

CR 2000/22

International Court  
of Justice

THE HAGUE

Cour internationale  
de Justice

LA HAYE

YEAR 2000

*Public sitting*

*held on Wednesday 28 June 2000, at 10 a.m., at the Peace Palace,*

*President Guillaume presiding*

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

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VERBATIM RECORD

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ANNÉE 2000

*Audience publique*

*tenue le mercredi 28 juin 2000, à 10 heures, au Palais de la Paix,*

*sous la présidence de M. Guillaume, président*

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

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COMPTE RENDU

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*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

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*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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Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je donne la parole pour l'Etat de Bahreïn à sir Elihu Lauterpacht.

Sir Elihu LAUTERPACHT:

## BAHRAIN'S TITLE 1868 ONWARDS

### Introduction

1. Mr. President and Members of the Court, it falls to me to examine a number of matters that relate to the original title of Bahrain to the Hawars and Zubarah.

2. The order in which I shall deal with these items is set out in the outline of the argument that is to be found at tab 123 of the judges' folders.

3. Only if the Court rejects the *uti possidetis* argument and then, in relation to the Hawars, also rejects the *res judicata* argument will it be necessary for the Court to turn to the fundamental question put by me in my opening speech:

"How will Qatar discharge the burden of proof that undoubtedly rests upon it . . . of showing how, where and in what degree Bahrain lost its title to the peninsula including, more particularly, Zubarah and the Hawars?" (CR 2000/11, p. 16, para. 19.)

4. The short answer, said Mr. Bundy in his speech on 20 June:

"is that it was by virtue of the 1868 Agreements that Bahrain was obliged to stay in its island and respect the maritime peace, while the Al-Thani ruler of Qatar was, for the first time, recognized as a sovereign in his own right possessing territorial rights in the Qatar peninsula. So, whatever vestige of a Bahrain presence in Qatar had existed prior to 1868 . . . that presence was terminated by the 1868 Agreements." (CR 2000/17, p. 43, para. 5.)

Shortly afterwards, Mr. Bundy asserted that "Bahrain, in its first round, scarcely mentioned the 1868 Agreements . . ." (CR 2000/17, p. 43, para. 7).

5. Well, it may be asked, why should Bahrain have done so? As Mr. Paulsson pointed out in his speech in the first round, Qatar has been constantly changing its position regarding the date at which it first became a State (CR 2000/11, p. 47, paras. 22-25). In the written pleadings, when Qatar thought it could rely on the 82 forged documents to counter evidence of Bahrain's position in the Hawars, Qatar was content to put the date of statehood at some time after the Second World War. Once it decided not to rely on the forged documents, Qatar had to find some other basis on



which to contest Bahrain's title. So the date of its own statehood began creeping backwards. As expressed in these oral proceedings, we have heard Professor Salmon put that date at the "beginning of the twentieth century" (CR 2000/5, p. 28, para. 15(a); Mr. Bundy then put it "roughly at 1870" (CR 2000/7, p. 9, para. 7) and with Professor David it crept back to "the middle of the nineteenth century" (CR 2000/8, p. 53, para. 12). Now, in Qatar's second round, Mr. Bundy has firmly cemented Qatar's origin as a State to a foundation in the 1868 Agreements. Well, Mr. President and Members of the Court, Mr. Bundy having at this late stage thus elevated the 1868 Agreements to a position of dominating prominence in Qatar's argument, I am obliged, in response to what has been said, to begin by examining quite closely the texts of the two 1868 Agreements. As I shall hope to show you, they do not do either of the things that Qatar says they do.

#### **The 1868 Al-Thani Agreement**

6. Let me take first, the Agreement with the Al-Thani. Mr. Bundy has asserted that by virtue of the 1868 Agreement "the Al-Thani Ruler of Qatar was, for the first-time, recognized as a sovereign in his own right possessing territorial rights in the Qatar peninsula".

7. The English text of the so-called Qatar Agreement is to be found at tab 123 in the judges' folders and is also up on the screen. I regret that it is necessary for me to go over the whole text with you in order to prove a negative, in order to show what it does not say.

8. First, I must draw your attention to the title that has been given to the item by Aitchison, the editor of the authoritative collection in which the text appears. I hold Volume 11 of Aitchison in my hand, it has been a bible to all of us. The title of the text as it appears in Aitchison is: "Agreement of the Chief of El-Kutr (Guttur) engaging not to commit any breach of the maritime peace, — 1868". Now, contrary to the assertion in the speech of Mr. Bundy (CR 2000/17, p. 43, para. 6) the word "Chief" does not appear in the actual text of this document. Only in the title — the editor's addition — is any reference made to "the Chief" of Qatar. This is not surprising because, as the Court will see when I come to the next document, Mohamed Al-Thani was only one of a number of relatively minor Sheikhs referred to in this latter document on the eastern side of the peninsula.

9. We then have the introductory paragraph

"I, Mahomed bin Sanee, of Guttur [note please, 'of Guttur', not 'chief' of Guttur or anything like that] do hereby solemnly bind myself in the presence of the Lord, to carry into effect the undermentioned terms agreed upon between me and Lieutenant-Colonel Pelly, Her Britannic Majesty's Political Resident, Persian Gulf."

There is no reference here to sovereignty, so we proceed to the five substantive articles in which Mr. President, Members of the Court, our task is to find, if it can be found, the recognition of Qatar's sovereignty that counsel for Qatar has so repeatedly alleged is to be found there. But, first, please note that the undertakings given by Mohamed Bin Sanee were personal undertakings, limited to himself and did not extend to his successors. Lorimer noted the position as follows:

"The Government of India, recognizing that the agreement made in 1868 with Sheikh Jasim's father, by which Sheikh Muhammad [of Qatar] undertook not to make war by sea, could hardly, *on account of its personal character* and the subsequent assumption by the Turks of authority at Dohah, be regarded as binding on Sheikh Jasim . . ." (Emphasis added.) (Memorial of Qatar, Vol. 3, Ann. II.5, p. 217.)

A bit further on Lorimer continued thus:

"About the same time, Colonel Ross, the British Political Resident, proposed that Shaikh Jasim . . . should be compelled to acknowledge in writing the continued validity of the Agreement signed by his father in 1868, but the Government of India, being of opinion that proceedings to this end might bring about a difficulty with the Turks, ordered that a verbal assurance only should be obtained. This was done; and the renewal of his treaty obligations to abstain from war at sea and to refer his dispute with his neighbours to the British Resident appeared for a time to have a restraining effect upon this unruly Shaikh."

10. These personal undertakings all run, it should be observed, in one direction, from Mohamed Bin Sanee to the British. It seems impossible to extract from such a text any concession or recognition of sovereignty or independence by the British.

11. So let us return to the rest of the 1868 Agreement.

12. "*1st.* — I promise to return to Dawka [i.e. Doha] and reside peaceably in that port." That, of course, is the basis on which I said in my first intervention that this Treaty simply told the Sheikh to go home and stay there. It certainly says just that. But there is nothing there about sovereignty!

13. "*2nd.* — I promise that on no pretence whatsoever will I at any time put to sea with hostile intention, and in the event of disputes or misunderstanding arising, will invariably refer to the Resident." Again, no hint of sovereignty there! I take the third and fourth paragraphs together:

14. "3rd. — I promise on no account to aid Mahomed bin Khalifeh [that is the deposed Shaikh of Bahrain], or in any way connect myself with him." And

15. "4th. — If Mahomed bin Khalifeh falls into my hands, I promise to hand him over to the Resident." No sovereignty in either of those two articles either. So only one article remains in which to find the recognition of sovereignty that Qatar says is there.

16. "5th. — I promise to maintain towards Shaikh Ali bin Khalifeh, Chief of Bahrein, all the relations which heretofore subsisted between me and the Shaikh of Bahrein, and in the event of a difference of opinion arising as to any question, whether money payment or other matter, the same is to be referred to the Resident."

Well, Mr. President, I can see no recognition of Al-Thani sovereignty there. Indeed, there is the very opposite. Mohamed Al-Thani is promising to maintain all the relations which heretofore subsisted between him and the Sheikh of Bahrain. By Qatar's own admission in paragraph 5 of the Application in this case, the pre-existing situation was that the entire Qatar peninsula was a dependency of Bahrain. In the present proceedings Qatar has never denied the truth and relevance of its original admission. The 1868 Al-Thani promise was thus a promise to maintain the pre-existing dependency — the pre-existing dependency of Qatar upon Bahrain. So, if there is no recognition of Qatari sovereignty in Article 5, it is nowhere in the 1868 Agreement and counsel for Qatar is manifestly wrong in suggesting the opposite. Moreover, the whole of Qatar's case about the emergence of Qatar into sovereignty and the acquisition of title by it to the peninsula and the Hawars at that time vanishes into the sand.

17. But that is not the end of this demonstration of the subordinate status of Qatar in 1868. Earlier in the same volume of Aitchison's Treaties which I showed you a moment ago and in which the text of the 1868 Agreement is reproduced, there is a section which the editor calls "Narrative" — a rather matter-of-fact recital of material events, many of which are reflected in the treaty texts that follow. On page 193 there appears the following statement:

"Through the mediation of the Resident an agreement was also concluded between the Shaikh of Bahrain and the Shaikhs [note the plural] of the Qatar tribes, determining the amount of tribute annually payable by the latter and the manner of its payments."

The Narrative goes on to observe that "the tribute, which was only paid for two years, was discontinued when the Turks established themselves in Bida" (text also at Memorial of Bahrain, Vol. 2, Ann. 13, p. 160). The short life of this Agreement probably explains why its text was relegated by the editor to a footnote. But it is an event that did occur, the Court cannot neglect it because it provides further evidence of the limited standing of the Al-Thanis in 1868. It is reproduced at tab 124 of the judges' folders, and continues:

18.

"We, the undersigned Chiefs, all residing in the province of Qatar, do hereby solemnly agree and bind ourselves to pay Shaikh Ali bin Khalifah, Chief of Bahrein, the sum of money per annum heretofore paid by us to the Chiefs of Bahrein, as follows: this total sum to be paid by us to Muhammad bin Thani of Doha and by him to the Resident for delivery to the Agent of the Chief of Bahrein, at Bushire."

19. There then follows, as you can see, a list of seven payments, totalling 9,000 Krans, including one of 2,500 Krans to be paid "on account of Muhammed bin Thani (Chief of the Maadhid) and the Musallam tribe": not Chief of Qatar, not Sheikh of Qatar.

20. The text concludes thus:

"And we, the said Chiefs [note, all the Chiefs, including Muhammed bin Thani who was but one of them], understanding that the Bahreini Chief claims from us a total of 15,000 Krans per annum in lieu of the 9,000 as above set forth, we do hereby further agree to pay any extra sums not aggregating a total larger than 15,000, which the Resident after judicial investigation may decree."

