Non-Corrigé
Uncorrected

Traduction
Translation

CR 2000/16 (traduction)

CR 2000/16 (translation)

Jeudi 15 juin 2000

Thursday 15 June 2000

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The PRESIDENT: Please be seated. The sitting is open and I give the floor to Professor Prosper Weil for the State of Bahrain.

THE MARITIME DELIMITATION OPERATION

Mr. WEIL: Mr. President, Members of the Court, before concluding the matter of defining the territories of Bahrain which generate maritime rights, it remains for me to say a few words about two precedents which the other Party has insistently relied upon.

An irrelevant precedent: the Boggs-Kennedy line

87. Our opponents set great store, first of all, by a line proposed in 1948 by Commander Kennedy of the British Admiralty and Whittemore Boggs, Geographer of the United States Department of State, for the purposes of dividing the seabed and subsoil of the Gulf between the riparian States. In the section of their report concerning the maritime areas located between Bahrain and Qatar these two experts, as our opponents point out, proposed that this division should be carried out in accordance with a median line drawn between Qatar and the main island of Bahrain, without taking account of the islands, islets, rocks, reefs and low-tide elevations located between the two. Our opponents clearly attach great importance to this precedent, as they devoted many pages to it in their Reply, after briefly referring to it in their Memorial and Counter-Memorial[1]. The text of the Boggs-Kennedy report is reproduced in Annex IV.127 in Volume 10 of the Annexes to the Memorial of Qatar [Illustration].

88. Mr. President, our opponents really must have been at a loss for arguments to be reduced to relying upon such flimsy evidence. No one will dispute the fact that Kennedy and Boggs are undoubtedly hydrographic experts of the highest order and fully deserve the praise heaped upon them by the authors of Qatar's written pleadings[2]. Their report is excellent and irreproachable for what it is — of that there is no doubt. However, it is utterly worthless for what it is not and does not purport to be, but which Qatar would have us believe that it is. Allow me to explain.

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[1]Memorial of Qatar, para. 11.37; Counter-Memorial of Qatar, para. 8.96, note 274; Reply of Qatar, paras. 9.12-9.26.

[2]Reply of Qatar, para. 9.14, note 43.

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89. In order to find out what this report is, and what its authors intended it to be, one need only cast one's eye over its text. Our attention is then immediately drawn to two things.

90. First, the report sets out recommendations for the British and United States Governments concerning proposals which they could submit to the Gulf States with a view to dividing up the Gulf for the purposes of exploitation of the seabed and subsoil. That is to say that, first, it is a proposal which can serve "as the basis for negotiations" *(«comme base pour les négociations»)*, as the report states; and, second, this proposal is limited to the continental shelf, excluding the superjacent waters.

91. Second, the proposal is of an exclusively technical and practical nature; it is not — and does not purport to be — based on any legal consideration. Neither Boggs nor Kennedy, as Qatar acknowledges, were lawyers[3]. The report's authors point out that their responsibilities were limited to the technical aspects of a fair and equitable division of the seabed and subsoil areas of the Persian Gulf on scientific principles. They add that the charts available to them were imprecise and incomplete and that sovereignty over certain islands was controversial. Our opponents have had the good grace to acknowledge this: the Boggs-Kennedy report, they write, is "based ... on exclusively geographical and technical considerations, disregarding any legal or political factors"[4]. The proposals made by the two eminent experts — our opponents make no secret of this either — are based on common sense principles (*«principes de bon sens»*), and not on principles and rules of law[5]. It can safely be said that their report has no legal aspirations and is without legal significance. Legally, the Boggs-Kennedy report does not create a precedent. In any event it dates back to a period — 1948 — when the law on maritime delimitation was embryonic and considerations of equity were purely empirical and not defined in legal terms. It was not — as the Court knows — until the Judgment in the 1985 *Libya/Malta* case that the concept of equity in the matter of maritime delimitation assumed what the Court referred to as a "normative character"[6].

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Similarly, the solutions which the report's authors suggested to the problem of the islands have

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[3]Reply of Qatar, para. 9.19.

[4]Reply of Qatar, paras. 9.14 and 9.25-9.26.

[5]Reply of Qatar, para. 9.26.

[6]*Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985*, p. 39, para. 46.

clearly been superseded in the light of the principles of customary law expressed in Article 121 of the 1982 Convention on the Law of the Sea.

92. To this should be added two other observations which are equally devastating for our opponents. The first is that, as they acknowledge[7], the Boggs-Kennedy report, dated 16 December 1948, makes no mention of the line proposed in the British letters of 23 December 1947 and proposes a different line. We have to believe that the report's authors were not struck by the importance of this British line of 1947, which Qatar would today like to be seen as a highly relevant, if not even decisive, circumstance for the maritime delimitation between Bahrain and Qatar — a circumstance which thus dated back exactly one year. Is it conceivable that this self-styled "decision" by the British, which was allegedly so important, could have completely escaped the notice of two such experienced experts in Gulf affairs? My second observation, which deals an even more fatal blow to the other side's argument, is that, as the other Party once again acknowledges[8], the Boggs-Kennedy line attributes — and nothing can be clearer than this — the Hawar Islands to Bahrain.

93. Our opponents should perhaps have been careful not to rely upon such a rotten plank. "A precedent that cannot be ignored": that is how Qatar describes the Boggs-Kennedy line[9]. The Court will decide.

Another irrelevant precedent: the maritime delimitation agreements concluded between riparian States in the Gulf

94. Just as illusory is the support which the other Party hopes to find in maritime delimitation agreements concluded between riparian States in the Gulf, particularly in other agreements concluded by either of the Parties to this dispute. As examples of this treaty practice in the Gulf, Qatar cites the 1958 Agreement between Bahrain and Saudi Arabia, the 1965 Agreement between Qatar and Saudi Arabia, the 1969 Agreement between Qatar and Abu Dhabi, the 1969 Agreement between Qatar and Iran and the 1971 Agreement between Bahrain and Iran: all these Agreements, Qatar argues, are based on the mainland-to-mainland delimitation method and do not take account

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[7]Reply of Qatar, para. 9.14, note 40.

[8]*Ibid.*

[9]Reply of Qatar, p. 320.

of the islands situated between the coasts of the Parties concerned[10]. This, Qatar contends, is a "significant practice"[11], from which the Court should draw inspiration in the present case. The Agent of Qatar and Professor Salmon have dwelt at length on the Agreement between Bahrain and Saudi Arabia which, they stated, adopted the principle of proximity and fixed the maritime boundary "on the basis of a median line and not on the basis of alleged occupation"[12].

95. Mr. President, should it be emphasized once again that negotiated delimitations may be based on all kinds of factors and are not based exclusively or necessarily on legal considerations? A delimitation agreement is often the fruit of lengthy negotiations, in which considerations of political or economic expediency, and the balancing of mutual concessions, play a crucial part. A State may accept a less favourable boundary on one of its coastlines in return for a more favourable delimitation on another segment of its coastline or for political or economic advantages in other areas. One need only think of agreements such as those concluded between Argentina and Chile[13] or between France and Monaco[14], to see that it is not always, and in any case not exclusively, the law which dictated and explained the solutions adopted. As a particularly authoritative commentator wrote, the Agreement between France and Morocco, for instance, "inspired by reasons of courtesy and good neighbourliness, involves an *ad hoc* solution which was not dictated by any legal consideration and can be explained only by the special nature of the relations between the two countries"[15] *[translation by the Registry]*. It may even happen that the negotiators ensure that the solution they adopt defies analysis so that commentators are unable to identify the reasons behind each segment of the line adopted. A recent example of this opacity, knowingly sought after, is provided by the maritime delimitation agreement concluded in 1999, last year, between Denmark and the United Kingdom concerning fishery limits and the continental shelf between the Faroe

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[10]Reply of Qatar, paras. 9.27-9.36.

[11]Reply of Qatar, p. 328.

[12]CR 2000/5, p. 20, para. 47, and p. 33, para. 12.

[13]1984 Treaty of Peace and Friendship, *International Maritime Boundaries*, Charney and Alexander, *op. cit. supra* note 45, Vol. I, p. 719 (French translation in *Revue générale de droit international public*, 1985, p. 854).

[14]1984 Maritime Delimitation Agreement, *International Maritime Boundaries,* cited above Vol. II, p. 1581 (French translation in *Revue générale de droit international public* 1990, p. 308).

[15]G. Guillaume, "Les accords de délimitation maritime passés par la France", *in Perspectives du droit de la mer à l'issue de la Troisième Conférence des Nations Unies*, Colloque de la société française pour le droit international (Rouen, 1983), Paris, Pedone, 1984, p. 284.

Islands and the United Kingdom, the authors of which clearly sought to preclude any rational attempt at a legal explanation[16].

96. Consequently, a negotiated maritime boundary, like that on which our opponents are relying, is not necessarily — and is in fact seldom — identical to that which might have been drawn by a court by applying legal principles and rules. As the Court stated in the *Libya/Malta* case "although there may be no legal limit to the considerations which States may take account of, this can hardly be true for a court applying equitable procedures"[17]. This analysis was reiterated and confirmed in the *Jan Mayen* case[18]. Based as much, if not more, on political factors or considerations of expediency rather than strictly legal considerations, treaty-related precedents, such as the practice in the Gulf, are not binding upon the courts, which are required to adjudicate in accordance with the law.

97. Neither the practice in the region in question nor the practice followed in its relations with a third State by either of the parties to the dispute in which a court is called upon to adjudicate are an exception to this rule. In the *Jan Mayen* case, for instance, Denmark argued that the method followed in a maritime delimitation agreement concluded in the same region by the other party, Norway, with a third State, Iceland, constituted a relevant factor and a precedent on which the Court should base its decision. Denmark also invoked the precedent of a Norwegian decree — that is, a unilateral measure by the other party itself — concerning an island of the Svalbard archipelago. The Court refused to attach any value to this argument.

98. The fact that other delimitation agreements in the Gulf concluded by one of the Parties to this dispute with a third State did not take account of certain islands or low-tide elevations is

therefore irrelevant in the present case. Furthermore, as I have already observed, developments in international law with regard to maritime delimitation — particularly in respect of islands and low-tide elevations — prevent agreements that go back such a long way in time from being regarded as precedents that apply today. Nor should it be forgotten that the agreements relied upon

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[16]See commentary by A. G. Onde Elferink, *The International Journal of Marine and Coastal Law*, Vol. 14, 1999, p. 541.

[17]*Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985*, p. 40, para. 48.

[18]*Maritime Delimitation in the Area between Greenland and Jan Mayen, I.C.J. Reports 1993*, p. 63, paras. 57-58.

by Qatar relate mainly to the continental shelf, while in the present case it is a single maritime boundary that the Court is being asked to determine.

99. Moreover, treaty practice in the Gulf is so diverse that it defies any attempt at systematization. The agreements referred to by Qatar demonstrate the empirical nature of the solutions adopted in each case. If the Court refers to the agreements relating to the Gulf reproduced in Charney and Alexander's work *International Maritime Boundaries*, it will find that it is not only the few agreements relied upon by our opponents which exhibit this empirical nature but all of the agreements concluded in this part of the world and even all of the agreements concluded in all parts of the world[19]. In his summary study appearing at the beginning of the work, entitled "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", Professor Bowett writes:

> "The situations are so diverse that generalizations are hazardous, and to attempt to postulate 'rules' [note the quotation marks] would be to fall into the error which the courts have persistently, and rightly, avoided."[20] *[La situation de chacune de ces entités est différente; aussi est-il risqué de procéder à des généralisations, et se hasarder à supposer l'existence de «règles» [le mot «règles» est entre guillemets] revient à commettre l'erreur que les tribunaux ont toujours, et à juste titre, pris soin d'éviter (traduction du Greffe).]*

100. In a word, the purported "practice in the Gulf" relied upon so heavily by our opponents is of no help in resolving the problem submitted to the Court, which, in the wording used in Qatar's Application instituting proceedings, is to draw the maritime boundary "in accordance with international law".

101. Having concluded this lengthy digression on the Boggs-Kennedy line and treaty practice in the Gulf, I now come to the question of whether all, or only some, of Bahrain's territories generate maritime projections and can be used as base points for the purposes of drawing the maritime boundary.

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C. Which of Bahrain's territories may be used as base points for drawing the maritime boundary?

102. Mr. President, once it has been determined which of Bahrain's land features are capable of generating maritime projections and, in particular, serving as base points for calculating

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[19] *Op. cit.*, Vol. I, p. 131.

[20] *Ibid.*, p. 154.

Bahrain's territorial sea, one question arises. That question is as follows: are these features therefore — that is, by the mere fact of having the capacity to generate maritime rights in favour of Bahrain — capable of serving as base points for establishing the median line within the context of a delimitation operation?

