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AFFAIRE DE LA DÉLIMITATION MARITIME ET DES QUESTIONS TERRITORIALES ENTRE QATAR ET BAHREÏN

(QATAR c. BAHREÏN)

COMPÉTENCE ET RECEVABILITÉ

ARRÊT DU 15 FÉVRIER 1995

1995

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING MARITIME DELIMITATION AND TERRITORIAL QUESTIONS BETWEEN QATAR AND BAHRAIN

(QATAR *v.* BAHRAIN)

JURISDICTION AND ADMISSIBILITY

JUDGMENT OF 15 FEBRUARY 1995

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CASE CONCERNING MARITIME DELIMITATION AND TERRITORIAL QUESTIONS BETWEEN QATAR AND BAHRAIN

(QATAR *v.* BAHRAIN)

JURISDICTION AND ADMISSIBILITY

Jurisdiction of the Court — Paragraph 1 of 1990 Doha Minutes — Reaffirmation by the Parties of their previous commitments — Scope of commitment undertaken by the terms of the exchanges of letters of 1987 — Work of the Tripartite Committee.

Paragraph 2 of the 1990 Doha Minutes — Seisin of the Court — Arabic expression "al-tarafan" *— Interpretation of the text in accordance with the ordinary meaning to be given to its terms in their context and in the light of the object and purpose of the Minutes — Recourse to supplementary means of interpretation to seek confirmation of the interpretation drawn from the text —* Travaux préparatoires *— Circumstances in which the Minutes were adopted.*

Links between jurisdiction and seisin — Unilateral seisin — Procedural consequences binding on the Parties.

Admissibility — Judgment of 1 July 1994 — Opportunity afforded to the Parties by the Court to ensure submission to it of the entire dispute — Separate Act of Qatar — Formulation exactly describing the subject-matter of the dispute.

JUDGMENT

Present: *President* BEDJAOUI; *Vice-President* SCHWEBEL; *Judges* ODA, Sir Robert JENNINGS, GUILLAUME, SHAHABUDDEEN, AGUILAR-MAWDSLEY, WEERAMANTRY, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA; *Judges* ad hoc VALTICOS, TORRES BERNÁRDEZ; *Registrar* VALENCIA-OSPINA.

In the case concerning maritime delimitation and territorial questions between Qatar and Bahrain,

between

the State of Qatar,

represented by

H.E. Mr. Najeeb Al-Nauimi, Minister Legal Adviser,

as Agent and Counsel;

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

as Legal Advisers;

Mr. Jean-Pierre Quéneudec, Professor of International Law at the University of Paris I,
Mr. Jean Salmon, Professor at the Université libre de Bruxelles,
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 at the University of London,

as Counsel and Advocates;

Mr. Richard Meese, Advocate, partner in Frere Cholmeley, Paris,
Miss Nanette E. Pilkington, Advocate, Frere Cholmeley, Paris,
Mr. David S. Sellers, Solicitor, Frere Cholmeley, Paris,

and

the State of Bahrain,

represented by

H.E. Mr. Husain Mohammed Al Baharna, Minister of State for Legal Affairs, Barrister at Law, Member of the International Law Commission of the United Nations,

as Agent and Counsel;

Mr. Derek W. Bowett, C.B.E., Q.C., F.B.A., Whewell Professor emeritus at the University of Cambridge,
Mr. Keith Highet, Member of the Bars of the District of Columbia and New York,
† Mr. Eduardo Jiménez de Aréchaga, Professor of International Law at the Law School, Catholic University, Montevideo, Uruguay,
Mr. Elihu Lauterpacht, C.B.E., Q.C., Honorary Professor of International Law and Director of the Research Centre for International Law, University of Cambridge; Member of the Institute of International Law,
Mr. Prosper Weil, Professor emeritus at the Université de droit, d'économie et de sciences sociales de Paris,

as Counsel and Advocates;

Mr. Donald W. Jones, Solicitor, Trowers & Hamlins, London,
Mr. John H. A. McHugo, Solicitor, Trowers & Hamlins, London,
Mr. David Biggerstaff, Solicitor, Trowers & Hamlins, London,

as Counsel,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 8 July 1991 the Minister for Foreign Affairs of the State of Qatar (hereinafter referred to as "Qatar") filed in the Registry of the Court an Application instituting proceedings against the State of Bahrain (hereinafter referred to as "Bahrain") in respect of certain disputes between the two States relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States.

2. In its Application, Qatar founded the jurisdiction of the Court upon two agreements between the Parties concluded in December 1987 and December 1990 respectively, the subject and scope of the commitment to jurisdiction being determined, according to the Applicant, by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990 (hereinafter referred to as the "Bahraini formula").

3. By letters addressed to the Registrar of the Court on 14 July 1991 and 18 August 1991, Bahrain contested the basis of jurisdiction invoked by Qatar.

4. By an Order dated 11 October 1991, the President of the Court, having consulted the Parties in accordance with Article 31 of the Rules of Court, and taking into account the agreement reached between them concerning procedure, decided that the written pleadings should first be addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application. By the same Order, the President fixed time-limits for a Memorial by Qatar and a Counter-Memorial by Bahrain on the questions of jurisdiction and admissibility, and those pleadings were duly filed within the time-limits so fixed.

5. By an Order dated 26 June 1992, the Court, considering that the filing of further pleadings by the Parties was necessary, directed that a Reply by Qatar and a Rejoinder by Bahrain be filed on the questions of jurisdiction and admissibility, and fixed time-limits therefor; those pleadings were duly filed within the time-limits so fixed.

6. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise the right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case; Bahrain chose Mr. Nicolas Valticos, and Qatar Mr. José María Ruda.

7. At public hearings held between 28 February and 11 March 1994, the Parties were heard on the questions of the Court's jurisdiction and the admissibility of the Application.