This Agreement is also dated 13 September 1868.

21. If any further evidence were required of the limitation of the authority of Mohamed bin Thani, it is to be found in the statement of the same date by the British Political Resident in the Gulf, Col. Pelly, as follows:

"Be it known to all the Shaikhs and others on the Guttar Coast that Mohamed bin Saneé of Guttar, is returning with his tribe to reside at his town of Dawka, and has bound himself to live peaceably there and not to molest any of his neighbouring tribes." (Memorial of Qatar, Vol. 5, Ann. II.29, p. 89.)

So that the Court may see the very limited area to which all this activity relates, there is now on the screen (and in your judges' folders at tab 125) a map illustrating the location of the tribes who thus undertook to continue their payments to the Al-Khalifah. Unfortunately the map does not place the names of each tribe against the precise location but I am assured that those are the districts in which they were. All on the east coast of Qatar, not far from Doha.

22. The most generous — but still significantly restricted interpretation of this episode — is to be found in a report some 37 years later by Captain Prideaux. He wrote that at some time between 1851 and 1866 Sheikh Mahomed-bin-Thani

"was enabled to consolidate for himself . . . a compact little dominion containing the towns of Wakrah, Doha and Bida, the independence of which from Bahrain was practically [and I think that means in a practice, not formal sense, as has been seen] established and ratified by the Government of India in 1868, when a formal agreement was first taken from Shaikh Mohammed bin Thani" (Memorial of Bahrain, Vol. 3, Ann. 71, p. 357).

But that falls a long way short of recognizing the sovereignty of the Al-Thani over the Qatar peninsula including the north-west and the west of the peninsula, as well as the Hawars.

23. In this way, Mr. President and Members of the Court, the statement so confidently presented on behalf of Qatar regarding the effect of the 1868 Agreement between Britain and Qatar is shown to be totally incorrect. And that has far-reaching implications because, as will be seen, between that date and 1913 Qatar has advanced no material in purported support of the Al-Thani claims to sovereignty over the peninsula.

### **The 1868 Bahrain Agreement**

24. And so, I turn now to the second limb of Qatar's proposition regarding the effect of the 1868 Agreements. Having quite misleadingly represented that the 1868 Qatar Agreement recognized "the Al-Thani ruler of Qatar . . . as a sovereign in his own right possessing territorial rights in the Qatar peninsula" (CR 2000/17, p. 43, para. 5), Mr. Bundy then went on to say that I had got things backwards and that it was "the Ruler of Bahrain who was told to go home and not breach the maritime peace again" (CR 2000/17, p. 43, para. 8). From this he drew the conclusion that "whatever vestige of a Bahraini presence in Qatar had existed prior to 1868 — was terminated by the 1868 Agreements" (CR 2000/17, p. 43, para. 5). So now we have to look at the other 1868 Agreement, the one made between Britain and Bahrain. The myth that the 1868 Agreement placed some territorial limit on Bahrain was again repeated by Sir Ian Sinclair, "no doubt inadvertently", as he would put it (CR 2000/18, p. 33, para. 21) when, in the second of his comprehensive propositions he said that after 1868 the Ruler of Bahrain had "been specifically forbidden by the British authorities from breaching the maritime peace by *interfering in Qatar*".

The documents, I submit, indicate otherwise. Not a word to this effect as regards Bahrain's relations with Qatar is to be found in the 1868 Agreement. It is only in Article 2 of the 1868 *Qatar Agreement*, which I have already read to the Court, that precisely such a restriction is placed on Qatar.

25. So now we have to subject the 1868 Bahrain Agreement to the same kind of scrutiny as we have just done to the 1868 Qatar Agreement. I must take the risk of wearying the Court with such a close examination, but it does expose, for the invention that it is, that Qatari pretence that 1868 is a crucial year in the pretended emergence of Al-Thani authority in Qatar and the alleged corresponding disappearance of Bahraini authority there.

26. So, once again, Mr. President, we must turn to the actual text (Memorial of Bahrain, Vol. 6, Ann. 317, pp. 1414-1416; judges' folders, tab 126). But just before looking at the 1868 Agreement itself we must take note of the text that almost immediately precedes it, in the same volume of Aitchison, the Friendly Convention of 1861 between Bahrain and Britain, for it is there that we find a major and critical distinction in standing between the Al-Khalifa of Bahrain and the Al-Thani of Qatar at this period (Memorial of Bahrain, Vol. 2, Ann. 8, pp. 110-113; judges' folders, tab 127) the 1861 Convention is described in its preliminary provision as being made between "Sheikh Mohammed bin Khaleefa, independent ruler of Bahrain" and the British Government. This is a very different mode of description from that used in the 1868 Agreement with "Mahomed bin Sane, of Guttur" — not a Sheikh, not a chief, not a mention of independence, not a hint of being a ruler. In short, a person not of a status in any way comparable to the Sheikh of Bahrain. It is of course a distinction that Qatar is most anxious to obliterate, but the pretence that there was some measure of equality of standing between the two, Bahrain and Qatar, is quite groundless and remains so until after the Second World War.

27. So now we can proceed to the 1868 Bahrain Agreement itself — the Agreement which Qatar contends marks the termination of whatever vestige of Bahraini presence in the peninsula might still have remained.

28. In its opening paragraph, the Agreement declares that Mahomed bin Khalifa, having committed acts of piracy and other irregularities at sea, has fled Bahrain and forfeited all his claims to title as principal Sheikh and Chief of Bahrain, and that Ali bin Khalifah has taken over. There

follow four operative articles: (i) to make over tomorrow all the war buglas and buteels [another kind of war boat] belonging to Mahomed bin Khuleefa and himself; (ii) to pay the Resident the sum of one lakh of dollars in four instalments; (iii) to consider Mahomed bin Khalifeh as permanently excluded from the affairs of Bahrain and as having no claim to that territory; and (iv) to appoint an agent at Bushire to keep the Resident informed of what happens. And that is all that there is in the Agreement. From what is it possible, even by the most energetic play of imagination, to squeeze out of this any suggestion of abandonment of Al-Khalifa authority or title in the Qatar peninsula? Qatar's representations in this regard are wholly fictitious. There is no basis whatsoever on which the Court can find that by virtue of this agreement or otherwise Bahrain authority in the Qatar peninsula ended in 1868.

**Absence of evidence of Qatari authority over the whole of the peninsula, 1868 onwards**

29. So what else has Qatar invoked by way of response to the challenge thrown down in Bahrain's opening round to show how Bahrain's title to the north-west and west of the Qatar peninsula came to an end?

30. Well, it is a rather poor story. Note the sequence of events in Mr. Bundy's speech. From the spurious citation of the 1868 Agreements he passed to the Ottoman presence in Qatar. This presence was said to extend to the whole of the Qatar peninsula. But on what was this based? Qatar has produced absolutely no evidence of any physical extension of Ottoman presence to the north-west of the Qatar peninsula or to the west or to the Hawars or of any Ottoman attempt to replace the Al-Khalifa in those regions.

31. The only item invoked is the formal or administrative distinction drawn between the "kaza" of Qatar, and the "Kasaba" or central town of the province also sometimes called Qatar. That serves no purpose here. And as to Qatar's dismissal of Captain Izzet's map, the only reason why the Hawar Islands would have been specifically named in it was because of their association with Bahrain. Qatar was evidently no more than a place in the south-east corner of the peninsula and its total non-involvement in the Hawars would not have led Captain Izzet to name the Hawars as being associated with Qatar.

32. Mr. Bundy further asserted that "The fact remains that Sheikh Jasim Al-Thani ruled the entire province of Qatar, and that he governed the territory both in his own right and as surrogate for the Ottoman Empire." (CR 2000/17, p. 47, para. 24.) What is the Court to make of that statement when it is read in conjunction with (a) the 1868 material that we have already covered, and (b) the following letter from Sheikh Jassim bin Thani to the British Political Resident dated 9 March 1881 (Memorial of Bahrain, Vol. 2, Ann. 38, p. 216) — it is on the screen:

"You write to me that I should keep guard over the whole of the Katar Coast but I have no power over it. You are aware of the treaty made in the time of my father between us and the British Government namely that we were only to be responsible for Dohat al Bidaa and Al Wakra. The Al Katar Coast is very large and extensive and I have not the power to forbid anyone from landing or embarking . . . I have before reported to you this state of the case and that I am powerless."

33. One small, but significant, episode may be mentioned at this point. Also in 1881, the brother of the Sheikh of Bahrain paid a visit to the west coast of the Qatar peninsula. The only available evidence of this appears to be in one item in a chronology of events in a report prepared by Captain Prideaux in 1905. He then said:

"In December [1881], Sheikh Ahmed, the brother of Sheikh Isa [of Bahrain], landed on the west coast of Katr with about 200 followers for the purpose of sport. Sheikh Jasim [of Qatar] sent a deputation from Bida to welcome him and invite him to an entertainment in the interior. Sheikh Ahmed [that is, the visitor] insisted upon Jasim's coming himself to greet him where he was, which the Bida chief accordingly did, and subsequently Sheikh Ahmed accompanied him to his camp." (Memorial of Bahrain, Vol. 3, Ann. 71, p. 362.)

Note, the Bida chief, not the Sheikh of Qatar, the Bida chief as identified by Captain Prideaux. But, if Sheikh Jasim had truly been the effective ruler of the western part of the peninsula, it would hardly have been appropriate for Sheikh Ahmed of Bahrain (not himself a ruler) to require the local sovereign to come to him, a foreigner from overseas!

34. Six years after this episode, in 1887, an Ottoman report stated that "Sheikh Jasim has for a long time functioned only in name as provincial governor in the Qatar district, between Oman and Bahrain" (Memorial of Bahrain, Vol. 2, Ann. 39 (a), p. 217).

35. And lastly, and I say lastly so as not to be thought to be flogging a dead horse, let me recall that on 7 May 1893 the British Political Resident reported a meeting with Sheikh Jasim Al-Thani of Qatar in the course of which the Sheikh expressed a wish for British protection and a place of safety to which he might retire. This is the so-called sovereign chief, ruler of an



independent Qatar: "a place of safety to which he might retire". Colonel Talbot's report then continued as follows, in part:

"I then asked him [Sheikh Jasim] where he would wish to settle if any new arrangement were made, pointing out that Zubarah and Odeid were impossible. The latter, however, they all admitted to be outside Katr, and therefore not within the scope of discussion . . ."

The discussion about a possible place of retirement continued and, after consulting his brother, Sheikh Jasim, in the words of the report, asked

"whether they could obtain the whole of Katr as in the days of his father. I replied [i.e., Talbot] that even if the Turks could be induced to waive their claims, those of Bahrain to Katr could not be ignored. Sheikh Jasim at once acknowledged the rights of Bahrain, and expressed his willingness to pay tribute as before." (Memorial of Bahrain, Vol. 2, Ann. 51, pp. 250-251, 7 May 1893.)

