SEPARATE OPINION OF JUDGE ODA

Territorial issues — Maritime delimitation.

Zubarah — Inclusion of question of title to Zubarah in 1994 Application of Qatar — Acceptance by Bahrain of referral to the Court of this case — Unanimous decision of the Court that Qatar has sovereignty over Zubarah.

Hawar Islands — Relevance of oil to interest in Hawar Islands — Legal significance of British decision of 11 July 1939 — Agreement with decision of majority of the Court.

Janan — Question of inclusion of Janan in the Hawar Islands group — Changing treatment of the issue by the Parties — Disagreement with decision of the Court.

Qit'at Jaradah and Fasht ad Dibal — Connection with claim to maritime boundaries — Concurrence with decisions of Court concerning sovereignty — Disagreement with Court as to relevance of sovereignty to determination of maritime delimitation line.

Islets and low-tide elevations — Qit'at Jaradah — Fasht ad Dibal — Question of acquisition of sovereignty over a low-tide elevation through appropriation — Effect of such features on extent or boundary of territorial sea — 1982 United Nations Convention on the Law of the Sea (Art. 13) — 1958 Convention on the Territorial Sea and the Contiguous Zone (Art. 11) — Reflection of current customary law — 1930 Hague Conference for the Codification of International Law — Expansion of 3-mile rule to a 12-mile rule — Absence of relevant State practice — Impact of Court's decision on development of law of the sea.

Disagreement with decision of the Court concerning the "single maritime boundary" — Division of relevant area into northern and southern sectors — "Single" boundary as identical boundary for different régimes of the continental shelf and exclusive economic zone — Court's prior use of term.

Disagreement with decision of Court to determine the southern sector maritime boundary in terms of delimitation of territorial sea — Historical background of dispute — Relevance of oil resources — Continental shelf declarations — Question of whether Parties intended to introduce notion of delimitation of territorial sea.

Misapplication by Court of principles of territorial sea delimitation — Misapplication of equidistance/special circumstances rule to territorial sea delimitation — Applicability of "true median line" and exception for historic title or other special circumstances.

Examination of territorial sea delimitation under the 1982 United Nations Convention on the Law of the Sea (Art. 15) — Absence of scrutiny at UNCLOS III — Relation between breadth of territorial sea and treatment of low-tide elevations and islets — Misconstruance by Court of 1982 United Nations Convention on the Law of the Sea (Art. 15) as customary international law.

Disagreement with Court's delimitation of the northern sector according to rules pertaining to continental shelf boundaries — Disagreement with Court's location of delimitation line.

Inability of any court to determine a boundary with precision — Question whether certain maritime features constitute special circumstances is not a matter for legal determination — Inexact nature of equity — Importance of moderation and self-restraint in its application.

Doubts as to Court's methodology for selection of co-ordinates for delimitation line — Distinction between present case and prior delimitations by the Court — Court should confine itself to describing method by which line should be measured.

Maritime boundary should be delimited according to the régime of the continental shelf — Applicability of 1958 Convention on Continental Shelf (Art. 6) — Distinct from 1958 Convention on the Territorial Sea and the Contiguous Zone (Art. 12) — 1982 United Nations Convention on the Law of the Sea (Art. 83) — Relation to régime of the exclusive economic zone (1982 United Nations Convention on the Law of the Sea (Art. 74)).

Absence of identified criteria for equitable determination of continental shelf boundary — Appropriateness of macrogeographical approach — Applicability of façade method — North Sea Continental Shelf *cases (1969) —* Continental Shelf (Libyan Arab Jamahiriya/Malta) *(1985) —* Maritime Delimitation in the Area between Greenland and Jan Mayen *(1993).*

Suggested maritime boundaries employing the façade method and equidistance lines with certain adjustments made.

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I. Territorial Issues

1. Individual Issues

1. The present case involves two questions: the *territorial issues* and the *delimitation of the maritime areas* for exploitation of submarine oil reserves. However, except for the matter of the Zubarah region, the territorial issues are not distinctly separate from the maritime delimitation. The somewhat obscure and ambiguous character of the present case in this respect has, in my view, created complications for the Court in preparing its Judgment.

2. *(Zubarah)* The region of Zubarah had been disputed among the sheikhs of the region for over 100 years and became an object of strife between Qatar and Bahrain once they gained their independence. Yet the issue of Zubarah was not included in the Application filed by Qatar with the Registry of the Court in 1991. Zubarah was, however, included in Qatar's Application as formulated in 1994. Qatar's willingness in 1994 to include the question of title to Zubarah in the present case made it possible for Bahrain to accept referral to the Court of this case, involving title to the Hawar Islands (title to those islands was most crucial for Bahrain owing to its interest in oil exploitation). Thus the procedure followed by the Court in this case (originally brought unilaterally by Qatar) has, since 1995, been that which applies to cases submitted jointly by the parties. To repeat, the present case was made possible only by including the question of title to Zubarah. I am pleased that the Court in this Judgment has *unanimously* decided that Qatar has sovereignty over Zubarah (Judgment, para. 252 (1)).

3. *(The Hawar Islands)* The issue of the Hawar Islands arose only out of the discovery of potential oil and natural gas reserves in this particular area of the Gulf region. The discovery of oil off the western coast of Qatar in the early 1930s opened a new era of territorial acquisition by the sheikhs of the region, which was at that time under the administrative control of Great Britain. Beginning at that time, western oil companies came to the region seeking concessions from certain sheikhdoms: namely, Qatar and Bahrain. The Hawar Islands subsequently attracted the interest of oil companies and, in 1939, the British Government decided that those islands belonged to Bahrain, most probably in exchange for Bahrain's undertaking not to interfere in Zubarah. It appears to me that there are no considerations other than the 1939 decision that could play a role in determining sovereignty over the Hawar Islands. The Court is divided in this matter (Judgment, para. 252 (2) *(a)*), but I find no reason to disagree with the majority view of the Court.

4. *(Janan)* Janan, an island approximately 700 metres long and 175 metres wide (thus representing just over 0.1 square kilometres), was not an issue at the outset of this case. Janan was not referred to at all in Qatar's 1991 Application, in which the Hawar Islands were claimed to be under Qatar's sovereignty; in Qatar's Application as formulated in 1994 Janan was mentioned in the phrase "[t]he Hawar Islands, including the island of Janan" as a subject falling within the jurisdiction of the Court. Bahrain, on the other hand, referred throughout its submissions in the written and oral pleadings to the "Hawar Islands, including Janan and Hadd Janan", over which "Bahrain is sovereign". Qatar clarified its position in its final submissions and stated that "Bahrain has no sovereignty over the island of Janan". The Court has, in the present Judgment, decided in favour of Qatar having "sovereignty over Janan Island, including Hadd Janan" (Judgment, para. 252 (3)) for the reason that Janan was not specifically mentioned in the 1939 British decision as being part of the Hawar Islands group. A question should first have been raised as to whether or not Janan actually forms part of the Hawar Islands. Janan, taken alone, is insignificant. I voted against paragraph 252 (3) of the Court's decision, that Qatar has "sovereignty over Janan Island, including Hadd Janan", for the reasons elaborated by Judges Kooijmans and Fortier in their separate opinions.

