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International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2000

Public sitting

held on Wednesday 31 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 mercredi 31 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

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

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

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Mr. Sami Abushaikha, Legal Expert,

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Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je donne la parole à M. Rodman R. Bundy au nom de l'Etat de Qatar.

Mr. BUNDY: Merci, Monsieur le Président. Mr. President, distinguished Members of the Court. It is indeed an honour to appear once again before you and to represent the State of Qatar in this important case.

THE CARTOGRAPHIC EVIDENCE IN THE CASE

1. Introduction

1. Having heard Sir Ian Sinclair yesterday set out the legal, geographical and historical underpinnings to Qatar's title of sovereignty over the Hawar Islands, I would like to turn to a very important source of evidence in these proceedings which confirms that title: and this is the map evidence.

2. The Court will appreciate that, given the increasing strategic importance of the Gulf region in the late nineteenth and early twentieth century, that the cartography of the area is very rich. Moreover, the Court will not have failed to have noted that both Parties attach legal relevance to the maps.

3. While Bahrain has produced relatively few historical maps of the area, those that it has introduced are relied upon by our distinguished opponents to support its claim to the Hawar Islands and Zubarah, as well as its contention that until 1935, the authority of the Al-Thani rulers of Qatar did not extend much beyond the city of Doha and its immediate surroundings.

4. Qatar, on the other hand, has produced a very comprehensive selection of maps, spanning the period from just after 1868, by which time the separate entities of Qatar and Bahrain had been recognized, until 1936 when Bahrain's claim to the Hawar Islands first surfaced: and we would suggest that these maps are significant in three broad respects.

5. First of all, they emanate from a wide array of sources. Indeed, Qatar has furnished maps from France, Great Britain, Germany, Russia, the United States, Italy, Turkey, Poland, Austria, Iran and even Australia. These maps furnish important evidence of general repute as to the territorial attributions and the situation on the ground during the relevant period.

6. Secondly, the maps in question are derived from both official and non-official sources. In speaking of official maps, I am referring to maps that were prepared by official government agencies and which thus can be relied upon as representing the considered views of the States that produced them as to the political characteristics of the areas that they depict. I would suggest that these maps have a special relevance as a result of their official provenance. However, there is also an impressive number of non-official maps that have been prepared by cartographic institutes and professional map-makers throughout the world. To the extent that these have been drafted by highly reputable cartographic houses, expert in making maps, they too are deserving of considerable probative value as evidence of informed opinion.

7. Thirdly, the maps in evidence in this case paint a remarkably consistent picture with respect to the territorial attributions that they depict that are relevant to the case. Whether reference is made to the official or the non-official cartography, the maps all tend to show the same thing—namely, that from roughly 1870 to the end of the 1930s—a period of some 70 years—the political entity of Qatar was recognized as extending over the entire Qatari peninsula including the Hawar Islands and Zubarah.

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8. Mr. President, in the first part of my presentation I shall undertake a chronological review of a selection of the relevant maps that Qatar has introduced to these proceedings. But I must hasten to reassure the Court that it is not my intention, obviously, to canvas all of the maps. Fortunately, the maps are of such consistency that a review of certain representative samples will suffice to demonstrate the thrust of their importance for purposes of assessing the territorial issues in the case.

9. In the second part of my presentation I will then turn to the maps that have been offered into evidence by Bahrain, including those that were introduced with its recently filed Supplemental Documents, in March. Lastly, I shall address the legal relevance of the maps in the specific context of this case and in the light of what the map evidence, taken as a whole, shows.

2. The map evidence confirms the territorial integrity of Qatar and Qatar's title over the Hawar Islands and Zubarah

(a) Maps following the 1868 Agreements

10. It is appropriate to begin a review of the map evidence with the period immediately following the 1868 Agreements. It was by virtue of these agreements, as Ms Pilkington demonstrated on Monday, that Qatar and Bahrain were recognized as separate political entities with Mohammed bin Thani being described as the "Chief of Guttur".

11. Bahrain's position as to the political situation at this time is illustrated by a series of very colourful graphics that Bahrain presented at the beginning of its Reply (following p. 9) and to which certain of my colleagues have already referred.

12. I have placed on the screen two illustrations from Bahrain's Reply which depict Bahrain's version of events as of 1868 and again in 1872. It can immediately be seen that neither of these graphics is an historical map in the proper sense of the word. They are purely illustrative and thus have no evidentiary value *per se*. These graphics are useful, however, when compared with the genuine maps of the time, because they expose — and I would suggest after reviewing the true maps in the case, the historical maps, that these graphics expose — the fundamental fallacies in Bahrain's case.

13. Let me start with the 1868 illustration produced by Bahrain. This purports to show spheres of influence at the time. The Court will note that the entire Qatar peninsula — including the Hawar Islands and Zubarah — is coloured bright red; in other words, as being part of Bahrain under Al-Khalifah control. There are some green arrows in the south, which apparently relate to the influx of tribes into southern Qatar, but there is absolutely no suggestion that any separate entity known as Qatar under Al-Thani rule exists, according to this illustration.

14. Now, how this illustration can be reconciled with the 1868 Agreements, which treated the Chiefs of Qatar and Bahrain separately and equally, and which thus confirmed that an entity known as Qatar under Al-Thani rule existed, is impossible to see. Had the situation really been as portrayed on Bahrain's graphic, there would have been no need for the 1868 Agreements because there would have been no area under Al-Thani control. Yet we know from the historical evidence that this simply was not the case. The entities of Qatar and Bahrain were recognized by the 1868 Agreements as being separated by the sea.

15. If we turn to the second illustration — purporting to show the situation as of 1872 after the Ottomans had already established themselves in Qatar, as Dr. Fetais Al-Meri spoke about yesterday — we will see that little has changed under Bahrain's graphics except for that Bahrain now concedes a small enclave around Doha which is attributed to Qatar and to the Ottomans. The rest of the Qatar peninsula, according to Bahrain, remained part and parcel of Bahrain.

16. Now let us compare these two graphics that were supplied in Bahrain's Reply with the contemporary cartographic evidence to see whether these illustrations stand up to the facts.

17. By 1875, this was four years after the Ottomans had established themselves in Qatar and one year before Shaikh Jassim bin Thani was appointed as the *kaimakam* — or governor — of the *kaza*, or district, of Katar, Qatar's separate political identity extending over the entire peninsula and encompassing the Hawar Islands and Zubarah was being recognized in the expert cartography of the time.

18. Appearing on the screen now is a map prepared in 1875 under the auspices of the Justus Perthes Institute. Justus Perthes had founded an independent publishing house which later became known as the Geographic-Cartographic Institute bearing his name and, it is no overstatement, Mr. President, to say that Justus Perthes possessed a worldwide reputation second to none for excellence in preparing detailed and accurate maps. The drafter of this particular map appearing on the screen was Augustus Petermann, who was affiliated with the Institute in Gotha and who was widely acknowledged as being one of the foremost cartographers of the late nineteenth century.

19. From the enlargement of the relevant portion of the map that appears on the screen — and which, for convenience, may also be found in your folders as No. 33 — this map clearly shows Qatar and Bahrain as distinct entities. Qatar is separately labelled and is shown by colour coding to encompass the entire peninsula, not simply the area around Doha which, on this map, is called El Bedaa. The Hawar Islands are also labelled and shown as part of Qatar. Zubarah appears on the map as well, and it too falls unquestionably within Qatari territory. Bahrain, in contrast, is limited to the main island of Bahrain and the smaller islands lying immediately adjacent thereto.

20. It is significant that the Justus Perthes Institute used to update its maps of the region on virtually a yearly basis. Thus, one can pick maps from almost any year starting in 1875 and the story will be exactly the same. A number of these maps were reproduced in Qatar's Map Atlas,

filed with its Reply, and 17 others all from different years were deposited with the Court at the time of the filing of the Reply.

21. So as not to tax the Court's patience, I will refer to just one further example prepared by Augustus Petermann in 1884. Once again, the Court can see from this map that the actual situation — the actual situation as reflected in the expert cartography of the time — was very different from that suggested by Bahrain's colourful graphics. Qatar covers the entire peninsula and includes the Hawar Islands and Zubarah.

22. In its Reply, Bahrain boldly asserts that there is not a single commentator of repute that provides any support for Qatar's interpretation of the situation on the ground following the 1868 Agreements (Reply of Bahrain, p. 71). Apart from the historical evidence reviewed by Ms Pilkington on Monday, which discredits this thesis, Qatar would submit that the map evidence provides eloquent testimony of general repute also disproving Bahrain's thesis. Qatar and Bahrain were consistently recognized as separate entities following the 1868 Agreements, and Qatar's control was invariably seen to extend to and encompass the Hawar Islands as well as Zubarah, as a matter of informed opinion in the expert cartography of the time.

(b) Maps of the late nineteenth and early twentieth centuries

23. If we turn to the cartography of the late nineteenth century, it is again instructive to recall how Bahrain views the political situation of the period. On the screen now appear Bahrain's "graphics", once more taken from its Reply, showing Bahrain's version of events as of 1872 and then again in 1915.

24. The Court will observe that the only difference between the 1872 and 1915 illustrations is that the area around Doha, which is conceded to be under Al-Thani or Qatari rule, is slightly larger as of 1915, and that a fourth arrow, the significance of which is not apparent, has been added in the south purporting to show the incursion of tribes from eastern Arabia. But the rest of the Qatar peninsula, including the Hawar Islands and Zubarah, is still claimed to be Bahraini territory as of 1915, according to these graphics.

25. Qatar has already shown that this remarkable picture does not even begin to square with the historical facts. And, as I hope to demonstrate, the thesis advanced by Bahrain cannot be reconciled with the contemporary cartographic evidence either.

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26. Let us examine how Qatar was portrayed by expert cartographers and on official maps of the time.

27. The map that presently appears on the screen was included in the 1890 edition of the *Atlas de géographie moderne* published by the Librairie Hachette of Paris — a highly reputable institution. As with earlier maps, the political entity of Qatar can be seen to encompass the entire peninsula. Similarly, the Hawar Islands appear in the same green colour as Qatar in contrast to the grey colouring of Bahrain. By no stretch of the imagination can Bahrain be said to extend across the sea to the Hawar Islands or Zubarah or indeed to other parts of the Qatar peninsula according to this map.

28. The next map, albeit of a slightly lesser quality, but produced in 1894, is an enlargement of an official Russian map prepared by the military authorities affiliated with Russian General Headquarters. It, too, depicts the entire Qatari peninsula, including the Islands and Zubarah, in a brown colour which is distinct from the orange colouring of Bahrain. I would suggest that Russian officials at this time, recognized that Qatar and Bahrain were distinct political entities and that the territorial extent of Qatar matched that as described in Qatar's pleadings.

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29. If we turn to the twentieth century, we find maps from still further sources — both official and non-official — attesting to the territorial integrity of Qatar and the attribution of the Hawar Islands and Zubarah, also to Qatar.

30. The map that now appears on the screen is taken from a Polish atlas published in Warsaw in 1904. Bahrain, which is coloured in a distinct orange, appears as a compact group of islands. Qatar, on the other hand, is coloured in white as are the Hawar Islands and, of course, Zubarah, both of which were clearly identified as forming part of Qatari territory.

31. The expert cartography produced in Great Britain at the time took the same position. This can be seen from a 1910 map produced by the widely respected cartographic house of George Philip & Son in London. Once again, the Court will observe from the map that the Hawar Islands, or the Warden Islands as they were sometimes referred to, are shaded in the same colour as the rest of the Qatar peninsula in contrast to the depiction of Bahrain. Qatar has furnished other maps prepared by George Philip — and this is a 1910 map — but Qatar has furnished maps from 1914, 1917 and 1922 which show the exact same situation, and those may be found in the Qatar Map Atlas as Nos. 48, 57 and 70.

32. If we return to the German maps, they continued to depict the situation in the same manner as the maps that have been earlier produced by the Justus Perthes Institute in the second half of the nineteenth century. To take just one more example, the map that presently appears on the screen was published in the 1914 edition of Andree's *Allgemeiner Handatlas*. It presents a particularly clear picture of the contemporary territorial situation with both the Hawar Islands and Zubarah being identified as Qatari. For convenience, a copy of this map has been placed as No. 34 in your folders.

