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International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2000

Public sitting

held on Monday 5 June 2000, at 10 a.m., at the Peace Palace,

President Guillaume presiding

*in the case concerning Maritime Delimitation and Territorial Questions between
Qatar and Bahrain (Qatar v. Bahrain)*

VERBATIM RECORD

ANNEE 2000

Audience publique

tenue le lundi 5 juin 2000, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président

*en l'affaire de la Délimitation maritime et des questions territoriales entre Qatar et Bahreïn
(Qatar c. Bahreïn)*

COMPTE RENDU

Present: President Guillaume
 Vice-President Shi
 Judges Oda
 Bedjaoui
 Ranjeva
 Herczegh
 Fleischhauer
 Koroma
 Vereshchetin
 Higgins
 Parra-Aranguren
 Kooijmans
 Rezek
 Al-Khasawneh
 Buergenthal
 Judges *ad hoc* Torres Bernárdez
 Fortier
 Registrar Couvreur

Présents : M. Guillaume, président
M. Shi, vice-président
MM. Oda
Bedjaoui
Ranjeva
Herczegh
Fleischhauer
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buerghenthal, juges
MM. Torres Bernárdez
Fortier, juges *ad hoc*
M. Couvreur, greffier

The State of Qatar is represented by:

H.E. Dr. Abdullah bin Abdulatif Al-Muslemani, Secretary-General of the Cabinet,

as Agent and Counsel;

Mr. Adel Sherbini, Legal Adviser,
Mr. Sami Abushaikha, Legal Expert,

as Counsel;

Mr. Eric David, Professor of International Law, Université libre de Bruxelles,
Dr. Ali bin Fetais Al-Meri, Director of Legal Department, Diwan Amiri,
Mr. Jean-Pierre Quéneudec, Professor of International Law at the University of Paris I
(Panthéon-Sorbonne),
Mr. Jean Salmon, Professor emeritus of International Law, Université libre de Bruxelles, Member
of the Institut de droit international,
Mr. R. K. P. Shankardass, Senior Advocate, Supreme Court of India, Former President of the
International Bar Association,
Sir Ian Sinclair, K.C.M.G., Q.C., Barrister at Law, Member of the Institute of International Law,
Sir Francis Vallat, G.B.E., K.C.M.G., Q.C., Professor emeritus of International Law, University of
London, Member emeritus of the Institut de droit international,
Mr. Rodman R. Bundy, *Avocat à la Cour d'appel de Paris*, Member of the New York Bar, Frere
Cholmeley/Eversheds, Paris,
Ms Nanette E. Pilkington, *Avocat à la Cour d'appel de Paris*, Frere Cholmeley/Eversheds, Paris,

as Counsel and Advocates;

Ms Cheryl Dunn, Member of the State Bar of California, Frere Cholmeley/Eversheds, Paris,
Ms Ines Sabine Wilk, Lawyer before the German Court of Appeal, Member of the Chamber of
Lawyers of Germany,

as Counsel;

Mr. Scott B. Edmonds, Director of Cartographic Operations, MapQuest.com, Columbia, Maryland
(United States of America),
Mr. Robert C. Rizzutti, Project Manager, MapQuest.com, Columbia, Maryland (United States of
America),
Ms Stephanie K. Clark, Senior Cartographer, MapQuest.com, Columbia, Maryland (United States
of America),

as Experts;

H.E. Sheikh Hamad bin Jassim bin Jabor Al-Thani, Minister for Foreign Affairs,
H.E. Mr. Ahmed bin Abdullah Al-Mahmoud, Minister of State for Foreign Affairs,

as Observers.

The State of Bahrain is represented by:

H.E. Mr. Jawad Salim Al-Arayed, Minister of State of the State of Bahrain,

as Agent;

L'Etat de Qatar est représentée par :

S. Exc. M. Abdullah bin Abdulatif Al-Muslemani, secrétaire général du gouvernement,

comme agent et conseil;

M. Adel Sherbini, conseiller juridique,
M. Sami Abushaikha, expert juridique,

comme conseils;

M. Eric David, professeur de droit international à l'Université libre de Bruxelles,
M. Ali bin Fetais Al-Meri, directeur des affaires juridiques du conseil de l'émir,
M. Jean-Pierre Quéneudec, professeur de droit international à l'Université de Paris I (Panthéon-Sorbonne),
M. Jean Salmon, professeur émérite de droit international à l'Université libre de Bruxelles, membre de l'Institut de droit international,
M. R. K. P. Shankardass, avocat principal à la Cour suprême de l'Inde, ancien président de l'Association internationale du Barreau,
Sir Ian Sinclair, K.C.M.G., Q.C., avocat, membre de l'Institut de droit international,
Sir Francis Vallat, G.B.E., K.C.M.G., Q.C., professeur émérite de droit international à l'Université de Londres, membre émérite de l'Institut de droit international,
M. Rodman R. Bundy, avocat à la Cour d'appel de Paris, membre du barreau de New York, cabinet Frere Cholmeley/Eversheds, Paris,
Mlle Nanette Pilkington, avocat à la Cour d'appel de Paris, cabinet Frere Cholmeley/Eversheds, Paris,

comme conseils et avocats;

Mme Cheryl Dunn, membre du barreau de l'Etat de Californie, cabinet Frere Cholmeley/Eversheds, Paris,
Mme Inès Sabine Wilk, avocat près d'une cour d'appel d'Allemagne, membre de la chambre des avocats d'Allemagne,

comme conseils;

M. Scott B. Edmonds, directeur du service des levés cartographiques, société MapQuest.com, Columbia, Maryland (Etats-Unis d'Amérique),
M. Robert C. Rizzutti, administrateur de projet, société MapQuest.com, Columbia, Maryland (Etats-Unis d'Amérique),
Mme Stephanie K. Clark, cartographe hors classe, société MapQuest.com, Columbia, Maryland (Etats-Unis d'Amérique),

comme experts;

S. Exc. le cheikh Hamad bin Jassim bin Jabor Al-Thani, ministre des affaires étrangères,
S. Exc. M. Ahmed bin Abdullah Al-Mahmoud, ministre d'Etat aux affaires étrangères,

comme observateurs.

L'Etat de Bahreïn est représenté par :

S. Exc. M. Jawad Salim Al-Arayed, ministre d'Etat de l'Etat de Bahreïn,

comme agent;

Dr. Fathi Kemicha, Member of the Bar of Paris, Kemicha & Associés (Tunis),
Professor Sir Elihu Lauterpacht, Q.C., C.B.E., Honorary Professor of the University of Cambridge,
Member of the Institut de droit international,
Mr. Jan Paulsson, Freshfields, Paris, Member of the Bars of Paris and the District of Columbia,
Professor Michael Reisman, Myres S. McDougal Professor of International Law of Yale Law
School, Member of the Bar of Connecticut, Associate of the Institut de droit international,
Mr. Robert Volterra, Freshfields, London, Member of the Bar of Upper Canada,
Professor Prosper Weil, Emeritus Professor at the University of Paris II (Panthéon-Assas), Member
of the Académie des sciences morales et politiques (Institut de France), Member of the Institut
de droit international,

as Counsel and Advocates;

Sheikh Khalid bin Ahmed Al-Khalifa, First Secretary, Ministry of Foreign Affairs of the State of
Bahrain,
Commander Christopher Carleton, M.B.E., Head of the Law of the Sea Division of the United
Kingdom Hydrographic Office,
Dr. Hongwu Chen, Freshfields, Paris, Member of the Bars of Paris and Beijing,
Mr. Graham Coop, Freshfields, Paris, Barrister and Solicitor of the High Court of New Zealand and
Solicitor of the Supreme Court of England and Wales,
Mr. Andrew Newcombe, Freshfields, Paris, Member of the Bar of British Columbia,
Dr. Beth Olsen, Advisor, Ministry of State of the State of Bahrain,
Dr. John Wilkinson, Former Reader at the University of Oxford, Emeritus Fellow, St. Hugh's
College, Oxford,

as Advisors;

H.E. Sheikh Mohammed bin Mubarak Al Khalifa, Minister for Foreign Affairs, State of Bahrain,
H.E. Sheikh Abdul-Aziz bin Mubarak Al Khalifa, Ambassador of the State of Bahrain to the
Netherlands,
H.E. Dr. Mohammed Jaber Al-Ansari, Advisor to His Highness, the Amir of Bahrain,
Mr. Ghazi Al-Gosaibi, Under-Secretary of Foreign Affairs, State of Bahrain,
Her Excellency Sheikha Haya Al Khalifa, Ambassador of the State of Bahrain to the French
Republic,
Mr. Yousef Mahmood, Director of the Office of the Foreign Minister, State of Bahrain,

as Observers;

Mr. Jon Addison, Ministry of State of the State of Bahrain,
Ms Maisoon Al-Arayed, Ministry of State of the State of Bahrain,
Mr. Nabeel Al-Rumaihi, Ministry of State of the State of Bahrain,
Mr. Hafedh Al-Qassab, Ministry of State of the State of Bahrain,
Ms Aneesa Hanna, Embassy of Bahrain in London,
Ms Jeanette Harding, Ministry of State of the State of Bahrain,
Ms Vanessa Harris, Freshfields,
Ms Iva Kratchanova, Ministry of State of the State of Bahrain,
Ms Sonja Knijnsberg, Freshfields,
Mr. Kevin Mottram, Freshfields,
Mr. Yasser Shaheen, Second Secretary, Ministry of Foreign Affairs of the State of Bahrain,

as Administrative Staff.

- M. Fathi Kemicha, membre du barreau de Paris, cabinet Kemicha & Associés, Tunis,
Sir Elihu Lauterpacht, Q.C., C.B.E., professeur honoraire à l'Université de Cambridge, membre de
l'Institut de droit international,
M. Jan Paulsson, cabinet Freshfields, Paris, membre des barreaux de Paris et du district de
Columbia,
M. Michael Reisman, professeur de droit international à l'Université de Yale, titulaire de la chaire
Myres S. McDougal, membre du barreau du Connecticut, associé de l'Institut de droit
international,
M. Robert Volterra, cabinet Freshfields, Londres, membre du barreau du Haut Canada,
M. Prosper Weil, professeur émérite à l'Université de Paris II (Panthéon-Assas), membre de
l'Académie des sciences morales et politiques (Institut de France), membre de l'Institut de droit
international,

comme conseils et avocats;

- Le cheikh Khalid bin Ahmed Al-Khalifa, premier secrétaire, ministère des affaires étrangères de
l'Etat de Bahreïn,
Le capitaine de frégate Christopher Carleton, M.B.E., directeur de la division du droit maritime du
bureau hydrographique du Royaume-Uni,
M. Hongwu Chen, cabinet Freshfields, Paris, membre des barreaux de Paris et de Beijing,
M. Graham Coop, cabinet Freshfields, Paris, avocat et conseil de la *High Court* de
Nouvelle-Zélande et conseiller de la Cour suprême d'Angleterre et du Pays de Galles,
M. Andrew Newcombe, cabinet Freshfields, Paris, membre du barreau de la Colombie britannique,
Mme Beth Olsen, conseiller, ministère d'Etat de l'Etat de Bahreïn,
M. John Wilkinson, ancien maître de conférence à l'Université d'Oxford, membre émérite du
Collège Saint Hugh, Oxford,

comme conseillers;

- S. Exc. le cheikh Mohammed bin Mubarak Al Khalifa, ministre des affaires étrangères de Bahreïn,
S. Exc. le cheikh Abdul-Aziz bin Mubarak Al Khalifa, ambassadeur de l'Etat de Bahreïn aux
Pays-Bas,
S. Exc. M. Mohammed Jaber Al-Ansari, conseiller de Son Altesse l'émir de Bahreïn,
M. Ghazi Al-Gosaibi, sous-secrétaire d'Etat aux affaires étrangères de l'Etat de Bahreïn,
S. Exc. la cheikha Haya Al Khalifa, ambassadeur de l'Etat de Bahreïn auprès de la République
française,
M. Yousef Mahmood, directeur du bureau du ministre des affaires étrangères de Bahreïn,

comme observateurs;

- M. Jon Addison, ministère d'Etat de l'Etat de Bahreïn,
Mme Maisoon Al-Arayed, ministère d'Etat de l'Etat de Bahreïn,
M. Nabeel Al-Rumaihi, ministère d'Etat de l'Etat de Bahreïn,
M. Hafedh Al-Qassab, ministère d'Etat de l'Etat de Bahreïn,
Mme Aneesha Hanna, ambassade de Bahreïn, Londres,
Mme Jeanette Harding, ministère d'Etat de l'Etat de Bahreïn,
Mme Vanessa Harris, cabinet Freshfields,
Mme Iva Kratchanova, ministère d'Etat de l'Etat de Bahreïn,
Mme Sonja Knijnsberg, cabinet Freshfields,
M. Kevin Mottram, cabinet Freshfields,
M. Yasser Shaheen, second secrétaire, ministère des affaires étrangères de l'Etat de Bahreïn,

comme personnel administratif.

Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je donne immédiatement la parole à Sir Ian Sinclair.

Sir Ian SINCLAIR: Merci, Monsieur le Président. Mr. President, Members of the Court:

DECISIONS ON HAWAR

1. In resuming my presentation on the 1936 and 1939 British decisions on the Hawar Islands, I would wish very briefly to remind the Court of the main threads of the argument which I had developed before I had to stop last Wednesday.

2. I had asked the Court to pay close attention to the "careful consideration" of the evidence which the British Government claimed to have given before announcing their decision of 11 July 1939, in favour of the Bahrain claim to sovereignty over Hawar. I had also submitted, as a preliminary point of law, that, in any event, the consent of both Rulers to the determination by the British Government of their dispute over title to the Hawar Islands would have been required before that determination, however it might be characterized, would have become binding on the parties; and that no such consent had been given by the Ruler of Qatar, whether at the time or subsequently. I had also cited a passage from a report by a British Foreign Office official in 1964 admitting that neither of the two Rulers was asked beforehand to promise his consent to the British decision of 1939, nor afterwards to give it, and that the decision was in fact "imposed" — and that was the very word he used — from above by the British.

3. I then proceeded to analyse the evidence relied upon by the British authorities to justify the "provisional decision" of 1936 in favour of Bahrain. The reason why British officials in the Gulf deliberately withheld from the Ruler of Qatar any information about the formal claim made by the Ruler of Bahrain to Hawar in April 1936, could not have been because Loch and Fowle were unaware in early 1936 that the Ruler of Qatar claimed sovereignty over Hawar. After all, Loch, the Political Agent, had taken part in the RAF reconnaissance of Qatar in 1934 which, with the permission of the Ruler of Qatar alone, had overflown Hawar. I pointed out that no real effort was made at the time to test the veracity of the assertions made by Belgrave in his letter of 28 April 1936, in support of the claim by the Ruler of Bahrain; and I reminded the Court of the

documentary evidence from the British Archives in 1933 and 1934 which confirmed British recognition that the Hawar Islands appertained to Qatar.