36. In the light of material of this kind, how could it possibly be said that Bahrain's authority in the peninsula and more particularly in Zubarah and the Hawars was displaced by the 1868 Agreements and replaced by Al-Thani authority?

37. The history of the period from 1868 to 1916, is one which, if seriously pursued, would require a detailed consideration both impossible and inappropriate at this stage of the case. Moreover, it is unnecessary. That history consists of a complex web of relations between the Turks, the British, the Sheikhs of Bahrain, the leaders of the Al-Thani family and sundry tribes in the east and north of the Qatar peninsula. There is nothing in that history to suggest that the Sheikhs of Bahrain abandoned their claims to Zubarah or the Hawars or, particularly in relation to the Hawars, that Bahrain was in any way confronted by physical or administrative competition from Qatar there.

### **The unratified 1913 Anglo-Turkish Convention**

38. So we come now to heading five, the unratified 1913 Anglo-Turkish Convention. This related to the Persian Gulf and adjacent territories (Memorial of Bahrain, Vol. 3, Ann. 81, pp. 431-432). This was presented by Mr. Bundy (CR 2000/17, p. 51, para. 41) as a text which

"did accurately reflect the parties' common view as to the territorial situation at the time and the status of the Al-Thani Rulers as governed in the past, and as still governing, the entire Qatar peninsula".

39. Now, the parties whose views were said to be reflected in this document were, of course, Britain and Turkey, whose views are obviously especially pertinent. Well, once again, we have to look closely at the text to see whether it really did reflect a common view that in 1913 the Al-Thani had ruled and were still governing "the entire Qatar peninsula", as now suggested by counsel for Qatar.

40. The relevant article is Article 11. It contains four elements. One is the establishment of a line separating the Nejd from the El-Katr peninsula; the Nejd being what is subsequently to become Saudi Arabia — the blue line is now up on the screen. The second element records the renunciation by the Ottoman Government of "all their claims with regard to the El-Katr peninsula" coupled with the third element, the provision that "the said peninsula shall be governed, as heretofore by Sheikh Jasim bin Sani and his successors" — to which I shall return in a moment. The fourth element is the British undertaking that it "will not permit the Sheikh of Bahrain to interfere in the internal affairs of El-Katr, to infringe the autonomy of the country, or to annex it".

41. Now there is nothing here that amounts to a recognition of an independent State of Qatar existing throughout the peninsula and the Hawar Islands or even Zubarah. The crucial words are that the peninsula shall be governed "as heretofore" by the Al-Thani. But we know that the prior government on the peninsula by the Al-Thani did not extend to large parts of the peninsula, including Zubarah, and certainly it did not extend to the Hawars. True, some 30 years had passed since Sheikh Jasim's sad plea that he had no authority over the interior and, *a fortiori*, over the west coast and the Hawar Islands. But the possibility that the area of his authority might have expanded in the interval has never been supported by any evidence of actual control. Qatar has been prepared, or content, to rely on the text of the 1913 Agreement as evidence of its title, whereas the true function of the document was to record the departure of the Turks and the British intention to restrain the Sheikh of Bahrain from interfering in the internal affairs of El-Katr.

42. The bottom line of the 1913 Agreement is really that Britain and Turkey were agreeing to leave the peninsula of Qatar to the Al-Thanis to make the best of the possibilities thus afforded to them to develop and consolidate their authority within such area of the peninsula as they might come to control. Nothing in the Agreement gave the Al-Thani title to areas which they did not

actually possess. For one thing, the Al-Thani were not party to the Agreement and for another, of course, Britain did not have the authority to give away territory belonging to the Al-Kalifa.

43. The cap is put on this analysis by an extract from a document which Qatar itself produced in the Annexes to its Counter-Memorial (Counter-Memorial of Qatar, Vol. 3, Ann. III.40, p. 216) and from which Professor Salmon quoted on 29 May (CR 2000/5. trans., p. 29, para. 19). This is a memorandum prepared in 1934 by J. G. Laithwaite of the India Office, to whom Mr. Paulsson referred yesterday, on "The Southern Boundary of Qatar and Connected Problems". In the section discussing the 1913 Convention, Laithwaite observed that the wording of Article 11 "would justify the contention that the blue line" — that is, with an arrow on the screen now — "was at once the eastern frontier of Nejd and the western frontier of Qatar". He then immediately continued:

"But there are definite objections to adopting this view. In the first place there is nothing to show that this was, in fact, the intent of HMG at the time when the Convention was concluded or that the [word garbled in the photocopy but probably 'provision'] had any object beyond limiting the eastern boundary of the Turkish possessions in this area. Secondly, there is no evidence of any claim to suzerainty by Qatar so far to the west or so far to the south. Thirdly, the Resident's telegram of 11 January 1934 emphasises the absence of control by the Sheikh of Qatar over the interior of his State and *a fortiori* over regions so remote from Doha as are now under consideration."

And please recall I am quoting — and this was written even in 1934! — that the Sheikh of Qatar had no control "over the interior of his State and *a fortiori* over regions so remote from Doha as are . . . under consideration"; and those regions under consideration were no more remote from Doha than were Zubarah and the Hawars. And, as if that was not enough, Laithwaite continues a few lines later:

"Fifthly, it is arguable that even in a formal document such as the 1913 Convention the fact that the blue line is spoken of as separating Nejd from the Qatar Peninsula need not be regarded as determining the boundary of Qatar. [The clear distinction being drawn between the political concept of a State or entity of Qatar and the geographical concept of a Qatar peninsula.] The Qatar Peninsula was the closest prominent geographical feature and the nearest adjoining Arab political entity on the mainland, and a reference to it for descriptive purposes was not unnatural. Finally, there is much to be said for giving no avoidable extensions to the boundaries of Qatar, even if the consequence is that we have to deal with an area of indeterminate ownership between those boundaries and the blue line." (Counter-Memorial of Qatar, Vol. 3, Ann. III.40, p. 216.)

### The 1914 Agreement

44. So we can turn now to the 1914 Agreement. What about it between Britain and Turkey? The only thing that need be said about that treaty is that the mention in it of "conforming with" Article 11 of the 1913 Convention was simply for the purpose of describing by reference to a pre-existing document a line separating the two "territories". There is nothing in it to suggest recognition of the political status of the territory of El-Katr or the area of authority of those who governed part of it (Memorial of Qatar, Vol. 5, Ann. II.45, p. 161).

### The 1916 Agreement

45. Finally, we come to the 1916 Agreement. I say "finally" because it is the last of the agreements with Britain constantly invoked by Qatar as "repeatedly and consistently" recognizing Al-Thani "sovereignty . . . as encompassing all of the areas included in the Qatar peninsula", as well as the 3-mile belt of territorial waters running round its coast (CR 2000/18, pp. 8-9, paras. 51 and 57 (Mr. Bundy); *ibid.*, p. 24, para. 2 (4) (Sir Ian Sinclair)).

46. Now, in examining this agreement it must be recalled that we are not seeking evidence of a grant or recognition of title of Qatar to a *terra nullius*, an area in which there was no other effective authority. We are assessing whether this agreement helps to answer the basic question posed by Bahrain — how and when did Bahrain lose to Qatar the title over the whole of the Qatar peninsula, including Zubarah and the Hawar Islands, which Qatar admits that Britain recognized as possessed by Bahrain prior to 1868? We have looked at each of the earlier texts invoked by Qatar — its agreement with Britain of 1868, the unratified Treaty with Turkey of 1913 and the 1914 Treaty. We have found that none of them gave to Qatar, or acknowledged, the title to which it now pretends. So at this point the game stands or falls on the 1916 Agreement. As the Court will see, it provides Qatar with little, if any, help.

47. Let us begin with the most summary recollection of its provisions. Bear in mind — we are looking for acknowledgements of Qatar's status and title to territory. Articles I and II relate to co-operation with the British Government in the suppression of the slave trade and piracy and general acceptance of the obligations of the treaties with Her Majesty's Government concluded by the Trucial Sheikdoms. Article III relates to the supply of arms. Article IV contains the standard treaty of protection undertaking, that the Sheikh "will not have relations nor correspond with, nor

receive the agent of any other power without the consent of the High British Government". Nor could he, without such consent, cede to any other power or its subjects, land either on lease, sale, transfer, gift or in any other way whatsoever. Article V contained a similar restriction on pearl-fishery concessions or any other concessions to anyone whomsoever. Article VI gave Bahrain merchants national treatment in respect of custom dues. So far, nothing on territory.

48. Then come three Articles, the operation of which, so the history books tell us, was suspended by agreement until, as it turned out, as late as 1949. For this I turn to Zahlan's history of *The Creation of Qatar* mentioned by Mr. Paulsson yesterday. It recalls that:

"the concessions made to ensure Abdullah's signature were as follows: the articles concerning a British agent (Article VIII), British postal and telegraphic offices (Article IX) and the protection of British residents (Article VII) were to remain inoperative for the time being since Abdullah [that is the Sheikh of Qatar] did not feel sufficiently strong internally to impose them on his people" (*op. cit.*, p. 60).

Not strong enough internally.

49. There were two further Articles. By Article X the British Government undertook to protect the Ruler, his subjects and his territory from aggression. By Article XI, Britain also undertook to grant the Ruler good offices should he or his subjects be assailed by land within the territories of Qatar.

50. Neither in Article X or XI was any definition given of these territories referred to. We know, however, from the record of a meeting between the Sheikh of Qatar and the Political Resident in 1934 (Counter-Memorial of Bahrain, Vol. 2, Ann. 122, pp. 411-412) that even 18 years after the Treaty, the Ruler was under the impression that the Treaty covered only the coast of his country — that must have meant the east coast, because there was no authority exercised over the west coast. The Political Resident corrected him, saying that the Treaty extended to the whole of Qatar. But even if the Ruler had thought in the meanwhile that the Treaty did cover the whole of his country, it would make no difference because the "whole" of his country was undefined. It could only have meant in law the whole of whatever unoccupied territory he was legally entitled to take possession of. As Bahrain was in possession of both Zubarah and the Hawars, they were not unoccupied territories. Britain could not have vested them in Qatar since they were not Britain's to give, and since Qatar did not occupy them peacefully or, indeed, at all, it was not entitled to treat them as part of its territory. The actual possession of the Hawars and Zubarah by Bahrain was in

law an effective limitation upon any conceptual extension of Qatari title. It is not necessary to engage in any discussion about the meaning of the passage from Judge Huber's award quoted by Mr. Bundy (CR 2000/18, p. 9, para. 58) because the facts do not support the application of the dictum. We are not confronted here by a situation in which an uninhabited region is involved; nor were the Hawars and Zubarah "regions enclosed within territories in which sovereignty [that is Qatar's sovereignty] is incontestably displayed". The Sheikh of Qatar was in 1916, and still in 1934, and even indeed until 1949, so weak and impoverished that he could not even accept the implementation of Articles VII, VIII and IX of the 1916 Treaty.