5. *(Qit'at Jaradah and Fasht ad Dibal)* In the present case territorial sovereignty over Qit'at Jaradah and Fasht ad Dibal is not an issue distinctly separate from the issue of maritime delimitation. While these two geographical features are included in Qatar's 1991 Application and in Qatar's Application as formulated in 1994, as independent issues relating to Qatar's sovereign rights, Bahrain refers to its sovereignty over "the insular and other features [comprising the Bahraini archipelago]", including these two features, in regard only to the issue of its maritime boundary with Qatar; these two features are mentioned *only* in connection with Bahrain's claimed maritime boundary.

Prior to these proceedings, there was no dispute between Qatar and Bahrain regarding the title to these two features and certainly no diplomatic effort to negotiate the matter. The Court did not analyse these matters as territorial issues but dealt with them *solely* in connection with the maritime delimitation. Yet, the Court first decided, over the objections of five Members of the Court, on Bahrain's sovereignty over Qit'at Jaradah (Judgment, para. 252 (4)) and, second, decided unanimously that "the low-tide elevation of Fasht ad Dibal falls under the sovereignty of . . . Qatar" (Judgment, para. 252 (5)). I voted in favour on these two occasions only because, as I understand it, the Court wanted to draw a single maritime boundary — in this instance, the boundary of the "territorial sea" — to the east of Qit'at Jaradah and to the west of Fasht ad Dibal. Believing in a very different approach to the matter of the maritime delimitation, I find that the determination of the State having sov-

ereignty over the island of Qit'at Jaradah and the low-tide elevation of Fasht ad Dibal is of no significance in the drawing of a maritime delimitation line.

2. *Status of Islets and Low-Tide Elevations*

6. I would like to point out in this respect that the Court should have dealt more cautiously with the issue concerning islets and low-tide elevations. Qit'at Jaradah is a small island. "[A]t high tide its length and breadth are about 12 by 4 metres, whereas at low tide they are 600 and 75 metres [and] its altitude is approximately 0.4 metres" (Judgment, para. 197). In reaching the conclusion that Bahrain has sovereignty over the "island of Qit'at Jaradah", the Court states as follows:

> "taking into account the size of Qit'at Jaradah, the activities carried out by Bahrain on that island [such as the drilling of artesian wells and the construction of navigational aids] must be considered sufficient to support Bahrain's claim that it has sovereignty over it" (Judgment, para. 197).

As to Fasht ad Dibal, a low-tide elevation, the Court states:

> "The decisive question for the present case is whether a State can acquire sovereignty by appropriation over a low-tide elevation situated within the breadth of its territorial sea when that same low-tide elevation lies also within the breadth of the territorial sea of another State." (Judgment, para. 204.)

The Court is cautious in discussing the legal status of low-tide elevations and, in referring to other low-tide elevations such as Fasht al Azm, Fasht al Jarim, etc., is careful to state that low-tide elevations should not be assimilated with islands or other land territory (Judgment, para. 204).

7. I believe that the questions of whether sovereignty over an islet or a low-tide elevation may be acquired through appropriation by a State and how such features can affect the extent of the territorial sea or the boundary of the territorial sea remain open matters. The Court appears to take the position that the provision concerning low-tide elevations in the 1982 United Nations Convention on the Law of the Sea (Art. 13), which is identical to the relevant provision (Art. 11) of the 1958 Convention on the Territorial Sea and the Contiguous Zone, reflects customary international law as it stands today. I might add that already in 1930, at the Hague Conference for the Codification of International Law, a similar idea was proposed for "an elevation of the seabed which is only uncovered at low tide" (League of Nations, *Acts of the Conference for the Codification of International Law*, Vol. I, p. 131).

But it is important to note that at the time of the Hague Codification

Conference (1930) and of the adoption of the Convention on the Territorial Sea (1958) the 3-mile rule prevailed; that the 1982 United Nations Convention was not adopted until nearly 50 years and 25 years later, respectively, and that the 1982 United Nations Convention simply copied the relevant 1930 and 1958 texts on those issues without any in-depth discussion at the Third United Nations Conference on the Law of the Sea (UNCLOS III) on the effect which would follow from the broadening of the territorial sea from 3 miles to 12 miles.

In 1930 and 1958, low-tide elevations located in the rather narrow (3-mile) seabelt off the coast would not have had much effect on the extent or the boundary of the territorial sea, and these provisions might have reflected customary international law prevailing at that time. But how could they have the same minor effect if the territorial sea were to be widened to 12 miles? This matter has been given very little thought in academic and judicial circles. Since there is no practice in this area, the question is better left for future discussion with a view to formulating the governing law.

8. The provisions on islands in the 1982 United Nations Convention on the Law of the Sea come from the 1930 text of the Hague Codification Conference and the 1958 Convention on the Territorial Sea. But small islands and islets did not receive specific attention and the provision on islands in general would have applied. In UNCLOS III there were some efforts, although at an unofficial level, to define "island" more cautiously so that the title granted under the 1958 Convention would not extend to small islands or islets. These efforts did not produce any clear result. I wish to mention this, as I have some doubts as to whether Article 121 concerning the régime of island of the 1982 United Nations Convention which does not refer to islets or small island may as a whole be considered the customary international law in the age when the 12-mile territorial sea prevails.

9. My further concern is that modern technology might make it possible to develop small islets and low-tide elevations as bases for structures, such as recreational or industrial facilities. Although the 1982 United Nations Convention does contain some relevant provisions (e.g. Arts. 60 and 80), I consider that whether this type of construction would be *permitted* under international law and, if it were, what the *legal status* of such structures would be, are really matters to be reserved for future discussion. The statements in the present Judgment concerning Qit'at Jaradah, as an island, and Fasht ad Dibal and certain other low-tide elevations could have an enormous impact on the future development of the law of the sea. The Court, in my view, should have been more circumspect in handing down its decision in this respect.

II. Maritime Delimitation

1. Introduction

10. I voted in favour of paragraph 252 (6) of the Judgment for the reason that it may well be that Qatar and Bahrain, in the spirit of co-operation between two friendly, neighbouring countries, will be able to accept the demarcated line *decided* by the Court. I am, however, unable to agree with the Court's treatment as a whole of the issues relating to the maritime delimitation. I believe that the Court misconstrues the issues of the maritime boundary and is also mistaken in the manner in which it has applied what it considers to be the appropriate rules. I shall explain the reasons for my disagreement with the majority of my colleagues.

