

CR 2000/6

International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2000

Public sitting

held on Tuesday 30 May 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 mardi 30 mai 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

<i>Present:</i>	President	Guillaume
	Vice-President	Shi
	Judges	Oda
		Bedjaoui
		Ranjeva
		Herczegh
		Fleischhauer
		Koroma
		Vereshchetin
		Higgins
		Parra-Aranguren
		Kooijmans
		Rezek
		Al-Khasawneh
		Buergenthal
	Judges <i>ad hoc</i>	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

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as Agent and Counsel;

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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
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Mr. Jean Salmon, Professor emeritus of International Law, Université libre de Bruxelles, Member
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Mr. R. K. P. Shankardass, Senior Advocate, Supreme Court of India, Former President of the
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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
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Ms Nanette E. Pilkington, *Avocat à la Cour d'appel de Paris*, Frere Cholmeley/Eversheds, Paris,

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Mr. Robert C. Rizzutti, Project Manager, MapQuest.com, Columbia, Maryland (United States of
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H.E. Mr. Ahmed bin Abdullah Al-Mahmoud, Minister of State for Foreign Affairs,

as Observers.

The State of Bahrain is represented by:

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S. Exc. M. Ahmed bin Abdullah Al-Mahmoud, ministre d'Etat aux affaires étrangères,

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Mr. Andrew Newcombe, Freshfields, Paris, Member of the Bar of British Columbia,
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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
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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,
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Le cheikh Khalid bin Ahmed Al-Khalifa, premier secrétaire, ministère des affaires étrangères de
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Le capitaine de frégate Christopher Carleton, M.B.E., directeur de la division du droit maritime du
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M. Graham Coop, cabinet Freshfields, Paris, avocat et conseil de la *High Court* de
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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,
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S. Exc. le cheikh Abdul-Aziz bin Mubarak Al Khalifa, ambassadeur de l'Etat de Bahreïn aux
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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
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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 Aneesa 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 la parole au Dr. Ali bin Fetais Al-Meri pour l'Etat de Qatar. Vous avez la parole. You have the floor.

M. AL-MERI :

B. L'ORGANISATION DE L'ADMINISTRATION OTTOMANE A QATAR

Monsieur le Président, Madame et Messieurs de la Cour,

I. Introduction

1. Le conseil qui m'a précédé a expliqué la manière dont l'entité politique de Qatar s'est progressivement créée, sous le gouvernement des Al-Thani, pour s'étendre sur l'intégralité de la péninsule de Qatar au cours de la seconde moitié du XIX^e siècle. La présence des Ottomans à Qatar, entre 1871 et le début de la première guerre mondiale, constitue un des éléments importants de l'histoire de Qatar pendant cette période. Comme je tâcherai de le démontrer, cette présence ottomane a confirmé l'intégrité territoriale de Qatar, en tant qu'entité distincte.

2. Pour une bonne compréhension de la manière dont les Ottomans exerçaient leur autorité à Qatar, il faut d'abord savoir comment était organisée l'administration ottomane dans la région du Golfe. Les documents de l'époque qui se trouvent dans les archives ottomanes, y compris les cartes dressées par les Ottomans vers la fin du XIX^e siècle et au début du XX^e siècle, nous montrent que les Ottomans considéraient Qatar comme un district administratif séparé et distinct, et que — contrairement aux thèses avancées par Bahreïn — ce district n'était pas simplement limité aux environs de Doha, mais s'étendait sur l'intégralité de la péninsule de Qatar, y compris les îles Hawar.

II. La nature de l'administration ottomane dans la région

3. Les Ottomans exerçaient leur autorité dans la partie nord du Golfe par le biais d'une structure complexe, comportant une hiérarchie d'unités administratives. Ces unités correspondaient à des provinces, des sous-provinces, des districts et des villes.

4. Au sommet de cette structure administrative se trouvait la province ou *vilayet* de Bassorah, où les Ottomans avaient établi leur capitale administrative régionale. Le *vilayet* de

Bassorah était gouverné par un officier appelé *vali*. Le *vilayet* de Bassorah était lui-même divisé en quatre sous-provinces, ou *sanjaks*. Il s'agissait des *sanjaks* de Bassorah, de Muntefik, de Ammara et de Hasa (ou de Nejd). Chacun de ces *sanjaks* était gouverné par un officier appelé *mutassarif*.

5. A leur tour, les *sanjaks* étaient divisés en districts, ou *kazas*, lesquels étaient gouvernés par un gouverneur local, appelé *kaimakam*. Le *kaimakam* établissait habituellement sa résidence dans la ville principale du *kaza* et cette ville était appelée *kasaba*. Le *kaza*, pour sa part, était divisé en unités administratives plus petites, ou *nahiyes*, qui pouvaient comprendre plusieurs villes ou villages (*koys*).

6. Cette structure permettait un certain niveau de centralisation de l'administration ottomane, les *mutasarrifs* et *kaimakams* locaux étant subordonnés au *vali* du *vilayet*. En réalité, cependant, il existait un haut degré d'autonomie au niveau du *kaza*, et il n'était pas inhabituel qu'un *kaimakam* gouverne de manière très autonome ou quasi indépendante, comme cela était le cas pour Qatar.

7. Il a déjà été dit que les Ottomans avaient nommé le cheikh Jassim bin Thani de Qatar en tant que *kaimakam* du *kaza* de Qatar. Les documents nous montrent que le cheikh Jassim, tout en professant une allégeance nominale aux Ottomans et en tolérant une présence militaire ottomane à Qatar, agissait de temps en temps de manière indépendante dans la péninsule, et se méfiait des intentions des Ottomans.

III. L'étendue du *kaza*, ou district, de Qatar

8. Afin que la Cour puisse visualiser la structure administrative que je viens de décrire, il convient de regarder quelques cartes de la région, dressées par les Ottomans à l'époque concernée. Ces cartes illustrent trois choses. Tout d'abord, elles illustrent très clairement la hiérarchie entre les *vilayets*, les *sanjaks*, les *kazas* et les *kasabas*. Ensuite, elles démontrent, au-delà de tout doute possible, que, contrairement à ce que prétend Bahreïn, le *kaza* ou district de Qatar s'étendait sur l'intégralité de la péninsule de Qatar. Enfin, elles nous montrent que les Ottomans considéraient que Bahreïn, sur lequel ils se prétendaient suzerains, mais qui était en fait accepté comme étant gouverné par les cheikhs locaux, se limitait aux îles principales de Bahreïn, à l'exclusion des îles Hawar.

[Afficher à l'écran la carte n° 35 de l'Atlas]

9. J'ai fait afficher à l'écran une carte extraite de l'Atlas de Qatar (le n° 35), qui a été dressée par les Ottomans vers la fin du XIX^e siècle et qui représente le *vilayet* de Bassorah. Le *vilayet* entier est tracé sur la carte, et est colorié en rose pâle [**indiquer la carte**].

10. Les quatre *sanjaks* que comportait le *vilayet* sont également énumérés sur la carte [**les indiquer sur la carte**]. Tout d'abord, il y avait le *sanjak* de Bassorah lui-même, qui comprenait la région entourant la ville de Bassorah. Au nord et à l'ouest de Bassorah était le *sanjak* de Muntefik. A l'est de Bassorah et formant la frontière avec l'Iran, se trouvait le *sanjak* de Ammara. Et au sud était le plus grand des quatre, le *sanjak* de Hasa ou de Nejd, dont la capitale provinciale se trouvait à Al-Hufuf.

11. Pour les besoins de la présente affaire, c'est le *sanjak* de Nejd qui est le plus pertinent. Comme je l'ai déjà indiqué, ce *sanjak* était divisé en *kazas* ou districts, dont l'un était le *kaza* de Qatar.

12. En outre, la Cour remarquera également que les îles de Bahreïn sont elles-mêmes indiquées de manière distincte sur la carte [**indiquer sur la carte**]. On peut aisément constater que les îles de Bahreïn, telles qu'elles sont indiquées, se limitent à l'île principale de Bahreïn et aux îles tout près de ses côtes, comme Muharraq [**indiquer**]. Ni Zubarah, ni les îles Hawar, qui font pratiquement partie de la côte de Qatar [**indiquer**], ne sont indiquées comme faisant partie de Bahreïn. A la différence de Qatar, et en raison sans doute de ses liens étroits avec la Grande-Bretagne, Bahreïn n'était pas considéré comme un *kaza* distinct.

[Afficher à l'écran la carte n° 15 de l'Atlas]

13. L'étendue du *kaza* de Qatar ressort très clairement de cette deuxième carte ottomane de la région, qui vient d'être affichée à l'écran. Il s'agit de la carte n° 15 de l'Atlas de Qatar.

14. La Cour constatera de nouveau que le *sanjak* de Nejd est indiqué sur la carte. Si nous regardons Qatar, nous voyons que le *kaza* de Qatar est également indiqué de manière très claire, le nom «Qatar» recouvrant une bonne partie de la péninsule de Qatar. La carte ne laisse aucun doute quant au fait que le *kaza* a été considéré comme englobant toute la péninsule.

15. En revanche, le *kasaba* de Qatar, la capitale du district, est traité sur la carte de manière tout à fait différente. Il n'était pas inhabituel qu'une capitale de district porte le même nom que le *kaza* lui-même - comme par exemple Koweït. En conséquence, la carte indique non seulement le

kaza de Qatar mais également la ville de Qatar. Si nous regardons l'encart au bas de la carte [l'indiquer sur la carte], nous voyons que la ville de Qatar est indiquée très distinctement comme constituant le *kasaba* de Qatar.

16. Cette carte contredit totalement la thèse de Bahreïn, selon laquelle Qatar n'était constitué que par la ville d'Al-Bida et ses environs. Ce à quoi Bahreïn se réfère comme constituant toute l'étendue de Qatar n'était, tout simplement, que la capitale de district, ou *kasaba*, de Qatar. Comme l'indique la carte, le *kaza* de Qatar était beaucoup plus étendu, et recouvrait toute la péninsule.

17. Les informations figurant sur la carte sont confirmées par les documents ottomans eux-mêmes. Par exemple, il existe un rapport interne ottoman, daté de 1895, soit la date approximative de cette carte, et adressé au Grand Vizir. Ce rapport décrit Qatar comme suit : «L'endroit appelé Qatar, sur la côte à cent milles de la garnison d'Ojair, est comme une langue qui se projette dans la mer entre Oman et l'île de Bahreïn.»¹

18. Cette description démontre que les Ottomans considéraient que Qatar recouvrait la péninsule entière, ou la «langue» de terre décrite dans le document. Le même rapport indique ensuite que:

«La quasi-totalité de la population est occupée à la pêche des poissons et des perles, et les gens ont également une activité commerciale et de navigation. Le nombre de leurs bateaux varie entre cinq et six cents... Le centre administratif de ce *kaza* est le *kasaba* d'Al-Bida. Le *kasaba* d'Al-Bida comporte quelque deux mille cinq cent maisons construites de pierre et de chaux. Il comporte onze villages, situés sur la côte.»²

19. Une fois encore, la Cour aura vu que les Ottomans faisaient une distinction entre le *kaza* de Qatar, recouvrant toute la péninsule, et le *kasaba* de Qatar, lequel comporte onze villages autour de la ville d'Al-Bida. Si nous regardons de nouveau la carte, nous voyons qu'un certain nombre d'autres villages sont indiqués comme faisant partie du *kaza* de Qatar. Entre autres, il s'agit, notamment, de Zubarah [l'indiquer sur la carte], qui a été considéré sans aucun doute comme faisant partie du *kaza*, et ainsi comme étant en-dehors des domaines de Bahreïn. Ces points ont

¹Réplique de Qatar, annexe II.45, vol. 2, p. 253

²*Ibid.*

également été confirmés par un spécialiste de l'histoire ottomane, le Dr. Zekeriya Kursun, dans son rapport joint à la réplique de Qatar³.

20. Bahreïn lui-même a fourni des confirmations complémentaires de la structure administrative ottomane, dans les documents qu'il a versés aux débats. Ainsi, en annexe 25 b) au contre-mémoire de Bahreïn, figure un rapport ottoman sur Qatar, datant de 1893, lequel fait une distinction très nette entre le territoire du *kaza* de Qatar et la capitale de district de Qatar ou d'Al-Bida. Comme l'indique ce rapport, les Ottomans voulaient s'assurer de «l'établissement complet de la sécurité et de la tranquillité dans *toutes les parties du kaza*»⁴.

21. En outre, en annexe 35 b) au contre-mémoire de Bahreïn, il y a un nouveau rapport ottoman de 1909, lequel indique que: «Les districts de Zubare et d'Udeyd sont des prolongements de la sous-division de Katar de la province de Nejd, et ils occupent des situations importantes.» (P. 113.)