51. As Qatar acknowledged in its Counter-Memorial (para. 2.13), it did not really emerge into statehood until after World War II. Throughout the intervening period Bahrain maintained its presence in the Hawars undisturbed; and has continued to do so. The argument that "the integrity" of the territory of Qatar automatically carries with it title to the Hawars is quite unsustainable.

52. The crowning surprise lies in Qatar's concluding assertion in support of its contention that the Al-Thani rulers did not need to exercise sovereignty over the whole peninsula to justify their title to all of it. True, it was said by Mr. Bundy, Qatar is "still today a relatively unpopulated country" (CR 2000/18, p. 9, para. 59). But the south and south-eastern coasts of Bahrain were also relatively barren. So, he suggested, Bahrain is applying a double-standard! The suggestion verges on the absurd. Bahrain's title over the whole of the main island of Bahrain is not and has never been in issue. It is only the title of the Sheikhs of Qatar to parts of the peninsula of Qatar and to the Hawar Islands that is in issue. Bahrain's title across the water has nothing to do with the present case. Reference to it is totally irrelevant, and only serves to strengthen the impression that Qatar has no better arguments to offer.

53. So much then for the basic elements in the discussion about Qatar's claim to title over the Hawars and Zubarah.

#### *A titre de souverain*

54. I now turn to heading 8 — *A titre de souverain*. I say a brief word about this as being one aspect of Bahrain's conduct on the Hawars, that has been discussed. This is the distinction

between the *Kasikili/Sedudu Island* case and the present case, regarding the application of the concept of possession *à titre de souverain*.

55. In my opening speech I pointed to the clear distinction between the facts in the two cases — in particular the fact that when part of the Dowasir tribe first went to the Hawars they did so on the basis of a grant from the Ruler of Bahrain. They were thus acting *à titre de souverain*. This was in contrast with the position in the *Kasikili/Sedudu Island* case where the Masubia tribesmen used Kasikili without the benefit of any comparable grant. And I may say, their use of Kasikili was much less than the use that is made by the Dowasir on the Hawars.

56. Mr. Shankardass asserted that "this must surely be wrong" because Bahrain itself asserts in its Memorial (paras. 36-37) that "its 'jurisdiction and control over the Hawar Islands' commenced with the grant of the alleged permission in around 1800" (CR 2000/17, p. 25, para. 2).

57. In truth, the position in the Bahrain Memorial is not at all as Mr. Shankardass has indicated. The Bahraini Memorial said: "In about 1800, members of the Dowasir tribe sought and obtained permission from the Qadi of Zubarah, an official of the Al-Khalifa family, to settle on the islands." Then, in the next paragraph there appears the sentence: "Bahrain's jurisdiction and control over the Hawar Islands thus commenced two centuries ago."

58. It must, of course, be admitted that the omission of the word "over" before the expression "two centuries ago" — so that it should have read "over two centuries ago" — could be read as suggesting — as Qatar now appears to contend — that there was no authority or jurisdiction of the Al-Khalifa over the Hawars *prior* to the grant made to the Dowasir in about 1800. But this would, to say the least, be a rather strained interpretation of the words. If there was no Al-Khalifa authority over the Hawars prior to the grant, there was no reason why the Dowasir should have sought permission from the Al-Khalifa's Qadi to settle there. Their request could only have been made on the basis that the Al-Khalifa possessed known authority over the Hawars *before* the grant to the Dowasir, that the Dowasir recognized this fact and that in going to the islands they were manifesting the authority of the Al-Khalifa. If the Al-Khalifa were never sovereign over the Hawars and the Al-Thani were, is it not extraordinary that at no time since 1868 — and obviously not before — have the Al-Thani ever sought to exercise any authority over them?

59. This interpretation is in full conformity with the facts. For the matter is really taken care of by the Qatari admission in paragraph 5 of its Application, of which I venture again to remind the Court: "Until 1868, the Qatar peninsula was considered by the British as a dependency of Bahrain." It is noteworthy that not a word has been said by Qatar about this crucial point. This is hardly surprising. Obviously, because the admission emanates from Qatar, it cannot now be denied by them. So, from their point of view, the less said about it the better. But in truth the fact conceded in the admission must be, for Qatar, a painful and controlling reality. On the approach adopted by Qatar, the Hawars are an integral part of the peninsula. If until 1868 the Qatar peninsula was considered a dependency of Bahrain, then it follows that the Hawars were also a dependency of Bahrain. And so they must have been even at the time of the grant to the Dowasir. An earlier paragraph of the Qatari Application, paragraph 3, refers without qualification to the Al-Khalifa as having settled in Zubarah in about 1766. Although the sentence goes on to mention the subsequent expulsion by the Al-Khalifa of the Persians from Bahrain and the Al-Khalifa settlement there, it does not suggest that the Al-Khalifa thereupon abandoned their authority over Zubarah. There is thus no basis for any suggestion that Al-Khalifa authority over the Qatar peninsula (including the Hawars) did not pre-exist the grant to the Dowasir. This is an inescapable historical fact. So the Dowasir came to and remained in the Hawars *à titre de souverain*. The present case is in no way affected by the Court's assessment of the facts in the *Kasikili/Sedudu Island* case, a quite different case on the facts.

60. An additional point must be made by way of rebuttal of the statement by Mr. Shankardass (CR 2000/17, p. 25, para. 2) questioning the arrival of the Dowasir in the Hawars in 1800. He cited Lorimer as providing "positive evidence that the Dowasir only arrived in 1845 from Najd via Zakhuniyan". Surely the evidence of Captain Brucks, which dates from 1821-1829 (see Memorial of Bahrain, Vol. 2, Ann. 7, p. 92), 80 years earlier, and 15 years before the date that Lorimer gave, is more to be trusted in this connection than even that of Lorimer. Brucks wrote of "Warden's Islands" (alias the Hawars) that the principal island of this group "has two fishing villages on it and belongs to Bahrain".



### Proximity

61. I now come to point 9, which I call proximity. I move to consider in relatively short compass those parts of Sir Ian Sinclair's argument that deal with the basis on which Qatar claims title to the Hawars.

62. The reason I can be brief is that as regards the law applicable to the situation there is only limited disagreement between the two sides. We both turn to the *Isle of Palmas* case and the *Eritrea/Yemen* Awards as authoritative sources, though we emphasize different parts of each Award. In the *Palmas* case, Qatar leans heavily on Judge Huber's mention of islands in the territorial sea. Bahrain, on the other hand, points to those passages which stress the need for occupation or the performance of acts of authority as well as the need to maintain continuity of title. In *Eritrea/Yemen* Bahrain points to the criteria of exercise of jurisdiction on a continuous and peaceful basis, while Qatar points to the lesser degree of activity permitted in the case of islands that lay uninhabited and ungoverned.

63. The real contention between the Parties lies in their diametrically opposed factual starting-points in applying the law. For Bahrain, the starting-point is in the nineteenth century; for Qatar, the starting-point is 1936. Allow me to go over the relevant parts of the respective chronologies of the two sides in summary form.

64. First, Bahrain's position.

(A) We start from the absolutely undeniable (and undenied) fact that at the end of the eighteenth century the Al-Khalifa family and their adherents were in control in the Qatar peninsula. Even the tribes on the east coast paid them tribute. The Al-Thani were no more than a pearl merchant family in Doha.

Since Qatar relies so heavily on the maps, the Court may wish to be reminded that there are three maps in the Qatari Map Atlas which even as late as 1870 place the name "Bahrain" over the peninsula that we now call the Qatar peninsula: map 1 (1863); map 2 (1870); and map 3 (1876) which, though placing the name "Katar" on the peninsula, clearly makes its subordinate to name "BAHREIN" in capital letters stretching eastwards along the Gulf coast.

(B) We proceed next to the equally undeniable (and notably undenied) fact of the terms of paragraph 5 of the Qatari Application.

- (C) Applying Qatar's arguments about the integrity of Qatar's territory, this means that even then Bahrain had authority or title over the Hawars.
- (D) This Bahraini title is not dependent upon demonstrating that the Al-Khalifa or their adherents performed acts *à titre de souverain* in the Hawars. Their title was in those days absolute. It preceded the grant to the Dowasir of permission to settle on the islands. Thus the act of making the grant was merely confirmatory of the grantor's title. It was not an act on which Bahrain's title was dependent. Moreover, that title was never confronted by any physical manifestation of any competing Al-Thani or Qatar claims.
- (E) Contrary to Qatar's contentions, no political entity of Qatar was identified before 1913. Even then the extent of Qatari territory was ill-defined. As Mr. Laithwaite said in 1934, Qatar's authority did not even extend to the west coast. It certainly did not extend to the Hawars.
- (F) The date of 1936 is advanced by Qatar as some kind of turning-point in the history of the Hawars. But this is merely a Qatari pretence that it was in that year that Bahrain illegally occupied the Hawars. The proposition is a figment of Qatar's imagination. Nothing previously had served to bring to an end Bahrain's pre-existing title or presence in the islands. Qatar's continuous repetition of mention of 1936 means absolutely nothing.
- (G) At no time has Qatar ever performed any act of sovereignty on the ground in the Hawars. Indeed, until the commencement of the activities of the oil company at Durkan, there was virtually no human presence in the central and southern portions of the west coast of the peninsula.

65. So now let us look at Qatar's position

- (A) Qatar never demonstrates how or when Bahrain's title, as acknowledged by Qatar to have been in existence prior to 1868, came to an end.
- (B) Qatar invokes the writings of Sir Robert Jennings in support of the proposition that "when occasion demands, the law does recognize an abstract title presently divorced from a material display" (CR 2000/18, p. 35, para. 25). Bahrain sees no reason to dissent from this proposition. But where is Qatar's "abstract title"? Qatar has never pointed to its own root of abstract title other than in terms of legal presumptions which in the present case are rebutted by the facts.

66. Qatar invokes another legal dictum which in itself need not be denied. It takes the form of a quotation from the *Eritrea/Yemen* Award:

"There is a strong presumption that islands within the twelve-mile coastal belt will belong to the coastal state unless there is a fully-established case to the contrary (as, for example, in the case of the Channel Islands)." (CR 2000/18, p. 36, para. 27.)

If the facts were as Qatar constantly misrepresents them to be, namely, that "Bahrain simply occupied the Hawar Islands in 1937" (*ibid.*, para. 28), Qatar might have a case. But the facts do not support Qatar. The presumption relating to the effect on title of the partial location of the Hawars within Qatari territorial sea cannot operate in a case where there has been the long previous possession of the Hawars by Bahrain.