11. Proceeding from its understanding (which conflicts with my own understanding of the matter) that "[b]oth Parties . . . requested the Court to draw a *single* maritime boundary" (Judgment, para. 168; emphasis added), the Court states that:

> "It should be kept in mind, that the concept of '*single* maritime boundary' may encompass a number of functions. In the present case the *single* maritime boundary will be the result of the delimitation of various jurisdictions." (Judgment, para. 169; emphasis added.)

The Court also states that:

> "The Court observes that the concept of a *single* maritime boundary does not stem from multilateral treaty law but from State practice, and that it finds its explanation in the wish of States to establish one uninterrupted boundary line delimiting the various — partially coincident — zones of maritime jurisdiction appertaining to them." (Judgment, para. 173; emphasis added.)

The Court separates the whole of the relevant sea areas in dispute in the present case into two parts, the southern part (called the "southern sector" in the Judgment), where the distance between land areas (whether island or continental land mass) does not exceed 24 miles (namely, double the breadth of the 12-mile territorial sea), and the northern part (called the "northern sector" in the Judgment), in the middle of the Gulf, and applies a different régime to each part; admittedly, the Parties also used this division in their written and oral pleadings.

2. The Court's Misuse of the Concept of a "Single Maritime Boundary"

12. I note, to my surprise, that while the phrase "*single* maritime boundary" is not mentioned in Bahrain's submissions, it is repeatedly used in the Judgment. I also find it surprising that the Court proceeds to

pronounce a decision on the "*single* maritime boundary" despite the fact that both Qatar and Bahrain presented in their submissions individual claims to a boundary line.

If the word "single" is used in connection with the "maritime boundary" in the Court's jurisprudence, this is only because it was generally thought that the boundary to be drawn for the continental shelf and for the exclusive economic zone should be the same, at least within 200 miles of the coast. The idea of a "single" boundary (or identical boundary) for both the continental shelf and the exclusive economic zone was born in the course of the 1982 case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. The Judgment in that case was rendered by the Court on the eve of the adoption in December 1982 of the United Nations Convention on the Law of the Sea at UNCLOS III, in which the new concept of the exclusive economic zone was provided for for the first time (see para. 35 of this opinion).

The term "single" boundary has come to mean an *identical* boundary, being a single line for the two different régimes of the continental shelf and the exclusive economic zone, and was referred to in this sense in the 1984 case concerning the *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, the 1985 case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, and the 1993 case concerning the *Maritime Delimitation in the Area between Greenland and Jan Mayen*. The term "single" boundary does not mean anything else, despite the Court's use of this word in a different sense in the present Judgment.

3. The Court's Attempt to Employ the Principles and Rules Governing the Boundary of the Territorial Sea in the "Southern Sector" of the Region

13. With regard to the "southern sector", the Court applies the principles and rules governing the boundary of the territorial sea and states:

> "In the southern part of the delimitation area, which is situated where the coasts of the Parties are opposite to each other, the distance between these coasts is nowhere more than 24 nautical miles. The boundary the Court is expected to draw will, therefore, delimit exclusively their territorial seas and, consequently, an area over which they enjoy territorial sovereignty." (Judgment, para. 169.)

I cannot agree with the Court in its view that the maritime boundary in the southern part of this region should be the line of delimitation of the *territorial sea*. I think that the Court's misunderstanding of this dispute stems from the Court's failure to take account of the background of the case.

14. Let us look briefly at the origins of the present dispute. The exploitation of subsoil oil resources in the Gulf region attracted the interest of

western companies as early as the mid-1940s. While the 1945 United States Presidential Proclamation (the Truman Proclamation) with respect to the continental shelf did not necessarily attract much attention in the world at the time, the sheikhdoms in the Gulf region, following the advice of oil companies, successively made substantially identical continental-shelf declarations in the late 1940s: Bahrain on 5 June 1949; Qatar on 8 June 1949. In order to enable the apportionment among oil companies of vast areas of the Gulf which had been claimed by the States and the sheikhdoms, agreements to divide the continental shelf in the Gulf were concluded successively by *Bahrain* and Saudi Arabia (1958); Iran and Saudi Arabia (1968); Abu Dhabi and *Qatar* (1969); Iran and *Qatar* (1969); *Bahrain* and Iran (1971); Iran and Oman (1974) (the italics indicate the Parties to the present case). The only region in the Gulf where there was still no fixed delimitation by the middle of the 1970s was the sea area in dispute between Qatar and Bahrain in the present case.

15. The interest of the Gulf States in the waters of the Gulf was aimed exclusively at the exploitation of submarine oil. Although pearl diving had been carried out in the Gulf for several hundred years, it did not play a major role in post-war diplomacy of the Gulf region because of the decline of the industry. Furthermore, there was no dispute among the Gulf States concerning the territorial sea after they gained independence in the early 1970s. In fact the delimitation of the sea areas for oil exploitation was the only point of disagreement between Qatar and Bahrain with regard to the maritime issues over the last few decades.

A review of the history of oil development in the Gulf and the successive bilateral agreements concluded among the Gulf States over the last several decades leads me to submit that Qatar and Bahrain were contemplating the delimitation between themselves of the sea areas for oil exploitation. It is patently clear that the two States *never* thought that they would be engaged in a dispute concerning the delimitation of their respective *territorial seas*. That is, I believe, the reason why the Parties employ the expression "the maritime boundary" (Bahrain) or "single maritime boundary" (Qatar), but never the boundary of the *territorial sea*, in their respective submissions. To repeat, both Qatar and Bahrain talk about the "maritime boundary" or "single maritime boundary" because their concern does not lie with the delimitation of the *territorial sea*. The Court is *not* correct in attempting to apply the rules and principles governing the boundary of the *territorial sea* in the southern part of the region at issue.

16. Even if, for the sake of argument, the "southern sector" is to be delimited according to the rules and principles governing the boundary of the *territorial sea*, as the Court suggests, it appears to me that the Court

is also mistaken in its interpretation of those rules and principles. The Court recommends that the boundary of the territorial sea (in the southern sector) should be drawn in accordance with Article 15 of the 1982 United Nations Convention on the Law of the Sea (which is quoted in full in the Judgment at paragraph 175 and is virtually identical to Article 12, paragraph 1, of the 1958 Convention on the Territorial Sea and the Contiguous Zone), which is "to be regarded as having a customary character" (Judgment, para. 176).

17. The Court states that Article 15 of the 1982 United Nations Convention "is often referred to as the 'equidistance/special circumstances' rule" (Judgment, para. 176), and also that

> "the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated" (Judgment, para. 231).

