

## BOUNDARY DISPUTE BETWEEN DUBAI AND SHARJAH (Emirate of Dubai v Emirate of Sharjah) Award of 19 October 1981

1. *Jurisdiction:* *Ad hoc* international arbitral tribunal
2. *Arbitrators:* P. Cahier (President); J.L. Simpson; K.R. Simmonds
3. *English language text of the Award:* *ILR*, Vol. 91 pp. 543 *et seq.*

### (I) GEOGRAPHICAL CONTEXT

1. The area to be delimited lay off the adjacent coasts of the Emirates of Dubai and Sharjah,<sup>1</sup> in the far South of the Persian Gulf, North of the Strait of Hormuz. The coastline of the two emirates, running north-east, was remarkably straight. Their joint coastline faced the Iranian coast, the nearest point of which was approximately 140 kilometres away. The area to be delimited was complicated only by the presence of Abu Musa island, 35 miles from the coast of Sharjah and 43 miles from the Iranian coast.<sup>2</sup> The maritime zone generated by the island would interfere with the drawing of an equidistance line between the two Emirates.

2. The geographical context is illustrated by Map No. 4.

### (II) TASK OF THE TRIBUNAL

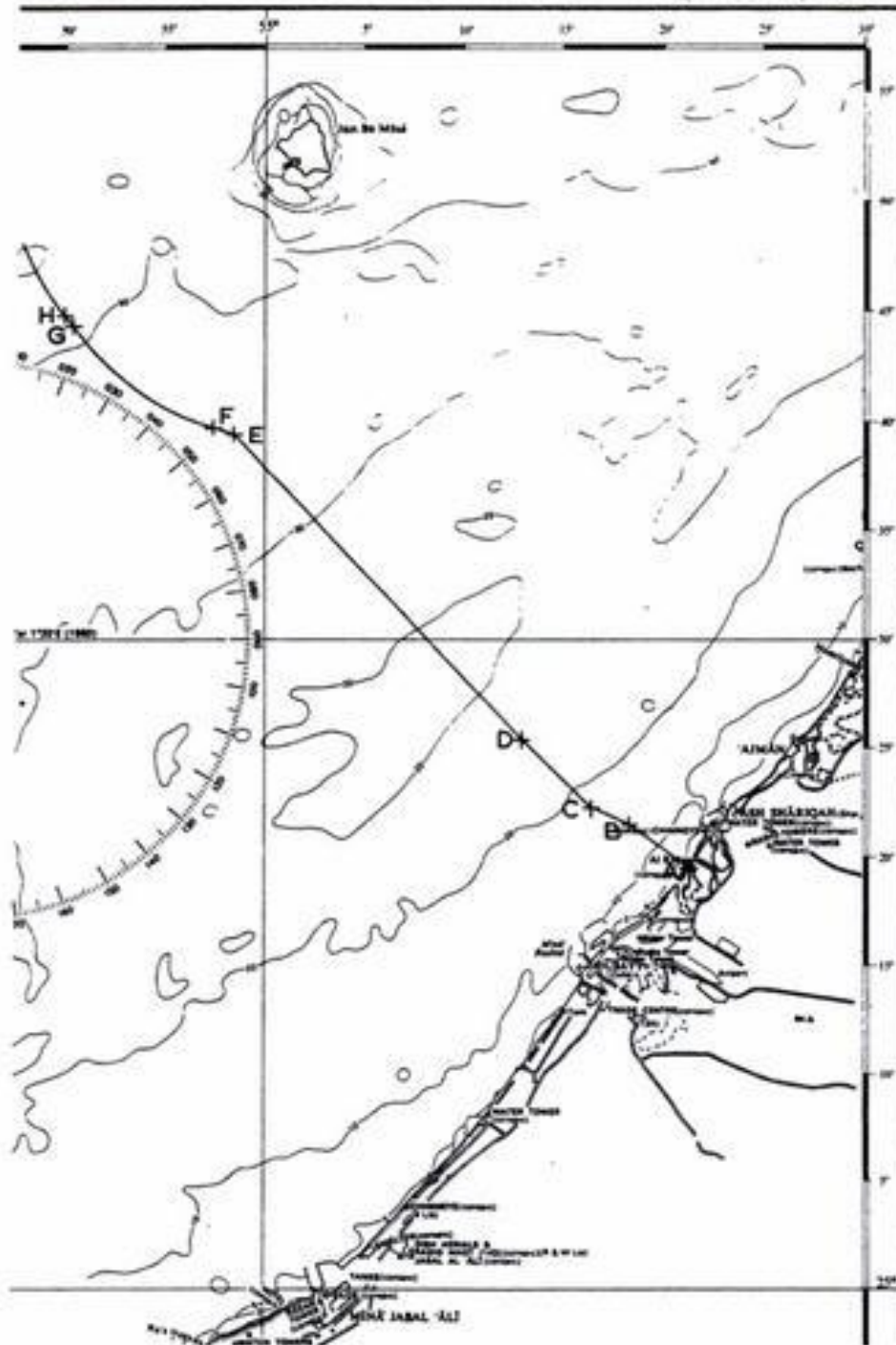
1. Article 1 of the *Arbitration* Agreement very succinctly confined itself to asking the arbitrators to proceed to a "demarcation" of the boundaries between the two Emirates.