103. Qatar's reply to this question is "no" and is based on two well-known theories derived from previous decisions: first, the theory of "special or unusual characteristics", to which the delimitation may grant only partial effect or even refuse to grant any effect at all, even though they have a right to generate maritime rights; secondly, the theory that a point which serves as a basis for determining the breadth of a State's territorial sea does not necessarily serve as a basis for drawing the delimitation line. Qatar invokes these two theories for refusing to take into consideration the islands and low-tide elevations located between the eastern coast of the main island of Bahrain and the western coast of the Qatar peninsula. I should like to point out again — and I beg the Court to excuse this repetition — that, in relying on these two theories, our opponents are implicitly but inevitably acknowledging that the features in question are Bahraini territory. If Dibal were not under Bahraini sovereignty, for instance, why would Qatar place such emphasis on its "minor geographical feature" or "incidental special feature" status, or why would it strive so hard to maintain that Dibal is not part of Bahrain's "coastline" and cannot serve as a basis for the maritime delimitation[21]?

104. Whatever the answer, neither of the theories invoked by Qatar is applicable in the present case. That is what I should now like to demonstrate.

The theory of minor, special or unusual features

105. And first the theory of minor, special or unusual features, on which my friend Jean-Pierre Quéneudec dwelt at length. It was — and I need hardly repeat this — in the *North Sea*

015 *Continental Shelf* cases that the Court laid down for the first time the principle that delimitation of the continental shelf must, albeit without "totally refashioning geography", endeavour to "abat[e] the effects of an incidental special feature *(une particularité non essentielle)* from which an

[21]Counter-Memorial of Qatar, paras. 8.42, 8.57 and 8.106; Reply of Qatar, para. 9.42.

unjustifiable difference of treatment could result"[22]. Given, as the Court noted in this case, that "[t]he slightest irregularity in a coastline is automatically magnified by the equidistance line . . .", "[s]o great an exaggeration of the consequences of a natural geographical feature must be remedied or compensated for as far as possible, being of itself creative of inequity"[23]. Thus the Court suggested in this case that "the disproportionally distorting effect" that may arise from taking into consideration, when establishing the equidistance line, "islets, rocks and minor coastal projections"[24], should "be eliminated". And in the operative provisions of its Judgment, the Court ruled that not only should "the general configuration of the coasts of the Parties" be taken into consideration but also "the presence of any special or unusual features" *(toute caractéristique spéciale ou inhabituelle)*[25].

106. As we pointed out in our Memorial[26], and as the Court knows better than I, this approach has been confirmed and developed in subsequent decisions. The Court has, however, taken care to emphasize on each occasion that it is not a question of remoulding nature or refashioning geography, thus putting its finger on the contradictory, or even somewhat flighty, nature of an exercise that consists of respecting nature and geography by violating them or, if you prefer, violating nature and geography on the pretext of respecting them. In defence of this theory, it should be borne in mind, and this is important, that it was designed to deal with certain genuinely rare and exceptional situations where taking a minor geographical feature into consideration would have led to an unjustified imbalance and hence a manifest and undeniable inequity.

107. Perhaps the Court will one day decide to abandon or reorient the theory of insignificant features in favour of the fundamental principle, which it has vigorously affirmed and reaffirmed
016 many times, of the primacy of geography. There is no doubt that it would thus end the ambiguity born of the somewhat unrealistic and probably chimerical desire of those who drafted the 1969 Judgment to respect nature while correcting it. There is also no doubt that it would thereby considerably simplify the law of maritime delimitation. However, even if it preferred not to call

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[22]*North Sea Continental Shelf, I.C.J. Reports 1969,* p. 50, para. 91.

[23]*Ibid.*, p. 49, para. 89.

[24]*Ibid.*, p. 36, para. 57.

[25]*Ibid.*, p. 54, para. 101.

[26]Memorial of Bahrain, paras. 542 *et seq.*

into question its jurisprudence in this matter, the Court would increase its significance if it were to confirm its exceptional and, so to speak, residual nature as a safety valve, as it were, reserved for the specific situations for which it was designed. However the Court intends to treat this jurisprudence in future, one thing, in any event, is certain: this theory, relied on so heavily by our opponents[27], is not relevant in this case and cannot legitimize the so-called mainland-to-mainland delimitation method. There are a number of reasons for this.

108. First, as the Court pointed out in the 1969 Judgments, the theory of insignificant features was conceived with a very specific aim in mind, with a view to correcting the distortion created by taking account of minor coastal features in a situation consisting of lateral or adjacent coasts, and for continental shelf delimitations involving areas a relatively long way off from the coasts. Lateral delimitation, delimitation at a long distance from the coasts: this is the twofold constraint which the Court has imposed upon the scope of this jurisprudence. Where, however, it is a question of delimiting the territorial sea, even if this is between adjacent coasts, "these [distorting] effects are much less marked and may be very slight", the Court stated, "owing to the very close proximity of such waters to the coasts concerned"; and it added that:

> "the distorting effects of lateral equidistance lines under certain conditions of coastal configuration are nevertheless comparatively small within the limits of territorial waters, but produce their maximum effect in the localities where the main continental shelf areas lie further out"[28].

In the present case it is between opposite coasts that the delimitation is to be carried out in the southern sector, that is in that area where the disputed features are located, and it is a question of territorial sea delimitation, close to the coasts of the two Parties. The raison d'être and basis of the theory of insignificant features capable of having an unduly distorting effect are not to be found in the present case and this theory is irrelevant in this instance.

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109. Secondly, we are not dealing here — I come back to this matter once again — with a land mass or mainland off which there are some islands or low-tide elevations, in respect of which one might wonder whether, in view of their insignificance, they really do deserve to be taken into consideration for the purposes of drawing the maritime boundary. Neither the Hawar Islands, nor

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[27]Memorial of Qatar, para. 11.37; Counter-Memorial of Qatar, paras. 7.26-7.27; Reply of Qatar, para. 9.40.

[28]*North Sea Continental Shelf, I.C.J. Reports 1969,* p. 18, para. 8, and p. 37, para. 59.

Dibal, Jaradah or any other island or low-tide elevation can be described as an "insignificant feature" of the coastline or as an "incidental special feature" lying off a main coast. They all constitute an integral part of the ensemble of Bahrain, of which they are important constituent elements in geographical, political, human and economic terms. To paraphrase the expression used by a member of the Arbitral Tribunal in the *Guinea/Guinea-Bissau* case, without these features Bahrain would not be Bahrain. By asserting vigorously, for instance, that Dibal is not part of the coast of Bahrain and cannot be regarded as representing the coast of Bahrain for delimitation purposes[29], Qatar is asking the Court to base the maritime delimitation on a mutilated, distorted and fictitious State of Bahrain.

110. But there is one even more crucial reason to reject here any reliance upon the theory of insignificant coastal features. The jurisprudence concerning the partial or zero effect to be granted in delimitation to certain minor features of the coast of a State presupposes that these features are part of the territory of the State in question. The sole purpose of this theory is to alleviate the impact of a minor geographical feature of a coast on the course of the maritime boundary. Never, I repeat never, has any judgment, any arbitral award, relied upon this theory to reject a geographical feature on the other side of a previously determined maritime boundary and hence transfer sovereignty over it to that other party. The theory of insignificant coastal features appertains to the law of maritime delimitation; it is not an aspect of the law of territorial sovereignty. And yet it is precisely that role which our opponents intend that it should play.

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111. So much, Mr. President, for the theory of insignificant coastal features. In the hope of making those features of the State of Bahrain it finds troublesome vanish, as if by waving a magic wand, the opposing Party invokes a second theory, that of the duality of baselines and base points. In the present case this argument does not hold water, any more than the previous argument. That is what I should now like to rapidly demonstrate.

The theory of the duality of baselines and base points

112. The Court will recall that in their written pleadings our opponents criticized us at length for relying, in the construction of our median line, on the base points from which the breadth of

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[29]Counter-Memorial of Qatar, paras. 6.76 and 6.85.

Bahrain's territorial sea may be calculated. Qatar states that the baselines and base points used to construct a median line are not necessarily the same as those used to determine the breadth of the territorial sea of the parties under the customary rules which found expression in the 1982 Convention. Even if Bahrain were entitled under international law, Qatar argues, to calculate the breadth of its territorial sea from the low-water mark of a particular island or low-tide elevation, this would not imply that the island or low-tide elevation in question can or must serve as a base point for drawing the equidistance line. It is therefore not, Qatar concludes, because Bahrain would be able to calculate the breadth of its territorial sea from Dibal, Jaradah, Qit'at ash Shajarah, Qita'a el Erge, etc., that the equidistance line may or must be constructed from those same points. Thinking that they would perhaps put me in a difficult position, those who drafted Qatar's written pleadings saw fit to base this argument on my contribution to the festschrift published in 1992 in honour of Judge Elias, a former President of the Court, under the title *«A propos de la double fonction des lignes et points de base dans le droit de la mer»*[30]. They even went so far as to do me the honour of describing my analysis as "definitive"[31]! The other Party has been much more discreet with regard to this problem in the oral proceedings. But, while the question has no longer been addressed head-on, Qatar's argument remains unchanged. Not only has Professor Quéneudec

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expressly confirmed this by asking the Court to refer on this matter to Qatar's written pleadings[32], but he stated that "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 base points for drawing a delimitation line between Qatar and Bahrain"[33]; this is exactly the same argument as that defended in Qatar's written pleadings[34]. I therefore feel that I owe you some explanations concerning this matter.

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[30]*Essays in Honour of Judge Taslim Olawale Elias*, E. G. Bello and B. A. Ajibola, eds., 2 vols., Martinus Nijhoff, 1992, Vol. I, p. 145 *et seq.*

[31]Reply of Qatar, para. 9.40, note 87.

[32]CR 2000/9, p. 41, para. 19.

[33]CR 2000/10, p. 11, para. 62.

[34]Counter-Memorial of Qatar, paras. 7.33-7.38; Reply of Qatar, paras. 8.7-8.13.

Jurisprudential background

113. Mr. President, our opponents are correct in stating that according to the jurisprudence the fact that a point on the coast, an island, an islet, a projection, or a low-tide elevation can be used as a base point for calculating the breadth of the territorial sea is not sufficient to require that it be used by the Court as a base point for the purposes of drawing a maritime boundary between that State and a neighbouring State. This duality has been accepted in several judgments, in particular in the Judgment in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta),* which constructed the median line between Malta and Libya without reference to an islet which Malta had included in its straight baselines. The Court stated

> "In any event the baselines as determined by coastal states are not identical *per se* with the points chosen on a coast to make it possible to calculate the area of continental shelf appertaining to that State. In this case, the equitableness of an equidistance line depends on whether the precaution is taken of eliminating the disproportionate effect of certain 'islets, rocks and minor coastal projections'"[35].

114. Consequently, as I wrote in my essay, there can be no debate, Qatar is correct, that the "baselines and base points from which a delimitation line is drawn are determined independently of the baselines and base points of the territorial sea of the States concerned" *[translation by the Registry]*, and that consequently, "a geographical characteristic may be used as a base point for calculating the territorial sea, without being used as a base point for delimitation"[36] *[translation by the Registry]*.

115. If I may be allowed a personal observation, may I tell the Court that I wrote this essay because, in my work on the issues of maritime delimitation, I found myself delving into the
020 sources, the raison d'être, and the scope of this jurisprudence. I admit that the issue had not come to mind at the time I wrote my book on the law of maritime delimitation a few years previously; as did everyone, at the time I considered it to be evident, to be a given, that the equitable result sought might be found, *inter alia*, by moving the baselines and base points. The purpose of my contribution to *Essays in Honour of Judge Taslim Olawale Elias* was precisely to review the validity of this jurisprudence. There is no contradiction between the essay and the analyses which I

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[35] *Continental Shelf (Libyan Arab Jamahiriya/Malta), I.C.J. Reports 1985*, p. 48, para. 64.

[36] *Op. cit. supra,* Note 30, p. 156.

have the honour to submit to the Court in the present case. Our opponents may rest assured: my essay does not embarrass me and in no way do I deny it.

116. This said — and I beg the Court's indulgence for having said it — let us return to the facts of the matter as they appear in the light of the jurisprudence.

117. It must be first recalled that the relevant texts which, as we know, have the weight of customary law, all refer to the baselines from which the breadth of the territorial sea is measured. This is as true with regard to title as with regard to delimitation. With regard to title, i.e., for the calculation of the breadth out to sea of the various maritime jurisdictions, the 1982 Convention defines the breadth of all maritime spaces by a maximum distance from the "baselines from which the breadth of the territorial sea is measured": so says Article 33 in respect of the 24 nautical miles of the contiguous zones; so says Article 57 in respect of the 200 nautical miles of the continental shelf. With regard to delimitation, the Conventions of 1958 and 1982, which have the force of customary law, also define the line of equidistance from the baselines and base points of the territorial sea. In the present case, it is the customary norm governing the delimitation of the territorial sea that is at issue in respect of the greater part of the delimitation, and I would recall that this norm expressly defines the median line in relation to the baselines of the territorial sea of each of the two States.