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33. As I previously mentioned, it was not simply maps produced by eminent cartographic houses which showed, as a matter of general repute, that the Hawar Islands were Qatari. Official maps prepared by government agencies portrayed the same situation.

34. The map on the screen now, Mr. President and Members of the Court, is an enlargement of the relevant area taken from a map of Arabia and the Gulf prepared by the *Service Géographique du Ministère des Affaires Etrangères* — the French Foreign Ministry — in 1905.

This map can thus be said to represent the official position of the French Government as to the political situation in the region at the time.

35. A copy of this map also appears as No. 35 in your folders, and on it, Bahrain shows up very clearly in an orange colour. Qatar, in contrast, is depicted in blue, as are the Hawar Islands and Zubarah. Obviously, France did not share the views that Bahrain has put forward in its pleadings as to the exaggerated extent of Bahraini territory. France's position entirely accorded with that which has been presented by Qatar in its pleadings.

36. It was not simply just French and British maps that depicted this situation, but official Italian maps were consistent with their French, British, German and Russian counterparts. This can be seen from the map that is now coming up on the screen — a map of the Arabian Peninsula that was prepared by the General Directorate of Political Affairs in Rome for the Italian Ministry of Colonies in 1918. As with the other maps of the time, this publication provides compelling evidence as to how the Italian Government viewed the territorial situation just after the First World War. Qatar was recognized as covering the entire peninsula, and the Hawar Islands were depicted so as to leave no doubt as to their inclusion within Qatari territory. The Bahrain islands, in contrast, appear in a distinct reddish colour.

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37. Now the significance of the 1913 Anglo-Ottoman Convention, and the 1914 Anglo-Turkish Convention and the 1916 Treaty between Bahrain and Qatar in reaffirming the territorial extent of Qatar has been discussed on Monday by Ms Pilkington. With the withdrawal of the Ottomans from the area at the outbreak of the First World War, Britain embarked on a careful study of the territorial situation on the Arabian peninsula in preparation for peace talks and a Treaty of Peace, eventually, with Turkey.

38. In 1920, the British Foreign Office prepared an internal memorandum setting out Britain's proposals with respect to territorial issues affecting the Arabian peninsula, including the attribution of islands to various chiefdoms on the mainland of the Arabian peninsula. Qatar

furnished a copy of this memorandum as Annex III-38 to its Reply. The memorandum in question included a map, which had been prepared by the British Admiralty, to illustrate the British proposal. An enlarged copy of that map is No. 36 in your folders and the map itself was produced as No. 58 in Qatar's Map Atlas. The Court will recall that Mr. Shankardass, yesterday, briefly referred to this map. With the Court's indulgence, I would like to discuss its background and what it shows in somewhat more detail.

39. The Court will observe that the map includes a red line encompassing the Arabian peninsula running all the way from the Gulf of Aqaba in the northern Red Sea to the northern reaches of the Arabian/Persian Gulf. Now the purpose of this red line was described in Article 2 of the British proposal in the following terms:

"For the purpose of this Treaty [that is, the proposed treaty of peace with Turkey] — the Arabian peninsula includes (1) all territories other than those of the Kingdom of Hedjaz and the British protectorate over Aden and its surrounding territorial zone; and (2) the islands, whether previously Turkish or not, which lie within the line which is defined hereafter."

40. The rest of Article 2 went on to define the course of that red line. It is point No. 2 which is the key. The Arabian peninsula includes the islands, whether previously Turkish or not, which lie within the line which is defined hereafter. In Britain's view, the islands which were encompassed within the red line were deemed to appertain to the Arabian peninsula — and more specifically — to the independent chiefs of the adjacent mainland. If we enlarge the area of the Gulf relevant to the present proceedings, it can be seen that the Hawar Islands, which are pointed out with the arrow there, were located inside of this line and thus were considered to appertain to the adjacent mainland — in other words, to Qatar. Bahrain, as is clear from the map, was carefully and specifically excluded from this definition by virtue of the fact that it was carefully enclaved by a separate red line which did not include the Hawar Islands, and this was emphasized by underlining, although it is difficult to read, the word "Bahrain" in red, there on the map.

41. There can thus be no doubt that Britain considered the Hawar Islands and Zubarah to form part of Qatar's territory at the time: and this position was entirely consistent with the historical and legal considerations which Sir Ian exposed to the Court yesterday, as well as with the contemporary cartographic evidence which was independently produced at the time.

42. There is a further important point with respect to this map which, I would suggest, underlines its significance in this case. For exactly the same map was furnished to the Arbitral Tribunal during the course of the *Eritrea-Yemen* proceedings. Because the red line on this map also reflected Britain's position with respect to the attribution of certain islands lying in the southern Red Sea. As the Court will see from the enlargement that now appears on the screen, the red line passed through a feature known as South West Rocks in the southern Red Sea leaving the Hanish Islands, which were over here, at the heart of the dispute in the *Eritrea-Yemen* case, the red line left those islands on the Arabian side of the line. At paragraph 151 of its Award in the first phase of the *Eritrea-Yemen* proceedings, the Arbitral Tribunal alluded to the British position as reflected on the map, stating:

"The initial position of Great Britain at the peace talks at Sèvres was that the islands lying east of the South West Rocks off Greater Hanish island should be placed under the sovereignty of the independent Chiefs of the Arabian mainland."

43. It is significant, I would suggest, Mr. President and Members of the Court, that the decision of the Tribunal in the *Eritrea-Yemen* case on the issue of sovereignty over the islands that were in dispute there, while based on a number of factors, attributed all of the islands lying to the east — in other words, inside of the red line — to Yemen which was, at that time, the local Chiefdom on the Arabian peninsula. Qatar would suggest that exactly the same situation pertains here with respect to the Hawar Islands. They clearly lie inside of the red line and thus were viewed by the British as falling under the sovereignty of the local ruler of the mainland which, in this case, was the Al-Thani régime in Qatar. Bahrain was very carefully excluded from this definition and the territorial extent of Bahrain as reflected on the map clearly excluded the Hawar Islands, and, needless to say, Zubarah.

44. Between 1917 and 1933, the official British view of the territorial situation did not change. This is reflected in the 1933 annotated map — which is now appearing on the screen and which Mr. Shankardass discussed in some detail yesterday — this was the map prepared by Mr. G. Rendel of the Foreign Office showing political divisions in the area — it is No. 17 in your folders. It is *entirely* consistent with the previous map showing the red line that I just discussed, as well as the other cartographic evidence produced from both official and non-official sources.

45. Contemporary British cartography, therefore, provides a clear expression of the British view as to the territorial situation at the time. Obviously, the reality of the situation as portrayed on these maps bears no relation to the picture which Bahrain has attempted to portray with its graphics.

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46. Notwithstanding the overwhelming weight of the cartographic evidence up to the 1930s, Bahrain, of course, sees matters very differently. Let me just remind the Court of Bahrain's version of events as of 1934 — another of these colourful graphics.

47. This picture is really quite extraordinary. Even in 1934, Bahrain is said to continue to control most of the Qatar peninsula, including Zubarah and the Hawar Islands. Yet when this sketch is compared with the genuine cartography of the period that I have reviewed, it simply does not stand up to scrutiny.

48. The final map that I would like to display from those which Qatar has introduced into evidence is a 1936 map of the Arabian peninsula produced by George Philip & Sons of London. I end this part of my presentation with this map because it seems to me to summarise in a particularly compelling fashion what the cartographic evidence taken from the entire period from 1870 to 1936 demonstrates as a whole. First of all, Qatar is clearly represented by a distinct brown colouring as encompassing the entire Qatari peninsula. Second, both the Hawar Islands, which are again labelled the Warden Islands on the map and Zubarah are recognized to constitute an integral part of Qatar. And third, Bahrain is highlighted in its own reddish colour as a compact group of islands separated by the sea from Qatar.

49. None of the maps that I have reviewed lends the slightest credence to Bahrain's theory that prior to 1935 Qatar was limited to a small outpost around the city of Doha. Had the Hawar Islands or Zubarah genuinely been under Bahraini control or subject to Bahraini administration throughout this period, *surely* this would have been reflected in the contemporary cartographic materials.

50. Is it really credible, Mr. President and Members of the Court, that the expert map-makers could have gotten it so wrong for so many years? Is it credible that official government maps produced by France, Great Britain, Russia and Italy — that all of these official maps — were in error when they depicted the territorial extent of Qatar as encompassing the entire peninsula or when they showed the Hawar Islands and Zubarah invariably as part of Qatar? Or is it Bahrain's case which is fundamentally misconceived? I would suggest that the facts speak for themselves, and that the map evidence fully confirms the legal considerations underlying Qatar's title to the Hawar Islands and Zubarah.

3. Maps introduced by Bahrain

51. Mr. President, having canvassed the maps which, in our view, so clearly support Qatar's position on the territorial issues in this case, I now propose to turn to the maps that Bahrain has introduced, to see whether they in any way contradict the extensive cartographic evidence that Qatar has produced.

52. In Bahrain's words, evidence of its authority over the Hawar Islands and Zubarah following the 1868 Agreements is said to be "well documented" and "overwhelming" — these are the words of our colleagues (Bahrain's Memorial, paras. 412 and 438). One would expect such ambitious assertions to be backed up by the map evidence. But the fact of the matter is that prior to Bahrain's submission of its Supplemental Documents in March of this year, Bahrain was able to produce only a single map, following the events of 1868 which was claimed to support its position with respect to the Hawar Islands. This was the very rough survey map, you may recall, prepared by an Ottoman military official, Captain Izzet, in 1878 which was produced in Bahrain's Memorial and to which our distinguished opponents attach considerable importance.

53. I have placed on the screen the version of the map which Bahrain introduced in its Memorial. Although Bahrain itself acknowledges that this map is "primitive" (Memorial of Bahrain, para. 21), it claims that because both the main island of Bahrain and the Hawar Islands are shaded in the same blue, Captain Izzet must have considered that the Hawar Islands belonged to Bahrain.

54. It must be said, Mr. President, with all respect, that the logic of this argument is not readily apparent. The entire coastal area along the northern Gulf is shaded in blue and, because of the small size of the Hawar Islands, it is not surprising that this blue shading covers the islands.

55. The Court will also note that there are other blue-shaded areas as well, and these include an area along the present-day Saudi coast and a large area around Al-Hufuf, which was the district capital, as Dr. Fetais Al-Meri described it, of the Sanjak of Nejd. Nowhere does Captain Izzet explain what this blue tinting or shading is meant to mean. However, under Bahrain's logic, these two areas must also be deemed to appertain to Bahrain — a conclusion which is manifestly absurd.

56. Regrettably, however, there is a much more serious problem with the map that Bahrain has introduced which needs to be addressed. Following the receipt of Bahrain's Memorial, Qatar went back to the Ottoman archives to see if we could find any further information regarding this map and its context to shed light on what it purported to depict.

57. In carrying out this research, Qatar was astonished to discover that Bahrain had not submitted the full map in question, but only a portion of the map carefully cropped so as to exclude substantial areas lying further to the north.

58. Here is the full map, Mr. President and Members of the Court, and what a different picture it presents than the edited version submitted by Bahrain. That edited version is the bit outlined in red. Indeed, we now see in the portion of the map that was omitted by Bahrain in its Memorial, a whole series of areas shaded in the same blue colour as Bahrain and the Hawar Islands — lots of areas. There is still no indication what these areas are meant to represent, but they certainly do not support the thesis advanced by Bahrain that it possessed sovereignty over all such blue-tinted areas.

59. I think the Court will now see why Bahrain was reluctant to include this northern half of the map in its pleadings: and quite apart from the inappropriateness of filing an edited version of the map, the map as such lends no support to Bahrain's claims that the Hawar Islands were deemed to belong to Bahrain. Indeed, to the contrary, Qatar has already placed in evidence official Ottoman maps, discussed by Dr. Fetais Al-Meri, which limit the territorial extent of Bahrain to the principal island of Bahrain and its immediately surrounding islets.