*First:* the outstanding dispute between the two Emirates of Dubai and Sharjah concerning the demarcation of the boundaries between them shall be referred to *Arbitration*.

<sup>1</sup> Federated entities within the United Arab Emirates.

<sup>2</sup> Sovereignty over the island was disputed between Iran and Sharjah. The resolution of this issue was not within the Tribunal's remit.

In the matter of an arbitration concerning the border between  
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Map / Carte No. 4. *Dubai / Sharjah*: ILR, vol. 91 (1993), p. 700 (*idem.*).

1. *Commentary*

This formula was considered to cover the “demarcation” of the entirety of the disputed boundary, i.e. both the land and maritime sectors. The demand for “demarcation” was certainly most unusual. Normally a distinction is made between delimitation (the definition of the boundary in accordance with the applicable principles and rules) and demarcation (an operation following upon the delimitation and consisting of marking out the course of the delimited boundary on the terrain, by means of pillars or other markers). In the present case, the Tribunal declined to give the term “demarcation” the technical sense indicated above. Instead it interpreted the term in a broad sense, to mean delimitation. This corresponded to the parties’ real intention.<sup>3</sup> The Tribunal’s task was thus clear: it was to decide on the applicable rules, to carry out the delimitation and to indicate the resulting line. This corresponded to the tribunal’s role in *United Kingdom v France* (1977).

(III) SPECIFIC FEATURES OF THE CASE

The case was characterised by the five features set out below.

1. *A simple the geographical position*

The first feature was the great simplicity of the geographical situation, represented by the regular, almost perfectly straight alignment of the two adjacent coasts. From this perspective, *Dubai/Sharjah* was the reverse of the *North Sea* cases. In the latter, a particular coastal configuration (concavity) had had a decisive effect on the Court’s reasoning – and in the process had inclined the whole law of the sea towards individualisation, attention to special circumstances and equitable corrections. The present case, by contrast, provided a respite from the twists and turns of highly individualistic and atypical geographical situations. Instead, the law could be presented under the aspect of a “rule”, this being permitted by the geographical regularity of the situation. It is no accident that, in this context, the equidistance method, which is especially applicable to geographically simple situations, appeared in a quite new light. The simplicity of the geography was to lead to a parallel simplicity in the judicial reasoning. That reasoning was marked by an economy of thought and expression unusual in the context of maritime delimitations.

2. *Application of the equidistance method*

Having taken account of the simple straightness of the coastlines, the two sides were agreed on the application of the equidistance method, and the Tribunal accepted that solution. Thus, for the first time in the case law, the equidistance method was applied to adjacent coasts. The regularity of the coastline excluded any adjustment in the delimitation line as it ran out to seaward. It will be noted that the 1958

<sup>3</sup> *ILR*, Vol 91 pp. 566 *et seq.*

Convention on the Continental Shelf was not applicable, since neither of the two parties to the dispute had become a party. Nor, indeed, had the United Arab Emirates. The equidistance rule applied in the present case because the parties, considering it appropriate, reached an *ad hoc* agreement to that effect. Their decision to do so was not without its effects both on the relevant equitable principles (themselves influenced by the fact that every new case adds a brick to the edifice of relevant case law), and on the customary law (which also is influenced by every relevant legal decision). These effects are particularly noteworthy in view of the highly indeterminate nature of the law of maritime delimitation in its early stages.