118. This shows that the concept of "baselines from which the breadth of the territorial sea is measured" is the keystone to the architecture of projections by States over the maritime spaces adjacent to their coasts, whether in establishing the title of coastal States over these spaces or in delimiting the overlapping projections of two neighbouring States.

119. The rationale behind this principle is easily understood. If international law, both treaty law and customary law, calculates the breadth out to sea of all the maritime spaces, as well as the course of the delimitation line, on the basis of the baselines and base points from which the breadth of the territorial sea is measured, this is because these baselines and base points represent the coasts, are equivalent to the coasts. This, and in my opinion it is highly revealing, explains why the Court, in defining the equidistance method, has to date referred either to the coasts or to the baselines and base points, without distinction. The Judgments have treated coasts and baselines or base points as synonymous, as something conceptually interchangeable: the base points and

baselines represent the coast; and inversely the coast is represented by the base points and baselines. This synonymy stands out in one passage from the Judgments in the cases concerning the *North Sea Continental Shelf*, in which the Court defines the equidistance line as "a line every point on which is the same distance away from whatever point it is nearest to on the coast of each of the countries concerned[37]". According to this passage, *equidistance from the coasts means equidistance from the baselines and base points from which the breadth of the territorial sea is calculated.* The wording used in the most recent Judgment, the Judgment in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*: "the median line between the territorial sea baselines" is strictly accurate and admirably precise. The wording used by the Court in 1969 and 1993 on the one hand, matches that of the 1958 and 1982 Conventions on the other, utterly, totally and perfectly.

120. As I recalled in the essay[38] our opponents have cited, it is moreover apparent from the work of the International Law Commission that no one, so it would appear, ever envisaged constructing an equidistance line from coastal points which were detached from the baselines and base points of the territorial sea. It was a decision of the Court which uncoupled the two concepts. However, the dictum which enshrined this dichotomy in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)* was manifestly not the Court's last word, since what actually happened was that the Court abandoned this dictum and took a diametrically opposite stance in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen* in 1993. From now on, in accordance with this latest Judgment, I would recall, the provisional median line is defined as "the median line between the territorial sea baselines"[39].

0 2 2 **The scope and limits of this jurisprudence**

121. In my essay, after reviewing this background, I raised the question: "Should we stop here?" In other words, which principle should now have force of law: that found in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)* or the more recent one found in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*? And I

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[37] *North Sea Continental Shelf, I.C.J. Reports 1969*, p. 20, para. 13.

[38] *Op. cit. supra*, Note 30, pp. 147-148.

[39] *Maritime Delimitation in the Area between Greenland and Jan Mayen, I.C.J. Reports 1993*, p. 60, para. 49.

added: "In the law of maritime delimitation, a subject which is still evolving, nothing ... can be said to be definitive, and further consideration is necessary in order to grasp all aspects of the issue." *[Translation by Registry.]*

122. At first sight, the theory of the duality of baselines and base points found in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)* does not appear devoid of justification. Lines and points are not always used for the same purpose. When it is a matter of determining the outer, seawards limit of the territorial sea and, by the same token, all other maritime jurisdictions, the function of the baselines and base points is to represent the coast to be projected into the adjacent maritime spaces. When it is a matter of drawing a maritime boundary between two States, their function is different. It is to ensure an equitable division of the area where the titles of the two States overlap. In my essay, I added that, although the distinction between the two functions of baselines and base points might well be understood in such a manner, nevertheless it indeed contravened directly the treaty provisions — provisions of customary law — which I mentioned earlier, and went against other rulings of the Court. That observation remains true. I therefore brought my essay to a conclusion by speculating that the jurisprudence might, sooner or later, have to undertake a "critical review" of the problem as a whole. Bearing in mind the close, logical relationship which the Court has established between what it has called "the legal basis of that which is to be delimited and ... entitlement to it"[40], bearing in mind also the content of the treaty provisions to which I have referred, which are provisions of customary law, the question may well be asked whether the distinction made in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)* is justified. Since the title extending seawards of the coastal State is determined from the baselines of the territorial sea, should not the delimitation of maritime spaces between States whose titles overlap be effected from these same lines. Perhaps the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen* has opened the door to such revision, presuming that such revision has not already been effected when the Judgment in that case refers to an equidistance line "between the territorial sea baselines".

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[40] *Continental Shelf (Libyan Arab Jamahiriya/Malta) I.C.J. Reports 1985*, p. 30, para. 27 and p. 46, para. 61.

123. Without there being any need to delve further into this issue, an issue which it is for the Court to decide, it suffices to observe that, in any event, the dichotomy between baselines used for the purposes of determining the outer limit of maritime spaces and baselines used for the purposes of delimitation loses its rationale in the present case, where it is a matter of delimiting the territorial sea in narrow areas between opposite coasts, the effect of distortion then being very minor. Drawing the equidistance line on the basis of the base points from which the breadth of the territorial sea is calculated is all the more imperative in the present case in that the breadth would not be calculated from a few isolated features, detached from a continent or mainland *[masse terrestre]* but, as in the situations mentioned in the *Eritrea/Yemen* Award to which I have already referred[41], from the outer limit, or external fringe *[frange extérieure]*, of an insular and quasi-insular ensemble, of a closely woven "carpet of islands", no one part of which is separated from another by more than 12 nautical miles.

124. In other words, and to bring this point to a conclusion, once it has been established that the breadth of Bahrain's territorial sea must be calculated, in accordance with international law, from the base points of Bahrain's islands and low-tide elevations, there is only one conclusion in law: the provisional median line between Bahrain and Qatar must be drawn on the basis of the same base points. The course of the maritime boundary which Bahrain requests the Court to establish meets this principle.

II. THE 1947 BRITISH LINE IS IRRELEVANT FOR THE PURPOSES OF DELIMITING THE MARITIME BOUNDARY

125. Mr. President, Members of the Court, having sought to replace a maritime delimitation between the true coasts of Bahrain and Qatar by a "mainland-to-mainland" *[«masse terrestre à masse terrestre»]* delimitation between fictitious coasts, the other Party still has to define the course of the maritime boundary it claimed. At that stage, Qatar gives pride of place to a line proposed by the British authorities in 1947 in order to organize the oil operations of the two companies concerned.

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[41] Second Stage, paras. 139 and 143.

126. The exact content of the Qatari claim in this respect is calculated in its ambiguity, and I would call attention to this. After that, I shall show that the 1947 British line is irrelevant to the Court's delimitation of the maritime boundary.

127. In its Application instituting proceedings of 5 July 1991, Qatar requested the Court to delimit the single maritime boundary between the two countries "with due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947" *[«compte dûment tenu de la ligne de partage des fonds marins décrits dans la décision britannique du 23 décembre 1947»]*. As the Court is aware, the "decision" to which this refers is constituted by two letters identical in content, addressed to the Rulers of both countries on 23 December 1947 by Pelly, the British Political Agent in Bahrain. To echo the wording used, the purpose of the letters was to forward to both Rulers a map showing the line "which, His Majesty's Government considers, divides in accordance with equitable principles the sea-bed aforesaid". The map has not been found, but the letters provide sufficient information for an analysis to present no difficulties.

128. As Members of the Court will note from the copies of these letters which appear in the judges' folders, their content may be summed up as follows:

(1) the British Government stated that it had "for some time past, had under consideration the boundary which should delimit" *[devrait délimiter]* the two countries' rights in the bed of the sea between their respective territories;

(2) the proposed line was a median line "based generally" on the configuration of the coastline of the Bahrain main island and the peninsula of Qatar;

(3) the line covered the seabed only and not the waters above it and was without prejudice to existing navigation rights;

(4) the British Government stated that it "will, in future, regard all the sea-bed lying to the west of this line as being under the sovereignty of His Highness the Shaikh of Bahrain and all the sea-bed lying to the east of it as being under the sovereignty of [His Highness the Shaikh of Qatar]";

(5) the exceptions to this line were that the Shaikh of Bahrain was recognized as having sovereign rights in

025 — first: the areas of the Dibal and Jaradah shoals which are above the spring tide low-water level; under international law, so the letters state, these shoals should not be considered to be islands having territorial waters;

— second: the islands of the Hawar group and the territorial waters pertaining thereto and delimited in accordance with international law, excluding Janan Island which was not regarded as being included in this group;

(6) the letters added that the division so described had been made on the basis of the maps and information currently available and that it was subject to revision in the event of more exact geographical data being forthcoming at a later date. Mr. President, Members of the Court, that was the British decision of 1947.

Qatar's maritime claim gives pride of place to the 1947 British line

129. These letters of 1947 are not merely one of the arguments advanced by Qatar in support of the line it claims. They are the very substance of Qatar's claim. What Qatar requests the Court to do in the submissions contained in its Application is to award it the 1947 line with the exception of Dibal and Jaradah on the one hand and the Hawar islands on the other. This restriction explains the wording used by Qatar in its Application instituting proceedings; Qatar does not request in its Application that the Court decide that the British line *is* the maritime boundary; this is not what Qatar requests in its Application. Qatar requests the Court to draw the maritime boundary "with due regard to" *[«compte dûment tenu»]* this line. This wording, somewhat hermetic at first sight, is clarified by paragraph 21 of the Application, which reads:

> "Qatar did not oppose the part of the line which the British Government stated was based on the configuration of the coastlines of the two States and was determined in accordance with equitable principles. On the other hand, Qatar rejected and continues to reject that part of the line which enclaves those Hawar islands which were regarded by the British Government in 1947 as being included in the Hawar group."

026 In plain terms, Qatar requests the Court to consider that the 1947 letters have force of law in respect of those provisions which suit them and to deny them force of law in respect of those provisions which stand them in ill stead.

130. Before going any further, allow me one remark on the way in which Qatar has worded its maritime claim. The object of Qatar's Application instituting proceedings is:

> "to draw in accordance with international law a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain".

That is it, that is Qatar's "submission" *[«conclusion»]*. To draw in accordance with international law a single maritime boundary. In requesting the Court to have due regard to the line dividing the seabed as described in the British decision of 23 December 1947, it does not frame a true submission *[conclusion]*; it puts forward a contention, that is to say an argument in support of its submission. It does not appear to me that this contention should carry any greater weight with the Court than any other argument. It is for the Court, for the Court alone, to determine the grounds, i.e., the reasons and considerations of fact and law, on which its decision is based. As it stated in the case concerning *Nuclear Tests*:

> "The Court has . . . repeatedly exercised the power to exclude, when necessary, certain contentions or arguments which were advanced by a party as part of the submissions, but which were regarded by the Court, not as indications of what the party was asking the Court to decide, but as reasons advanced why the Court should decide in the sense contended for by that party."[42]

To echo an expression used in the 1951 Judgment in the case concerning *Fisheries*, the reference to the 1947 British line is at most an "element[s] which might furnish reasons in support of the Judgment but cannot constitute the decision"[43]. Recalling this jurisprudence in the recent case concerning the *Fisheries Jurisdiction (Spain* v. *Canada)*, the Court confirmed that it "will distinguish between the dispute itself and arguments used by the Parties to sustain their . . . submissions on the dispute"[44].

027 131. In short, what the Court is requested to do in the present case — the submission of which it is seised — is, I repeat, to draw the single maritime boundary between the two Parties. As for knowing what factors or what circumstances the Court must take into account in exercising its function, this is a matter for the Court's discretion.

132. This said, Mr. President, our opponents obviously feel embarrassed at requesting the Court, simultaneously, to award them the 1947 line whilst rejecting some elements of it. In order

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[42] *Nuclear Tests, I.C.J. Reports 1974*, p. 262, para. 29.

[43] *Fisheries, I.C.J. Reports 1951*, p. 126; cf. *Minquiers and Ecrehos, I.C.J. Reports 1953*, p. 52; *Nottebohm, I.C.J Reports 1953*, second stage, p. 16.

[44] *I.C.J. Reports 1998*, para. 32.

to get themselves out of this uncomfortable situation they dreamt up the argument that, even if the 1947 line *per se* is not the maritime boundary, it nevertheless constitutes a factor or a highly relevant circumstance for the process of drawing that boundary. Let me explain.

133. On the one hand, our opponents reiterate *ad infinitum* that Qatar does not consider the 1947 British line to be the maritime boundary and that it does not request the Court to recognize it as such. This was spelt out in the Memorial[45], recalled in the Reply[46], confirmed in the oral arguments. Qatar, so Professor Salmon stated right at the beginning of the oral arguments[47], does not consider that the 1947 line "is a binding decision". Qatar does not rely on the line as "final and binding", he repeated at the end of Qatar's oral statements[48]. Qatar explicitly acknowledges that, in the opinion of the British authorities themselves, the line described in 1947 was merely a proposal submitted to the two countries, that it was not binding and that serious doubts had been raised on the British side as to the validity of the proposed solution[49]. Furthermore, Professor Salmon recalled:

> "the two interested Parties themselves expressed their opposition" to the proposed solution, so much so, as my friend Jean Salmon said, that, "His Britannic Majesty ultimately yielded to the facts by agreeing to the matter being submitted to arbitration between two sheikdoms".