8. The following submissions were presented by the Parties in the oral and written proceedings:

On behalf of Qatar:

> "the State of Qatar respectfully requests the Court to adjudge and declare, rejecting all contrary claims and submissions, that —
>
> The Court has jurisdiction to entertain the dispute referred to in the Application filed by Qatar on 8 July 1991 and that Qatar's Application is admissible."

On behalf of Bahrain:

> "The State of Bahrain respectfully requests the Court to adjudge and declare, rejecting all contrary claims and submissions, that the Court is without jurisdiction over the dispute brought before it by the Application filed by Qatar on 8 July 1991."

9. By its Judgment of 1 July 1994, the Court found that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed "Minutes" and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, were international agreements creating rights and obligations for the Parties; and that, by the terms of those agreements, the Parties had undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the Bahraini formula. Having noted that it had before it only an Application from Qatar setting out that State's specific claims in connection with that formula, the Court decided to afford the Parties the opportunity to submit to it the whole of the dispute. It fixed 30 November 1994 as the time-limit within which the Parties were jointly or separately to take action to that end; and reserved any other matters for subsequent decision.

10. Judge *ad hoc* Ruda died on 7 July 1994 and, by a letter dated 5 September 1994, the Agent of Qatar informed the Court that his Government had chosen Mr. Santiago Torres Bernárdez to replace him.

11. By a letter from the Agent of Bahrain dated 11 July 1994, and a letter from the Agent of Qatar dated 2 November 1994, the Court was informed of various measures taken by the Parties with a view to complying with its Judgment of 1 July 1994.

12. On 30 November 1994, within the time-limit laid down in the Judgment of 1 July 1994, the Agent of Qatar filed in the Registry a document entitled "Act to comply with paragraphs (3) and (4) of operative paragraph 41 of the Judgment of the Court dated 1 July 1994". In the document, the Agent referred to "the absence of an agreement between the Parties to act jointly" and declared that he was thereby submitting to the Court "the whole of the dispute between Qatar and Bahrain, as circumscribed by the text . . . referred to in the 1990 Doha Minutes as the 'Bahraini formula'". He continued thus:

> "The matters which would be referred to the Court were exhaustively defined in the Tripartite Committee (see paragraph 18 of the Court's Judgment of 1 July 1994). The subject matters of the dispute were described in identical terms in Bahrain's written pleadings and in a draft special agreement proposed by Bahrain on 20 June 1992 (see Bahrain's Rejoinder, Annex 1.3, p. 113).
>
> The following subjects fall within the jurisdiction of the Court by virtue of the rights and obligations created by the international agreements of December 1987 and 25 December 1990 and are, by virtue of Qatar's Application dated 5 July 1991 and the present Act, submitted to the Court:
>
> 1. The Hawar Islands, including the island of Janan;
> 2. Fasht al Dibal and Qit'at Jaradah;
> 3. The archipelagic baselines;
> 4. Zubarah;

5. The areas for fishing for pearls and for fishing for swimming fish and any other matters connected with maritime boundaries.

It is understood by Qatar that Bahrain defines its claim concerning Zubarah as a claim of sovereignty.

Further to its Application Qatar requests the Court to adjudge and declare that Bahrain has no sovereignty or other territorial right over the island of Janan or over Zubarah, and that any claim by Bahrain concerning archipelagic baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case."

Qatar's "Act" was accompanied by the texts of several letters and documents exchanged between the Parties after the Judgment of 1 July 1994 "with a view to reaching an agreement to ensure the submission to the Court of the whole of the dispute by way of a joint act".

13. On 30 November 1994, the Registry also received, by facsimile, a letter from the Agent of Bahrain communicating to the Court a document entitled "Report of the State of Bahrain to the International Court of Justice on the attempt by the Parties to implement the Court's Judgment of 1st July, 1994". In that "Report", the Agent stated that his Government had welcomed the Judgment of 1 July 1994 and understood it as confirming that the submission to the Court of "the whole of the dispute" must be "consensual in character, that is, a matter of agreement between the Parties". Yet, he observed, Qatar's approach to the discussion had been dominated by two features from which it had "resolutely declined to move in any way acceptable to Bahrain". First, Qatar's proposals had "taken the form of documents that can only be read as designed to fall within the framework of the maintenance of the case commenced by Qatar's Application of 8th July, 1991"; and, second, Qatar had denied Bahrain "the right to describe, define or identify, in words of its own choosing, the matters which it wishes specifically to place in issue", and had opposed "Bahrain's right to include in the list of matters in dispute the item of 'sovereignty over Zubarah' ". The Agent of Bahrain emphasized moreover that, following the breakdown of the negotiations, the last draft joint act proposed by Bahrain had been withdrawn and was no longer open to acceptance. Finally, the Agent explained that, in his Government's opinion, the Judgment of 1 July 1994 implied that the Parties "should bring their dispute before the Court on the basis of new, and agreed, terms of reference". He confirmed Bahrain's conclusion that "the Court does not have jurisdiction in the case commenced by the Qatari Application of 8th July, 1991" and affirmed that, without Bahrain's consent, there could be no curing that defect of jurisdiction by means of an individual act of Qatar making reference to sovereignty over Zubarah, whether through an amendment to its original application or a fresh application.

The original of the "Report" of Bahrain was received in the Registry, by courier, on 1 December 1994; it was accompanied by a separate volume of "all documents which have passed between the two sides since 1st July 1994". Most of those documents were also appended to the Qatari "Act".