3. *The limitation to only two points in dispute*

The very wide agreement between the parties as to the applicable principles, rules and methods permitted the Tribunal a considerable measure of procedural economy, allowing it to confine itself to the only two points which were really disputed: (1) the incidence on the baselines of ports and port installations; (2) the effect to be given to an island 35 miles offshore. In a way, it was not the Tribunal's function to delimit a disputed zone. Thanks to the agreement between the parties, the boundary already existed, on the basis of equidistance. The Tribunal had therefore to confine itself to a clarification of the course of that equidistance line, having regard to only two aspects, the coastal ports and the offshore island of Abu Musa. Similarly to the position in the *Grisbadarna* case (1909), the Tribunal's main task was to complete the agreement between the parties by reference to these two points.

4. *A mixed land/maritime delimitation*

*Dubai/Sharjah* was the first of a series of cases each of which involved the delimitation of the land sector followed by the delimitation of the relevant maritime space. Later cases were to include the *Land, island and maritime dispute (El Salvador/Honduras 1992)*<sup>4</sup> (which was to be decided on very special grounds), followed by *Eritrea/Yemen* (1998/9),<sup>5</sup> the first phase of which concerned sovereignty over islands, *Qatar/Bahrain* (2001),<sup>6</sup> and the case relating to the *land and maritime boundary between Cameroon and Nigeria*.<sup>7</sup> The joint delimitation of the land and maritime boundary) can have concrete legal consequences. Thus, if the maritime boundary must start from a precise point where the land boundary reaches the sea, it is obvious that its determination will have an effect on the maritime boundary. Depending on the exact position of the land/sea intersection, various legal or equitable principles can come into play. If, for example, that point of intersection lies in a convex or concave area, whether geographically simple or tortuous, the maritime delimitation would have to reflect the fact. Judges or arbitrators obliged to fix the land and

<sup>4</sup> ICJ Reports, 1992, pp. 351 et seq., 582 et seq.

<sup>5</sup> *ILR*, Vol. 114, pp. 2 et seq.

<sup>6</sup> ICJ Reports, 2001.

<sup>7</sup> See now the judgment of 10 October 2002, §40 et seqs.

maritime boundary will therefore attempt to determine this point of intersection between the land and sea first, with the maritime aspect of the case well in mind. They will proceed in this way in order to avoid complicating the drawing of an equitable line in the maritime sector. Very often the margin of difference between the parties as to the end point on the land boundary will not be very considerable, so that the points open to selection by the tribunal will be concentrated within a restricted area. But, depending upon the situation, the impact of the microgeography can be a large one, especially when the tribunal is using a geometrical method such as equidistance.

5. *A delimitation confined to the continental shelf*

It should be emphasised that the case concerned the delimitation of the continental shelf only, not the delimitation of any other maritime area.

(IV) SUBMISSIONS OF THE PARTIES

1. (a) The Emirate of Dubai submitted as follows:

*The Maritime Boundary*

11. The maritime boundary begins at the terminal point of the land boundary which is that point in the entrance to Khan Creek, identified in Submission 10.

12. The 312° line, proposed by Her Majesty's Government in 1963 as a maritime boundary, has never been accepted in practice by the parties as a boundary, nor is it binding upon them in law, and its starting point, the coastal terminus of the land boundary, is obscure.

13. The correct boundary under customary international law is an equidistance boundary, beginning at the point defined in Submissions 10 and 11 above and extending to such furthestmost point as does not involve any encroachment into an area of the continental shelf which reasonably may, under some future delimitation between the United Arab Emirates and Iran, be determined to belong to Iran.

14. In the construction of that equidistance boundary, effect is to be given to the base-lines of the mainlands of both Dubai and Sharjah, in conformity with the rule of law, especially those contained in Articles 3 and 8 of the Geneva Convention on the Territorial Sea and Contiguous Zone of 1958 which states the rules of customary international law, and including in those base-lines the outer-most harbour works of both Dubai and Sharjah.