IV. Conclusions

22. En conclusion, Monsieur le président, Madame et Messieurs de la Cour, les documents ottomans de l'époque sont en parfaite conformité avec les autres documents qui ont été traités par Mlle Pilkington. Comme ces derniers, ils confirmaient l'intégrité territoriale de Qatar, en tant qu'entité politique, comprenant toute la péninsule de Qatar. Ils sont également conformes à la cartographie qui sera traitée plus tard par M. Bundy. En conséquence, les arguments de Bahreïn quant à l'étendue limitée de Qatar vers la fin du XIX^e siècle et au début du XX^e siècle, sont sans aucun fondement, et doivent être rejetés en totalité.

Je remercie la Cour de son attention, et vous prie, Monsieur le président, de bien vouloir donner la parole à M. Shankardass.

Le PRESIDENT : Je vous remercie beaucoup, Dr. Ali bin Fetais Al-Meri. Now I give the floor to Mr. Shankardass.

³Annexe II.75, vol. 2, p. 531

⁴Contre-mémoire de Bahreïn, annexe 25 b), vol. 2, p. 73, les italiques sont de nous.

MR. SHANKARDASS:

**LIMITED EXTENT OF BAHRAIN AND THE IMPACT OF OIL CONCESSIONS
ON QATAR/BAHRAIN TERRITORIES**

Mr. President, and distinguished Members of the Court:

May I say it is a great honour and indeed a privilege to appear before this Court again and to represent the State of Qatar.

1. My learned colleague, Ms Nanette Pilkington, presented to you yesterday the history of the territorial scope and integrity of Qatar up to a few years after the Anglo-Qatar Treaty of 1916. My task today is to address you first, on the territorial extent of Bahrain for approximately the same period; and thereafter, to demonstrate to you the impact of oil concession negotiations of the 1920s and the 1930s on what were to be regarded as the Sheikhdoms of both Qatar and Bahrain.

2. As to the extent of Bahrain, I would like to begin, if I may, by referring to Bahrain's effort, in its pleadings, to present an image of itself as a historical entity comprising not just the compact group of the Bahrain islands, but also including extensive tracts of territory on the Arabian mainland. Thus, Bahrain claims that "the Qatar peninsula, along with the Hasa oases, was part of a major geographical and socio-economic unit known to historians, we are told, as Greater Bahrain"¹; and furthermore, that it exercised authority and control over all the waters between the Bahrain main Island and the Zubarah coast². Bahrain has produced no credible evidence to support any such idea of a Greater Bahrain. All that we have seen is Colonel Lapie's French map of 1838 included in Bahrain's Memorial³. Even this map is in no sense evidence of any political entity of a greater Bahrain covering the extensive area marked on the map.

3. Qatar does not dispute that the name "Bahrain" was at one time used as a geographical description covering different parts of the Arabian mainland together with the Bahrain group of islands.

The Court will recall the statement reproduced in Qatar's Reply of the present Emir of Bahrain when, writing in 1994⁴, he stated that *from the middle of the thirteenth century* the name

¹Counter-Memorial of Bahrain, para. 32.

²Memorial of Bahrain, paras. 16-17.

³Memorial of Bahrain, map facing p. 5 and para. 16.

⁴Reply of Qatar, Ann. II.79, Vol. 2, p. 555.

"Bahrain" has been applied "more specifically to *the group of islands* now known as Bahrain". He also points out that the entire area continued to be loosely referred to as "Bahrain" for centuries afterwards.

4. Bahrain however claims in its Memorial that the State of Bahrain *today* consists of "an archipelago which includes more than 50 islands, low-tide elevations and shoals . . . the territory on the north-west coast of the Qatar peninsula referred to as the Zubarah region" and of course "the Hawar Islands group"⁵.

5. My effort will be to show, on the contrary, that the extent of Bahrain has in fact been limited for a long time to what the Emir of Bahrain describes as "the group of islands now known as Bahrain" and to demonstrate how this description has been historically and universally understood. I propose to do this by analysing the position briefly before the Agreements of 1868 and, in somewhat greater detail, after that date.

The position before 1868

6. As to the position before 1868, Qatar has already shown in its pleadings⁶, that the Al-Khalifah occupation of Bahrain in 1783 was followed by a confused period up to 1820 when struggle for control over the islands, by Muscat, Wahhabis and Persia were occurring. Even in the years after 1820, as Lorimer points out⁷, and as Dr. Al Baharna of Bahrain confirms⁸, the internal situation in Bahrain during the first half of the nineteenth century was highly unstable with the towns in a state of ruin and decay, the six sons of the Sheikh pretending to exercise separate and independent power and the ongoing dynastic quarrels between the Sheikhs.

7. Lorimer further records⁹ that towards the end of the year 1859, in view of another Wahhabi threat, Sheikh Mohamed of Bahrain made simultaneous applications for protection to the Persians and to the Turkish Wali of Baghdad. It is in this context that a British Report, now filed

⁵Memorial of Bahrain, paras. 42-43.

⁶Memorial of Qatar, paras 3.23 to 3.29; Reply of Qatar, para. 3.10.

⁷Memorial of Qatar, Ann. II.5, Vol. 3, p. 265.

⁸Reply of Qatar, Ann. II.76, Vol. 2, p. 545.

⁹Memorial of Qatar, Ann. II.5, Vol. 3, p. 295.

by Bahrain, points out that "Bahrain once hoisted in succession Turkish, Persian and English flags"; and goes on to say that "she has been known to hoist all three at once"¹⁰.

8. I mention these events merely to indicate that during the whole period after 1783 when Bahrain claims the Al-Khalifah Sheikhs were exercising sovereign authority or dominance throughout Qatar, the Al-Khalifah were hardly themselves stable in the Bahrain islands or independent of other powers.

9. The problem of Bahrain's instability was only resolved with the British decision of 1861 that the tranquillity of the Persian Gulf seemed to demand that Bahrain should be regarded as subject neither to Turkey nor to Persia; and that its independence must be recognized¹¹. In the same year, Bahrain was also engaged in what the British Political Resident considered "aggression on the coast of [its] neighbours" and he arrived in Bahrain in May 1861 determined "sternly to control" Bahrain's activities and to see what he could do to preserve the maritime tranquillity which, he declared, was being openly endangered by the Shaikh of Bahrain¹². These were the events which led to the Anglo-Bahrain Treaty of 1861, whereby Bahrain undertook to abstain from all maritime aggression of every kind, in return for British protection for the security of Bahrain¹³.

10. While the British action in 1861 might have helped stabilize Bahrain's situation to some extent, as the Court will have seen, this did not stop the Al-Khalifah undertaking aggressive activities across the sea against Qatar in 1867 and 1868 until they were finally punished and prohibited by the British from ever doing so again under the 1868 Agreements.

The position after 1868

11. Turning now, if I may, Mr. President, to the position after 1868, I would like to draw the Court's attention to the numerous occasions set out in some detail in Qatar's pleadings¹⁴ when Bahrain was described as being limited to a group of close islands and none of these descriptions

¹⁰Supplemental Documents of Bahrain, Ann. 1, p. 26.

¹¹Memorial of Qatar, Ann. II.5, Vol. 3, p. 295.

¹²Memorial of Qatar, para. 5.3; Memorial of Qatar, Ann. III.5, Vol. 6, p. 27.

¹³Memorial of Qatar, paras. 5.3-5.4; Memorial of Qatar, Ann. III.6, Vol. 6, p. 31.

¹⁴Reply of Qatar, paras 3.23-3.36.

included any part of the Qatar peninsula or the Hawar Islands; I will only briefly refer to some of the important ones.

12. The Court will recall that Bahrain was occupied in the sixteenth century by the Portuguese and thereafter between 1622 and 1783 by Persia and that the Persians continued to claim sovereignty over Bahrain right up until 1970 when the issue was ultimately resolved as a result of the Shah of Persia's announcement that "the *island's* inhabitants were welcome to decide their own fate"¹⁵.

13. During the entire period when the Persian claim was being pressed, particularly from 1886 onwards, Bahrain was always referred to either as "one island" or "an island State, consisting of five islands" or "a group of one large and four small islands"¹⁶. There are ten Persian maps in Qatar's Map Atlas, from Map No. 89 onwards, showing Bahrain as part of Persia and each of them shows only the main Bahrain Island and its adjoining islands as Persian territory. None of them include the Hawar Islands or Zubarah. To demonstrate this position, may I show the Court just two out of the four official Persian maps: first, a 1950 map of the Geographic Department of the Army [map No. 89 now on the screen]; and second, a 1965 map of the National Iranian Oil Company [map No. 94 now on the screen], both showing only the Bahrain main island and its immediately adjoining islands as part of Iran.

14. Next, a description of Bahrain in 1931 in the official publication of the Turkish Ministry of Foreign Affairs, echoes what the Emir of Bahrain has told us, and states: "In the past, al-Hasa and Qatar were included under the name Bahrain, but today, Bahrain refers only to a group of five islands"¹⁷ (which are then named).

15. Contrary to Bahrain's description of the "State of Bahrain", all other significant historical references to or descriptions of "Bahrain" after 1868, which Qatar has listed in its Reply¹⁸, specify only the main Bahrain island and its immediately neighbouring islands as constituting Bahrain. These include two official British Reports of 1874 and 1880, a study presented to the Royal

¹⁵Reply of Qatar, para. 3.25.

¹⁶Reply of Qatar, paras. 3.23 to 3.35.

¹⁷Reply of Qatar, Ann. II.87, Vol. 2, p. 625; Reply of Qatar, Ann. II.88, Vol. 2, p. 631. These are named as: "(1) Bahrain . . . (2) Moharrekk, (3) Umm Na'san, (4) Sitra, (5) Nabi Salih".

¹⁸Reply of Qatar, para. 3.31 and related annexes.

Geographical Society in 1889 by J. Theodore Bent with an important map reflecting his description of Bahrain [map No. 12 which is now on the screen], a Report of 1902 by the German Ambassador to Persia and, most importantly, Lorimer's description of Bahrain in 1908 as consisting of:

"the archipelago formed by the Bahrain, Muharraq, Umm Na'asan, Sitrah and Nabi Salih islands and by a number of lesser islets and rocks . . . taken all together these form a compact group almost in the middle of the gulf which divides the promontory of Qatar from the coast of Qatif"¹⁹.

16. To return briefly to Bent's map still on the screen, I would like to stress that this map published in 1890 is representative of a broad spectrum of maps prepared throughout the late nineteenth and early twentieth centuries, all of which depicted Bahrain in the same way and, in Qatar's submission, this map still substantially shows the extent of Bahrain today.

17. Lorimer's description of the extent of "Bahrain", which I have just read out, was thereafter consistently adopted by British authorities, for example, in the 1916 *Handbook of Arabia*, an India Office Report of 1928; a British Military Report of 1933, which is annexed to Bahrain's own Memorial²⁰ and in India Office and Political Residency correspondence of 1933 and 1934 to which I will have occasion to refer shortly when dealing with the oil concession history of the 1930s.

18. The Court will therefore see that in addition to the Persian, Turkish, German and earlier British descriptions of 1874, 1880 and 1889, all descriptions of Bahrain in British records from 1908 to 1934 are also virtually identical and clearly demonstrate that "Bahrain" during that period was regarded by the British as comprised only of the five named islands. Added to all this evidence are the numerous maps that my learned friend Mr. Bundy will address which similarly show "Bahrain" as consisting of a group of islands. I, for my part, would invite the Court's particular attention to just two of the maps, as they are official British maps, and therefore of high evidentiary value:

- (i) First, a portion of the Admiralty Chart No. 748-B of 1917 [map No. 58 now on the screen] showing a red line within which lies the Arabian peninsula. This map, which

¹⁹Memorial of Qatar, Ann. II.3, Vol. 3, p. 88.

²⁰Memorial of Bahrain, Ann. 330, Vol. 6, p. 1446.

Mr. Bundy will analyse, shows "Bahrain" specifically marked by a circle enclosing the same compact group of islands; and

- (ii) Second, a War Office map of 1924 with annotations by the Foreign Office made in 1933, which the Court will now see on the screen [map No. 77]. As Qatar has shown, this map was annotated by Mr. G. W. (later Sir George) Rendel in connection with a Memorandum in the context of a proposal to the British Cabinet that the duties in regard to Persian Gulf States, should be transferred from the Colonial Office to the Foreign Office²¹;

Rendel's annotations on the map depicted the contemporary view of the Foreign Office in 1933 and set out the limits of each of the political entities in the Gulf region. With respect to Qatar, Rendel left no doubt that it encompassed the entire peninsula obviously including Zubarah. Bahrain, in contrast, was indicated as falling within the blue line on the map and its territorial extent limited to the compact group of islands described by Lorimer. In accordance with British views which Qatar has shown were expressed and prevailed between 1933 and 1936, the Hawar Islands were obviously excluded from the limits of Bahrain and included within the limits of Qatar.