14. By letter dated 5 December 1994, which reached the Registry the same day by facsimile, the Agent of Bahrain transmitted to the Court a document

entitled "Comments by the State of Bahrain on the Qatari 'Act' of 30th November, 1994". In that document the Qatari "Act" was termed "inherently defective". Bahrain's Agent explained the position of his Government as follows:

> "Nor does the Judgment use the words 'either of the Parties' to indicate that one Party alone could complete the process of reference to the Court. It is to 'the Parties' — and not to either or one of them — that the Court afforded the opportunity to seise it of the Case. This reflects the Court's adherence to the dominant requirement of the consent of the Parties, no less of the Respondent than of the Applicant.
>
> It is the belief of Bahrain that when, in its Judgment, the Court spoke in paragraph 41 (4) of 'separately', and in paragraph 38 of 'separate Acts' (in the plural) by the Parties, the Court had in mind the prospect that the Parties would conclude an agreement submitting the Case to the Court but recognized the possibility that the Parties might decide to express that agreement between them by concordant, and effectively identical, but nonetheless separate Acts";

and, he continued,

> "It is Bahrain's submission that the Court did not declare in its Judgment of 1st July, 1994 that it had jurisdiction in the Case brought before it by virtue of Qatar's unilateral application of 1991. Consequently, if the Court did not have jurisdiction at that time, then the Qatari separate Act of 30th November, even when considered in the light of the Judgment, cannot create that jurisdiction or effect a valid submission in the absence of Bahrain's consent. Clearly, Bahrain has given no such consent."

Bahrain's Agent concluded thus:

> "Every State possesses the sovereign right to determine whether it consents to the jurisdiction of the Court and to determine the limits, conditions and method of implementation of its consent. Every State also possesses the sovereign right to decline to appear before the Court. Bahrain possesses this right in the same measure as any other State. Bahrain has given reasons for its decision not to appear before the Court in the circumstances that have developed only out of respect for, and as an act of courtesy towards, the Court. However, it remains a fact that the absoluteness of Bahrain's sovereign prerogative in this respect cannot be questioned."

15. A copy of each of the documents produced by Qatar and Bahrain and mentioned in paragraphs 11 to 14 above was duly transmitted to the other Party by the Registry upon receipt.

* *

16. The Court begins by calling to mind that, by its Application filed in the Registry on 8 July 1991, Qatar instituted proceedings before the Court against Bahrain

> "in respect of certain existing disputes between them relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States".

According to Qatar, the two States:

> "have made express commitments in the agreements of December 1987 . . . and December 1990 . . ., to refer their disputes to the . . . Court".

As both Parties had "given their requisite consent through the international agreements referred to above", the Court, according to Qatar, is in a position "to exercise jurisdiction to adjudicate upon those disputes".

Bahrain maintained on the contrary that the 1990 Minutes did not constitute a legally binding instrument. It went on to say that, in any event, the combined provisions of the 1987 exchanges of letters and of the 1990 Minutes were not such as to enable Qatar to seise the Court unilaterally. According to Bahrain, the Court therefore lacks jurisdiction to adjudicate upon the dispute.

17. As stated above (paragraph 9), by its Judgment of 1 July 1994 the Court found that the Parties had undertaken to submit to it the whole of the dispute between them. It decided to afford the Parties the opportunity to submit to it the whole of that dispute, and fixed 30 November 1994 as the time-limit within which they were, jointly or separately, to take action to this end.

18. By a declaration made on the very day on which the Judgment was delivered, the Minister for Foreign Affairs of Bahrain expressed his appreciation of the decision thus reached and invited the representatives of Qatar "to a meeting at the earliest possible opportunity in order to work towards the signing of a joint submission". On 6 July 1994, the Agent of Qatar, for his part, wrote to the Agent of Bahrain, expressing the hope that they might meet "as early as possible . . . to discuss together whether it would be possible to act jointly so as to ensure that the whole of the dispute is placed before the Court" and expressing the conviction that they would be able "to agree on a joint compliance with the decision of the Court". After various exchanges of correspondence, the persons concerned met in London on 6 October, 22 October and 14 November 1994.

19. During the meeting of 6 October 1994, the Agent of Qatar proposed that the two Agents should submit to the Court by a joint letter the whole of the dispute, as circumscribed by the Bahraini formula, in the terms suggested by Bahrain during the meeting of the Tripartite Committee on 6 and 7 December 1988, namely:

> "1. The Hawar Islands, including the island of Janan
> 2. Fasht al Dibal and Qit'at Jaradah
> 3. The archipelagic baselines
> 4. Zubarah
> 5. The areas for fishing for pearls and for fishing for swimming fish and any other matters connected with maritime boundaries."

On the occasion of that same meeting, the Agent of Bahrain proposed the signature by the two Governments of a draft of a Special Agreement whose object would be to seise the Court of all of the issues as defined by

each of the Parties. Article II of the draft contained an introductory phrase worded as follows: "The above request covers the following matters in dispute: —". But the sentence broke off there, with the result that the questions forming the subject-matter of the dispute were not enumerated. The Bahraini draft moreover raised various other questions, i.e., the system of geographic co-ordinates to be used for the maritime delimitation; the appointment of an expert by the Court for that delimitation; the organization of the written proceedings; the final and binding character of the Judgment; the entry into force and notification of the Special Agreement, and its translation into Arabic from the original English.

20. At the second meeting, held on 22 October 1994, the Agent of Qatar proposed a new text similar to its first, but dealing in addition with the system of geographic co-ordinates to be employed, the language of the written pleadings and the fixing of time-limits for their simultaneous filing. The Agent of Bahrain proposed, for his part, a joint initiative taking the form of an Act signed by the two Agents and requesting the Court to decide any question which might be a matter of difference between the Parties. The Bahraini draft enumerated those matters, adopting the list proposed by Bahrain at the meeting of the Tripartite Committee on 6 and 7 December 1988, but specifying in addition, as to points 1 and 4, that the request to the Court concerned sovereignty over the Hawar islands and sovereignty over Zubarah. The document included certain simplifications with respect to the procedural questions raised in the first text. It requested the Court to amend the title of the case to make it clear that it would be dealt with, not pursuant to an Application by one Party, but to a joint initiative by the two Parties, and in order to comply with "the pattern of names in other cases placed before the Court jointly by the Parties".