67. I hope that Sir Ian Sinclair will not think me lacking in respect for him if I do not pursue much further this response to his arguments. But the truth is that we are divided by our different understandings of the facts — and the facts are matters to which my colleagues — as I have also — devoted direct detailed attention.

68. Coming to point 10, I need only add that Mr. Bundy concluded his presentation with five conclusions (CR 2000/18, p. 15, para. 86) and Sir Ian Sinclair prefaced his arguments by a summary expressed in seven propositions (CR 2000/18, p. 23, para. 2). Both series of assertions share the same weakness and demonstrate the fundamental defect in Qatar's case. Both series hang upon the claimed validity of the first item in each: for Mr. Bundy it was that "the 1868 Agreements formally recognized the existence of Qatar and Bahrain as separate political entities"; for Sir Ian it was that

"Britain recognized Qatar as an entity separate from Bahrain in 1868, that recognition necessarily encompassing acknowledgement that the Al-Thani Rulers of Qatar exercised or were entitled to exercise authority over the whole of the peninsula."

69. Both propositions are simply wrong; and, as they are the predicates of all that follows, their errors lead to the collapse of all that follows. I need say no more on this subject. So I now turn to the subject of maps.

### **Maps**

70. As to maps, Bahrain adheres to the views that were expressed in our arguments during the first round and I need not repeat them.

71. Mr. Bundy has criticized those views in a number of respects. I venture to suggest that to the extent that the Court thinks it necessary to pursue this subject, it will find on close examination that nothing that Mr. Bundy has said really undermines Bahrain's position. Despite their apparent profusion, the maps do not strengthen Qatar's case.

72. Even so, a few comments are called for.

73. *One:* Mr. Bundy put at the forefront of his reply the observation that "maps are not a game. [They] are serious evidence of . . . 'general opinion or repute'." (CR 2000/18, p. 10, para. 63.) Because of the prominence given by Mr. Bundy to this point it bears repetition that "general opinion or repute" is at best a subsidiary element in the determination of title. In so far as opinion or repute may be relevant, the most important consideration is the identity of those on whose opinion or repute reliance is being placed.

74. In this regard, it should be emphasized that the official British view of the matter as expressed in maps or recorded in documents is worth more than the opinion or repute of anyone else. At every significant juncture there is evidence of a British view of the matter that far outweighs the views of all others. To identify but some: in 1829 there is the recognition by Brucks in his report and his map that the Hawars belong to Bahrain; as at 1868, there is Qatar's own admission in the Application in this very case; in 1939 there is the British award to the effect that the Hawars belong to Bahrain; and in 1972, that is, immediately following the 1971 exchanges of notes giving both Bahrain and Qatar the right to conduct their foreign affairs, there is the British Ministry of Defence map to which Mr. Paulsson referred again yesterday. This clearly drew the boundary between the Hawars and Qatar. Compared with these acts of recognition by the country closest to the whole matter, the views of others — whether States or private parties — cannot even begin to shift the balance.

75. As to the strength of Bahrain's positive case against which Qatar pleads opinion or general repute, Bahrain's submission is that the map material produced by Qatar — even if it were free from defects — can make no dent in it.

76. *Second comment — the scale of maps:* The important point to note is that Qatar has not responded in specific terms to one of the most telling criticisms made by Bahrain, namely, that the enlargement of small- scale maps leads to a distortion of colour. It therefore creates the misleading

impression regarding the connection of the Hawars with Qatar, as achieved for example in the Qatar Map Atlas No. 41. Bahrain's criticisms in respect of scale remain essentially unanswered.

77. *Third comment — colouring of maps:* Recourse to colouring as a means of linking the Hawars politically to Qatar assumes that at the time the map was made, Qatar was a political entity within established boundaries — so that the map-maker could legitimately treat the Hawars as being *politically* attributable to an authority ruling the peninsula. But, as I have already shown in some detail, there was no recognizable political entity called Qatar until at earliest 1913. In consequence recourse to colours prior to that date could not possibly be evidence that the Hawars belonged to any country called "Qatar".

78. Whatever the identity of colouring that the maps presented by Qatar may show between Qatar and the Hawars, the fact remains that the colouring varies even between identical maps by the same map-maker in such a way as to raise the most serious doubts about the accuracy or knowledge of the map-makers or the reliability of their product. Take but one example, Map 11 in the Qatar Map Atlas which was published in 1884 by Justus Perthes. It shows Bahrain and El-Hasa outlined in the same orange colour, quite distinguishable from the green colour of Oman of which Katar appears as a part. Map 22 is virtually the same map, by the same publisher published 11 years later in 1895. But in this map while El-Hasa appears in the same orange colour as before, the colour of Bahrain has changed completely to resemble more closely that of Qatar. Yet in the intervening 11 years there was no change in the political relationships in that area, though it is just possible that the map-maker may have learned that his original attribution of Bahrain to the Ottoman Empire was wrong and that he should have joined Bahrain to the Hawars and Qatar to both of them as a dependency of Bahrain. In that case, neither map 11 nor map 22 supports Qatar's case. Both maps can be found in the judges' folders at tab 128. They still leave one asking: what importance can one safely attach to colouring as an indication of political relationships, of recognition or of general repute when its use is so unreliable.

79. *Fourth comment:* As an illustration of the misrepresentation of his understanding characterizing Qatar's response on maps, mention may be made of the map described by counsel as one "prepared in 1910 by the cartographic company which acted as the cartographer to the British Crown" (CR 2000/18, p. 12, para. 71). Now, this mode of description was clearly intended to

convey the impression that this map possessed some special official status and cogency. On the face of the map it is stated that it is "by J. Bartholomew, FRGS" — a private individual. 1910 was the year in which King George V acceded to the British throne. He promptly gave a royal warrant to J. Bartholomew personally, who had by then probably already prepared the 1910 map. A royal warrant is a public indication that the holder of the warrant provides a service personal to the monarch or to a member of his family. Thus the well-known department store, Fortnum and Mason, in Piccadilly, London, possesses a number of royal warrants. It is:

"By appointment to H.M. Queen Elizabeth II, grocers and provision merchants; by appointment to Her Majesty Queen Elizabeth, the Queen Mother, suppliers of leather and fancy goods; and by appointment to H.R.H. the Prince of Wales, tea merchants and grocers."

Now these appointments do not endow the biscuits, the handbags or the marmalade sold by Fortnum and Mason with any official status. It just shows that the shop is specially favoured by particular members of the Royal Family. John Bartholomew was, of course, more than a purveyor of maps. He was a personal friend of King George V when he was Prince of Wales. The Prince of Wales had a particular interest in maps. So he marked his friendship by issuing the warrant worded "J. Bartholomew Cartographer to the King". But bear in mind, in Britain the King is not the government. Possession of the royal warrant did not make the maps prepared by J. Bartholomew into official British maps. Such maps could be produced only by either the Ordnance Survey Department or by the Cartographic Department of the War Office or by the Hydrographic Department of the Royal Navy. The point may appear a small one, but it is reflective of Qatar's somewhat cavalier approach to the facts.

80. *Fifth comment:* When attempting to reply to my comments on map 58 — the map with the red line round Arabia — counsel to Qatar did not respond to my suggestion that he identify the provenance of the map and provide some proof that the red circle round Bahrain had been placed on the map at the same time as the principal line and was intended to have the purpose he suggested. Instead, in words which are speculative, though not acknowledged as such, Mr. Bundy said: "Had Bahrain not been enclaved by a red circle, the map would have given the false impression that the Bahrain Islands formed part of the Arabian Peninsula." But if that is accepted as an explanation of the red circle, we must ask: what would it have mattered if the circle had not

been drawn and Bahrain had been taken for part of the Arabian peninsula? The only answer that can be given to this question must be in terms of Article 1 of the draft agreement — which is now up on the screen — which the map is said to have illustrated, namely, that Bahrain would thus have fallen within the area whose independence from external domination would have been recognized and within which the parties declared that they seek no territorial aggrandizement for themselves.

81. But that answer is not convincing because included in that area anyway were a number of mainland territories that were in much the same legal position as Bahrain in that they were British protected States or protectorates and were obviously intended so to remain. These were: the Aden Protectorate; Kuwait, which was a British protected State; and to some extent, the Trucial Sheikdoms. This was acknowledged in paragraph 5 of the accompanying Memorandum (Reply of Qatar, Vol. 3, Ann. III.38, p. 217).

82. So, if there was no reason for distinguishing Bahrain from the mainland territories just mentioned, there was no reason for drawing a circle around it and Mr. Bundy's explanation just does not hold water; and we are thus left still without any official explanation of the function of the circle. We do not know why it was put on the map, when it was put on the map and by whom it was put there. Certainly we cannot accept it as a line intended to draw a political distinction between Bahrain and the Hawars. Moreover, it has to be observed again — in view of Mr. Bundy's disregard of the point — that the Hawars, not being in the Red Sea, did not fall within the scope of the provision in the draft treaty that the islands *in the Red Sea*, not those in the Gulf, within the lines should be placed under the sovereignty of the independent chiefs of the mainland.

83. Mr President and Members of the Court, I could continue with this catalogue of defects in the answers given by Qatar on the subject of maps. But were I to do so I would be elevating the maps to a place out of all proportion to their insignificance and perhaps I have already done so. I doubt whether you would wish me to take your time further on an exercise of no more than marginal relevance. I seek to justify the detail into which I have gone principally in order to illustrate the kind of methodology adopted by Qatar, an illustration which must serve as a cautionary signal to the Court to approach Qatar's presentation not only of the maps, but also of the facts generally, in a very critical manner. I repeat my submission that, even if the maps produced by Qatar were all flawless and clear, the Court should pay no regard to any of them on the grounds

that they could not constitute evidence of recognition and repute sufficient to override the evidence of direct recognition by the British Government of a different state of affairs. Nor can the maps override the proven facts on the ground. Moreover, many of the maps, by virtue of scale, enlargement, distortion of colouring and contradictory detail, cannot be accepted as valid evidence of the points in support of which they have been adduced. Now, Mr. President, I have one further section which is not long, which will take me a few minutes. May I continue before the break?.

### **The Timeline**

84. I come now to my last heading, which I call the timeline. By way of conclusion I should like to draw to the particular attention of the Court the Timeline of Key Events which is folded into Bahrain's Reply, just after the Political Map of the Gulf of Arabia that follows page 9. As it is both useful and easily overlooked, it has now been reproduced and is at tab 129 of the judges' folders. And if I may be permitted to suggest, you might find it helpful to open it up in order to follow what I have to say. It is too large to be put on the screen in one piece, but it can be put up in three segments which I shall do for a few moments in order, forgive me, to explain what is largely self-explanatory.

85. The first segment is the left-hand or inner part of the timeline, chronologically the earliest. It is divided into three layers. The top layer presents the dates pertinent to the Hawar Islands, the bottom layer presents the dates pertinent to Zubarah and the middle layer presents a number of additional dates not exclusively referable to the top or bottom layers.