The fact of the matter is that the equidistance/special circumstances rule, so named by certain scholars after the 1958 Convention on the Continental Shelf, has been referred to mainly in connection with the delimitation of the continental shelf but, as far as I am aware, *not* in connection with the delimitation of the territorial sea. I wish to make this point because the Court, in this connection as well, appears to me to have confused the rules applicable to the boundary of the territorial sea with those applicable to the boundary of the continental shelf.

18. For the territorial sea, the *principle* is that the "median line" is to be used, although there may be exceptions to this principle where necessary because of historic title *or* other special circumstances. This rule is manifestly *not* the same as the one applicable to the boundary of the continental shelf, as will be explained below (see paras. 31 to 34 of this opinion).

The Court is not correct in stating, in its interpretation of Article 15 of the 1982 United Nations Convention, that "[t]he most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances" (Judgment, para. 176). It may be pertinent in this respect to note that the meaning of the phrase "special circumstances" in the case of the territorial sea was explained over 40 years ago at the 1958 United Nations Conference on the Law of the Sea by the United Kingdom's delegate to the Conference (Sir Gerald Fitzmaurice), who proposed the wording:

> "[S]pecial circumstances did exist which, for reasons of equity or because of the configuration of a particular coast, might make it dif-

> ficult to accept the *true median line* as the *actual line* of delimitation between two territorial seas. There might be a navigation channel, for instance, which was not in the middle of a strait but to one side of it, or went from one side to the other; or the situation might be complicated by small islands. [The] delegation therefore felt that it would be too rigid to specify that the median line must be adhered to regardless of special circumstances." (*United Nations Conference on the Law of the Sea, Official Records*, Vol. III, p. 189; emphasis added.)

The "true median line" is a *general rule*; this rule does not apply when *historic title or other special circumstances* so necessitate. And, in my view, this rule may have been realistic in 1958 when the "true median line" could, in principle, be objectively drawn, within the then narrowly defined territorial seas, by the application of mathematical or geometrical means.

19. After having explained my difference of opinion with the Court as to the interpretation of the rules and principles applicable to the boundary of the territorial sea, as set out in Article 15 of the 1982 United Nations Convention, I find it pertinent to examine how Article 15 and other provisions relevant to the breadth or boundary of the territorial sea (Part II, Sec. II) are formulated in that Convention. Most of the provisions concerning the "limits of the territorial sea" are identical to those of the 1958 Convention on the Territorial Sea (Part I, Sec. II). The right to establish the breadth of the territorial sea up to a limit of 12 miles (Part II, Sec. II, Art. 3) was practically the only change and was introduced at UNCLOS III as a new concept of the 12-mile territorial sea in the section on the "limits of the territorial sea" in the 1982 United Nations Convention.

In discussing the breadth of the territorial sea, I would like here to refer to the particular situation that prevailed in the late 1960s and the early 1970s with regard to the territorial sea in general. The trend towards expansion of the territorial sea was gathering momentum and legal recognition, and the 12-mile territorial sea was about to be widely accepted. In fact, UNCLOS III, which commenced in 1973 for the purpose of reviewing the régime established under the four 1958 Geneva Conventions on the Law of the Sea, dealt extensively with the subjects that were then considered to be new — such as the redefined concept of the continental shelf, the newly emerging régime of the exclusive economic zone, the new concept of the free passage of warships and military aircraft through narrow sea areas, the new régimes of the deep ocean floor and high seas fisheries, etc. On the other hand, the points

which were considered to have already been established under the Geneva régime in 1958 were rarely discussed at working level during UNCLOS III and were not put to a vote at the formal meetings. The provisions of the 1958 Convention on the Territorial Sea relating to the "limits of the territorial sea" (apart from the new provision of the 12-mile territorial sea) were simply incorporated in the 1982 United Nations Convention without receiving intensive consideration by the delegates of the States participating in UNCLOS III. The delegates at UNCLOS III were perhaps simply not aware of the fact that the introduction of a wider breadth of 12 miles for the territorial sea would drastically affect the issues concerning the maritime boundary of the territorial sea.

20. The general rules established in the provisions in the 1958 Convention on "limits of the territorial sea" (Part I, Sect. II) remain in the 1982 United Nations Convention (Part II, Sec. II). I have in paragraph 6 of this opinion expressed my concern regarding islets and low-tide elevations in connection with the territorial issues but I must repeat those concerns here in connection with the maritime delimitation. This is necessary because in the present case the islets and low-tide elevations are really the most crucial points, leaving aside the matter of sovereignty over the Hawar Islands, in determining the maritime boundary.

The extension of the breadth of the territorial sea to 12 miles would have resulted in a radical change in the context of the concepts of low-tide elevation, island and islet, straight baselines, etc., which were introduced in 1958 to reflect customary international law at that time. It is extremely important to note that the provisions of the 1958 Convention relating to the territorial sea, its boundary and other elements which might affect the boundary were, as a whole, designed to meet the situation under the 3-mile rule and were adopted at a time when the 3-mile limit for the territorial sea prevailed. By the 1970s, only two decades after the 1958 Conference, there was no longer any doubt that a 12-mile limit for the territorial sea would eventually become the rule.

Although this change in the limit would have greatly affected the new régime of the territorial sea, the 1982 United Nations Convention was adopted at UNCLOS III without any careful consideration being given to this change of situation, namely from the generally accepted 3-mile limit to the suggested 12-mile limit of the territorial sea. I greatly doubt whether certain provisions relating to "limits of the territorial sea" adopted in 1958 and copied in 1982 (provisions on which the Court relies in the present Judgment) can today be considered to be customary international law when the overall conditions (those pertaining to the terri-

torial sea in particular) have changed dramatically over the intervening decades.

21. I fear that the Court's statement in the present Judgment concerning the boundary of the territorial sea to be applied in the southern part of the sea areas in question (where there are a number of scattered low-tide elevations and islets in extremely shallow sea waters) will, in future, be taken as jurisprudence relating to maritime delimitation. I feel compelled to repeat and emphasize that the manner in which the Court has taken the rules and principles concerning the boundary of the territorial sea which might have been in effect when the 3-mile limit prevailed and applied them to the boundary of the 12-mile sea-belt (territorial sea) in the southern part of the area in question is quite inappropriate.

4. The Court's Drawing of the Continental Shelf Boundary in the "Northern Sector" of the Region

22. Turning to the northern part of the region (called the "northern sector" in the Judgment), the Court states:

> "More to the north . . . where the coasts of the two States are no longer opposite to each other but are rather comparable to adjacent coasts, the delimitation to be carried out will be one between the continental shelf and exclusive economic zone belonging to each of the Parties, areas in which States have only sovereign rights and functional jurisdiction." (Judgment, para. 170.)

In respect of the northern sector, the Court also states that it "will . . . deal with the drawing of the single maritime boundary [in the northern sector] of the delimitation area which covers both the continental shelf and the exclusive economic zone" (Judgment, para. 224). (It should be noted that the term "exclusive economic zone" is not found in the submissions of the Parties.)

