, Bahrain has submitted to the Court as Supplemental Documents 134 new photographs, 22 of which are dedicated to these maritime features. These are, however, snapshots — not particularly clear and without any precise indication of the conditions in which they were taken. They furnish no useful information and are, moreover, presented in a charmingly haphazard fashion. All are deliberately put on the same footing, in line, it would seem, with the usual pattern followed by Bahrain in these proceedings: i.e., confusing different things in such a way as to make islets out of low-tide elevations, not to mention making mountains out of molehills.

Let us examine these two types of features.

(Illustration 13)

(a) *Islets*

61. The islets are in fact very small, uninhabited islands, or even, in some if not all cases, simply rocks that are quite uninhabitable, found either directly off the coast of the island of Bahrain, or at a distance from Bahrain island barely exceeding four to five nautical miles. This applies in particular to Al Hool, Halat Noon, Sabka Noon, Jazirat Mashtan, Yabberi Rock and, further north, Umm Jalid, Jazirat ash Shaykh above the cape of Ras Hayyan, and another islet above the cape of Ras Abu Jarjur which, incidentally, is not named on the maps. Only the islet of Mattera (or Al Mu'tarid) is at a distance of nearly seven nautical miles from the main coast of Bahrain.

These various islets are practically all fringed by coral reefs or sandbanks that are exposed at low tide, which can sometimes give the false impression that they are significant island formations. Indeed, this is the impression Bahrain has tried to create. It has not hesitated in some cases to exaggerate their depiction on the maps produced in its written pleadings, in such a manner as to give the impression that these were not "minor accessories of a mainland territory" [*«accessoires mineurs d'un territoire continental»*]. Bahrain even went so far as to state that the islets were "essential parts of the geographical configuration and the political structure of the State of Bahrain" (Counter-Memorial of Bahrain, para. 544). We must be dreaming!

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It is sufficient to refer to the nautical charts of the area, including those published by Bahrain (in particular map 2501, scale 1:25,000, Al Manama to Umm Jalid; map 5005, scale 1:100,000, Qit'at Jaradah to the Gulf of Bahrain), to realize that one is dealing here with tiny fragments of emerged land, next to which the small island of Janan discussed yesterday would appear almost gigantic. In reality, these islets correspond to what are often referred to in international case-law as "minor geographical features" [*«accidents géographiques mineurs»*], in other words, to repeat the words used in the Judgment in the *Gulf of Maine* case:

"the . . . type of minor geographical features which . . . should be discounted if it is desired that a delimitation line should result so far as feasible in an equal division of the areas in which the respective maritime projections of the two countries' coasts overlap". (*I.C.J. Reports 1984*, p. 332, para. 210).

62. One must therefore consider these islets as insignificant factors that should be ignored when drawing a delimitation line. Therefore, even if one accepts that Bahrain is justified in using some of these islets to establish baselines for its territorial sea, these islets could not, however, normally be used as basepoints for drawing a delimitation line between Qatar and Bahrain. Particularly as the ownership of at least one of these islets depends on the Court's decision concerning sovereignty over the Hawar Islands. Thus, the attribution of the islet of Mattera (or Al Mu'tarid) to one State or the other will depend on knowing on what side of the delimitation line the islet will be located. If the Court recognizes Qatar's sovereignty over the Hawar Islands, the islet of Mattera (or Al Mu'tarid) will perhaps no doubt be regarded as belonging to Qatar, since the delimitation line would put it on the Qatari side. Bahrain cannot therefore prejudge its attribution.

63. When — as is the case here — one is dealing with tiny islets with regard to which the existence of territorial title is uncertain to say the least, it is the drawing of the maritime boundary, based on a number of other factors, that will determine the attribution of sovereignty over the islets in question.

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In this connection the Award rendered in the *Beagle Channel arbitration* in 1977 will be recalled. The Arbitral Tribunal had stated that one of the effects attached to the drawing of a line representing the maritime boundary between the parties was to attribute all the islands and other formations to be found on one side of the line to Argentina and to attribute all those to be found on the other side of the line to Chile (para. 105 of the award). Rejecting the Chilean claim to

sovereignty over all the islands and islets located in the Beagle Channel, the five judges of the Court appointed as arbitrators were careful to stress that:

"a division of the waters of the Channel along a boundary line must necessarily entail . . . a corresponding division of the small islands lying in it, depending on which side of the line they are situated" (*ILM*, para. 107, 1978, p. 673).

[«le partage des eaux du canal selon une ligne de délimitation doit nécessairement entraîner un partage correspondant des petites îles qui s'y trouvent, selon que celles-ci se situent d'un côté ou de l'autre de la ligne.»] [Translation by the Registry.]

Therefore, it is not completely irrelevant for the purposes of the present case to cite a passage from the *dispositif* of this Award, the text of which was subsequently implicitly validated by the 1984 Treaty of Peace and Friendship between Argentina and Chile, in which the following wording is to be found:

"the title to all islands, islets, reefs, banks and shoals, if situated on the northern side of the . . . line, is vested in the Republic of Argentina; and if situated on the southern, in the Republic of Chile" (para. 176, 1 (iii), *ibid.*, p. 674).

[«le titre de l'ensemble des îles, îlots, récifs et hauts-fonds, s'ils sont situés du côté nord de la ligne, appartient à la République argentine et, s'ils sont situés du côté sud de la ligne, à la République du Chili.»] [Translation by the Registry.]

(b) *Low-tide elevations*

64. What is valid for all the islets referred to above is valid *a fortiori* for the *low-tide elevations* which are also scattered throughout the southern sector of the delimitation area. Thus, the Thalib (or Tighaylib) low-tide elevation, just over four nautical miles off the coast of Bahrain, is indisputably located in an area that, in any event, will be subject to Bahrain's sovereignty. This will be the case irrespective of whether the maritime boundary laid down by the Court follows the 1947 line in this sector or whether it is a median line between the two main coasts, that is following a line which, for instance, the *Eritrea/Yemen* Arbitral Tribunal called a "mainland-coastal median, or equidistance line" [*«une ligne médiane ou ligne d'équidistance établie à partir des côtes des territoires continentaux»*] in its Award of 17 December 1999 (para. 152).

On the other hand, there is every reason to believe that the Fasht Bu Thur, Qita'a el Erge and Qit'at ash Shajarah low-tide elevations, located respectively 7 ½, 6 ½ and less than 5 miles off the mainland coast of Qatar, will be located to the east of the delimitation line and thus within a maritime area under Qatar's sovereignty.

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For the reasons put forward during our examination of Fasht Dibal and Qit'at Jaradah, the three low-tide elevations of Bu Thur, El Erge and Shajarah cannot be considered as capable of appropriation themselves. Therefore they cannot, in our view, be used as basepoints for the determination of the delimitation line. On the contrary, it is the course of that line, based on the true coasts of the two States, that will have the effect of conferring title to these low-tide elevations in the light of their location in relation to the delimitation line.

65. The same applies to Fasht Al Azm. Indeed, as we saw yesterday, Fasht al Azm does not naturally form a part of Sitrah Island, to which it was, on the contrary, artificially attached in 1982. Therefore, for the purposes of the delimitation, it must be treated independently, in other words as a low-tide elevation off the coast. However, what is called Fasht al Azm, far from consisting of a single low-tide elevation, appears in actual fact to be made up of a series of consecutive fragments. These are in some cases drying reefs, and in others drying sandbanks, as can be seen, for instance, on the 1993 British Admiralty Chart 3790, to which a few minor corrections were made in 1999. This Admiralty Chart bears the wording "Drying reefs and sandbanks" [*«Récifs et bancs de sable découvrants»*], a label that also appears on the 1987 Bahraini nautical chart 5001. The formation in fact consists of several shoals that dry in pieces or patches, as indicated in the 1987 edition of British nautical chart 3790 — "Sand and coral (dries in patches)" [*«bancs de sable et coraux découvrant par endroits»*] — or Bahraini chart 1502: "Numerous shoals, dries in patches" [*«Nombreux hauts-fonds découvrants par endroits»*] (see Reply of Qatar, para. 7.17, p. 285).

Given these circumstances Fasht al Azm can no longer, contrary to what is asserted by Bahrain, be taken into account for the establishment of the delimitation line. It is definitely not a portion of the territory of Bahrain. And there is nothing, from the legal point of view, to prevent the drawing of a delimitation line which would have the effect of cutting through this series of shoals, as did the 1947 line and the Boggs-Kennedy line.

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66. In sum, the numerous islets and low-tide elevations that we have just examined appear in this case to be nothing more than minor geographical features in relation to the general configuration of the coasts of the two States. These items are of no significance when examined in the light of the overall geographical situation prevailing in the delimitation area. Which is why we contend that these islets and low-tide elevations cannot therefore be considered as relevant factors.

2. The irrelevance of the archipelagic claim

67. The *archipelagic claim* advanced by Bahrain is likewise irrelevant for the purposes of the present maritime delimitation. Qatar emphasized this point in its first two written pleadings (Memorial of Qatar, para. 11.43 *et seq.*; Counter-Memorial of Qatar, para. 6.65 *et seq.*). Therefore, I shall limit myself here to a few additional observations.

(a) *First observation*

68. The first observation one should make concerns the fundamental contradiction inherent in the position maintained by Bahrain in the present case.

On the one hand, Bahrain claims sovereignty over what it calls "the Zubarah area", that is a portion of the Qatari peninsula, that it asserts is part of its territory. On the other hand, Bahrain at the same time maintains that it fulfils all of the conditions required to qualify as an archipelagic State and is thus entitled to establish archipelagic baselines.

However, these are two claims that are totally irreconcilable and mutually exclusive.

Indeed, as is patently clear from work of the Third United Nations Conference on the Law of the Sea, only States whose territory is *entirely* and exclusively composed of islands or parts of islands can be granted archipelagic State status. Therefore, if the territory of a State is not solely composed of one or more groups of islands but also includes a portion of mainland territory, that State cannot claim archipelagic State status.

69. It is perhaps because Bahrain was aware of this incompatibility that it initially appeared to put forward its archipelagic claim only in the alternative, that is in the event that the Court should decide not to recognize its claim to Zubarah. However, Bahrain quickly abandoned its initial prudence and did not hesitate to assert that, even if its claim to Zubarah were accepted, it should still be considered an archipelagic State. The Court will certainly not have failed to notice that in its final written pleading, insofar as archipelagic status is concerned, Bahrain is no longer relying on an "alternative claim" [*demande alternative*] to submit its archipelagic pretensions.

In any event, it is clear that Bahrain cannot claim recognition of an alleged territorial title to a mainland zone, such as Zubarah, while at the same time also claiming archipelagic State status. This is not only a case of wanting "to have one's cake and eat it too", but also of wanting to "mix oil with water".

In Qatar's view, this reason alone is sufficient to have the archipelagic claim raised by Bahrain declared irrelevant for the purposes of the present case.