60. So much for the 1878 Ottoman survey map. What about the other maps recently filed by Bahrain with its Supplemental Documents? Despite having nine months to counter the map evidence produced with Qatar's Reply, Bahrain has only been able to produce a mere four maps covering the relevant period in its Supplemental Documents.

61. The first such map is a map taken from a hand atlas published in Leipzig in 1905, an enlargement of which is now appearing on the screen. The Court will observe that Qatar is shaded in two different colours on this map — orange in the north and green in the south. The basis on which this colouring was added is not known. But what can be said is that the map bears no relation to reality since it includes Al-Bida — or Doha — in the area which, under Bahrain's reasoning, would appertain to it — to Bahrain — by virtue of its orange colouring. Yet even Bahrain — in its pleadings and in the sketch maps that I showed you earlier — admits that Al-Bida was under the control of the Al-Thani, an Ottoman régime, ever since 1872. So the map does not even square with Bahrain's version of events. Moreover, if one looks at the larger version which Bahrain has included with its Supplemental Documents, it will be seen that the colour coding suggests that Bahrain and the northern part of Qatar, coloured in orange, were part of Persia, again a conclusion which does not square with the facts, since it is well known that Persia's — or Iran's — claim to Bahrain included only the main island and specifically did not include the Hawar Islands or certainly any area on the Qatari peninsula.

62. The second map produced by Bahrain in its Supplemental Documents fares no better. It is another non-official 1905 map, this time produced in St. Petersburg.

63. If the Court takes the time to examine this map with the previous map I just discussed, it will see that this map is an *exact* reproduction of the previous map, the only thing that has changed is that the titles are now in Russian, unlike the previous map: but the map itself is identical. Consequently, this map cannot be relied on as an independent or accurate portrayal of the area or as supporting Bahrain's case. In contrast, Qatar has placed several official Russian maps — and these are Nos. 20, 83 and 88 in the Qatar Map Atlas — which directly contradict this map in showing the genuine situation as perceived and understood by the Russian Government.

64. The third map submitted by Bahrain is an undated map taken, apparently, from a twentieth century atlas. This map at least has the benefit of correctly depicting the territorial

integrity of Qatar by virtue of the fact that the entire Qatar peninsula, including Zubarah, is shaded in the same colour. I would suggest that, because of the scale of the map and the colours used, it is really quite impossible to say to whom the Hawar Islands are attributed. So how this map can be said to support Bahrain's theory of the case is difficult to discern.

65. In the final map which Bahrain introduced in its Supplemental Documents is yet another 1905 map, published in an unofficial British atlas. It shows the same thing as the previous map. To the extent that Bahrain argues that this map depicts the Hawar Islands in the same colour as Bahrain, Qatar can say the same thing. The islands are in the same colour as Qatar. The map, as such, no more supports Bahrain's position than it does that of Qatar.

66. That is the sum total of the maps, the historical maps, introduced by Bahrain during the relevant period from 1868 to 1936: five maps. One is the 1878 Ottoman survey map which Bahrain has misrepresented and which is, I would suggest, useless to its case. Three of the remaining four appear to be aberrations, non-officially produced, all printed in one year, 1905, which are either demonstrably inaccurate, as I have shown, or which simply do not support the appurtenance of the Hawar Islands — much less Zubarah — to Bahrain. And the fourth map, the undated one, is equally supportive of Qatar's case as that of Bahrain.

67. In contrast, I would respectfully recall that Qatar has produced 89 maps in its Map Atlas, and another 19 which it deposited with the Court, spanning the entire period from the 1860s to 1936 and taken from a wide spectrum of official and non-official sources. And all these maps confirm both the extent of the political entity of Qatar during the period and the fact that the Hawar Islands and Zubarah were deemed to be Qatari. It is the overwhelming weight of this evidence emanating, as it does, from highly reputable sources, which, Qatar submits, is legally relevant.

4. The legal relevance of the maps

68. And this leads me, Mr. President, to the final portion of my presentation and the shortest — the issue of what legal weight should be accorded to the map evidence introduced by the Parties. And in this respect, there are two preliminary points that should be reiterated.

69. First, as I mentioned earlier, it is significant that both Parties have relied on the map evidence to support their cases. It follows that, in principle, the Parties are agreed that the maps do have a legal relevance in this case. And second, Qatar wishes to make it very clear that it does not rely on the cartographic evidence as creative of its title to the Hawar Islands or Zubarah. That title results from the operation of legal and factual considerations which Sir Ian and others have discussed. Nonetheless, the maps have an important role to play in this case in so far as they constitute confirmatory evidence of an historical nature pointing to a widespread recognition, or general repute, that the political entity of Qatar covered the entire peninsula including the Hawar Islands and Zubarah. As I trust I have shown, there is no credible map evidence from the relevant period produced by Bahrain indicating that either the Hawar Islands or Zubarah were considered to be Bahraini. The overwhelming weight of the evidence is all in the other direction.

70. Now, it is no doubt true, as the Court has had occasion to note in the past, that maps do have to be approached with a degree of caution. As the Chamber of the Court observed in the *Frontier Dispute* case:

"maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts" (*Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 582, para. 54).

71. In assessing the legal relevance of the map evidence, Qatar submits that three criteria should be borne in mind. First, the maps in question must be technically accurate in order to be accorded evidentiary value. Second, maps produced by official government agencies are entitled to particular weight due to their official provenance. And third, maps produced by reputable cartographic institutes which depict with consistency an established state of affairs are entitled to considerable probative value as evidence of general recognition or repute.

72. Now, with respect to the first criterion — the technical accuracy of the maps — the Court need not have any worries. All of the maps introduced by Qatar have either been produced by official government agencies or by highly reputable and impartial cartographic institutes well known for the quality of their work. Moreover, by the late nineteenth and twentieth centuries, significant technical advances had been made permitting the production of accurate maps.

73. As for the second criterion — the provenance of the maps — Qatar has submitted official maps prepared by the Governments of France, Great Britain, Russia, Italy and Turkey. All

of these maps support Qatar's position regarding the attribution of the Hawar Islands and Zubarah to Qatar or the overall territorial integrity of the Qatar peninsula. Bahrain, on the other hand, has been unable to produce a single official map from an official source which supports its position.

74. Turning to the third criterion — the issue of general recognition or repute — one of the remarkable features of the map evidence in this case, as I have suggested, is the fact that virtually all of the maps, despite having been drawn from so many sources and over 70 years of time, all show the same thing. Even in cases where there has been conflicting map evidence as, for example, the *Eritrea-Yemen* arbitration, the Arbitral Tribunal in those proceedings was able to conclude that the Yemeni map evidence was superior in scope and volume to that of Eritrea and as such, it provided "important evidence of general opinion or repute" (Award in the First Stage of the *Eritrea-Yemen* Arbitration, paras. 381 and 388).

75. Here, the evidence cannot be characterized as conflicting. Qatar has submitted literally dozens, over 100 by my count, of maps from a dozen different countries confirming its position. Bahrain has submitted five maps, none of which support its case. In these circumstances, the remarks of the arbitral tribunal in the *Beagle Channel* arbitration seem particularly apposite. And there the Court will recall that the Tribunal stated:

"Where there is a definite preponderance on one side — particularly if it is a very marked preponderance — and while of course every map must be assessed on its own merits — the cumulative impact of a large number of maps, relevant for the particular case, that tell the same story — especially where some of them emanate from the opposite Party, or from third countries — cannot but be considerable, either as indications of general or at least widespread repute or belief, or else as confirmatory of conclusions reached, as in the present case, independently of the maps." (*U.N.R.I.A.A.*, XXI, p. 53, at p. 166.)

76. Finally, Qatar would note that in situations where the territory in question lacks a permanent population, as was the case with the Hawar Islands, it is to be expected that the Parties will be able to show little, if any, credible evidence of actual administration and control on the ground. And in such cases, a consistent pattern of map evidence, such as we have here, can be especially useful in demonstrating how the territorial situation was viewed by third parties as a matter of informed opinion.

5. Conclusion

77. It is in the light of these authorities, that Qatar submits that the maps, looked at in their totality, provide an important source of evidence confirming Qatar's title over the Hawar Islands and Zubarah.

78. Mr. President, that concludes my presentation on the map evidence. I would like to thank Members of the Court for the attention they have accorded me, and I would ask that Mr. Shankardass be called on to continue Qatar's presentation.

The PRESIDENT: Thank you very much, Mr. Bundy. Je donne la parole maintenant à M. Shankardass.

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

OIL CONCESSION – HISTORY AND THE 1936-1939 DECISIONS

1. In my presentation to the Court yesterday, I drew attention to a number of documents from 1933 expressing the clear view of British officials that the Hawar Islands were part of Qatar. I was also able to show the Court a few maps including one prepared by geologists who conducted a survey of Qatar and attached the map to their report of July 1933; the map which had been attached to Qatar's Oil Concession Agreement of May 1935; and two official maps which Mr. Bundy has just referred to, one of them annotated by Rendell of the Foreign Office in 1933, all demonstrating that right up to the time of the Qatar Oil Concession of 1935 and the related British guarantee of protection of Qatar, the Hawar Islands were regarded by the British as appertaining to Qatar.

2. Let me now turn to the circumstances in which this view was reversed in 1936. Qatar pointed out in its Memorial that Bahrain had made a claim to the Hawar Islands in 1936, and soon after that several British officials, both in the Gulf and in London, quite openly argued for or stressed the political and strategic advantages to Britain of a decision on Hawar in Bahrain's favour¹. Bahrain's response to this in its Counter-Memorial began with the assertion:

¹Memorial of Qatar, para. 6.134.

"The facts plainly show, to the contrary, that if Britain had allowed itself to be guided by such impulses rather than by legal principle, it would have favoured the grant of the Hawar Islands [ownership] to Qatar."²

3. But, having said this, Bahrain then adopts a somewhat contradictory position by proceeding to state that after BAPCO, the American company, secured an oil concession under the Agreement of 1925, " Britain was to do its utmost to promote the interests of British oil companies over those of American oil companies"; and that when APOC, regarded as a British company, and later its group subsidiary, Petroleum Concessions Ltd. (PCL), decided to join the competition for the Bahrain unallotted area, it became Britain's major concern to ensure that any additional concession rights awarded to BAPCO were confined to as small an area as possible³. Bahrain has drawn attention to the evidence on this issue in its Counter-Memorial and Qatar's response therefore is mostly contained in its Reply and will be discussed by me, briefly, today.

4. I propose to demonstrate to the Court that British officials from 1936 onwards were most anxious to ensure that the new concession for Bahrain's "unallotted area" was granted to PCL rather than to BAPCO; and furthermore, that their actions in pursuit of this aim led them precipitately to reverse, in 1936, the British view held, even as recently as 1935 that the Hawar Islands were an integral part of Qatar; and that these actions, manifesting themselves in a conscious bias in favour of Bahrain on the sovereignty issue, vitiated the British decision of 1939 on the ownership of Hawar Islands.

5. Negotiations for a concession covering Bahrain's unallotted area were resumed in 1936. PCL, the "British" company, submitted a proposal for a concession on 16 April 1936, and a few days later — as the Court is now aware — Bahrain decided for the first time to make a formal written claim to the Hawar Islands by its letter of 28 April 1936 from Belgrave to the Political Agent. Sir Ian Sinclair has already referred to this letter and will be analysing its contents in some detail in a later presentation; for my purpose it is only relevant to draw attention to the fact that the claim was expressly made in the context of negotiations for a concession over the "unallotted area"⁴.

²Counter-Memorial of Bahrain, para. 197.

³Counter-Memorial of Bahrain, paras. 205 and 217.

⁴Memorial of Bahrain, Vol. 5, Ann. 246, p. 1071.