19. Important evidence more recently researched, confirming that Bahrain consisted only of the group of islands I have mentioned, is provided by the English Adviser to the Government of Bahrain, Charles (later Sir Charles) Belgrave himself. In an article — a copy of which is in the judges' folders — published in the *Journal of the Central Asian Society* in 1928 — two years after he had taken up his official position — Belgrave described the Bahrain archipelago as consisting of "a group of small islands about seventeen miles off the Arab coast half-way down the Persian Gulf"²². His detailed description of the islands makes no mention whatsoever of Hawar or, for that matter, of Zubarah.

20. Had the Hawar Islands been regarded as part of the principality of "Bahrain" in 1928, the main Hawar Island (Jazirat Hawar) would have been the second largest in the group, and specific attention would certainly have been directed to it by Belgrave himself in his detailed description of the islands constituting Bahrain.

²¹Reply of Qatar, Ann. II.58, Vol. 2, p. 335.

²²Reply of Qatar, Ann. II.81, Vol. 2, p. 570.

21. Finally, even in 1970, when a representative of the United Nations Secretary-General visited Bahrain to ascertain the wishes of its people on the issue of the Persian claim to Bahrain, his Report of that year — a copy of the excerpt is in the judges' folders — described Bahrain in almost the same terms as Lorimer and observed: "Only five islands are inhabited but nearly all the population lives on three."²³ Even in this Report, there is no mention whatsoever of Hawar or Zubarah.

22. The Court will therefore see that contrary to Bahrain's description of its territories in its pleadings, for decades, if not for at least a century, the entity referred to by the Emir of Bahrain as "the group of islands now known as Bahrain" clearly meant the compact group of islands which my learned friend, Professor Salmon, showed you on Bent's 1890 map yesterday, and which have been specifically named from time to time.

Oil concession of the 1930s and the territorial extent of Qatar and Bahrain

23. Let me now turn to the events following efforts in the 1920s and 1930s to discover and later produce oil which further confirm the extent of the territories of Bahrain and Qatar as described by Qatar in its pleadings.

24. In view of the prospects for the discovery of oil in the area, negotiations began in the 1920s between prospective oil concessionaires and the Rulers of the Gulf Sheikhdoms.

25. Bahrain, by virtue of an undertaking of May 1914²⁴, and Qatar under the 1916 Treaty²⁵, had agreed with the British Government not to grant any oil concession over their territories to anyone without British consent. As noted by a senior British official²⁶, although none of their treaties with the two Sheikhdoms entitled the British to make binding boundary determinations of their territories without the consent of the Rulers, for the purpose of the oil concessions, the British, before giving their required consent, had to ensure that the proposed concessions lay within the territories of each Sheikhdome.

²³United Nations Security Council Doc. S/9772 of 30 April 1970.

²⁴Memorial of Bahrain, para. 235; Memorial of Bahrain, Ann. 94, Vol. 3, p. 552.

²⁵Memorial of Qatar, Ann. II.47, Vol. 5, p. 181.

²⁶Supplemental Documents of Qatar, doc. 17, p. 116.

26. Before I discuss the Qatar and Bahrain oil concessions that came to be signed, may I first briefly refer to a few relevant events that occurred just before oil became significant in the area.

27. After Ibn Saud had driven the Turks out of Hasa in 1913, he was initially inclined to consider himself heir to some of the Sheikdoms which were formerly in the Wahabee area of influence, including Bahrain, Qatar and the Trucial Sheikdoms²⁷. At the time he also sought good relations with the British. As Qatar has shown, the Political Resident, Sir Percy Cox, had warned him that these could exist only on condition that Ibn Saud was not to disturb the status quo or cause unrest among the Arab principalities whose rulers were in treaty relations with the British Government. These, he pointed out, included the principality of Qatar, the independence of which under the government of the late Sheikh Jasim bin Thani and his successors had recently been recognized by the British and Turkish Governments²⁸. The reference of course was to the Anglo-Turkish Convention of 1913. Thereafter, Ibn Saud and the British (represented by Sir Percy Cox) entered into a Treaty in December 1915; Article VI of the Treaty incorporated an undertaking by Ibn Saud to refrain from any aggression on, or interference in Bahrain, Qatar and the other Sheikdoms who had treaty relations with the British²⁹.

28. However, despite this background, in perhaps the first overt challenge to the territorial integrity of Qatar after prospects for the discovery of oil had become promising, Sir Percy Cox discovered during a meeting in 1922 that Ibn Saud, in his discussions with potential oil concessionaires for the Hasa region, had apparently included the Qatar Peninsula within the tract of territory for which he was preparing to negotiate a concession.

It is reported³⁰ that Sir Percy Cox at once took him to task, reminding him that he had nothing to do with Qatar and to respect the terms of the 1915 Treaty. Ibn Saud accordingly granted the first oil concession in 1933 to the Standard Oil Company of California in respect of the Hasa region only.

²⁷Counter-Memorial of Qatar, para. 3.43.

²⁸Memorial of Qatar, Ann. III.59, Vol. 6, p. 283.

²⁹Memorial of Qatar, Ann. III.62, Vol. 6, p. 295.

³⁰Supplemental Documents of Qatar, doc. 6, p. 18.

29. Returning to oil concession developments in Bahrain and Qatar, I propose to draw the Court's attention, to the various events occurring in the 1920s and almost in parallel, in the 1930s, in the history of oil concessions relevant to the boundaries of both Bahrain and Qatar.

30. In 1923, Frank Holmes, who became a well-known figure in the area in relation to oil concession negotiations, in his capacity as the representative of the Eastern and General Syndicate Limited (EGS as it is called), prepared a draft agreement to be concluded with Bahrain for a petroleum concession³¹. The draft was duly signed by Frank Holmes and his signature witnessed. This draft essentially proposed a comprehensive concession to be granted by the Ruler of Bahrain to EGS for 70 years in the "land known as THE BAHREIN ISLANDS" including rights to set up a refinery. The Bahrain islands to which the proposed concession was to apply are referred to in the draft concession in the following words which are now on the screen:

"THIS GROUP of ISLANDS (hereinafter called THE CONCEDED TERRITORY) is more particularly shown and delineated on the MAP attached to this Agreement, and MARKED in RED Colouration thereon, *all the islands forming Part of THE SHEIKH's Dominions* are included in the CONCEDED TERRITORY."³²

The map referred to in the draft concession is also signed by Frank Holmes³³. I would respectfully ask the Court to see this map³⁴ now on the screen [full and zoom] and notice how clearly it marks the group of islands comprising the territory of Bahrain.

31. Admittedly the draft to which the map was attached did not mature into a final concession (as the proposals it contained were at the time presumably regarded as excessive and premature). However, contrary to Bahrain's contention in its Counter-Memorial³⁵ that the purpose of the red colouring on the map was to define only the area *proposed* by EGS, the description of Bahrain in the draft concession and the map I have just shown to the Court, clearly provide evidence of what was considered the territorial extent of Bahrain. The description refers to "all the Islands forming Part of THE SHEIKH's Dominions" and "MARKED in RED" showing them as quite distinct from mainland Qatar and its immediately adjoining Hawar Islands. Another map

³¹Memorial of Qatar, Ann. III.66, Vol. 6, p. 323.

³²*Ibid.*, p. 327 (emphasis added).

³³*Ibid.*, p. 345.

³⁴*Ibid.*, p. 345.

³⁵Counter-Memorial of Bahrain, para. 200.

prepared by Mr. Holmes five years later, in 1928, [map No. 71] showing various oil concessions in the Gulf area and now on the screen [full and zoom] is identical to the 1923 map and similarly shows Bahrain in a distinct colour separating it from Qatar and the Hawar Islands.

32. A Concession Agreement was eventually signed between EGS and the Ruler of Bahrain in December 1925. In terms of this Agreement, EGS was granted an exclusive licence to explore the territory of Bahrain and the right thereafter to a mining lease over an area not exceeding 100,000 acres to be selected by the Company. Although no map was attached to the Agreement, its terms were to apply "*throughout* the whole of the territories under his [that is the Ruler of Bahrain's] control". As I will shortly show, this description was later expressly cited by the India Office to support the British view in 1933 that no area in mainland Qatar nor the Hawar Islands could be regarded as part of Bahrain. Bahrain attempts to argue in its Counter-Memorial³⁶ that the 1925 Agreement only applied to the Bahrain main island. This contention, Mr. President, is hardly consistent with the expression "*throughout* the *whole* of the territories under his control", and even Qatar does not suggest that the Ruler's control was confined only to the main Bahrain island. Furthermore, Bahrain itself admits the intention was that "no geologically significant territory would be excluded from the concession"³⁷. In any event, this is further evidence of what, in the context of the discovery of oil, the entity of "Bahrain" was really understood to be in 1925.

33. In the meantime, negotiations had also begun between the Anglo-Persian Oil Company (APOC as it was called), and the Ruler of Qatar with regard to the possibility of APOC securing an oil concession in Qatar. In August 1932, APOC, through its representative, Mr. C. C. Mylles, concluded an Agreement³⁸ with the Ruler of Qatar, whereby it was granted exclusive exploration rights for two years within the "territories of Qatar" and an exclusive right to apply for a concession during that period. APOC was also granted permission to carry out a detailed geological survey of Qatar which it undertook early in 1933. The Geological Survey Report of July 1933 is an important piece of evidence showing that the geologists regarded the Hawar Islands as part of the

³⁶Counter-Memorial of Bahrain, paras. 201-203.

³⁷*Ibid.*, para. 203.

³⁸Supplemental Documents of Qatar, doc. 10, p. 45; doc. 11, p. 47.

territory of Qatar. They state in their report³⁹ that although they did not visit the islands of Rubadh and Howar, these islands were topographically so similar to the Abaruk peninsula on the mainland that the Hawar group effectively formed part of that peninsula⁴⁰. That APOC's geologists considered the Hawar Islands to be part of Qatar's territory is further confirmed by the absence of these islands from the areas specified as outside or beyond the Sheikh of Qatar's territory⁴¹.

34. Next, and most important, is the map produced by the APOC geologists titled "Geological sketch map of Qatar peninsula" and attached to their report as the illustration in plate No. I which distinctly illustrates the territory of Qatar⁴². This map is now on the screen and the Court will see how clearly it marks areas comprising Qatar and so obviously including the Hawar Islands. I will return to this map later, Mr. President, when dealing with the final map, also based on this map, which eventually came to be attached to the Qatar Oil Concession.

35. The next important step towards defining the territory of Qatar was initiated in the second half of 1933 when the Secretary of State for India sought the views of the Government of India on the boundaries of Qatar in connection with APOC's negotiations with the Ruler of Qatar for an oil concession⁴³.

36. But before I describe the extensive activity that followed upon this initiative of the Secretary of State, I would like to refer to some simultaneous events that were also taking place with regard to determining the extent of Bahrain which could be covered by a second oil concession. In the jargon of the time, this was referred to as a concession which would cover Bahrain's "unallotted area", that is, the area that would remain after the Bahrain Petroleum Company — BAPCO as it came to be called — to whom the 1925 EGS concession had been assigned in the meantime, had selected the 100,000 acres that I have already mentioned.

37. Of particular significance in the context of official British recognition, in the early 1930s, that the Hawar Islands appertained to Qatar and *not* to Bahrain are the following four pieces of

³⁹Supplemental Documents of Qatar, doc. 12, p. 49, at p. 64.

⁴⁰*Ibid.*, p. 69.

⁴¹*Ibid.*, pp. 66 and 70.

⁴²Counter-Memorial of Qatar, Ann. III.35, Vol. 3, p. 185; and referred to as Plate I under "Illustrations" Supplemental Documents of Qatar, doc. 12, p. 51.

⁴³Supplemental Documents of Qatar, doc. 7, p. 20.

evidence dating from 1933 out of the India Office and Political Residency correspondence which I mentioned earlier:

- (1) In connection with determining the territorial extent of the unallotted area for which a new concession could be granted, Laithwaite of the India Office, in a letter of 3 May 1933, that is a few weeks before the initiative on Qatar's boundaries, wrote to the Petroleum Department⁴⁴ that: "in considering any grant of a concession in respect of his 'dominions' or 'Bahrein' it would seem necessary to have a clear understanding as to precisely what is covered".

In the same letter, Laithwaite mentioned that "the Sheikh maintains a rather nebulous claim to certain areas on the Arab coast, with which it is unnecessary to deal here" and then baldly went on to say that the dominions of the Ruler of Bahrain may be regarded as consisting of the Bahrain archipelago. Laithwaite defines the Bahrain archipelago as comprising the same five islands named by Lorimer in 1908 without any mention of the Hawar Islands.

- (2) A telegram from the Acting Political Resident (Loch) to the Secretary of State for the Colonies of 23 July 1933, about Bahrain oil, points out that it would be prudent to name the Bahrain islands . . . otherwise controversy may arise over Hawar, and Bahrain claim to certain places on the west coast of Qatar peninsula⁴⁵.