(b) *Second observation*

70. A second observation may also be added along the same lines, which reinforces the preceding observation.

This observation relates to the fact that, in the view of third-party States, Bahrain is not considered an archipelagic State within the specific meaning attached to this term since the adoption of the United Nations Convention on the Law of the Sea.

Not only is Bahrain not included in the list compiled by the Secretariat of the United Nations of the 17 States which are in fact currently claiming archipelagic status, but it is not even considered as one of those States which could, under the Convention on the Law of the Sea, claim archipelagic State status.

Thus, in the report sent to the President of the United States on 23 September 1994 in support of transmitting the 1982 Convention to the Senate for it to authorize the accession of the United States to the Convention, the United States Secretary of State listed the 20 States that, according to the study completed by his department, could legitimately claim archipelagic State status (see *International Legal Materials*, 1995, p. 1409). It is noteworthy that Bahrain was not included in this list, although the list was considered to be a complete inventory of those States entitled to have archipelagic baselines and was in fact published in *International Legal Materials* in 1995.

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In other words, the mere possibility for Bahrain to establish archipelagic baselines has not been recognized. This possibility was not even envisaged when the Geographer of the United States State Department was engaged in determining, in an objective and exhaustive manner, which States could do so by applying the criteria set forth in the Convention on the Law of the Sea.

Thus, this second consideration also leads to the conclusion that for purposes of the maritime delimitation the Court should not take into account the archipelagic baselines claimed by Bahrain.

(c) *Third observation*

71. Moreover, a third observation may be made concerning specifically the impossibility for the Court, within the framework of the present case, to decide in favour of the archipelagic baselines as presented by Bahrain for the first time in its Memorial (Illustration 14).

The archipelagic polygon defined by these baselines, which is shown on the screen, encompasses and includes maritime areas to the north and east of Bahrain, i.e., maritime areas that are outside the area in which the delimitation with Qatar is to take place, as may be seen from map No. 12 in Bahrain's Memorial.

However, to establish the maritime delimitation between Qatar and Bahrain, the Court is only able to take into account what is contained within the delimitation area proper. Obviously, the Court has no jurisdiction in this case with regard to maritime areas located outside this zone. In other words, the Court certainly cannot take a decision on the portion of the archipelagic baselines located outside the delimitation area, i.e., essentially the lines drawn between points 20 (they do not appear very clearly on the map) — I have made a note of them — 21, 22, 23, 24, 25, 26 and point 1, as well as a portion of the line drawn between points 1 and 2. Part of this line is normally outside the delimitation area.

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72. Does this mean that, as the Court cannot rule on all the archipelagic baselines, it could merely rule on the portion of these lines found within the delimitation area? That does not appear to be the case either, for the following reasons.

The assessment of the validity of archipelagic baselines under international law can be made only by applying the rules contained in Part IV of the 1982 Convention on the Law of the Sea, which is the section dealing with archipelagic States. The problem is, however, that as Qatar is not a party to this Convention, the provisions in question are not opposable to it as treaty-based rules.

Therefore, the Court should first decide whether these provisions can be considered as now forming part of customary international law, which is the only law applicable in the present case. However, the genuinely customary nature of several of the provisions of Part IV of the 1982 Convention is doubtful to say the least.

73. But if it is assumed that these provisions can be recognized as being customary and that the Court is therefore able to rely on them, it could not, however, decide on the validity of the

archipelagic baselines included within the delimitation area without making a global evaluation of the archipelagic polygon defined by all the baselines.

It would in fact, applying criteria based on those contained in Article 47 of the 1982 Convention, have to verify two things. First, it would have to evaluate the required ratio between the area of the water contained within the archipelagic polygon and the area of the emerged lands under Bahraini sovereignty. Second, it would also have to assess whether or not the drawing of the archipelagic baselines departs to any appreciable extent from the general configuration of the Bahrain archipelago. The Court would, however, only be able to do this by examining aspects that are outside the delimitation area itself, which would lead it to go beyond the geographical framework of this case. Furthermore, this would risk calling into question the delimitation that has already been made with a third State.

Under these circumstances, the Court does not appear to be in a position to rule on the archipelagic baselines that Bahrain wishes to establish.

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74. It follows, Mr. President, from all these observations that the archipelagic claim put forward by Bahrain should not be taken into consideration in the present case, as it is totally lacking in relevance. As a result, there is no need to examine whether or not Bahrain is entitled to draw archipelagic baselines.

Conclusion

Mr. President, Members of the Court,

75. These, together with the points now to be set forth by Professor Salmon, are the essential elements of Qatar's position with regard to the claims and arguments put forward by Bahrain with regard to maritime delimitation. It is taking some time to present them, and I should like to thank the Court for its patience and attentiveness.

Mr. President, I should be very grateful if you would now call upon my colleague, Professor Salmon.

The PRESIDENT: Thank you, Professor, I shall now call upon Professor Salmon.

Mr. SALMON: Mr. President, Members of the Court,

My colleague Professor Quéneudec has just dealt with certain circumstances that have been put forward by Bahrain as relevant circumstances, including its alleged archipelagic status, and urged the Court not to take this last element into account.

1. At this point my task is to draw the Court's attention, first, to two other facts that are presented by Bahrain as relevant circumstances: the pearl fisheries on the one hand and Bahrain's economic development plans on the other. Qatar considers that these should not be admitted as relevant circumstances. Second, I will show why, in Qatar's view, the line of 23 December 1947 is, in contrast, a significant relevant factor.

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Let us first review the circumstances to be disregarded.

A. The circumstances to be disregarded

1. The pearl fisheries argument

2. (a) Among such circumstances, let us first look at the *pearl fisheries argument*.

As was shown yesterday, for the purposes of maritime delimitation, Bahrain relies upon a highly questionable provisional equidistance line.

(Show sketch "Bahrain pearl fishing claims 1961 and 1996" [*«Réclamation de Bahreïn concernant les pêcheries de perles en 1961 et 1996»*]
judges' folders, No. 15).

Moreover, both in the claim that was presented on 16 August 1961¹ and in that found in the Reply of 1996², Bahrain purports to shift the line eastwards on the basis of the past activities of its pearl fishermen³. The map now on the screen (No. 15 in the judges' folders) shows in green the line claimed in 1961, and in red the even more curious line claimed today.

I would remind the Court incidentally that the Qatari documents referred to the 1961 line as the 1964 line for a long time, simply because the only text we had in our archives was that supplied to us by the British in 1964. It was not until 30 years later, when we were able to open the British archives, that we discovered that the document dated not from 1964, but indeed from 1961, but that the British had taken good care not to transmit it to us until 1964. This explains why the Court will

¹See details in Memorial of Qatar, paras. 10.34-10.40.

²Reply of Bahrain, paras. 391-399.

³See details in Memorial of Qatar, paras. 10.37, *et seq.* and App. 4. See also, Counter-Memorial of Qatar, paras. 6.38-6.49.

sometimes find a reference to 1964 in Qatar's pleadings, but in reality, in historical fact, it was in 1961 that Bahrain made this claim.

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3. Qatar has already disposed of these surprising claims in its Memorial (and in App. 4 to that pleading). Leaving aside the unreliability of the names and locations of the banks claimed⁴, Qatar notes the following elements, each of which alone suffices to destroy Bahrain's thesis:

(1) The pearl fisheries stretched throughout the entire southern region of the Gulf, and in particular from Saudi Arabia to the Emirates.

(Show sketch map "Common pearl fishing grounds"
[«Pêcheries de perles communes»],
judges' folders, No. 16)

The sketch map now on the screen (No. 16 in the judges' folders) shows a smaller area, as it covers only the area of the southern waters of the Gulf, between 50° and 51° 50' E, approximately.

From *time immemorial*, these fisheries were considered as *common* to all the tribes along the shores of the Gulf.

This position was consistently upheld by the British authorities as early as the last century⁵. The legal situation was acknowledged by Sir Humphrey Waldock in a legal opinion given to BAPCO, for which he acted as adviser at the time of the negotiations on delimitation between Bahrain and Saudi Arabia⁶, and by Mr. Al-Baharna, who is almost an honorary counsel to the Qatari delegation and who was the previous Agent of Bahrain in the present case, and who said exactly the same thing in his oft-cited work, *The Legal Status of the Arabian Gulf States*⁷. The jurisdiction of each flag State was therefore purely personal and not territorial.

(2) The Qataris — like other nationals of the Gulf States — also fished for pearls on a significant scale⁸.

(3) In stating that the seabed delimitation it had operated did not affect traditional fishing rights, the British decision of 23 December 1947 implicitly confirmed that the jurisdiction relating to

⁴See Counter-Memorial of Qatar, paras. 6.42-6.48.

⁵Counter-Memorial of Qatar, App. 2, paras. 19-20, Vol. 5, pp. 155-158.

⁶Memorial of Qatar, Ann. IV.206, Vol. 11, pp. 75-76 and Memorial of Qatar, App. 4, Vol. 15, para. 12. See also extracts in Counter-Memorial of Qatar, App. 2, Vol. 5, pp. 155-158.

⁷Memorial of Qatar, App. 4, Vol. 15, para. 14, pp. 118-119.

⁸Memorial of Qatar, App. 4, Vol. 15, para. 15, p. 119.

the fisheries was not an *in rem* jurisdiction in the civil law sense of ownership but a *personal* one.

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- (4) The proclamations by Bahrain and Qatar in June 1949 concerning their sovereignty over the seabed similarly reserved the traditional pearling rights on the high seas⁹.
- (5) The personal jurisdiction that the Ruler of Bahrain was able to exercise over Bahraini boats or citizens did not give rise to any right of sovereignty *over the fishing grounds*; this is why Bahrain's arguments based on such exercise in relation to the Bu Saafa banks were rejected by Saudi Arabia¹⁰.

(Show sketch map "Map attached to Belgrave's letter dated 21 March 1951 together with the transposition of the line of the Agreement of 22 February 1958" [*«Carte jointe à la lettre de Belgrave en date du 21 mars 1951, ainsi que la transposition de la ligne de l'accord du 22 février 1958»*], judges' folders, No. 17)

The map now on the screen (No. 17 in the judges' folders) shows the banks that were claimed by Bahrain in a letter written by Belgrave on 21 March 1951, in particular all these banks visible in this semi-triangle in the northern area; I have superimposed on them the line adopted under the agreement of 22 February 1958 between the two States. This sketch map makes it plain that this agreement gave Bahrain no sovereignty over the said fishing grounds. As will be seen later, it was another argument, that relating to BAPCO's oil operations in the area, that was to lead to Saudi Arabia sharing the oil revenues from the zone concerned, a zone that was to be subject to the exclusive sovereignty of Saudi Arabia.

- (6) The discussions concerning sedentary fisheries during the framing of the Geneva and the Montego Bay Conventions definitively rejected any idea that such fisheries could belong to a State other than the coastal State. The latter has exclusive rights over the continental shelf and its resources¹¹.

(Show again sketch map "Common pearl fishing grounds" [*«Pêcheries de perles communes»*], judges' folders, No. 16)

⁹Memorial of Qatar, App. 4, Vol. 15, para. 21, p. 121.