15. The equidistance boundary so constructed would accord with the relationship of the two Parties as adjacent States, would accord to each Party that area of continental shelf which is the natural prolongation of its landmass, which appertains to it *de jure* and *ab initio*, and would produce an equitable and proportionate result.

16. Such an equidistance boundary is fully in accordance with the rules of customary international law as reflected in the Judgment of the International Court of Justice in the *North Sea continental Shelf* cases [41 *ILR* 29], and it conforms to equitable principles and produces an equitable result in the light of all the relevant circumstances.

17. It would be inequitable, and not in accord with principles and rules of customary international law, to allow the equidistance boundary to be deflected to allow for an

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area of territorial waters and/or continental shelf pertaining to the island of Abu Musa; and it would be even more inequitable and contrary to law to adopt a continental shelf boundary giving "half-effect" for the island of Abu Musa.

18. The maritime boundary is described and defined in submissions 11 to 17 and is depicted on Dubai Map 10, proceeding through Points 10, 11, 17, 8 and 9.

(b) The Emirate of Sharjah, for its part, submitted as follows:

7. That the sea boundaries between the Emirate of Sharjah and the Emirate of Dubai should be fixed from the point on the coast determined by the Award made by Her Britannic Majesty's Political Agent on 1 and 2 April, 1956 (and described in paragraph 1 above and defined by co-ordinates in paragraph 3 above), as a rhumb line drawn out to sea on bearing of  $312^{\circ}$ (true) to its intersection with the continental shelf boundary defined in the agreement between the United Arab Emirates and the Government of Iran dated 13 August, 1974.

8. That, in the event that the Court considers that the sea boundaries must be determined otherwise than as stated in paragraph 7 above, the sea boundaries determined in accordance with the customary rules of international law, which in the circumstances existing in the area require the fixing of an equidistance line between the said terminus of the land boundary on the mainland coast (described in paragraph 1 above) and the point of intersection with the said continental shelf boundary between the United Arab Emirates and Iran in such a way as to give "half effect" to Sharjah's island of Abu Musa and no effect to the respective harbour works of Sharjah and Dubai, such sea boundaries being plotted in accordance with the illustration appearing on Sharjah Map 27.

9. That the said sea boundaries be plotted on an Award Chart based upon the current edition of Admiralty Chart 2889, to be made an integral part of the Award of the Court.

## 2. *Commentary*

The parties' positions can be summarised as follows.

- (a) *Dubai*. Dubai's submissions can be summed up in five points: (1) the line proposed in 1963 by the Government of the United Kingdom as Protecting Power ( $312^{\circ}$ ) had never been accepted and was thus not binding on Dubai; (2) the equidistance rule was applicable under customary international law; (3) the equidistance line should be prolonged as far as the nearest point which could reasonably be considered, in a future delimitation, to belong to Iran; (4) the port installations of the two States could be used as basepoints, even if the effect would be to enlarge the area of their internal waters; (5) it would be inequitable to permit the existence of the island of Abu Musa to have the effect of changing the direction of the equidistance line, to grant that island territorial waters and a continental shelf, or to accord it half-effect.
- (b) *Sharjah*. Sharjah's submissions can be summed up in four points: (1) the  $312^{\circ}$  line was binding on the parties because it resulted from an arbitral award of

1963 conducted under the authority of the United Kingdom; (2) alternatively, in the present case customary law required the adoption of an equidistance line; (3) port installations must not be used as basepoints; (4) it was equitable to confer half effect upon the island of Abu Musa.

(c) These submissions call for comment in three respects:

*First*, one must emphasise the parties' agreement that the equidistance principle be applied as a *method* (not as a norm twinned with special circumstances). It applied not only because it was equitable, but on the more compelling basis of customary law. The parties were thus voicing an opinion as to the law that was at variance with the conclusions which had been reached by the International Court of Justice in the *North Sea* cases (1969). Dubai formulated its views in general terms. Sharjah, on the other hand, presented its position in a more considered way, expressing the view that "in this case" customary law required the application of the equidistance principle. But the difference was not a major one because, according to this way of looking at things, customary law would, at least in certain cases, require the use of the equidistance method. It is widely appreciated that the International Court of Justice had declined to go that far. For its part, the Tribunal in the present case avoided deciding the precise basis upon which it was applying the equidistance method. Instead, it based itself on the agreement between the parties (pp. 672-673).