In the course of the same meeting, the Agent of Qatar once again proposed that the subject of the dispute should be described in the Joint Act in accordance with the terms contemplated in 1988, but further suggested that two annexes should be appended thereto in which the Parties could set forth their claims in detail, and which would enable Bahrain to specify its intention to lay claim to sovereignty over Zubarah. Bahrain rejected "the proposal made by Qatar for a Joint Act, with two annexes, whether with, or without, the itemization of the issues of dispute in the main body of the Joint Act" and insisted that "sovereignty over Zubarah" ought to appear in the main body of the Joint Act.

21. In a memorandum of 12 November 1994, Bahrain restated its position particularly with respect to the appointment of a technical expert by the Court, the fixing of procedural time-limits and the modification of the title of the case; attached to this memorandum was the text of a new draft joint act, which differed from the draft of 22 October only in respect of the system of geographic co-ordinates to be used. No progress was made at the third meeting, held on 14 November 1994, during which Qatar, for its part, presented a revised version of its 22 October text. Subsequently, on 19 November 1994, the Agent of Qatar sent the

Agent of Bahrain a fourth draft which included, after the enumeration of the matters as they had previously been defined, a sentence in which the two Parties declared:

> "We understand that Bahrain defines its claim concerning Zubarah as a claim of sovereignty."

By a letter dated 25 November 1994, the Agent of Bahrain rejected that new proposal, recalling its position both on that point and on several others, and invited the Agent of Qatar to give a positive response to his offer of 12 November. The Agent of Bahrain then informed the Agent of Qatar, on 27 November 1994, that it seemed pointless to hold a fourth meeting on 28 November.

22. As already mentioned (paragraph 12 above), after the breakdown of those negotiations, Qatar addressed to the Court on 30 November 1994 an "Act to comply with paragraphs (3) and (4) of operative paragraph 41 of the Judgment of the Court dated 1 July 1994". In its observations of 5 December 1994 on Qatar's Act, set out in paragraph 14 above, Bahrain stressed, however, that in its view

> "the Court did not declare in its Judgment of 1st July, 1994 that it had jurisdiction in the Case brought before it by virtue of Qatar's unilateral application of 1991. Consequently, if the Court did not have jurisdiction at that time, then the Qatari separate Act of 30th November, even when considered in the light of the Judgment, cannot create that jurisdiction or effect a valid submission in the absence of Bahrain's consent."

23. The Court recalls that, in its Judgment of 1 July 1994, it reserved for subsequent decision all such matters as had not been decided in that Judgment. It notes moreover that Bahrain maintains the objections that it raised with respect to the Application of Qatar. Accordingly, it falls to the Court to rule on those objections in the decision it must now give on the one hand, on its jurisdiction to adjudicate upon the dispute submitted to it and, on the other, on the admissibility of the Application.

* * *

24. As stated above (paragraph 9), in its Judgment of 1 July 1994, the Court found

> "that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed 'Minutes' and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, are international agreements creating rights and obligations for the Parties"

and

> "that by the terms of those agreements the Parties have undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the text proposed by Bahrain to Qatar on 26 October 1988, and accepted by Qatar in December 1990, referred to in the 1990 Doha Minutes as the 'Bahraini formula'" (*I.C.J. Reports 1994*, pp. 126-127, para. 41 (1)-(2)).

The Court must therefore pursue its examination of the content of the obligations entered into by the Parties by the terms of the Agreements of 1987 and 1990, in order to determine whether it has jurisdiction to adjudicate upon the dispute.

25. Paragraph 1 of the Doha Minutes places on record the agreement of the Parties to *"reaffirm what was agreed previously between [them]"*. Qatar and Bahrain both acknowledge that that expression covers the commitments entered into by them in 1987; but Bahrain considers that its scope is much more extensive and that, in particular, it covers everything agreed upon by the Parties in the course of the meetings of the Tripartite Committee.

26. The Court will proceed, first of all, to define the precise scope of the commitments which the Parties entered into in 1987 and agreed to reaffirm in 1990. In this regard, the essential texts concerning the jurisdiction of the Court are points 1 and 3 of the letters of 19 December 1987. By accepting those points, Qatar and Bahrain agreed, on the one hand, that

> "All the disputed matters shall be referred to the International Court of Justice, at The Hague, for a final ruling binding upon both parties, who shall have to execute its terms"

and, on the other, that a Tripartite Committee be formed

> "for the purpose of approaching the International Court of Justice, and satisfying the necessary requirements to have the dispute submitted to the Court in accordance with its regulations and instructions so that a final ruling, binding upon both parties, be issued".

Neither Qatar nor Bahrain denies having committed itself in accordance with those texts; however, they differ as to the meaning to be given to those texts when read together and, hence, as to the scope of that commitment. Qatar maintains that, by that undertaking, the Parties clearly and unconditionally conferred upon the Court jurisdiction to deal with the disputed matters between them. The work of the Tripartite Committee was directed solely to considering the procedures to be followed to implement the commitment thus made to seise the Court, and there was nothing to show that any particular method or procedure ought to have been followed to that end, provided that the seisin of the Court took place "in accordance with its regulations and instructions". Bahrain on the contrary maintains that the texts in question expressed only the Parties' consent in principle to a seisin of the Court, but that such consent

was clearly subject to the conclusion of a Special Agreement marking the end of the work of the Tripartite Committee, setting forth the questions to be put to the Court by mutual agreement and settling a number of related procedural questions. Bahrain maintains that its interpretation of the texts is corroborated by the subsequent conduct of the Parties, in so far as the work of the Tripartite Committee, in which the two Parties participated, was concerned exclusively with the drawing up of a Special Agreement to submit the disputed matters to the Court.