¹⁰Memorial of Qatar, App. 4, Vol. 15, para. 25, p. 123 and Counter-Memorial of Qatar, App. 2, Vol. 5, paras. 19-20, pp. 155-158.

¹¹Counter-Memorial of Qatar, App. 4, Vol. 15, para. 24, p. 122.

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- (7) Incidentally, it will be noted that these activities took place in the northern area of the southern area, if you take my meaning: i.e., the northern area before reaching the Gulf median line¹², and there was no pearling activity in what is sometimes called the Gulf of Bahrain, in particular there had never been any pearling activity at Hawar¹³; contrary to certain Bahraini allegations, the Dowasir came to Hawar *at the end of their pearl-fishing season*¹⁴.
- (8) The pearl fisheries ceased to exist over half a century ago. They were already described as defunct by Young in an article published in 1973 in *New Directions in the Law of the Sea*¹⁵. Bahrain's statement that "pearling is now substantially reduced"¹⁶ [*«la diminution substantielle de l'activité perlière»*] must be brought to the Court's attention as one of the rare occasions where Bahrain has exercised euphemism and restraint in its written pleadings.
- (9) Lastly, Bahrain's claim that its coastguard now patrols around the pearl banks to the north of Qatar¹⁷ — supposing this were proven — has, without prejudice to its temporal inadmissibility, no particular legal significance, as we had the honour to state before the Court in our earlier statement.

Bahrain has refrained from replying to all this, or has given only unsatisfactory responses.

4. The last form of argument that has been put forward by Bahrain is to claim that it has always exercised an *imperium*, as opposed to a *dominium*, over the pearling banks, by legislative, administrative and judicial means. Moreover, it asserts, boldly and candidly, that this fact is not challenged by Qatar¹⁸.

The word "*imperium*" is a Latin term used in doctrine to denote the power exercised by a State over persons wherever they might be located. Thus, Professors Combacau and Sur, in their well-known work, make a distinction between space as an area where *imperium* is exercised *over people* and space as an area where *dominium* is exercised over territory. In the case of *imperium*,

¹²Reply of Bahrain, para. 54.

¹³See Bahrain's affidavits at Reply of Bahrain, Anns. 15, 17-19 and 26-31.

¹⁴*Ibid.*, Anns. 22 and 23.

¹⁵Memorial of Qatar, Ann. IV.372, Vol. 13, p. 297.

¹⁶Reply of Bahrain, para. 391.

¹⁷Reply of Bahrain, para. 392 and Ann. 24, Vol. 2, p. 148.

¹⁸Reply of Bahrain, para. 394.

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this is a personal power, exercised over the persons located within a territory (be it national, foreign or even international)¹⁹. And in the case of *dominium*, power is exercised by the State over its territory as an object.

This terminology is relatively rare. Most jurists make a distinction between territorial jurisdiction and personal jurisdiction.

But this Roman garb changes nothing: whether one speaks of *imperium* or of personal jurisdiction over Bahraini subjects or over vessels flying the Bahraini flag, it does not in itself confer any right of a territorial nature or of special management of the fishing grounds. This was stated in no uncertain terms in 1903 by Lieutenant-Colonel Kemball, the Political Resident in the Persian Gulf, to a French businessman by the name of Joseph Dumas, who wanted to take part in pearl diving and who mentioned the possibility of obtaining the agreement of the Ruler of Bahrain. The Resident replied as follows:

"I explained to Monsieur Dumas that the pearl banks were the common property of the coast Arabs and that the Chief of Bahrein had no right to give any one permission to take part in the diving operations"²⁰.

This could not be clearer. If by its use of Latin Bahrain purports to argue that this *imperium* extended to Qatari citizens or to vessels flying the Qatari flag, this claim is formally disputed here.

5. Incidentally, the Court will have noted that Bahrain's written pleadings, which are full of economic activities from the last century, do not dwell on the conduct of the Parties with regard to *oil concessions* — an activity that has assumed a predominant role in the contemporary era. If there is one economic activity that might be considered relevant, it is this. We shall come back to this matter in a moment.

¹⁹J. Combacau and S. Sur, *Droit international public*, 4th ed., Montchrestien 1999, pp. 394 and 418.

²⁰Letter dated 26 March 1903, from Lieutenant-Colonel C.A. Kemball, Political Resident in the Persian Gulf, to L.W. Dane, Secretary to the Government of India, OF 78/5380 (Supplemental Documents of Qatar, No. 3).

0 2 4 2. Bahrain's development plans

(Show map "Proposed reclamation of the Bahrain archipelago" [*«Projet d'aménagement de l'archipel de Bahrein»*], Reply of Bahrain, facing page 181)

6. But let us first deal with the second circumstance relied upon by Bahrain. This concerns the grandiose reclamation projects it envisages, particularly on Hawar, Fasht al-Azm, Fasht Dibal and Qit'at Jaradah, but also on Nun, Mashtan, Tighaylib and Qit'at ash Shajarah²¹.

The sudden unveiling of these futuristic construction works in Bahrain's Reply is doubtless aimed at impressing the Court with arguments of an economic nature. It must be emphasised from the outset that, were such works carried out, they would transform certain low-tide elevations into islands which would thus substantially encroach upon Qatar's territorial sea.

7. Qatar considers it unnecessary to dwell upon these projects, for the four following reasons:

1. As I pointed out in my introductory statement, economic prospects as such have no role in settling the issue of delimitation between the Parties. As the Arbitral Tribunal held in the case concerning delimitation of the maritime boundary between Guinea and Guinea-Bissau, when faced with the parties' development plans:

"this Tribunal has not, any more than the International Court of Justice in the *Tunisia/Libya* case (*I.C.J. Reports 1982*, p. 77-78, para. 107), acquired the conviction that economic problems constitute permanent circumstances to be taken into account for purposes of delimitation. As the Tribunal can be concerned only with a contemporary evaluation, it would be neither just nor equitable to base a delimitation on the evaluation of data which changes in relation to factors that are sometimes uncertain"²².

2. Some of the low-tide elevations that Bahrain is planning to transform are under Qatar's sovereignty, as stated yesterday and again this morning, by the Counsel who preceded me.

3. They are futuristic constructions contemplated for a time beyond any conceivable critical or relevant date. As such, the argument is inadmissible.

0 2 5 4. Moreover, artificial construction works thrust into such a narrow sea would profoundly transform the geographical configuration, and would undermine any reasonable application of the legal rules of maritime delimitation.

²¹See map in Reply of Bahrain, facing page 181.

²²Award of 14 February 1985, *ILM*, Vol. 25, p. 251, at p. 302.

In conclusion to this first part, Qatar considers that the pearl fisheries and Bahrain's development projects must be rejected as relevant circumstances.

B. A circumstance to be taken into account: the line of 23 December 1947

8. Any examination of the relevant circumstances which might have an impact upon the determination of an equitable line of demarcation cannot fail to take into account the British decision of 23 December 1947.

(Show sketch map "The British Decision of 23 December 1947" [*«La décision britannique du 23 décembre 1947»*], judges' folders, No. 18).

The Court will have noticed that to all intents and purposes Bahrain has remained silent with regard to this decision, except when it is to its advantage (for Dibal and Qit'at Jaradah)²³. Otherwise, this document by the British government is rebaptized "letter by a third State"²⁴ and is loftily ignored by Bahrain.

Similarly, Bahrain says not one word about the impact that the adoption of this line may have had upon oil operations in the region.

Qatar has shown in its written pleadings that this document — which was adopted by the British Government in order to avoid any conflict between the oil interests on either side in the waters separating Bahrain from the Qatar peninsula — is however a relevant circumstance to be taken into consideration for the maritime delimitation.

9. The British, who were influenced by the Truman Proclamation and the concept of equitable principles, drew a dividing line based on the three following criteria: the use of only those coasts which were opposite each other, the selection of a few easily identifiable turning points, and the drawing of a simplified line.

It will be recalled that the line was formed of three segments and that there were two exceptions. The first segment began at point M in the south (shown by the arrow), at the entrance of the Bay of Dawhat Salwah (at latitude 25°30' N) and went up to point Q.

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The *first exception* occurred at this point. The line deviated to the east, in order to enclose inside a polygon the Hawar Islands, which had been attributed to Bahrain in 1939.

²³Reply of Bahrain, para. 355.

²⁴Reply of Bahrain, para. 274.

The second segment extended from point L to point NSLB (standing for the North Sitrah Light Buoy). The third segment was a straight line running NNE up to point BLV (standing for the Bahrain Light Vessel). The line therefore ended at latitude 26° 33' 33" N, while the Gulf median line with Iran lies a little beyond 27°N.

The *second exception* lay in the fact that the decision attributed sovereign rights over the two shoals of Fasht ad Dibal and Qit'at Jaradah to Bahrain, while stressing that they were not islands and that these low-tide elevations, which were enclaved in the area attributed to Qatar, had no territorial waters.

10. As Qatar has shown in its written pleadings, it does not rely on this line either as a final and binding British decision, or for the whole of its length.

It is not relied upon as a *final and binding* British decision for two fundamental reasons.

First, the various authorities that expressed views on this point on behalf of the British Government held differing opinions with regard to the nature of the decision. At times they considered it a final decision, and at other times a provisional measure requiring confirmation. This is apparent from the various declarations made after 1947 which have been collected and cited in Qatar's written pleadings before the Court.

Second, the two interested parties themselves expressed their opposition to the decision, either (as Qatar did) because of the exceptions that it contained, or because of the course of the line provided for therein (as did Bahrain, which wanted to regard it solely as confirming or enshrining its alleged rights over the Hawar Islands or the Dibal and Jaradah shoals). His Britannic Majesty ultimately yielded to the facts by agreeing to the matter being submitted to arbitration between two sheikhdoms. Consequently, this decision was not legally opposable to the two States concerned.

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11. Nor is the line relied upon by Qatar *throughout its length*, not only because Qatar protested against the two exceptions but also because if the southern part of the line were retained, it would encroach upon the rights of Saudi Arabia in the north of the bay of Salwah. Finally, as has just been noted, since the 1947 line terminates at BLV, it leaves the course of the line in the northern part of the area to be delimited undetermined.

Qatar therefore considers that the only part of the line that is relevant and should serve as a reference is the section running from point L to point BLV.

(Show sketch map "The 1947 line as a relevant factor for the delimitation of the single maritime boundary" [*«La ligne 1947 en tant que facteur pertinent pour la délimitation de la frontière maritime unique»*], judges' folders, No. 19)

In view of various circumstances that will be dealt with next by my colleague Professor Quéneudec, this part of the 1947 line is relied upon not as the *starting point* for a legal argument, but as *its end-result*, as a reasonable solution.

The 1947 line as a reference line for petroleum activities

12. It cannot be emphasized enough that the 1947 line fulfilled the purpose that was intended by His Majesty's Government: it was taken into account, significantly, as a reference line for the activities of the oil companies. To demonstrate this point requires a detailed technical explanation, for which we must beg the Court's indulgence and patience. Because of the doubts that Bahrain had raised in this regard in its Reply and recent entirely unfounded protests, Qatar felt obliged to produce some of the relevant documentation in the Supplemental Documents that it filed with the Court in March.