4. The Court's attention was also directed to the lack of any evidence in Bahraini official records prior to those for 1937-1938 or in the Political Diaries of the British Political Agent prior to those for 1938 of Bahraini acts of administration in the Hawar Islands; and its attention was equally directed to the devastating consequences for Qatar of the British "provisional decision" of 9 July 1936, in favour of the Bahrain claim to the Islands. I was able to conclude last Wednesday by speculating about some of the reasons for the British "provisional decision" of 1936, and suggesting that one reason may have been the critical state of Bahrain's public finances in the mid-1930s.

5. Mr. President, Members of the Court, I can now resume by describing the genesis of the 1938-1939 supposed "enquiry" into the issue of sovereignty over the Hawar Islands.

**The genesis of the 1938-1939 "enquiry" into the issue of sovereignty
over the Hawar Islands**

6. The process of enquiring into the respective claims of the Ruler of Bahrain and the Ruler of Qatar was initiated as a result of a memorandum by Fowle, Political Resident in the Gulf, to Symon, of the India Office, of 5 April 1938¹, in response to a request for his views on what procedure should be followed in determining the question of sovereignty over the Hawar Islands. Fowle's proposals were as follows:

(a) that he, as Political Resident, should write to the Ruler of Qatar informing him that in connection with negotiations which certain companies were about to commence, the question of the ownership of Hawar and Fasht ad Dibal must be decided; that on the evidence at present available to His Majesty's Government, these islands appeared to belong to the Ruler of Bahrain; but that His Majesty's Government also had reason to believe that he, the Ruler of Qatar, might wish to advance claims to these islands; if so, he should submit these claims to His Majesty's Government within a certain period, say, two months, after which no claims would be considered;

¹Memorial of Qatar, Ann. III.146, Vol. 7, p. 233.

- (b) that, thereafter, a letter should be sent to the Ruler of Bahrain, enclosing a copy of the letter to the Ruler of Qatar and explaining that, when the latter's reply had been received, a copy would be communicated to him, the Ruler of Bahrain. He would then have an opportunity of rebutting the claim of the Ruler of Qatar, should the latter advance one;
- (c) a second letter should then be sent to the Ruler of Bahrain, referring to the first letter — which I have just described — and requesting the Ruler to postpone negotiations with the companies concerned until the ownership of Hawar and Fasht ad Dibal had been decided; and
- (d) a further letter should then be sent to PCL and BAPCO informing them of the action taken.

7. Although the interests of the Ruler of Qatar had been seriously, if not fatally, damaged by the *ex parte* "provisional decision" taken by the British Government on 9 July 1936, there seemed to be some prospect of restoring the balance if *all* of Fowle's proposals had been adopted. However, at a meeting held in the India Office on 12 April 1938, between Fowle, India Office officials and representatives of PCL, to discuss PCL activities in the Gulf, it rapidly emerged that PCL were strongly opposed to any postponement of the negotiations. They were even opposed to a postponement for a period as short as two or three months, to enable a final decision to be taken on the sovereignty issue. Indeed, it was at this meeting that Longrigg for PCL stated that "he personally thought it would be a pity to put ideas of ownership [of the Hawar Islands] into the mind of the Sheikh of Qatar"². In the light of this expression of PCL's view, combined with Longrigg's statement that PCL were prepared to take the risk of paying twice for the same thing, Fowle withdrew his proposal for a postponement of the negotiations. It is noteworthy that, at no time during the discussions with PCL on 12 April 1938, was any reference made even by India Office officials to the interests of the Ruler of Qatar as opposed to the interests of PCL. It is obvious that if the oil concession negotiations for the unallotted area were to be continued with the Ruler of Bahrain alone, this would inevitably be prejudicial to the Ruler of Qatar's title to the Hawar Islands which he had already made known to Weightman in February 1938, even though the latter speciously continued to deny this as late as 15 May 1938³. More and more it would be assumed by the negotiators that the Ruler of Bahrain was entitled to grant a concession for an area which

²Memorial of Qatar, Ann. III.148, Vol. 7, p. 241, at p. 245.

³Memorial of Qatar, Ann. III.152, Vol. 7, p. 261.

included the Hawar Islands; and less and less would the negotiators pay attention to the British Government's formal reservation of the right to make a final decision on the competing claims of the two Rulers to the Islands. The negotiators would certainly calculate — they were intelligent people — that, if the British Government was encouraging the making of bids by both BAPCO and PCL to the Ruler of Bahrain for a concession covering the whole of what was now taken to be the "unallotted area" or, as in the case of PCL at a later stage, for the Hawar Islands alone, they had already decided finally in favour of the Bahraini claim to the islands and were simply going through the motions of an enquiry.

8. Mr. President, subject to the dropping of the initial proposal by Fowle in April 1938 that the oil concession negotiations be postponed pending a final decision on the ownership of Hawar and Fasht Dibal, his scenario for the enquiry was accepted in principle by both the India Office and the Foreign Office in London. It will be noted that the burden of *disproving* Bahrain's claim to the Hawar Islands would therefore lie on Qatar. This was an inevitable consequence of the British Government's "provisional decision" of 1936. Also, it will be noted that there was no room in Fowle's proposals for the Ruler of Qatar to be informed about the evidence on which Bahrain's claim of sovereignty was based, nor to be given the opportunity to rebut that evidence. Finally, the Court will certainly note that the proposals advanced by Fowle in his memorandum to the India Office of 5 April 1938 were accompanied by the egregious comment in paragraph 6 of the memorandum that: "From the political point of view it will suit quite well if we give Hawar to Bahrein, as this will balance our previous decision of giving Zubara to Qatar".⁴

Title to the Hawar Islands and the oil concession negotiations

9. Mr. President, it is at this point in the narrative that I would like to remind Members of the Court of what I have termed "the interaction between . . . two separate but related exercises", that is to say, the question of title to the Hawar Islands, on the one hand, and the outcome of the oil concession negotiations, on the other hand. The manner in which these two issues became inextricably entangled from May 1938 onwards has been amply demonstrated by Mr. Shankardass in his illuminating presentation last Wednesday. The Court will no doubt conclude that the British

⁴Memorial of Qatar, Ann. III.146, Vol. 7, p. 236.

authorities in the Gulf had by this time become so caught up in a spider's web of their own making that they simply could not render an objective and impartial decision on the issue of title to Hawar. In effect this meant that the provisional decision of 1936 had become a final decision even before the so-called "enquiry" into the question of title had begun.

The questions of bias and prejudgment

10. It is noteworthy that Bahrain has not directly contested, in its written pleadings, Qatar's contention that there are two main elements underlying the rule which prohibits bias in a decision-maker on the international plane, namely:

- (1) that no-one may be judge in his own cause (*nemo iudex in causa sua*), which is generally understood to mean that the decision should not be made on the basis of the decision-maker's self-interest, but with due regard to the merits of the respective cases of the disputing parties; and
- (2) that the decision-maker must not be prejudiced for or against either of the parties: nor must he have prejudged the case, by making up his mind before having given the parties a proper and equal opportunity to be heard.

11. Now, the quite unnecessary comment in paragraph 6 of Fowle's memorandum of 5 April 1938 clearly offends against the first element of the rule which prohibits bias since it expresses a point of view based upon what the author deems to be the British self-interest. Nor was this the first time that a broadly similar point of view had been expressed by senior British officials in the Gulf; for the Court will certainly recall that Loch, the then Political Agent, had, in his letter to Fowle of 6 May 1936, specifically put forward the argument that "it might in certain circumstances suit us politically to have as large an area as possible included under Bahrain"⁵. As Qatar has already pointed out, what would suit the British Government politically is not — repeat not — a proper consideration to be taken into account by an impartial decision-maker, particularly if that decision-maker is the British Government itself.

12. I need do no more at this stage than simply list eight other glaring instances of bias or prejudgment in favour of Bahrain displayed by British officials in the Gulf or in London in the

⁵Memorial of Qatar, Ann. III.106, Vol. 7, p. 27.

course of or following the supposed enquiry conducted by Weightman into the question of sovereignty over the Hawar Islands in 1938 and 1939:

- (1) the indefensible action of Weightman in showing Belgrave, Advisor of the Ruler of Bahrain, on 22 April 1939, in the absence of any representative of the Ruler of Qatar, a copy of his report to the Political Resident of that date (possibly even in draft) on the sovereignty issue;
- (2) the failure of Weightman to let the Ruler of Qatar see, or even be informed of, the content of the (uninvited) "preliminary statement" of 29 May 1938 of the Bahrain case on Hawar, despite the fact that Weightman expressly identified that document as one of the documents in the case;
- (3) the pressure put upon the Ruler of Qatar by Weightman, in his letter to the Ruler of 20 May 1938, to submit his claim to Hawar "at the earliest possible moment"⁶, resulting in its submission on 27 May 1938⁷, only seven days later, when contrasted with the leisurely timetable for the submission of Bahrain's "counter-claim", which was not in fact submitted until 3 January 1939, some 4½ *months* after it had been requested;
- (4) the similar pressure put upon the Ruler of Qatar to respond rapidly to Bahrain's "counter-claim", a copy of which was transmitted to the Ruler of Qatar, but in English only (which the Ruler could not understand) on 5 January 1939⁸;
- (5) the evidence of direct prejudgment of the issue of sovereignty by Weightman himself when, in his letter to Fowle of 12 February 1939, discussing the relative financial benefits to Bahrain of the BAPCO offer for the whole unallotted area and the PCL offer for the Hawar Islands alone, together with their territorial waters, he states that, so far as Hawar is concerned, "there can be little doubt that sovereignty rests with Bahrain" and discusses what will be the position "*when once His Majesty's Government award Hawar to Bahrain*"⁹;
- (6) the evidence of Fowle's prejudgment of the issue of sovereignty when, in his letter to the Secretary of State for India of 3 November 1938, he argues that a decision by His Majesty's

⁶Memorial of Qatar, Ann. III.156, Vol. 7, p. 279.

⁷Memorial of Qatar, Ann. III.157, Vol. 7, p. 285.

⁸Memorial of Qatar, Ann. III.177, Vol. 7, p. 393.

⁹Counter-Memorial of Qatar, Ann. III.47, Vol. 3, p. 265 (at paras. 8 (b) and 9 (b)).

Government to postpone the oil concession negotiations will be taken as a move to prevent "the Bahrain State from increasing its income considerably"; and when, in the same letter, he admits that "Hawar geographically is outside the Bahrain area and adjoining Qatar, where [PCL] already have a concession" and yet recommends that pressure be put on the *Ruler of Bahrain* to grant a concession over Hawar to PCL¹⁰;

- (7) the letter from Peel (India Office) to Bagallay (Foreign Office) of 6 July 1938, which considers *inter alia* whether the Ruler of Qatar should be invited to present his observations on the Bahrain "counter-claim", and contains the statement that:

"for practical reasons there would be no advantage in inviting the Sheikh of Qatar's observations on the Bahrein case since it is pretty clear that he has no evidence to bring forward in his own support"¹¹.

This letter is a prime example of prejudice, even if an intervention by Beckett, then second Legal Adviser at the Foreign Office, eventually ensured that a copy of the Ruler of Bahrain's "counter-claim" was in due course transmitted to the Ruler of Qatar for his comments;

- (8) finally, there is the extraordinary language used in Weightman's letter to Prior of 5 December 1939¹² covering the Packer Report, in which Weightman almost seems to relish an eventual murder attempt on the heir-apparent of Qatar, Sheikh Hamad, when he succeeds to Sheikh Abdulla as Ruler.

13. I have to apologize to the Court for having to remind them of some of the instances of bias in favour of Bahrain or prejudice of the issue of sovereignty over Hawar displayed by British officials in the Gulf and in London during this significant period between 1936 and 1939. Indeed, I have to say that the final example of Weightman's almost paranoiac attitude towards the ruling family of Qatar of the time, brings to my memory a fragment of verse which I must have learnt in my childhood more than 60 years ago. It runs, and I am not quite sure how this will come across in translation, but it runs:

"I do not like thee, Dr. Fell,
The reason why I cannot tell."

¹⁰Memorial of Qatar, Ann. III.170, Vol. 7, p. 351.

¹¹Memorial of Qatar, Ann. III.164, Vol. 7, p. 323.

¹²Counter-Memorial of Qatar, Ann. III.48, Vol. 3, p. 275.

For Weightman gives no real explanation for his rooted dislike of the then Ruler of Qatar and, more particularly, of the heir apparent, Sheikh Hamad. He makes complaint of the "avarice" of the then Ruler, conveniently forgetting that Qatar was hardly enjoying any oil revenues in 1939 and was much poorer at that time than Bahrain. He also grumbles about the "impositions" of the heir apparent. But none of this begins to justify his going on record as calmly welcoming a possible assassination attempt on the heir apparent. After all, Belgrave, in his private diaries as we know, was from time to time highly critical of the extravagant expenditure of some of the members of the ruling family of Bahrain during the recession in the early 1930s; but he did maintain a proper discretion in the matter, even if only in his self-interest, and he certainly does not canvass, even in his private diaries, assassination as a possible remedy.

14. Mr. Shankardass has of course drawn attention to the evidence that British officials in London and in the Gulf wished in 1938 to secure a division of what was assumed to be Bahrain's "unallotted area" so that PCL obtained a concession over the Hawar Islands at least, while BAPCO would be awarded a concession over the remainder of the unallotted area. But these would be concessions to be granted by *the Ruler of Bahrain*. Bahrain would have the exclusive benefit of the oil revenues, not Qatar. To suggest, as Bahrain does, that the record displays no evidence of bias in favour of Bahrain and against Qatar in the matter of the conflicting claims to sovereignty over the Hawar Islands is to strain credibility to breaking point. Bahrain in the 1930s was, as Weightman certainly argued in his letter to Fowle of 18 October 1938, considered by the British Government at this time to be "the one loyal Sheikdom in the Gulf"¹³. Bahrain was also a staging-post for Imperial Airways on their increasingly strategic air route to India. So, in a sense quite irrespective of the conduct of particular officials, there was almost an inherent British bias on the issue of Hawar in favour of Bahrain whose Ruler would in addition enjoy relief from the financial worries which had beset him in the early 1930s if Hawar were awarded to him. This leaning towards Bahrain was, if anything, reinforced in 1938 and 1939 when Britain was confronted with the looming prospect of a second world war against Germany, which would underline the importance to Britain of its communications links with India and Australia through the Gulf.

¹³Reply of Qatar, Ann. III.79, Vol. 3, p. 487, at p. 492.

15. The result was, however, a flagrant miscarriage of justice committed by the British Government of the time on the basis of a slanted and flawed assessment of the position by the then British Political Agent in Bahrain, Weightman. That slanted assessment may well have been fuelled, among other things, by the deep-seated prejudice which Weightman continued throughout to hold against the Al-Thani ruling family in Qatar.