86. The colour coding of the boxes is: red, for events indicative of Bahrain's sovereignty; brown for events indicative of Qatar's claims to sovereignty; and white representing neutral events. The initials are pretty obvious: GB equals Great Britain; RB equals Ruler of Bahrain; RQ equals Ruler of Qatar.

87. The first fold occurs just before 1840. As you can see, with the exception of the white boxes in the bottom layer, all the boxes to the left of the fold are red ones. This feature reflects the fact that in that segment there is only Bahraini activity to be noted. Thus, in the *top* layer the most important items to be seen are:

— 1800: the grant to the Dowasirs,



— in 1829: the Brucks survey.

88. Then in the *middle* layer there is reference to:

— the occupation in 1783 of the main island by the Al-Khalifa, and

— in 1820 Great Britain recognized the Ruler of Bahrain's authority over the Qatar peninsula by means of the implications of the Preliminary Treaty with the Sheikhs of Bahrain which referred to "Bahrain or its dependencies" (Memorial of Bahrain Ann. 2, Vol. 2, p. 4).

— In 1823 Great Britain records Bida to be a dependency of Bahrain.

— 1838 refers to the Lapie map (see Reply of Bahrain, Vol. 1, opposite p. 5) placing the name Bahrain over the whole of the Qatar peninsula.

89. And then we come to the *bottom* layer where there is a reference to:

— 1796: the Al-Khalifa move their capital from Zubarah to the main island of Bahrain to rule the Qatar peninsula, and so on.

90. The second or middle segment of the timeline covers the period from just before 1840 to just after 1920. In the *top* layer, you will see such items as:

— 1845: the Dowasir permitted to settle on the main island of Bahrain,

— 1873: the rescue by the Ruler of Bahrain of Ottoman soldiers stranded on the Hawars,

— 1908 and 1909: recognition by the British and Ottomans of the Ruler of Bahrain's sovereignty over the Hawars,

— 1911: the Ruler of Bahrain compels the presence of Hawar residents in a Bahrain court at Great Britain's request.

91. Then in the *middle* layer there are many references to the exercise of authority by the Ruler of Bahrain over the Qatar peninsula. You will note that it is only in 1871 that any brown (Qatari) boxes begin to appear — and even then only in relation to the limited area around Doha. In addition, under 1913 there is the unratified Anglo-Ottoman agreement and under 1916 the agreement between Britain and the Al-Thani.

92. In the *bottom* layer there are many references to the position in Zubarah.

93. The third segment, or right-hand segment (which has gone up on the screen now) of the folder covers from just after 1920 to the present day where we begin to find more brown boxes. For example, in relation to the top layer — the Hawars — Qatar's first claim to the Hawars is noted

in 1938, as is its protest against the British Award of 1939. The brown boxes in the bottom layer record, amongst other items, the seizure of Zubarah by Qatar.

94. Mr. President and Members of the Court, I think that I have given you enough explanations and examples to enable you to make efficient use of the Timeline. It should serve as a convenient guide to the principal historical events on which so much of this case turns. It can thus replace the summary, that I might otherwise have offered you.

95. And so, Mr. President and Members of the Court, this is a good place for me to end and to request you, Mr. President, to call upon Mr. Volterra to deal with what we have called the «*effectivités*». May I thank the Court for the courtesy and patience with which it has heard me as a member of a team in which I have felt it an honour to serve. Thank you, Mr. President.

The PRESIDENT: Thank you, Sir Elihu. The Court will now adjourn for a quarter of an hour.

*The Court adjourned from 11.30 a.m. to 11.45 a.m.*

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise, and I now give the floor to Mr. Robert Voltera.

Mr. VOLTERRA:

**QATAR HAS FAILED IN ITS ATTEMPT TO DISCREDIT THE 80 EXAMPLES OF  
BAHRAINI ACTIVITIES ON THE HAWAR ISLANDS**

**Introduction**

1. Thank you, Mr. President, Members of the Court.

2. May I direct the attention of the Court to the slide on the screen. You might recall that this was the slide used at the end of Mr. Shankardass's presentation last week in an attempt to demonstrate that, in Qatar's view, all 80 of the examples of Bahraini activities on the Hawar Islands had been eliminated from consideration in the present case by the force of Qatar's arguments<sup>1</sup>. The slide shows that Qatar understands that it must somehow suppress each piece of historical evidence

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<sup>1</sup>CR 2000/17, pp. 37-38, para. 42.

of Bahraini activities on the Hawar Islands or suffer the same fate as it did in the arbitration of 1938-1939.

3. In so far as it shows evidence of the parties' activities on the Hawar Islands, Bahrain agrees with half the slide. There is no evidence of any Qatari activities on the Hawar Islands. The only disagreement is whether the evidence of *Bahraini* activities is to be accorded any weight by the Court. Qatar says that it should not, has stripped the historical record bare and then presented the Court with a blank slide.

4. In my remarks during the first round of oral pleadings I reminded the Court that, of the list of 80 Bahrain activities, some 60 took place before Qatar's first claim to the islands in 1938. I shall not repeat that analysis. Today I will examine how Qatar responded in its second round of oral pleadings.

**Qatar has failed to overcome the evidence of Bahraini *effectivités*  
in the three categories that it has chosen to address**

5. In its first round, Qatar limited itself to analysing what Qatar chose to call three categories of *effectivités*. Qatar thus tried to pretend that there were only three Bahraini *effectivités*. In its second round of oral argument, Qatar recognized that what it had in fact discussed was no fewer than 20 of the *effectivités* from the list of 80<sup>2</sup>.

6. The three categories of Bahraini *effectivités* that Qatar addressed were:

- first, the original permission of the Qadi of Zubarah to the Dowasir to settle in the Hawar Islands;
- second, the 1909 and 1910 Bahrain court cases dealing with property and fishing rights in the Hawar Islands and involving Dowasir residents of the islands; and
- third, the two 1932 court cases, the 1911 subpoena, and the 1936 Bahrain Police Directorate memo, dealing with property and fishing rights in the Hawar Islands and involving Dowasir residents of the islands.

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<sup>2</sup>CR 2000/17, p. 38, para. 44.

7. The Court will recall that, during Bahrain's first round, I examined Qatar's attack on these documents, with reference to the evidence. I shall now examine Qatar's response to each of these categories during its second round.

**The original permission of the Qadi of Zubarah to the Dowasir to settle  
in the Hawar Islands**

8. First, the original grant from the Qadi of Zubarah, an official of the Al-Khalifa. In the first round, I pointed out that Qatar argued for the exclusion of this evidence on the grounds that some of it had been marshalled by Britain in 1909 in response to the Zakhuniya incident<sup>3</sup>. Mr. President, a fact is a fact. The motivation behind Britain's internal investigation in no way diminishes the force of the evidence. I also exposed the outright misrepresentation by counsel for Qatar of the texts of the relevant documents<sup>4</sup>. Qatar has failed to respond to either of these in its second round.

9. Qatar also argued that the Bahraini Dowasir were not really subject to the authority of Bahrain<sup>5</sup>. Qatar has done this because it realizes that it must establish that the Dowasir living in Hawar had no connection with Bahrain. Otherwise, its claim to the original title to the islands would fail.

10. As Mr. Paulsson reminded the Court yesterday, Qatar's wishful thinking is that Bahrain illegally occupied the islands in 1937, thereby displacing Qatar<sup>6</sup>. The reality is that even before 1868 the islands had been occupied by Bahraini Dowasir for at least seven months out of every year in permanent settlements that included houses and mosques and cemeteries<sup>7</sup>. Professor Sir Elihu Lauterpacht has already explained today that, even if Qatar were somehow accorded instant coast-to-coast title over the Qatar peninsula from 1868 based on the 1868 Agreements, a claim that the texts of the relevant documents do not support, that paper title could not overcome the reality of the previous and continuing occupation of the islands by the Bahraini Dowasir.

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<sup>3</sup>CR 2000/13, p. 28, para. 119.

<sup>4</sup>CR 2000/13, pp. 28-29, para. 122.

<sup>5</sup>CR 2000/13, p. 26, para. 109; CR 2000/17, p. 28, para. 11.

<sup>6</sup>CR 2000/17, p. 38, para. 42.

<sup>7</sup>CR 2000/13, p. 5, para. 26.

11. Qatar's instant coast-to-coast original title theory including the Hawar Islands would have the effect of cleansing territory of its peaceful, long-term residents by the force of a piece of paper whose authors were actively focused on arranging peace amongst the squabbling local groups in Doha, with not the slightest thought of the Hawar Islands on the other side of the peninsula — in the Gulf of Bahrain.

12. This is why Qatar would like the Court to believe that the islands were empty, that the Dowasir never really lived there or, if they did live there, that somehow they were not connected with Bahrain *à titre de souverain*. The evidence, starting from the 1820s and continuing to the witness statements of former Hawar Islands residents who were born on the islands, is entirely to the contrary.

13. In the first round, I examined the relationship of the branch of the Dowasir who lived in Bahrain at Zellaq, Budaiya and the Hawar Islands<sup>8</sup>. I shall not revisit that analysis because Qatar did not respond to it.

14. Nonetheless, in its second round, Qatar again attempted to convince the Court that the Bahraini Dowasir somehow constituted an independent entity<sup>9</sup>. The documents relied on by Qatar simply do not say what Qatar wishes that they would say. For example, Qatar cited Lorimer in support of its allegation that the Bahraini Dowasir were independent from Bahrain<sup>10</sup>. However, at the part of his book cited by Qatar, Lorimer was writing about the Dowasir tribe as a whole — a far-flung group living across the Arabian peninsula and the Gulf. He was not writing about the Bahraini branch of the tribe who had settled in the Hawar Islands in the early 1800s and on the main island of Bahrain in 1845.

15. When Lorimer *later* in his work turned to consider the Bahraini Dowasir *in particular*, he wrote, and I quote from counsel for Qatar's own reference to Lorimer during the second round: "The Dawasir of Bahrain are a *practically* independent community."<sup>11</sup> (Emphasis added.)

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<sup>8</sup>CR 2000/13, pp. 4-6, paras. 24-28.

<sup>9</sup>CR 2000/17, pp. 26-29, paras. 5-14.

<sup>10</sup>CR 2000/17, p. 26, para. 5.

<sup>11</sup>CR 2000/17, p. 27, para. 6.

*Practically* independent but, by the force of grammar and logic, not *actually* — let alone *legally* — independent. Qatar's thesis gets no support from Lorimer.

16. Qatar also cited Khuri as a purported authority for its thesis on this point. However, what Khuri *actually* wrote was that the Bahraini Dowasir "were the most powerful, influential and *autonomous* of all tribal groups" (emphasis added) in Bahrain<sup>12</sup>. Autonomy is not the same as independence. In many States, there are autonomous peoples and regions that are not independent. Autonomy connotes a degree of freedom, but freedom that is necessarily subordinated to a higher authority. It seems significant that Khuri carefully used the word "autonomy" and not "independence" to describe the Bahraini Dowasir.