For clarity of presentation, a distinction should be made between the period prior to the adoption of the 1947 line and the period following the adoption of that line.

13. *Before the decision of 23 December 1947, before it was adopted* by His Majesty's Government, BAPCO had made surveys of the islands, islets and rocks and of low-tide elevations. The picture displayed (which is to be found in the judges' folders as item No. 20) depicts the 1947 line — although it did not exist at the time — but simply to show the possible locations of BAPCO's activities in relation to that line. So BAPCO had made surveys of the islets and rocks and of low-tide elevations such as Fasht Jarim, Khor Fasht, but also Fasht Dibal and Qit'at Jaradah²⁵. So this is before 1947.

(Show sketch map "BAPCO activities" [*«Activités de la BAPCO»*], judges' folders, No. 20)

In 1940, BAPCO drilled structure holes [*«forages structurels»*] at Fasht Dibal, Qit'at Jaradah and Fasht Adham²⁶. This was on the other side of the future 1947 line.

²⁵Memorial of Qatar, Anns. IV.54 and IV.55, Vol. 9, pp. 263 and 269.

²⁶Memorial of Qatar, Ann. IV.65, Vol. 9, p. 319 and Memorial of Qatar, Ann. IV.176, Vol. 10, p. 379.

When Prior, the British Political Resident in the Persian Gulf, heard about this drilling on Fasht Dibal and Qit'at Jaradah, he protested strongly in the following terms:

"I cannot explain why Belgrave took it upon himself to sanction drilling which he must have realised was beyond his powers and trenching on international politics, and I have sent him an official reprimand through Alban"²⁷. (Alban was the Political Agent in Bahrain.)

In any event, from June 1942 onwards — we were in the middle of a war — the British authorities ordered BAPCO to cease its activities. This prohibition was not lifted until September 1945. In May 1946 BAPCO sought British authorization to perform structural drilling at various locations to the south-east of Fasht Dibal and Qit'at Jaradah and on Hawar and the island of Sawad Janubiyah²⁸.

(Show sketch map "BAPCO requests 1946" [*«Demandes de la BAPCO en 1946»*], judges' folders, No. 21)

Authorization was refused, except on the main Hawar Island²⁹. There was a further refusal in 1947 with regard to drilling on Fasht Dibal and Qit'at Jaradah³⁰.

All this shows that BAPCO's unilateral actions on the low-tide elevations between Bahrain and Qatar were neither authorized nor approved by His Majesty's Government before the 1947 decision.

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However, in March 1947 PCL, or PDQ, which held the concession over Qatar's territory, received authorization to make a topographical air survey over Fasht Dibal and Qit'at Jaradah, provided that no surface operations were involved³¹.

14. *We now come to the second part, that is after the decision of 23 December 1947.* The situation subsequently developed as follows.

The first offshore concession extending beyond the territorial sea was granted by Qatar on 5 August 1949 to a consortium formed by Central Mining and Investment Corporation (CMIC) and Superior Oil Co. The concession included, according to Article 3 thereof:

²⁷Memorial of Qatar, Ann. IV.69, Vol. 9, p. 335.

²⁸Memorial of Qatar, Ann. IV.77, Vol. 9, p. 373.

²⁹Memorial of Qatar, Anns. IV.58, IV.71 and IV.85, Vol. 9, pp. 283, 345 and 405. See also Memorial of Qatar, Ann. IV.76, Vol. 9, p. 367 and the attached map.

³⁰Memorial of Qatar, Ann. IV.103, Vol. 10, p. 13.

³¹Supplemental Documents of Qatar, Nos. 18 and 19.

"all of the sea-bed and subsoil underlying the waters of the Persian Gulf which fall within the jurisdiction and control of the Ruler of Qatar and which lie beyond the territorial waters contiguous to the mainland and islands of Qatar"³².

No further details were given of the limits of the concession, and no map was drawn up on this occasion. At any rate we have not found any trace of one.

15. With a view to avoiding conflicts between the oil companies operating for Qatar and for Bahrain within the limits of the 1947 line and in the still undelimited area in the north, an interministerial meeting, held in London on 21 November 1949, instituted a policy of safe areas [*«zones de sécurité»*] that was to be complied with by companies operating in the waters between the two sheikhdoms³³. From that moment on, the oil companies' operations were subject to twofold control by His Majesty's Government. First, any concession granted by the two States concerned had to be approved in principle by His Majesty's Government by virtue of the agreements referred to earlier entered into with each sheikhdom (third condition of the Agreement of 13 March 1892 between Bahrain and the United Kingdom³⁴ and Article IV of the Treaty of 3 November 1916 between Qatar and the United Kingdom³⁵). Second—and this is what was new—the concessionaires themselves had to enter into "political" agreements [*«accords «politiques»*] with His Majesty's Government which imposed upon them safe areas where drilling or exploitation could be undertaken only with the authorization of that Government.

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And the first company to be affected by this new policy was CMIC for Qatar. In a letter from the Foreign Office to CMIC dated 8 September 1950, the United Kingdom recognized that the western limits of the company's concession coincided with the seabed boundary:

(Show sketch map "Superior Oil Company limits of safe area (according to HMG letter of 8 September 1950)" [*«Limites de la zone de sécurité de la Superior Oil Company (selon la lettre du gouvernement de sa Majesté du 8 Septembre 1950)»*], judges' folders, No. 22)

"(a) The western boundary is the line announced in October 1947 to the Shaikhs of Bahrain and Qatar"³⁶

³²Counter-Memorial of Qatar, Ann. IV.4, Vol. 4, p. 22.

³³Memorial of Qatar, Ann. IV.152, Vol. 10, p. 263.

³⁴Memorial of Qatar, Ann. II.37, Vol. 5, p. 121.

³⁵Memorial of Qatar, Ann. II.47, Vol. 5, p. 181.

³⁶Letter from Furlonge (Foreign Office) to Muir Warden (CMIC) of 8 September 1950 (Supplemental Documents of Qatar, No. 26).

Thus it was indeed the 1947 line which, for the British, provided the limit of the concession. And it was stated that "[t]his line [did] not go beyond a certain point at its northern extremity and the question of extending it to a point approximately in the centre of the Persian Gulf [was] under examination". It should be borne in mind that the delimitations with Iran and Abu Dhabi — which are indicated here with a dotted line — had not yet been fixed. They were not to be fixed until 1969.

16. Consequently, CMIC was authorized to *drill* — note that I said drill — only in certain specified areas of its concession (to identify them more easily, they are shown in green on the sketch map displayed on the screen and on item No. 22 in the judges' folders), thus leaving safe areas (*zones de tranquillité*) to the south, east and west. On the other hand, by letters of 8 November 1950³⁷ and 6 January 1951³⁸, that is shortly afterwards, the United Kingdom agreed to allow CMIC to make surveys in the area shown in orange on Document No. 23 in the judges' folders, on condition that it performed no operations on the ground.

(Show sketch map "Authorization given to Superior Oil Company to survey in 1950-1951"
[«Autorisation donnée à la Superior Oil Company d'effectuer des levés en 1950-1951»],
judges' folders, No. 23)

0 3 1 Finally, the Foreign Office spontaneously considered informing CMIC and BAPCO that they could undertake seismic surveys (excluding drilling) on either side of the extension of the 1947 line towards 27° North, 51° 20' East³⁹. This area, with regard to Qatar, is shown in pink on the same Document No. 23.

The official decision was transmitted on 21 July 1951 to the Political Resident in the Persian Gulf:

"we propose to inform the Company that we have no objection to their carrying out survey operations in the area to the East of the line joining the Bahrain light-ship (the Northern point of the 1947 line) and the point 27° North, 51°20 min East, provided they understand that this is a tentative line given for the present purpose of oil survey only and without prejudice to the final delimitation of the sea-bed boundary. The two companies could at the same time be similarly informed"⁴⁰.

³⁷Memorial of Qatar, Ann. IV.179, Vol. 10, p. 393; and Supplemental Documents of Qatar, No. 27.

³⁸Reply of Qatar, Ann. IV.5, Vol. 4, p. 21.

³⁹Letter of 13 December from Fry (Foreign Office) to Hay (PRPG) (FO 371/82086); Reply of Qatar, Ann. IV.4, p. 17.

⁴⁰Letter of 21 July 1951 from the Foreign Office to the PRPG, FO 371/91319 (Supplemental Documents of Qatar, No. 20).

These surveys were made for Qatar in 1952⁴¹.

(Show sketch map "Marine seismic survey for International Marine Oil Co., Ltd."
[«*Levés sismiques maritimes pour International Marine Oil Co., Ltd.*»],
judges' folders, No. 24)

17. After CMIC had abandoned its concession, the concession was granted by the Ruler of Qatar to Shell Overseas Exploration Company Limited (SOEC) on 29 November 1952. According to Article 1 of the concession agreement, the concession area covered:

- "(i) all the seabed and subsoil underlying the spring tide of the waters of the Persian Gulf which fall within the jurisdiction of the Sheikh and which lie beyond territorial waters . . . and
- (ii) any and all islands, islets, shoals and bars . . . above spring tide of the waters within the area defined in (i) above"⁴².

In application of its 1947 decision, the United Kingdom considered that the western limit of the concession coincided with the 1947 line⁴³. In turn, the company was authorized to undertake *surveys* to the east of an extension of that line up to the point which I mentioned just now, namely latitude 27° N, longitude 51°20' E⁴⁴, the limits thus being the same as for the earlier concession.

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(Show sketch map "Extension of the 1947 line" [«*Prolongation de la ligne de 1947*»],
judges' folders, No. 25)

It is important to note that this extension of the NSLB-BLV line was not straight. It turned slightly towards the east. If it had been straight, it would have terminated at 51° 15' 30" E. As will be seen later, this distinction is not without interest.

At all events, maps prepared later of the Shell Company of Qatar offshore concession illustrate the situation as it had been decided by the British Government⁴⁵.

(Show "The Shell Company of Qatar offshore concession" [«*La concession en mer de la Shell Company of Qatar*»], judges' folders, No. 26)

⁴¹Report by Robert Ray, 13 June 1952 (Marine seismic survey for IMCO [«*Levés sismiques maritimes pour IMCO*»], No. 24969) and the attached map (Supplemental Documents of Qatar, No. 21).

⁴²Supplemental Documents of Qatar, No. 29.

⁴³Reply of Qatar, Ann. IV.8, Vol. 4, p. 33.

⁴⁴*Ibid.*

⁴⁵Reply of Qatar, Ann. IV.12, Vol. 4, p. 65.

18. With BAPCO, the United Kingdom took the same position of adherence to the 1947 line⁴⁶, which BAPCO accepted, recognizing it "as being the effective boundary of their operations in practice"⁴⁷ even though the Ruler of Bahrain had not yet accepted it.