27. The Court cannot agree with Bahrain in this respect. Neither in point 1 nor in point 3 of the letters of 19 December 1987 can it find the condition alleged by Bahrain to exist. It is indeed apparent from point 3 that the Parties did not envisage seising the Court without prior discussion, in the Tripartite Committee, of the formalities required to do so. But the two States had nonetheless agreed to submit to the Court all the disputed matters between them, and the Committee's only function was to ensure that this commitment was given effect, by assisting the Parties to approach the Court and to seise it in the manner laid down by its Rules. By the terms of point 3, neither of the particular modalities of seisin contemplated by the Rules of Court was either favoured or rejected. Moreover, there would have been nothing to prevent Bahrain's saying in its reply of 26 December 1987 that its acceptance of the Court's jurisdiction was subject to the conclusion of a special agreement providing for joint seisin of the Court. Yet the Court notes that Bahrain's letter expresses its unreserved adhesion to the proposals made by the King of Saudi Arabia.

28. The Court is not able either to accept the conclusions that Bahrain draws from the subsequent conduct of the Parties. Indeed, while it is undeniable that the Tripartite Committee focused exclusively upon the attempt to finalize the text of a special agreement determining the subject-matter of the dispute, this does not at all mean that the Parties took that approach to be the only one sanctioned by the Agreement of 1987. On the contrary, everything tends to suggest that, if the Committee explored that possibility, it did so simply because that course appeared to it, at the time, to be the most natural and the best suited to give effect to the consent of the Parties.

29. The Tripartite Committee met for the last time in December 1988, without the Parties having reached agreement either as to the "disputed matters" or as to the "necessary requirements to have the dispute submitted to the Court". Furthermore the minutes of the meetings of the Committee were diplomatic documents recording the state of progress of the negotiations, which possessed no legally binding force. The Court concludes that, from the standpoint of its jurisdiction, the only prior commitment that the Parties intended to reaffirm in the international agreement constituted by the Minutes of 25 December 1990 was the commitment entered into in 1987, in accordance with the "Principles for the Framework for Reaching a Settlement" of 1983, to submit to the Court "all the disputed matters" and to comply with the judgment to be handed

down by the Court. The Tripartite Committee ceased its activities in December 1988 at the instance of Saudi Arabia and without opposition from the Parties. As the Parties did not, at the time of signing the Doha Minutes in December 1990, ask to have the Committee re-established, the Court considers that paragraph 1 of those Minutes could only be understood as contemplating the acceptance by the Parties of point 1 in the letters from the King of Saudi Arabia dated 19 December 1987, to the exclusion of point 3 in those same letters.

*

30. The Doha Minutes not only confirmed the agreement reached by the Parties to submit their dispute to the Court, but also represented a decisive step along the way towards a peaceful solution of that dispute, by settling the controversial question of the definition of the "disputed matters". This is one of the principal objects of paragraph 2 of the Minutes which, in the translation that the Court will use for the purposes of the present Judgment, reads as follows:

> "(2) The good offices of the Custodian of the Two Holy Mosques, King Fahd Ben Abdul Aziz, shall continue between the two countries until the month of Shawwal 1411 A.H., corresponding to May 1991. Once that period has elapsed, the two parties may submit the matter to the International Court of Justice in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it. The good offices of the Kingdom of Saudi Arabia will continue during the period when the matter is under arbitration."

31. The long negotiations which preceded the conclusion of the 1990 Minutes showed the difficulties the Parties had constantly met in their attempts to define the entire dispute, because for each of them there were sensitivities about the express mention of certain aspects of that dispute. The Bahraini formula was carefully constructed by Bahrain, and proposed by it in October 1988, as a form of words which, whilst specifically avoiding any express reference to those sensitive issues, would nevertheless sufficiently clearly comprehend the entire dispute. Paragraph 2 of the Minutes, which formally placed on record Qatar's acceptance of the Bahraini formula, put an end to the persistent disagreement of the Parties as to the subject of the dispute to be submitted to the Court. The agreement to adopt the formula showed that the Parties were at one on the extent of the Court's jurisdiction. The formula had thus achieved its purpose: it set, in general but clear terms, the limits of the dispute the Court would henceforth have to entertain.

32. The Parties nonetheless continue to differ on the question of the method of seisin. For Qatar, paragraph 2 of the Minutes authorized a

unilateral seisin of the Court by means of an application filed by one or the other Party, whereas for Bahrain, on the contrary, that text only authorized a joint seisin of the Court by means of a special agreement.

33. It is accordingly incumbent upon the Court to decide the meaning of the text in question by applying the rules of interpretation that it recently had occasion to recall in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*:

> "in accordance with customary international law, reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Interpretation must be based above all upon the text of the treaty. As a supplementary measure recourse may be had to means of interpretation such as the preparatory work of the treaty and the circumstances of its conclusion." (*I.C.J. Reports 1994, Judgment*, pp. 21-22, para. 41.)

34. Throughout the proceedings, the Parties have devoted considerable attention to the meaning which, according to them, should be given to the expression *"al-tarafan"* as used in the second sentence of the original Arabic text of paragraph 2 of the Doha Minutes. Qatar translates those words as "the parties" and Bahrain as "the two parties". Both however recognize that the problem is not one of choosing between two translations which do not, in themselves, provide an answer to the question raised, but rather one of interpreting these Arabic terms in their context. The dual form in Arabic serves simply to express the existence of two units (the parties or the two parties), so what has to be determined is whether the words, when used here in the dual form, have an *alternative* or a *cumulative* meaning: in the first case, the text would leave each of the Parties with the option of acting unilaterally, and, in the second, it would imply that the question be submitted to the Court by both Parties acting in concert, either jointly or separately. Qatar and Bahrain each proceeded, before the Court, to a detailed analysis both of the more remote context (paragraphs 1 and 3 of the Doha Minutes, and earlier texts produced in the case) and the more immediate context (other expressions used in paragraph 2 of the Minutes) within which the words *"al-tarafan"* were employed. Qatar deduces from this that those words have an alternative meaning in the text under consideration, and Bahrain, a cumulative meaning implying a joint action.