*Second*, it is important to note the immediate success of the "half effect" concept. Half effect had been given to an island virtually *ex nihilo* in *United Kingdom v France* (1977). In *Dubai/Sharjah* this method was invoked by one of the parties, and in *Tunisia/Libya* (1982) it would be applied by the tribunal.

*Third*, it is noticeable that the dispute effectively reduced itself to three points: (a) the binding nature of the United Kingdom's 312° line; (b) the port installations as basepoints; and (c) the effect on the equidistance line of an island 35 miles offshore.

#### (V) THE TRIBUNAL'S DECISION

First, the Tribunal rejected the argument that the 312° line constituted a binding inheritance from the period when the United Kingdom was present on the scene.<sup>8</sup> Instead, the Tribunal fixed the end of the land boundary at the extreme point of the Al Mamzer Peninsula. The reasons for this decision are not relevant to the law of maritime delimitation and will not be examined here.<sup>9</sup>

<sup>8</sup> This was a simplified equidistance line: "The method adopted was a simplified equidistance line, formed by drawing straight lines between the terminal points of land territory of each Emirate and, at the point where these lines met - that is the frontier on the coast between two Emirates - simply bisecting the angle formed by the two lines" (D.W. Bowett, "The *Dubai/Sharjah* Boundary Arbitration", *BYIL*, Vol. 65, 1994, p. 126). Dubai rejected this line because of the terminal points on the land boundary chosen by the British experts in the Protectorate period. This confirmed the importance of the land boundary line for the maritime delimitation also (see *supra*, III.4, p. 140-1).

<sup>9</sup> Cf. *ILR*, Vol. 91, pp. 568 et seq.

(A) *Permanent port installations as basepoints*

1. Dubai's port installations projected to seaward three times as far as the corresponding installations belonging to Sharjah. There was a risk that this projection would produce a change in the direction of the equidistance line, to Sharjah's detriment, if the installations furthest out to sea could be used as basepoints. In general, the Tribunal relied on Article 8 of the Geneva Convention on the Territorial Sea (1958) and Article 11 of the draft Convention on the Law of the Sea (1980),<sup>10</sup> which permitted the use of permanent port installations as basepoints. There was a fairly consistent international practice in this regard. The Tribunal also recognised that certain techniques could be employed to correct inequitable distortions. It considered, however, that such a correction was not necessary in the present case, since there was no inequitable effect.

(In general)

This Court is satisfied that, in the light of the provisions of Article 8 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and of Article 11 of the 1980 Draft Convention on the Law of the Sea the permanent harbour works of both Dubai and of Sharjah must be treated as a part of the coast for the purpose of drawing the base lines from which the lateral sea boundary between them is constructed. The Court is aware of the techniques for remedying any distortion of a boundary line should the result of giving full effect to such harbour works cause an inequitable deflection of an equidistance line. The Court does not believe that to give full effect to the permanent harbour works of both Dubai and Sharjah does produce an inequitable result in the present case. To give such full effect for the purpose of delimiting the territorial sea is required by international law and produces, in this case, an equidistance line modified by the existence of the harbour works between point B on the Chart and the seaward point E where the effect of the harbour works ceases to be felt. Having regard to the whole of the maritime area affected by the delimitation of the lateral sea boundary between the Parties in this case, the deflection of the line from the "true" or "strict" equidistance line by reason of the effect given to the harbour works of both Parties is slight and the resulting line is in all respects equitable as between the two territorial seas. (p. 662-3).

(On the practice of States)

Those illustrations do, however, demonstrate that there is a body of practice, and of conventional law, in which full effect has been given to harbour works in the construction of frontal maritime boundaries as between opposing States. The same

<sup>10</sup> Article 11 of the 1982 Convention on the Law of the Sea: "For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast...." On this Article, cf. M. Nordquist (ed), *United Nations Convention on the Law of the Sea, 1982 - A Commentary*, Dordrecht/Boston/London, 1993, pp. 120-122.



principles apply to the construction of lateral maritime boundaries as between adjacent States as to the construction of frontal maritime boundaries between opposing States. (p. 662).