(Show sketch map "Seismic isochrone map, Qatar marine area, Bataafse Internationale Petroleum Maatschappij, N.V." [*«Carte sismique de courbes isochrones, zone maritime de Qatar, Bataafse Internationale Petroleum Maatschappij, N.V.»*], judges' folders, No. 27)

In this area, during the first quarter of 1953, the Shell Company of Qatar undertook research on sediment distribution, and in 1953-1955 and 1959 seismic surveys⁴⁸. The image displayed on the screen shows the isochrone map overprinted with the 1947 line, so that you can see quite clearly that the geographical operations more or less adhered to the 1947 line. But Shell's drilling programme was thus limited to the north and east of the peninsula⁴⁹.

19. In 1963 Shell abandoned part of its concession, including the area to the west of the Qatar peninsula. Those areas were in turn granted to Continental Oil Company of Qatar, with the same limits⁵⁰.

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(Show sketch map "Concession areas granted to Continental Oil Company of Qatar, 1963" [*«Concessions octroyées à la Continental Oil Company of Qatar, 1963»*], judges' folders, No. 28)

After BAPCO in turn had abandoned its offshore concession in the north (along the 1947 line) and at Hawar, these areas were acquired on 20 September 1965 by a new concessionaire, the Continental Oil Company of Bahrain.

As a result, through two separate subsidiaries, the same company found itself the concessionaire on each side of the 1947 line. This exceptional situation offered the possibility of a compromise solution. With your permission, Mr. President, I will leave this for the continuation.

⁴⁶Reply of Qatar, Ann. IV.7, Vol. 4, p. 29.

⁴⁷Letter of 7 December 1953, Reply of Qatar, Ann. IV.10, Vol. 4, p. 47. Drilling on Fasht al Azm was to the Bahraini side of the 1947 line.

⁴⁸See "Interpretation of the marine seismic survey offshore Bahrain-Qatar by Seismic Review Section", 11 December 1959, by Bataafse Internationale Petroleum Maatschappij, NV, The Hague, Report EP-30827 and attached isochrone map (Supplemental Documents of Qatar, No. 22).

⁴⁹Reply of Qatar, Ann. IV.12, Vol. 4, p. 65.

⁵⁰Reply of Qatar, Ann. IV.13, Vol. 4, p. 67, in particular p. 73.

The PRESIDENT: Thank you, Professor Salmon. The Court will adjourn for a quarter of an hour.

The Court adjourned from 11.30 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The sitting is resumed and I give the floor once more to Professor Salmon.

Mr. SALMON: Mr. President, Members of the Court, as I was saying, a quite exceptional situation obtained, in that one and the same company, Continental Oil Company, was on both sides of the line. Compromise solutions were therefore a possibility.

20. To give it full credit, Bahrain took the initiative here. The initiative was made known in a letter of 20 February 1966 from the Political Agent in Bahrain and confirmed at a meeting on 12 April 1966 between the Political Resident, Luce, and the Ruler of Bahrain and his adviser Sayyid Mahmoud. The Political Resident wrote in this connection that his interlocutors had indicated again that they were ready to accept the 1947 line as the operating limit, without prejudice to an eventual settlement of the maritime boundary, and again made the point that if any oil structure were found which straddled that line operations should be suspended until the two Governments agreed on how the matter should be dealt with.

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21. Things went a step further when, on the occasion of his visit to Qatar from 8 to 12 April 1967, the Ruler of Bahrain proposed to the Ruler of Qatar a solution to the seabed *delimitation* problem. According to information from Parsons, the Political Agent in Bahrain, Bahrain's proposal was the following, as shown on the screen. This document is not in your folders but is reproduced as No. 37 of Qatar's Supplemental Documents. It is nonetheless of capital importance.

(Show the following text)

"On Sayed Mahmoud's instructions, Yusuf outlined to me the details of the Bahraini proposals on the seabed. He confirmed that the boundary had been drawn on the basis of a median line ignoring all islands, reefs and shoals. It ran roughly as follows from South to North; — from the 1947 line at E 50° 38' 30" N 25°33' to E 50° 45' N 25° 46' 30" to E 50° 49' N 26° to E 50° 50' N 26° 10' to E 50° 53' 30" N 26° 27' 30" and thence NNE along the 1947 line. They had also proposed that, instead of Dibal/Jaradeh and Ekhchejera being two separate enclaves they should

either be incorporated by two separate eastward bulges or by linking them all in one eastward bulge: in exchange Bahrain was prepared to concede an equivalent amount of seabed in the northern zone, i.e. north of the point where the 1947 line turns NNE at N 26° 27' 30" ⁵¹.

The Court will note that it was confirmed that the boundary proposed by Bahrain had been drawn on the basis of a median line ignoring all islands, reefs and shoals. Someone else who might have been included in our team! There followed a series of co-ordinates which I will spare the Court, but you have them in the texts, and in any case I shall revert to them in detail.

(Show sketch map "Bahrain's proposal of 1967 with indication of co-ordinates"
[«*Proposition de Bahreïn de 1967 avec indication des coordonnées*»],
judges' folders, No. 29)

This description requires some explanation. First, the median line that was proposed did not actually begin at a point situated on the 1947 line, but at a point slightly further east. Second, the last point identified by co-ordinates, which falls more or less on the 1947 line, is situated between NSLB and BLV. However, this is not the point where the 1947 line "turns" or "bends", since that point is at NSLB. Third

(Show sketch map "Bahrain's proposal of April 1967 with indication of prolongation"
[«*Proposition de Bahreïn d'avril 1967 avec indication du prolongement*»],
judges' folders, No. 29bis),

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since the proposed line continues "NNE along the 1947 line", it should end at around 27°N—51° 15' 30" E. That can be said to be the baseline which the Bahrainis took as their starting-point.

(Show sketch map "Bahrain's proposal of April 1967 with indication of three areas"
[«*Proposition de Bahreïn d'avril 1967 avec indication de trois zones*»],
judges' folders, No. 30)

Bahrain then proposed to exchange two areas. The first (called «*Première Zone*» ["First Area"]) was to include the eastern end of Fasht al Azm, Qit'at ash Shajarah, Fasht Dibal and Qit'at Jaradah and would be for Bahrain. The second (called «*Deuxième Zone*» ["Second Area"]), of an equivalent surface area, was to be given in compensation to Qatar to the west of the final segment of the extended 1947 line. One would thus arrive at a point situated at approximately 27° 2' 18" N—51° 9' 35" E.

⁵¹Supplemental Documents of Qatar, No. 37.

Finally, it should not be forgotten that in making this proposal Bahrain did not give up the Hawar Area [*«zone de Hawar»*]. In conclusion, the proposed line was as follows:

(Show sketch map "Bahrain's proposal of April 1967" [*«Proposition de Bahreïn d'avril 1967»*], judges' folders, No. 31)

The important thing to note at this stage of the negotiations is that Bahrain's proposal for the *maritime delimitation* took as its starting-point a *median line from mainland to mainland, disregarding islands, reefs and shoals*. The proposals for gains to the east of that line, in the central portion, were balanced by an equivalent area to the west of the line in the northern part of its course.

(Show sketch map "Comparison of the 1961 and 1967 lines" [*«Comparaison des lignes de 1961 et de 1967»*], judges' folders, No. 32)

It will also be noted that Bahrain abandoned its extravagant intentions of 1961 — intentions, moreover of which Qatar had become aware only in 1964, as I said a moment ago. The Court will note how striking the difference is. However, the negotiations could not continue during that meeting at Doha because Qatar was unable to accept a solution that perpetuated Bahrain's occupation of Hawar.

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22. On 5 September 1967 Qatar made a counter-proposal⁵² which left in abeyance the contradiction concerning the problem of delimitation between sovereignties and was limited to an agreement on the exploitation of petroleum resources by Continental Oil.

(Show sketch map "Qatar's counter-proposal of September 1967" [*«Contre-proposition de Qatar de septembre 1967»*], judges' folders, No. 33)

Qatar proposed that an agreement should be concluded along the following lines:

- (1) Both parties would reserve their rights regarding the question of Hawar and the 1947 line (thus circumventing the contradictions);
- (2) The 1947 line was taken as a starting-point for the division of petroleum operations. Both parties asked Continental Oil to give priority to drilling operations in three areas: the first similar to the one proposed by Bahrain in the area of the shoals, but leaving Fasht ad Dibal to Qatar, the second having an equal surface area and being in the shape of an upturned triangle, with its apex at NSLB, and the third being the area of the Hawar Islands.

⁵²Supplemental Documents of Qatar, No. 41.

(3) The idea was that in the event oil was discovered in those areas, the two parties would divide it equally between them.

This proposal remained unanswered until the Ruler of Qatar paid an official visit to Bahrain on 11 May 1969. Here a document dated 6 May 1969 is of the greatest importance⁵³.

This again was a Bahraini proposal for a final settlement of the maritime delimitations between Qatar and Bahrain. In it the Government stated that it was anxious — I repeat for the benefit of the Court, because the terminology of the passage is extremely important — the Government stated that it was anxious "to come to an agreement . . . on an *equitable division, based on established principles of international law*, of the sea areas lying between Bahrain and Qatar.

In Bahrain's eyes, its sovereignty over Hawar was not called into question by the proposal it put forward, and although the Bahrain Government had never accepted the line proposed in 1947 by the British Government, it agreed to take that line "as a useful starting point . . . in finding a just solution . . .". And the document continued:

(Text to be shown on screen)

"(3) On the basis of the foregoing it is proposed that Bahrain and Qatar should agree in principle to exchange two equal areas of sea lying on either side of this line and then proceed to define them. These two areas are: Area A lying on the south east of the 1947 line where it passes between Bahrain and Qatar and Area B lying on the north west side of the 1947 line where it reaches the Gulf median line in the area of the first point (point A) of the six points recently agreed between Iran and Qatar."

Without seeing Areas A and B on a map, it is difficult to visualize precisely the proposal in question. It is therefore with the utmost hesitation and numerous question marks that I venture to display on the screen the sketch map which is No. 34 in the judges' folders.

(Show sketch map "Bahrain's proposal of May 1969 ???" [*«Proposition de Bahreïn de mai 1969???»*], judges' folders, No. 34)

The way in which Bahrain contemplated the extension of the 1947 line northwards is unclear: the text of the agreement with Iran, which at that time had not yet been finalized — being signed in Doha only on 20 September 1969⁵⁴, and thus some months later — did not contain a starting-point (point A), but simply a point 2, and from this point 2 a directional bearing, and thus no point 1 or point A. We cannot therefore be sure where Bahrain wished this line to end. It may

⁵³Supplemental Documents of Qatar, No. 39.

⁵⁴U.N.T.S., Vol. 787, p. 172. See Memorial of Qatar, Ann. IV.260, Vol. 12, p. 81.

be assumed, however, that the more recent proposal by Bahrain was something similar to its proposal of April 1967, except that the point of departure — and we can go by the Bahraini text — was the 1947 line rather than a median line, and that, in the more recent case, the turning-point of the line in the north was NSLB.