23. In order to draw the boundary of the continental shelf (and the exclusive economic zone) the Court states that:

> "For the delimitation of the maritime zones beyond the 12-mile zone it will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line." (Judgment, para. 230.)

The Court adds:

> "The Court . . . notes that the equidistance/special circumstances rule, which is applicable in particular to the delimitation of the territorial sea, and the equitable principles/relevant circumstances rule, as it has been developed since 1958 in case-law and State practice

> with regard to the delimitation of the continental shelf and the exclusive economic zone, are closely interrelated." (Judgment, para. 231.)

As stated above (see para. 17 of this opinion), the Court's understanding of the concept of the equidistance/special circumstances rule is not entirely correct.

The Court follows with the statement "[t]he Court will now examine whether there are circumstances which might make it necessary to adjust the equidistance line in order to achieve an equitable result" (Judgment, para. 232).

24. In connection with the northern part of the region, the Court concludes:

> "The Court . . . decides that the single maritime boundary in this sector shall be formed in the first place by a line which, from a *point* situated to the north-west of Fasht ad Dibal, shall meet the *equidistance line as adjusted* to take account of the absence of effect given to Fasht al Jarim . . . The boundary shall then follow this adjusted equidistance line until it meets the delimitation line between the respective maritime zones of Iran on the one hand and of Bahrain and Qatar on the other." (Judgment, para. 249; emphasis added.)

The Judgment fails to explain how this point situated to the north-west of Fasht ad Dibal was selected and I cannot visualize "a *line* which, from a *point* [which is not specified] shall meet the *equidistance line as adjusted* to take account of the absence of effect given to Fasht al Jarim" (Judgment, para. 249; emphasis added). I assume that the Court intended first to draw a provisional line equidistant from whatever baselines the Court found appropriate (and the Court does not identify those baselines) and then found no special circumstances which could affect that "provisionally drawn" equidistance line. In the Court's view, Fasht al Jarim is not a "special circumstance" calling for a modification of the equidistance line as provisionally drawn in order to achieve an equitable result. It appears to me that the Court, finding no circumstances necessitating the adjustment of the equidistance line, is suggesting that equidistance line as the maritime boundary in the northern sector. I fail to understand the Court's attempt to demarcate a boundary in the area near Fasht ad Dibal, Qit'at Jaradah and Qit'at ash Shajarah. The Court does not provide any precise construction lines showing how it decided on the final line of demarcation in that particular area.

5. *The Court's Handling of the Drawing of the Maritime Boundary*

25. Qatar and Bahrain have each requested the Court in their submissions to accept their respective claims to maritime boundary. Those claims are, of course, quite different. The Court, in dismissing the individual claims of the Parties, should have indicated the guidelines for

drawing the maritime boundary in the disputed sea areas. The Court, however, has decided to demarcate a boundary in the southern part of the region in accordance with the rules of the boundary of the territorial sea and in the northern part in accordance with the rules pertaining to the boundary of the continental shelf. I would like to point out two things in this respect.

First, the maritime boundary — either of the territorial sea or of the continental shelf — cannot be determined with geometrical or mathematical precision. (The only exception is where the median line for the territorial sea lies within a very narrow band (3 miles); see para. 18 of this opinion.) A boundary may be drawn within the framework of international law but taking into account the variety of special or relevant circumstances and with due regard for equitable considerations. The question whether certain marine features constitute special circumstances is not a matter for legal determination.

26. I recall that in my separate opinion attached to the Judgment in the 1993 case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen* I suggested that there is no such thing as a single equitable line of delimitation. I quote just a few lines from my separate opinion in that case:

> "In reality the delimitation of a line . . . may vary in an infinite number of ways within a certain range, and the choosing of one of these variations after consideration of 'special circumstances', 'relevant circumstances' or 'factors to be taken into account' etc., does not belong to the function of law. No line thus drawn can be illegal or contrary to rules of international law." (*I.C.J. Reports 1993*, p. 111, para. 76.)

Equity exists in infinite variety and the determination of what is "equitable" depends on who is making that determination in a particular case. There is no definite criterion to apply. Seen from a legal point of view, there is not in the present case one definite, determinative line of delimitation that should be adopted.

27. I am not suggesting that the Court should leave aside the question of the criterion to apply but simply that the Court should not, in its Judgment, go beyond stating what elements should be taken into account in order to achieve an equitable solution and how those elements should be assessed. The decisive factor is not the legal principles (which are defined with unquestionable precision); the important point here is the Court's understanding of what is most suitable to the consideration of equity and how that understanding has led it to make a choice from among an infinite number of possibilities. In my view, the Court should always exercise moderation and self-restraint in its decisions on maritime boundaries.

The line adopted by the Court cannot therefore be defined, with legal precision, by reference to any legal standard. The reason for my concern

is that, in spite of the fact that choosing a line of delimitation in the case is a relative matter, the Court, in paragraph 252 (6) of the Judgment, states that it "[d]ecides that the single maritime boundary . . . shall be drawn [in the manner described in the Judgment]". We must remain aware that the line drawn by the Court is no more than the one considered by the Court to be the most appropriate in order to achieve an equitable solution to the present dispute concerning the maritime boundary. I reiterate, the line described by the Court is not one decided through the application of legal objectivity and precision.

28. *Second*, I entertain some doubt regarding the fact that the Court lists 42 co-ordinates (on which the line given in the final map is based) demarcating the course of the boundary line (see Judgment, para. 250). No explanation is given in the Judgment as to how these co-ordinates were selected, although it appears to me that they were determined on the basis of the line, the construction of which was determined by the general reasoning of the Court, as drawn on sketch-maps 3, 4, 5 and 6 attached to the Judgment. The Court seems to have commenced its demarcation of the boundary line without first producing a list of geographically or geometrically precise baselines or basepoints from which it measured the equidistance line, and this is particularly apparent upon inspection of certain parts of the area (e.g., the area near Qit'at ash Shajarah, the area between Qit'at Jaradah and Fasht ad Dibal, and others). I fail to understand how it is possible for the reasoning given by the Court in its Judgment (which is not set out with mathematical precision) to be translated into the *precise* line determined by reference to the indicated co-ordinates. I cannot support the Court's decision in this case to produce a list of co-ordinates for drawing a line of demarcation. If the Court wishes to draw a maritime boundary by referring to a sketch-map of the area in question, it should first formulate its view as to how the general rules and principles governing the drawing of maritime boundaries should be applied (which the Court has done in the present case) and then reflect that view on the sketch-map, without providing the detail of a list of co-ordinates.