## 2. *Commentary*

The Tribunal extended the rationale of the equidistance/special circumstances rule to the definition of basepoints. The rule became "ordinary basepoints/special circumstances". The relevant baseline needed to be defined for the purpose of determining the extent of the territorial sea and other maritime areas. In order to define the baseline it was necessary to rely on the rules of treaty law (notably the Montego Bay Convention). On this point, treaty law was the mirror of customary law. If, however, the basepoints accepted for the purpose of determining the breadth of a maritime zone produced an inequitable result in relation to the delimitation of such zones (e.g. the continental shelf), this was a special circumstance which might require the making of a correction to the baseline.

The definition of basepoints to be used for the purposes of such a delimitation is a matter upon which both the general law referred to above and the principles of equity have something to say. But in this context equity is to be understood in a restrictive manner. It comes into play under the form of a special circumstance, one relating in particular to the cutting off of one party's continental shelf as a result of an excessive deviation in the line of equidistance. The concepts of a promontory (convexity) or inlet (concavity) are thus always dominant, as in the *North Sea cases* (1969) and *United Kingdom v France* (1977). The Tribunal was not very explicit about the techniques that it was referring to for the correction of distortions. In fact, it was simply playing back the pleadings of Dubai which proposed, if the equidistance line did have to be modified, the use of a geometrical technique (reduction by one third in the excess distance).<sup>11</sup>

It will also be observed that the Tribunal followed international practice in considering that the choice of basepoints for delimitations between opposite coasts could serve equally well in the context of adjacent coasts. There was no reason why it should be otherwise. The applicable law makes no distinction between the two situations so far as concerns the determination of basepoints. All that is required is that the problem of a possible inequitable distortion of the equidistance line should also be taken into account.

### (B) *The effect of Abu Musa Island: grant of a territorial sea of 12 miles*

1. According to the Tribunal, it was necessary to make a distinction between an island's right to a territorial sea and its right to a continental shelf. The international law of the sea recognised that every island had the right to a territorial sea. Given

<sup>11</sup> As to this technique, cf. Bowett, *op.cit.*, p.129.

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that Abu Musa did not lie in the vicinity of coastlines which might encroach on its territorial sea, it had a full right to territorial waters, i.e. to 12 miles. Consequently the equidistance line was displaced, to follow an arc 12 miles from the island. So far as concerned the island's continental shelf, however, it was necessary in the present case to rely on equitable considerations, mediated through the concept of special circumstances. In principle, every island has an inherent right to its continental shelf. But this title is subordinate to the requirements of equity arising in the context of delimitation. If Abu Musa were permitted to extend its maritime zones beyond the 12 mile territorial sea, this would encroach excessively upon the continental shelf of other Emirates or States. The island could not, in the circumstances of the case, be allowed to have any effect beyond 12 miles. This, moreover, was in conformity with the practice elsewhere in the region.

#### (On the island as a special circumstance)

In the light of these principles and in reliance upon them this Court is satisfied that use of the equidistance method is generally appropriate to, and required in, the present case and that the delimitation of the maritime boundary between the Parties beyond their respective territorial seas should properly be based upon this method where that boundary is unaffected by the presence of the island of Abu Musa which is the only "special circumstance" of which account must be taken in the area concerned. (pp. 672-673).

#### (On the territorial sea)

The entitlement of all islands (i.e. natural formations above sea level) to a territorial sea is well established in principle in international law. Article 10 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, and, more recently, Articles 3 and 121 of the 1980 Draft Convention are in point.

"Every island, no matter how small, has its belt of territorial sea." (p.673)

"Full effect must be given to the territorial sea generated by the island and thus the notional continuation of the lateral equidistance boundary between the continental shelves of Dubai and of Sharjah is displaced, between points E and H on the Chart, by the outer limits of the extent of the territorial sea (of 12 nautical miles in breadth), claimed by Sharjah." (p. 674)

#### (On the continental shelf).

The entitlement of an island to a continental shelf is an inherent right, deriving from the physical fact of the existence of the shelf as a prolongation of the landmass. (p. 675).