When the Ruler of Bahrain objected to naming the islands covered "so that the question of Hawar and Qatar (*sic*) will not be made prominent by their omission", Loch, as Acting Political Resident, went even further and recommended to London that the Ruler's view might be accepted because he said, "as Hawar Island is clearly not one of the Bahrain group"⁴⁶.

The Court will carefully note Loch's view, in 1933, that Hawar Island did *not* appertain to Bahrain. This is in stark contrast to the support, to which I will have occasion to refer in another presentation, which both he and Fowle gave in 1936 to the Bahrain claim to the Hawar Islands.

- (3) When the Secretary of State for India requested the Political Resident, on 2 August 1933, to provide him with a "marked map showing the area recognized as Bahrain Islands", Loch, as

⁴⁴Memorial of Qatar, Ann. III.84, Vol. 6, p. 435.

⁴⁵Memorial of Qatar, Ann. III.85, Vol. 6, p. 437.

⁴⁶Memorial of Qatar, Ann. III.88, Vol. 6, p. 449.

the Acting Political Resident, responded on 4 August 1933, by enclosing a map published in 1906 by the Survey of India. Unfortunately, the map is missing from the British archives, but Loch's covering despatch names the same five islands listed in his letter of 3 May 1933, that I have just mentioned, and certain islets, as "included in the general term Bahrain Islands"⁴⁷.

- (4) The considered view of the India Office at this time is given in Laithwaite's further letter to Starling of 9 August 1933. Laithwaite refers in this letter to the possible risk that a claim might be put forward by the Bahrain concessionaire to "rights in respect of Hawar...". However, as I indicated earlier, he pointed out that the exploration licence of 1925, between EGS and the Ruler of Bahrain, was in respect of "'the whole of the territories' under the Sheikh's 'control'", and he goes on to say:

"This seems clearly to exclude areas in Qatar and presumably also would exclude Hawar which belongs in any case geographically to Qatar, and is the westernmost and largest of a group of islands, just off the Qatar coast."⁴⁸

So Laithwaite, who was the most knowledgeable official in the India Office at that time of the geography of this part of the Gulf, was unhesitatingly of the view in 1933 that the Ruler of Bahrain did *not* exercise any control whatsoever over the Hawar Islands: and nobody in London, or indeed in the Gulf, sought to challenge this conclusion.

38. Mr. President, Members of the Court, all these pieces of evidence, taken together, demonstrate decisively that for the purpose of the new oil concession for Bahrain's unallotted area, the British Government was firmly of the view, in 1933, that the Bahrain archipelago consisted of the five named islands and did *not* accept that Bahrain had title to the Hawar Islands.

39. Qatar has also drawn attention to the fact⁴⁹ that independent calculations were made for the India Office, by the Petroleum Department in London in 1933, of the area comprising Bahrain Islands workable for oil exploitation. Qatar has demonstrated, in its Memorial, that it is beyond question that the 1933 calculations could not have included the acreages of the Hawar Islands, Fasht Dibal, or Qit'at Jaradah⁵⁰.

⁴⁷Memorial of Qatar, Ann. III.90, Vol. 6, p. 457.

⁴⁸Memorial of Qatar, Ann. III.91, Vol. 6, p. 467.

⁴⁹Memorial of Qatar, para. 6.18; Memorial of Qatar, Ann. II.92, Vol. 6, p. 473.

⁵⁰Memorial of Qatar, para. 6.19.

40. Let me now turn to the events occurring at about the same time with regard to Qatar's boundaries. Acting on the request of the Secretary of State for India, after some examination of the issue, a file note was prepared in India, in January 1934⁵¹, which records that the necessity of the determination of the boundaries of Qatar had arisen in connection with APOC's negotiations with the Sheikh of Qatar for an oil concession in his territory. It further records that "we are required to determine the southern boundary only" and concludes that the Government of India accepted the boundary described by Lorimer.

41. At the same time, the British authorities in London undertook an extensive and detailed examination of what comprised the boundaries of Qatar. In connection with this investigation a detailed memorandum was prepared in the India Office⁵², to which Qatar respectfully draws the Court's special attention. The Memorandum contains an elaborate examination of the relevant historical facts about Qatar's southern boundary and contains conclusions to the effect, as Professor Salmon pointed out, that "the boundaries of Qatar shall be accepted as being on the north, east and west, the sea"; and on the south, a line running across the base of the peninsula between two specific points⁵³. A note at the foot of the Memorandum confirms that the above conclusions were also accepted by the Government of India and the Political Resident in February 1934.

42. The record now available shows that at least three elaborate meetings of a sub-committee of the British Committee of the Imperial Defence were held in London early in 1934, on 23 February, 23 March, and again on 12 April 1934, on the subject of the Qatar boundary, where senior officials of the Foreign Office, the India Office, and a number of other concerned departments were present. The India Office Memorandum that I have just mentioned was one of the documents considered and approved at these meetings. The object of the meetings was stated to be to determine the boundaries of Qatar for two reasons. Firstly, in view of the possibility of the discovery of oil, the territory that could be covered by the concession that Qatar was likely to grant; and secondly, as efforts were to be made to persuade the Ruler of Qatar to grant the concession to APOC, regarded as a British company, and as the Ruler of Qatar in consideration of agreeing to do

⁵¹Supplemental Documents of Qatar, doc. 7, p. 20.

⁵²Counter-Memorial of Qatar, Ann. III.40, Vol. 3, p. 215.

⁵³*Ibid.*, p. 220.

so, would ask for and be given a British guarantee of protection of Qatar against aggression by land, to determine therefore the geographical limits of Qatar within which any such British guarantee of protection would apply⁵⁴.

43. Another aspect considered by the Sub-Committee was that an enquiry had been made on behalf of the US State Department on the Anglo-Turkish Convention of 1913 in relation to the course of the boundary between Qatar and Saudi Arabia, that is Qatar's southern boundary; and it was believed that the object of the enquiry was to ascertain the limits within which the Standard Oil Company of California could operate its concession from Ibn Saud⁵⁵.

44. Instructions were therefore given to provide the United States authorities with the texts of the Anglo-Turkish Conventions of 1913 and 1914, reaffirming the boundaries of Qatar envisaged in these Conventions. A specific recommendation was also made that the proposed British guarantee of protection would operate within the territory of Qatar north of what came to be called the "blue line" laid down in the 1913 Convention⁵⁶, and therefore the entire peninsula.

45. In accordance with the decisions taken at these meetings, the Political Resident duly began efforts to persuade the Ruler, Shaikh Abdullah of Qatar, to agree to grant the oil concession to APOC. At his meeting for this purpose with the Ruler on 12 March 1934⁵⁷, he not only discussed the extent of Qatar territory to which the British-Qatar Treaty of 1916 applied, but also pressed him to grant the concession to APOC; and notified him that the British Government was prepared in return to protect him against any attack by land and to help him with the necessary force.

46. However, as Qatar has shown in its Reply⁵⁸, during this meeting the Ruler of Qatar claimed that the British-Qatar Treaty of 1916 included only the coast. His reason for making this contention appears to have been that he wanted to be free to grant a concession over the bulk of his territory — the "interior", as opposed to the coastline — to the oil company of his choice, without

⁵⁴Supplemental Documents of Qatar, doc. 8, p. 24.

⁵⁵*Ibid.*, p. 27.

⁵⁶*Ibid.*, p. 32.

⁵⁷Counter-Memorial of Bahrain, Ann. 122, Vol. 2, p. 412.

⁵⁸Reply of Qatar, paras. 2.61-2.62.

having to seek British approval for such a concession. The record of this meeting⁵⁹ also indicates that the Ruler was somewhat apprehensive of annoying Ibn Saud by not granting a concession to the oil company preferred by the latter (i.e., Standard Oil, his American concessionaire).

47. Qatar has of course drawn attention to the fact that the Political Resident, in response to what the Ruler had said about the 1916 Treaty not including the interior but only the coast, told Shaikh Abdullah:

"According to Bin Sa'ud's Treaty with the British Government he cannot interfere in your affairs and it is because of your Treaty with the Government that he cannot do anything and if he does, the Government will prevent him. *And you are the Ruler of all Qatar and the Treaty extends to the whole of Qatar.*"⁶⁰

48. In connection with the British guarantee of protection to be provided in return for an oil concession for APOC, the Sub-Committee had also approved a proposal for a reconnaissance to be undertaken of the territory of Qatar⁶¹.

49. As Qatar has shown, an aerial reconnaissance of Qatar by the Royal Air Force was therefore undertaken on 9 May 1934 after permission for over-flight of his territory had been sought and received from the Ruler of Qatar. A report made thereafter⁶² clearly shows that the Hawar main island was included in this reconnaissance as part of Qatar, that the aircraft flew over the island and took photographs of it which were then made a part of the report.

50. Thereafter, detailed negotiations were undertaken extending over the next 12 months with the Ruler of Qatar in respect of the terms of an oil concession in favour of APOC. During this period, negotiations between the British authorities and representatives of Ibn Saud were also conducted to try and finalize the southern boundary of Qatar. Qatar has discussed in some detail in its Reply⁶³ the position that was taken by the British with Saudi Arabia in the 1930s⁶⁴ which was that the integrity of the Qatar peninsula had to be preserved even if some territory was to be allowed to Saudi Arabia east of the "blue line" in the south. As is now well known, this boundary

⁵⁹Counter-Memorial of Bahrain, Ann. 122, Vol. 2, p. 412.

⁶⁰*Ibid.*

⁶¹Supplemental Documents of Qatar, doc. 8, pp. 26 and 33.

⁶²Memorial of Qatar, Ann. III.94, Vol. 6, p. 479.

⁶³Reply of Qatar, paras. 2.66 *et seq.*

⁶⁴By reference to Map No. 84 in Reply of Qatar Map Atlas.

was finally determined many years later as a result of direct negotiations between Saudi Arabia and Qatar. However, for the purposes of the proposed Qatar oil concession in favour of APOC, a line generally across the south of the peninsula was adopted as the southern limit of the concession area. The Concession Agreement between the Ruler of Qatar and APOC was finally signed on 17 May 1935 with the requisite British approval. Prior to the execution of the Agreement, the Political Resident duly furnished a guarantee of protection on behalf of Britain to the Ruler of Qatar by his letter of 11 May 1935 stating that the guarantee "will be external, i.e., against serious and unprovoked attacks which may be made on your territory from outside your frontier"⁶⁵. There was no indication whatsoever that the Hawar Islands or Zubarah were to be excluded from such territory or indeed that it contemplated an "external" attack from Hawar or Zubarah!

51. The second Article of the Qatar Concession of May 1935 indicates the area covered by it as being the State of Qatar which is defined as "the whole area over which the Shaikh rules and which is marked on the north of the line drawn on the map" which was attached to the Concession Agreement. The Court will notice that the map which is now on the screen is formally signed by the Ruler of Qatar and the same Mr. C. C. Mylles on behalf of APOC, to the east of Bahrain and on the west side of Qatar.

52. As Qatar has shown in its Counter-Memorial⁶⁶, there had been some discussion of the map to be annexed to the Concession Agreement at a meeting held between APOC representatives and India Office officials on 10 January 1935⁶⁷, a few months before the Agreement was entered into. The only issue concerning the territory of Qatar to be covered by the concession, which required clarification, was the southern limit of such territory. At the meeting APOC sought confirmation that the southern boundary of Qatar, which had been indicated to its geologists on the ground by the Ruler of Qatar personally (and which had subsequently been shown on the map prepared by the geologists and circulated in February 1934)⁶⁸, was satisfactory to the British Government for the purposes of the map to be attached to the concession. Following this meeting,

⁶⁵Memorial of Qatar, Ann. III.98, Vol. 6, pp. 503-504.

⁶⁶Counter-Memorial of Qatar, para. 3.72(7).

⁶⁷Counter-Memorial of Qatar, Ann. III.44, Vol. 3, p. 247 (in particular para. 7 at pp. 251-252).

⁶⁸Counter-Memorial of Qatar, Ann. III.39, Vol. 3, p. 209.

Laithwaite of the India Office, after consultation with Rendel of the Foreign Office, informed APOC on 22 January 1935, that there was no objection to the Company's accepting as the southern limit of the concession the line marked on the APOC geologists' map of Qatar⁶⁹. No question was raised or doubt expressed about any other part of Qatar to be shown on the map.

53. The map which is now on the screen and was attached to the Qatar Oil Concession, thus came to be based on the map prepared by the APOC geologists in 1933 and enclosed with their Report of that year. That map, the Court will recall, showed Hawar and Zubarah clearly as part of Qatar⁷⁰. That was the map I showed to the Court earlier today, and this is again on the screen now. A comparison of the two maps of Qatar, and both are on the screen, clearly demonstrates that the territory of Qatar covered in the concession map is the same as in the geologists map which showed the extent of Qatar including Hawar and Zubarah. This was only to be expected as one important object of preparing the initial geologists map must necessarily have been to prepare the final map to be attached to the Concession Agreement.