6. When PCL became aware of Bahrain's claim to the Hawar Islands, it protested on the very next day by a letter of 29 April 1936 to Walton in the India Office. In this letter, which is in your folder at No. 37, PCL drew attention to the fact that, as they were now negotiating with the Shaikh of Bahrain for a concession over his unallotted area, he had commenced by claiming "that the Island of Hawar is part of his dominions"⁵. PCL pointed out, in this letter, that the island was situated just off the west coast of Qatar and went on to assert firmly and entirely accurately in words, which are now on the screen:

"The island is shown on the official map of Qatar which was signed by the Shaikh of Qatar and by Mr. Mylles and *which forms part of the Qatar Concession*. This map, I believe, was seen and approved by the Political Resident and, perhaps, the India Office. All this points to its forming part of Qatar and not of Bahrain."⁶

A pretty concise summary of some of the submissions I made yesterday.

7. However, as Bahrain had in fact made a claim to Hawar the day before, the letter concluded with a request for a clarification as to whom, in the opinion of the British Government, did the island belong. This request, in the context, was in effect for a confirmation of PCL's view rather than a request for what Bahrain calls "an advisory opinion"⁷.

8. In the meantime, dealing with Bahrain's formal claim of 28 April 1936, Loch, the Political Agent, proceeded to accept the bare assertions in Belgrave's letter and recommend to Fowle, the Political Resident, in his letter of 6 May 1936, [judges' folder, No. 38], that there was real substance in Bahrain's claim. He mentioned that Hawar Island was a low, desolate looking place near the mainland of Qatar, but, said he, that it might have considerable value "now that oil has been found in Bahrain and is hoped for in Qatar", and then, in what appears to evidence the first indication of the reason for the change in the British position on the ownership of Hawar, wrote that "it might in certain circumstances suit us politically to have as large an area as possible included under Bahrain". Similarly, Fowle, the Political Resident, without considering any evidence in support of Bahrain's claim, simply proceeded to express the view that Hawar should be regarded as belonging to the Shaikh of Bahrain and that the burden of disproving this would lie on

⁵Memorial of Qatar, Ann. III.104, Vol. 7, p. 19.

⁶*Ibid.*

⁷*Ibid.*

the Shaikh of Qatar, who knew nothing about this. Sir Ian Sinclair will review this turn of events more fully in his presentation. For now, I only wish to draw the Court's particular attention to the contrast between the various objective opinions expressed and accepted since 1933⁸ and these subjective views clearly dictated by political policy.

9. In June 1936, the American company, BAPCO, also notified its intention to negotiate for a concession over the entire unallotted area of Bahrain and its territorial waters. It will be seen therefore that while Bahrain's formal claim of 28 April 1936 to the Hawar Islands was being considered in London, the question of which company could secure Bahrain's new concession for its unallotted area was simultaneously receiving attention⁹.

10. Another issue that was exercising British officials in London at the same time was to try to restrict control of oil resources in the Gulf area by American companies. In this context, Starling, a senior official in the Petroleum Department in London, writing to the India Office on 3 July 1936, expressed his concern for "securing a measure of British control" over oil supplies from the Gulf area, and proposed that the British Government might suggest to the Sheikh of Bahrain to give the remainder of Bahrain to PCL¹⁰. He therefore suggested that the whole issue be discussed at an interdepartmental meeting.

11. As regards Bahrain's new formal claim to the Hawar Islands, Walton of the India Office, in a memorandum of 8 July 1936 for the Secretary of State for India, expressed his agreement with Fowle's view that Hawar should be regarded as belonging to the Sheikh of Bahrain. Although he pointed out that this would be a provisional decision, as a final decision could not be reached without hearing a Qatar claim, if any, he went on to conclude that "Qatar may make a claim in any case, but it hardly seems necessary to put it into his head by asking whether he has one"¹¹.

12. On the next day, 9 July 1936, there was held a crucial interdepartmental meeting, where Starling, Walton and a number of senior officials were present. The first item of the Minutes of this meeting is particularly important for these proceedings, for it records:

⁸Memorial of Qatar, para. 6.35; Memorial of Qatar, Ann. III.106, Vol. 7, pp. 27, 30; see also, Reply of Qatar, paras. 4.251 *et seq.*, and Memorial of Qatar, Ann. III.107, Vol. 7, pp. 31, 35.

⁹Reply of Qatar, para. 4.212.

¹⁰Counter-Memorial of Bahrain, Vol. 2, Ann. 76, p. 240.

¹¹Memorial of Qatar, Ann. III.109, Vol. 7, p. 41.

"The meeting first examined the question of the ownership of the Hawar Islands. It was agreed that on the evidence at present available these Islands *appear* to belong to the Sheikh of Bahrein, and that the burden of disproving this claim lay on *any other* potential claimants. It was agreed that the Sheikh of Bahrein should be informed accordingly."¹²

13. In other words, the question of ownership of the Hawar Islands was quickly and summarily decided in favour of Bahrain, notwithstanding the lack of any effort to examine previous official records, notably those covering the years from 1933 to 1935, or indeed any other evidence, and without any thought of obtaining the views of the Ruler of Qatar. As I will shortly show, though this decision was stated to be "provisional", it was in actual fact treated as final and immediately acted upon as such, by all concerned. I would draw the Court's particular attention to the remarkable formal direction in the decision that "the Sheikh of Bahrein should be informed". The Ruler of Qatar was not even mentioned. This statement was clearly to enable the Shaikh of Bahrain, and as the Court will see, did enable him from then onwards, to offer the Hawar Islands as part of *his* territory for the proposed new concession for the unallotted area¹³.

14. At the same interdepartmental meeting, Starling pressed his favourite policy to further British oil interests in the Gulf. As Bahrain also points out¹⁴, the Minutes of the meeting record:

"Mr. Starling [of the Petroleum Department] then suggested that His Majesty's Government should exert a *sub rosa* influence to *induce* the Sheikh to give the concession for the unallotted area to [PCL] . . ."

The Minutes further record that Starling expressed the hope "that United States concerns would gradually disappear from the Gulf and that the whole area would fall under British control". The record also shows that this crudely chauvinistic passage was later replaced by a more emollient sentence containing an expression of a hope that if PCL could secure the remainder of Bahrain, it would give the company a better chance to acquire the American interests in the Gulf, thus strengthening the British position in the area¹⁵.

15. The change in the views of British officials in the Gulf on the ownership of the Hawar Islands between 1933 and 1936 in the face of all of the evidence I mentioned yesterday, this change to which I have just referred, combined with the anxiety at the interdepartmental meeting

¹²Reply of Qatar, paras. 4.213-4.214; Counter-Memorial of Bahrain, Vol. 2, Ann. 77, p. 243.

¹³Reply of Qatar, para. 4.214.

¹⁴Counter-Memorial of Bahrain, para. 252.

¹⁵Reply of Qatar, para. 4.215.

on 9 July 1936 to advance British oil interests by securing the new Bahrain concession for PCL, clearly suggest that, by that date, at least some British officials were inclined to believe that attributing the Hawar Islands to the Ruler of Bahrain would help to persuade him or induce him, as Mr. Starling said, to grant the new concession over the "remainder of Bahrain" to PCL. In any event, the so-called "provisional" decision of 9 July 1936 was immediately communicated to Belgrave the very next day and he promptly announced that the Shaikh of Bahrain would enter the island in the list of his possessions to be given to PCL¹⁶. As Bahrain itself confirms in its Counter-Memorial, it was clear to all parties that the oil concession negotiations with the Ruler of Bahrain were to proceed on the understanding that the Hawar Islands were included within the territories of Bahrain¹⁷.

16. In response to the PCL letter of 29 April 1936 that I have referred to and which contained the strong and firm summary of the basis of Qatar's title to the Hawar Island, PCL was informed of the "provisional" British decision in favour of Bahrain by the India Office on 14 July 1936. At this point, PCL rapidly changed tack. Instead of persisting with the argument that the Hawar Islands already fell within the 1935 Qatar oil concession held by them¹⁸, PCL continued its negotiations with the Ruler of Bahrain for a concession covering the whole of what was claimed to be Bahrain's "unallotted area", this expression being now understood by all involved in the negotiations to include the Hawar Islands. Now, why did PCL pursue this strategy? PCL wanted to have a foothold in the Bahrain islands, where BAPCO had already commenced oil production. Once it was made known to PCL in mid-July 1936, that the British Government had made a provisional decision in favour of the Bahraini claim to Hawar, PCL obviously decided that their commercial interests outweighed whatever loyalty they may have felt towards the Ruler of Qatar who had granted them only one year previously an exclusive oil concession covering the whole of Qatar. It is also quite on the cards that British officials in London or in the Gulf actively encouraged PCL to persist with their bid to the Ruler of Bahrain for a concession covering the unallotted area.

¹⁶Memorial of Qatar, Ann. III.111, Vol. 7, p. 51.

¹⁷Counter-Memorial of Bahrain, para. 255; Counter-Memorial of Bahrain, Vol. 2, Ann. 78, p. 246; Memorial of Qatar, Ann. III.112, Vol. 7, p. 55; Counter-Memorial of Bahrain, Vol. 2, Ann. 80, p. 249.

¹⁸Memorial of Qatar, Ann. III.104, Vol. 7, p. 19.

17. As Longrigg of PCL explained at a meeting held in the India Office in London on 12 April 1938, if enquiries showed that the Hawar Islands belonged to the Sheikh of Qatar, they would be included in the concession which PCL had already obtained from that Ruler; and that by entering into negotiations with the Sheikh of Bahrain for them, the company were merely running the risk of paying twice for the same thing¹⁹.

18. This, then, was the cynical response which Longrigg gave at the meeting on behalf of PCL in response to a suggestion by Fowle that the resumption of negotiations be postponed in order to determine clearly, as between Bahrain and Qatar, the ownership of the Hawar Islands and Fasht Dibal. But PCL strongly opposed any suggestion of postponing the negotiations; and indeed, Longrigg proceeded to assert he personally thought it would be a pity to put ideas of ownership into the mind of the Sheikh of Qatar²⁰. All this as part of PCL's effort to secure a concession over the unallotted area.

19. Here is proof of Qatar's contention in its written pleadings²¹ that PCL were extremely careful, in the period between 1936 and 1939, to withhold from the Ruler of Qatar any knowledge of the Company's involvement in negotiations with the Ruler of Bahrain about the unallotted area. PCL were playing a devious game. They wanted to secure a new concession covering that part of the Bahrain islands not yet covered by the BAPCO mining lease, *or* as I will shortly show, at least the Hawar Islands and other islands and islets close to the Bahrain main island. But, in seeking to achieve their aims, PCL could not put their Qatar oil concession at risk. So, there was every reason for PCL to conceal their ambitions and activities from the Ruler of Qatar, who was thus, it would appear, kept in total ignorance of the developing oil concession negotiations concerning the so-called "unallotted area" of Bahrain, including the Hawar Islands, during the years from 1936 to 1939.

20. As I have indicated earlier, from July 1936 onwards the British authorities not only permitted, but even participated in, concession negotiations on the basis that the Hawar Islands were part of "the unallotted area" of Bahrain. It was Belgrave who reported to the India Office on

¹⁹Memorial of Qatar, Ann. III.48, Vol. 7, pp. 241, 245.

²⁰Memorial of Qatar, Ann. III.112, Vol. 7, p. 245.

²¹Counter-Memorial of Qatar, paras. 3.64 to 3.66.

17 July of that year the progress of the concession negotiations and the details of the terms offered by both PCL and BAPCO, pointing out that both companies attached great value to the oil prospects of the Hawar Islands and sought the British Government's views on the terms offered²². The Ruler of Bahrain's own first response to the offers from the two companies was that the additional or unallotted area might be divided between them: with the area that included Hawar Islands to be given to PCL, and the rest of Bahrain "proper" to BAPCO²³. Both the companies found the idea of dividing the additional area unacceptable. BAPCO desired to obtain a concession over the whole additional area, and clearly the real attraction for PCL was to secure a concession not just over the Hawar Islands but over areas in Bahrain itself²⁴.