The question, however, necessarily arises as to whether an inherent entitlement of the island of Abu Musa to a share of this common shelf may be displaced by a consideration of exceptional geographical circumstances. The Court of *Arbitration in the Arbitration between the United Kingdom of Great Britain and Northern Ireland and*

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*the French Republic on the Delimitation of the Continental Shelf*, 1977, found that there was: ... a single rule, a combined equidistance – special circumstances rule... (Award, para 68) and that the equidistance principle of delimitation (on which, in a modified form, the Government of Sharjah has placed reliance in its claim for “half-effect” to be accorded to the island of Abu Musa) must be subject to the overriding aim of achieving an equitable apportionment of shelf areas between adjacent or opposite States. (Award, para. 97.) (p. 676).

Certain islands are clearly capable of giving rise to “special circumstances” and thus to the invocation of equitable considerations where their existence would otherwise produce a distortion of an equidistance line or an exaggerated effect which would be inequitable. It may thus be necessary, in the delimitation of a boundary, to abate the effect of an island which forms an incidental special feature. (p. 676).

[The Tribunal] has come to the conclusion, as a consequence of this examination, that to allow to the island of Abu Musa any entitlement to an area of the continental shelf of the Gulf beyond the extent of its belt of territorial sea would indeed produce a distorting effect upon neighbouring shelf areas. The application of equitable principles here, so as to achieve a limitation that is a function or reflection of the geographical and other relevant circumstances of the area, must lead to no effect being accorded to the island of Abu Musa for the purpose of plotting median or equidistance shelf boundaries between it and neighbouring self areas. (p. 677).

To give no effect to the continental shelf entitlement of the island of Abu Musa would preserve the equities of the geographical situation and would be consistent, for example, with comparable regional practice as applied to the islands of Al-'Arabiyah and Farsi in the Saudi Arabian-Iranian agreement of January 1969, and Dayinah in the Abu Dhabi-Qatar agreement of March 1969, where the continental shelf rights of islands were limited to coincide with their respective territorial waters, but not used as base points for the purpose of constructing median or equidistance boundaries in respect of the continental shelves between opposite or adjacent States. (p. 677).

### 2. *Commentary*

- (a) Islands can have an effect on the process of delimitation in a wide range of ways:
  - (1) the island can be an independent island State, one of the parties to the dispute before the tribunal (e.g. *Libya/Malta*, 1985);
  - (2) the island can be a political dependency of a metropolitan State and at the same time one of the two entities between which the delimitation is to be carried out (e.g. *St Pierre-et-Miquelon* (1992) and *Jan Mayen* (1993));
  - (3) the island can be an entity belonging to one of the States parties to the dispute (or to a third State) and have its effect, as a special circumstance, on the line of delimitation drawn according to the configuration of the coastlines (e.g. *Tunisia/Libya* (1982), *Eritrea/Yemen* (1999) or the present case);

- (4) the island can be an entity close to the principal coasts and used as a basepoint in such way that the waters between the coast and the island are analysed as internal waters (e.g. *United Kingdom v France* (1977: Eddystone) and *Eritrea/Yemen* (1999: Dahlaks)).

As indicated above, Abu Musa fell into the third category. It was treated as a special circumstance necessitating a certain measure of adjustment to the equidistance line. The Tribunal's approach was clear. The equidistance line was the main line. It was appropriate to correct it to the minimum extent required by the presence of Abu Musa. This course,<sup>12</sup> based on the paradigm equidistance/special circumstances, can be contrasted with the route taken by the International Court in *Tunisia/Libya* (1982) in relation to the Kerkennah islands. In the latter case, the uncanalised equity of customary law, as defined by the Hague Court, resulted in a completely new line, one bearing no relationship to the concrete configuration of the coast.

(b) The Tribunal's approach based on equidistance/special (i.e. equitable) circumstances was directly inspired by *United Kingdom v France* (1977). The decision in *Dubai/Sharjah* was the last in which the tribunal followed the doctrine advanced in *United Kingdom v France* (1977) before the International Court of Justice turned its back on it in *Tunisia/Libya* (1982). The close connection between *Dubai/Sharjah* and *United Kingdom v France* is apparent in two respects. First, the Tribunal identified equitable principles with special circumstances, giving the same harmonist reading to the treaty and customary law as had underpinned the decision in the *United Kingdom* case.<sup>13</sup> Second, the Tribunal emphasised the importance of the concrete geographical circumstances, which prevailed over any *a priori* category, as in the *United Kingdom* case.<sup>14</sup> However the pre-eminent place accorded to the equidistance method ensured that this cocktail of flexible factors (equity and concrete geographical circumstances) did not undermine flexibility of the selected method or the sense of certainty that it tended to generate.