54. I referred earlier to the documentary evidence showing that in 1933, British officials were clearly of the view that the Hawar Islands were part of Qatar. There is nothing to suggest that this view had changed when the Qatar Concession Agreement was signed in May 1935. But when the selection of the concessionaire for Bahrain's unallotted area began to be considered actively in 1936, and the Ruler of Bahrain advanced a formal claim to the Hawar Islands in April 1936, British officials, in circumstances I will have the opportunity to discuss in another presentation, without any justification whatsoever, reversed their earlier view and began to treat the Hawar Islands as part of Bahrain. It is against this background that the India Office, in a letter of 14 May 1936, sought to explain away the map attached to the Qatar concession by asserting that the object of the map was simply to define the southern boundary of the concession⁷¹ and was not relevant to Qatar's ownership of Hawar. It is Qatar's respectful submission that to define the southern boundary of the concession may have been one of the purposes, but it certainly could not have been the sole

⁶⁹Counter-Memorial of Qatar, Ann. III.45, Vol. 3, p. 257.

⁷⁰Counter-Memorial of Qatar, Ann. III.35, Vol. 3, p. 185; and referred to as Plate I under "Illustrations" Supplemental Documents of Qatar, doc. 12, p. 51.

⁷¹Memorial of Bahrain, Ann. 248, Vol. 5, p. 1076.

purpose of a map attached to an Oil Concession Agreement covering "the whole area over which the Shaikh rules".

55. Mr. President, Members of the Court, in the extensive record of the careful investigation of the boundaries of Qatar that I have described which were to be covered by the 1935 Oil Concession as well as the British guarantee of protection of those boundaries, there was no indication or suggestion whatsoever, that either the Hawar Islands or Zubarah would not be included within the concession area or the area to be covered by the guarantee. The map attached to the 1935 Concession clearly depicts the Hawar Islands as lying on the north of the line representing the southern boundary of the concession area. North of that line was the area over which the Sheikh of Qatar ruled. The area clearly included the Hawar Islands, the main island being specifically named "Jezirat Howar". It is inconceivable that government departments in London would have accepted this definition of the State of Qatar for the purposes of the 1935 Concession and the guarantee of protection had they, or indeed any of them, seriously thought that the Ruler of Bahrain had any rights either in the Hawar Islands or Zubarah.

56. It would be entirely reasonable to think that if *any* Bahrain interest in the peninsula or the Hawar Islands was to be taken into account in relation to the oil concession or the guarantee of protection, this would have been clearly indicated either by a marking on the map attached to the Concession Agreement of May 1935 or in a reservation in the terms of the guarantee of protection contained in the Political Resident's letter of 11 May 1935 to the Ruler of Qatar. No such marking or reservation was made for the obvious reason that none of those involved had any thought that Hawar or Zubarah were not part of Qatar.

57. It is therefore Qatar's submission, Mr. President, in all the circumstances I have described, that Bent's map prepared for the Royal Geographical Society in 1890 and Holmes' maps prepared for oil concessions in the 1920s correctly illustrate the extent of Bahrain; and the map attached to the Qatar Oil Concession Agreement, based as it was on the 1933 geologists map, is irrefutable evidence of the boundaries of Qatar as consisting of the whole peninsula including Zubarah and the adjoining islands including the Hawar Islands.

Mr. President, this concludes my presentation and I would request you to give the floor to Sir Ian Sinclair unless you wish this to be the time for the break. Thank you very much.

The PRESIDENT: Thank you very much Mr. Shankardass. The Court will now suspend its meeting for a quarter of an hour.

The Court adjourned from 11.20 a.m. to 11.40 a.m.

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

Sir Ian SINCLAIR: Mr. President, Members of the Court, it is, as always, a great privilege and an honour for me to appear before you again, this time on behalf of the State of Qatar. Mr. President, this morning I intend to address the Court essentially on the geography of the Hawar Islands, together with the principle of proximity.

GEOGRAPHY OF THE HAWAR ISLANDS AND THE PRINCIPLE OF PROXIMITY

Composition of the Hawar Islands: macro-geography

1. At the outset, the Court will note that there is a clear difference between the Parties as to the composition of the collection of islands, islets and rocks known as the Hawar Islands and as to the relevance of their location [**show Map No. 2 in Memorial of Qatar**]. From the macro-geographical point of view demonstrated by the map, which has now been put up on the screen, it is evident that the Hawar Islands are closely associated with the mainland of Qatar and that each of the islands in the collectivity known by that name lies nearer to the mainland of Qatar than to the main island of Bahrain. Now, if it is suggested that this map has been prepared by Qatar for the purpose of this case and cannot therefore be relied upon, let us look at Map No. 100 in the Map Atlas submitted with the Qatar Reply [**show Map No. 100 in Map Atlas**]. This is of course a reproduction of Bahrain Chart No. 5005 published in 1987. This Chart portrays the relationship between the Hawar Islands and the mainland of Qatar in a manner very similar to that shown on Map No. 2 in the Memorial of Qatar which you have just seen. The Court may find it interesting to compare these two maps which I have shown you with a map submitted by Bahrain in Volume 7 of the Memorial of Bahrain. This in fact is Map No. 2 in the Bahrain Map Atlas and a copy of this is in your folders this morning as item No. 24.

The Court will note how this map, because it shows or purports to show the position at high tide — although it does not in fact say so — exaggerates the distance between the Hawar Islands and the mainland of Qatar and foreshortens the distance between them and the main island of Bahrain. But a side-effect of this somewhat unbalanced presentation is that Fasht ad Dibal and Qitat Jaradeh are simply not represented on Bahrain Map No. 2. Perhaps conscious of this unwelcome side-effect of their map, Bahrain seeks to remedy it by putting a rectangle around the eastern half of Bahrain Island and part of the western coastal area of Qatar, including Zubarah and the Hawar Islands, on Bahrain Map No. 2 and captioning this rectangle **[demonstrate]**: "For more detail of the area see Map 6". This is shown by an arrow. Let us therefore now look at Map No. 6 in the Bahrain Map Atlas¹, a copy of this is in your folders as item No. 25. The Court will immediately note that this map shows the position at *low* tide, but without indicating on the map that this is so. The result is that Fasht el Dibal and Qitat Jaradeh — invisible on Bahrain Map No. 2 — suddenly make an appearance, as do other low-tide elevations such as Fasht Al Azm, Qitat ash Shajarah and Qita'a al Erge. The position of Qatar in relation to these named features is clearly set out in paragraphs 7.34 to 7.41 of the Qatar Reply. A similar criticism can of course be made of the photographs at pages 143 to 151 (a) of Bahrain's Supplemental Documents. All these photographs were clearly taken at high tide rather than low tide so that the distances which they show, for example, between the tail of Hawar Island and the mainland of Qatar or between the Zekrit peninsula and the Hawar Islands, are always exaggerated.

2. But to return to the configuration of the Hawar Islands, both Map No. 2 in the Memorial of Qatar and Map No. 100 in the Map Atlas submitted with the Reply of Qatar show that the Hawar Islands as a whole can be taken as representing fragments of land which became detached from the mainland of Qatar at some time in the past. Already in its Memorial, Qatar pointed out that Qatar's western coast in the vicinity of the Hawar Islands is very ragged, and likened it to "a jigsaw puzzle with a few missing pieces"². Those missing pieces are the Hawar Islands themselves which are needed to complete the curve of Qatar's western coast between Ras al Uwaynat and Ras Umm Hish **[show Map No. 2 in Memorial of Qatar again]**. From this perspective, as the Court will now see

¹Memorial of Bahrain, Vol. 7.

²Memorial of Qatar, para. 4.2.

on the screen, the Hawar Islands can be seen as constituting an integral part of Qatar's mainland coast.

3. The geology and geomorphology of the area confirm this conclusion. In its Counter-Memorial, Bahrain saw "no need to comment on the geology of the Qatar peninsula" nor indeed of the Hawar Islands³. We may assume therefore that Bahrain does not contest Qatar's conclusion that the bedrock of the Hawar Islands is the same age and type as that of the adjacent mainland of Qatar⁴. One consequence of this conclusion is that the area of the Hawar Islands can, in terms of coastal processes, be said to constitute an integral part of the Western Qatar coastal system.

4. Before I leave the macro-geography of the Hawar Islands, which I have just been discussing, I would wish to remind the Court of the evidence which Qatar already produced — yesterday, and again this morning — demonstrating the territorial integrity of Qatar as a whole, namely, the entirety of the peninsula and the immediate off-lying Hawar Islands. In this context, I would remind the Members of the Court of the presentations made yesterday and indeed earlier today by my colleagues, Ms Pilkington and Dr. Fetais. So far as the written pleadings are concerned, I would refer them to Chapter II of the Counter-Memorial of Qatar, and, in particular, to Chapter II of the Reply of Qatar with its many Annexes drawn from Turkish as well as British and other sources. This documentary evidence, read in combination with the map evidence, demonstrates beyond a shadow of doubt that, in the early 1930s, Qatar as a political entity covered both the peninsula as a whole, including Zubarah, and the Hawar Islands lying immediately off the western coast of the peninsula.

Composition of the Hawar islands: micro-geography

5. Mr. President, I have so far concentrated only on the macrogeography of the Hawar Islands considered as a collectivity. But what about the microgeography you may ask? Let us start with the composition of the collection of islands, islets and rocks known as the Hawar Islands. For a principality which claims that members of the Dowasir tribe professing allegiance to the Ruler of

³Counter-Memorial of Bahrain, para. 163.

⁴Memorial of Qatar, para. 4.6.

Bahrain have been in virtually uninterrupted occupation of the Hawar Islands for over 150 years prior to the 1930s (apart from a period of three to four years in the 1920s), and which claims to have administered the islands throughout this period, it is indeed remarkable how little senior Bahraini officials and members of the ruling family of Bahrain knew about the Hawar Islands even as late as 1936 [**show Map No. 9 facing p. 145 of Memorial of Qatar**]. When Belgrave first presented a Bahraini claim to the Hawar Islands in his letter to the then Political Agent (Loch) on 28 April 1936⁵, — and a copy of that letter is in your folders as item No. 26 — he identified the Hawar group of islands as including the following named islands, as well as a number of small islets — and I hope the Court will forgive me if my pronunciation of some of these named islets and islands is not altogether accurate. The list is as follows:

1. Noon
2. Meshtaan
3. Al-Materrad
4. Rubadh
5. Hawar
6. Ginan
7. Mahazwarah

Let us look at these named islands individually. Noon unfortunately cannot be seen on the map in front of you; nor indeed can Meshtaan. The reason is in fact that they have nothing to do with the Hawar Islands. We will come back to them later [**show Map No. 11 in Counter-Memorial of Qatar**]. Al-Matterad is a small islet located some 3½ miles north west of Rabad Al Gharbiyah, the most north-westerly of the true Hawar Islands. It is here indicated on the screen by an arrow [**demonstrate**]. As you will see, Al-Matterad lies closer to Meshtaan than to Rabad Al Gharbiyah, and should not therefore be counted as one of the Hawar Islands [**show again Map No. 9 facing p.145 of Memorial of Qatar**]. Rubadh, the fourth on the list, is more commonly known as Rabad ash Sharqiyah and is here where the arrow is pointing [**demonstrate**]. Hawar Island is of course the main island of the group, normally referred to as "Jazirat Hawar" and

⁵Memorial of Qatar, Ann. III.103, Vol. 7, p. 15.

it is here again where the arrow is pointing [demonstrate]. "Ginan" is of course normally spelt Janan. Qatar has never considered Janan, which is here where the arrow is pointing [demonstrate] to be part of the Hawar group of islands. There is, as the Court will see, a deep water channel which runs close to Janan but not to Hawar: Qatar will deal more fully with the question of Janan Island within the framework of its presentation on the maritime delimitation. Finally, there is Mahazwarah, otherwise known as "Umm Kharurah" and shown on the map before you under that name [demonstrate]. To complete the picture of the islands formally claimed by Bahrain on 28 April 1936, under the name of the "Hawar Islands", I now have to show you another map [show **Map No. 6 in Memorial of Bahrain, Vol. 7**]. Two "features" (to use a neutral term) are shown here, quite close to the south-east coast of Bahrain Island, under the names of "Qassar Nun" and "Halat Nun". These are now indicated by two arrows [demonstrate].