24. The line must therefore have been something of the sort, but I cannot possibly commit anyone to accepting this sketch map. In any event Qatar was unable to accept this arrangement because it did not resolve the issue of sovereignty over Hawar, and consequently these proposals by Bahrain — positive, it must be said, as they were — were nonetheless unacceptable to Qatar.

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Moreover, it is quite clear that the various proposals of April and September 1967 and of May 1969, which Qatar produces because they are in the public domain, are not of course binding upon either of the Parties. They are interesting only because they demonstrate the more reasonable position that was taken by Bahrain when it was not embarking upon the simplistic procedural strategy of asking for too much in the hope that the Court will, as one says, "split the difference".

25. But let us return to the main elements of the concession history on the two sides.

In 1968 Pure Oil Middle East, acting on behalf of Qatar, drilled an exploratory well beyond Janan island and this was abandoned⁵⁵.

(Show sketch map "Janaan 1 drilled by Pure Oil Middle East Inc. (Qatar), 1968"
[«Forage du puits Janaan 1 par la Pure Oil Middle East Inc. (Qatar), 1968»],
judges' folders, No. 35)

26. In 1968 Continental Oil abandoned both its Qatari and its Bahraini concessions.

Since then developments have been as follows:

27. (a) on Bahrain's side:

On 15 December 1970, Superior Oil (Bahrain) acquired two offshore blocks, one in the northern area and the other in the area of Hawar⁵⁶. Here we shall concern ourselves with the northern area.

(Show sketch map "1970 Superior Oil (Bahrain) safe area" [«Zone de sécurité de 1970 de la Superior Oil (Bahrain)»], judges' folders, No. 36)

⁵⁵Supplemental Documents of Qatar, No. 28.

⁵⁶Reply of Qatar, Ann. IV.19, Vol. 4, p. 99.

It will be noted that the limits of the northern area coincide with the 1947 line from NSLB to BLV, then continue up to the median line with Iran. Although the illustrative maps published by Petroconsultants are doubtless imprecise, given their scale, they do indicate, from BLV, the same direction as the NSLB-BLV segment, which would imply a tripoint at 27° 01' 30" N, 51° 15' 30" E⁵⁷.

It is instructive to note that this line was respected in practice by Superior Oil in regard to the wells drilled at Bu Amama in 1972⁵⁸ and at Annayawah in 1975⁵⁹.

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28. On 20 November 1975 Superior relinquished part of its concession⁶⁰.

(Show sketch map "Partial relinquishment of concession area"
[«Renonciation à une partie de la concession»],
judges' folders, No. 37)

The map now displayed (judges' folders, No. 37) is particularly interesting since it reproduces exactly the official map attached to the agreement and published by Barrow, and shows the same lines as those I have just indicated. There is nevertheless a slight inclination of the line eastwards from BLV, which could, according to our calculations, signify a difference of at most 10 seconds from the tripoint we have just mentioned.

29. From 1979 onwards various concessionaires succeeded each other in the north, but I shall spare the Court their names.

(Show sketch map "'Bahrain and Qatar' with indication of Al-Wassmi-1, Rajah 1 and Athari-1 wells, Petroconsultants, 1986" [«Bahreïn et Qatar» avec indication des forages Al-Wassmi-1, Rajah 1 et Athari-1, Petroconsultants, 1968], judges' folders No. 38)

In March 1980 they drilled a well at Rajah 1, which was abandoned⁶¹, and in 1985-1986 two experimental wells at Al-Wassmi-1 and Athari-1, with no success. All of them appear on the sketch map now on the screen (judges' folders, No. 38). Again it is significant that these various wells were all located to the west of the 1947 line^{62 63}, extended towards the north-north-east.

⁵⁷Supplemental Documents of Qatar, Nos. 31 and 32.

⁵⁸Reply of Qatar, Ann. IV.21, Vol. 4, p. 137.

⁵⁹Reply of Qatar, Ann. IV.23, Vol. 4, p. 141.

⁶⁰Reply of Qatar, Ann. IV.22, Vol. 4, p. 141 and map annexed to contract, p. 145.

⁶¹Reply of Qatar, Ann. IV.24, Vol. 4, p. 151.

⁶²Reply of Qatar, Ann. IV.27, Vol. 4, p. 163.

⁶³Supplemental Documents of Qatar, No. 34.

30. (b) on Qatar's side

What is important to note is that there were changes in the concessionaires at this period. On 26 March 1970 the Government of Qatar entered into a concession agreement with South East Asia Oil and Gas Company (U.S.A., Texas). The concession area, referred to as Qatar Marine Area No. 2, was defined as follows:

(Show sketch map "Concession Agreement between Government of Qatar and South East Asia Oil and Gas Company" [*«Accord de concession entre le Gouvernement de Qatar et la South East Asia Oil and Gas Company»*], judges' folders No. 39)

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"Concession Area' means the offshore area called Area No. 2 generally shown on the map attached hereto as Exhibit 'A' and more precisely defined by the document attached hereto as Exhibit 'B', all made an integral part hereof"⁶⁴.

Thus for this concession we have both a map and a group of points indicated by co-ordinates or by co-ordinates and bearings. And in any case the endpoint, point 13 (which we can call the tripoint) has the co-ordinates 27° 01' 30" N, 51° 15' 30" E. An illustrative map was published when Area No. 2 was put out to tender⁶⁵.

Western undertook a seismic survey in 1972 for SCQ, approximately from the north-west of Dibal to the north of Fasht al Azm⁶⁶.

31. On 18 June 1973 Qatar signed a concession agreement with another group of companies led by Wintershall Aktiengesellschaft. This concession had the same limits as those of the South East Asia Oil and Gas Company⁶⁷. Wintershall commissioned a seismic survey over the whole of its concession territory⁶⁸.

32. After Wintershall had also relinquished part of its concession in 1979, keeping, in the area with which we are concerned here, the southern part facing Bahrain, the northern part of the area under discussion and the area to the south of Hawar were finally granted to Qatar General

⁶⁴Supplemental Documents of Qatar, No. 30.

⁶⁵Supplemental Documents of Qatar, No. 30.

⁶⁶Marine seismic survey by Western for SCQ [*«Levés sismiques maritimes par Western pour SCQ»*], 1972, Supplemental Documents of Qatar, No. 24.

⁶⁷See text of the annex and the map attached to the concession agreement in the Memorial of Qatar, Ann. II.66, Vol. 5, p. 325.

⁶⁸Shell International Petroleum, The Hague, Qatar marine seismic survey by Western for Wintershall [*«Levés sismiques maritimes par Western pour Wintershall»*] 1973 (Drawing 10035) and 1973-1974 (Drawing 10069), Supplemental Documents of Qatar, No. 24.

Petroleum Corporation (QGPC). A further seismic survey, of the part of the seabed lying between Fasht al Azm and Fasht Dibal and Qit'at Jaradah, was undertaken for QGPC in 1981⁶⁹.

33. It may be concluded from all this that although both parties expressed reservations with regard to the 1947 line, it was adopted for reasons of expediency as a line of reference by successive concessionaires on both sides of the line. Beyond the northern endpoint of the line (BLV), its extension progressed from one with a turn in it to one which was straight or almost straight — of the segment NSLB-BSV. In terms of co-ordinates, this means that the line terminates at 51° 15' 30" instead of 51° 20'. This is the line that appears on all the maps published by the *Bulletin of the American Association of Petroleum Geologists*, later known as the *A.A.P.G. Bulletin*, from 1978 to 1989⁷⁰, without there having been a murmur of protest from Bahrain.

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(Show sketch map "'Bahrain and Qatar' with indication of additional wells and 1947 line, Petroconsultants, 1986" [*«Bahreïn et Qatar» avec indication de forages supplémentaires et de la ligne de 1947»*], judges' folders, No. 40)

The sketch map now on the screen, No. 40 in the judges' folders, is a consolidated map prepared by Petroconsultants 1986, overprinted with the 1947 line. It shows the drillings which took place on the two sides. In Qatar's view, it is therefore reasonable to consider that the 1947 line is one of the relevant circumstances to be taken into consideration by the Court in order to arrive at an equitable solution.

I thank the Court for its particularly welcome attention, bearing in mind the tedious nature of my remarks. Mr. President, Professor Quéneudec is now at the disposal of the Court for the next part of Qatar's presentation concerning maritime delimitation.

The PRESIDENT: Thank you, Professor Salmon. I now give the floor to Professor Jean-Pierre Quéneudec.

Mr. QUENEUDEC: Mr. President, Members of the Court.

⁶⁹Shell International Petroleum, The Hague, Qatar marine seismic survey by GSI for QGPC [*«Levés sismiques maritimes par GSI pour QGPC»*] (offshore) 1981 (A), drawing No. 10064, Supplemental Documents of Qatar, No. 25.

⁷⁰In addition to the maps previously presented, see the maps indicating the situation for 1977 and 1988, taken from the Bulletins of 1978 and 1989 respectively, Supplemental Documents of Qatar, Nos. 35 and 36.

THE MARITIME DELIMITATION LINE

1. The general aspects of the question of the maritime delimitation between Qatar and Bahrain have been dealt with in the two previous presentations, which underscored the major shortcomings of the position adopted by Bahrain in this respect.

At this point, we will present the arguments that the State of Qatar relies on concerning the construction of the single maritime boundary that it requests the Court to draw between the respective maritime areas of the two States.

2. In geographical situations such as the one in the present case, the first step consists of establishing, provisionally, an equidistance line, and the two Parties agree on this; but they are in complete disagreement regarding the approach to be followed, and more particularly, on the response to the first question that must inevitably arise: equidistance between what and what?

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3. The Parties are also in disagreement concerning the factors or circumstances that might bring about a modification of the provisional equidistance line. Thus, as we have seen, Bahrain contends that the old pearling banks should be taken into account, even though these banks are now abandoned, and thus, as Professor Salmon has just shown, are of no relevance. This is what, despite everything, has prompted the opposing Party to propose a peculiar, zigzagging course for the delimitation line in the northern sector.

4. In Qatar's view, in the present case there are further circumstances, geographical and other, whose relevance is difficult to deny. This raises the question whether, and to what extent, these particular circumstances can lead to an adjustment of the provisional line established by application of the equidistance method. Only once this second question has been answered will it be possible to determine the definitive course of a delimitation line, one that, taken overall, will be equitable and reasonable throughout the delimitation area.

5. I therefore propose to examine the elements of the construction of the delimitation line by dealing in turn with the following four steps, all of which, in Qatar's opinion, are a necessary part of the process:

1. establishment of a provisional equidistance line;
2. particular factors to be taken into consideration;

3. adjustment of the provisional line as a result of these particular factors;
4. drawing of the delimitation line in each of the two sectors.

1. Establishment of a provisional equidistance line

6. The starting point of any delimitation process, of course, consists in defining and taking account of the relevant coasts of the two States involved. In this case, the respective coastal fronts of Qatar and Bahrain have been defined earlier. I would simply refer the Court to what was said on this subject during an earlier presentation.