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Professor Salmon's conclusion: "this decision was not legally opposable to the two States concerned"[50].

134. Having said this, on the other hand our opponents accord decisive weight for the purposes of the present case to the line proposed by the British in 1947: a fact, they say, which the Court cannot fail to take into account in its delimitation because, so Qatar contends, it is a "factor or a circumstance highly relevant"[51], "a significant relevant factor", or better still, an "established fact, something virtually set in stone"[52]. And, although Qatar emphasizes that it does not rely on

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[45]Memorial of Qatar, Ann. II.19, para. 11.20.

[46]Reply of Qatar, para. 8.17.

[47]CR 2000/5, p. 30, para. 7.

[48]CR 2000/10, p. 26, para. 10.

[49]Memorial of Qatar, paras. 10.41-10.43; Reply of Qatar, paras. 8.17-8.18.

[50]CR 2000/10, p. 26, para. 10.

[51]Memorial of Qatar, para. 11.19.

[52]CR 2000/10, p. 18, para. 1 and p. 47, para. 23.

the 1947 line as a "historic title" within the meaning of Article 15 of the Convention on the Law of the Sea, it nevertheless sees it as an "important historical aspect" or a "historical circumstance" which the Court is invited to take into consideration[53]. Not a historic title, but a historical circumstance or aspect of the greatest importance: our opponents play on words and in any event have difficulty in hiding their embarrassment.

135. Thus, in the same breath, Qatar states loud and clear that the 1947 line is not a legally binding decision but that it is a circumstance of decisive weight in settling the present case. In Professor Quéneudec's words, the Court is requested "not to disregard it or not to ignore it, in other words not to act as if this line had never existed"[54]. To escape this uncomfortable contradiction, our opponents perform a verbal pirouette: they describe the 1947 line not as "the starting point for a legal argument, but as its end-result" and, repeatedly, as a "reference line"[55].

136. Factor, aspect, circumstance, reference line: behind these terms, legally correct in appearance, lurks an infinitely more radical approach. For what Qatar requests the Court to do is nothing more and nothing less than to recognize the 1947 line as the maritime boundary between the two countries. If Qatar endeavours to conceal this evident fact, a fact clearly illustrated by the

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map now on the screen [show map], it is because the British letters recognized Bahrain's rights over the Hawar Islands, Dibal and Jaradah and that they made the proposed line terminate at point BLV, i.e., before the end-point the Court is today invited to give the line. The submissions in Qatar's written pleadings expressly request the Court to draw a boundary, between points L and BLV, "following the line of the British decision of 23 December 1947" *[«suivant la ligne établie par la décision britannique du 23 décembre 1947»]*. This could not be more explicit.

137. As I already had occasion to emphasize yesterday, the delimitation process followed by Qatar is an illusion. There is no relationship between the provisional equidistance line drawn by Qatar and the maritime boundary claimed by Qatar. The provisional equidistance line, as I have already said, plays no role whatsoever in this process, and the result would be exactly the same if we spared ourselves the detour via the provisional median line. In order to justify this approach,

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[53]Counter-Memorial of Qatar, paras. 7.11 and 7.48; Reply of Qatar, para. 8.15.

[54]CR 2000/10, p. 52, para. 43.

[55]CR 2000/10, p. 27, para. 12.

which in reality leads directly to the 1947 line, Qatar states that the role played by the relevant circumstances, in the present case the 1947 line, is not limited to verifying the equitable nature of a provisional equidistance line — therefore the provisional equidistance line becomes pointless — but consists in determining the choice of the method or methods of delimitation[56]. I had to read this twice to believe what I was reading. For, Mr. President, this takes us light-years back in time, to the time when it was reiterated, reiterated, untiringly reiterated before the Court, in this courtroom, that any method or combination of methods was appropriate provided that it produced an equitable result; that no one method was preferred to or more appropriate than another; that a delimitation process in two stages was a flight of fantasy on the part of counsel or of an author. What our opponents request the Court to do is to sweep away the progress achieved since the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* towards the establishment of a juridical framework for the delimitation process, and to revert to the old-fashioned theory, a theory definitively rejected by the Court, of equity alone, in other words to return to a law which is outdated and belongs to the past.

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The 1947 British line is totally irrelevant to the maritime boundary which the Court is requested to delimit

138. But this is not the essential point. The essential point is that the 1947 line is neither a "special circumstance" in the segments where the Court has to delimit a territorial sea, nor a "relevant factor or circumstance" in the segments where maritime jurisdictions are to be delimited beyond the territorial sea, nor a "reference line". Shifting a provisional equidistance line can be justified by a geographical, economic or political factor. It cannot be justified by the existence of another line, drawn on other bases. A line is the end-point of a process, not its beginning or its causal factor. In addition, if the 1947 line was as "highly relevant" as our opponents would have us believe, why then would this line be any less pertinent where it recognizes Bahrain's sovereignty over the Hawar Islands, over Dibal, over Jaradah? This question, which we raised in our Counter-Memorial[57], remains unanswered.

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[56]Reply of Qatar, para. 8.23.

[57]Counter-Memorial of Bahrain, para. 551.

139. In order to explain the importance which they wish to have attached to the 1947 British line, our opponents have had recourse, both in the oral phase and in their written pleadings, to an extraordinary and not unappetizing argument: even if this line has been challenged, we are told, it has been the subject of discussion and consideration, "either with the aim of transforming it into an agreed line or with a view to modifying or adapting its course"[58]. A proposition which has the force of law because it has been discussed and rejected: rarely has a party confessed its weakness so forcefully.

140. Is it not also significant, I repeat, that the weight which Qatar claims to attach to the British letters is equally selective? Qatar says "yes", a resolute "yes" to the 1947 line, but only north of the Hawar Islands. To the southern segment of the 1947 line Qatar answers with a radical "no", just as it answers "no" to the recognition by the 1947 letters of Bahrain's rights over Dibal and over Jaradah. How would our opponents have reacted, Mr. President, and how would the Court react if Bahrain maintained that the 1947 letters were authoritative in recognizing the rights of
031 Bahrain to the Hawar Islands, Dibal and Jaradah, but irrelevant in drawing the dividing line between the seabeds? How would the other Party have reacted and how would the Court have reacted?

The British letters of 1947 are not a "decision" having any legal authority whatsoever

141. Mr. President, Qatar explicitly acknowledges, as I have already observed, that the 1947 British letters did not constitute a binding decision and that the parties concerned never abided by them. Bearing in mind the absence of disagreement between the Parties on this essential point, it is pointless to repeat here the detailed analysis of the documents annexed to the pleadings of the two Parties[59]. In the eyes of the authorities in London — the British documents leave no doubt about this — the purpose of the seabed division envisaged in the 1947 letters was, as Professor Salmon indicated, "to avoid any conflict between the oil interests on either side in the waters separating Bahrain from the Qatar peninsula"[60]. This division was to be regarded as a simple *«limite des*

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[58]CR 2000/10, p. 47, para. 23. Similarly, Reply of Qatar, para. 8.19.

[59]Memorial of Qatar, paras. 3.83-3.84, 6.224, 10.22 *et seq.*, 10.27; Counter-Memorial of Bahrain, paras. 560-561, etc.

[60]CR 2000/10, p. 25, para. 8.

opérations» [operating limit], as a practical division of a provisional nature about which it was always said that it was made without prejudice to the settlement of the maritime boundary. *Sans préjuger du différend concernant les fonds marins, sans préjuger d'un éventuel règlement portant sur la frontière* [without prejudice to the seabed dispute, without prejudice to the eventual settlement of the boundary]: this statement can be found in innumerable documents which are on the file and some of which are cited by the other Party[61]. This is particularly the case with the two British letters on which Professor Salmon relied in this very hall last week: first, a letter of 1951, which refers to "a tentative line given for the ... purpose of oil survey only and without prejudice to the final delimitation of the seabed boundary"[62]; then a letter of 1966 in which the Political Resident wrote that his interlocutors could accept the 1947 line *«sans préjuger d'un arrangement qui pouvait être atteint concernant la frontière maritime»* ["without prejudice to an eventual settlement of the maritime boundary"][63]. The issue of the maritime boundary, an issue totally independent of the "operating limit" proposed by the British, was subsequently, in the minds of the British authorities — as Qatar acknowledges —, to be settled by arbitration[64].

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142. Nor does the other Party dispute the fact that neither of the two Parties accepted the 1947 line. Accordingly, it is not astonishing that in 1949, two years later, when they announced their claim to the continental shelf, neither Bahrain nor Qatar made the slightest reference to the seabed division proposed in 1947. Quite the contrary, in their 1949 proclamations, which, says Qatar, were prepared by the British authorities, both Qatar and Bahrain postponed the determination of the outer limit of their continental shelves to a subsequent decision, which was to follow consultation with the neighbouring States[65]. There was clearly no question of a determination of the boundary of the continental shelf having been made by the 1947 decision.

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[61]Reply of Qatar, Anns. IV.17 and 18, Vol. 4, pp. 91 and 95. See also the documents cited in the Reply of Qatar, paras. 8.28-8.30.

[62]CR 2000/10, p. 31, para. 16.

[63]CR 2000/10, p. 33, para. 20.

[64]Memorial of Qatar, paras. 10.25 and 10.43.

[65]Memorial of Qatar, Anns. II.55 and II.56, Vol. 5, p. 221 and 225.

143. Mr. President, if, as Qatar admits, the 1947 line was never authoritative, never declaratory of the law, never established a valid maritime boundary, why should this line have the force of law now, to the point of imposing itself on the Court?

The 1947 British line concerned the seabed only, and not superjacent waters

144. Moreover, we must not forget that the British letters concerned the seabed only, and not superjacent waters and navigational rights. Admittedly, as Qatar indicates, a number of agreements relating to the delimitation of the continental shelf were subsequently transformed by the Parties — accomplished, said Qatar's pleadings — into a single maritime boundary. But, Mr. President — this transformation, Qatar pretends to forget — this transformation, when it occurred, took place by agreement between the two parties. This was precisely the case in the Gulf of Paria which our opponents mentioned. In the absence of agreement between the parties, the transformation did not take place. In the *Jan Mayen* case, for example, the Court considered that owing to the opposition of one of the parties it was not empowered to draw a single maritime boundary covering both the
033 continental shelf and the superjacent water column[66]. I am also thinking of the recent agreement, to which I have referred already, between Denmark and the United Kingdom, which establishes a different limit for the continental shelf off the Faroe Islands from the one which the parties had previously established for their fishing zones[67].

The 1947 British line is of no intrinsic value

145. Lacking the authority of a "binding decision", does the 1947 line then have at least some intrinsic merits, merits of its own which, regardless of its authority or absence of authority, would qualify it to become the maritime boundary between the two countries? Again the reply is firmly in the negative.

146. The merits of a line based on law are certainly not possessed by the 1947 line. That was not its goal. What the British authorities sought, if I may remind you, was to draw a limit in regard to the operations of the two oil companies, BAPCO on the Bahraini side and PLC on the Qatari

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[66] *Maritime Delimitation in the Area between Greenland and Jan Mayen, I.C.J. Reports 1993*, pp. 57-58, paras. 43-44.

[67] See note 16 above.

side. In short, as Qatar says, a "practical methodology"[68], nothing else and nothing more, intended to enable the petroleum activities to be separated from each other.

147. What is more, how could the British have aspired to anything better? The region was little known and the geographical data were incomplete, as the 1947 letters recognize, and as Qatar acknowledges[69]. Hence the explicitly provisional character conferred on the proposed division: "this division", said the letters, "has been made on the basis of the maps and information at present available", and "is subject to revision in the event of more exact geographical data being forthcoming at a later date".

148. Also, there is nothing to indicate the considerations which were the basis for drawing this line, except that the letters proclaim it to be based in a general fashion on the configuration of the main island of Bahrain and that of the Qatar peninsula. Contrary to what the 1947 letters assert, this line was not an equidistance line between the main island of Bahrain and the Qatar peninsula; it was a line closer to the main island of Bahrain than to the Qatar peninsula. In its Memorial, Qatar advances the argument that this fact could be explained by the difference in coastal lengths,

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but it acknowledges that this is pure supposition on its part[70]. We may also wonder by what extraordinary coincidence a line proposed in 1947 could have taken account, almost prophetically, of the concept of disparity of coastal lengths as the jurisprudence was to understand it many years later. Just as opaque are the reasons which prompted the choice of the two points mentioned in the 1947 letters, namely the North Sitrah Light Buoy (NSLB) and the Bahrain Light Vessel (BLV). Here again the explanation hazarded by Qatar — "probably" for navigational reasons[71] — is purely conjectural and of no interest as regards the seabed.