It can be argued that there are precedents for the indication of co-ordinates in such a case as this. The Judgments in the 1985 *Libyan Arab Jamahiriya/Malta* case and the 1993 *Jan Mayen* case also contained lists of co-ordinates to be used in determining lines of delimitation. However, the factual situations in those cases were easily distinguishable from that in the present case. In both of those cases there was no doubt concerning the baselines to be taken as the basis for drawing a boundary, given the simple topography of the relevant sea areas (in the *Libyan Arab Jamahiriya/Malta* case, the coast of the island of Malta and the coast of Libya; and in the *Jan Mayen* case, the coast of the island of Jan Mayen and the coast of Greenland).

In the present case, the situation is much more complicated and the baselines are, from a mathematical or geometric point of view, extremely difficult to identify and, in fact, have not been specified. This exercise is

beyond the competence of the Court, and I would suggest that the Court should have confined itself to describing, in general terms, the method by which the boundary line should be measured and should have ordered that a panel of experts in the fields of geography and hydrography be appointed, either by the Court or jointly by the Parties, to determine the mathematical or geometric means by which the precise boundary line should be drawn, instead of itself proceeding to the demarcation of a boundary line.

III. My Views on the Maritime Boundary in the Present Case

1. Application of the Laws and Rules concerning the Boundary of the Continental Shelf in the Present Case

29. After having criticized the Court's position on the "question of the maritime delimitation", I would like to state my view on how this question should have been dealt with in the present case. I see the present case as one concerning a delimitation line dividing the sea areas in the Gulf — including the sea-bed and subsoil — to be reserved for the exploitation of oil in the sea-bed. The areas in question are those which both Parties claimed in their respective continental shelf declarations in 1949. I consider that both Parties, when referring to the "maritime boundary" (but not to the boundary of the territorial sea), have in fact suggested from the outset that the law governing the continental shelf should apply in the relevant sea areas in the present case.

30. The régime of the continental shelf should certainly have applied to the area beyond the territorial sea of the coastal State and the 1949 continental shelf declarations by Qatar and Bahrain were drafted to apply to the area lying more than 3 miles from the coast, which was widely — or even universally — considered to be the breadth of the territorial sea. The two States have never thought that the sea areas between them would be delimited as their respective territorial seas.

2. Laws and Rules for the Boundary of the Continental Shelf

31. It is pertinent in this respect to examine the development over recent decades of the laws governing the delimitation of the continental shelf. The concept of the continental shelf, first enunciated in 1945 in the United States Presidential Proclamation on the continental shelf (known as the Truman Proclamation), came into being in international law in 1958 when the Geneva Convention on the Continental Shelf was adopted at the First United Nations Conference on the Law of the Sea (UNCLOS I). The delimitation of the continental shelf between neighbouring States was from the outset an important issue. The 1945 Truman Proclamation states that:

> "In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined *by the United States and the State concerned in accordance with equitable principles.*" (Emphasis added.)

The delimitation of the continental shelf between neighbouring States was so complex that it was extremely difficult to formulate the general rules of the applicable law on this issue. Relying on the draft articles on the law of the sea prepared in 1956 by the International Law Commission, UNCLOS I succeeded in drafting and adopting a specific provision on delimitation of the continental shelf, Article 6 of the 1958 Convention on the Continental Shelf (which is not quoted in the Judgment):

> "1. Where the same continental shelf is adjacent to the territories of two or more States whose *coasts are opposite each other*, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the *median line*, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
>
> 2. Where the same continental shelf is adjacent to the territories of *two adjacent States*, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the *principle of equidistance* from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured." (Convention on the Continental Shelf, Art. 6; emphasis added.)

32. Thus, the 1958 Convention called for a solution by agreement between the States concerned and, failing such an agreement, for application of the equidistance or median-line method (depending on whether the States were adjacent or opposite to each other). This is what international lawyers at that time called the "equidistance/special circumstances rule", despite the Court's statement in paragraph 176 of the present Judgment to the contrary (see para. 17 of this opinion).

I wish to reiterate that these provisions in Article 6 of the 1958 Convention on the Continental Shelf are not the same as the provisions relating to the boundary of the territorial sea in Article 12 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. In my view, the difference in the applicable provisions is due to the differences in size and nature of the areas concerned. I am afraid that the Court is manifestly unaware of these differences (see para. 17 of this opinion).

33. The boundary of the continental shelf was one of the most controversial issues dealt with at UNCLOS III (1973-1982). The discussion at the Conference started with an examination of the text of Article 6 of the 1958 Convention on the Continental Shelf but the Conference was divided into two schools of thought: one favouring the "equidistance" rule and the other favouring the "special circumstances" rule. After preparation of several informal negotiating texts (the 1975 Informal Single Negotiating Text (ISNT), the 1976 Revised Single Negotiating Text (RSNT), and the 1977 Informal Composite Negotiating Text (ICNT) which, as a procedural device, would only provide a basis for negotiation) the Chairman of a negotiating group suggested in 1980 a compromise text (ICNT/Rev.2), which reads:

> "The delimitation of the . . . continental shelf between States with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median line or equidistance line, where appropriate, and taking account of all circumstances prevailing in the areas concerned." (UNCLOS III, *Official Records*, Vol. XIII, pp. 77 f.)

This text remained unchanged in the draft Convention (ICNT/Rev.3) until August 1981 when the President of the Conference introduced a text which, having the general support of the two opposing schools, became Article 83 of the 1982 United Nations Convention (which is not quoted in the Judgment):

> "1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
>
> 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV."

(For the drafting history of the texts quoted above, see my dissenting opinion in the 1985 continental shelf case between the Libyan Arab Jamahiriya and Malta (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 148).)

34. The text of Article 83 of the 1982 United Nations Convention on the Law of the Sea made no reference, in connection with the boundary of the continental shelf, to the "equidistance" (or median-line) or "special circumstances" method (found in Article 6 of the 1958 Convention on the Continental Shelf), and thus the "equidistance/special circumstances" rule of the 1958 Convention on the Continental Shelf does not appear in the text of the 1982 United Nations Convention. It must be kept in mind,

however, that the "equidistance/special circumstance" rule had throughout UNCLOS III been considered as a major premise of the discussion. This demonstrates the difficulties faced in formulating general rules for the delimitation of the continental shelf.

35. I would like to refer at this juncture to the concept of the exclusive economic zone which appeared during UNCLOS III. The concept emerged early in the 1970s as acceptance of a 200-mile zone became inevitable in the light of increasing demand, particularly by developing nations, for wider coastal areas for exclusive fisheries; the concept was established in the 1982 United Nations Convention on the Law of the Sea (Chap. V). For delimitation of the exclusive economic zone, UNCLOS III simply attempted to make use of the concept already applicable to the delimitation of the continental shelf. Thus, we find Article 74 concerning the boundary of the exclusive economic zone, which is identical in substance to Article 83 on the boundary of the continental shelf.