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At most, two important aspects of Qatar's position should be mentioned here; we have already drawn these to the Court's attention, but they should nevertheless be highlighted.

7. First, the coasts to be taken into account are those corresponding to the "high-water line", [*«la laisse de pleine mer»*] because this is precisely the line that represents the coastline [*«la ligne de côte»*], as we have already had occasion to highlight. The general configuration of the delimitation area is such, principally in the southern sector, that the coastline or the line of the coast is the only stable element that can serve as a reference.

8. Second, nor can one take account of the various islets and rocks found in the delimitation area, because, as we have seen, they are not significant features. Only islands of a certain size, therefore, must be taken into consideration. Naturally, in this connection, this would include the islands of Sitrah and Muharraq on the Bahraini side, and on the Qatari side, the main Hawar Island, not only because of its size, which clearly distinguishes it from the other insular formations, but also because it is perfectly integrated into the coast of the Qatari peninsula of which it forms a part, geologically, geographically and, as we have shown, legally.

9. A provisional line must therefore be drawn taking into account, on the one side, a series of basepoints located on the coastline of the islands of Bahrain, Sitrah and Muharraq and, on the other side, on the coastline of the Qatar peninsula, including Hawar Island. This is an equidistance line drawn from the mainland coasts that are, in this case, the only true coasts of the two States.

(Illustration 1)

This line, now shown on the screen, has been drawn using 23 basepoints on the coast of Qatar and 15 basepoints on the coast of Bahrain. The geographical co-ordinates of these points,

which it would take too much time and would be too tiresome to enumerate, have been submitted to the Court as No. 41 in the judges' folders; on the back of the same page is a map showing the position of these different basepoints.

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I would simply add that although one point on the coast of Saudi Arabia has also been used, this is for purely illustrative purposes, and not for the purposes of trying to identify a kind of tripoint [*«point triple»*] on the provisional equidistance line; in any event the Court could not take such a tripoint into consideration, since the present case concerns only the two States that are Parties to the case.

10. In 1948, as the Court will recall, Boggs and Kennedy also relied on the mainland coasts of the two States when contemplating the possible delimitation line dividing the continental shelf between Qatar and Bahrain, taking into account the geographical and hydrographical circumstances of the region. Moreover the line they envisaged at that time was, of course, based on the 1939 British decision, so they assumed that the Hawar Islands belonged to Bahrain. This explains why their line drew a semi-enclave around these islands.

(Illustration 2)

11. The same mainland-to-mainland method was also used to establish several maritime boundaries in the Persian Gulf region.

12. Allow me to recall, very briefly, that this is also what was decided recently by the Arbitral Tribunal between Eritrea and Ethiopia, which referred to "a median line between the opposite mainland coastlines" [*«une ligne médiane entre les côtes des territoires continentaux se faisant face»*] in its Award of 17 December 1999 (para. 132), and which stated, with regard to the northern portion of the Eritrea/Yemen maritime boundary, that "the boundary should be a mainland-coastal median, or equidistance, line" [*«la frontière doit être la ligne médiane ou la ligne d'équidistance établie à partir des côtes des territoires continentaux»*] (para. 152).

13. The provisional equidistance line drawn by Qatar using basepoints located on the mainland coast of Qatar and on the coast of the principal islands of Bahrain is therefore not only justified by the characteristics of the region, but is also confirmed by treaty practice and the jurisprudence.

The Court will note, however, that this provisional line also relies on the dual premise that, first, Bahrain's claim to the "Zubarah region" is dismissed and second, that Qatar's sovereignty over the Hawar Islands is recognized.

(Illustration 3)

14. Furthermore, the salient characteristics of this provisional equidistance line should be noted. Although drawn from north to south, we will begin from the bottom of the map as shown on the screen.

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First, it will be seen that its terminal point, at the extreme southern end of the delimitation area, is very close to point 1 on the delimitation line between Saudi Arabia and Bahrain as determined by the Agreement of 22 February 1958, shown here as point S1.

Second, it will be seen that this provisional line cuts across the area of the Fasht al Azm reefs, at around 4,000 m from the easternmost point of this group of reefs.

It will further be seen that this provisional equidistance line runs right above the Qit'at Jaradah shoal before running along the western edge of the Fasht Dibal shoal.

Lastly, it will be noted that the starting point of this line on the Gulf median line in the middle of the Gulf is a point located slightly more than 5 km to the east of the terminal point on the Iran-Bahrain delimitation line (point 2).

2. The particular factors to be taken into consideration

15. These factors, as we will see, appear as circumstances that cannot be completely ignored. Some of them are geographical in nature and are, so to speak, "given facts", whereas others fall into the category of "created" circumstances, to adopt the well-known distinction proposed by Dean Gény.

(a) *Geographical factors*

16. The *geographical factors* that distinguish the present case arise essentially from certain characteristics of the coastal configuration.

17. The first of these characteristics lies in the fact that there is a significant disproportion between the lengths of the respective relevant coasts of the two States. Measured in accordance

with their general direction, these coasts measure approximately 55.5 km for Bahrain and approximately 88 km for Qatar, that is, a ratio of coastal lengths of 1 to 1.59 in favour of Qatar.

The disparity in coastal lengths is therefore greater here than it was in the *Gulf of Maine* case, where the Court held that a ratio of 1 to 1.38 "should be reflected in the location of the second segment of the delimitation line" (*I.C.J. Reports 1984*, p. 336, para. 222).

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And, as the Court has stated in its most recent judgment on maritime delimitation: "The disparity between the lengths of coasts . . . constitutes a special circumstance" (case concerning the *Maritime Delimitation in the Area between Greenland and Jan Mayen*, *I.C.J. Reports 1993*, pp. 68-69, para. 68). This determination, which was made in the Jan Mayen case in the context of the 1958 Convention on the Continental Shelf, may be transposed to the customary law framework that is applicable to the determination of a single line of delimitation, where a disparity in coastal lengths is also a relevant circumstance or factor.

18. An examination of the coastal geography also brings out a second characteristic, which is undoubtedly less obvious than the one just mentioned but nevertheless, despite everything, far from being insignificant.

(Illustration No. 4)

The Qatar peninsula does not extend as far towards the centre of the Arabian/Persian Gulf as does the group of islands consisting of Bahrain and Muharraq. The extreme northern end of the Qatar peninsula is actually located at approximately the same latitude as the Sitrah jetty, on the east of Sitrah Island, whereas the extreme northern end of Muharraq Island clearly extends further seawards. The northernmost point of Muharraq Island (identified as point MQ) is located at latitude 26° 17' 15" N, while the northernmost point of the Qatar peninsula is located at latitude 26° 09' 25" N, thus a difference in latitude of almost 8 minutes. In itself, this difference might appear to be minimal, but it must be seen in relation to the fact that the seaward-facing coastal front of Qatar is much longer than the seaward-facing coastal front of Muharraq.

19. The result is a significantly greater projection of the Bahraini coast in a northerly direction, even though Bahrain's coast in this area is shorter than Qatar's; this may lead to a relative encroachment upon the maritime projection of the coastal front of Qatar.

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It will simply be recalled that in the *Continental Shelf Delimitation* case between France and the United Kingdom, the Arbitral Tribunal emphasized that, amongst the distinctive aspects of the situation in the Atlantic region, the Tribunal had to take account of what it called "[t]he pertinent dissimilarity between the two coasts", which meant that, with regard to the United Kingdom, "its coastal frontage projects further into the Atlantic than that of the French Republic" (Decision of 30 June 1977, para. 235).

There can hardly be any doubt that in the present case we find, *mutatis mutandis*, though to a lesser degree, the same type of dissimilarity between the coasts of Qatar and Bahrain.

(b) Other factors

20. *Other particular factors* combine with these aspects of the geographical setting to give the question of the delimitation between Qatar and Bahrain its special character.

21. Among the foremost of these factors is that a line was drawn in 1947 by the British authorities in order to divide the seabed between the two Sheikhdoms and so avoid conflicts in the award of offshore oil concessions.

22. Doubtless, Qatar and Bahrain never viewed this line with loving eyes. Qatar consistently rejected the two exceptions that were applied to the line by the British around the Hawar Islands and the Dibal and Jaradah shoals, while Bahrain on the other hand was of the view that these exceptions alone had any value.

23. Whatever the meaning and value that each of the Parties intended giving this line, they nonetheless both — "*al tarafan*", in a manner of speaking — were drawn to take account of it subsequently.

The 1947 line appeared as an established fact, something virtually set in stone, even if it was open to challenge, given that in the years that followed all the discussions undertaken under the aegis of the British Government and relating to the maritime delimitation between Qatar and Bahrain revolved around this line, either with the aim of transforming it into an agreed line or with a view to modifying or adapting its course.

24. The 1947 line is therefore, in Qatar's view, a factor of obvious relevance and thus one that should be taken into consideration.

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25. We would merely point out that the nature of the 1947 line — in our view, that it is a factor to be taken into consideration — relates not so much to the line itself, as drawn, but rather to the elements on the basis of which the line was drawn by the British; in our view the important factor is, above all, that this line was drawn starting from the principal coasts and was constructed in a simplified manner on the basis of a few significant points.

(Illustration 5)

26. In its Memorial, Qatar offered reasons why it considered that the part of the 1947 line located south of point L could not be taken into consideration (see Memorial of Qatar, paras. 11.21-11.33). This led Qatar to emphasize the particular importance of point L (Memorial of Qatar, para. 11.24). Qatar returned to this aspect in its Reply, where it reminded the Court that on the 1947 line points L and BLV — the latter corresponding, as we have seen, to the location of the "Bahrain Light Vessel" [*«bateau-phare de Bahreïn»*] — were certainly the most significant points and were, therefore, the points whose relevance was indisputable (Reply of Qatar, para. 9.59).

27. Linked to and reinforcing this first particular factor there is a second consideration that cannot be ignored. As Professor Salmon has shown, the line that the British had drawn in 1947, with a view to avoiding overlapping and conflicts between the offshore activities of the petroleum companies, subsequently served as a reference line for fixing the limits that these companies were to respect when conducting their operations.

28. As we have seen, the 1947 line, and more specifically the NSLB-BLV segment between the North Sitrah Light Buoy [*«bouée lumineuse de Sitrah nord»*] and the Bahrain Light Vessel, was also used to determine the limits of certain offshore concessions granted both by Bahrain and by Qatar.

It is significant that, in certain cases, express reference was made to this line. But it is equally significant that, in other cases, even if the 1947 line was not expressly referred to, the limits set for concessions did in fact follow along a portion of it.

29. This fact in itself is certainly of great importance. It proves that the 1947 line not only fulfilled the role assigned to it by the British Government with regard to petroleum company activities, but that it also affected the behaviour of Qatar and Bahrain in their dealings with these same companies. It would certainly be improper and inaccurate to infer the existence of any type

0 4 9 of "de facto" line from the Parties' conduct, as was partly the case in 1982 in the *Continental Shelf (Tunisia/Libya)* case. The situation in the present case is in no way comparable to the situation in that case. What is peculiar to the present case, and what Qatar insists upon underscoring, is simply that the conduct of the Parties with regard to petroleum concessions has itself confirmed the importance of the 1947 line as a factor.