6. The *Persian Gulf Pilot*, in its most recently corrected edition of 4 September, 1997, gives them the names "Sabkha Noon" and "Halat Noon" and describes them as low islets lying, respectively, about two miles east and south-east of Ras al Barr. These islets clearly appertain to Bahrain, and have always so appertained, because they lie within the territorial sea of Bahrain even when (as in 1936) that territorial sea was limited to three miles measured from the low-water mark along the coast of the main Bahrain island. "Meshtaan" is described in the *Persian Gulf Pilot* as an islet on which there is a cairn. It lies about 4½ miles east-north-east of Sabkha Noon and is now indicated by an arrow [demonstrate]. As can be seen, it lies closer to the main island of Bahrain than to the mainland of Qatar or even to the Hawar Islands properly so called. So "Noon" and "Meshtaan" do not form part of the Hawar Islands. Qatar has never claimed title to them and finds it difficult to understand why Bahrain should have regarded them as forming part of the Hawar group unless Bahrain, despite its protestations to the contrary, was totally ignorant at the time, in 1936, of the composition of the group.

7. After all, Belgrave did not include in his 1936 list the second and third largest islands in terms of area in the Hawar group, namely, Suwad al Janubiyah and Suwad ash Shamaliyah; and this despite the fact that, in his letter of 28 April 1936, he boldly (but quite untruthfully) asserts that "at least four of the larger islands are permanently occupied by [the Ruler of Bahrain's] subjects". We know now that, in 1936, none of the Hawar Islands was "permanently occupied" by anybody;

at most, Jazirat Hawar (but, it would seem, no other island in the group) was visited by fishermen from Bahrain, Qatar and other territories in the vicinity during the winter time, these fishermen being accustomed to engage in seasonal fishing activities in the waters off Hawar Island.

8. Now, Mr. President, the second attempt to specify islands claimed by Bahrain is to be found in a memorandum by Belgrave of 14 August 1937 in response to an enquiry from Weightman (the then British Political Agent in Bahrain)⁶. The memorandum states that, "in addition to the large islands forming the Bahrain archipelago", five named reefs or islands (including Fasht Dibal as a reef and Qit'at Jaradah as an island) belong to Bahrain, as also does "the Howar archipelago, consisting of nine islands near the Qatar coast". The Court will note that, by a mysterious process of what they presumably will assume to be accretion, the seven islands mentioned in Bahrain's 1936 list have now become nine. The inflation in numbers was to continue, however.

9. The third attempt by Bahrain to specify the Hawar Islands which it claims was in its "preliminary statement" submitted by Belgrave to Weightman on 29 May 1938, within the framework of the supposed "enquiry" being conducted by the British authorities in the Gulf as to whether the Hawar Islands appertained to Bahrain or to Qatar⁷. The Annex to this "preliminary statement" lists the main Hawar Island and 16 other islands, islets and rocks as constituting the Hawar group of islands. Among these 16 islands, islets and rocks will be found, for the first time, the second and third largest islands in the Hawar group, namely, Suwad al Janubiyah and Suwad ash Shamaliyah (sometimes referred to as "South Sawad" or "North Sawad"). As I already indicated, these two islands had been omitted from Belgrave's 1936 list. Faced with this unexpected and unexplained growth between 1936 and 1938 in the number of islands said by Bahrain to constitute the Hawar group, the Political Agent in Bahrain in 1946 (Galloway) decided to regard the Bahrain claim to the Hawar Islands as being confined to the islands, islets and rocks identified in the 1938 list; this list did not include Janan⁸.

⁶Memorial of Bahrain, Ann. 334, Vol. 6, p. 1455.

⁷Memorial of Bahrain, Ann. 261, Vol. 5, p. 1106.

⁸Memorial of Qatar, Ann. IV.92, Vol. 9, p. 435.

10. Bahrain argues that Galloway should not have excluded Janan from the list of islands, islets and rocks included in the Hawar group, on the ground that the 1938 list submitted by Belgrave was prefaced by a caveat that the 16 listed islands were only those islands on which beacons had been erected by Bahrain. This argument, I have to say, is wholly specious, as I shall now immediately demonstrate. I now show on the screen a copy of the Annex to Bahrain's "preliminary statement" of 1938⁹ (and a copy of this you will find as item No. 27 in your folders). It will be seen that the first section of this brief statement reads:

"This group of islands consists of one large island approximately 11 miles long and at the widest point 2 miles in width, with an area of about 17 square miles which is known as Hawar island and also a number of islands and rocky islets which are adjacent to Hawar island."

There then follows this sentence: "On each of the islands there is a stone beacon about 6 feet high surmounted by a pole on the top of which is an oil drum painted red and white, the Bahrain colours." Qatar has already shown (and it has not been denied) that these beacons were erected by Bahrain on the Hawar Islands and indeed elsewhere during the winter of 1937/38 in an obvious attempt to bolster Bahrain's claim to sovereignty over the islands, rocks and shoals concerned. A secondary aim was probably to remedy Bahrain's woeful ignorance of the composition and indeed location of the islands. How Belgrave could, in his letter to Loch of 28 April 1936, assert unblushingly that "at least four of the larger islands are permanently occupied by . . . subjects [of the Ruler of Bahrain] who live there in stone houses as well as barastis . . ." when he had not even included the second and third largest islands of the Hawar group (the two Suwads) in his list of seven claimed islands? How that happened defies belief. At this time, 1936, Belgrave himself had never even visited any of the Hawar Islands. His first visit to the main Hawar Island appears to have been on 31 March 1938, according to his diaries. What can be said with certainty is that the 1936 list of the islands claimed by Bahrain as the Hawar Islands is so defective as to lend support to Qatar's suspicion that, in that year, Bahrain was totally ignorant of the detailed composition and location of the islands. Indeed, the Ruler of Bahrain and Belgrave were only interested in the Hawar Islands to the extent that they might yield significant oil revenues if included in a new concession to be granted by the Ruler of Bahrain. This is why Belgrave's letter of 28 April 1936

⁹Memorial of Bahrain, Ann. 261, Vol. 5, p. 1110.

specifically admits that the Bahrain claim to the Hawar Islands is being submitted "in connection with the present negotiations for an oil concession over the territory of Bahrain which is not included in the 1925 oil concession". The Court will have noted that these negotiations were being kept entirely secret from the Ruler of Qatar. Belgrave's letter also explains his eagerness to engage in activities on or in relation to the Hawar Islands which could buttress or could be represented as buttressing Bahrain's claim to the islands. The building of a fort on the main Hawar Island, the beaconing of islets, rocks and shoals in the area surrounding the islands or further to the north, all are part and parcel of a major effort on the part of Bahrain from early 1936 onwards to portray the Hawar group as having been Bahraini for over 150 years. It was, it has to be said, the total ignorance of the British authorities in the period between 1936 and 1939 about the history of Qatar in general, and indeed about the physical geography of the Hawar Islands in particular, which contributed in some measure to the miscarriage of justice represented by the 1939 British decision in favour of Bahrain's claim to the Hawar Islands. This ignorance was of course compounded by the misleading observation in Lorimer that the main Hawar Island lies "due west of the point of Ras Aburuk and about 5 miles from it".

Determination of the outer limit of the territorial sea

11. I turn now from the geography of the Hawar Islands and their physical relationship to the mainland of Qatar to a discussion of how the outer limit of the territorial sea is determined. Bahrain appears to accept that, as regards the determination of the outer limit of the territorial sea or the delimitation of the "territorial sea" between opposite States, the normal baseline from which the breadth of the territorial sea is measured is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State. Bahrain concedes that this rule applies to those parts of the coast of the Qatar peninsula that, even by Bahrain's admission, appertain to Qatar¹⁰ and contends that the same rule applies to the coasts of the "ensemble constituting Bahrain"¹¹.

¹⁰Memorial of Bahrain, para. 616.

¹¹Memorial of Bahrain, para. 617.

12. Qatar sees no reason to contest these statements of principle, at least in so far as they concern the determination of the outer limit of the territorial sea. But it certainly continues to deny that "the ensemble constituting Bahrain" includes the Hawar Islands, Zubarah or any of the other maritime "features" between Qatar and Bahrain, title to which is claimed by Bahrain but contested by Qatar. Applying these principles to the mainland coast of Qatar, it will be seen that the outer limit of the territorial sea appertaining to the mainland of Qatar would, in the period between 1936 and 1939 when Qatar still had a three-mile limit (as indeed did Bahrain) have been the line shown on the map now on the screen. This is a specially prepared map and a copy of it is in the judges' folders as item No. 28. Now it will be seen that this line embraces within what was the territorial sea of Qatar in the late 1930s about half of the land area of the main Hawar Island, the whole of Suwad al Janubiyah and Suwad ash Shamaliyah, the whole of the three Wakur rocks lying between them, the Bu Sedad rocks, the four Bu Saada islands lying to the south-west of Suwad al Janubiyah and part of Umm Kharurah (sometimes known as Al Mahzoura). Lying just beyond a three-mile limit so drawn (but of course well within a three-mile limit drawn from Jazirat Hawar) would be Jazirat Ajirah, the two islands called Al Hajjat, Rabad ash Sharqiyah and Rabad al Gharbiyah. In other words, of the 17 named islands, islets and rocks appearing in Bahrain's 1938 list, all but five are enclosed or partly enclosed by a three-mile limit drawn from the low-water line on Qatar's mainland coast. So indeed also is Janan Island which of course Qatar does not consider to be one of the Hawar group and which was in any event omitted from Belgrave's 1938 list.

13. Now, Qatar accepts that a clear distinction must be drawn between the determination of the outer limit of the territorial sea of a State or other territorial entity, and the delimitation of a maritime boundary between two States with opposite coasts. As regards the first of these two operations the Court will recollect that, in the *Anglo-Norwegian Fisheries* case, it had no difficulty in finding, and here I quote from the Judgment:

"that, for the purpose of measuring the breadth of the territorial sea, it is the low-water mark as opposed to the high-water mark, or the mean between the two tides, which has generally been adopted in the practice of States"¹².

¹²*Fisheries (United Kingdom v. Norway)*, *I.C.J. Reports 1951*, p. 128.

As regards the second of these two distinct operations, I should signal that my learned friends, Professors Quéneudec and Salmon, will be addressing you later on the factors which the Court should take into account in delimiting the maritime boundary between Qatar and Bahrain.

14. So the question of which islands, islets and rocks in the Hawar Islands would have been properly considered as lying within the three-mile territorial sea appertaining to Qatar in the late 1930s must in principle be determined by a line of three nautical miles drawn from the low-water mark along the relevant coastline of the mainland of Qatar, and this is the line that I have just shown you on the screen; this has very recently been confirmed in the second award of the Arbitral Tribunal of 17 December 1999, in the *Eritrea/Yemen* Arbitration, where it is stated (in paragraph 133 of the Award):

"The 'normal' baseline of the territorial sea as stated in Article 5 of the [UN] Convention [on the Law of the Sea] — and this again accords with long practice and with the well established customary rule of the law of the sea — is 'the low-water line along the coast as marked on large scale charts officially recognised by the coastal State'".

15. I should add that Britain was particularly ill-informed, in the period between 1936 and 1939, about the distance which separated the Hawar Islands from the mainland of Qatar. No British official in the Gulf had ever visited the islands, apart from Prideaux in 1909, although Loch, as Political Agent in Bahrain, had flown over them in 1934 when taking part in the RAF reconnaissance of Qatar, to which Mr. Shankardass had referred in his earlier presentation. Map No. 5 opposite page 50 of the Memorial of Qatar [show: copy (item No. 29) in judges' folders] is particularly rewarding in this context [demonstrate]. Before explaining why it is rewarding, I must clarify one point. In its commentary to Annex 20 of its Supplemental Documents, Bahrain accuses Qatar of having prepared, as Map No. 5, a map supposedly based on Sheet 3 of the Bahrain map of the Hawar Islands in the 1:50,000 series, published in 1997 — please note the date; Bahrain accordingly claims that Qatar Map No. 5 is inaccurate. This charge, I have to say, is demonstrably false. Qatar could not have used a map published only in 1997 to construct its Map No. 5 which was submitted to the Court as early as 30 September 1996, with the Qatar Memorial. It obviously used an earlier version of the same map, namely, Edition 2 of the Bahrain 1:50,000 map series, Sheet 3 (Hawar Islands), published in 1986. The difference between the two maps is in any event marginal if the Members of the Court bear in mind that the letters ALWM on the Bahrain

Map No. 20 (b), in the Supplemental Documents, are explained in the legend as meaning Apparent Low Water Mark.