Mr. President, I have no more than ten minutes or so left, do you wish me to break now or would you prefer me to finish?

The PRESIDENT: If it is a question of no more than ten minutes or so, you may continue, Professor Weil.

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[68]Memorial of Qatar, para. 10.16.

[69]Memorial of Qatar, para. 10.17.

[70] Memorial of Qatar, paras. 10.21 and 11.14.

[71] Memorial of Qatar, paras. 10.19 and 11.40.

Mr. WEIL: I shall continue.

The PRESIDENT: If it is a question of no more than ten minutes or so.

Mr. WEIL: I hope so.

The British line of 1947 is irrelevant to the contemporary law of the sea

149. But that is not the essence of the matter. What most radically prevents the transformation of the 1947 line into a single maritime boundary is the fact that the Court is requested to effect the maritime delimitation in accordance with present-day international law. There, as I noted at the beginning of my remarks, both Parties are in agreement[72]. Now, as Qatar acknowledges in its written pleadings[73], the 1947 line was proposed by the British just a few months after the Truman Proclamation, at a time when neither the concept of continental shelf nor the law of continental shelf delimitation had yet been established. In 1947, the concept of single maritime boundary did not exist. In 1947, the principle that islands — all islands, even — generate
035 the same maritime jurisdictions as other territories had not gained acceptance. In 1947, the concept and the régime of low-tide elevations was not stabilized. The year 1947 lies in the prehistory of maritime delimitation law. What major transformations that law has undergone since then! From being physical as it then was, the concept of natural prolongation has become legal. From being geological and geomorphological as it then was, the concept of continental shelf has been linked to that of distance and partly merged into the then totally unknown concept of exclusive economic zone. As to the operation of delimitation, it is nowadays obliged to start with an equidistance line — which for years seemed unthinkable and nearly sacrilegious. When we read in the Judgment of the Court in 1982, in the *Tunisia/Libya* case, that equidistance is not "a method having some privileged status in relation to other methods"[74], and when we read in the 1984 *Gulf of Maine* Judgment that there is no method which "has intrinsic merits" and "of which it can be said that it

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[72]On this agreement of the Parties, see Counter-Memorial of Bahrain, paras. 464-467.

[73]Reply of Qatar, para. 8.21.

[74]*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982* p. 79, para. 110.

must receive priority"[75], we find ourselves in a legal world that has foundered into oblivion. The war of religion over equidistance is today something that has been swallowed up in the past. And what are we to say of the radical transformation of the concept of equity, which has ceased to be subjective since the *Libya/Malta* Judgment?

150. Mr. President, a continental shelf line proposed in 1947 by a third State for practical reasons essentially to do with the operations of two oil companies, and the basis of which is a matter of pure conjecture, and that the two Parties concerned have rejected — such a line, Mr. President, is quite out of keeping with the principles and rules of contemporary law which govern the determination of a maritime boundary.

The practice relating to oil and the conduct of the Parties

151. To escape the unequivocal condemnation of its claim for a maritime boundary resting, over a substantial part of its course, upon a line proposed in 1947 by the British, the opposing Party has recourse to a final salvage attempt by relying on the practice relating to oil and the conduct of the Parties.

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152. This attempt had already been outlined in the written Reply where, in an attempt to give some credence to the 1947 line "under the current law of maritime delimitation"[76], Qatar placed reliance upon the conduct of the parties regarding oil concessions. Qatar referred to the *Tunisia/Libya* Judgment in which the Court considered such conduct to provide "indicia . . . of the line or lines which the Parties themselves may have considered equitable or acted upon as such — if only as an interim solution affecting part only of the area to be delimited"[77]. Qatar submits, we read in the Reply, that the conduct of the Parties relating to the limits of their respective oil concessions reinforces, "to some extent" *[«dans une certain mesure»]*, the value of the 1947 line as a relevant factor in the present case[78], since that line has "from time to time" *[«de temps à autre»]* been relied upon by the Parties and the British authorities for determining the operating limits

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[75]*Delimitation of the Maritime Boundary in the Gulf of Maine area, I.C.J. Reports 1984*, p. 315, paras. 162 and 163.

[76]Reply of Qatar, p. 308.

[77]Reply of Qatar, para. 8.26, citing *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), I.C.J. Reports 1982*, p. 84, para. 118.

[78]Reply of Qatar, para. 8.26.

[«limites d'exploitation»] of the two Parties' offshore petroleum licences[79]. Whatever might have been the Parties' respective perceptions of the 1947 line, Qatar concluded, "owing to the role that has been historically assigned to that line in the conduct of both States, there can be no doubt as to the relevance of the 1947 line in the light of the contemporary law of maritime delimitation"[80].

153. In its oral arguments, the opposing Party resumed this line of argument but gave it a somewhat different connotation.

154. On the one hand, the thesis was amplified. Not only was a central place given to it by Professor Salmon[81], but above all the cautious phraseology of the Reply — *«dans une certaine mesure, de temps à autre»* — has given way to peremptory assertions. "[T]he 1947 line", stated Professor Salmon, "fulfilled [its] purpose [since] it was taken into account, significantly, as a reference line for the activities of the oil companies"[82]. "Bahrain . . . made no attempt to exploit oilfields to the east of the 1947 line ever since the adoption of that line"[83], he added.

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155. Yet, on the other hand, our opponents have considerably moderated the legal characterization of the facts on which they rely. Whereas the written pleadings of Qatar relied firmly on *Tunisia/Libya*, Professor Quéneudec backed down by stating:

> "It would certainly be improper and inaccurate to infer the existence of any type 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."[84]

156. Let us take note of this, for how indeed could the two cases be compared? In the *Tunisia/Libya* case we had conduct on the part of the two Parties. In our case what we essentially have is conduct on the part of the oil companies and of a third party, the United Kingdom, a variable and uncertain conduct *[dans une certaine mesure, de temps à autre]*, a conduct systematically accompanied by a reservation concerning the provisional character of the boundary and the statement that it was without prejudice to the question of the boundary of the continental

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[79]Reply of Qatar, para. 8.27.

[80]Reply of Qatar, para. 8.31.

[81]CR 2000/10, pp. 27 *et seq.*, paras. 12 *et seq.*

[82]CR 2000/10, p. 27, para. 12.

[83]CR 2000/5, p. 33, para. 12.

[84]CR 2000/10, pp. 48-49, para. 29.

shelf, and the constant opposition of the two governments concerned to any final solution of the boundary based on that "expedient" solution[85]. No, it is definitely not in the theory of the *de facto* line in the *Tunisia/Libya* case that our opponents could place some hope. Whether or not the 1947 line "fulfilled its purpose" regarding the activity of the two oil companies is not the question. What is important, and the only thing that is important, is that, in the eyes of the Bahraini Government at least, the 1947 *limite d'exploitation* has never represented a continental shelf boundary and still less a maritime boundary.

157. This being so, there is no need to dwell on the factual inexactitude of our opponents' line of argument. It will suffice to remind you that activities of oil companies have more than once been conducted by companies so authorized by the Government of Bahrain beyond the 1947 line, and more particularly, but not exclusively, around the Hawar Islands, Dibal and Jaradah. I venture in passing to ask a question: do our opponents not realize that by arguing a claimed lack of
0 3 8 activities on the part of the Bahraini oil company to the east of the 1947 line, they transform the activities of that same Bahraini oil company around the Hawar Islands, Dibal and Jaradah into an indicium of the sovereignty of Bahrain over those same features? And why then would the exclusion of the Hawar Islands from the scope of the oil concessions of Qatar, mentioned by Mr. Jan Paulsson, not be an indicium of the sovereignty of Bahrain over the Hawar islands?

158. Incidentally, it is not just activities to do with oil that Bahrain has conducted after 1947 to the east of the 1947 line, but all sorts of other activities such as coastguard patrols. I venture in this respect to refer you to our written pleadings[86].

159. Added to this is the fact that jurisprudence is reluctant to make the distribution of resources into a decisive criterion of the course of a maritime boundary. It is no doubt the case that tribunals cannot completely overlook this reality when it is precisely the fishery resources and those of the subsoil of the sea which are involved and are what is at stake in many problems of maritime delimitation. Tribunals are nevertheless definitely reluctant to over-emphasize such a fluctuating factor. Resources, and oil resources in particular, are not always easy to locate; oil is not necessarily where it is expected to be, and it may be discovered where it was not expected to

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[85]CR 2000/10, p. 40, para. 33.

[86]See Memorial of Bahrain, paras. 575, 576, 587, 598 and 599. Cf. map 7 in the Memorial of Bahrain.

occur. A product sought after today may be looked down on tomorrow — pearls are a perfect case in point — and vice versa. As stated by my friend Jan Paulsson, oil prospecting in the area that is the subject of this dispute has so far been somewhat disappointing, but there is no telling what the future holds. Given that, according to the Court, a maritime boundary "involves the same element of stability and permanence"[87] as a land frontier, its course cannot be determined on the basis of naturally uncertain and changing economic considerations.

Negotiations between the Parties

160. Next, and I shall conclude with this, to the considerations deriving from the practice relating to oil, Qatar has added in its oral arguments one argument based on the negotiations
039 conducted between the two Governments from 1966 onwards[88], while specifying that the various proposals put forward in that context "are not of course binding upon either of the Parties"[89]. There is no need to refute as to the merits the analysis of the negotiations presented by our opponents. It will suffice that I refer to the rule laid down by the Permanent Court of International Justice in the *Factory at Chorzów* case[90], recalled by the Chamber of the Court in the *El Salvador/Honduras* case[91] and confirmed by the Court in the first phase of our own case, namely that the Court

> "cannot take account of declarations, admissions or proposals which the parties may have made in the course of direct negotiations when the negotiations in question have not led to an agreement between the parties"[92].

Any further discussion would be superfluous.

161. At the close of this long investigation of the British line of 1947, my conclusion will be simple and clear:

— *primo*, the British line of 1947 cannot become the single maritime boundary, for its course does not meet the requirements of contemporary law;

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[87] *Aegean Sea Continental Shelf (Greece* v. *Turkey), I.C.J. Reports 1978*, p. 36, para. 85.

[88] CR 2000/10, pp. 33 *et seq*, paras. 20 *et seq*.

[89] CR 2000/10, p. 38, para. 24.

[90] *PCIJ Series A No. 9*, p. 19; *Series A No. 17*, paras. 51 and 62-63.

[91] *Land, Island and Maritime Frontier Dispute, I.C.J. Reports 1992*, p. 406, para. 73.

[92] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, I.C.J. Reports 1994*, p. 126.

— *secundo*, the British line of 1947 cannot even be taken into consideration as a relevant factor for the delimitation. It was never seen by its authors or understood by its recipients as anything else than a mere *limite d'exploitation* for the purposes of the activities of the two oil companies. It was never designed as anything endowed with legal force, and still less binding force, either by the British authorities or by Bahrain or by Qatar. It is not in keeping with any principle of law.

162. Mr. President, Members of the Court, I am quite aware that I have been long and rather tedious and I beg you to excuse me. I thank you for your attention and would ask you, Mr. President, to give the floor presently to Professor Reisman, who will describe the course of the maritime boundary sought by Bahrain. Thank you very much.

0 4 0 The PRESIDENT: Thank you, Professor Weil. The Court will adjourn for a quarter of an hour.

The Court adjourned from 11.35 a.m. to 12 noon.

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

The PRESIDENT: Thank you Professor. The sitting is adjourned for a quarter of an hour.

The Court adjourned from 11.35 a.m. to 12 noon.

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

M. REISMAN : Je vous remercie.

ASPECTS MARITIMES

DEUXIÈME PARTIE

Introduction

Monsieur le Président, Madame et Messieurs les Membres de la Cour,

1. Mon ami Prosper Weil a présenté la théorie de Bahreïn concernant la délimitation, ainsi que la critique détaillée que cet Etat fait de celle de Qatar. Mon propos est de décrire l'application effective de la théorie de Bahreïn à une frontière maritime. Comme nous l'avons expliqué, la Cour est confrontée à la délimitation d'un espace maritime entre un État continental, Qatar, et un Etat pluri-insulaire ou archipel, Bahreïn. Comme nous l'avons également expliqué, dans la mesure où la décision de la Cour sur les questions territoriales aura de profondes répercussions sur la délimitation maritime, Bahreïn s'est vu contraint de proposer des conclusions subsidiaires, qui reposent chacune sur l'hypothèse d'une décision différente concernant la délimitation territoriale. Je présente à nouveau mes excuses pour la complexité de cette démarche.

A. Les secteurs nord et sud

2. Les deux Parties conviennent que la délimitation devrait être effectuée en distinguant deux secteurs contigus, celui du nord et celui du sud. Selon Bahreïn, les points à retenir pour la ligne de partage entre ces secteurs sont Fasht al Dibal et RK[1], le point choisi par Qatar comme son extrémité septentrionale.