16. In the light of all the circumstances surrounding the conduct of the so-called "enquiry" conducted by Weightman in 1938/1939 into the question of sovereignty over the Hawar Islands, and having regard to the Award of the arbitral tribunal in the *Dubai/Sharjah* arbitration, Qatar entertains no doubt that the British Government's decision of 11 July 1939 cannot possibly be characterized as an arbitral award. Furthermore, as it was given without the prior consent of the two Rulers, it was not binding on them, and was certainly never accepted by the then Ruler of Qatar or any of his successors as possessing any binding force whatsoever. Qatar's legal arguments on this aspect of the case have been fully set out in its successive written pleadings, and I would respectfully refer Members of the Court to the relevant sections of those written pleadings.

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Mr. President, this completes my remarks on the 1936 and 1939 British decisions on the Hawar Islands. I would wish to thank Members of the Court for their kind attention to my presentation, and I would respectively suggest, Mr. President, that you now call on Mr. Shankardass to present Qatar's arguments on Bahrain's alleged pre-1936 *effectivités*.

The PRESIDENT: Thank you very much Sir Ian. I now give the floor to Mr. Shankardass.

Mr. SHANKARDASS: Thank you Mr. President. Mr. President, distinguished Members of the Court:

REBUTTAL OF THE ALLEGED *EFFECTIVITÉS* PRE-1936 (LEGAL AND FACTUAL)

1. In my earlier presentation, I drew the Court's attention to the extensive evidence establishing the limited extent of the territories of Bahrain, consisting essentially of a compact group of islands, which never included the Hawar Islands.

2. My task today is to address you on Bahrain's alternative contentions presented in an attempt to support its claim to the Hawar Islands, on the assumption that the Court will be pleased to reject Bahrain's primary submission that the issue is determined by the British decision of July 1939.

3. Bahrain claims, in the first place, that the "historical genesis" of its title to the Hawar Islands, is Bahrain's original dominance and authority over all the territories in the Gulf of Bahrain and the Qatar peninsula. I would respectfully suggest, Mr President and Members of the Court, that Qatar has already demonstrated in its written pleadings, that Bahrain had no such dominance and authority¹, and not in any event, over the Qatar peninsula or its adjoining islands, after the 1868 Agreements.

4. The second aspect of this alternative contention is Bahrain's attempt to invoke *effectivités* in support of its claim, asserting that it has submitted evidence of more than 70 "examples" of Bahrain's *exercise of authority* over the Hawar Islands during the nineteenth and twentieth centuries². Bahrain has listed these so-called "examples" in its Reply in what I might call a "bullet points" strategy. In my respectful submission, a great majority of these bullet points are simply bald assertions, without any supporting evidence and therefore hardly deserving of serious consideration. None of them constitutes an act performed by or on behalf of Bahrain *à titre de souverain*.

5. There are only three so-called "examples" of acts claimed to have been performed by Bahrain before 1936-1937, when Bahrain illegally occupied the Hawar Islands, which warrant more detailed consideration. These are, Mr. President, firstly, the claim of an Al-Khalifa grant of permission to the Dowasir tribe to settle in the Hawar Islands soon after the Al-Khalifa conquest of Bahrain in the eighteenth century; secondly, that the Bahraini courts decided cases relating to land

¹Reply of Qatar, paras. 4.120-4.133.

²Reply of Bahrain, paras. 28-29.

rights and fishing traps in Hawar; and thirdly, that Bahraini authorities could order the arrest of or compel attendance in Bahraini courts of persons stated to be "residents" of the Hawar Islands.

6. The first contention relates to Bahrain's claim that its sovereignty over the Hawar Islands is supported by the evidence of the continuous presence in the islands of a population subject to Bahrain³, that is, a branch of the Dowasir tribe, from around 1800, after they had sought and been given permission to do so by the highest ranking religious and legal official of the Al-Khalifah family, the Qadi of Zubarah⁴. Bahrain contends therefore that its "jurisdiction and control over Hawar Islands thus *commenced* two centuries ago"⁵. It must follow in the first place that if Bahrain had no jurisdiction or control before that date, it had no authority to make the supposed grant to the Dowasir.

Bahrain also claims that in 1845, what it calls "the Hawar Dowasir" were invited by the Ruler of Bahrain to settle on the main Island of Bahrain while, at the same time, continuing their life on the Hawar Islands⁶. As evidence for this contention, Bahrain cites an observation of Lorimer⁷ regarding the arrival of the Dowasir in Hawar and Bahrain; and correspondence in 1909 from the British Political Agent, Prideaux, to the Political Resident with regard to the grant of permission to the Dowasir to reside in Hawar. It is Qatar's submission, Mr. President, that none of this evidence supports what Bahrain is seeking to establish.

7. A reference to the cited observation in Lorimer's 1908 *Gazetteer* shows, firstly, that Lorimer was describing the numerous locations where the Dowasir tribe was to be found, and there is no mention of Hawar in his list; secondly, that the Dowasir of Bahrain are stated to have immigrated from Najd from where "they gradually moved eastwards and, after spending several years by the way of Zakhunaniyah Island, finally arrived in Bahrain about 1845 under the leadership of the grandfather of *their* present Shaikh" — this is Lorimer. In the same observation, Lorimer also notes that some of the Dowasir settled in Doha in Qatar and in Kuwait and that some "offshoots from the Bahrain community" of Dowasir settled on the Persian coast.

³Memorial of Bahrain, para. 345.

⁴Memorial of Bahrain, paras. 346 and 413.

⁵Memorial of Bahrain, paras. 36-37.

⁶Memorial of Bahrain, para. 417.

⁷Memorial of Bahrain, para. 417 and Memorial of Bahrain, Ann. 74, Vol. 3, p. 378.

8. The Court will notice there is no mention by Lorimer of the Dowasir arrival in or via Hawar in 1800, or of the "Hawar Dowasir" being invited in 1845 by the Ruler of Bahrain to settle on the main island of Bahrain. On the other hand specific mention is made of Zakhnuniyah and even of Dohah, Kuwait and the Persian coast. Accordingly, apart from some hearsay reference in the Political Agent, Prideaux's letters of 1909, to which I will shortly refer, there is no real evidence of Dowasir "occupation" of Hawar or their presence in the island either upon an Al-Khalifa grant or otherwise from 1800. And certainly none of any Bahraini invitation to the so-called "Hawar Dowasir" in 1845.

9. Qatar has already shown that even after a part of the Dowasir tribe began to live in Budaiya and Zellaq on the north-west coast of Bahrain main island, they remained a particularly independent community. They did not accept the political authority of the Rulers of Bahrain⁸; and when in the 1920s, the Ruler attempted to introduce certain reforms in the pearling industry which would affect them, they regarded this as an encroachment on their independent status and simply left Bahrain for Saudi Arabia. Many of them finally returned to Zellaq, but some were still drifting back as late as 1933⁹. Furthermore, King Ibn Saud regarded them as his "Duwasir subjects" when he made representations to the British and the Ruler of Bahrain in 1928 concerning their rights in Bahrain¹⁰. Bahrain has therefore not established that the Dowasir constituted at the time a "population subject to Bahrain" nor that theirs was an "uninterrupted occupation" of Hawar. In fact Bahrain now itself also admits that the Dowasir lived in Buddaiya or Zellaq on the main island of Bahrain, and only seasonally visited the Hawar Islands for fishing and hunting¹¹. Bahrain further states that after the development of oil in the 1930s, "life on the mainland became more attractive" and indicates that whatever activity there was on Hawar, also declined¹².

10. Let me now turn to the only evidence — the only evidence — that Bahrain offers in support of the alleged Al-Khalifah grant of permission to the Dowasir tribe to occupy the Hawar Islands in around 1800.

⁸Counter-Memorial of Qatar, paras. 3.82-3.95.

⁹Reply of Qatar, para. 4.164; Reply of Qatar, Ann. III.42, Vol. 3, p. 270.

¹⁰Reply of Qatar, para. 4.164; Counter-Memorial of Qatar, Ann. III.34, Vol. 3, p. 179.

¹¹Memorial of Bahrain, para. 419; see, also, Reply of Qatar, paras. 4.165 *et seq.*

¹²Memorial of Bahrain, para. 38.

11. This evidence consists of two letters written by the British Political Agent, Prideaux, on 20 March and 4 April 1909. Bahrain contends this evidence also shows that the written decision of the Qadi dating from around 1800, was still preserved by the Dowasir¹³ in 1909. These letters appear to be fundamental to Bahrain's claim to the Hawar Islands and copies of them have been placed in the judges' folders at Nos. 44 and 45. With the Court's permission, I propose to show on the screen just a few of the more important extracts from these letters.

12. To begin with, I would respectfully submit to the Court that the correspondence on which Bahrain relies, was neither intended to, nor does it amount to any kind of credible evidence to support Bahrain's claims to Hawar. Its objective was quite different. A reading of Prideaux's two letters of 20 March 1909¹⁴ and 4 April 1909¹⁵ clearly shows that he was concerned at that time about what he called efforts of Turkish officials to establish their authority more securely in the rather vaguely defined district over which they ruled¹⁶ and in that connection decided to visit Zakhnuniyah and the Hawar Island to check for signs of any increased Turkish activity in the area. After his visit, he reported to the Political Resident in an unofficial handwritten letter of 20 March 1909 that he had learnt that a Turkish Mudir had visited Zakhnuniyah and tried to persuade the Dowasir whom he found there to recognize themselves as Turkish subjects as well as fly the Turkish flag on the island; and that the Dowasir replied that they could only follow *their own headman* resident in Bahrain, and resolutely declined to have anything to do with the flag.

13. In this first handwritten note, the Hawar Islands are initially mentioned when Prideaux states in a passage, which is now on the screen:

"The facts are that Dowasir of Budaiya and Zellaq on the north-west coast of Bahrain are in the habit of *every winter* partially migrating to Zakhnuniya and Hawar Islands for fishing (sharks as well as edible fish) and hawking."

14. The only other reference to Hawar is made by Prideaux in the context of what appears to have been his real objective which he indicates in the following words, which are now on the screen:

¹³Memorial of Bahrain, paras. 413 and 424 and footnote 484.

¹⁴Memorial of Qatar, Ann. III.51, Vol. 6, p. 233.

¹⁵Memorial of Qatar, Ann. III.53, Vol. 6, p. 245.

¹⁶*Ibid.*

"If Shaikh Esa is willing to claim sovereignty over Zakhnuniya our position will be fairly plain sailing, but the Dowasir especially as regards Hawar are inclined to consider themselves the independent owners on the strength of a century old decision of a Kazi of Zubara (who however of course was an official under the al-Khalifa) *so the position may require some consideration.*

I strongly deprecate letting the Turks keep Zakhnuniya, as they will then naturally be encouraged to go on to Hawar, but if Shaikh Esa doesn't want or dare to assert his sovereignty over Hawar we shall be in rather a quandary. However, I hope next week to be able to give a satisfactory report *about his attitude.*"

15. Prideaux's main objective therefore seems to have been to thwart what was seen to be Turkish territorial expansionism in this part of the Gulf. As I will shortly show, he succeeded in doing so, though only temporarily as it happened, in respect of Zakhnuniyah, but not in respect of Hawar, because Shaikh Esa only made a formal claim of ownership to Zakhnuniyah and clearly did not "want or dare to assert his sovereignty over Hawar". The Court will observe that Prideaux nonetheless confirms that the Dowasir from Bahrain only went *every winter* to Hawar for fishing and hawking. He makes what is clearly only a passing reference to the Dowasir claim of being "independent owners on the strength of a decision of a Kazi of Zubarah". While he mentions, in effect, that the Kazi, over 100 years earlier, was likely to be an official under the Al-Khalifa, he confines himself to recommending that: "so the position may require some consideration".

16. Prideaux sent his formal report to the Political Resident regarding his visit to Zakhnuniyah and Hawar by his second letter of 4 April 1909. This he did only after he had met Shaikh Esa and ascertained what he referred to in his informal letter as "his attitude" with regard to the islands¹⁷.

17. On Zakhnuniyah, he wrote that he had found a few fishermen on the island living in temporary *mat* huts; and noticed the Turkish flag rolled up and attached to the bottom of the mast. He also reported that the Dowasir tribesmen had replied, to an enquiry from the Turkish Mudir, that they had decided not to accept the Mudir's advice to recognize themselves as Turkish subjects, as they might then perhaps lose their possessions in Bahrain. In other words, they considered it was open to them independently to do so but chose not to, for fear of annoying the British Political Agent or the Ruler of Bahrain whose Shaikhdом the Turks also claimed. It is also clear that the

¹⁷Memorial of Qatar, Ann. III.53, Vol. 6, p. 245.

Dowasir placed much more value on their possessions in Bahrain than on whatever goods or chattels they might have had with them during their seasonal visits to Zakhnuniyah.

18. Prideaux further reported that after Zakhnuniyah he proceeded to Hawar Island, where the Dowasir had two similar winter villages; he had found in one locality a collection of 40 large huts under the authority of a cousin of the tribal Shaikh. The Court will note this was a reference to the cousin of a local Dowasir Shaikh and clearly not to the Ruler of Bahrain. Prideaux further noted that this individual, Esa bin Ahmed Dosiri, "is also related by marriage to Shaikh Esa bin Ali". Bahrain seems to have assumed this marriage might in some way have formed the basis of Shaikh Esa's sovereignty over Hawar, but I believe the Court will conclude Prideaux was not suggesting anything of the kind. Prideaux went on to state in his report that the Dosiri whom he met also told him, and this excerpt is now on the screen:

"[He also] told me that Zakhnuniya was undoubtedly a possession of the Chief of Bahrain, but that the Dowasir regarded Hawar as their own independent territory, the ownership of this island having been awarded to the tribe by the Kazi of Zubara more than 100 years ago, in a written decision which they still preserve."

19. Having stated in his letter of 20 March 1909 that in view of the Dowasir claim of being "independent owners" of Hawar, "the position may require some consideration", Prideaux, in his official report of 4 April, now expressed his own opinion that as the Kazi of Zubara was in those days an official of the Al-Khalifah and, in words which are now on the screen, "the island would seem to be a dependency of the mainland State, which the Chief of Bahrain still claims as morally and theoretically his".

20. Prideaux was of course fully aware of the effect of the Agreements of 1868 and the facts recorded by then, in 1909, in Lorimer's *Gazetteer* of 1908 about the "mainland State" being the separate entity of Qatar. Bahrain was, and is of course, wholly insular in its composition and the description "mainland State" could not by definition apply to it. The "mainland State" which the Chief of Bahrain still claimed, in 1909, in Prideaux's very careful words "as morally and theoretically his" was therefore obviously the separate entity of Qatar.