16. If I may revert to the Qatar Map No. 5, this map shows that, at low tide, a distance of only 250 metres separates Hadd ad Dib, at the end of the spit on the main Hawar Island, from the apparent low-water mark off the mainland coast; similar distances separate points on the apparent low-water mark off Suwad al Janubiyah to the south and south-east of this island from points on the corresponding low-water mark off the mainland. The two distances of 150 metres shown on the map on the screen in front of you may not be entirely accurate if the apparent low-water marks shown on Edition 4 of the Bahrain map of the Hawar Islands in the 1:50,000 series — this is the one that was published in 1997 — are themselves correctly depicted, which Qatar is not at present in a position to judge. Assuming that they are correctly depicted, the differences are in any event rather small. In the case of the first measurement, taken due south of Suwad Janubiyah, [demonstrate] the distance between the closest corresponding points on the apparent low-water mark widens to approximately 200 metres from 150 metres, an increase of only 50 metres. To the south-east of Suwad Janubiyah the variation is more noticeable. However, it need hardly be added that Qatar could have easily chosen another nearby position from which to demonstrate the close proximity of the islands to the mainland, if it had been aware that Bahrain was about to publish a new edition of its 1:50,000 Series Map of the Hawar Islands in 1997 [demonstrate]. You will now see highlighted on the screen an area where even the *amended* apparent low-water mark in this area shows a channel of only 350 metres at low tide. That is why Qatar considers that the difference between the two editions of the same map is only marginal.

17. The Court will in any event recall that, in his key letter of 22 April 1939, to the Political Resident, Weightman reported that "at low springs it is possible (as I am informed though I have not verified this by experiment) to wade from the Qatar mainland to a certain point on the main Hawar Island in about three feet of water"¹³. There can be no question about the very close proximity of Suwad al Janubiyah to the mainland of Qatar at certain points, and from

¹³Memorial of Qatar, Ann. III.195, Vol. 7, p. 497 at p. 501.

Suwad al Janubiyah it should be possible to proceed dry-shod (or relatively dry-shod) to the main Hawar Island at very low tide.

18. But the British authorities in the Gulf in 1938-1939 were blind to, or at least ignorant of, the realities of the geographical situation with which they were confronted. They seemed to be relying solely on the misleading statements in Lorimer and the 1916 *Handbook of Arabia* to the effect that the main Hawar Island lies west of the point of Ras Aburuk and about 5 miles from it. These statements are not in themselves inaccurate; but they do convey a thoroughly misleading impression when it is realized that the nearest of the larger Hawar Islands to the mainland of Qatar is Suwad al Janubiyah and *not* the main Hawar Island (Jazirat Hawar). This can be seen clearly from the map which I now show to the Court, this map being based, not on the earlier Bahrain map to which I referred, but on Bahrain Chart No. 5005, published in 1987. This map can be found in Appendix 5 to the Qatar Reply [**show map entitled "Distance from Qatar's mainland to selected islands" in Reply of Qatar Vol. 6**]. It will be seen on the screen that, paralleling the results obtained from the use of Edition 2 of the 1:50,000 Bahrain map series of the Hawar Islands, the distance from Ras Abruq to the low-water mark off Suwad al Janubiyah is approximately 1,300 metres — that is to say, considerably short of 1 nautical mile. But this is not even the nearest point on the mainland of Qatar to Suwad al Janubiyah: two points — here and here — lie, according to this map, within 150 metres of Suwad al Janubiyah at low tide. It will also be seen from the map that, at low tide, Suwad al Janubiyah becomes effectively joined to Jazirat Hawar at one point [**show**]. The misleading impression conveyed by the description of the main Hawar Island in Lorimer is reinforced when it is appreciated that only a distance of 250 metres separates the southernmost tip of Jazirat Hawar (at Hadd ad Dib) from the mainland of Qatar at low tide and that only a distance of approximately 1,200 metres separates Jazirat Hawar from the mainland of Qatar at low tide at the point now indicated [**show**].

19. Had the officials in the India Office in London realized in 1939 how close to the mainland of Qatar the Hawar Islands lay, it is questionable whether they would have been so enthusiastic in supporting Bahrain's claim of sovereignty over them. Hemingway of the India Office at any rate seems to have had a glimmer of the significance of the three-mile limit of the territorial sea as regards the appurtenance of islands lying wholly or partly within that limit, since,

in his manuscript minute of 12 May 1939, he refers to the fact that "the islands are separated by . . . five miles (*more than three*) of shallow water from the mainland . . ." ¹⁴. Why refer to "more than three" unless you are aware that a three-mile limit is highly significant? But, of course, Hemingway was thoroughly misled as to the position on the ground since, in fact, the vast majority of the Hawar Islands lie within what was, in the 1930s, the outer limit of the territorial sea appertaining to the mainland of Qatar drawn at a distance of three nautical miles from the low-water mark along that coast.

Title to islands located within the territorial sea of a State

20. Mr. President, I turn now to the legal principles which govern title to islands located within the territorial sea of a State or other territorial entity. Qatar has gone into this at considerable length in Chapter 4 of its Reply, particularly Section 2. One starts from consideration of the question whether the coastal State has sovereignty over the territorial sea appertaining to it, subject of course to a right of passage for vessels of other States, whether that right of passage is characterized as "innocent passage" or as "transit passage". In Qatar's submission — and I assume that the Court will entirely agree with this — the short and decisive answer to this question is "Yes". Article 2, paragraph 1, of the United Nations Convention on the Law of the Sea of 1982 is quite specific in stating that the sovereignty of a coastal State extends, beyond its land territory and internal waters, and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea. Note that it is the "sovereignty" of a coastal State which extends to its territorial sea; and that this sovereignty extends also to the bed and subsoil of the territorial sea. Note further that Article 121, paragraph 1, of the 1982 Convention provides that every island is entitled to its own territorial sea, an island being defined as "a naturally formed area of land, surrounded by water, which is above water at high tide".

21. As the territorial sea of a State is subject to the sovereignty of that State, it follows, in the submission of Qatar, that any island, islet or indeed low tide elevation located wholly or partly within the territorial sea of that State is also subject to its sovereignty. This seems to be an ineluctable consequence of the rules stated in Article 2 of the 1982 Law of the Sea Convention

¹⁴Memorial of Qatar, Ann. III.203, Vol. 8, p. 13.

which, Qatar would submit, can be taken as expressing the position under customary international law.

22. How then do we apply these principles to the particular case of the Hawar Islands? Qatar has already demonstrated that the territorial integrity of Qatar as a political entity encompassed, by the end of the nineteenth century at the latest, the entire peninsula together with any islands located within a three-mile belt of territorial sea appertaining to the peninsula. At this time, and indeed between 1936 and 1939, both Qatar and Bahrain adhered to a three-mile limit for the breadth of their respective territorial seas. Had the British authorities in the Gulf and indeed in London been fully aware in early 1939 that the great majority of the 17 islands in the Hawar group identified in Bahrain's "preliminary statement" of 29 May 1938, fell wholly or partly within a three-mile limit if it were drawn from Qatar's mainland coast at low tide (that is to say 12 out of the 17 islands), they would surely not have decided that the islands belonged to Bahrain. Assuming that all these islands had been attributed by Britain to Qatar by virtue of their undoubted location, in whole or in part, within a three-mile limit drawn from Qatar's mainland coast (thereby applying the relevant principle of the inter-temporal law, which the Court will of course recognize), each one of them would have been recognized as having its own three-mile belt of territorial sea. It goes of course without saying that, if a 12-mile territorial sea drawn from Qatar's mainland coast were to be applied, it would naturally encompass all the Hawar Islands to which Qatar has made reference.

The principle of proximity

23. Now, Mr. President, Members of the Court, we have so far looked at the problem from the point of view of current international law while acknowledging the applicability of the principle of inter-temporal law whereby a juridical fact must be appreciated in the light of the law contemporary with it. So we have to look at the principles of international law relating to title to islands located within a three-mile limit of the territorial sea as those principles had developed in the period between 1936 and 1939. Here it is important to be precise in the articulation of the relevant principles. This applies in particular, in the submission of Qatar, to the use of the word "proximity". Proximity as such, when applied to islands, is not a root of title except, and I say

except, in the case of islands located, wholly or partly, within the territorial sea appertaining to the mainland coast of a State or other territorial entity.

24. It is, in Qatar's submission, essential to bear this exception in mind when considering the state of international law as it existed in the late 1930s. At this point in time, international lawyers had available to them the guidance contained in the important Award of Judge Huber in the *Island of Palmas* arbitration. For our purposes, the key passage in this Award is the following and I am sorry to say that I have to cite it in full:

"Although States have in certain circumstances maintained that islands relatively close to their shores belonged to them in virtue of their geographical situation, it is impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial waters should belong to a State from the mere fact that its territory forms the *terra firma* (nearest continent or island of considerable size)."¹⁵

Now, the Court would surely note that this negative proposition applies only to islands *situated outside territorial waters*; it does not apply to islands situated within territorial waters.

25. Indeed, it is here, in relation to islands situated close to the territory of a State but outside the territorial sea appertaining to the mainland coast of that State at any particular time, that the principle of proximity has a significant role to play. The principle arguably had its origin in the so-called "portico doctrine" which was developed in the mid-nineteenth century as a means of attributing sovereignty over small islands and islets immediately off a coast but falling within the attraction of the mainland. The "portico doctrine" itself can be said to have been based on the judgment of Sir William Scott (later Lord Stowell) in the case of *The Anna* in 1805, details of which have been given at paragraph 4.40 of the Reply of Qatar. Sir William Scott in giving judgment in *The Anna*, drew attention to the dangers to the security of the United States which would unquestionably arise if the islands in question were not acknowledged to appertain to the United States; and the Court will undoubtedly recall that the *raison d'être* of the notion of the territorial sea was the perceived need to protect the fundamental security interests of the coastal State, and that is a consideration which still applies today. Building upon Sir William Scott's judgment in *The Anna*, later generations of international lawyers developed the "portico doctrine"; and, as the Court will be aware from the content of paragraphs 4.40 to 4.50 of the Qatar Reply, the

¹⁵Counter-Memorial of Qatar, Ann. II.67, Vol. 2, p. 371.

"portico doctrine" provided a means of resolving some quite serious disputes which arose in the nineteenth century as regards the outer limit of the territorial sea of a State or colony having a fringe or outer carapace of rocks, islets or islands. The "portico doctrine", combined with the principle of natural and physical unity of island groups, has, much more recently, been referred to with approval by the Arbitral Tribunal in the *Eritrea/Yemen* case in paragraphs 460 to 463 of its first Award of 9 October 1998.

26. The Court will note that no reference is made to the "portico doctrine" by Weightman or indeed by other officials in London in 1939 when seeking to come to a final decision on the conflicting claims of Qatar and Bahrain to the Hawar Islands. Strangely, however, there is no evidence that any of the legal advisers in the Foreign Office were consulted at this time on the merits of the dispute, as opposed to the procedures by which it should be resolved.

27. Qatar accordingly invokes the authority of the "portico doctrine" considered in the light of the authoritative pronouncements by Fitzmaurice, Waldock, Gidel and Judge Levi Carneiro, to which reference is made at paragraphs 4.22 to 4.26 of the Qatar Reply, to sustain its title to the entire collectivity of the Hawar Islands. That collectivity includes those islands which may lie marginally outside a three-mile limit drawn from the low-water mark on Qatar's mainland coast but well within what is now (in the year 2000) the outer limit of Qatar's 12 mile territorial sea, drawn from that low-water mark.

28. The positive case for Qatar's sovereignty over the Hawar Islands accordingly takes into account the fact that the great majority of the islands are physically located within a three-mile limit drawn from the low-water mark on Qatar's mainland coast and therefore are to be considered as an integral part of Qatar's territory. For this reason alone they must surely be considered to appertain to Qatar. The remaining islands in the Hawar group which I have identified, are, in Qatar's submission, to be considered equally to appertain to Qatar by virtue of the principle of proximity as properly understood. That principle embraces the principle of natural and physical unity of island groups as recently endorsed, subject to certain necessary qualifications, by the Arbitral Tribunal's Award of 9 October 1998, in the *Eritrea/Yemen* case. Indeed, the Arbitral Tribunal in that case had this to say in its first Award of 9 October 1998:

"There is a strong presumption that islands within the twelve-mile coastal belt will belong to the coastal state, unless there is a *fully-established* case to the contrary (as, for example, in the case of the Channel Islands)."¹⁶

Is the Court satisfied — can it be satisfied — that Bahrain had, by 1936/1937 a fully-established case for sovereignty over the Hawar Islands? Qatar is clear that the answer can only be "No", and Qatar intends to demonstrate this in its further presentations.

Other historical evidence

29. But there is other evidence of a historical nature which supports Qatar's title to the Hawar Islands, and to which I would now wish to refer. There is first of all the evidence which one can derive from the entries in Lorimer's *Gazetteer of the Persian Gulf, Oman and Central Arabia*, originally published in 1908 and 1915. It is of course well known that the entry in Lorimer covering the main Hawar Island (Jazirat Hawar) and some other islands and islets in the Hawar group, notably Ajirah, Rubadh and Suwad, appears in the geographical and statistical volume of the publication under the heading "West Side of Qatar". The entry for Jazirat Hawar reads as follows:

"About 10 miles long, north and south, and roughly parallel to the Qatar coast. There are no wells, but there is a cistern to hold rainwater built by the Dawasir of Zallaq in Bahrain, who have houses at two places on the island and use them in winter as shooting boxes. Fishermen also frequent Hawar."