(c) Is it useful to draw a distinction between the territorial sea, the continental shelf, and perhaps the contiguous zone of an island (as in *St. Pierre-et-Miquelon*, 1992)? Might it not be better to take for granted all these zones to which an island is entitled, making a clear separation between the issues of entitlement and

<sup>12</sup> Predetermined line (equidistance), with minimal correction (special circumstances).

<sup>13</sup> *ILR*, vol. 91, p. 675: "The Court has referred above to the relationship between the use of the equidistance method of boundary delimitation and the application of equitable principles in order to meet the needs of "special circumstances". The median or equidistance principle is a general rule, not an invariable one, and may be qualified by "special circumstances" where this is necessary in order to ensure an equitable delimitation. (Decision of 30 June 1977 in the *Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf*, para. 70)."

<sup>14</sup> *Ibid.*, See also *supra*, under *United Kingdom v France*, V.C.3 and V.E.

delimitation? One might proceed to the delimitation with the freedom to make adjustments independently of any predetermined category (12 miles, 24 miles etc.). However it is not certain that in practice the exercise is so very different, particularly since it can seem reasonable, when carrying out a delimitation exercise, to attempt to ensure that an island has the benefit of zones corresponding to the categories laid down by the law of the sea. In practice, therefore, the effects produced by an island will often be decided by the maritime zones which the geography allows it. It may claim the lot if the distance from the coast is great enough (for example *Jan Mayen*). But in other cases (for example *St. Pierre-et-Miquelon*), where the geographical context is a narrow one, only a territorial sea or a contiguous zone and their respective seabeds and subsoils may be available. The process is controlled by the non-encroachment rule. It will be noted that this rule applies as a function of the concrete geographical circumstances, not as a function of island status, except in categories (1) and (4) above (see *supra*, (a)).

(d) Finally, it should be noted that the Abu Musa problem gave rise to controversy between the parties because of a hydrocarbon deposit close to the island, exploited under the authority of Dubai. A strict equidistance line would have allocated part of this deposit to Sharjah. The Tribunal did not, however, base its decision on the existence or extent of the deposit.

#### (VI) THE DISPOSITIF

"The Court of Arbitration has therefore decided that the maritime boundary between the Emirates of Dubai and Sharjah shall be based upon an equidistance line beginning at the terminal point of the land boundary and proceeding thence seawards, taking account of the harbour works of both Dubai and of Sharjah, until such line intersects a 12 nautical mile limit around the island of Abu Musa and the low tide elevations in its vicinity. Thence the line shall follow the 12 nautical mile limit until the latter intersects the maritime boundary between Iran and the United Arab Emirates at a position yet to be determined." (p. 677)

#### (VII) INDIVIDUAL AND DISSENTING OPINIONS

Arbitrator J.L. Simpson delivered a dissenting opinion. His disagreement with the Tribunal related to the determination of the land boundary and, in relation to the maritime delimitation, to the fixing of the terminal point on that land boundary. He took care to affirm that except in relation to that terminal point on the land (the starting point so far as concerned the sea), he was in total agreement with his colleagues on the maritime part of the delimitation (p. 686). It can thus be said that the rules and methods applied to the maritime delimitation were unanimously agreed by the arbitrators.

(VIII) ACADEMIC COMMENT ON THE AWARD

*Bibliography:*

D.W. Bowett, "The *Dubai/Sharjah* Boundary Arbitration of 1981", *BYIL*, vol. 65, 1994, pp. 103-133.

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The *Dubai/Sharjah* award, published very late in the day, has received little attention from commentators. Only D. Bowett seems to have carried out a study of it. He approved the Tribunal's reasoning and the result it led to.

"The Tribunal's treatment of the sea boundary is also orthodox and sound, and it is interesting to see the way in which the Tribunal has re-asserted the virtues of the equidistance method. The result was fair and reasonable, and perhaps not unexpected by Sharjah once the coastal terminal point of the land boundary was placed at the tip of the Al Mamser Peninsula." (p. 133).