21. Prideaux had reason to be careful. As Sir Ian Sinclair has shown, while dealing with the geographical extent of the Bahrain Principality, Prideaux, then Political Agent in Bahrain, is stated, in Lorimer's *Gazetteer* of 1908, to have "supplied very full information regarding all places in his

jurisdiction . . .". The record also shows he was actively associated in 1907 with preparing the final version of the description of the Principality in the *Gazetteer*¹⁸. As a result, the Hawar Islands were viewed as being an integral part of the west side of Qatar and as having no connection with Bahrain. This conclusion is strongly reinforced when it is realized that no reference at all is made to the Hawar Islands in the article in Lorimer's *Gazetteer* on the Bahrain Principality. But a few years before this final information was incorporated in the *Gazetteer*, in 1905, when the British authorities in the Gulf were considering various policy options for the area, one of the three suggestions made by Prideaux in a memorandum to Major Cox, the Political Resident (upon which Bahrain places some reliance)¹⁹, was that the suzerainty of the Ruler of Bahrain could be reasserted over most of the Qatar peninsula; and another suggestion, to recognize Turkish sovereignty over Qatar subject to British control over the coast. These suggestions were rejected not only by the Political Resident, as is clear from his letter of 16 July 1905 to Mr. S. M. Fraser, Secretary to the Government of India²⁰ but also by his superiors in the Government of India²¹. One comment recorded in the file was that: "As to the proposals put forward by Captain Prideaux, Major Cox does not apparently commend them to serious notice . . ." and that the objectives which Prideaux contemplated could be amply fulfilled by measures including "the conclusion of a protectorate treaty with . . . El Katr". A further comment was that:

"The main endeavour of Captain Prideaux seems to be to prove that the order issued in 1875; reading: 'it was shown that the Chief of Bahrein had no possessions on the mainland of Gutter and that his rights there were of a very uncertain character —' to Colonel Ross, is not correct. Any data proving the reverse would no doubt be of importance, but Captain Prideaux's final report in this respect will alone show how far his views are correct . . ."

There is nothing on the record to show that such reversal was ever contemplated.

22. Fraser's final comment on Prideaux's suggestion reads:

"I agree that no action is required. The historical facts collected by Captain Prideaux would not in the least affect the policy which the Defence Committee may recommend, as they will be influenced merely by expediency with regard to the state of politics in the present day.

¹⁸Memorial of Qatar, Ann. II.3, Vol. 3, pp. 61, 87.

¹⁹Counter-Memorial of Bahrain, para. 120; Reply of Bahrain, para. 197.

²⁰Memorial of Bahrain, Ann. 71, Vol. 3, p. 355.

²¹Supplemental Documents of Qatar, doc. 4, p. 10.

We need not therefore send home the report by weekly letter. Indeed, I should be rather sorry for Captain Prideaux's state that his very wild suggestion . . . should be brought to the notice of the India Office."

23. Returning to Prideaux's official letter of 4 April 1909 to the Political Resident on his visits to Zakhnuniyah and Hawar, he also reported that upon being informed of the result of his trip, Shaikh Esa "at once said that he desired to make a written protest on the subject of the Turkish occupation of Zakhnuniya . . . that his father Shaikh Ali had built the fort [there], . . . and that for some years he had kept a garrison on the island . . ." Prideaux also reported that another possession, outside of the Bahrain Islands, which the Chief held, was the reef named Labainat including two islets where the Shaikh took a tax from all the boats which collect turtle shells on the islets; and that if the Turks claimed Zakhnuniya, they might also see fit to claim the two islets. With his report of 4 April 1909, Prideaux therefore enclosed a translation of a letter from Shaikh Esa²², which is in the judges' folders at item No. 46, asserting his ownership to "Al Labaina" as well as "the island of Zakhnuniya".

24. The Court will immediately notice that no mention at all is made by the Shaikh of Bahrain, at the time, of any claim to the Hawar Islands. Shaikh Esa had recited no history of his father building a fort on Hawar or keeping a garrison there nor of collecting taxes from anyone in Hawar; and he was obviously unwilling to stake a claim to Hawar only on the ground that the Dowasir periodically fish or hunt there. Clearly, Prideaux had been unable to persuade the Shaikh to "dare" to make such a claim to Hawar.

25. However, Bahrain now seeks to rely on what has been referred to as the Zakhnuniyah parallel in support of its claim to Hawar²³. Bahrain claims that because Bahrain Dowasir fishermen seasonally visited both Zakhnuniyah and Hawar, and as Bahrain's rights in Zakhnuniyah were "recognized" at the time of the Anglo-Turkish Convention of 1913, its rights in Hawar must similarly be upheld. It is Qatar's submission there is no basis whatsoever for this argument. As Prideaux's report shows, any right even to Zakhnuniyah had appeared in reality to have been abandoned well before his visit. Major Cox, the Political Resident, is reported to have suggested therefore that the Sheikh should be advised to fly his flag there in Zakhnuniyah during the winter,

²²Memorial of Qatar, Ann. III.52, Vol. 6, p. 241.

²³Memorial of Bahrain, paras. 426-431.

and to employ a regular custodian to take charge of it from among those of his Dowasir subjects who annually migrate there²⁴. In other words, even in Zakhnuniyah, the Shaikh of Bahrain was not exercising any authority and was being advised to do so to support his claim of ownership. It is inconceivable, Mr. President, that he could have been exercising any such authority in the Hawar Islands which he was not even prepared to claim at the time.

26. The question of Zakhuniya, as the Court is aware, was finally decided under the 1913 Anglo-Turkish Convention in terms of which Ottoman sovereignty over Zakhuniya, which was practically part of the Hasa mainland²⁵ and therefore within its territorial sea, was recognized. As Bahrain has already pointed out (presumably because of the fuss made in regard to Zakhnuniyah), under a side arrangement it received a sum of £1,000 for whatever claims it may have had in Zakhuniya²⁶. By contrast, as the Ruler of Bahrain apparently did not want or dare to make a similar claim to the Hawar Islands, these islands were not even mentioned and no attempt was made by the British authorities to secure or protect the islands for him. One cannot help thinking that if the Ruler of Bahrain had claimed the Hawar Islands in 1909, he might just possibly have been richer by a few additional pounds by 1913; and none of us would be here today. In the event however, the Hawar Islands continued to remain a "dependency of the mainland State" and thus a part of Qatar. As Qatar has shown, it was not until oil became a factor in the Gulf area that the Ruler of Bahrain, 27 years later, did in fact "dare" (in circumstances Qatar has already explained) to make a claim to the Hawar Islands.

27. Mr. President, Members of the Court, on the basis of this evidence, Qatar would suggest the following conclusions:

1. Prideaux's letters clearly show that he was concerned only with containing Ottoman territorial expansion.
2. There is no credible evidence, historical or other, of the grant of any Al-Khalifah permission in 1800 to the Dowasir to occupy the Hawar Islands. The Court will in any event recall that in

²⁴Supplemental Documents of Qatar, doc. 5, p. 13.

²⁵Counter-Memorial of Qatar, Ann. II.25, Vol. 2, p. 149.

²⁶Memorial of Bahrain, paras. 410 and 430.

1800, Bahrain itself was engaged in a battle for survival with the Imam of Muscat²⁷ so that the Al-Khalifah Chief of Bahrain was hardly in a position to be making such grants. The only so-called "evidence" which Bahrain invokes in this context is a casual conversation between Prideaux and a Dowasir fisherman during the former's visit to the Hawar Islands in March 1909. Prideaux merely repeated what the Dowasir fisherman — "the cousin of the tribal principal Shaikh" who also happened to be "related by marriage to Shaikh Esa" — had heard and had told him; he did not see the "written decision which they still preserved" and he does not say that it was the Al-Khalifah who granted the permission, but merely recorded what could clearly only be his guess that the Kazi of Zubarah was in those days (over 100 years earlier) an official of the Al-Khalifah. Prideaux's own conclusion in fact was that "the island would seem to be a dependency of the mainland State (that is Qatar), which the Chief of Bahrain still claims[, according to him,] as *morally* and *theoretically* his" (and not actually as under the 1868 Agreements he could no longer exercise any rights there across the sea). The Court will no doubt take into account the fact that in 1868 or on whichever earlier date Bahrain ceased to have any rights in the mainland Shaikhdom of Qatar, it must also follow that any Bahraini rights to or in any dependency of mainland Qatar similarly came to an end.

The only other document cited by Bahrain in this connection is Weightman's Report of 22 April 1939, made during the so-called "arbitration" to which I had occasion to refer, where he simply repeats the hearsay account reported by Prideaux but does go on to say that "The Political Agent mentioned a written decision *which however now seems to have disappeared.*"²⁸ In other words, while Prideaux, in 1909, was told that the 100 years old decision was still preserved, Weightman somehow came to the conclusion, 30 years later, that it had disappeared.

Despite Prideaux's promptings, the then Ruler of Bahrain could not be persuaded in 1909 to advance a claim to the Hawar Islands. Nor did he make any reservation of rights with respect to Hawar. On the contrary, his conduct in 1909 can only be construed as amounting to acquiescence in the Hawar Islands being regarded as a dependency of mainland Qatar. Following the Court's

²⁷Memorial of Qatar, para. 3.24 and Memorial of Qatar, Ann. II.5, Vol. 3, pp. 248-249; Reply of Qatar, para. 3.10 and Reply of Qatar, Ann. II.61, Vol. 2, p. 365.

²⁸Memorial of Bahrain, Ann. 281, Vol. 5, p. 1168.

decision in the case concerning the *Temple of Preah Vihear*, Qatar would respectfully submit, the Ruler of Bahrain's failure to make a claim to the Hawar Islands in 1909 clearly amounted to "an acknowledgement by conduct" of Qatar's rights to Hawar as a dependency of the mainland²⁹.

And, acquiescence in Qatar's rights, following the Court's Judgment in the *Minquiers and Ecrehos*³⁰ case where the Court held in favour of Great Britain, based in part, on the fact that France had failed to claim sovereignty over the Ecrehos on several occasions.

We now also have Belgrave's entry in his diaries on 23 April 1936, to which Sir Ian Sinclair has already referred, that the Al-Khalifah Shaikhs, five days before the formal claim was made on 28 April 1936, did not in fact themselves believe they had a sustainable claim to the Hawar Islands.

28. Mr. President, may I now turn to the second of the "exercise of authority" examples that Bahrain relies upon to support its claim to sovereignty, namely, that "even before the First World War, Bahrain manifested its authority over the Hawar Islands through the decisions of its courts [and that] the cases related to land rights and fishing traps in the Islands"³¹. In Bahrain's "preliminary statement" of 29 May 1938, supplied by Belgrave to Weightman (and of which no copy was ever shown to the Ruler of Qatar), in the course of the so-called "arbitration", it was claimed that "disputes, which were frequent, regarding fishing rights and grazing have always been referred to and judged by the Ruler of Bahrain, the Bahrain Shar[i]a Courts and, latterly, the existing Civil Courts. These cases can be produced"³². But by the time Bahrain came to file its formal counter-claim of 3 January 1939 (i.e., seven months later), it sought to explain that as there was no regular filing system or preservation of records, a search for old cases regarding Hawar had been unproductive and therefore, only the two judgments could be produced³³. No other judgments were produced before the British authorities in 1938 with Bahrain's counter-claim and the same two judgments are the only ones relied upon in the present proceedings. The Court will no doubt see that these so-called judgments, which Weightman in his crucial letter of 22 April 1939 on the ownership of the Hawar Islands referred to as "two judgments dating from some thirty years

²⁹*I.C.J. Reports 1962*, p. 23.

³⁰*I.C.J. Reports 1953*, p. 47.

³¹Reply of Bahrain, para. 28, at p. 15; Memorial of Bahrain, paras. 433-437, 476-478 and 480-482.

³²Memorial of Bahrain, Ann. 261, Vol. 5, p. 1108.

³³Memorial of Bahrain, Ann. 274, Vol. 5, p. 1133.

ago . . . of unquestionable authenticity" hardly represent what he characterized as "important evidence of the exercise of jurisdiction by the Shaikh of Bahrain for years past"³⁴. Furthermore, it is difficult, if not impossible, to see how Weightman came to the conclusion that even these two "judgments" were of "unquestionable authenticity". Bahrain's communication of 3 January itself contained an admission that there had been no regular filing system or preservation of records at the time in Bahrain and there was no explanation how even these two so-called judgments, from "even before the First World War" had been found. For what they are worth, Bahrain's own Dowasir witness statements³⁵ point out that if the Dowasir had disputes, which were usually about fishing rights and fish traps, they went to the tribal elder to solve it as the "Dowasir always liked to settle their disputes between themselves". It is claimed only if they could not solve a dispute, they went to the Ruler of Bahrain or his descendants to solve it, presumably as arbitrators. In all the circumstances therefore, Mr. President, the authenticity of the two judgments that were "produced" by Belgrave must be open to serious doubt.

29. The first of these two judgments³⁶ of 1909 — both the judgments are in the judges' folders at items Nos. 47 and 48 — "by the Qadi of the Shar[i]a Court", in Bahrain names one Ahmad bin Shahin Dosari and three others who appeared before him, and "disputed the ownership of land and sea properties in Hawar. Ahmad bin Shahin claimed these to be his property inherited from fathers and forefathers; Jabr and Bati claimed them to be their properties and that they held a document . . ."

30. In the second case of 1910, the judgment, unlike the 1909 judgment, begins:

"By the order of Shaikh Abdulla bin Isa Al Khalifah, Ahmad bin Shahin Dosari and Isa bin Ahmad Dosari appeared before me in a dispute about land and sea properties in Hawar . . ."

31. Both the judgments are shown to have been signed by Sharaf bin Ahmad, the Qadi of the Sharia Court.

32. An examination of these two judgments shows they both relate to the same land and sea properties in Hawar of the same individual, Ahmed bin Shahin Dosari, who had a dispute over his

³⁴Memorial of Bahrain, Ann. 281, Vol. 5, p. 1165.

³⁵Memorial of Bahrain, Ann. 313 (a), Vol. 6, p. 1363, Ann. 315 (a) p. 1392 and Ann. 316 (a) p. 1400.

³⁶Memorial of Bahrain, Annexes 238-238A, Vol. 5, pp. 1049 and 1049 (a).

alleged land and sea properties in Hawar with two different parties. Both disputes were decided in his favour, the 1910 decision being based on the 1909 decision. In other words, the two judgments, even assuming their authenticity, together really represent just one instance of a Kazi dealing with an individual's rights of inheritance in a particular land and sea property, which appears to be a description of a fish trap. As I have just indicated, these were also the only two judgments taken into account by Weightman in his attempt to bolster his sweeping conclusions in his letter of 22 April 1939.

33. Even as they stand, the two judgments are hardly evidence of any exercise of State jurisdiction. Furthermore, it is Qatar's submission that it is wholly inappropriate to apply western concepts to the jurisdiction exercised by a Qadi, which jurisdiction was only exercised *in personam* over individuals who were Muslims.