The separate entries for Ajirah, Rubadh and Suwad all declare that these islands lack fresh water; and Janan Island, which also has a separate entry, is stated to be "waterless". But, of course, all the other entries appearing in this publication under the heading "West Side of Qatar" relate to capes, bedouin camping places, towers, deserted villages and hills, on the mainland of Qatar. The Bahraini argument that this passage from Lorimer, which was more or less copied in the *Handbook of Arabia* of 1916 issued by the British Admiralty, is simply presenting a geographical fact, is weak and unconvincing. The fact is that, as Mr. Shankardass has already shown us this morning, in his presentation on the limited extent of Bahrain, the Hawar Islands are viewed as being an integral part of the west side of Qatar and as having no connection with Bahrain; and this conclusion is strongly reinforced when it is realized that no reference at all is made to the Hawar Islands in the article on the Bahrain Principality (as distinct from the article on Bahrain Island) which also

¹⁶Award, para. 474.

appears in Lorimer¹⁷. I have caused to be put in your folders this morning, Mr. President, Members of the Court, as item No. 31, the article on the Bahrain Principality which appears in Lorimer. It is prefaced by a note which states: "The article on the Bahrain Principality may be consulted in regard to all matters not dealt with above which concern Bahrain Island." A footnote to the title "Bahrain Principality" explains:

"This leading article on the Bahrain principality and the minor articles on places in the same are founded chiefly upon systematic and careful investigations made on the spot during the years 1904-1905 . . . The inquiry proper was begun by the writer on tour in Bahrain early in 1905; but it was carried out chiefly by Lieutenant C. H. Gabriel, I.A., who personally travelled over the greater part of the islands and by Captain F. B. Prideaux, Political Agent in Bahrain, who supplied very full information regarding all places in his jurisdiction."¹⁸

Thus, this article on the Bahrain Principality in Lorimer's *Gazetteer* embodies all the information available to the most knowledgeable British authorities on the Gulf between the years 1904 to 1907. It will be recalled that Lorimer describes "the present sheikhdom of Bahrain" (as of 1905) as consisting of :

"the archipelago formed by the Bahrain, Muharraq, Umm Na'asan, Sitrah and Nabi Salih islands and by a number of lesser islets and rocks which are enumerated in the articles upon the islands . . . Connected with the sovereignty of Bahrain, or possibly appertaining to the Shaikh as hereditary personal property, are certain ill-defined rights upon the mainland of Qatar, at present (1905) under discussion. Whatever the nature or extent of these rights our attention will be confined, in the present article, to the undisputed insular possessions of the Shaikh."¹⁹

30. Now, the reference to "certain ill-defined rights upon the mainland of Qatar" must be taken as a reference to the Sheikh of Bahrain's claimed rights in or in relation to Zubarah. So one would assume that if, as Bahrain asserts, members of the Dowasir tribe had been occupying at least the main Hawar Island on behalf of the Sheikh of Bahrain since before 1800, and if, as Bahrain also claims, the authority of Sheikh Jassim bin Thani did not extend to the west coast of the mainland of Qatar at this time, that is to say 1908, the Hawar Islands would certainly be included among the "undisputed insular possessions" of the Sheikh of Bahrain to which Lorimer refers. But of course Lorimer makes no mention whatsoever of the Hawar Islands in this article on the Bahrain Principality. Under the heading "Population and tribes" he lists the islands of the Principality —

¹⁷Memorial of Qatar, Ann. II.3, Vol. 3, p. 87.

¹⁸*Ibid.*

¹⁹*Ibid.*, at p. 88.

Bahrain, Muharraq, Umm Na'asan, Nabi Salih and Sitrah — with their main towns and population divided into Sunni and Shiah townspeople and Sunni and Shiah villagers. Lorimer even includes "Umm Na'asan" in these lists, although giving a "Nil" return under this head for towns, townspeople, villages and villagers. This is presumably because, at least at this time, Umm Na'asan was uninhabited. So one would surely anticipate that, if the Bahraini version of the history of the Hawar Islands were accurate, there would be at least a mention of them in Lorimer's article on the Bahrain Principality. After all Bahrain can hardly contend that the Hawar Islands were excluded from this description because the Sheikh's possession of them at this time was being disputed by the Ruler of Qatar, since, as my colleague Ms Pilkington has already explained yesterday, the Bahraini version of history falsely seeks to relegate the Al-Thani chiefs of Qatar at this time to mere pearl merchants in Doha.

31. Qatar does not dispute the fact that Prideaux made a visit to the main Hawar Island in the second half of March 1909, as is proved by his manuscript letter to Sir Percy Cox of 20 March 1909 and his more official despatch to the Political Resident of 4 April 1909²⁰. But, of course, Qatar does not accept the interpretation which Bahrain seeks to put on these two letters as Mr. Shankardass will show in his future presentation on Bahrain's alleged *effectivités* prior to 1936. Indeed, Qatar is quite convinced that Prideaux's letter to the Political Resident of 4 April 1909 offers no evidence whatsoever to support a claim to the Hawar Islands by the Ruler of Bahrain for the detailed reasons which will be spelt out to the Court by Mr. Shankardass.

32. Above and beyond the well-nigh decisive consideration that, in 1939, the great majority of the Hawar Islands were located wholly or partially within a three-mile limit drawn from the low-water mark on the mainland coast of Qatar, is other evidence. This includes the evidence to which Mr. Shankardass will draw attention in a later presentation and which demonstrates that the Ruler of Bahrain never asserted title to the islands until 1936 and, in particular, did not assert title to them in 1909 when virtually invited to do so by the then British Political Agent, Prideaux.

33. Mr. President, Members of the Court, Mr. Shankardass has already addressed you this morning on the limited extent of Bahrain as a political entity, drawing *inter alia* on Iranian and

²⁰Memorial of Qatar, Anns. III.51 and III. 53, Vol. 6, pp. 233 and 245.

Turkish sources. The Court will recall that that presentation covered *inter alia* specific documentary evidence of official British recognition in the year 1933, in the context of the beginning of the oil concession negotiations covering Bahrain's so-called "unallotted area", that the Hawar Islands belonged to Qatar and not to Bahrain. I would ask the Court to pay close attention to this clear and compelling evidence, which does not appear to have been looked at by either Loch or Fowle in 1936 when Belgrave first advanced a claim by the Ruler of Bahrain to the Hawar Islands. It is of course true that Loch, in his letter to the Political Resident, Fowle, of 6 May 1936, qualified his view that there was "real substance" in the Bahrain claim to Hawar by saying that this was "subject to any past correspondence which is not available to me". Loch indeed may have had a hazy recollection of his own exchanges of letters and telegrams with the Colonial Office and the India Office in London in the months of July and August 1933, when he, Loch, was Acting Political Resident in Bushire in the temporary absence of Fowle; this would explain why the earlier correspondence was not available to him in 1936 — because it was in Bushire and not in Bahrain.

34. This evidence, dating from 1933, of official British recognition that the Hawar Islands appertained to Qatar and not to Bahrain is further buttressed by events in 1934. This was the year in which the RAF wished to carry out an aerial reconnaissance of Qatar in anticipation of a possible British guarantee to the Ruler of Qatar against a serious and unprovoked attack against his land territories from, it would seem, Saudi Arabia. The reconnaissance was duly carried out on 9 May 1934, after permission for the overflight of his territory had been sought and received from the Ruler of Qatar, *but not* from the Ruler of Bahrain.

35. The significance of this reconnaissance is that the British authorities sought and obtained permission from the Ruler of Qatar for an overflight of Qatari territory, *including the main Hawar Island*. They did not seek, and they did not even consider seeking, any such permission from the Ruler of Bahrain. Their conduct is consistent only with the conclusion that, at this time, they acknowledged the Ruler of Qatar to have sovereignty over the Hawar Islands. Loch specifically draws attention in his report on the reconnaissance to the care taken to ensure that the RAF flying boats undertaking this reconnaissance did not overfly Zakhnuniyah. It is therefore inconceivable

that he would not have taken the same precaution with respect to Hawar if he had been convinced at this time, in 1934, that Hawar was under the sovereignty of Bahrain.

36. There is in addition — and Mr. Shankardass has already pointed this out in his earlier presentation this morning — the evidence to be gleaned from the wording of the oil concession which the Ruler of Qatar granted to the Anglo-Persian Oil Company (APOC) in 1935. The Court will recall that, by Article 1 of this Concession, APOC was given the sole right "throughout the principality of Qatr, to explore, to prospect, to drill for and to extract and to ship and to export and the right to refine and sell petroleum and natural gases . . ." under certain defined conditions. Article 2 of the Concession Agreement granted the Company the right to operate in any part of the State of Qatar, with certain exceptions relating to religious lands and buildings. It then went on to declare that: "The State of Qatr means the whole area over which the Shaikh rules and which is marked on the north of the line drawn on the map attached to this Agreement."²¹ I apologize for showing the Court again the map which they would already have seen this morning, but I think it would just be helpful if we could show it again for a few minutes.

[Show map attached to the Qatar Concession Agreement at Memorial of Qatar, Vol. 6, p. 529.]

37. As the Court will see, this map, which is now shown on the screen, and to which Mr. Shankardass has already referred, is a fairly simple sketch map which does not show much in the way of geographical detail. But it does show Jazirat Hawar (indicated by an arrow) and Rabad Ash Sharqiyah (also indicated by an arrow), two of the Hawar Islands, as well as, apparently, Janan island. The Court will note that the signatures of the Ruler and of Mr. Mylles, representing APOC, are affixed on the map *between* Bahrain Island and the Hawar Islands and this is obviously a clear attempt to differentiate Bahrain Island from the Qatar peninsula, including the Hawar Islands. The argument put forward by certain British officials in the 1930s, that the presence of Bahrain Island on this sketch map negatives any implication to be drawn from it that the Hawar Islands belong to Qatar is accordingly thoroughly weak and indeed wholly unconvincing. The sketch map clearly shows those Hawar Islands which it identifies as appertaining to Qatar and as being separated from

²¹Memorial of Qatar, Ann. III.99, Vol. 6, p. 507.

Bahrain Island. There can be no question but that the Qatar oil concession signed on 17 May 1935 was intended to apply to the Hawar Islands as well as to the whole of the peninsula of Qatar to the north of the line drawn on the map attached to the Agreement (but obviously the concession did not apply to Bahrain Island).

38. Finally, the Court will also wish to be reminded that Rendel of the Foreign Office (who later became Sir George Rendel) gave expression at the end of 1937 to his strong doubts about the "provisional decision" of the British Government in 1936 that Hawar should be regarded, on the evidence then available, as appertaining to Bahrain. Rendel was very familiar with the Gulf region, and in a minute of 30 December 1937, to which attention has already been drawn, he expresses his regret that the India Office went so far as they seem to have done in allotting the Hawar Islands to Bahrain. Rendel points out that the Hawar Islands are obviously, from the geographical point of view, a part of Qatar, and comments that interests, as well as geography, ought to have led the India Office to allocate them to Qatar. Rendel's comment, in this minute composed at the end of 1937, is as cogent today as when it was first expressed; and no real answer to the point which he makes is forthcoming from the British Archives or indeed from anywhere else.

39. Mr. President, Members of the Court, I would conclude by summarizing Qatar's positive case for sovereignty over the Hawar Islands in the following terms. Qatar claims an original title to the Hawar Islands on the ground that the great majority of them lie within a three-mile limit drawn from the low-water mark on Qatar's mainland coast, and the remainder on the basis of the principle of proximity as properly understood; and on two further grounds which support and sustain Qatar's claim of title:

- (1) that the historical evidence, including the revealing history of the oil concessions, some of which will be reviewed at a later stage by Mr. Shankardass, fully substantiates Qatar's claim of title to the Hawar Islands; and
- (2) that the map evidence which Qatar produced with its Reply overwhelmingly confirms, as a matter of general repute, the territorial integrity of Qatar and the sovereignty of its Ruler over the islands.

40. Mr. President, Members of the Court, this concludes my presentation this morning. I thank you all very much for the careful attention which you have paid to my remarks and, as I have

already drawn attention briefly to the other historical evidence upon which Qatar's title to the Hawar Islands is based, I would ask you, Mr. President, if you would be good enough next to give the floor to Mr. Bundy who will now review the map evidence which so strikingly confirms Qatar's case, but as I note that the time is now about five minutes to one o'clock, you may care, in fact, to let Mr. Bundy take the floor tomorrow morning.

The PRESIDENT: Thank you very much, Sir Ian. La séance de la Cour est levée. Nous reprendrons demain à 10 heures.

L'audience est levée à 13 heures.