35. The Court will first analyse the meaning and scope of the phrase "Once that period has elapsed, the two parties may submit the matter to the International Court of Justice." It notes the use in that phrase of the verb *"may"*, which, in its ordinary meaning, envisages a possibility, or even a right. Accordingly, the expression "the two parties may submit the matter to the . . . Court" suggests in the first place, and in its most natural sense, the option or right for them to seise the Court. Taken as such, in its most ordinary meaning, that expression does not require a seisin by

both Parties acting in concert, but, on the contrary, allows a unilateral seisin.

In the view of the Court, that interpretation is reinforced both by the form of words and by the logical implications of the expression "Once that period has elapsed", which constitutes the other component of the phrase in question. Indeed, those words imply that the option or right to move the Court was capable of being exercised as soon as the time-limit expired; this in turn necessarily implies the existence of an option or a right of unilateral seisin. Any other interpretation would encounter serious difficulties: it would deprive the phrase of its effect and could well, moreover, lead to an unreasonable result.

In fact, the Court has difficulty in seeing why the 1990 Minutes, the object and purpose of which were to advance the settlement of the dispute by giving effect to the formal commitment of the Parties to refer it to the Court, would have been confined to opening up for them a possibility of joint action which not only had always existed but, moreover, had proved to be ineffective. On the contrary, the text assumes its full meaning if it is taken to be aimed, for the purpose of accelerating the dispute settlement process, at opening the way to a possible unilateral seisin of the Court in the event that the mediation of Saudi Arabia — sometimes referred to, as in the text under discussion, as "good offices" — had failed to yield a positive result by May 1991.

36. The Court however considers that it still ought to look into the possible implications, with respect to that latter interpretation, of the conditions in which the Saudi mediation was to go forward according to the actual text of the Minutes. According to the first sentence of paragraph 2, the good offices of the King of Saudi Arabia were to "continue between the two countries until the month of . . . May 1991", and in the terms of the third sentence of that same paragraph, those good offices were moreover to "continue during the period when the matter is under arbitration" (meaning, in fact, before the Court). The text did not however specify whether the good offices were likewise to continue between the expiry of the May 1991 time-limit and the seisin of the Court.

In the view of the Court, this text can be read as affecting not only the right of the Parties to seise the Court, but also the continuation of the mediation. On that hypothesis, the process of mediation would have been suspended in May 1991 and could not have resumed prior to the seisin of the Court. However, if that seisin had itself been subject to the negotiation, and then to the conclusion, of a special agreement, any mediation would have been ruled out during the course of that negotiation, which could well have taken a long time. What was more, mediation would have become impossible if no agreement was reached between the Parties and if as a result the Court was never seised. It could not have been the purpose of the Minutes to delay the resolution of the dispute or to make it more difficult. From that standpoint, the right of unilateral seisin was the necessary complement to the suspension of mediation.

Even if paragraph 2 of the Minutes were taken not to have suspended the Saudi mediation between the expiry of the May 1991 time-limit and the seisin of the Court, and that time-limit exclusively affected the right of the Parties to resort to the Court, this interpretation would still be consistent with the conclusions reached by the Court in the previous paragraph as to the modalities of seisin.

37. The Court will now apply itself to an analysis of the meaning and scope of the terms "in accordance with the Bahraini formula, which has been accepted by Qatar, and with the procedures consequent on it", which conclude the second sentence of paragraph 2 of the Doha Minutes. As has already been indicated (paragraph 31 above), the Minutes, in specifying that the Parties might seise the Court "in accordance with the Bahraini formula, which has been accepted by Qatar", placed on record both Qatar's acceptance of that formula and the agreement of the Parties on the subject of the dispute which could be referred to the Court. The Court must, however, ascertain whether, as is maintained by Bahrain, that reference to the Bahraini formula and, in particular, to the "procedures consequent on it", further had the aim and effect of ruling out any unilateral seisin. Bahrain recalls that the Bahraini formula, proposed by it in 1988 — prior to the fifth meeting of the Tripartite Committee — was designed for inclusion in the text of a special agreement which was then under negotiation. It stresses that the introductory sentence of the formula and, in particular, the words "the Parties request the Court to decide", clearly imply a joint seisin of the Court. Bahrain explains moreover that the terms "and the procedures consequent on it" as employed in paragraph 2 of the Doha Minutes, and which were inserted into those Minutes at its request, relate to the Bahraini formula and are intended precisely to indicate that the Parties ought jointly to take other measures to give effect to the formula and bring the case before the Court. Qatar for its part emphasizes that the very object of the Bahraini formula was to enable each Party to submit its own claims to the Court; it considers that the words "and the procedures consequent on it" relate solely to the proceedings before the Court in general, as the Parties merely intended to defer, with regard to those matters, to the Statute and Rules of the Court, rather than to rules they might themselves have defined by mutual agreement.

38. The Court is aware that the Bahraini formula was originally intended to be incorporated into the text of a special agreement. However it considers that the reference to that formula in the Doha Minutes must be evaluated in the context of those Minutes rather than in the light of the circumstances in which that formula was originally conceived. In fact, the negotiations carried on in 1988 within the Tripartite Committee had broken down and the Committee had ceased its activities. If the 1990 Minutes referred back to the Bahraini formula, it was in order to determine the subject-matter of the dispute which the Court would have to entertain. But the formula was no longer an element in a special agreement, which moreover never saw the light of day; it henceforth became

part of a binding international agreement which itself determined the conditions for seisin of the Court.

39. The Court furthermore considers, like Bahrain, that the words "on it" that were used in paragraph 2 of the Doha Minutes in the expression "the procedures consequent *on it*", can only — grammatically — relate to the Bahraini formula. It must then determine what are, from a procedural standpoint, the necessary implications of the Bahraini formula which have survived the change of context. The Court notes that the very essence of that formula was, as Bahrain clearly stated to the Tripartite Committee, to circumscribe the dispute with which the Court would have to deal, while leaving it to each of the Parties to present its own claims within the framework thus fixed. It was on that basis that Qatar, during the sixth meeting of the Tripartite Committee, had suggested that the proposed special agreement should be accompanied by two annexes, with each State defining, in its annex, the matters in dispute that it wished to refer to the Court. Bahrain, for its part, undertook to study that suggestion. Given the failure to negotiate that special agreement, the Court takes the view that the only procedural implication of the Bahraini formula on which the Parties could have reached agreement in Doha was the possibility that each of them might submit distinct claims to the Court.