34. The Court will have seen that the then Political Resident, C. G. Prior, in his letter of 26 October 1941³⁷ pointed out that during his own presence in Bahrain for three and half years — during 1929-1932 — he had never heard anything to suggest that the Hawar Islands belonged to Bahrain and believed them to belong to Qatar, which, he noted, was a view also supported by Lorimer. In the same letter, he also asserted that "by agreement parties can take their cases to any Qadhi and two Iraqis on the Trucial Coast could take a dispute to Kerbala if they wished . . ."

35. Qatar has now also furnished the opinion of a distinguished expert in Islamic law to the effect that

"if two Muslim contenders stand before the *qadi* and ask him to settle their private dispute, he has to assume jurisdiction for adjudicating the case in dispute. On the other hand, a *qadi* has to consider himself competent to decide any dispute as long as none of the contenders objects to pleading before him . . ."

He points out that this is the view taken by all four schools of Mahomedan law. In support he cites a case of a land dispute brought before the Prophet where "the contenders were from Yemen, the land was in Yemen, but the case was brought to the Prophet who was in Medina"³⁸.

36. Accordingly, a Qadi sitting somewhere in Bahrain and deciding private or inheritance related disputes between Dowasir Sunni fishermen who seasonally visited the Hawar Islands,

³⁷Memorial of Qatar, Ann. III.229, Vol. 8, p. 127.

³⁸Reply of Qatar, Ann. III.98, Vol. 3, p. 604.

though normally resident in Bahrain, is in no sense an example of "exercise of authority" by the Ruler of Bahrain in the Hawar Islands and such practice therefore offers no support whatsoever to Bahrain's claim of sovereignty over these islands.

37. The third *effectivité* relied upon by Bahrain consists of the following examples of the claimed exercise of judicial or quasi-judicial powers by Bahrain authorities in relation to persons claimed to be residents of Hawar³⁹:

- First, the arrest and compelled attendance in Bahrain courts of the so-called Hawar Island residents⁴⁰;
- Second, the compelled attendance by the Ruler of Bahrain of a Hawar Island resident in a civil case *at the request of Britain*, no less, in 1911⁴¹;
- Third, a 1932 case before the Bahrain courts in which Hawar Islands residents were subpoenaed⁴²; and
- Fourth, a 1932 case before the Bahrain courts between two Hawar Islands residents⁴³.

38. As regards the arrest and compelled attendance of persons charged with criminal offences, in Bahrain courts, the only specific instance referred to is alleged to have occurred in 1936. The document relied upon in this connection⁴⁴ (which is in the judges' folders at item No. 49), is stated to be "a record of the Bahrain Police Directorate seizing the Bahrain courts of a violent dispute over fishing traps in the Hawar Islands"⁴⁵. This document provides no evidence of such arrest or compelled attendance. It is merely an unsigned typewritten sheet purporting to be a report addressed to "the Court" and containing information about the disputed ownership of certain fish-traps located "between Bahrain and Qatar and near to Hawar". There is a reference to a warning to the disputants and the report supposedly bears "thumbprints" of two individuals. No original is produced and the Court will no doubt conclude that the document can have no

³⁹Reply of Bahrain, para. 28, pp. 15-16.

⁴⁰Memorial of Bahrain, paras. 479-480.

⁴¹Memorial of Bahrain, para. 436.

⁴²Memorial of Bahrain, Anns. 242 and 243, Vol. 5, pp. 1065 and 1066.

⁴³Memorial of Bahrain, Anns. 244 (a)-244 (c), Vol. 5, pp. 1067-1069.

⁴⁴Memorial of Bahrain, Ann. 245, Vol. 5, p. 1070.

⁴⁵Memorial of Bahrain, para. 480.

evidentiary value whatsoever. In any event, it offers no support for any "arrest and compelled attendance in Bahrain Courts".

39. The other documents relied upon⁴⁶ under this item are Belgrave's letter of 28 April 1936⁴⁷ (containing Bahrain's first formal claim to the Hawar Islands), the Note (that is the Preliminary Statement) of 29 May 1938⁴⁸, and Bahrain's so-called "Counter-claim" of 3 January 1939⁴⁹, all of which make general assertions in the context of Bahrain's claim to Hawar. The second of these documents states that "in the past the 'fidawis' of the Shaikh of Bahrain were sent when necessary to arrest people of Hawar when they were required to appear before Bahrain authorities", and that "since the present regime summonses are served in the usual way on the inhabitants of Hawar". There is no evidence whatsoever to support these assertions. In any event the practice of sending "fidawis" to "arrest" individuals in another Shaikh's territory provides no support to a claim of sovereignty. As the former Political Resident, Prior again, pointed out⁵⁰ when protesting the 1939 decision, Bin Jiluwi of Saudi Arabia frequently sent men to Bahrain and Qatar to arrest people when he was in Bahrain.

40. With regard to the second item relating to the "compelled attendance by the Rulers of Bahrain of a Hawar Island resident at the request of Britain in 1911" (in fact a request by the Political Agent, Major Knox), the only evidence relied upon is a letter from the Ruler of Bahrain himself to the Political Agent (which is in the judges' folders at item No. 50) which appears to be a response to a request for securing attendance of a seaman who was then in Hawar, whom the Political Agent seems to have helped secure employment to go out pearl diving⁵¹.

41. There is no reference in this letter to appearance in a court and this is in no sense an instance of "arrest and compelled attendance in Bahrain Courts of Hawar Island residents".

42. In support of the third and fourth items relating to cases in 1932 in Bahrain courts involving "Hawar island residents", Bahrain merely relies on a set of typewritten sheets in

⁴⁶Memorial of Bahrain, para. 479.

⁴⁷Memorial of Bahrain, Ann. 246, Vol. 5, p. 1071.

⁴⁸Memorial of Bahrain, Ann. 261, Vol. 5, p. 1108.

⁴⁹Memorial of Bahrain, Ann. 274, Vol. 5, p. 1133.

⁵⁰Memorial of Qatar, Ann. III.229, Vol. 8, pp. 127, 130.

⁵¹Memorial of Bahrain, Ann. 239 (a), Vol. 5, p. 1050.

English⁵² of which one document is a translation. (Copies of these are also included in the judges' folders at item Nos. 51 and 52.) These were prepared by Belgrave in connection with Bahrain's claim and, in Qatar's submission, have no evidentiary value. They certainly do not demonstrate "the subpoena powers that Bahrain courts exercised over the residents of Hawar Islands". They mention letters to a party in a case or a request to the Ruler to arrange for an individual to appear. In fact, the contents of the documents suggest that despite repeated "requests" the persons concerned simply did not appear before the court. In any event, nothing here suggests that any court in Bahrain had territorial jurisdiction *over Hawar*.

43. The 1932 case before the Bahrain courts between what are termed two "Hawar Islands residents" (Case 6/1351)⁵³ refers to two persons, each described as "living in Hawar and a Bahraini subject". Since it is dated March 1932, the record appears to have been made during the winter season when the Dowasir fishermen could in principle have been present in Hawar. Moreover, there is no evidence that the persons concerned did appear in court while they were "resident in Hawar", since it is recorded that the defendant was "summoned again" and the hearing was rescheduled. This in fact rather tends to suggest that the individual concerned may not even have returned from Damman at the time when his presence in court was required.

44. In summary, therefore, Bahrain has produced no evidence either of arrests in Hawar or of compliance with subpoenas or summonses (which in any case is a Western concept) addressed to persons described as "resident in Hawar" who we now know were in fact temporary visitors to the islands. Furthermore, as the Court will be well aware there is a recognized practice whereby a State may send summons to someone in another country without any implications in relation to sovereignty. The only "evidence" of court judgments concerning property in Hawar remains the 1909 and 1910 judgments analysed by me earlier and which, I trust I have shown, to be of questionable authenticity and in any event of no evidentiary value in support of Bahrain's claim to sovereignty over Hawar.

⁵²Memorial of Bahrain, Anns. 242 and 243, Vol. 5, p. 1065 and p. 1066.

⁵³Memorial of Bahrain, Ann. 244 (a), Vol. 5, p. 1067.

45. The remaining items⁵⁴ invoked by Bahrain are in no sense examples of exercise of authority and, as I said earlier, hardly deserving of any serious consideration. They refer to the Dowasir tribe's seasonal stay in Hawar, evidence of their activities or presence in Hawar, their allegiance and nationality, and the so-called British, Ottoman or other recognition of some of these alleged facts. Prideaux's two letters of 1909 which I analysed earlier are again invoked for what Bahrain terms as *British* confirmation and recognition of the Dowasir habitual presence and activities on the Hawar Islands. A number of other subsequent British documents are cited to the same effect.

46. Qatar does not deny that the Hawar Islands were used by the Dowasir at least prior to 1923 when they departed *en masse* to Damman in Saudi Arabia; what it does deny is that the tribe had more than a seasonal presence in the islands, that the Dowasir were exclusive users of Hawar⁵⁵, or that their presence in the Hawar Islands and their private activities were in any sense indicative of State activity. In Qatar's submission, such activities did not constitute evidence of *effectivités* as none are acts *à titre de souverain*.

47. The Court will recall, with regard to Hawar, that Belgrave himself recorded in his diary on 1 April 1938 (nearly 30 years after Prideaux's statement of Dowasir assertion of ownership of Hawar) that the Dowasir "resent us having developed the place which in the past was never visited and which they seem to consider as their own property"⁵⁶. They could therefore, Mr. President, hardly be regarded as acting for or on behalf of Bahrain.

48. Even assuming that the Dowasir were subjects of or owed allegiance to the Ruler of Bahrain, the nature of their seasonal activities of fishing and hawking cannot in law sustain Bahrain's claim to sovereignty over the Hawar Islands. The Court will recall that in the recent *Eritrea/Yemen* arbitration, the Tribunal found that although there was substantial evidence of individual fishing practices, it did not "*constitute evidence of effectivités for the simple reason that none of these functions are acts à titre de souverain . . .*"⁵⁷

⁵⁴Reply of Bahrain, Sect. 2.3.

⁵⁵Reply of Qatar, para. 4.173 (*d*).

⁵⁶Reply of Qatar, para. 4.178.

⁵⁷Reply of Qatar, para. 4.182.

49. These principles now find clear confirmation in this Court's own Judgment in the case concerning *Kasikili/Sedudu Island (Botswana/Namibia)* to which my learned friend, Professor Salmon, has already referred holding that the Masubia did not occupy the island *à titre de souverain* when using it intermittently, according to the seasons and their needs, for exclusively agricultural purposes⁵⁸.

50. It is Qatar's submission that this rule adopted by the Court applies *mutatis mutandis* to the issue of Bahrain's claim to sovereignty in this case, based as it is on the nature of the Dowasir seasonal presence for fishing or other activities on the Hawar Islands.

51. Bahrain also makes what I can only describe as a faint claim of British, Ottoman and even Qatari recognition that the Hawar Islands belong to Bahrain.

52. As for British recognition, Bahrain cites, firstly, the Brucks survey which also refers to the fishing villages on Hawar and which, as Bahrain admits, dates from the 1820s and thus from long before the emergence of Qatar as a separate entity. The next reference is to the "British confirmation in 1909 that the Hawar Islands belonged to Bahrain"⁵⁹, relying upon the two Prideaux letters. From what I have shown above, Prideaux's letters, and for that matter, Captain Brucks's Survey, in no sense amount to such "British confirmation" or recognition. The claim of recognition by Ottoman authorities, who in fact claimed sovereignty over Bahrain itself and, even by the Ruler of Qatar, are, to say the least bold, but in reality have no credibility whatsoever.

53. Mr. President, I trust that I have shown the Court that there is no evidence whatsoever of any Bahrain State activity in the nature of legislation, jurisdiction or even administration, in the period before April 1936; and that the seasonal visits of the Bahrain Dowasir to the Hawar main island and their activities on that island, did not in any sense amount to *effectivités* as such activities were not carried on *à titre de souverain*.

Mr. President, this concludes my presentation and I am most grateful for the attention I have received. May I suggest that you call upon Sir Ian Sinclair for his next presentation, but perhaps first, this is an appropriate time for the Court's morning break.

⁵⁸*I.C.J. Reports 1999*, para. 98.

⁵⁹Reply of Bahrain, para. 28, at p. 15.

The PRESIDENT: Je vous remercie, M. Shankardass. La séance de la Cour est suspendue pour un quart d'heure.

L'audience est suspendue de 11 h 20 à 11 h 50.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise et je donne maintenant la parole à Sir Ian Sinclair.

Sir Ian SINCLAIR: Merci, M. le President. Mr. President, Members of the Court:

BAHRAIN ACTIVITIES POST-1936: CRITICAL DATE: STATUS QUO COMMITMENTS: NO ACQUIESCENCE BY QATAR

1. You may well be relieved to hear that this is the final presentation which Qatar will make in the first round on the issues which have to be determined by the Court in the context of the dispute with Bahrain concerning title to the Hawar Islands. Following on from the presentation just made to you by Mr. Shankardass on Bahrain's pre-1936 *effectivités*, I will analyse corresponding Bahrain *effectivités* post-1936, and assess what weight, if any, the Court should attach to them in determining title to the Hawar Islands. I will then have a few words to say on the relevance in this context of what has been termed the critical date or the critical period, and on the role which this notion or indeed any comparable notion can play in the present case in the evaluation of evidence. It would also be appropriate for me to deal in this statement with the related question of the continuing breaches by Bahrain of its solemn commitments to respect the status quo dating back to 1983. Finally, I will conclude by demonstrating that, contrary to the persistent but wholly unsubstantiated allegations made by Bahrain, Qatar has never at any time acquiesced in the Bahraini occupation of the Hawar Islands. This, then, I fear, will be a mixed bag of goodies that I present to you.

2. There is, however, one general point which I would wish to make at the outset. One of the most significant features of the history of Qatar over the past 150 years has been that there was never any British official presence in Qatar on any permanent basis until 1949, when Mr. John Wilton was appointed as the first British Political Officer in Qatar. By way of contrast, the first British Political Agent in Bahrain had been appointed as early as 1900 and there was

always a British Political Agent resident in Bahrain until that State achieved its independence in 1971. Also, from 1926 onwards the Ruler of Bahrain had available to him the services of Mr. Charles Belgrave as his adviser. This was in contrast to the situation in Qatar, whose Ruler had no outside advisers working directly for him until 1950. Until 1949, it was the British Political Agent in Bahrain who reported to London from time to time on events in Qatar, but, as he and his superior in the Gulf, the Political Resident, only visited Qatar on infrequent occasions, their knowledge of the ruling family in Qatar, and of conditions in what was, prior to the discovery and exploitation of oil in Qatar in the late 1940s and 1950s, a barren and inhospitable land, was inevitably limited. Thus, it can occasion little surprise that, as Ms Pilkington has already pointed out, evidence from British official sources (or indeed from other sources) of conditions in Qatar during the period between 1916 and 1936 is very sparse. There was continuing and continuous contact during this period between the resident British Political Agent and the Ruler of Bahrain; but there was no corresponding and continuous contact with the Ruler of Qatar.