These two areas, the continental shelf and the exclusive economic zone, and their respective boundaries could theoretically be different. However, considering on the one hand that the continental shelf, first defined by reference to depth in the 1958 Convention on the Continental Shelf, was redefined in the 1982 United Nations Convention in terms of distance and on the other hand that the exclusive economic zone, having started out as a fishery zone, turned into a zone conferring broader jurisdiction upon the coastal State to control the exploitation of sea-bed resources, these two areas could not as a general rule be different, at least within 200 miles of the coast. Although the 1982 United Nations Convention treats the two concepts of the exclusive economic zone and the continental shelf differently, and in separate parts of the Convention, namely, in its Parts V and VI, matters relating to the delimitation of the respective areas of the continental shelf and the exclusive economic zone were dealt with together at UNCLOS III and resulted in virtually identical provisions in the Convention.

I have already noted above that the term "single" boundary has through the Court's jurisprudence come to mean an *identical* boundary, being a single line for the two different régimes of the continental shelf and the exclusive economic zone. I reiterate: the term "single" boundary does not mean otherwise, despite the Court's use of this word in a different sense in the present Judgment (see para. 12 of this opinion).

36. In the light of the development of the provisions concerning the delimitation of the continental shelf, it is difficult to speak of *agreed* or

established rules concerning the drawing of the boundary of the continental shelf. It was, however, widely agreed that the delimitation of the maritime resources areas (continental shelf and exclusive economic zone) must be determined by agreement between the neighbouring States concerned on the basis of international law and that the consideration of equity must always predominate. This was already clear at the time of the 1945 Truman Proclamation, which states that "the boundary shall be determined by the United States and the State concerned in accordance with equitable principles". If agreement could not be reached between the States concerned, a solution was to be sought from a competent third party. This principle appears in the 1982 United Nations Convention, which provides that "[i]f no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV" (1982 United Nations Convention, Art. 74, para. 2, and Art. 83, para. 2).

However all efforts to identify objective, decisive criteria of equity or the equitable principle which would lead to an equitable solution for the delimitation of the continental shelf have been unsuccessful.

37. In diplomatic negotiations (which are at any rate affected by the diplomatic skills of the parties) each party concerned may cite various political, social and economic factors in support of the boundary line most favourable to it: namely, the extent of the territories, the population, the distribution of natural resources, the degree of economic and industrial development, etc., of the respective parties. However, consideration of these factors cannot produce a solution unless the parties agree on them and the parties may well disagree on the way in which these elements should be taken into account. Furthermore, a third party may not be competent to foresee or initiate further development of universal policies of social justice extending beyond existing principles and rules of international law.

The geography of the areas concerned has played a very important role in the drawing of maritime boundaries ever since the International Law Commission first dealt with the law of the sea. Rarely has any other factor been considered to affect this determination and consensus has been reached under Article 6 of the 1958 Convention on the Continental Shelf that the concept of geographical equity lies at the heart of the criterion of equitable considerations.

38. To return to the year 1958, the "equidistance/special circumstances" formula, adopted at UNCLOS I in 1958, could have been interpreted to permit either of two methods: (i) the line of equidistance should be measured from the coast of the continent or landmass, but taking into consideration any existing islands and certain other geographical features as special circumstances which might modify that line, or (ii) the line of equidistance should be measured taking account of all coasts (those of

islands as well as those of the mainland) but ignoring some tiny islands and certain other geographical features which could otherwise be deemed to constitute special circumstances. In point of fact, these two approaches could lead to the same conclusion. It would have been difficult in the case of vast areas (in contrast to the case of the rather narrowly defined three-mile areas generally agreed in 1958 to constitute the territorial sea) to fix the equidistance line definitively and unequivocally.

Would it not be correct to interpret the equidistance/special circumstances rule to mean that the line of equidistance, from the outset, should be drawn taking into consideration the topography of the region, which is vast, as a whole. This is why I have advocated the macrogeographical approach.

39. Appearing as counsel for the Federal Republic of Germany in the *North Sea Continental Shelf* cases, I stated on 25 October 1968 that:

> "I propose that the lines of demarcation be drawn from a basis represented by the coastal 'façade', if I may so call it.
>
> . . . .
>
> I respectfully submit that we have in the *façade method* a theory which becomes more useful in the particular circumstances of greater distance from the shore. In contrast to the equidistance method whose value, given an irregular coastline, may decline with the distance, the *façade theory* provides us with a method which can equitably apportion far-ranging offshore areas." (Argument of Professor Oda, *I.C.J. Pleadings, North Sea Continental Shelf*, Vol. II, pp. 62, 63; emphasis added.)

In reply to a question put by Judge Sir Gerald Fitzmaurice immediately after this statement, I stated on 5 November 1968:

> "The coastal *façade*, as I envisage it, represents a view taken of a State's coastal front with the intent of placing it in the proposed perspective in relation to the coastal front of its neighbouring States. Such a perspective would lead to a division granting each State a just and equitable share. In order to visualize such a *façade*, one should be guided by the general direction of the coast; in some particular cases, the most useful course would be to take the whole coastline of a country as constituting an entity.
>
> . . . .
>
> This *façcade* line is a *macrogeographical* viewpoint which is a further abstraction from the microgeographical viewpoint. The latter consists in the drawing of the linear coastline as, for example, is

envisaged in the concept of the straight baseline, whereas the *façade theory* involves a further abstraction from the actual coastal configuration and, therefore, should be characterized as a *macrogeographical* viewpoint." (Reply of Professor Oda, *I.C.J. Pleadings, North Sea Continental Shelf*, Vol. II, pp. 193, 195; emphasis added.)

From my present viewpoint, I am not quite satisfied with my statement in 1968. However, I suggested that the "equidistance/special circumstances" rule (which existed under the 1958 Convention on the Continental Shelf) should be seen in the light of the geographical circumstances viewed from the macrogeographical perspective. In the present case, it would in my view have been most important to examine the topography of this region from the *macrogeographical perspective* and then draw the equidistance line, which could then have been adjusted to take account of special circumstances.

3. Drawing of the Maritime Boundary in the Present Case

40. Let me turn to the drawing of the maritime boundary in the present case. Attached hereto are two sketch-maps prepared for purposes of illustration (p. 144 below).

(1) Viewing the whole region in the present case from the macrogeographical aspect, I see the following coastal façades or coastal fronts.
  (i) Qatar and Bahrain are opposite States whose coasts face each other in the Gulf of Bahrain (see line a-b, connecting points A, B and C, and line c-d, connecting points D, E and F, in sketch-map I);
  (ii) Iran lies to the north-east of the Gulf, and Saudi Arabia, Bahrain and Qatar to the south-west. In the centre of the Gulf, these latter three States become, in their relationship with each other, adjacent States. Bahrain occupies one part of the coastal façade between Saudi Arabia and Qatar, facing Iran on the north-eastern side of the Gulf (see line e, connecting points D and G, in sketch-map I).