40. This conclusion accords with that drawn by the Court from the interpretation of the phrase "Once that period has elapsed, the two parties may submit the matter to the International Court of Justice." Consequently, it seems to the Court that the text of paragraph 2 of the Doha Minutes, interpreted in accordance with the ordinary meaning to be given to its terms in their context and in the light of the object and purpose of the said Minutes, allowed the unilateral seisin of the Court. In these circumstances, the Court does not consider it necessary to resort to supplementary means of interpretation in order to determine the meaning of the Doha Minutes, particularly paragraph 2 thereof; however, as in other cases (see for example *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 27, para. 55), it considers that it can have recourse to such supplementary means in order to seek a possible confirmation of its interpretation of the text. The Parties have moreover themselves referred at length, in support of their respective arguments, to the *travaux préparatoires* of the Minutes of December 1990, as well as to the circumstances in which they were signed.

* *

41. The *travaux préparatoires* of the Doha Minutes must be used with caution in the present case, on account of their fragmentary nature. In the absence of any document relating the progress of the negotiations, they appear to be confined to two draft texts submitted by Saudi Arabia and Oman successively and the amendments made to the latter. Qatar

denies that the Saudi Arabian draft can be regarded as an element of the *travaux préparatoires*, since it says that it was never sent the draft in question. The Omani draft unquestionably served as the basis for the text finally adopted at Doha; the only amendment was to the second sentence of the second paragraph of that draft which read as follows: "Once that period has elapsed, either of the two parties may submit the matter to the International Court of Justice."

It is not a matter of dispute between the Parties that the words "in accordance with the Bahraini formula, which has been accepted by Qatar" were added at the request of Qatar; nor do the Parties deny that it was at Bahrain's initiative that the expression *"al-tarafan"* was substituted for the words "either of the two parties" and that it was also Bahrain which requested the insertion of the words "and with the procedures consequent on it" at the end of the sentence. On the other hand, the Parties disagree on the consequences to be drawn from these amendments for the interpretation of the text of the Minutes. Bahrain maintains that its amendments are clear evidence of its consistent adoption of an approach excluding any possibility of referring the dispute to the Court by means of a unilateral application; it emphasizes that Qatar made no objection whatsoever to the adoption of those amendments. Qatar, for its part, contends that the Omani draft provides ample proof that there was no plan to hold other negotiations in order to induce the Parties to agree to submit the dispute jointly to the Court. On the contrary, according to Qatar, the draft clearly envisaged the possibility for the Parties to seise the Court unilaterally, and if neither Qatar nor Saudi Arabia nor Oman raised any objections to the amendments proposed by Bahrain, it was because none of them considered that those amendments substantially altered the rights and obligations of the Parties or the aims pursued by the draft; rather, in Qatar's view, the insertion of the words "and with the procedures consequent on it" reflected Bahrain's intention to enable each Party to formulate its own claims and to submit them to the Court in order to safeguard its own interests.

The Court notes that the initial Omani draft expressly authorized a seisin by one or the other of the Parties, and that that formulation was not accepted. But the text finally adopted did not provide that the seisin of the Court could only be brought about by the two Parties acting in concert, whether jointly or separately. The Court is unable to see why the abandonment of a form of words corresponding to the interpretation given by Qatar to the Doha Minutes should imply that they must be interpreted in accordance with Bahrain's thesis. As a result, it does not consider that the *travaux préparatoires*, in the form in which they have been submitted to it — i.e., limited to the various drafts mentioned above — can provide it with conclusive supplementary elements for the interpretation of the text adopted; whatever may have been the motives of each of the Parties, the Court can only confine itself to the actual terms of the Minutes as the expression of their common intention, and to the interpretation of them which it has already given.

42. In support of their arguments, the Parties have also invoked the circumstances in which the Minutes were signed. In the opinion of the Court those circumstances do not — any more than the *travaux préparatoires* — provide any conclusive supplementary elements for the interpretation of the text. The Court realizes that the principal concern at the meeting of the Co-operation Council of Arab States of the Gulf, held at Doha in December 1990, was not the achievement of a settlement between Bahrain and Qatar but the conflict between Iraq and Kuwait; moreover, it takes the view that this circumstance could explain why the Parties were not able to reach agreement on a more explicit text. However, the Court does not consider, in the light of the information contained in the record, that more precise conclusions capable of otherwise supporting the interpretation of the Minutes given above can be drawn directly from the particular situation created by the Gulf crisis and the consideration of that situation at Doha.

* *

43. The Court has still to examine one other argument put forward by Bahrain to contest its jurisdiction in this case. According to Bahrain, even if the Doha Minutes were to be interpreted as not ruling out unilateral seisin, that would still not authorize one of the Parties to seise the Court by way of an Application. Bahrain argues, in effect, that seisin is not merely a procedural matter but a question of jurisdiction; that consent to unilateral seisin is subject to the same conditions as consent to judicial settlement and must therefore be unequivocal and indisputable; and that, where the texts are silent, joint seisin must by default be the only solution. Qatar, for its part, distinguishes between seisin and jurisdiction and explains that, while the wishes of the Parties, as expressed in the agreements in force, are of decisive importance for the purpose of establishing jurisdiction, the validity of the seisin must on the other hand be evaluated essentially from the standpoint of the Statute and the Rules of Court, subject to any special provision to which the Parties may have agreed.