17. In 1922, Major Daly, the British Political Agent, evaluated the relationship of the Dowasir to Bahrain — years before any Qatari claim to the Hawar Islands. Major Daly wrote that the Dowasir who lived in the main island of Bahrain and the Hawar Islands were recognized as Bahraini subjects<sup>13</sup>.

18. Both Lorimer's and Khuri's description of the Bahraini Dowasir is consistent with Bahrain's description of their status and inconsistent with Qatar's description. Neither authority gives support for counsel for Qatar's speculation that: "It is entirely unlikely therefore that [the Bahraini Dowasir] would have accepted any regulation or paid any taxes for any fishing or other activity in Hawar."<sup>14</sup>

19. This is *pure* speculation, in a case where there is no need to speculate. There is evidence of the Bahraini Dowasir accepting the authority of the Ruler of Bahrain. For example: the 1869 anti-smuggling order; the 1909 and 1910 Bahrain court judgments; the 1911 request from Britain to the Ruler of Bahrain to produce a Dowasir man from Hawar; the fact that the Bahraini Dowasir turned for protection to the Ruler of Bahrain during the 1909 Zakhnuniya incident and at the same time, expressed unequivocally their allegiance to the Ruler of Bahrain to the Ottomans and the British; and all the other examples that Bahrain submitted in its pleadings to show its sovereignty and the Bahraini Dowasir's acceptance of it. Qatar has no answer to them.

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<sup>12</sup>CR 2000/17, p. 26, para. 5, quoted from Counter-Memorial of Qatar, Ann. II.74, Vol. 2, p. 408.

<sup>13</sup>Note from British Political Agent to British Political Resident entitled "Bahrain Affairs" dated 13 July 1922 at p. 3. Memorial of Bahrain, Ann. 49, Vol. 2, pp. 155-158.

<sup>14</sup>CR 2000/17, p. 27, para. 7.

20. The only other argument raised by Qatar on this issue in its second round was the fact that some, but not all, of the Bahraini Dowasir temporarily left Bahrain before returning in 1927. But Qatar itself cited in its second round the uncompromising conditions upon which the Bahraini Dowasir were permitted to return to Bahrain in 1927<sup>15</sup>. Furthermore, counsel for Qatar accepted that those conditions alone, imposed in 1927, were sufficient for the Dowasir to be considered subjects of the Ruler of Bahrain. And Qatar cited the statement by the British Political Agent that the conditions described were intended to prevent "the establishment of any authority whatever, independent" of the Ruler of Bahrain<sup>16</sup>. *To prevent the establishment of any authority whatever, independent of the Ruler of Bahrain.*

21. Despite his clear language, Qatar chooses to interpret the British Political Agent as meaning that there *had* been such an independent authority previously established by the Dowasir in Bahrain<sup>17</sup>. Qatar's wishful interpretation cannot be correct. This is further borne out by scrutiny of another passage from Khuri quoted by Qatar last week. In it, Khuri explained that certain of the Bahraini Dowasir left Bahrain in 1924 because, "They abhorred the idea of being treated like *other* subjects in the country" (emphasis added)<sup>18</sup>. Like *other* subjects in the country, like other *Bahraini* subjects.

22. Qatar's speculation that the Dowasir were *independent* of Bahrain clearly finds no support even in the documents relied on by Qatar.

23. Qatar also argued that the Bahraini Dowasir were semi-nomadic<sup>19</sup>. Again, Qatar relied as authority for this proposition on the part of Lorimer that discussed the entire Dowasir tribe as a whole, not the Bahraini Dowasir in particular. Qatar could point to no evidence that the Dowasir who were subjects of Bahrain were semi-nomadic. The evidence is all to the contrary. The Hawar islanders were not nomads. They did not wander the deserts with their flocks. Since 1845 they had had two fixed places of habitation: the Hawar Islands and the main island of Bahrain. Indeed,

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<sup>15</sup>CR 2000/17, p. 28, para. 11.

<sup>16</sup>CR 2000/17, p. 28, para. 11.

<sup>17</sup>CR 2000/17, p. 28, para. 11.

<sup>18</sup>CR 2000/17, p. 27, para. 8.

<sup>19</sup>CR 2000/17, p. 26, para. 5.

Qatar has not challenged the recorded fact that the Dowasir families who lived in Hawar did so for seven months of the year.

24. Until last week, Qatar had claimed that the Dowasir only visited the islands. Now Qatar accepts that there was more to their inhabitation; that they had a "presence" there<sup>20</sup>.

25. The truth — unchallenged by Qatar's rhetoric — is that the Dowasir did not have a "mere" presence on the islands only for fishing purposes. They lived there as families — for the greater part of each year: seven months during the winter<sup>21</sup>. The remaining five months they lived in Zellaq<sup>22</sup>.

26. Qatar's attempt to disregard the original grant of the Qadi of Zubarah therefore fails. Qatar has merely attempted to refute documentary evidence long in the historical record with self-serving speculation. In these circumstances, the evidence must be returned to its rightful place on the historical record.

#### **The 1909 and 1910 Bahrain court cases dealing with property and fishing rights in the Hawar Islands and involving Dowasir residents of the islands**

27. The second of the three categories of *effectivités* addressed by Qatar in its first round was the evidence of Bahrain's exercise of judicial authority over the Hawar Islands and in particular the 1909 and 1910 Bahrain court cases dealing with property and fishing rights in the Hawar Islands and involving Dowasir residents of the islands. In the first round, Qatar stated that this historical evidence was of doubtful authenticity<sup>23</sup>. Bahrain responded with a challenge for Qatar to prove its last-minute allegation or withdraw the statement<sup>24</sup>. Qatar, of course, cannot prove its allegation and so it has resiled. In the second round, Qatar said that the documents were of doubtful *relevance*<sup>25</sup>.

28. The Court can take its own view of the relevance or not of judicial decisions by the Bahraini courts dating from the first decade of the twentieth century and dealing with land and property rights of Bahraini Dowasir in the Hawar Islands. This evidence was analysed fully in

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<sup>20</sup>CR 2000/17, p. 32, para. 22.

<sup>21</sup>CR 2000/13, p. 5, para. 26.

<sup>22</sup>CR 2000/13, p. 5, para. 26.

<sup>23</sup>CR 2000/8, p. 28, para. 28.

<sup>24</sup>CR 2000/13, p. 30, para. 129.

<sup>25</sup>CR 2000/17, p. 29, para. 13.



Bahrain's first round and I shall not discuss it further now. This evidence, too, must be restored to the historical record.

**The two 1932 court cases, the 1911 subpoena and the 1936 Bahrain Police Directorate memo, all dealing with property and fishing rights in the Hawar Islands and involving Dowasir residents of the islands**

29. In its first round of pleadings, Qatar asserted that the evidence of a third category of *effectivités*, related to the exercise of Bahrain's judicial and police authority over the Hawar Islands and dating from before Qatar's preferred critical date in 1936, did not say what Bahrain said it did<sup>26</sup>. Qatar's assertion was unsupported by any evidence or analysis.

30. In the first round, Bahrain exposed Qatar's assertion on this issue as misleading simply by referring to the actual texts of the documents<sup>27</sup>. Qatar has chosen not to respond to Bahrain on this point. The Court should make the appropriate inference: return those documents as well to the list.

31. The Court will recall that the Bahrain court cases from 1932, as well as the 1936 Police Directorate memorandum, deal with the activities of Bahraini Dowasir on the Hawar Islands. So much for Qatar's theory that there is no evidence of Dowasir activities on the islands after the return of the dissatisfied Dowasir to Bahrain in 1927.

32. So, in relation to the three categories of Bahrain's *effectivités* over the Hawar Islands that Qatar has thought fit to address, Qatar did not even attempt to resurrect its arguments about the evidence of Bahrain's judicial and quasi-judicial exercise of authority over the Hawar Islands. Qatar's attack on the first category of *effectivités*, related to the status of the Bahraini branch of the Dowasir tribe, likewise failed to withstand scrutiny.

**Qatar's attempt to exclude the evidence of other Bahraini activities on the Hawar Islands has also failed to withstand scrutiny**

33. In the second round, Qatar considered a number of other Bahraini activities on the Hawar Islands and contended that *none* of them should be considered by the Court. Qatar's analysis cannot withstand examination.

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<sup>26</sup>CR 2000/8, p. 30, para. 37.

<sup>27</sup>CR 2000/13, pp. 30-31, paras. 130-133.

### **Captain Brucks's survey of 1820-1829**

34. In its second round, Qatar again failed to address the substance of the Brucks report of the 1820s to the effect that the Hawar Islands were recognized as belonging to Bahrain. Qatar's attack on Captain Brucks's methodology is unconvincing<sup>28</sup>. Captain Brucks's map of the Gulf of Bahrain and his information about this part of the Gulf was precise and detailed, as can be seen by reading his report, extracts of which are contained in the Parties written pleadings, and to which I provide references here<sup>29</sup>. Captain Brucks, too, is entitled to reclaim his place in the historical record.

### **The physical evidence of Bahraini occupation of the islands for centuries**

35. Also in the second round, Qatar referred in passing to the physical evidence of the centuries-old occupation of the Hawar Islands by the Bahraini Dowasir<sup>30</sup>. Counsel for Qatar noted the not very remarkable fact that the witness statements of former Hawar islanders "speak of the past". And he concluded that the evidence of houses in ruins and cemeteries fit into a past history of Bahraini Dowasir links to the Hawar Islands that was "of a number of generations ago"<sup>31</sup>. *A past history of a number of generations ago*. Bahrain requests the Court to pay particular attention to this admission by Qatar. It certainly contradicts Qatar's vision of a sudden, artificial, and illegal occupation of the Hawar Islands in 1937. These examples of Bahraini activities must also be returned to the list.

### **Fishing in the Hawar Islands**

36. Then, fishing. In the first round, Bahrain pointed out that Qatar had no evidence to support its assertion that fishermen from all over the Gulf fished off the Hawar Islands<sup>32</sup>. One would have expected Qatar in the second round to support its assertion by reference to specific evidence. It did not do so. Instead, Qatar referred to general statements by Lorimer and the *Persian Gulf Pilot*. But those authorities do not state that fishermen from all over the Gulf fished

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<sup>28</sup>CR 2000/17, pp. 33-34, paras. 29-30.

<sup>29</sup>Memorial of Bahrain, Ann. 7, Vol. 2, pp. 92-109.

<sup>30</sup>CR 2000/17, p. 34, para. 31.

<sup>31</sup>CR 2000/17, p. 34, para. 31.