3. There is accordingly, Mr. President, a wealth of written documentation from British official sources about conditions in Bahrain during this period and about the activities of the ruling family in Bahrain. This is supplemented by the Belgrave diaries which cover at least part of this period and which are an invaluable source for the day-to-day life of what can be termed the Bahrain "establishment". But there is no such written documentation about conditions in Qatar prior to 1949, except for a few isolated papers such as the Packer Report of 1939 on which Qatar has commented extensively in its written pleadings¹. Precisely because of this contrast, it need not occasion surprise that there is no written evidence of visits by members of the Al-Thani family to Hawar during this period. There may well have been such visits but they remain unrecorded. There is of course evidence in one of the Supplemental Documents filed by Qatar on 1 March of this year of a visit by the then Ruler of Qatar, accompanied by Saleh el Mana, to Zekrit in January of 1938, no doubt in order to inspect the activities of the oil company working the Qatar oil

¹Memorial of Bahrain, Ann.292, Vol.5, p.1190, commented on in Counter-Memorial of Qatar, paras. 3.133-3.142.

concession²; and the Court will of course recall that Zekrit is on the mainland of Qatar just opposite Hawar.

4. What is astonishing, however, is that, despite the wealth and variety of written materials relating to Bahrain which were generated during this period, there is not one official document to be found in the British archives of the time which indicates any official activity by or on behalf of the ruling family of Bahrain in or in relation to the Hawar Islands.

5. In contrast to the singular lack of evidence of Bahraini governmental or official activities on or in relation to the Hawar Islands prior to 1936, save for the court judgments of 1909 and 1910 which my learned friend Mr. Shankardass has this morning dissected so convincingly, there is of course a mass of evidence of Bahraini official activities on or in relation to the islands after their clandestine occupation by Bahrain police and other guards in 1936 or 1937. Bahrain of course will not admit that the occupation by Bahrain took place at this time, since to do so would be wholly inconsistent with Bahrain's argument that the Hawar Islands had been regularly settled by members of the Dowasir tribe for some 150 years prior to 1936. Bahrain's original contention was that members of the Dowasir tribe had been *permanently* settled on Hawar throughout this period, but they were obliged to withdraw this claim in the face of the incontrovertible evidence that those members of the Dowasir tribe resident in Zellaq and Budeya had gone into voluntary exile in Dammam, Saudi Arabia in 1923, refusing to return until 1928/1929 at the earliest. Indeed, some were still drifting back to Budeya in Bahrain as late as 1933³.

6. What Qatar has consistently maintained is that certain members of the Dowasir tribe resident in Bahrain may before 1923 or indeed after 1936 have visited Hawar during the winter months in order to engage in fishing activities; but that these were by no means the only winter visitors to Hawar by fishermen, since fishing was at that time an activity which was practised in common by tribesmen from various settlements on the southern coast of the Gulf, and was not accordingly an activity engaged in by or on behalf of Bahrain *à titre de souverain*. Now I turn to post-1936 Bahrain activities in and around Hawar. I start with beaconing.

²Supplemental Documents of Qatar, doc. 15.

³See Reply of Qatar, Ann. III.42, Vol. 3, p. 257, at p. 270.

Post-1936 Bahrain activities in and around Hawar: beaconing

7. The beaconing by Bahrain of islands, islets, rocks, and indeed low-tide elevations in and around the Hawar Islands was one of the earliest activities engaged in by Bahrain after their occupation of the main Hawar island in 1936 or 1937. This is freely conceded by Bahrain itself. In the Memorial of Bahrain, it is stated that "Bahraini monuments or markers have been erected on all of these maritime features since the 1930s"⁴. By "these maritime features" Bahrain is clearly referring here to "all of the maritime features situated in the Gulf of Bahrain from the Hawar Islands in the south to Fasht ad Dibal in the north"⁵. Indeed, Bahrain goes even further, expressing its claim in the broadest possible terms:

"The areas of sea, and the insular and other legally relevant formations, situated between the peninsula [of Qatar] and the main island of Bahrain, together with those peninsular areas that were Bahraini, continued to be part of the political entity of Bahrain."⁶

8. Qatar has already demonstrated in its Memorial that these beaconing activities were undertaken on behalf of Bahrain, at the instigation of Belgrave, during the winter months of 1937-1938 in a clear attempt to give some semblance of credibility to the Bahraini claim to Hawar⁷. The Court will also recall that, in its Judgment in the *Minquiers and Ecrehos* case, it disregarded completely the placing by the French Government of buoys outside the reefs of the Minquiers group and even the erection of provisional beacons on some of these reefs⁸.

Other post-1936 Bahrain activities in Hawar: fort, mosque and attempt to drill artesian well

9. In the immediate aftermath of the Bahraini occupation of the main Hawar island in the late 1930s, Bahrain also set in hand the construction of a stone fort with tower, the building of a mosque and an attempt to drill an artesian well. In the "preliminary statement" filed by Belgrave on 29 May 1938, reference is made to this stone fort; but it is not of course revealed that its construction had been begun only in 1937, as is apparent from the Government of Bahrain's Annual Report for the year March 1937 — February 1938. In that Annual Report, it is stated that, among

⁴Memorial of Bahrain, para. 575.

⁵Memorial of Bahrain, para. 568.

⁶*Ibid.*

⁷Memorial of Qatar, paras. 6.42-6.45 and 6.146-6.154.

⁸*I.C.J. Reports 1953*, p. 71.

the "additional new works" undertaken during the year was the "Hawar Fort", for which expenditure of 17,237 rupees is allocated⁹. In the same Annual Report, it is also stated that "the fort and pier at Hawar were completed at the end of the year with the exception of some work on the courtyard wall". Among the public works estimated for the forthcoming year (March 1938-February 1939) is a sum for the "Completion of Hawar police station"; in addition, a sum of 28,400 rupees is set aside to cover *inter alia* the need for a government motor launch which "has become more urgent since the increased development in the Hawar islands".

10. The Government of Bahrain's Annual Report for the following year, March 1938-February 1939, also records some interesting facts. Actual expenditure on "Completion of Hawar Fort" was 11,069 rupees, but included in this sum was "the cost of erecting about twenty stone beacons on various islands in the Bahrain waters". It is also stated in this Annual Report that a police launch built during the year is "used for coastal patrol work and for plying between Bahrain and Hawar"; and that "a barbed wire fence was built around the Fort at Hawar and several of the water cisterns were repaired". A further entry discloses that "the main Island of [the] Hawar Group was surveyed and a map of the island has been made"¹⁰.

11. I do make my apologies to the Court for recounting these petty details of early expenditure by the Government of Bahrain on construction activities in Hawar after 1936. But I have recounted them quite deliberately. Precisely because they are so petty, one would certainly anticipate corresponding items of expenditure on small projects in Hawar prior to 1936 if, as Bahrain claims, the Hawar Islands had appertained to Bahrain since before the year 1800. But what do we find if we consult earlier Government of Bahrain Annual Reports? We find absolutely no reference to even the smallest official expenditure on projects in Hawar. Does this make sense? It makes sense only if you discount entirely the wholly unproven assertion by Bahrain that members of the Dowasir tribe had been in permanent, or even regular, occupation of the Hawar Islands for over 150 years before 1936, and that they had occupied the islands on behalf of the Ruler of Bahrain. And, even on this basis, it makes sense only if you accept in its essentials the case which Qatar is urging upon you: namely, that, prior to the unlawful Bahraini occupation of

⁹Reply of Qatar, Ann. III.59, Vol. 3, p. 361.

¹⁰Reply of Qatar, Ann. III.89, Vol. 3, p. 545.

the Hawar Islands in 1936 or 1937, they were uninhabited — essentially uninhabited — although fishermen from several neighbouring territories, including Bahrain, were accustomed to visit them from time to time during the winter months in order to engage in fishing activities in the waters surrounding the islands.

Critical date

12. Mr. President, I turn now to discuss briefly the notion of the critical date and other notions which may be relevant to the Court in evaluating the admissibility or opposability to Qatar of post-1936 evidence adduced by Bahrain to sustain its claim to Hawar. Qatar made it clear in its Counter-Memorial that it was deliberately refraining from positing the notion of a specific "critical date" for the crystallization of the dispute between Bahrain and Qatar over Hawar. It did, however, draw attention to the significance of the date of 28 April 1936, when Belgrave, on behalf of the Ruler of Bahrain, first advanced a formal claim to the Hawar Islands as constituting part of the State of Bahrain by means of a letter to the then Political Agent in Bahrain.

13. Why is the date of 28 April 1936 so significant in this particular case? It is because, up until that date, the British authorities in the Gulf and in London had unhesitatingly, by word and by deed, openly acknowledged that the Hawar Islands belonged to Qatar, as has been demonstrated by Mr. Shankardass in analysing the limited extent of Bahrain and the early oil concession history. In this context, I would ask the Court again to look closely at the four items of evidence dating from the summer of 1933 which were invoked by Mr. Shankardass in that statement. These items of evidence are expressive of the views then held by both Laithwaite of the India Office and Loch in his capacity as Acting Political Resident, which were contemptuously dismissive of any Bahraini claim to the Hawar Islands. Both Mr. Shankardass and I have in addition drawn attention to the RAF reconnaissance of Qatar in 1934 involving the overflight of the Hawar Islands. The consent of the Ruler of Qatar, but *not* — repeat *not* — of the Ruler of Bahrain, was sought for the carrying out of this reconnaissance. Then in 1935 we have the Qatar oil concession clearly predicated upon the assumption that the Hawar Islands, several of which are illustrated on the sketch map attached to the concession, form an integral part of the Qatar Peninsula and accordingly of the State of

Qatar. All this cumulative evidence demonstrates consistent recognition by the British Government, at least up until early 1936, of the appurtenance of the Hawar Islands to Qatar.

14. Now, we know that neither Belgrave nor the British authorities in the Gulf, nor indeed PCL as Qatar's exclusive oil concessionaire, revealed to the Ruler of Qatar in the spring or summer of 1936 the existence of this formal claim by Bahrain to sovereignty over the Hawar Islands, nor indeed the existence of the "provisional decision" of 9 July 1936 by the British Government in favour of the Bahraini claim. All this was quite deliberately kept secret from the Ruler of Qatar.

15. It was no doubt in consequence of the British "provisional decision" of 9 July 1936 that the Bahraini authorities felt confident enough in late 1936 or indeed in 1937 to embark on the clandestine occupation of Hawar by Bahraini police and security guards, which provoked the first strenuous protest from the Ruler of Qatar in February 1938, when he became fully informed of what Bahrain had been doing on his territory.

16. In one sense, therefore, it can be argued that the formal crystallization of the dispute between the two sheikhdoms over Hawar only occurred in February 1938, when the Ruler of Qatar protested against Bahrain's building and other activities on Hawar. But this would be to mistake the appearance for the reality. The fact that the formal claim by the Ruler of Bahrain to the Hawar Islands advanced on 28 April 1936 had been deliberately withheld from the Ruler of Qatar, as had the British Government's "provisional decision" of 9 July 1936 in favour of the Bahraini claim, obviously encouraged the Ruler of Bahrain at the time to take active measures to occupy the main Hawar island by stealth in late 1936 or in 1937. Qatar accordingly submits that evidence of any activities embarked upon by Bahrain after 28 April 1936 with a view to sustaining its claim of title to the Hawar Islands must be regarded as wholly inadmissible, particularly since such activities must be viewed as amounting to an illegal occupation and exploitation of an island hitherto recognized, even by the British Government, as appertaining to Qatar.

17. Even if the Court is not prepared to go quite so far as to declare evidence of these activities inadmissible *in limine*, they are, in Qatar's submission, clearly not opposable to Qatar, the more particularly since, as I will be showing later in this presentation, Qatar *never* — repeat *never* — acquiesced in the wrongful occupation of the Hawar Islands by Bahrain in the late 1930s, which was in any event kept secret from the Ruler of Qatar until he first heard of it in early 1938.

18. Qatar accordingly requests the Court for these reasons

- (a) not to attach any weight to evidence of official Bahraini activities in or in relation to the Hawar Islands conducted after 28 April 1936;
- (b) in the alternative, to regard any such official Bahraini activities as *not* — I repeat *not* — opposable to Qatar in the determination of the issue of sovereignty over the Hawar Islands.

Hawar in the 1940s

19. Before turning to consideration of the extent to which Bahrain has observed its status quo commitments, there is one further point which Qatar must make on the relevance, if any, of activities engaged in by the Bahrain Government or by Bahrain nationals on Hawar since its occupation by Bahrain in 1936 or 1937. I do not intend to go over the ground so fully covered in paragraphs 3.143 to 3.158 of the Counter-Memorial of Qatar and in paragraphs 4.173 to 4.192 of Reply of Qatar which are responsive to the arguments advanced by Bahrain based upon alleged Bahrain *effectivités* on Hawar both pre-1936 and post-1936. I would however particularly draw the attention of the Court to two pieces of evidence submitted by Qatar in its Reply which provide strong confirmation of what Qatar has been consistently maintaining concerning conditions on Hawar in the 1930s and 1940s. The first relates to the visit which Alban, the new Political Agent in Bahrain, paid to the main Hawar island on 13 December 1940, less than two months after Weightman's departure from the Gulf. In paragraph 4.176 of its Reply, Qatar has reproduced his brief report on that visit as recorded in the Intelligence Summary of the Political Agent, Bahrain for the period 1 to 15 December 1940. I now show on the screen that brief report. [Show para. 132 (v) of Reply of Qatar, Ann. III.94 on screen.] You will see that it confirms what I have already said this morning about the new fort and the barbed wire fence; more interestingly, however, Alban records that "a few Dawasir from Zellaq were in residence; they apparently like Hawar in winter and return to Zellaq in summer". This entirely supports what Qatar has been constantly saying about the Dowasir from Zellaq being winter visitors only. The second piece of evidence concerns the use made of Hawar in the 1940s by the then ruling family in Bahrain. In its Reply, Qatar has produced evidence to show that, during the 1940s and early 1950s, the main island of Hawar was used by Bahrain as a convenient place to which to banish unruly and recalcitrant junior members of

the ruling family, particularly those who had engaged in drunken behaviour. In paragraph 4.189 of its Reply, Qatar has cited a passage from the Intelligence Summary of the Political Agent, Bahrain, for the period from 16 to 31 March 1940. The Court will note that the Political Agent during this period was, in fact, still Weightman who signed that Intelligence Summary. I now show on the screen Weightman's brief report of one of those incidents of drunkenness. [Show para. 33 (i) of Reply of Qatar, Ann. III.91 on screen.] I draw particular attention to the final sentence of this report: "The pleasures of Hawar are confined to watching a few fishermen gut their catch, and the result of this action should be admirable." Now, Mr. President, this picture of conditions on Hawar in early 1940 is in noticeable contrast to the description of conditions on Hawar contained in Weightman's key letter to Fowle of 22 April 1939, on which the British Government relied so heavily in reaching their decision of 11 July 1939.