The Court does not consider it necessary to dwell at length on the links which exist between jurisdiction and seisin. It is true that, as an act instituting proceedings, seisin is a procedural step independent of the basis of jurisdiction invoked and, as such, is governed by the Statute and the Rules of Court. However, the Court is unable to entertain a case so long as the relevant basis of jurisdiction has not been supplemented by the necessary act of seisin: from this point of view, the question of whether the Court was validly seised appears to be a question of jurisdiction. There is no doubt that the Court's jurisdiction can only be established on the basis of the will of the Parties, as evidenced by the relevant texts. But in interpreting the text of the Doha Minutes, the Court has reached the conclusion that it allows a unilateral seisin. Once

the Court has been validly seised, both Parties are bound by the procedural consequences which the Statute and the Rules make applicable to the method of seisin employed. It is therefore not necessary to examine Bahrain's arguments based on the discretionary nature of the choice of a method of seisin or the drawbacks for Bahrain of being placed in the position of respondent.

* *

44. In its Judgment of 1 July 1994, the Court found that the exchanges of letters of December 1987 and the Minutes of December 1990 were international agreements creating rights and obligations for the Parties, and that by the terms of those agreements the Parties had undertaken to submit to it the whole of the dispute between them. In the present Judgment, the Court has noted that, at Doha, the Parties had reaffirmed their consent to its jurisdiction and determined the subject-matter of the dispute in accordance with the Bahraini formula; it has further noted that the Doha Minutes allowed unilateral seisin. The Court considers, consequently, that it has jurisdiction to adjudicate upon the dispute.

* * *

45. Having thus established its jurisdiction, the Court still has to deal with certain problems of admissibility. Bahrain stated before the Court that it was prepared not to contest the admissibility of the Application as framed by Qatar on 8 July 1991, reserving the right to review its position if Qatar itself were to challenge the admissibility of any claim Bahrain might intend to submit at a later stage. However, Bahrain has reproached Qatar with having limited the scope of the dispute, which the Bahraini formula was meant to cover, only to those questions set out in Qatar's Application.

46. In its Judgment of 1 July 1994, the Court, after referring to the Principles for the Framework for Reaching a Settlement adopted by the Parties in 1983, emphasized that, according to the 1987 Agreement, "all the disputed matters shall be referred to the International Court of Justice, at The Hague". Turning to an analysis of the Minutes of December 1990, the Court found that "the authors of the Bahraini formula conceived of it with a view to enabling the Court to be seised of the whole of those questions . . . within the general framework thus adopted" (*I.C.J. Reports 1994*, pp. 124-125, para. 37).

The Court consequently decided in the same Judgment:

> "to afford the Parties the opportunity to ensure the submission to the Court of the entire dispute as it is comprehended within the 1990 Minutes and the Bahraini formula, to which they have both agreed. Such submission of the entire dispute could be effected by a joint act

by both Parties with, if need be, appropriate annexes, or by separate acts. Whichever of these methods is chosen, the result should be that the Court has before it 'any matter of territorial right or other title or interest which may be a matter of difference between' the Parties, and a request that it 'draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters'." (*I.C.J. Reports 1994*, p. 125, para. 38.)

It also fixed 30 November 1994 as the deadline for joint or separate action by the Parties to submit the whole of the dispute to the Court.

47. Following the failure of the negotiations between the Parties summarized in paragraphs 18 to 21 above, Qatar, by a separate act of 30 November 1994, submitted to the Court "the whole of the dispute between Qatar and Bahrain, as circumscribed" by the Bahraini formula. Accordingly, it referred the following matters to the Court:

"1. The Hawar Islands, including the island of Janan;
2. Fasht al Dibal and Qit'at Jaradah;
3. The archipelagic baselines;
4. Zubarah;
5. The areas for fishing for pearls and for fishing for swimming fish and any other matters connected with maritime boundaries."

48. The dispute is thus described in the very terms used by Bahrain at the sixth meeting of the Tripartite Committee held on 6 and 7 December 1988. Nor does it differ from the dispute described in the draft joint acts proposed by Bahrain on 22 October and 12 November 1994, and subsequently withdrawn by it, except in so far as these latter related to *sovereignty* over the Hawar islands and *sovereignty* over Zubarah. It is clear, however, that claims of sovereignty over the Hawar islands and over Zubarah may be presented by either of the Parties, from the moment that the matter of the Hawar islands and that of Zubarah are referred to the Court. As a consequence, it appears that the form of words used by Qatar accurately described the subject of the dispute. In the circumstances, the Court, while regretting that no agreement could be reached between the Parties as to how it should be presented, concludes that it is now seised of the whole of the dispute, and that the Application of Qatar is admissible.

49. Within the framework thus defined, it falls to Qatar to present its submissions to the Court, as it falls to Bahrain to present its own. To this end, after it has ascertained the views of the Parties, the Court will issue an Order fixing the time-limits for the simultaneous filing of the written pleadings, in accordance with paragraph 39 of the Judgment of 1 July 1994.

* * *

50. For these reasons,

THE COURT,

(1) By 10 votes to 5,

Finds that it has jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain;

IN FAVOUR: *President* Bedjaoui; *Judges* Sir Robert Jennings, Guillaume, Aguilar-Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Vice-President* Schwebel; *Judges* Oda, Shahabuddeen, Koroma; *Judge* ad hoc Valticos.

(2) By 10 votes to 5,

Finds that the Application of the State of Qatar as formulated on 30 November 1994 is admissible.

IN FAVOUR: *President* Bedjaoui; *Judges* Sir Robert Jennings, Guillaume, Aguilar-Mawdsley, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Vice-President* Schwebel; *Judges* Oda, Shahabuddeen, Koroma; *Judge* ad hoc Valticos.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this fifteenth day of February, one thousand nine hundred and ninety-five, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the State of Qatar and the Government of the State of Bahrain, respectively.

(Signed) Mohammed BEDJAOUI,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Vice-President SCHWEBEL, Judges ODA, SHAHABUDDEEN and KOROMA, and Judge *ad hoc* VALTICOS append dissenting opinions to the Judgment of the Court.

(Initialled) M.B.
(Initialled) E.V.O.