(2) I would suggest the equidistance line (line f) as the maritime boundary between the opposite façades in the Gulf of Bahrain (line a-b and line c-d), and, as the maritime boundary between adjacent States, an equidistance line (line g) perpendicular to the coastal façade of these three States (line e) at point H where line f meets line e, as determined in accordance with the established geometrical method described in Shalowitz's book *Shore and Sea Boundaries*, Volume I (1962).

(3) The northern segment of the maritime boundary line (line g) approaches the undefined area located between the easternmost point of the agreed Iran/Saudi Arabia line and the westernmost point of

the agreed Iran/Qatar line. The southern segment of the maritime boundary line (line f) approaches the undefined area beyond the southeastern end point of the agreed Bahrain/Saudi Arabia boundary line.

(4) This maritime boundary must be adjusted to take account of the Hawar Islands, which are under the sovereignty of Bahrain but located on Qatar's side of the maritime boundary line. The Hawar Islands should not be denied their traditional territorial sea of three miles which, however, should not extend beyond the median line between the Qatar peninsula and the Hawar Islands. Thus the maritime boundary constitutes a kind of enclave as indicated in sketch-map I.

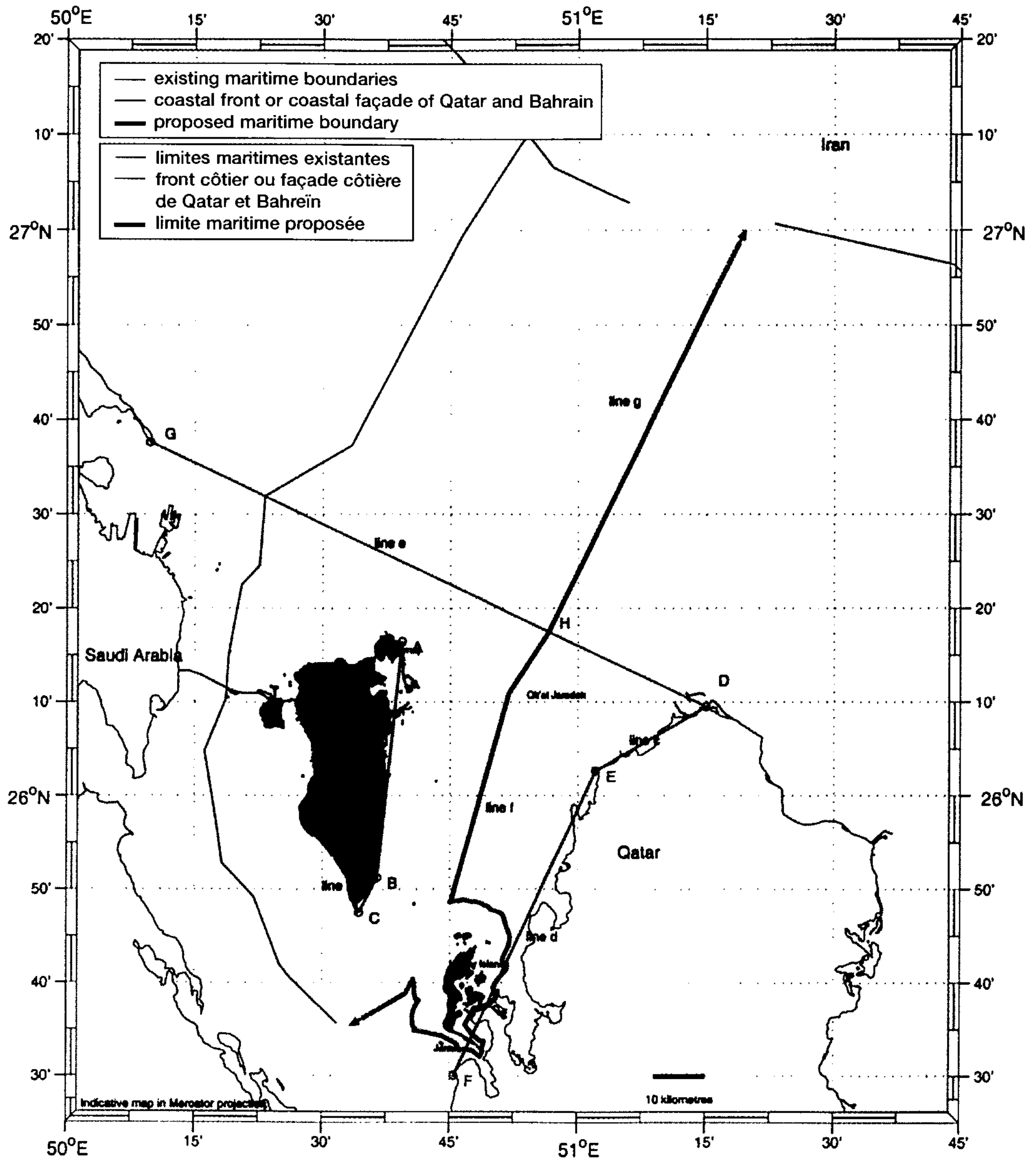
(5) I do not see any other circumstances which might affect the maritime boundary as thus drawn. Qit'at Jaradah, though under the sovereignty of Bahrain, should not, because of its physical nature, have any influence on the boundary (see my argument on islets and low-tide elevations in paragraphs 6 to 8 and 20 to 21 of this opinion).

41. In the sketch-maps I and II attached to this opinion, I present quite independently of the map the Court produces, a boundary line which in my view is the most appropriate in meeting the requirements of equity. As I stated earlier, there is not necessarily a sole and definitive boundary line that alone meets the requirements of an equitable solution and the consideration of equity does not necessarily lead to the determination of one particular or definitive line. My suggestions concerning the coastal façade or coastal front method and the line so produced may, of course, be subject to criticism. The Court's task is to indicate one line from among the many lines that may reasonably be proposed.

Although I consider that my proposal for a boundary line, as indicated above, would have provided a possible solution, I have voted in favour of paragraph (6) of the operative part of the Judgment, for the reasons given in paragraph 10 above, for the maintenance of the friendly relations between the two States. The two sketch-maps are attached hereto solely in the hope that my view of equity in the drawing of a boundary of the continental shelf or the sea areas for the exploitation of sea-bed resources may in future assist governments in their negotiations with neighbouring States.

(Signed) Shigeru ODA.

Map I. Maritime Boundary between Qatar and Bahrain Proposed by Judge Oda
Carte n° I. Délimitation maritime entre Qatar et Bahreïn proposée par M. Oda



Map II. Maritime Boundary between Qatar and Bahrain Proposed by Judge Oda
Carte n° II. Délimitation maritime entre Qatar et Bahreïn proposée par M. Oda