3. Bahreïn accepte le choix fait par Qatar de ce qu'il appelle le point de sa côte qui se trouve le plus vers le large mais tient à faire observer que ce point a changé au cours de la présente affaire. Dans son mémoire, Qatar parle du «point le plus septentrional de la côte de Qatar [tel que] situé à l'est du feu de Ras Rakan» [93]. Dans son contre-mémoire, Qatar, modifiant sa conception de la partie la plus septentrionale de sa côte, donne sa préférence au point RK[1], basé sur la laisse de
041 *pleine mer* de sa côte[94]. J'ai formulé des observations sur les incohérences et les objectifs tactiques de Qatar dans l'exposé que j'ai fait ici auparavant. Bahreïn a systématiquement appliqué les dispositions de l'article 5 de la convention de 1982 sur le droit de la mer pour déterminer les côtes respectives des îles composant son ou ses archipel(s), mais, en principe, s'en remet à Qatar pour ce qui a trait à la décision portant sur ce qui constitue la côte qatarienne. Comme la Cour l'a dit dans l'affaire des *Pêcheries* anglo-norvégiennes, «l'Etat côtier apparaît comme le mieux placé pour

[93] Mémoire de Qatar, par. 9.4
[94] Contre-mémoire de Qatar, par. 6.98 et 8.10.

apprécier les conditions locales qui peuvent dicter le choix.»[95] Bahreïn a néanmoins utilisé la laisse de basse mer pour déterminer les zones côtières qatariennes parce qu'il s'agit là de la norme juridique internationale et qu'elle est nettement plus favorable à Qatar. Il appartiendra à la Cour de décider comment elle ajustera plus loin en direction de la péninsule la ligne de délimitation qui en découle, conformément aux souhaits de Qatar lui-même.

4. Le point le plus septentrional de Bahreïn, qui est le plus proche du point correspondant faisant face à la côte qatarienne, se trouve, je l'ai déjà indiqué, sur Fasht ad Dibal. Ainsi que je l'ai expliqué lors de mon précédent exposé et que mon collègue, Prosper Weil, l'a redit avec plus de détails, Fasht ad Dibal est un haut-fond découvrant qui se trouve à un peu plus de deux milles marins de Qit'at Jaradah. Et une étude scientifique systématique de M. Alexander a confirmé, la Cour s'en souviendra, que Qit'at Jaradah est une île aux termes du paragraphe 1 de l'article 121 de la convention sur le droit de la mer. Bahreïn a démontré les effectivités et les facteurs archipélagiques qui établissent son titre sur l'île. Qatar est resté muet sur ces deux points. La partie pertinente du paragraphe 1 de l'article 13 de la convention sur le droit de la mer prévoit que «[L]orsque des hauts-fonds découvrants se trouvent, entièrement ou en partie, à une distance du continent ou d'une île ne dépassant pas la largeur de la mer territoriale, la laisse de basse mer sur ces hauts-fonds peut être prise comme ligne de base pour mesurer la largeur de la mer territoriale.» Ainsi une ligne de calcul entre la laisse de basse mer au point le plus septentrional de Fasht ad Dibal, orientée est-sud-est en direction du point RK[1], peut servir à délimiter les secteurs nord et sud, qui, les Parties en conviennent, doivent être traités séparément.

5. Qatar ignore, au contraire, la description faite par Bahreïn de sa propre côte et propose de repousser le point de base bahreïnite au point le plus septentrional de Muharraq. Comme la Cour peut le constater, le point de base de Qatar se trouve bien à l'intérieur de l'archipel de Bahreïn et non
042 sur sa côte «juridique». Pour les raisons que j'ai exposées plus tôt, Bahreïn rejette la ligne de partage entre les secteurs proposée par Qatar ainsi que les points de base correspondants que Qatar place à l'intérieur de l'archipel de Bahreïn plutôt que sur sa côte, comme le droit international le prévoit.

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[95] *C.I.J. Recueil 1951*, p. 131.

B. La délimitation dans le secteur sud

6. La Cour constatera qu'il faut effectuer dans le secteur sud une délimitation des mers territoriales respectives de Bahreïn et de Qatar. Ce secteur est donc régi par les dispositions de l'article 15 de la convention sur le droit de la mer. Celui-ci dispose que la frontière de la mer territoriale entre États dont les côtes se font face est «la ligne médiane dont tous les points sont équidistants des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacun des deux États.» La seconde phrase de l'article 15 permet une dérogation à cette règle lorsque cela est requis en raison de «titres historiques ou d'autres circonstances spéciales». Il se trouve que les différents titres historiques qui s'attachent aux formations maritimes de Bahreïn, dont j'ai parlé lors de mon exposé précédent, coïncident avec les points de base normaux que Bahreïn, en tant qu'Etat pluri-insulaire ou qu'Etat archipel de fait, utilise aux fins de la délimitation de sa mer territoriale. Ainsi que M. Weil l'a montré, l'allégation de Qatar selon laquelle les lettres de 1947 ou les passages que Qatar en choisit constituent une «circonstance spéciale» n'a aucun fondement, que l'on se réfère à la convention de 1958 ou à celle de 1982. La délimitation dans le secteur sud doit donc comporter, dans un premier stade, l'identification des «lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacun des deux États.»

7. Qatar soutient vous vous rappellerez l'analyse de M. Weil qu'il s'agit ici d'une délimitation relativement simple entre les «territoires principaux» de deux Etats, entre lesquels on trouve quelques minuscules îles litigieuses. Qatar reconnaît, il est vrai, que Bahreïn est ce qu'il appelle un «archipel de fait», mais ce fait embarrassant peut être évacué, selon Qatar, en traitant la complexité géographique de Bahreïn comme s'il ne s'agissait pas d'un Etat composé d'îles et d'autres formations maritimes. Qatar considère qu'il est possible d'y parvenir en ne retenant qu'une partie de Bahreïn, décrite comme un «groupe compact» formé par certaines de ses îles archipélagiques, celles qui, et c'est bien commode, sont les plus éloignées et non les plus proches de Qatar, et en ignorant le reste. Ainsi, selon le *modus operandi* proposé par Qatar, la Cour verra sa tâche heureusement ramenée à l'établissement d'une prétendue ligne médiane entre les «territoires principaux» des deux Etats, à un certain nombre d'ajustements de cette ligne favorables à Qatar, au choix de certains passages des lettres de 1947 allant dans son sens, tout en ignorant

soigneusement ou écartant ouvertement d'autres passages, pour ensuite rattacher les îles et les autres formations maritimes à l'Etat qui se trouve du même côté de cette prétendue «ligne médiane». Et il n'est bien entendu nullement nécessaire de s'intéresser si peu que ce soit aux effectivités.

8. M. Weil a déjà mis en évidence le caractère indéfendable des propositions de Qatar dans le secteur sud. Je me bornerai à ajouter que la prétendue «ligne d'équidistance provisoire» proposée par Qatar n'est pas une véritable ligne médiane. Une véritable ligne médiane devrait être tracée à partir de la ligne de base de la mer territoriale des deux Etats, sans ajustement. La ligne proposée par Qatar est tout au plus une ligne *ajustée*, car elle se fonde sur la laisse de pleine mer des deux Etats et ne tient aucun compte de toutes les formations situées au large de la laisse de basse mer. En revanche, dans le secteur sud, au sud de la ligne de partage en secteurs, Bahreïn propose à la Cour une véritable ligne médiane construite à partir des points de la laisse de basse mer de Fasht ad Dibal et de Qit'at Jaradah et des points correspondants de la laisse de basse mer de la côte de Qatar qui sont les plus proches.

9. En supposant, comme nous le faisons ici, que la Cour restituera Zubarah à Bahreïn, la relation entre celui-ci et Qatar devient une relation d'adjacence des côtes, la côte de Qatar partant du point Y sur la carte que vous voyez pour se diriger vers le nord-est et la côte de Zubarah de Bahreïn se dirigeant ensuite vers le sud jusqu'au point X, au niveau de l'agglomération qatarienne d'Umm El Ma. Cette modification de la relation géographique oblige la Cour à tracer une ligne médiane vers le large à partir du point Y, qui constitue dans cette hypothèse la frontière terrestre entre Bahreïn et Qatar, jusqu'à ce qu'elle rencontre le vecteur établi par la ligne médiane dans la zone située immédiatement au nord. La Cour remarquera que, pour Bahreïn, la ligne $Y\text{-}O_2$ constitue la frontière maritime dans ce secteur de la zone. Par vecteur, nous entendons évidemment une direction à partir d'un point, ce qu'il ne faut pas confondre avec une ligne joignant deux points désignés.

10. Nous nous dirigeons de nouveau vers le sud jusqu'à la limite la plus méridionale de la région de Zubarah. Le point le plus méridional de la côte bahreïnite de Zubarah touche le territoire qatarien à Umm El Ma. La frontière maritime dans l'échancrure côtière peu profonde est, en raison d'une configuration qui est celle de l'échancrure, une ligne entre des Etats dont les côtes

sont d'abord adjacentes pour ensuite se faire face. Un encadré de la carte n° 8 du mémoire de Bahreïn indique la suite des points de base nécessaires pour tracer une ligne médiane dans cette zone d'assez faible superficie. La ligne de délimitation part de la côte pour rejoindre le point X, s'ajuste elle-même pour tenir compte de la côte de Qatar mais finit par repartir vers le large du fait de la circonstance géographique de l'opposition des côtes entre le point bahreïnite de Ra's ash Shamiah à Zubarah et le point qatarien de Ra's Umm Hish. Il faut de nouveau corriger le vecteur de cette ligne pour tenir compte du point médian d'un vecteur situé entre les côtes se faisant face de Bahreïn à Zubarah et de Qatar à Ra's Umm Hish. La Cour relèvera la présence de la ligne indiquant les points opposés les plus proches entre la péninsule de Qatar et le point de base suivant, qui est le haut-fond découvrant de Qita'a el Erge, dont je reparlerai dans un instant.

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11. En poursuivant vers le sud, le prochain point de base de Bahreïn, comme je viens de le dire, est Qita'a el Erge, haut-fond découvrant qui se situe à moins de 12 milles marins d'Al Awal, la plus grande île de l'archipel de Bahreïn, ainsi qu'à moins de 12 milles marins de sept autres îles, notamment Al Mu'tarid, Mashtan, Jazirat Hawar, Rabad al Gharbiyah, Rabad ash Sharqiyah, Jazirat Agirah et Umm Jalid. La Cour verra que la multiplication des îles bahreïnites dans un rayon de 12 milles de Qita'a el Erge s'explique par le caractère extrêmement compact de l'archipel de Bahreïn.

12. Après le point de base de Qita'a el Erge, le point de base suivant sur la côte de l'archipel de Bahreïn se trouve à Fasht Bu Thur. Ce haut-fond découvrant, tout comme Qita'a el Erge, se situe à moins de 12 milles marins d'Al Awal, la plus grande île, ainsi que d'Al Mu'tarid, Mashtan, Jazirat Hawar, Rabad al Gharbiyah, Rabad ash Sharqiyah et Jazirat Agirah. Là encore, la compacité de l'archipel de Bahreïn place le haut-fond découvrant de Qita'a el Erge dans un rayon de 12 milles marins d'un certain nombre d'îles de Bahreïn.

13. Si nous allons plus loin au sud, la laisse de basse mer de l'archipel des Hawar devient la côte de Bahreïn. Chacun des points de base méridionaux successifs servant à la délimitation de la mer territoriale avec Qatar constitue maintenant un point de la côte de l'île principale de Hawar ou d'une des îles constituant le groupe des Hawar : les points de base les plus importants sont Rabad ash Sharqiyah, Jazirat Agirah, Suwad ash Shamaliyah, Suwad al Janubiyah et la laisse de basse mer de Janan.

14. La Cour remarquera qu'après Hadd Janan, la frontière entre les mers territoriales de Bahreïn et de Qatar se dirige vers une étendue de mer appartenant à l'Arabie saoudite. L'accord conclu en 1958 entre celle-ci et Bahreïn ne fournit pas de point de base à la délimitation maritime entre Bahreïn et Qatar. Comme le fait observer à ce propos *Limits of the Seas*, «le point 1 ... ne constitue pas un point triple pour les revendications de Bahreïn, de l'Arabie saoudite et de Qatar sur le plateau continental». Quant à la limite extérieure de la frontière maritime septentrionale dans
045 le secteur nord, Qatar reconnaît — et je cite son mémoire — que «la Cour n'a pas compétence pour déterminer le tripoint Qatar/Iran/Bahreïn sans le consentement de l'Iran»[96]. Si cela est vrai pour l'Iran, comment n'en serait-il pas de même pour l'Arabie saoudite ?