Status quo commitments

20. Mr. President, I turn now to consideration of the extent to which Bahrain has observed the status quo commitments which it undertook to observe, initially, in the Second and Third Principles of the Framework Principles proposed to the two Parties by King Khalid of Saudi Arabia in 1983, and approved on 22 May 1983. The Second of these Framework Principles provided for the maintenance of the status quo and declared that any act to change the status quo would have no legal effect. The Second and Third Principles were later embodied in the 1987 Agreement which the Court itself, in its Judgment of 1 July 1994 on jurisdiction and admissibility, has characterized as an international agreement "creating rights and obligations for the Parties". The second point of the 1987 Agreement provides that, until a final settlement of the disputed matters is reached, Qatar and Bahrain shall abide by the principles of the framework for a settlement on which they agreed on 22 May 1983, and by the following in particular. [Show on the screen the second point of the 1987 Agreement at Memorial of Qatar, para. 1.18.]

Mr. President, Members of the Court, the second point of the 1987 Agreement is now on the screen. I draw to the attention of the Court in particular the content of sub-paragraph (a):

"(a) Each party shall undertake from to-date to refrain from any action that would strengthen its legal position, weaken the legal position of the other party, or change the status quo with regard to the disputed matters. Any such action shall be regarded [as] null and void and shall have no legal effect in this respect."

21. Notwithstanding these clear and indeed peremptory provisions, Qatar has felt obliged, during the entire course of the present proceedings before the Court, to draw to the Court's attention new military and civilian activities undertaken by the Bahrain Government, or by private companies with the approval of that Government, on the main island of Hawar and indeed in the disputed maritime areas. Paragraphs 1.16 to 1.23 of the Qatar Memorial, together with Appendices 1, 2 and 7, provide details of the numerous protests made to Bahrain about the continuing breaches of the status quo commitments by the Bahrain authorities. Paragraph 1.37 of the Qatar Counter-Memorial, together with Appendices 1 and 3 to that Counter-Memorial, draw to the attention of the Court evidence of extensive further construction by Bahrain of both military and civilian installations on Hawar in violation of the status quo commitments. Finally, paragraphs 1.39 to 1.44 of the Qatar Reply, together with Appendices 3 and 4 to that Reply, provide further evidence of new activities by Bahrain which are in clear violation of the status quo commitments which Bahrain has formally undertaken to observe. Reference to the relevant passages in the Qatar Memorial, Qatar Counter-Memorial and Qatar Reply, together with the Appendices to these written pleadings will be found in the transcript of this morning's verbatim record. To this long litany of Bahrain's actions in breach of its status quo commitments, there must now be added the construction by Bahrain in the early months of the present year of three artificial islets in the waters off the western coast of the main Hawar island. Qatar protested to Bahrain on 21 March 2000 about this further clear breach of the status quo commitments which it had undertaken as long ago as 1983, and lodged a copy of this protest with the Court.

22. Paragraph 1.42 of the Reply of Qatar shows that it is only in recent years, and particularly since the filing of Qatar's Application to the Court, that Bahrain has begun to develop civilian facilities on the main Hawar island in addition to strengthening and extending its military capabilities. A palace, together with associated buildings, was constructed prior to 1991. But in recent years, there has been a considerable increase in construction activities, including the building of a new military camp, a harbour, a jetty, a hotel, two groups of chalets and other new buildings. I need not go into further detail on these continuing breaches by Bahrain of its status quo commitments as His Excellency the Agent for Qatar, in his opening statement, has given a striking demonstration of what Bahrain has been doing in recent years in an effort to present Hawar

as a vital part of Bahrain's economy. Qatar submits that, because Bahrain's more recent construction activities on Hawar, both military and civilian, were begun long after the critical period in this case, they cannot in any event, be taken into account as evidencing or confirming Bahrain's title to the Hawar Islands; the more particularly is this so since all construction activities on Hawar by Bahrain since 1983 have been conducted in open and flagrant breach of the status quo commitments which both parties have undertaken to observe. The Court will have noted that, in Section 2.11 of the Bahrain Reply, at paragraphs 173 to 180, Bahrain seems to take positive pride in various planned or ongoing projects for the further economic development of Hawar, despite the fact that active pursuit of these projects in advance of a judgment from the Court upholding Bahrain's title to Hawar would certainly constitute a further breach by Bahrain of its status quo commitments. It is noteworthy that, so far as Qatar can judge, Bahrain makes no mention of its status quo commitments in any of its written pleadings, and has not sought to respond in any way to Qatar's recurring charges that Bahrain is in open breach of these commitments by reason of its construction and other activities on Hawar. The Court will no doubt wish to give full effect to the second of the two Framework Principles agreed by the two Parties in 1983, as further clarified by sub-paragraph (a) of point 2 of the 1987 Agreement, already characterized by the Court in its Judgment of 1 July 1994 as an international agreement creating rights and obligations for the parties. Qatar accordingly submits that evidence of all construction and other activities by Bahrain on Hawar since 1936, whether military or civilian, has to be totally set aside, and indeed regarded as having no legal effect, in the context of the determination which the Court has to make as to which of the two States has sovereignty over the Hawar Islands. Having said this, I would simply wish to remind the Court of the assurance which His Excellency the Agent for Qatar gave at the end of that part of his opening statement which was devoted to Bahrain's continuing breaches of its status quo commitments.

No acquiescence by Qatar

23. Mr. President, the constantly repeated charge by Bahrain that Qatar has somehow acquiesced in Bahrain's unlawful occupation of the Hawar Islands does not bear examination for a moment. Qatar has already given chapter and verse for the numerous protests made by the Ruler of

Qatar against the British decision of 11 July 1939. The first such protest was made on 4 August 1939 in a firm, but dignified letter to the Political Resident. A copy of this letter is now on the screen, and you will find a copy in the judges' folders [Memorial of Qatar, Ann. III.211, Vol. 8, pp. 50-52]. The Court will note that the Ruler asserts forcefully that the Hawar Islands

"do not belong to Bahrain according to their natural and geographical position; that they neither were detached from their mother Qatar, nor did they cut themselves off from her; and the Government of Bahrain neither conquered nor invaded them except in recent times when they found circumstances to be favourable and transgressed on the Islands with a view to usurping them under a false claim which is contrary to all facts and principles".

The Ruler then goes on to point out that he could have physically prevented the unlawful occupation of the islands by Bahrain:

"I was able to prevent them from doing this transgression at the time, but I resorted to commonsense and relying upon the friendship of His Majesty's Government and their support in rightful questions, and with this belief, I submitted my protest and a complaint to the proper quarters on this subject."

This is of course a reference to the oral protest which the Ruler made to Weightman in February 1938 about Bahrain's activities on Hawar, including the building of a fort; and the Court is certainly aware how Weightman did not even report this oral protest in writing to his superior in the Gulf, Fowle, until 15 May 1938, some three months later. No wonder that Prior, who succeeded Fowle as Political Resident, at the beginning of September 1939, was horrified when he saw the file, commenting in a manuscript minute that "I have little doubt that a grave miscarriage of justice has occurred"¹¹. Although the Ruler asked for the question to be reconsidered, Prior, despite his private sympathy for the Ruler and barely concealed distaste for the machinations of Weightman, replied to this protest on 25 September 1939, stating that the decision of 11 July 1939 was final and could not be reopened. Possibly anticipating this response, however, the Ruler concluded his letter of 4 August 1939 by reserving for himself his "rights to the Hawar islands until the true position has become clear". He would not have anticipated then that more than 60 years would elapse before the true position had become clear.

24. The Ruler of Qatar was of course far from content with Prior's reply of 25 September 1939 to his initial letter of protest. So he penned another letter of protest to the

¹¹Memorial of Qatar, Ann. III.212, Vol. 8, p. 53.

Political Resident dated 18 November 1939¹². [I now show a copy of this letter on the screen and a copy of the letter will similarly be found in the judges' folders as document No. 54.] The Ruler displays some anger at the dismissive reply which he had received from the Political Resident to his first protest of 4 August 1939, but continues by saying, among other things, that "it is impossible for me to keep quiet and to submit in such a matter". Despite the evidence to the contrary which should already have become apparent to him, he continues:

"I cannot perceive that His Majesty's Government would forcibly take the rights of one to give to the other because of my knowledge of their honourable attitude in all matters."

But possibly anticipating that his renewed protest would not be heeded, he immediately follows this by making a comprehensive and sweeping reservation of his rights with respect to Hawar in the following terms:

"I therefore beg to inform Your Honour that I neither recognize nor submit that the Bahrain Government have the least lawful connection with the Hawar Islands, and that I view whatever measure which have been lately taken by the Bahrain Government as a challenge and an encroachment upon my rights against which I most strongly protest, and therefore, as I have informed you before, I reserve my rights to the Hawar Islands while not recognizing any measure which may be taken in them . . ."

There could hardly be a more comprehensive reservation of rights than this. Moreover, the language used demonstrates that it was designed to be a once-for-all reservation of rights applying to all subsequent actions by Bahrain in or in relation to the Hawar Islands which could be interpreted as encroaching upon or adversely affecting the Ruler of Qatar's continuing rights to sovereignty over the islands.

25. The Ruler of Qatar nonetheless returned to the charge on 7 June 1940, when he sent a further letter of protest to Weightman as Political Agent in Bahrain, this time complaining of the abduction of a number of Qatari citizens from the west coast of the mainland of Qatar by the crew of eight boats which usually anchor at Hawar. The Ruler viewed such acts as "a clear aggression", and threatened to take effective measures to uphold Qatar's honour and his own and to preserve his rights against repeated aggression by Bahrain against his coasts¹³.

¹²Memorial of Qatar, Ann. III.213, Vol. 8, pp. 62-63.

¹³Memorial of Qatar, Ann. III.219, Vol. 8, p. 85.

26. In response to an enquiry from the Political Agent in Bahrain in early July 1946 as to whether he claimed title to Fasht ad Dibal and Qit'at Jaradah, the Ruler of Qatar replied in the affirmative on 13 July 1946. But he took this opportunity to reiterate his claim of title to the Hawar Islands: "You see that Qatar has been treated unjustly in her clear right in the question of [the] Hawar Islands which I am still tenacious to claim their ownership . . ." ¹⁴

27. Finally, we have the Ruler of Qatar's response of 21 February 1948, to the letter from the Political Agent in Bahrain of 23 December 1947, notifying him of the course of the so-called "1947 line" delimiting the boundary between the areas of seabed appertaining to the Ruler of Qatar and those appertaining to the Ruler of Bahrain.

Two exceptions of course were made to the 1947 line itself:

- (i) the areas of the Dibal and Jaradah shoals which are above the spring-tide low-water level are regarded as falling within the "sovereign rights" of the Ruler of Bahrain;
- (ii) Hawar Island, the other islands of the Hawar group (but not Janan which is not regarded as being included in the islands of the Hawar group), and the territorial waters pertaining to such islands, are also regarded as falling within the "sovereign rights" of the Ruler of Bahrain.

In response to this notification, the Ruler of Qatar, in his letter of 21 February 1948 to the Political Agent in Bahrain (which is now being shown on the screen and a copy of which is also in the judges' folders as document No. 55) reverts to his consistent position on the question of sovereignty over the Hawar Islands:

"However, I like to invite Your Excellency's attention to the correspondence exchanged some ten years ago on the subject of Hawar (Island) and the clear representation I made regarding its position in my letter submitted to His Excellency the Political Agent, [in] Bahrain, at the time, in which I expounded my points of view in regard to this Island which is a part of Qatar and in which I expressed my protest against the behaviours of [the] Bahrain Government. But H.M.'s Government acted as they wished, and I had nothing but to submit, reserving in the meantime to myself my own rights." ¹⁵

28. Now, Mr. President, I have two observations to make on this citation from the letter of 21 February 1948. In the first place, the cross-reference made by the Ruler of Qatar is clearly to

¹⁴Memorial of Qatar, Ann. III.245, Vol. 8, p. 203.

¹⁵Memorial of Qatar, Ann. III.259, Vol. 8, p. 277.

his early protest letter of 27 May 1938 to the Political Agent, following up his first protest letter to the Political Agent of 10 May 1938¹⁶. In his follow-up letter of 27 May 1938, the Ruler states *inter alia* that: "The Bahrain Government have only recently occupied [the Hawar islands] which fact made me move in the matter and submit protests against it."¹⁷ The Ruler goes on to state:

"I do not know on what ground the Bahrain Government took such steps in these islands recently which made me object against them. O! Political Agent! for a long time this island was free from any interference or undertakings which attract attention and cause resentment, but remained like other islands. Some fishermen, however, visit this island when they go to the sea for fishing as they do in other islands which is considered a usual practice."

29. The second observation I would make on the Ruler of Qatar's letter of 21 February 1948 is to draw attention to the sentence which immediately follows his clear protest against the behaviour of the Bahrain Government. That sentence reads: "But H.M.'s Government acted as they wished, and I had nothing but to submit, reserving in the meantime to myself my own rights."¹⁸ The use of the word "submit" in this sentence, if read in isolation from the rest of the letter, could in theory be read as suggesting a degree of acquiescence on the part of Qatar in the situation resulting from the British decision of 11 July 1939. But this would be a wholly false interpretation of the Ruler's thought. As Qatar has pointed out in its Memorial, the word "submit", when considered in the context of the rest of the letter "conveys not the sense of voluntary acceptance but of pure incapacity to procure a reversal of what had been decided" by the British Government¹⁹.

30. All these separate pieces of evidence, Mr. President, show conclusively that the Ruler of Qatar never accepted or acquiesced in the British decision of 11 July 1939 in favour of the Bahrain claim to the Hawar Islands. This is not just Qatar's view of the matter. It is also the analysis of the British Government in the year 1964. In that year, Mr. Frank Brenchley, the then head of Arabian Department, in the Foreign Office, put up a submission to his Assistant or Deputy Under-Secretary — I cannot remember exactly what he really was at the time — Sir Stewart Crawford, on the Bahrain/Qatar seabed dispute on 6 July 1964. Although the submission

¹⁶Memorial of Qatar, Ann. III.150, Vol. 7, p. 253.

¹⁷Memorial of Qatar, Ann. III.157, Vol. 7, p. 285.

¹⁸Memorial of Qatar, Ann. III.259, Vol. 8, p. 277.