31. Finally, there is another particular circumstance to which the Court's attention has barely been drawn until now, but one that nonetheless might be considered as a factor to be taken into account as well.

(Illustration 6)

This is the line, appearing on large-scale nautical charts, that indicates the present limits of the Port of Bahrain and that encompasses the buoyed approaches and stretches of water of the oil port of Sitrah and the commercial port of Mina-Salman. Within these limits, since 15 July 1984, a single authority, the "Bahrain Port Authority", has been in charge of information and co-ordination of ship movements. The present Bahrain Approach Buoy [*«bouée d'approche de Bahreïn»*], located at approximately latitude 26° 22' N and at longitude 50° 47' E, in other words, in the upper right-hand corner of the zone so delimited, marks this corner and also the entrance to the buoyed deepwater channel leading to the various port installations at Sitrah and Mina-Salman.

32. This circumstance must doubtless be taken into account, given the fact that in order to determine the course of the 1947 line, the British had relied on the existence and placement of what was called at the time the North Sitrah Light Buoy [*«bouée lumineuse de Sitrah nord»*], whose position was defined by the British both on the basis of its distance (15.20 nautical miles) and by a bearing (6° ½) from the British Political Agent's flagstaff in Manamah. The point NSLB that the British Government referred to in 1947 had the following geographical co-ordinates: 26° 21' 24" N — 50° 49' 48" E, i.e., a location very close to the present Bahrain Approach Buoy within the limits of the Port of Bahrain. The point NSLB was however located slightly to the east of the location of the present Bahrain Approach Buoy, i.e., it was outside the present limits of the Port of Bahrain.

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33. These, Mr. President, are the different characteristic factors that if taken into account may, and in our view must, lead to some kind of adjustment of the line drawn provisionally on an equidistance basis.

3. Adjustment of the provisional equidistance line

34. Given the observed disparity between the lengths of the respective coasts of the two States, one might validly think that this circumstance is of such a nature as to justify the adoption of a delimitation line different from the equidistance line in the whole of the delimitation area, including the southern sector, where the coasts are directly opposite and where a median line should in principle divide the two territorial seas.

35. It could doubtless be objected that with regard to the delimitation between the respective territorial seas of the two States, the simple fact that there is more or less a disparity between the lengths of the coasts is not necessarily, in itself, sufficient reason to depart from the median line.

36. However, one must not lose sight of what the Parties have requested the Court to do in the present case, i.e., to "draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters", to use the words of the Court in the two judgments it rendered in 1994 and 1995 (*I.C.J. Reports 1994*, p. 125, para. 38 and *1995*, p. 25, para. 46).

The Court has not been requested to determine, on the one hand, a line delimiting the respective territorial seas of Qatar and Bahrain, and, on the other, a delimitation line for the continental shelf and the exclusive economic or fishing zones of each State. The Court is called upon to decide on the course of a single delimitation line between the Qatari and Bahraini maritime areas, regardless of the designation or international status of such areas.

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37. It will be noted, moreover, that at the time of the institution of the present proceedings in 1991, each of the two States still had a territorial sea with a breadth of three nautical miles; this left room, in the southern sector, for a delimitation of maritime areas beyond the territorial sea and it would be difficult to accept that the extension of the breadth of the territorial waters to 12 miles undertaken by both States has radically changed the parameters of the delimitation problem.

38. Moreover, when a single maritime boundary has to be drawn throughout the delimitation area, it might appear odd not to take into account a significant disparity between the coastal lengths

in the sector of the area where the disproportion is obvious and is one of the characteristic aspects, if not the most characteristic aspect, of the coastal geography. Surely the purpose of drawing a single maritime boundary is to determine a line whose course reflects all of the geographical characteristics of the delimitation area, regardless of the legal nature of the various maritime areas involved in the delimitation?

39 As the disproportion or disparity in coastal lengths is clearly in favour of Qatar, the proposed adjustment can only be a shifting or displacement of the delimitation line towards the coasts of Bahrain, i.e., towards the west, in order to reflect this attribute of the coastal geography. The Court used an adjustment of this type in 1985 in the *Continental Shelf (Libya/Malta)* case and again (although in a different manner) in the *Jan Mayen* case, precisely in order to take account of the disparity in the lengths of the coasts.

40. The displacement of the provisional line towards the west is also justified, even in the northern sector, by the fact that the short coastal front of Muharraq Island projects considerably further than the northern front of the Qatar peninsula. And because of this fact, the application of the equidistance method, as we have already said, results in the drawing of a line that would encroach to a certain extent upon the maritime projection of Qatar in the northern sector. As this encroachment is not justified by any other particular circumstance, a correction is required that can, it seems, result only from an adjustment of the provisional equidistance line.

Thus, if the geographical factors that are peculiar to this case are taken into account, recognition of the need to adjust the equidistance line follows.

41. Now in the present case, I would add that this adjustment appears necessary, in any event, for reasons of practicality. As I indicated, this provisional equidistance line passes above the Jaradah shoal and the Fasht Dibal shoal. And it is precisely the question of the ownership of these two low-tide elevations that is one of the issues in the dispute of which the Court has been seised. There can be no doubt that the two Parties are entitled to hope that the judicial settlement of this dispute will not cause new problems to arise between them. That would, however, be the inevitable result if the delimitation line laid down by the Court failed to place the entirety of these two low-tide elevations in the maritime area of one Party or the other.

42. Therefore, it will be necessary to make this adjustment, as the Court must, in the exercise of its judicial function, settle completely and finally the disputes that are submitted to it. It can hardly adopt a solution that might risk creating a new dispute. The Court must also keep in mind the future peaceful relations between the two States. Judging and peace-making always go hand in hand.

It will also be noted that the equidistance line drawn in 1948 by Commander Kennedy and Whittmore Boggs ran well to the west of the Jaradah and Dibal shoals.

(Illustration 7)

43. There remains, of course, the question of the degree to which the provisional line may be adjusted by shifting it westwards. And this is where the particular factor of the 1947 line may come into play.

In its Application, in 1991, Qatar stated that the maritime boundary it requested the Court to draw should be drawn "with . . . regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947". Without there being any need to repeat the explanations subsequently given in the written pleadings, it will be sufficient here to emphasize that requesting the Court to take account of the 1947 line amounts to asking the Court not to disregard it or not to ignore it, in other words, not to act as if this line had never existed.

44. In these circumstances, it is no doubt possible to consider that in shifting the provisional equidistance line westwards, the 1947 line, between points L and BLV, is the "extreme limit" of such a shift, to borrow the words used by the Court in 1985 in the *Libya/Malta* case (*I.C.J. Reports 1985*, p. 51, para. 72). So, to conclude, what is the course of the delimitation line proposed by Qatar?

0 5 3

4. The course of the delimitation line

45. In its written pleadings, Qatar has already presented in detail the criteria and methods to be used, as well as the reasons justifying the course of the line it proposed, and there is therefore no need to go back over these. Consequently I shall confine myself to a brief summary of the delimitation line proposed in each of the two sectors.

(a) *The line in the southern sector*

(Illustration 8)

46. As has already been mentioned, point L as defined in 1947 is of great importance. And in Qatar's view, it is starting from and around this point that the construction of the delimitation line in the southern sector must be envisaged.

47. Qatar has explained why account should not be taken either of the enclave encompassing the Hawar Islands or of point M, the starting-point of the 1947 line, because of the rights of a third party State at the mouth of the Dawhat Salwa.

48. Therefore, Qatar's proposed delimitation line in the extreme south of this sector is a straight line joining the first point of the maritime boundary between Bahrain and Saudi Arabia (point S1) to point L on the 1947 line. This, it should be pointed out in passing, is a slight adjustment of the provisional equidistance line in favour of Bahrain.

(Illustration 9)

49. Beyond point L, taking into consideration the geographical and other factors that we have mentioned, Qatar proposed an adjustment of the provisional line in its own favour, by pushing the delimitation line westwards, so that it coincides with the 1947 line which, starting at point L, meets point BLV in the northern sector and bisects the dividing line between the two sectors (line MQ-RK) at point N.

0 5 4

(b) *The line in the northern sector*

(Illustration 10)

50. The line proposed by Qatar starting from point N (which joins, I repeat, what is situated on line MQ-RK) passes through points NSLB and BLV on the 1947 line and then meets point 2 on the delimitation line established between Bahrain and Iran. The course of this second segment in the northern sector is based on a method (which in certain respects is a variation of the equidistance method) whereby a perpendicular is drawn from the dividing line MQ-RK, but a perpendicular line passing through point BLV, and is then modified so that it terminates at point 2 on the delimitation line between Bahrain and Iran. This therefore means that the maritime delimitation line between Qatar and Bahrain terminates in the northern sector at the point described by co-ordinates 51° 05' 54" E and 27° 02' 47" N.

(Illustrations 11, 12, 13)

51. This, in a nutshell, is the course of the delimitation line proposed by Qatar in each of the two sectors of the delimitation area.

52. In sum, it is a question of evaluating this single maritime boundary that Qatar has submitted to the Court. And it can be said to have three salient characteristics.

(Illustration 14)

First, it is a line designed to take into account and reflect the particular circumstances and characteristics of the present case. Second, it satisfies the fundamental requirement of being equitable, as is confirmed in the present case by the application of the proportionality test. From this point of view, I shall do no more than reiterate what was explained by Qatar in its Reply, that is, that the proposed delimitation line complies with proportionality not only with regard to the length of the coastal fronts and the size of the maritime areas of each State, but also in another way: as an additional test, Qatar has also shown in its written pleadings that the line passing through point BLV and perpendicular to the dividing line between the northern and southern sectors splits that dividing line into two segments, the respective lengths of which are also in keeping with the coastal lengths. I would make reference here in particular to paragraph 9.71 *et seq.* of Qatar's Reply.

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Finally, the third, in our view essential, characteristic of Qatar's proposed delimitation line lies in its great simplicity, which is quite obvious and does not require any further explanation.

These three salient characteristics are even more apparent when the line proposed by Qatar is compared to the line proposed by Bahrain.

(Illustration 15)

Mr. President, Members of the Court.

At the end of a presentation that I have endeavoured to simplify and to reduce, as far as possible, to the essential elements, I should like to say how grateful I have been for your attention.

Since this is Qatar's final presentation in the first round of the oral proceedings, I should like to thank you on behalf of the whole of Qatar's delegation before this Court. Thank you, Mr. President.

The PRESIDENT: Thank you, Professor Queneudec. This does indeed complete the first round of the oral arguments presented to the Court by the State of Qatar and I should like, for my part, to thank on behalf of the Court the Agent and Counsel for Qatar for presenting their position. The sitting is about to be adjourned. The State of Bahrain will commence the presentation of its own position on Thursday 8 June at 10 a.m. The Court is adjourned.

The Court rose at 1 p.m.