15. Compte tenu des points de base et des lignes de base pertinentes, nous pouvons décrire succinctement la ligne de délimitation entre les eaux territoriales de Qatar et de Bahreïn dans le secteur sud. La distance entre la ligne de partage des secteurs allant de RK^1 au point le plus septentrional de Fasht ad Dibal est d'environ 18 milles marins. Il n'y a ensuite aucune ligne allant du point RK^1 de Fasht ad Dibal jusqu'au point situé sur la laisse de basse mer de Qit'at Jaradah et au point opposé sur la côte de Qatar à Al Arish dont la longueur soit supérieure à cette distance. La frontière maritime que la Cour est appelée à délimiter dans cette zone déterminée est donc celle d'une mer territoriale. La Cour remarquera sur la carte affichée à l'écran que les points médians de chacune des lignes reliant sur les côtes opposées les points les plus proches, respectivement, ont été reliés par une ligne rouge continue qui va jusqu'à la région bahreïnite de Zubarah et qu'on retrouve ensuite à la limite inférieure de cette région jusqu'à ce qu'elle s'approche d'un vecteur tracé à partir de la ligne de délimitation entre Bahreïn et l'Arabie saoudite.

16. La ligne à laquelle aboutit, dans le secteur sud, la démarche que nous venons de suivre est une véritable ligne médiane qui respecte toujours fidèlement les réalités géographiques de chaque Etat sans entraîner aucune des amputations territoriales que propose Qatar. Cette ligne respecte le caractère d'Etat pluri-insulaire ou d'Etat archipel de fait de Bahreïn, mais, je m'empresse de le souligner, n'emploie que des points de base normaux et ne fait pas bénéficier Bahreïn des lignes de base droites archipélagiques particulières dont peut se prévaloir un Etat

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[96] Mémoire de Qatar, par. 12.42.

archipel qui retient la partie IV de la convention de 1982 et les options qu'elle offre. Elle est également équitable au sens de l'évolution de ce terme dans la pratique de la Cour en matière de délimitation de frontières maritimes.

17. Monsieur le président, Madame et Messieurs de la Cour, Qatar propose que l'on ajuste sa ligne d'équidistance provisoire en sa faveur pour tenir compte de la plus grande longueur de littoral qu'il prétend avoir, dans un rapport qui serait de 1,59 à 1. La Cour remarquera toutefois que la longueur des côtes dans le secteur sud est essentiellement égale lorsque les îles Hawar sont à juste titre indiquées comme appartenant à Bahreïn et qu'elle augmente en fait de 25 pour cent environ en faveur de Bahreïn si Zubarah lui est restituée. Bahreïn soutient qu'il n'est ni nécessaire ni justifié d'ajuster la ligne d'équidistance, que ce soit en faveur de Bahreïn ou de Qatar. Et même si, pour raisonner sur une considération purement hypothétique, on acceptait le rapport des façades côtières de 1 à 1,59 proposé par Qatar, un ajustement ne se justifierait pas. Un ajustement de la ligne de délimitation d'une zone de 200 milles pourrait provoquer de graves distorsions et des attributions erronées d'espaces maritimes, ce que ne fera pas, de par sa nature même, une ligne de délimitation de mer territoriale. De plus, la seule affaire — qui ne concernait d'ailleurs pas la délimitation d'une mer territoriale — dans laquelle il a été procédé à un ajustement pour une disparité très minime était celle du *Golfe du Maine*[97] et cela, d'ailleurs, à cause de la configuration géographique particulière de cette région et d'une situation inhabituelle. Dans les autres affaires *Malte/Libye*[98] et *Jan Mayen*[99] où il a été procédé à un ajustement de la ligne médiane en raison de disparités et du rapport entre les longueurs de côte, ce rapport était très supérieur et susceptible d'entraîner une différence *notable* entre les façades côtières. Enfin, il convient de relever que l'ajustement de la ligne médiane proposé en l'espèce par Qatar aurait pour effet d'empiéter sur le territoire et les eaux territoriales d'un des Etats intéressés.

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C. Délimitation dans le secteur sud selon des qualifications subsidiaires

18. Monsieur le président, Madame et Messieurs les Membres de la Cour, comme Bahreïn l'a fait remarquer dans son mémoire, cette affaire est inhabituelle parce qu'il faut trancher les

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[97] *Délimitation de la frontière maritime dans la région du golfe du Maine, arrêt, C.I.J. Recueil 1984*, p. 246.

[98] *Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 13.

[99] *Délimitation maritime dans la région située entre le Groenland et Jan Mayen, arrêt, C.I.J. Recueil 1993*, p. 38.

questions territoriales avant de pouvoir tracer les frontières maritimes, le tout en une seule phase judiciaire. De sorte que les Parties n'ont pas d'autre choix que d'énoncer leurs conclusions relatives aux frontières maritimes sous forme de variantes, puisqu'elles ignorent la position qu'adoptera la Cour concernant les questions territoriales. De ce point de vue, on peut caractériser Bahreïn de deux manières :

— Bahreïn peut être considéré comme un Etat continental et pluri-insulaire *si* sa souveraineté sur Zubarah est rétablie, ou

— Bahreïn peut être considéré comme un Etat pluri-insulaire ou un Etat archipel de fait, si la région de Zubarah n'est pas censée lui appartenir.

Ces différentes qualifications concrètes engendrent chacune une conception juridique particulière de ce que doit être la ligne de délimitation unique dans le secteur sud.

19. Dans l'exposé principal de Bahreïn, l'hypothèse est que la Cour confirmera la souveraineté de Bahreïn sur Zubarah et la rétablira. Au cas où la Cour en déciderait autrement,
047 quels que soient ses motifs, les points de base que j'ai énumérés précédemment devraient être complétés par d'autres points, puisque nous nous retrouverions dans une situation où la côte qatarienne dans la région de Zubarah et la côte de l'Etat de Bahreïn se feraient face. Le point de base suivant à utiliser pour construire la ligne côtière de Bahreïn serait donc l'île de Sitrah. Comme nous l'avons déjà démontré précédemment, Fasht al Azm fait partie intégrante de l'île de Sitrah dans la mesure où il n'en est séparé que par un chenal étroit et artificiel, profond de 3 mètres, qui fut dragué en 1982 afin de permettre la navigation (il n'existait pas de chenal naturel avant cette date), mais qui ne modifie pas le statut juridique international de l'île : ce haut-fond reste une partie de Sitrah. Qit'ah ash Shajarah étant un haut-fond découvrant situé à moins de 1 mille de la laisse de basse mer de la côte de Fasht al Azm appartenant à Sitrah, Bahreïn est en droit d'utiliser cette laisse comme point de base, conformément à l'article 13, paragraphe 1, de la convention de 1982 sur le droit de la mer. De sorte que la côte de Bahreïn relierait la laisse de basse mer de Qit'at Jaradah à celle de Qit'ah ash Shajarah. Permettez-moi d'ajouter, entre parenthèses, que même si Fasht al Azm n'était pas considéré comme faisant partie de Sitrah, Bahreïn pourrait encore se servir de Qit'ah ash Shajarah comme d'un point de base, dans la mesure où cette formation est

située à moins de 12 milles marins d'Umm Jalid et de Qit'at Jaradah. C'est là, une fois de plus, une conséquence imputable au fait que Bahreïn est un archipel très dense.

20. Les points de base sur la laisse de basse mer de Qit'ah ash Shajarah et le point de base le plus proche de la côte qatarienne servent à tracer le segment suivant de la ligne médiane reliant O (2) à un point situé à mi-distance entre le point de base sur Qita'a el Erge, que j'ai analysé précédemment, et le point de base correspondant le plus proche sur la côte qatarienne, en l'occurrence Ras um Hish. De là, nous tracerions une ligne médiane, équidistante des points de base de la côte de Zubarah (dont je suppose, pour les besoins de l'argument, qu'elle est qatarienne) et des points de base opposés sur la côte de Bahreïn, qui descendrait vers le sud de la façon suivante. La Cour notera que ce tracé ne modifie pas sensiblement le rapport entre les lignes côtières des deux Etats, puisque nous avons toujours le schéma des côtes se faisant face ; de sorte que, pour les raisons que je viens d'évoquer, il n'y aurait pas lieu d'opérer le moindre ajustement de la ligne médiane provisoire en faveur de l'un des Etats ou de l'autre.

21. Monsieur le président, Madame et Messieurs les Membres de la Cour, je ne saurais conclure cette partie de mon exposé sans mentionner le droit qu'a Bahreïn de demander, le cas échéant, à bénéficier du statut spécial reconnu aux Etats archipels par la partie IV de la convention de 1982 sur le droit de la mer. En 1937, en réponse à une demande de renseignements du Gouvernement britannique, Bahreïn indiqua que son archipel incluait Fasht al Dibal, Qit'at Jaradah, Fasht al Jarim, Khor Fasht, Al Benat et «l'archipel des Hawar qui comptait neuf îles à proximité de la côte qatarienne»[100]. Cette revendication fut formulée de nouveau en 1947 par le souverain de Bahreïn[101] et, au cours des négociations menées dans le cadre de la troisième conférence des Nations Unies sur le droit de la mer, le représentant de Bahreïn souleva de nouveau ce point, dès 1974, sans susciter aucune opposition de la part de Qatar[102]. Bahreïn avait préparé les documents requis pour se déclarer Etat archipel, mais fut empêché de les publier en raison de l'injonction à effet suspensif prononcée dans le cadre de la médiation : une injonction qui est toujours en vigueur sur le plan juridique et qui le restera en fait jusqu'au prononcé de l'arrêt de la

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[100] Mémorandum de Charles Belgrave, 14 août 1937, mémoire de Bahreïn, par. 661.

[101] Mémoire de Bahreïn, *ibid.*

[102] Mémoire de Bahreïn, *ibid.*

Cour. L'un des paradoxes de la procédure actuelle est que Bahreïn risque de ne jamais pouvoir réaliser le destin que la partie IV de la convention de 1982 sur le droit de la mer réserve aux Etats archipels répondant aux conditions à remplir.

22. Le rapport de la superficie des eaux à celle des terres de Qatar est d'environ 5,3 à 1 à l'époque de la pleine mer de vive eau ou de 3,4 à 1 à l'époque des plus basses mers astronomiques, et remplit ainsi la condition obligatoire prévue par l'article 47, paragraphe 1, de la convention : il s'agit de définir «une zone où le rapport de la superficie des eaux à celle des terres, atolls inclus soit compris entre 1 à 1 et 9 à 1»[103]. Qatar conteste que Bahreïn puisse se prévaloir de l'une des options prévues par la partie IV de la convention pour diverses raisons. Par exemple, le professeur Quéneudec déclare que Bahreïn n'est pas répertorié comme un archipel sur la liste du département d'Etat américain, ce qui l'empêcherait de se déclarer Etat archipel. Rassurons tout de suite le professeur : la permission des Américains n'est pas indispensable et un Etat n'a pas besoin de figurer sur une liste du Gouvernement des Etats-Unis pour pouvoir se déclarer archipel. La Jamaïque ne figurait pas sur la liste, ce qui ne l'a pas empêchée de se déclarer Etat archipel, alors même qu'elle menait des négociations avec les Etats-Unis. Une telle déclaration ne poserait pas non plus de problèmes de compétence à l'égard des Etats tiers. C'est Bahreïn qui se serait déclaré Etat archipel en vertu de la partie IV de la convention, et la Cour appliquerait simplement les conséquences de cette déclaration à la frontière maritime entre Bahreïn et Qatar, la question relevant de sa compétence, mais elle ne les appliquerait pas à des Etats ou à des situations échappant à cette compétence. L'exercice par Bahreïn de l'option prévue par la partie IV n'est pas sujet à forclusion, car cette partie de la convention ne prévoit pas de date limite à respecter en la matière. D'ailleurs, les Etats n'exercent généralement cette option que lorsque cela s'avère nécessaire dans le cadre des négociations bilatérales qu'ils mènent pour fixer leurs frontières maritimes. Tout Etat archipel ayant la faculté de se définir comme tel en vertu de la partie IV de la convention de 1982a parfaitement raison de peser soigneusement les avantages et les inconvénients de sa décision. Prétendre, comme le fait Qatar, que la partie IV n'a pas de caractère coutumier au contraire de la plupart des autres dispositions de la convention de 1982 sur le droit de la mer,

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[103] Article 4 (1) de la Convention des Nations Unies sur le droit de la mer de 1982.

aboutit à une absurdité : un Etat archipel serait un archipel à l'égard de certains membres de la communauté internationale mais pas pour d'autres, de sorte que, dans son texte même, la convention telle que l'interprète Qatar irait à l'encontre de la prévisibilité et de l'uniformité d'application qui sont la finalité propre de tout acte législatif. La convention de Vienne sur le droit des traités abhorre les interprétations absurdes. En résumé, rien ne s'oppose à ce que Bahreïn se déclare Etat archipel en vertu de la partie IV de la convention sur le droit de la mer de 1982.