¹⁹Memorial of Qatar, para. 6.242.

concentrated on the seabed dispute, it referred incidentally to the dispute over the Hawar Islands in the following terms (the relevant part of this document is now being shown on the screen, it is Qatar's Supplemental Document No. 17) and I quote from that document:

"The Ruler of Qatar is likely, when presented with the Bahraini claim, to make the counter-proposal that Hawar Island should also be included in the terms of reference of the arbitration. Hawar Island, which lies close to the Western coast of Qatar and is almost linked with it at low tide, was awarded by H.M.G. to Bahrain in 1939 in a manner similar to that used for the 1947 line, *and the Qataris have never acquiesced in that award*. Were it to be included in the arbitration and awarded to Qatar, the Bahrain/Qatar median line would be much simpler to draw."²⁰ (Emphasis added.)

31. Here then is clear recognition by a senior official in the Foreign Office that Qatar had never acquiesced in the British Government's decision of 11 July 1939 in favour of the Bahraini claim to the Hawar Islands. To set against it, Bahrain can only invoke a hearsay report mentioned in a letter from Mr. Morgan Man in the British Residency, Bahrain, to Mr. Beaumont of 21 February 1961, that "Shaikh Ahmad told the Political Resident recently that he did not contest our decision on Hawar"²¹. As this unlikely second-hand report immediately follows a reference by Mr. Man to "Shaikh Ahmad's threat to take both Hawar and Zubara to international arbitration", no credence can be attached to it. Qatar has already characterized Mr. Man's statement to the effect that Hawar "is at least one problem we managed to get settled" as being "pure wishful thinking", no doubt stimulated by his wish *not* to see a combination of the disputes over Hawar and Zubarah going to arbitration. Unfortunately, Mr. Man's desire for a quiet life had an adverse effect upon his judgment at the time.

32. Mr. President, Members of the Court, this concludes Qatar's first round presentation on the question of the Hawar Islands. I would respectfully request you, Mr. President, to call now on Professor David who will begin to address you on the issue of Zubarah.

The PRESIDENT: Thank you very much, Sir Ian. Je donne maintenant la parole au Professeur David.

²⁰Supplemental Documents of Qatar, doc. 17, para. 10.

²¹Memorial of Bahrain, Ann. 299, Vol. 5, p. 1212.

M. DAVID : Merci Monsieur le président. Monsieur le président, Madame, Messieurs de la Cour,

1. C'est un honneur pour moi, non seulement de comparaître à nouveau devant la Cour, mais aussi de m'exprimer au nom de l'Etat de Qatar. C'est presque un plaisir car je ne pense pas que la partie du dossier qu'il m'appartient de traiter, c'est-à-dire la revendication de Bahreïn sur la région de Zubarah, soit la plus compliquée à présenter même si elle est sans doute la plus surprenante.

Monsieur le président, Madame, Messieurs les juges,

Cette revendication a hanté, au propre comme au figuré, les relations entre Bahreïn et Qatar pendant trois quarts de siècle, de 1873 à 1954, et on la pensait totalement éteinte depuis 1954¹. Certes, Bahreïn avait réintroduit cette revendication auprès des Britanniques en 1957 et en 1961, mais ceux-ci l'avaient chaque fois rejetée [dossier d'audience, n^{os} 58-59], et les Britanniques n'avaient même pas jugé utile d'aviser Qatar² de cette revendication tant ils considéraient cette affaire comme réglée depuis longtemps.

2. D'ailleurs, lorsqu'en 1964 Bahreïn et Qatar avaient tenté de trouver un accord pour soumettre au règlement arbitral ou judiciaire l'ensemble de leur contentieux territorial³, Bahreïn n'avait pas fait la moindre allusion à Zubarah, et il allait encore s'écouler vingt-quatre ans, de 1964 à 1988, avant que Bahreïn n'exhume un revenant que l'on croyait emporté par le vent du désert et le souffle de l'Histoire⁴.

3. Il s'agit d'ailleurs autant d'un revenant que d'un mutant car l'objet de la revendication n'a cessé de varier au fil des ans selon les humeurs de Bahreïn : présentée au départ, en 1873, comme une réclamation de suzeraineté sur une tribu fréquentant la région de Zubarah⁵, la revendication va devenir une réclamation de souveraineté sur le site de Zubarah⁶, puis revenir à une réclamation de droits de juridiction personnelle sur les Naïm de Zubarah⁷, puis se limiter à une réclamation soit de

¹Mémoire de Qatar, par. 8.51 et s.

²Mémoire de Qatar, par. 8.52-8.54

³Mémoire de Qatar, compétence et recevabilité, par. 3.01 et s.

⁴Ibid., annexe II.22, vol. III, p. 141.

⁵Mémoire de Qatar, annexe II.8, vol. 4, p. 187.

⁶Ibid., p. 189.

⁷Mémoire de Qatar, annexe III.297, vol. 8, p. 491.

droits de propriété privée sur des ruines de Zubarah⁸, soit de droits de pâture et d'usage de pièges à poissons à Zubarah⁹, avant de prendre en 1988 la forme, pour le moins originale, d'une réclamation indéfinie où Bahreïn se réserve le droit de demander le maximum possible sans autre précision¹⁰. Bref, on ne peut pas dire que la rigueur et la sécurité juridique ont été les vertus dominantes d'une réclamation qui défie tout effort de qualification.

4. Mais il n'y a pas que l'objet de la revendication, Monsieur le président, qui a varié dans le temps; il y a aussi son étendue. Si, aujourd'hui, c'est la souveraineté que Bahreïn revendique sur Zubarah¹¹, le revenant a pris du corps puisque la revendication qui portait au départ sur le site de l'ancienne ville de Zubarah, s'étend désormais à un territoire qui correspond à plus du tiers de la principale île de Bahreïn et à près du quadruple de la surface des îles Hawar, comme vous pouvez le constater !

Quand on sait que déjà, en 1948, les Britanniques disaient, non sans ironie, que cette revendication n'avait pas plus de valeur que celle de l'Iran sur Bahreïn¹², on comprend qu'il n'est pas nécessaire d'épiloguer longuement sur le sérieux d'une réclamation qui intervient dans de telles conditions : il s'agit d'une tactique judiciaire dont S. Exc., l'agent de Qatar, a déjà expliqué l'objectif. Le seul résultat matériel de cette stratégie consiste pour l'instant à alourdir et allonger considérablement tant la phase écrite que la phase orale de cette procédure.

Pardonnez-moi, Monsieur le président, de rappeler le contexte de cette revendication, mais je devais faire ce rappel pour expliquer le malaise que l'on éprouve à présenter un ensemble d'évidences pour quiconque connaît un tant soit peu la situation de Zubarah.

5. Une dernière remarque : la revendication sur Zubarah remonte à 1873 et les documents d'archives qui s'y rapportent comprennent des milliers de pages; non — répétons-le — que la question fût difficile puisque d'emblée les Britanniques ont estimé que la réclamation de Bahreïn était sans fondement, mais il est vrai aussi que certains fonctionnaires britanniques ne l'ont pas toujours dit avec suffisamment de clarté à Bahreïn, ce qui peut expliquer l'acharnement,

⁸Mémoire de Qatar, annexe III.260, vol. 8, p. 291.

⁹Mémoire de Bahreïn, vol. 4, p. 798-799.

¹⁰Mémoire de Qatar, compétence et recevabilité, annexe II.31, vol. III, p. 203.

¹¹Mémoire de Bahreïn, par. 34 et p. 301.

¹²Mémoire de Qatar, annexe III.261, vol. 8, p. 298.

l'obstination de Bahreïn. Dans ces conditions, et vu cette immense documentation, il est possible de consacrer des volumes entiers à la seule question de Zubarah et de plaider pendant des heures à son sujet. Eu égard au temps imparti aux plaidoiries, la Cour ne m'en voudra sans doute pas de me confiner à l'essentiel et de ne pas aborder le détail de tous les points soulevés par nos adversaires.

6. Le présent exposé, Monsieur le président, sera divisé en quatre parties où j'aborderai successivement l'histoire des origines de Zubarah, puis le fondement du titre de Qatar sur Zubarah, ensuite la confirmation de ce titre, et enfin le fondement des arguments de Bahreïn basés principalement sur les liens tribaux de l'émir de Bahreïn avec la tribu des Naïm.

I. HISTOIRE DES ORIGINES DE ZUBARAH

7. Bahreïn prétend que Zubarah aurait été créée par les Al-Khalifah¹³, une fraction de la tribu des Utubi, venus du Koweït, lorsqu'ils s'établirent sur cette partie de la péninsule de Qatar en 1766. Bien que cette question ne soit pas fondamentale pour déterminer la souveraineté sur Zubarah, on observera néanmoins que cette réclamation de paternité sur Zubarah par Bahreïn est déjà douteuse. S'il est certain que la ville de Zubarah s'est commercialement développée après l'arrivée des Al-Khalifah, il n'est nullement prouvé que c'est eux qui ont créé la ville. Bien au contraire, Lorimer suggère que Zubarah existait déjà en 1766, lorsqu'il écrit que c'est à cette époque que les Utubi arrivèrent à Zubarah¹⁴.

Arriver à Zubarah, ce n'est pas fonder Zubarah. Un auteur cité par Bahreïn reconnaît d'ailleurs que la ville aurait pu déjà exister un siècle avant l'arrivée des Al-Khalifah¹⁵. Et si le lieu d'origine d'une tribu devait justifier des droits territoriaux particuliers sur ce lieu d'origine, on se demande pourquoi Bahreïn ne réclamerait pas aussi des droits sur les parties du Koweït d'où provient la famille des Al-Khalifah.

8. Le développement commercial rapide de Zubarah après 1766 va entraîner des rivalités, puis un conflit ouvert avec les Perses qui occupaient alors l'île de Bahreïn. Les Al-Khalifah, alliés

¹³Contre-mémoire de Bahreïn, par. 63.

¹⁴Mémoire de Qatar, annexe II.4, vol. 3, p. 141.

¹⁵Contre-mémoire de Bahreïn, annexe 115-116, vol. 2, p. 366.

à d'autres tribus qatariennes, vont alors envahir Bahreïn en 1783. Ils vont en expulser les Perses et y transférer leur quartier général qui, jusqu'alors, était situé à Zubarah¹⁶.

La région n'est cependant pas de tout repos. En 1800, les Al-Khalifah sont chassés à leur tour de l'île de Bahreïn par Mascate; ils reviennent brièvement à Zubarah, le temps de reprendre leurs esprits et surtout de reprendre Bahreïn en 1801 grâce à l'aide des Wahhabis¹⁷.

9. Les jours de Zubarah sont désormais comptés. En 1809, ce sont les Wahhabis qui s'installent dans la ville et qui y restent jusqu'en 1811. Mascate profite alors de leur départ pour prendre Zubarah et l'incendier¹⁸.

C'est la fin de Zubarah en tant que ville et on n'en parle plus en dehors d'un bref passage sur le site alors désert en 1842-1843 de deux cheikhs rivaux de Bahreïn¹⁹. La chronique n'évoquera plus Zubarah avant 1873, lorsque les Turcs exigent que les Naims présents sur le site leur fassent allégeance²⁰.

10. Cette brève évocation, Monsieur le président, des origines de Zubarah tend à montrer, premièrement, que les Al-Khalifah n'ont occupé Zubarah que de manière brève et intermittente, entre 1766 et 1783, puis de 1800 à 1801 et en 1842-1843, deuxièmement, que les Wahhabis se sont installés dans la ville en 1809, puis que celle-ci a été détruite par Mascate en 1811 et qu'à partir de ce moment, la ville a cessé d'exister comme telle. Indépendamment des événements qui vont suivre, une occupation aussi fragmentaire caractérisée par des abandons successifs dans une zone de nomadisation ne paraît pas de nature à pouvoir justifier des titres particuliers de propriété, et encore moins de souveraineté sur les lieux.

11. Bahreïn est d'autant moins fondé à se prévaloir de son passage à Zubarah pour invoquer des droits historiques sur le site que les Al-Khalifah n'étaient pas la seule tribu à fréquenter Zubarah. Parmi les tribus présentes sur les lieux se trouvaient les Ma'adid dont faisait partie Thani bin Muhammad, l'ancêtre éponyme de l'actuelle famille régnante des Al-Thani²¹ à Qatar.

¹⁶Mémoire de Qatar, par. 3.18 et 8.10.

¹⁷Mémoire de Qatar, annexe II.5, vol. 3, p. 248-249.

¹⁸Mémoire de Qatar, par. 3.19; Mémoire de Qatar, annexe II.5, vol. 3, p. 196-198.

¹⁹Mémoire de Qatar, annexe II.5, vol. 3, p. 206.

²⁰Mémoire de Qatar, annexe II.7, vol. 4, p. 53.

²¹Contre-mémoire de Qatar, par. 2.24.

Ce n'est donc pas l'histoire tourmentée de Zubarah de 1766 à 1811, puis son retour au désert après 1811 qui pourraient justifier les actuelles prétentions de Bahreïn.

Je voudrais aborder, simplement aborder parce que je pense que le temps avance, la deuxième partie de cet exposé qui est le fondement du titre de Qatar sur Zubarah.

II. FONDEMENT DU TITRE DE QATAR SUR ZUBARAH

12. Le fondement du titre de Qatar sur Zubarah se confond avec l'établissement de l'autorité des Al-Thani sur l'ensemble de la péninsule. Cette autorité, qui est reconnue dès le milieu du XIX^e siècle²², trouve une consécration officielle dans les traités conclus séparément par les Britanniques avec Bahreïn et Qatar en 1868, et encore lors de la soumission de Qatar aux Ottomans en 1871. Etant donné que c'est l'ensemble de la péninsule dont on reconnaît le détachement de Bahreïn, et non une partie comme s'efforce de le faire croire nos adversaires, la situation juridique de Zubarah suit celle de l'ensemble de la péninsule : *accessorium sequitur principale* (l'accessoire suit le principal). Ce point, qui suffit à fonder le titre de Qatar sur Zubarah, a déjà été présenté par M^e Pilkington la semaine passée, et mon exposé pourrait s'arrêter ici.

Mais, même si l'on prétend isoler le cas de Zubarah du reste de la péninsule, l'histoire montre que Bahreïn ne peut se prévaloir d'aucun droit sur ce lieu et que le titre de Qatar va trouver une large confirmation entre 1873 et 1878, six années riches en événements pour Zubarah et qui peuvent être divisées en trois périodes : l'année 1873, les années 1874 et 1875, et l'année 1878. Chacune d'elles confirme l'appartenance de Zubarah à Qatar.

Monsieur le président, peut-être que vous trouverez préférable que je laisse ici planer le suspense sur ce qui s'est passé au cours de ces années et que je m'interrompe ici sauf contre-ordre de votre part.

Le PRESIDENT : C'est une heureuse suggestion. Je vous remercie, Monsieur le professeur, la Cour suspend sa séance, elle la reprendra cet après-midi à 15 heures.

L'audience est levée à 13 heures.

²²Contre-mémoire de Qatar, par. 2.25.