21. The presupposition that the Hawar Islands were part of *Bahrain's* unallotted area, and it would be the Ruler of Bahrain who would be granting a concession of that area, was rapidly hardening into an unchallenged assumption. At a meeting in the India Office on 1 October 1936, it was again *Belgrave* who was assigned the task of ascertaining from PCL whether it would accept an oil concession limited only to the Hawar Islands, or to the Hawar Islands and a few small islands adjoining the two main Bahrain islands²⁵.

22. I must point out, however, that not every British official concerned regarded the "allotment" of Hawar Islands to Bahrain with equanimity. Sir Ian Sinclair alluded yesterday to the view expressed by Rendel of the Foreign Office, recorded well over a year after the 1936 "provisional" decision, in words that are now on the screen:

"As regards the Hawar Islands . . . I cannot help regretting that the India Office went so far as they seem to have done in *allotting* these islands to Bahrein. They are obviously, from the geographical point of view, a part of Qatar, and since the Qatar oil concession is held by a British company [PCL], while the Bahrein concession is held by a purely American company, I should have thought that interest, as well as geography, ought to have led us to *allocate* them to Qatar."

The Court will no doubt notice that even Rendel, though an opponent of the so-called "provisional" decision, appeared to be assuming in December 1937, before the inquiry into the ownership of the

²²Memorial of Qatar, Ann. III.112, Vol. 7, p. 55.

²³Reply of Qatar: Ann. III.50, Vol. 3, p. 311.

²⁴Memorial of Qatar, Ann. III.114, Vol. 7, p. 63 and Reply of Qatar, Ann. III.51, Vol. 3, p. 317.

²⁵Memorial of Qatar, Ann. III.113, Vol. 7, p. 59.

islands had even begun, that the "allotting" or "allocation" of the Hawar Islands to Bahrain was irreversible²⁶.

Mr. President, would this be a convenient moment for me to stop for a break?

The PRESIDENT: Thank you very much. The Court will suspend for a quarter of an hour.

The Court adjourned from 11.25 a.m. to 11.50 a.m.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise. Monsieur Shankardass, vous avez la parole.

Mr. SHANKARDASS: Merci, Monsieur le Président. If I may resume.

23. On 1 May 1937, the Ruler of Bahrain had again suspended negotiations for one year on the ground that the question of Zubarah was exclusively occupying his attention²⁷. When the negotiations were resumed in 1938, in view of the Bahrain Ruler's known desire to divide the area, PCL had decided to restrict the area from which it sought a concession, to a limited area on the Bahrain Islands and another which included the Hawar Islands²⁸.

24. Sir Ian Sinclair will be addressing you on the developments following Fowle's proposal, in 1938, to initiate an "enquiry" into the contested issue of sovereignty over the Hawar Islands. However, given that the Political Resident was simultaneously expressing the view that "from the political point of view it will suit quite well if we give Hawar to Bahrain, as this will balance our previous decision of giving Zubara to Qatar"²⁹, in view of this, obviously any prospect of an impartial and objective consideration of the issue was put in doubt at the outset. What Fowle was proposing was in effect only to go through the motions of an enquiry.

25. As the Court will recall, two months earlier, i.e., in February 1938, the Ruler of Qatar had himself already complained orally to the Political Agent (Weightman) about Bahrain's illegal activities on Hawar³⁰. But some indication of even Weightman's frame of mind is available from

²⁶Reply of Qatar, Ann. III.56, Vol. 3, p. 349.

²⁷Reply of Qatar, Ann. III.52, Vol. 3, p. 321.

²⁸Reply of Qatar, Ann. III.57, Vol. 3, p. 353.

²⁹Memorial of Qatar, Ann. III.146, Vol. 7, p. 233.

³⁰Memorial of Qatar, Ann. III.152, Vol. 7, p. 261.

the fact that, despite this complaint in February of that year, he recorded in his "Intelligence Summary" of 28 April 1938 — three months later — that he had visited Hawar on 15 April, "inspected the *new* Bahrain Police Post there" but that there had been no complaint about this, says he, from the Shaikh of Qatar, thus "indicating his acceptance of Bahrain's rights in Hawar"³¹. Weightman seems to have conveniently forgotten the serious complaint which the Ruler of Qatar had made to him personally in February. He must therefore have been highly embarrassed by the Ruler of Qatar's formal written protest of 10 May 1938 complaining of Bahrain's "aggression" in Hawar and invoking British action under his Treaty for help to end the aggression³².

26. However, following the Ruler of Qatar's protest, the process of dealing with the issue of the ownership of the Hawar Islands had begun and has been described in detail in the written pleadings. For present purposes, what is important is to keep in mind that from about the middle of 1938, developments in negotiations for a concession over the unallotted area proceeded in parallel with what Bahrain persists in terming the "arbitration" or "adjudication" over the Hawar Islands, leading to decisions on the two issues at almost the same time, by July 1939. Let me now describe the sequence of events in both these matters to demonstrate the true nature of the enquiry or the so-called "arbitration", on the ownership of the Hawar Islands.

27. On 22 May 1938, Weightman forwarded to the Political Resident and the Secretary of State for India a description of the areas to be offered *by the Ruler of Bahrain to the two companies*³³. The area for PCL clearly included the Hawar Islands; and yet only two days earlier, i.e., on 20 May 1938, Weightman had written to the Ruler of Qatar inviting him to state his case on the Hawar Islands and to provide evidence of it as rapidly as possible³⁴. This, of course, was being done upon the direction by Fowle in a telegram in which he also stated that "meantime . . . His Majesty's Government and Government of India might proceed on the assumption that HAWAR belongs to Bahrain"³⁵. Significantly, Weightman also sent Belgrave a copy of his letter of 20 May 1938 to the Ruler of Qatar which, in turn, prompted Belgrave to submit the unsolicited

³¹Reply of Qatar, Ann. III.60, Vol. 3, pp. 371, 374.

³²Memorial of Qatar, Ann. III.150, Vol. 7, p. 253.

³³Reply of Qatar, Ann. III.62 and III.63, Vol. 3, pp. 381 and 385.

³⁴Memorial of Qatar, Ann. III.56, Vol. 7, p. 279.

³⁵Memorial of Qatar, Ann. III.153, Vol. 7, p. 267.

"preliminary statement" to the British authorities³⁶. This document (which was never shown to the Ruler of Qatar) is described more fully in Qatar's Memorial³⁷. On 30 May 1938, Weightman also visited the Ruler of Qatar and when the latter asked that he be permitted to see Bahrain's "counter-claim" to enable him to rebut it, Weightman rejected the request out of hand³⁸. In retrospect therefore, Weightman's letter to the Ruler of Qatar marking the commencement of the so-called "arbitration" and his attitude at his meeting with the Ruler a few days later, can hardly be said to have begun with an open mind on the part of the British officials primarily concerned, as Bahrain's ownership of Hawar was already being taken for granted by them.

28. Both the Political Resident and all the concerned departments of the British Government, approved the Ruler's division of the unallotted area communicated by Weightman with his letter of 22 May 1938. PCL seems to have been generally satisfied with the Shaikh of Bahrain's latest proposed division. But at this stage, BAPCO, which already held a mining lease from December 1934 over the first 100,000 acres on the main Bahrain island, and was producing oil from it, delivered a most significant threat. It warned that, if any part of the new concession was offered to another company, BAPCO would abandon plans for substantial capital investment for the further development and refining of oil production in Bahrain, as well as slow down production on its existing Bahrain concession. This, of course, would mean reduced royalties for the Ruler of Bahrain³⁹. The Ruler and his family were greatly alarmed by this threat⁴⁰. Having made its threat, BAPCO then made a new offer for a concession covering the *whole* area under the supposed dominion of the Ruler of Bahrain, including the Hawar Islands. In June 1938, the Ruler therefore found himself in an extremely difficult situation and was looking for a way out that would not offend either BAPCO or his British friends; he [the Ruler of Bahrain] now proposed, in a letter of 9 June 1938, to give the "entire unallotted area except Hawar Islands and the three miles of sea around them" to BAPCO and to negotiate with PCL for the excepted area, including the Hawar Islands. He stated quite candidly that his reason for the decision was that he did not wish to

³⁶Memorial of Qatar, Ann. III.158, Vol. 7, p. 291.

³⁷Memorial of Qatar, paras. 6.76 *et seq.*

³⁸Memorial of Qatar, Ann. III.159, Vol. 7, p. 299.

³⁹Reply of Qatar, Ann. III.64, Vol. 3, pp. 391, 393.

⁴⁰Reply of Qatar, Ann. III.79, Vol. 3, pp. 469, 472.

endanger his oil revenues from BAPCO which would follow if PCL were introduced into the territory "except at Hawar"⁴¹, as he said.

29. The Political Agent (Weightman) recognized the implications of BAPCO's threat and reported to the Political Resident (Fowle) in his letter of 10 June 1938, that the Al Khalifa believed it was out of question to resist the threat made by BAPCO and that the British Government, they hoped, would appreciate this position. Weightman pointed out that, in offering PCL even a concession restricted to Hawar, the Ruler would be ignoring BAPCO's threats; he also indicated that the Ruler and his family seemed to think the allocation of Hawar to BAPCO might even result in the loss of his supposed "sovereignty" over Hawar⁴².

30. In another more detailed letter to the Political Resident on the same day (extracts from which are in the judges' folder at item No. 39), Weightman pointed out that if BAPCO's threat was carried out it would have devastating economic consequences for Bahrain, which had risen in a matter of two years from grinding poverty to undreamed of wealth, and that the British Government could not advise the Ruler to disregard it. He pointed out that the Shaikhs feared the possibility of a return to poverty and the loss of prestige that wealth had brought to Bahrain, the end of all their schemes of development, His Highness unable to indulge his twin passions of building and for extravagant generosity, and his family deprived of their almost unlimited pocket money. Weightman went on to say that no one could doubt the Ruler's original wish to discharge a debt of gratitude to the British Government and to give proof of his loyalty by offering a British company a substantial part of his territories, while at the same time "pleasing" the American company which had succeeded, where an English company had failed, in providing him with great wealth. Weightman felt however that these admirable sentiments: "*must now yield to the knife which the Ruler and his family saw at their throats*"⁴³. The Court will also wish to note the additional element of pre-judgment involved in Weightman's bland assumption in this letter that the Hawar Islands constituted at this time (June 1938) a substantial part of the Ruler of Bahrain's territories.

⁴¹Reply of Qatar, Ann. III.72, Vol. 3, p. 437.

⁴²Reply of Qatar, Ann. III.73, Vol. 3, pp. 441, 445.

⁴³Reply of Qatar, Ann. III.74, Vol. 3, p. 447.

31. Despite BAPCO's threat, however, Weightman had not yet given up on Hawar and stated in his letter in words which are now on the screen:

"Hawar is a different matter. It seems impossible for the Al Khalifah to consider Hawar without at the same time wondering how much they can annoy or perhaps damage the Al Thani of Qatar. His Highness has this absurd conviction that, whatever 'the engineers' may say, there is oil in Hawar, and if the Company operating in Qatar can produce oil from Hawar for Bahrain it will give him immense, if childish, pleasure. He does not want to offer Hawar in any case to the Americans [Bapco], . . ." ⁴⁴

The Court will not miss the additional motivation of the Ruler of Bahrain's extreme hostility to the Al Thani of Qatar.

32. Weightman went on to state that BAPCO had indicated Hawar was of no interest to them from the point of producing oil and concluded: "On the whole, I imagine His Highness would be quite safe in giving Hawar to [PCL], if they can arrange terms." A clear and an express assumption by Weightman, only three weeks after inviting the Ruler of Qatar to provide evidence of his ownership of Hawar, and a week after forwarding the Ruler's response to Fowle for consideration ⁴⁵ that it is the Ruler of Bahrain who will be "giving" Hawar to PCL.