23. Si on examine la situation de Bahreïn dans l'optique de la partie IV de la convention de 1982, cet Etat a le droit de tracer les lignes de base archipélagiques généreuses prévues par l'article 47. Si la Cour veut bien se donner la peine d'observer la carte affichée sur l'écran, elle remarquera que les lignes de base archipélagiques montrées joignent les dix îles et récifs découvrants les plus excentrés de l'archipel de Bahreïn. Il s'agit de Fasht al Jarim dans le nord, de Fasht al Dibal, de trois îles du groupe des Hawar, du récif Al Hul à la pointe sud de Al Awal, d'un rocher découvert en permanence nommé Al Baynah Saghirah de la partie occidentale d'Al Awal, d'un récif découvrant au nord d'Al Baynah Saghirah et de Khawr Fasht.

24. La Cour observera que la plus longue de ces lignes de base archipélagiques n'excède pas 40 milles marins. Si l'on tient compte du fait que l'article 47 autorise les Etats archipels à tracer des lignes de base pouvant atteindre 100 milles marins et même 125 milles marins pour 3 % d'entre elles et que la pratique des Etats a parfois dépassé ces limites, les lignes de base archipélagiques soumises par Bahreïn sont très modestes. La Cour observera que les lignes de base ne s'écartent pas sensiblement de la géographie générale de l'archipel et qu'elles ne coupent pas non plus la mer territoriale de Qatar de la haute mer ou de la zone économique exclusive. Le rapport de la superficie des eaux à celle des terres est, je le répète, de 5,3 à 1 à l'époque de la pleine mer de vive eau ou de 3,4 à 1 à l'époque des plus basses mers astronomiques. Le rapport des superficies est donc nettement inférieur à la limite de 9 à 1 prévue par la partie IV de la convention. Tous les droits de passage traditionnels exercés légitimement par Qatar entre ses côtes au sud des eaux archipélagiques de Bahreïn dans le Golfe seraient protégés conformément aux articles 51 et 52 de la convention de 1982, de même que le passage inoffensif prévu par l'article 52, paragraphe 1 de la

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convention. Mais ces considérations sont parfaitement théoriques puisque Qatar n'a jamais prouvé ni revendiqué l'un quelconque de ces droits.

25. Sur la base des lignes de base archipélagiques, une ligne médiane dans le secteur sud s'écarterait de la ligne partant des Hawar en direction du nord, telle que je l'ai déjà montrée. Dans ces conditions, la ligne médiane épouse la direction générale de la côte de Qatar, de la péninsule de Qatar, jusqu'au secteur nord.

26. Monsieur le président, Madame et Messieurs les Membres de la Cour, cette conclusion de Bahreïn n'est pas et ne saurait être formelle, en raison de la suspension qui nous a été imposée par la médiation puis par les procédures judiciaires en cours. Néanmoins, Bahreïn désire présenter les faits à la Cour et lui décrire les options juridiques viables dont il dispose. La Cour utilisera ces éléments d'information comme elle l'entend.

D. La délimitation dans le secteur nord

27. Je vais maintenant parler du secteur nord. La Cour se rappellera que, contrairement au secteur sud, ce secteur se caractérise non pas par des côtes qui se font face mais par des côtes adjacentes. Une deuxième différence importante entre le secteur nord et le secteur sud est qu'à l'exception d'une bande large de 12 milles nautiques qui suit la ligne de côte utilisée pour le calcul entre les points les plus proches sur Fasht ad Dibal à Bahreïn et le point RK à Qatar, bande constituée par des eaux territoriales, les eaux et le fond océanique à délimiter qui s'étendent au large jusqu'aux zones maritimes iraniennes font partie du plateau continental et de la zone économique exclusive. Une troisième différence importante entre le secteur nord et le secteur sud tient au fait que les accords en vigueur signés, l'un entre l'Iran et Bahreïn en 1971 et l'autre entre l'Iran et Qatar en 1969, doivent être pris en considération. Enfin, s'il est vrai que le secteur nord ne contient pas les nombreuses îles bahreïnites qui font partie de l'archipel de Bahreïn, on y trouve en revanche les bancs d'huîtres perlières qui appartiennent à Bahreïn, comme je l'ai expliqué dans mon exposé précédent.

28. La Cour remarquera que le point bissecteur de la ligne entre Bahreïn et Qatar est le point O(1). Ce point étant prolongé sur la carte par une ligne en pointillé jusqu'à la

frontière Iran/Qatar fixée d'un commun accord, le vecteur correspondant constituerait la ligne
051 d'équidistance. Le point Q sur cette ligne est situé exactement à une distance de 12 milles nautiques des points de base les plus proches de Bahreïn et de Qatar qui ont été utilisés pour tracer la ligne de partage entre secteurs. Par conséquent, le point Q représente la limite de la mer territoriale entre Qatar et Bahreïn. Au nord de ce point sur le vecteur qui finit par couper la frontière Iran/Qatar fixée d'un commun accord, il convient de faire un ajustement pour tenir compte des bancs d'huîtres perlières de Bahreïn. Pour que lui soit attribuée la partie du plateau continental contenant des bancs d'huîtres perlières, Bahreïn propose que les points S, T et U constituent les points de transition pour la frontière maritime de façon à tenir compte de la souveraineté de Bahreïn sur ces bancs. La Cour notera que Bahreïn a proposé que l'ajustement sur le vecteur général est-sud-est commence non pas à la limite de la mer territoriale, à savoir le point Q, mais bien quelque 3 milles marins au large, au point R. Si Bahreïn propose cet ajustement, c'est pour que la mer territoriale de Qatar ne soit pas du tout amputée ni même concernée par l'ajustement qu'il faut apporter à toute la zone maritime située au-delà de la mer territoriale. Bahreïn propose un deuxième ajustement en faveur de Qatar à l'extrémité nord de la ligne de délimitation générale, là où elle rencontre l'espace maritime iranien. Au lieu de relier le point U, où se trouve le banc d'huîtres perlières de Bahreïn Naywah Walid Ramadhan, au point terminal de la ligne d'équidistance sur un vecteur OQR, ce qui serait conforme au principe d'équidistance, Bahreïn propose que l'on utilise la ligne Z qui aboutit au point terminal de la frontière maritime Iran/Qatar. Bahreïn fait remarquer que l'accord Iran/Qatar n'oblige pas à adopter ce point terminal qui avantage sensiblement Qatar puisqu'une ligne d'équidistance qui attribuerait la colonne d'eau et le plateau continental à Bahreïn au sud de la ligne Iran/Qatar n'aurait aucune conséquence pour les Etats tiers.

29. Bahreïn soutient que cette ligne d'équidistance est équitable et n'a pas besoin d'être ajustée. Pour ses demandes d'ajustement en sa faveur dans le secteur nord, Qatar a renoncé, dans ses plaidoiries à ce qu'il tentait dans son argumentation écrite, qui consistait à utiliser une prétendue disproportion dans le secteur sud pour obtenir un ajustement en sa faveur dans le secteur nord. En revanche, il s'est efforcé de trouver à la place une nouvelle justification : les prétendus ratios entre les façades côtières dans le secteur nord. Or, la côte qui entre en ligne de compte pour

tracer la ligne de partage entre secteurs est contrôlée par un seul point de base de la mer territoriale sur chaque côte de sorte qu'il n'y a pas de façade côtière. C'est pourquoi la thèse de Qatar qui repose désormais sur une prétendue disparité entre des façades côtières est dénuée de tout fondement. De même, affirmer comme le fait Qatar que la partie nord de Bahreïn se trouverait située à 8 milles nautiques au nord de la partie la plus septentrionale de Qatar, ce qui créerait un résultat inéquitable, relève là encore de la fiction. Dans l'affaire dite des *Iles anglo-normandes* 052 *(Royaume-Uni/France)*, un demi-effet a été attribué aux Sorlingues[104] parce qu'elles sont situées à quelque 23 milles marins de la côte de Cornouailles et que la ligne qu'elles contrôlent est longue d'environ 200 milles marins. En la présente espèce, un prolongement de 8 milles marins au-delà d'une ligne qui n'a pas plus de 50 milles marins de longueur fera peu de différence. La ligne qui respecte les droits souverains de Bahreïn sur ses bancs d'huîtres perlières ne coupe pas l'accès à la mer de Qatar car, comme le montre la carte que vous avez sous les yeux, Qatar est géographiquement tourné vers l'est, ce qui correspond à l'orientation naturelle de sa masse continentale.

Les points de base

30. Pour ce qui est des points de base, Bahreïn rejette ceux qui ont été soumis par Qatar pour ce que Qatar appelle la côte bahreïnite, parce que tant du point de vue géographique que du point de vue juridique, ils sont situés sur les mauvaises formations maritimes et qu'ils utilisent de façon incorrecte les plus hautes mers astrologiques plutôt que les plus basses mers astrologiques. Quant à la description par Qatar de ses propres côtes, Bahreïn l'accepte, à l'exception évidemment de ce que Qatar dit de la région de Zubarrah et de la *totalité* des îles Hawar, que Bahreïn rejette, nous tenons à le redire. Comme nous l'avons déjà dit, tout Etat est habilité à décrire sa propre côte dans les limites fixées par le droit international.

31. Dans votre dossier, vous trouverez une liste de points de base approximatifs pour la totalité des côtes de Bahreïn. Comme la Cour le sait parfaitement, lorsqu'il s'agit de délimiter aujourd'hui les frontières maritimes, les programmes informatiques de géodésie moderne numérisent toute la ligne de base territoriale des deux côtes pour calculer une ligne médiane

[104] Recueil des sentences arbitrales, vol. XVIII, p. 190.

mathématiquement exacte alors que dans le passé on utilisait des points de base individuels. Bahreïn suppose que la Cour utilisera cette méthode ou une méthode voisine mais il a soumis les points de base approximatifs afin qu'en attendant de procéder à la délimitation, la Cour puisse mieux comprendre et reproduire les lignes utilisées dans son argumentation.

Conclusion

32. Monsieur le président, Madame et Messieurs de la Cour, ainsi s'achève l'exposé des demandes principales et subsidiaires de Bahreïn en ce qui concerne la délimitation maritime.
053 Comme il s'agit du dernier exposé de l'Etat de Bahreïn dans ce premier tour de plaidoiries, qu'il me soit permis, au nom de tous les conseils de Bahreïn, de remercier la Cour pour son écoute attentive et sa courtoisie. Cela fut pour moi un honneur que de prendre la parole devant vous.

Le PRESIDENT : Je vous remercie beaucoup, professeur Reisman. Je vais maintenant donner la parole au juge Vereschetin qui souhaite poser des questions.

M. VERESHCHETIN : Merci, Monsieur le président. Ma première question s'adresse à la fois à Qatar et à Bahreïn.

Avant 1971, a-t-il été conclu entre le Royaume-Uni, d'une part, et, de l'autre Qatar et Bahreïn respectivement des accords internationaux autres que ceux qui établissent pour eux une relation de protection ? Le Royaume-Uni a-t-il conclu avant 1971 des accords internationaux avec des Etats tiers au nom de Qatar ou de Bahreïn, ou bien pour le compte de Qatar ou de Bahreïn ? Dans l'affirmative, quel est aujourd'hui le statut de ces accords pour Qatar et pour Bahreïn ?

Ma deuxième question est adressée à Bahreïn et je serai également heureux d'entendre à ce sujet les observations de la Partie adverse.

Dans la note britannique de 1971 relative à l'abrogation du régime spécial de traité entre le Royaume-Uni et l'Etat de Bahreïn, Bahreïn est désigné par la formule : «Bahreïn et ses dépendances». Quelle était alors et quelle est aujourd'hui la dénomination officielle de l'Etat de Bahreïn ? Quel est le sens du terme «dépendances» ? Et quel était avant 1971 le statut juridique des «dépendances de Bahreïn» par rapport à Bahreïn proprement dit ?

Je vous remercie, Monsieur le président.

The PRESIDENT: I thank you. These questions are of course presented in writing to the Parties, and the Court would be happy if they could respond to them during the second round of oral arguments. This marks the end of today's sitting. I wish to thank each of the Parties for the statements submitted to us in the course of this first round of oral arguments. The Court will meet again as from Tuesday 20 June at 10.00 a.m. to hear the second round of oral arguments of the State of Qatar and of the State of Bahrain. As you know, the plan is that each of the Parties will have three sittings of three hours for the purpose. I should nevertheless like to remind you that,

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pursuant to Article 60, paragraph 1, of the Rules of Court, the oral presentations must be as succinct as possible. The purpose of this second round of oral arguments, I would add, is to enable each of the Parties to reply, with customary courtesy, to the arguments advanced orally by the other Party. The second round must not therefore constitute a repetition of past statements. And it goes without saying that the Parties are not obliged to avail themselves of the entire time allowed to them. Thank you. The Court is adjourned.

The Court rose at 12.50 p.m.