33. The Political Resident agreed with Weightman and, on 19 June 1938, recommended to the India Office ⁴⁶ that the British should approve the Ruler of Bahrain's decision to open negotiations with PCL for the Hawar Islands, and with BAPCO for the rest of the unallotted area. Fowle, who now became actively engaged in the process of securing the Hawar Islands for PCL from the Ruler of Bahrain, was at the same time, conducting the so-called "arbitration" on the ownership of Hawar, for on the very next day, 20 June 1938, he forwarded what he characterized as the Ruler of Qatar's "detailed claim" to the Secretary of State for India. He proposed that this should be given to Bahrain, and what he called Bahrain's "counter-claim" obtained ⁴⁷. How Fowle was able to reconcile in his own mind, his two conflicting roles of: (a) advising the India Office on how to persuade the Ruler of Bahrain to conduct the oil negotiations for a concession over Hawar and (b) supervising the enquiry into the ownership of Hawar as between Bahrain and Qatar, defies

⁴⁴*Ibid.*, pp. 455-456.

⁴⁵Memorial of Qatar, Ann. III.159, Vol. 7, p. 299.

⁴⁶Reply of Qatar, Ann. III.75, Vol. 3, p. 459.

⁴⁷Memorial of Qatar, Ann. III.161, Vol. 7, pp. 311-314.

comprehension. Indeed, the only way he could do so was to treat the enquiry as a charade designed simply to "rubber-stamp" the provisional decision of 1936.

34. Next, at a meeting at the India Office on 7 July 1938⁴⁸, it was decided in the light of BAPCO's threat, to recommend that the Ruler of Bahrain postpone the concession negotiations. Belgrave, who was present for a part of the meeting, reported that the Ruler and his family were now in favour of closing a deal with BAPCO and were prepared to "give" Hawar to PCL.

35. The Ruler of Bahrain was not only firmly opposed to any postponement but in October 1938, informed Weightman that he no longer wished to offer even the Hawar Islands to PCL⁴⁹.

36. On 18 October 1938, Weightman wrote again to Fowle, to say his opinion had gradually been hardening that the unallotted area ought to go to BAPCO, that the Ruler and his advisers were now quite definite about this and that he feared the gravest repercussions if the British were to obstruct them. Weightman therefore posed what he considered to be the main and most important question, that of British relations with Bahrain and asked: "Is it sound, save for the reason of the most extraordinary urgency, to imperil our friendship with the one loyal Sheikhdome in the Gulf?"⁵⁰

37. But now Fowle took the view, in a letter of 3 November 1938 (which is in the judges' folder at item No. 40) to the Secretary of State for India — for what appears to be the first time — that the British Government *should insist* that a concession over Hawar be granted to PCL. He points out in this letter that: "It will be seen that the Shaikh now does not even wish to give Hawar to [PCL]. I am *not* of the opinion that we should accept this. . ." ⁵¹

38. Mr. President and Members of the Court, I would like to draw your particular attention to the reason he then gives for his views. He states, in words which are now on the screen: "Hawar geographically is outside the Bahrain area and adjoining Qatar, where Petroleum Concessions Limited already have a concession and in fairness therefore it should go to them."⁵²

⁴⁸Reply of Qatar, Ann. III.79, Vol. 3, p. 469.

⁴⁹Reply of Qatar, Ann. III.78, Vol. 3, pp. 479, 482.

⁵⁰Reply of Qatar, Ann. III.79, Vol. 3, p. 487

⁵¹Reply of Qatar, Ann. III.80, Vol. 3, p. 493, pp. 496-497.

⁵²*Ibid.*

39. So Fowle was now giving reasons for his opinion which were similar to those given by British officials in 1933, as well as by Rendel of the Foreign Office in 1937, in support of Qatar's title to the Hawar Islands. He was doing so, however, to support PCL's claim to a *Bahraini* concession covering the Hawar Islands and not Qatar's ownership of the Hawar Islands! He advised, accordingly, that the British Government should inform the Ruler that it agreed to his proposal, provided Hawar was allotted to PCL *but not otherwise*. It may be asked: what was happening in the so-called "arbitration" when Fowle was making this recommendation on the firm assumption that Hawar was within the gift of the Ruler of Bahrain to "give" to PCL? Bahrain was still to submit its so-called "counter-claim", which it actually submitted on 3 January 1939⁵³ (two months later). Yet, ironically, Fowle, in his letter of 3 November to the Secretary of State which I have just referred to, also mentions, as if in passing, that in connection with the ownership of Hawar he would enquire from the Political Agent whether any reply had been received from the Shaikh of Qatar. He appeared to be unaware that what was then awaited was Bahrain's "counter-claim", had forgotten that, as I have shown, he had already seen and sent the Ruler of Qatar's "detailed claim" to the India Office on 20 June that year and seemed hardly to regard events concerned with the "arbitration" as of any significance⁵⁴.

40. It will be seen therefore that although at this time the so-called "arbitration" in respect of sovereignty over Hawar was, in theory at least, proceeding apace, the attention of all concerned was on how to get, from the Ruler of Bahrain, the grant of a concession over the Hawar Islands for PCL. No one was waiting in London or Bahrain in breathless suspense for the result of the arbitration before continuing the concession negotiations.

41. On 9 January 1939, Fowle sent a telegram to the Secretary of State for India pressing his earlier recommendation and stating that the British "declaration" to the Shaikh of Bahrain that Hawar should be allotted to PCL should be conveyed to him immediately⁵⁵. This again was on the basis that Hawar was to be "given" by the Ruler of Bahrain. And this was at the stage when

⁵³Memorial of Qatar, Ann. III.174, Vol. 7, p. 371.

⁵⁴*Ibid.*

⁵⁵ Reply of Qatar, Ann. III.81, Vol. 3, p. 499.

Bahrain's "counter-claim" had been forwarded to the Ruler of Qatar, whose comments thereon were awaited⁵⁶.

42. The Secretary of State for India nevertheless also acted on Fowle's advice. When the Ruler asked specifically whether the British Government had any political objection to his granting a concession to BAPCO over the whole of his territory, the Secretary of State stated, in a telegram of 13 January (which is also in the judges' folders at item No. 41), that the Ruler might be assured whatever conclusions he arrived at as a result of negotiations, would not affect the goodwill of His Majesty's Government; but that he should be informed of the British Government's view regarding the Hawar Islands that, to quote his words (now on the screen)

"owing to the contiguity of these Islands to Qatar where an oil concession is being operated by PCL the grant of concessional rights to [BAPCO] in Hawar would be open to objection and His Majesty's Government consider it would be appropriate at least to allow PCL the opportunity to acquire concessional rights therein".

Here then, Mr. President and Members of the Court, was yet another view being expressed, this time by the highest British authority involved, that because of their *contiguity* to Qatar, the Hawar Island *concession* should go to PCL. No one seemed to want to say that because of the very same *contiguity*, the Islands were actually part of Qatar. In any event, the telegram went on to state:

"His Highness should however be assured that in informing him of their views in regard to grant of a concession in Hawar, His Majesty's Government are not in any way *prejudicing* the question of sovereignty over Hawar Islands. The choice of PCL rather than [BAPCO] as concessionaires could not *adversely affect* his claim to the Islands."⁵⁷

43. No one bothered to remind the Secretary of State, who would no doubt have had many other matters of State to deal with, that the question of ownership of Hawar was pending with His Majesty's Government. It had clearly become a firm assumption by then that the so-called "arbitration" would formally deliver the Hawar Islands to the Ruler of Bahrain. The Political Agent duly informed the Ruler of the British Government's views on 15 January 1939⁵⁸ although Qatar's response to Bahrain's so-called "counter-claim" was still awaited.

⁵⁶Memorial of Qatar, Ann. III.177, pp. 393-396.

⁵⁷Reply of Qatar, Ann. III.84, Vol. 3, p. 515.

⁵⁸Reply of Qatar, Ann. III.86, Vol. 3, pp. 525, 528.

44. The Ruler of Bahrain must have felt quite intimidated, for he now changed his mind yet again and invited from PCL an offer covering the Hawar Islands alone. But at this same time, he also enquired of BAPCO whether its offer for the whole unallotted area would be affected if the Hawar Islands were to be excluded⁵⁹. At this point, BAPCO, who had recently submitted a revised bid with improved financial terms, delivered its second all-important threat, stating in effect that it must also have Hawar. At a meeting on 17 January 1939, BAPCO warned that its offer would be withdrawn if the area were to be divided. BAPCO's representative, one Mr. F. A. Davies, stated at the meeting that he was astounded at the enquiry because "all through the present negotiations, the whole of the area has been under discussion and there had been no mention of excluding Hawar . . ." The Ruler attempted to explain that he had merely excluded Hawar in order "to prevent complications and difficulties in the future which might arise *owing to the proximity of Hawar to the PCL concession*" [in Qatar]. He tried to argue that "Hawar was a very small island and very far away and that its loss to the company would not cause them any material loss". But Davies would have none of it. He explained that BAPCO did not want another company to hold an oil concession anywhere within the Ruler's territories because if two companies held a concession in so small a country it would cause difficulties and misunderstandings⁶⁰.

45. On 6 February 1939, in a letter to the Political Agent signed by all the Bahrain Sheikhs, as well as by Belgrave, they began by expressing their relief "to know that their decision about the oil concession will not affect their known rights over the Hawar Islands", then reaffirmed their reliance "on the justice and wisdom of the British Government" and stated that they were sure that the validity of their claim would be recognized. The letter then went on to draw attention to BAPCO's threat and to state that BAPCO's offer for "the whole area, including Hawar" was financially more advantageous to Bahrain than the alternative of dividing the concession area into two; but that before making a final decision, the Sheikhs sought the advice of the British Government⁶¹.

⁵⁹*Ibid.*

⁶⁰Reply of Qatar, Ann. III.85, Vol. 3, p. 519.

⁶¹Reply of Qatar, Ann. III.87, Vol. 3, p. 529.

46. As Bahrain states in its Counter-Memorial, this was the stage at which "Britain realised that its hands were tied"⁶².

47. Reporting to the Political Resident on 12 February 1939⁶³ (a copy is in the judges' folder as item No. 42), the Political Agent (Weightman), in a very long letter, expressed the view that it was no longer possible for the British Government to press the Ruler of Bahrain to grant Hawar to PCL. Weightman was thus continuing to assume Bahrain's ownership of Hawar. In his letter, Weightman set out the probable consequences if the British Government were to insist that the Ruler of Bahrain should grant Hawar to PCL. He felt that since details of the negotiations would inevitably become public property, the grant of a concession for Hawar to PCL on British advice would be disastrous to the British position in Bahrain and in the Gulf, as well as to the Shaikh and his administration and indeed to British prestige more generally. He went on to say that it required little imagination therefore to realize the devastating effect of the almost inevitable criticism, if His Majesty's Government were to insist on Hawar going to PCL, that the British had served their own interests at the cost of over £1 million to the Shaikh of Bahrain. He feared that the effect of hostile propaganda which might be based on such a statement would be incalculable. He therefore concluded that it was no longer possible, without incurring the gravest risk to the prosperity of Bahrain and, in direct consequence, to the future good relations between the British Government and the Bahrain Shaikhs, to exert pressure to obtain Hawar for PCL from the Ruler of Bahrain.

Weightman ended his letter with an expression of profound distress, saying:

"It is distasteful to be compelled to recommend the withdrawal of the support *hitherto afforded* to a partially British Company in its attempts to obtain a *footing in Bahrain*. Nevertheless it seems inevitable to me that commercial advantages must yield to the over-riding interests of His Majesty's Government and of the Bahrain State."

48. And what about the so-called arbitration on the ownership of Hawar? Weightman certainly was not giving it the slightest thought for he was expressing his view, which I have just mentioned, while the Ruler of Qatar's response to Bahrain's "counter-claim" was still awaited.

⁶²Counter-Memorial of Bahrain, para. 281.

⁶³Counter-Memorial of Qatar, Ann. III.47, Vol. 3, p. 265, pp. 272-274.

49. Nowhere in this important letter is there even a hint, far less a suggestion that the oil companies be reminded that the decision on Bahrain's ownership of the Hawar Islands was not yet final.

50. If further evidence was needed to show that on the question of ownership of the Hawar Islands, by now "Britain's hands were tied", it came in a response to Weightman's final proposal in the same letter. He suggested an alternative to an unconditional approval of the concession to BAPCO; and that was, that while BAPCO might be allowed to obtain a concession for the whole unallotted area, an express condition could be imposed that no operations would be conducted in Hawar until such time as the Ruler, acting on the advice of the British Government, might pronounce them unobjectionable.

51. The Political Resident (Fowle), in a letter of 14 February 1939 to the Secretary of State, which is also in the judges' folder at item No. 43, while generally approving Weightman's views, and stating that the only course open to His Majesty's Government was *to permit the Shaikh of Bahrain to include Hawar* in BAPCO's concession, rejected Weightman's suggestion that BAPCO should not work Hawar. This, he said, was because, in words on the screen now: "it would be difficult to give adequate reasons to the Shaikh or [BAPCO] *why, having obtained Hawar in their concession, they should not work it*"⁶⁴. Accordingly, BAPCO was later duly granted a concession covering Bahrain's unallotted area in which Hawar was also included.

52. Mr. President, Members of the Court, I respectfully submit it is impossible to escape the conclusion that by February 1939, while supposedly conducting an "arbitration" in respect of the ownership of Hawar Islands and two months before they were to assess the evidence and make their recommendations on which the British decision of 11 July 1939 was based, both Fowle and Weightman were unreservedly and unequivocally already acting on the basis that the Hawar Islands belonged to Bahrain. The Court will have noticed that during the entire period of the negotiations for a concession covering Bahrain's unallotted area from 1936 onwards, the fact that the British Government had arrogated to themselves the highly responsible duty of making an

⁶⁴Reply of Qatar, Ann. III.88, Vol. 3, pp. 539, 542.

objective decision in respect of the ownership of the Hawar Islands, was never regarded as a fundamental element in the equation.

53. Accordingly, on 22 April 1939, when Weightman sat down to write⁶⁵ his analysis of the evidence on whether the Hawar Islands belonged to Bahrain or Qatar, he appears in retrospect to have been engaging in nothing short of a hypocritical farce. To borrow Bahrain's terminology once again, by then, Britain's hands were already tied. There was accordingly never any question of Weightman, Fowle or the British officials in London rendering any objective decision in what Bahrain persists in calling an "arbitration". There was therefore no legal basis for the "decision" of 11 July 1939 nor, in the absence of examination of any evidence, for the provisional decision of 9 July 1936 in reversing the earlier British views and holding in favour of Bahrain's claim of sovereignty over the Hawar Islands.

54. Any objective authority on conditions in the Gulf, when confronted with the circumstances surrounding the British Government's decision of 11 July 1939, in favour of Bahrain's claim to the Hawar Islands, would have concluded, as indeed did Prior, who had spent many years in Bahrain and soon became the Political Resident himself, when he said only a few weeks after the decision had been taken, that it involved a major miscarriage of justice. It is to Prior's credit that he made a sincere attempt to have it rectified; but his efforts, and those of Alban, came to nothing, not because their superiors were convinced that Prior and Alban were in error, but rather because their superiors were, not unnaturally, very reluctant to reopen a highly questionable decision and risk serious embarrassment. The Court is now in a position to put the record straight and to restore to Qatar what was wrongfully taken from her in 1939.

Mr President, that concludes my presentation. I would be grateful if you would give the floor to Sir Ian Sinclair for his presentation. Thank you very much for the patience with which you have heard me.

The PRESIDENT: Thank you very much Mr. Shankardass. Je donne maintenant la parole à Sir Ian Sinclair.

⁶⁵ Memorial of Qatar, Ann. III.195, Vol. 7, p. 497.

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

1936 AND 1939 BRITISH DECISIONS ON HAWAR

1. At this point in our debates, I would like to complete the presentation which Mr. Shankardass has just made on the oil concession history, by analysing the 1936 and 1939 British decisions on Hawar in the light of what the true record discloses.

2. Bahrain's claim of sovereignty over the Hawar islands rests first and foremost on the British Government's decision of 11 July 1939, conveyed to the Rulers of Bahrain and Qatar in parallel letters from the Political Resident dated 11 July 1939. The substance of the letter from the Political Resident to the Ruler of Qatar is as follows:

"I am directed by His Majesty's Government to inform you that, after careful consideration of the evidence adduced by you and His Highness the Shaikh of Bahrain, they have decided that these Islands belong to the State of Bahrain and not to the State of Qatar"¹.

The Court will note that no reason is given for the decision, thereby prompting the then Ruler of Qatar, in his dignified protest to the Political Resident of 4 August 1939² to express his astonishment at the news, indicating that he had:

"tried to find the cause for what His Majesty's Government have made the basis of their opinion on this question while I had provided them with proofs, evidences, and contexts which I thought were adequate to clarify the correct position and conditions of these Islands."

3. Mr. President, I have started at the end of the first phase of this sordid and indeed shameful story because I would wish the Court to pay close attention to the "careful consideration" which the British Government supposedly gave to this contentious issue between 1936 and 1939. I say that the story is "sordid and indeed shameful" because — and this is what is shameful — it shows some British administrators in the Gulf, and, to a lesser extent, in London, behaving in a dubious and indeed reprehensible manner.

The principle of consent

4. Before I begin to analyse the events of 1936, however, I should say something about the relevance of the principle of consent by the Rulers of the Sheikhdoms in the Gulf to the

¹Memorial of Qatar, Ann. III.209, Vol. 8, p. 41.

²Memorial of Qatar, Ann. III.211, Vol. 8, p. 49.

determination by the British Government of their boundaries *inter se* or with other States, such as Saudi Arabia, or, indeed, of title to territories in dispute between two of the sheikhdoms themselves. My learned colleague Professor Salmon has already touched very briefly upon this aspect of the case in the analysis which he made, in his opening general statement, of what, if any, role the principle of *uti possidetis juris* should play in the present case. Professor Salmon reminded us that, by the 1930s, the two sheikhdoms of Bahrain and Qatar, which the British Government was happy even at that time to describe as "States in special treaty relations with the British Government", were sufficiently independent for the consent of their Rulers on the determination of boundary or territorial questions to be required if they were to be bound by that determination.

5. In fact, of course, Mr. President, there is strong support for this position in the Award of 19 October 1981 of the Court of Arbitration in the *Dubai/Sharjah Border* case. Both Dubai and Sharjah were, in 1956 and 1957, Emirates in the Gulf forming part of what were at the time called the Trucial States. These were small sheikhdoms on the Trucial coast which were also States in special treaty relations with the British Government, similar to the relationship which Bahrain and Qatar had with the British Government at the time. In 1956 and 1957, the then Political Agent in the Trucial States, Mr. Tripp, made a series of decisions purporting to lay down the land (but not the maritime) boundary between the two sheikhdoms. The Rulers of Sharjah and Dubai had given advance undertakings not to dispute or object to any decisions made by the Political Agent regarding the question of the land boundaries between Sharjah and Dubai. This is, of course, in stark contrast to the position in the present case where the Rulers of Bahrain and Qatar were neither requested to give their consent to the determination by the British Government of their dispute as to sovereignty over the Hawar Islands, nor did they in fact give it. It is interesting nevertheless that the Court of Arbitration, in the *Dubai/Sharjah* case, under the heading "The necessity for the Emirate's consent" in the Award, reached the following general conclusion:

"It is therefore clear that no treaty authorised the British authorities to delimit unilaterally the boundaries between the Emirates and that no British administration ever asserted that it had the right to do so. The Court has therefore come to the conclusion that the consent of the Rulers concerned was necessary before any such delimitation could have been undertaken."³

³Memorial of Qatar, Ann. III.295, Vol. 8, p. 477.

6. In the present case, it is equally clear that no treaty authorized the British Government to determine unilaterally the dispute between Bahrain and Qatar as to their respective claims of sovereignty over the Hawar Islands and that no British administration ever asserted that it had the right to do so. Bahrain has of course sought to argue that the implied consent of both Rulers was given through their participation in the processes proposed by the British authorities in the Gulf in 1938 for the "enquiry" into the conflicting claims of Qatar and Bahrain; and that this operated as a type of *forum prorogatum*. But, you may ask, implied consent to what? Certainly not to the designation of the British Government as arbitrator in an agreed process of arbitration, as was the position in the *Arbitral Award Made by the King of Spain* case, which is cited at paragraph 393 of the Counter-Memorial of Bahrain. At most, it could be argued that the Ruler of Qatar was content to have the Political Agent in Bahrain investigate his serious complaint about the unlawful Bahraini activities in 1937 in and in relation to Hawar. This complaint had of course been conveyed directly to Weightman by the Ruler of Qatar in February 1938, but had been treated so disdainfully that it was not even reported in writing to the Political Resident (Fowle) until 15 May 1938⁴. But of course this complaint was never treated seriously, since the British Government had already, without informing the Ruler of Qatar, made a provisional decision in July 1936 in favour of the Bahraini claim to sovereignty over Hawar, and Weightman, together with other British officials in the Gulf and in London had, by early 1938, as you will have already have gathered from Mr. Shankardass, completely prejudged the final decision in favour of Bahrain.

7. These facts in themselves are sufficient to refute the alternative Bahrain argument that the Ruler of Qatar was somehow obliged by the Agreement of 12 September 1868 to refer to the Political Resident any "difference of opinion" with Bahrain arising as to any question. The fact remains that the Ruler *did* refer his complaint, that Bahrain had unlawfully occupied the Hawar Islands, to the Political Agent, Weightman, in February 1938. And what happens? Weightman does not even deign to report this in writing to his superior (Fowle) until 15 May 1938, more than three months later. This demonstrates not only how lightly Weightman, as Political Agent, took his responsibilities in relation to Qatar, but also how contrived is this Bahraini argument when looked

⁴See Reply of Qatar, paras. 4.283 and 4.288-4.290.

at in the light of the events that actually occurred. The Ruler of Qatar *never* gave his consent to any process of "arbitration" by the British Government of the conflicting claims of Qatar and Bahrain to the Hawar Islands. This indeed is now openly admitted by British officials themselves. For example, Mr. Christopher Long of the Foreign Office, in his minute of 13 May 1964, which accurately summarizes some of the more important events between 1936 and 1939 concerning sovereignty over the Hawar Islands, states the following:

"Neither of the two Rulers was asked beforehand to promise his consent to the award, nor afterwards to give it. H.M.G. simply 'made' the award. Although it followed the form of an arbitration to some extent, it was imposed from above, and no question of its validity or otherwise was raised. It was quite simply a decision which was taken for practical purposes in order to clear the ground for oil concessions."⁵

8. So the Foreign Office accepted in 1964 that this was an "imposed" decision which the Ruler of Qatar had not promised in advance to accept; the clear implication is that, however it might be characterized, it could certainly not be regarded as binding.

**The evidence relied on by the British authorities to justify
the 1936 "provisional decision"**

9. If I may return to the events of 1936, one can see why PCL, pursuing their purely commercial interests, and anxious not to anger the Ruler of Qatar, may have wished to withhold from the Ruler of Qatar any knowledge of their oil concession negotiations with the Ruler of Bahrain which were predicated, of course, upon the assumption that the Hawar Islands belonged to the latter. It is less easy to understand why British officials in the Gulf deliberately failed to keep the Ruler of Qatar informed of the reopening of the oil concession negotiations in 1936 and of the formal claim by the Ruler of Bahrain in April 1936 to sovereignty over the Hawar Islands. Loch, still the Political Agent in Bahrain in early 1936, had at least flown over the Hawar Islands in 1934 and must have been aware from his own observation that the majority of the islands lay within a three-mile limit from the mainland coast of Qatar. Yet he spinelessly fails to draw this to the attention of the Political Resident in his letter to him of 6 May 1936, contenting himself with saying that "Hawar island . . . is a low, desolate looking place near to the mainland of Qatar"⁶.

⁵Reply of Bahrain, Ann. 2, Vol. 2, p. 4.

⁶Memorial of Qatar, Ann. III.106, Vol. 7, p. 27.

Loch also makes the following admission in the same letter to Fowle: "I do not know what Shaikh Abdullah bin Jasim of Qatar's views about the Island are." (*Ibid.*)

10. The Court will of course recall that, in 1936, Loch, as British Political Agent in Bahrain, also had responsibility for reporting on conditions in Qatar. Why then did he not sound out the Ruler of Qatar about his position with respect to the Hawar Islands? Presumably Loch feared that, if he were to do so, this would encourage the Ruler of Qatar to mount a competing claim to Hawar, thereby delaying yet again the resumption of the negotiations for a new concession covering Bahrain's unallotted area, which would now include the Hawar Islands. Better then not even to pose the question. But both Loch and Fowle must inevitably have been aware in 1936 that the Ruler of Qatar regarded the Hawar Islands as appertaining to him. After all, in the context of the 1935 offer of protection to the Ruler of Qatar against armed incursions into his territory by, for example, Ibn Saud, the 1934 reconnaissance of Qatar had overflown Hawar as part of the Ruler's territory, and, as both Mr. Shankardass and I have indicated in previous presentations, Loch had taken part in that reconnaissance. Loch also draws attention, in his letter of 6 May 1936, to the lack of any protest from the Ruler of Qatar about the activities of Bahrain subjects in Hawar. But this surely is to assume that there *were* activities of Bahrain subjects in Hawar prior to 1936. The Court has yet to hear a presentation by Mr. Shankardass on Bahrain's alleged pre-1936 *effectivités*. The fact is that the only so-called "evidence" for such activities is to be found in Belgrave's letter to Loch of 28 April 1936, advancing the Ruler of Bahrain's claim to the Hawar Islands; and we know how suspect Belgrave's assertions in that letter were at the time and still, indeed, are. Loch himself had not even sought to test what Belgrave was saying against other evidence undoubtedly available to him. He must, for example, have been aware that members of the Dowasir tribe who had gone into exile in Damman (Saudi Arabia) in 1923, some of them were still trickling back to Budeya in Bahrain as late as 1933⁷; and yet he seems to have accepted without question the proposition in Belgrave's letter of 28 April 1936 that "at least four of the larger islands [in the Hawar Group] are permanently occupied by [the Ruler of Bahrain's] subjects" (later to be identified as members of the Dowasir tribe), a proposition which Bahrain has now in effect had to withdraw in the light of the

⁷See Reply of Qatar, Ann. III.42, Vol. 3, p. 257, at p. 270.

clear evidence to the contrary. What sustains the charges of bias in favour of Bahrain and against Qatar over Hawar on the part of British officials in the Gulf, even as early as 1936, is the deliberate failure of Loch and Fowle even to investigate the so-called "evidence" in favour of Bahraini sovereignty over the Hawar Islands adduced in Belgrave's letter to Loch of 28 April 1936; and a real question mark must surely be raised in the mind of any objective investigator into the facts when he sees that Belgrave, in his diary entry for 23 April 1936, states:

"Discussed oil and the new agreement and especially the question of our right to the Hawar Group of islands which the Sheikhs fear the Agency will not allow. I think myself it is quite incontestable."

That the Bahrain Sheikhs should fear the British Political Agency would turn down a claim by the Ruler of Bahrain to the Hawar Islands is understandable. But why is Belgrave so confident that such a claim (to be made only five days later) will be backed by the Agency? Could it be that he had advance knowledge or at least a hint of what the reaction of the Agency to such a claim was likely to be? What other explanation is there, given, as Belgrave must have known, the very shaky grounds for a Bahraini claim to the Hawar Islands if those grounds were to be subjected to serious scrutiny?

11. That no real effort was made at the time to test the veracity of the assertions made by Belgrave in his letter to Loch of 28 April 1936, is clear from the record. Loch himself made no attempt to do so. Without giving any reasons, he is inclined to think that there is real substance in the Ruler of Bahrain's claim to the Hawar Islands while seeking to protect himself against any charge of partiality by making this view "subject to any past correspondence which is not available to me". He also protests his lack of knowledge of the Ruler of Qatar's views about Hawar. All this is very defensive and unconvincing. Nor does the Political Resident's letter to the Secretary of State for India of 25 May 1936 carry any greater conviction. No reference is made in that letter to the views expressed as recently as 1933 and 1934 by senior officials in London and the Gulf as to the territorial extent of the Bahrain Islands. Mr. Shankardass has already addressed you on the limited extent of Bahrain and, more precisely to the point, on the documentary evidence from 1933 and 1934 which demonstrates that, in the context of the early history of the oil concession negotiations, British officials in the Gulf and indeed in London entertained no doubt that the Hawar Islands appertained, not to Bahrain, but to Qatar.

12. The Court will note that Laithwaite's letter to Starling of 3 May 1933⁸, in which he describes the Bahrain archipelago as consisting of the island of Bahrain and the adjoining islands of Muharraq, Umm Na'assan, Sitrah and Nabi Salih, was copied to Bahrain on 19 May 1933, as is apparent from a statement to this effect at the foot of the first page of the letter. So it must have been on the Agency files which Loch failed to consult (or indeed deliberately overlooked) in 1936. Laithwaite's letter to Starling of 3 May 1933 also seems to have been the source of the third point in the Acting Political Resident's telegram of 23 July 1933 to the Secretary of State for the Colonies. And it will be remembered that Loch was the Acting Political Resident at this time, and in this telegram Loch argues, *inter alia*:

"It would however be prudent to name islands i.e. Bahrain Island, Muharraq and Sitrah (Umm Na'asan and other islets near main island might be included if question is raised), otherwise controversy may arise over Hawar island and Bahrain claim to certain places on west coast of Qatar peninsula."⁹

A copy of this telegram must also have been on the Political Resident's files in Bushire in 1936. But Fowle makes no reference to it, or indeed to any other evidence whether deriving from Lorimer or other early travellers such as Bent in 1889 and Belgrave himself in 1928. The Court will recall that Mr. Shankardass, in his earlier presentation on the limited extent of Bahrain, has already drawn attention to the fact that Belgrave himself, in an article published in the *Journal of the Central Asian Society* in 1928, gives a description of Bahrain which most clearly does not include Hawar.

13. Members of the Court may care to compare Belgrave's 1928 description of the geographical extent of the principality of Bahrain with the content of his letter to Loch of 28 April 1936, written on behalf of the Ruler of Bahrain and putting forward the Ruler's claim to the Hawar Islands. It is as if Belgrave had suddenly remembered that the Hawar Islands also belonged to the Ruler, notwithstanding that he had totally forgotten to mention them as part of the principality of Bahrain in an article published by him only eight years previously. The 1936 Bahraini claim to sovereignty over the Hawar Islands is even more implausible when no mention whatsoever of the Hawar Islands can be found in any of the Annual Reports of the Government of Bahrain prior to that for 1937-1938 or in any of the monthly Bahrain Political

⁸Memorial of Qatar, Ann. III.84, Vol. 6, p. 431.

⁹Memorial of Qatar, Ann. III.85, Vol. 6, p. 437.

Diaries prior to an entry in the Political Diary covering the period from 1 to 15 April 1938, and recording a visit by Weightman to Hawar on 15 April 1938. Is it really conceivable that there should be no reference to acts of administration of the Hawar Islands by or on behalf of the Ruler of Bahrain in any of the official Annual Reports published by the Government prior to the Annual Report for 1937-1938 if, as Bahrain alleges, the Hawar Islands had been regularly occupied by members of the Dowasir tribe and administered by Bahrain for a period of some 150 years or so? Is it also really conceivable that if the connection of the Ruler of Bahrain with the Hawar Islands were as Bahrain alleges it to have been before 1936, Belgrave himself should have made no mention of the islands in his private diaries prior to the entry for 23 April 1936? Finally, would the Sheikhs of Bahrain have entertained any doubts about Bahrain's sovereignty over the Hawar Islands in 1936 had the situation been as Bahrain now professes it to have been? The answer to all these questions must surely be in the negative.

14. Bahrain of course has sought to argue that the "provisional decision" reached on 9 July 1936 in favour of the Bahrain claim to the Hawar Islands was nothing more than an "advisory opinion" given to PCL. But, the Court will certainly be aware, this is grievously to underestimate the significance and, even more, the practical effect of the "provisional decision" of 9 July 1936. As Mr. Shankardass has reminded you, it was immediately conveyed to Belgrave (but not of course to the Ruler of Qatar) on 10 July 1936, with the caveat that a final ruling could only be given after it had been ascertained whether the Ruler of Qatar had a claim to the islands and hearing it if he had one. Despite this caveat, Belgrave indicated that the Ruler of Bahrain would now include the Hawar Islands in the list of his possessions to be given to PCL, and no objection was taken to this by the India Office¹⁰. In consequence, all future oil concession negotiations covering Bahrain's "unallotted area" were conducted on the basis that the Hawar Islands formed part of that area, so that it was for the Ruler of Bahrain alone to grant a concession which would include the islands. A further consequence was that, from July 1936 onwards, the competent British officials in the Gulf and in London acted on the confident assumption that the Hawar Islands belonged to Bahrain. Events were to prove the accuracy of the cynical observation which I

¹⁰Memorial of Qatar, Ann. III.111, Vol. 7, p. 51.

will render in its original language: "*Rien ne dure que le provisoire*", which I will translate as: "It is only the provisional which endures."

Possible reasons for British "provisional decision" in 1936

15. The question still arises: why did the British Government act with such extreme haste in supporting Bahrain's claim to the Hawar Islands in 1936, even if only on a supposedly provisional basis? The British authorities were clearly anxious that the oil concession negotiations, which had been suspended in August 1933 at the request of BAPCO should be resumed as soon as possible. Between 1933 and 1936, Bahrain suffered a major financial crisis. In a letter of 29 April 1933 to the Political Agent, covering a copy of the Bahrain Budget for 1933, Belgrave states that "the financial position of the State causes me very grave concern"; and that "the figures for the last year reveal a very disastrous condition of affairs"¹¹. Reductions in public expenditure, including reductions in the Civil List, had to be made. The position did improve slightly over the next two years but it was still precarious in 1936. Obviously, the British Government must have been anxious about the parlous state of Bahrain's finances in the mid-1930s; and the prospect that the Ruler of Bahrain would receive substantially increased revenues from oil production within the framework of a new concession covering *inter alia* the Hawar Islands as part of Bahrain's "unallotted area" would certainly have been agreeable to the British Government at that time. Bahrain was the equivalent of the "jewel in the Crown" of the British-protected Sheikhdoms in the Gulf, and a vital staging-post on the increasingly significant air route to India. Qatar does not suggest that this was the only factor prompting the British Government to favour an early resumption of the oil concession negotiations covering Bahrain's "unallotted area"; but it seems highly likely to have been an important factor.

16. Mr. President, my task this morning in explaining to you, and the other Members of the Court, the "careful consideration" which the British Government gave to the dispute between Qatar and Bahrain as regards title to the Hawar Islands between 1936 and 1939 has been rendered immeasurably easier by the full account which Mr. Shankardass has just given to you of the history of the negotiations for an oil concession covering the so-called "unallotted area" of Bahrain during

¹¹Reply of Qatar, Ann. III.42, Vol. 3, p. 257.

this same period. It is, I would submit, the interaction between these two separate but related exercises which sheds light on the complex manoeuvring of the British authorities in the Gulf and in London to satisfy simultaneously the need to promote Britain's overall petroleum policy interests in the Gulf and the acquisitive demands of the Ruler of Bahrain; but, as I will demonstrate — I fear I will not be able to demonstrate it now before next Monday morning — this complex manoeuvring was to be pursued wholly at the expense of the rights and interests of the Ruler of Qatar.

17. So much for events up to and including 1936.

And at this point Mr. President, it is perhaps appropriate for me to interrupt my presentation. I realize that I will not be able to address you again until next Monday, but I would certainly wish and hope that I could then resume and complete my presentation. Thank you, Mr. President.

Le PRESIDENT: Je vous remercie, Sir Ian. La séance de la Cour est terminée. Nous reprendrons nos travaux le lundi 5 juin, à 10 heures, pour écouter la suite de votre exposé.

L'audience est levée à 13 heures.