<sup>32</sup>CR 2000/13, p. 17, paras. 74-76.

off the Hawar Islands. It would be most surprising if they did, because the common fishing grounds of the Gulf did not extend to fish traps or to areas just off inhabited land. It seems that, in Qatar's view, because Lorimer and the *Persian Gulf Pilot* did not specifically say that Qatari and other non-Bahraini fishermen did *not* go to the Hawar Islands, Qatar is therefore entitled to conclude that they *must* have gone there. Qatar's argument on this point amounts to no more than a leap of faith<sup>33</sup>.

37. The best Qatar can do, once again, is speculate, and I quote: "In any event, there is nothing to suggest that the Dowasir stopped anyone else from fishing in the waters surrounding the island."<sup>34</sup>

38. Qatar proves nothing by this. These examples of Bahraini fishing activities are therefore reinstated on the historical inventory.

#### **Gypsum cutting on the Hawar Islands and visits of the Ruler of Bahrain**

39. In relation to gypsum cutting, Qatar attempted to convince the Court that it never occurred on the Hawar Islands and that, if it did, it was not conducted under licence. To do this, Qatar:

- (i) ignores the physical evidence of the gypsum quarries on the islands;
- (ii) ignores the witness statements that attest to the gypsum quarrying; and
- (iii) dismisses other historic documents recording the gypsum trade — including the reports of British officials — because they were written after the start of the British arbitration<sup>35</sup>.

In the same manner Qatar also ignores the witness statements and dismisses the historic evidence of the annual visits of the Ruler of Bahrain to the Hawar Islands. This analysis is superficial at best and it is insufficient to negate the evidence. So these activities too must be reinstated.

#### **Qatar's attempt to ignore half of the evidence by unsupported assertions cannot withstand scrutiny**

40. Finally, Qatar has attempted to convince the Court to disregard a large number of examples of Bahraini occupation of the Hawar Islands based only on the unsupported assertions

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<sup>33</sup>CR 2000/17, p. 31, para. 20.

<sup>34</sup>CR 2000/17, p. 32, para. 21.

<sup>35</sup>CR 2000/17, pp. 35-36, paras. 34-35.

that the examples were not supported by evidence or that they were not relevant<sup>36</sup>. Qatar has still declined to identify with any precision which of the 80 examples of Bahraini activities it would include in this category of documents, but counsel for Qatar referred to them as "a great majority"<sup>37</sup> and "at least half" of the list of 80<sup>38</sup>. In any event, Qatar states that it includes all the evidence other than that which Qatar grouped into the three categories of *effectivités* that I have just discussed.

41. In the first round, Qatar claimed that these examples should be disregarded because they were: "simply bold assertions, without any supporting evidence and therefore hardly deserving of serious consideration"<sup>39</sup>.

42. The Court will recall that I pointed out that this statement — itself a bold assertion — was demonstrably false. I described the location of the citations in Bahrain's written pleadings that identified the supporting evidence for these items<sup>40</sup>. In its second round, Qatar changed its position. Conceding that there *was*, after all, supporting evidence for all these examples of Bahraini activities, Qatar *now* stated — without explaining why — that the supporting evidence was not credible<sup>41</sup>.

43. The Court will no doubt reach its own conclusion about why Qatar failed to explain why the evidence should not be deemed credible. The evidence that Qatar has now gratuitously labelled as not being credible includes documents from the British Public Records Office, documents from the India Office Archives, documents from other British archives and sources, documents from oil companies, and even correspondence from the Rulers of Qatar<sup>42</sup>. Qatar was again effectively taking the position that historical evidence should be excluded if it disproves Qatar's latest theory of the history of the Hawar Islands. This is neither refutation nor legal argument.

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<sup>36</sup>CR 2000/17, p. 25, para. 1.

<sup>37</sup>CR 2000/8, p.17, para. 4.

<sup>38</sup>CR 2000/17, p. 37, para. 42.

<sup>39</sup>CR 2000/8, p. 17, para. 4.

<sup>40</sup>CR 2000/13, p. 27, para. 113.

<sup>41</sup>CR 2000/17, p. 25, para. 1; CR 2000/17, p. 37, para. 41.

<sup>42</sup>India Office Minute, 7 June 1939 (FO/371/23185) (Public Records Office); Letter from Prideaux, British Political Agent to British Political Resident, 4 April 1909 (IOR R/15/2/547) (India Office Archives); Letter from J. Black, BAPCO, to C. Belgrave, 8 Oct. 1939. Memorial of Bahrain, Ann. 290, Vol. 5, p. 1187 (oil companies); Letters from Ruler of Qatar to H. Weightman, 8 and 12 July 1938. Memorial of Bahrain, Anns. 265-266, Vol. 5, pp. 118-119 (Rulers of Qatar).

44. In relation to this category of examples of Bahrain's activities on the Hawar Islands, Qatar also made the unsupported assertion that: "None of them constitutes an act performed by or on behalf of Bahrain *à titre de souverain*."<sup>43</sup>

45. Qatar's assertion was emphatic and unqualified. None of these documents, according to Qatar, are acts *à titre de souverain*. None.

46. But the evidence that the Ruler of Bahrain appointed Hawar Island residents to act as guards on the islands during the 1920s and early 1930s<sup>44</sup> was never challenged by Qatar, whether in its written or oral pleadings. Qatar did not address this fact during its second round of oral pleadings *even* after I had made explicit reference to it during Bahrain's first round. Therefore this evidence stands unchallenged. Appointing local guards clearly fulfils the requirements of an act *à titre de souverain*. On the basis of that one activity alone, therefore, Qatar's ambitious assertion that *none* of this category of activities was *à titre de souverain* is proved false.

47. In Bahrain's view Qatar's *real* evaluation of the potency and relevance of the sort of evidence that Bahrain has produced in relation to the Hawar Islands of the *effectivités*, the conduct of the inhabitants, and the understanding of third parties, can be seen in Qatar's submission of the 82 forged documents. Those documents purported to include survey maps, letters from private fishermen about the Hawar Islands, records of fishing activities on the islands, visits of Qataris to the islands, statements of the opinions of third parties, and testimony of private citizens about other activities on the islands. In fact, precisely the same types of authentic evidence that is available from the public record *in relation to Bahrain*. As Sir Elihu noted to the Court in Bahrain's first round, when Qatar thought that the 82 documents could be accepted as evidence of this kind to support its case, Qatar was eager to present it to the Court as proof of its authority over the Hawar Islands<sup>45</sup>. It is only now, when it has been stripped of such evidence and left with absolutely nothing, that Qatar tries to diminish the relevance of Bahrain's evidence of a similar nature.

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<sup>43</sup>CR 2000/8, p. 17, para. 4; see also CR 2000/17, p. 25, para. 1.

<sup>44</sup>Memorial of Bahrain, Ann. 313 (a), Vol. 6, para. 10; Memorial of Bahrain, Ann. 314 (a), Vol. 6, para. 19.

<sup>45</sup>CR 2000/11, p. 11, para. 6; pp. 13-14, paras. 11-13.

48. Qatar's attempt to exclude this evidence from the Court is without merit. Qatar has now conceded that all the examples of Bahrain's activities in this category are, in fact, supported by evidence. And Qatar has failed to establish that this evidence is not relevant, let alone that none of it is *à titre de souverain*. They must therefore be returned to the list.

49. Before moving on to the post-1936 *effectivités*, I would like to remind the Court of the *effectivités* described in the various witness statements submitted by Bahrain and found in Volume 6 of the Bahrain Memorial and Volume 2 of the Bahrain Reply. These include:

- The Ruler of Bahrain rebuilding houses and mosques<sup>46</sup>.
- The Ruler of Bahrain appointing local guards, as I just said<sup>47</sup>.
- Licensing of pearling<sup>48</sup>.
- Licensing gypsum cutting<sup>49</sup>.
- The Ruler of Bahrain resolving islanders' disputes<sup>50</sup>.
- The Government of Bahrain building a pipe on Janan to guide Bahraini fishermen from nearby reefs<sup>51</sup>.
- The Ruler of Bahrain compensating a Bahraini fisherman who damaged his boat on the pipe<sup>52</sup>.
- The provision of medical treatment to Hawar Island residents by the Government of Bahrain<sup>53</sup>.

50. These witness statements are an important and uncontroverted oral history of the connections between the Hawar Islands and the rest of Bahrain.

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<sup>46</sup>Memorial of Bahrain, Ann. 313 (a), paras. 8-9; Memorial of Bahrain, Ann. 314 (a), para. 5.

<sup>47</sup>Memorial of Bahrain, Ann. 313 (a), para. 10; Memorial of Bahrain, Ann. 314 (a), para. 19.

<sup>48</sup>Memorial of Bahrain, Ann. 313 (a), para. 21; Memorial of Bahrain, Ann. 315 (a), para. 10; Memorial of Bahrain, Ann. 316 (a), para. 23.

<sup>49</sup>Memorial of Bahrain, Ann. 313 (a), para. 23; Memorial of Bahrain, Ann. 314 (a), para. 19; Memorial of Bahrain, Ann. 316 (a), para. 14.

<sup>50</sup>Memorial of Bahrain, Ann. 313 (a), para. 24; Memorial of Bahrain, Ann. 315 (a), para. 9; Memorial of Bahrain, Ann. 316 (a), para. 15.

<sup>51</sup>Memorial of Bahrain, Ann. 313 (a), para. 26.

<sup>52</sup>Memorial of Bahrain, Ann. 313 (a), para. 26.

<sup>53</sup>Memorial of Bahrain, Ann. 314 (a), para. 6.

**Qatar has not disputed the 14 examples of Bahrain's *effectivités* between 1936 and 1938**

51. Qatar has not contested the substance of the 14 examples of Bahrain's *effectivités* that are recorded as having occurred between 1936 and 1938. It is common ground between the Parties that these events took place. Qatar's attempt to exclude them from consideration is based entirely on its claim that April 1936 is the critical date in this case<sup>54</sup>.

52. But 1936 cannot be the critical date in this case. Indeed, Qatar cannot have been convinced of its own position. Qatar did not develop its critical date argument until it was required to transform its arguments radically because of its effective withdrawal of the 82 forged documents.

53. The 14 examples of Bahraini *effectivités* over the Hawar Islands between 1936 and 1938 must therefore be returned to their rightful place on the screen as part of the list of Bahrain activities over the islands.

**Rejection of Qatar's claim that the historical record does not include Bahraini activities demonstrating the exercise of State authority on the Hawar Islands**

54. Qatar drew the attention of the Court to certain types of State activities, demonstrative of the exercise of a State's authority over territory, that Qatar said were conspicuous by their absence from Bahrain's list<sup>55</sup>. Counsel for Qatar noted that there were no references to schools, medical facilities, or transportation facilities on the Hawar Islands. Bahrain admits that in 1938 there were no schools on Hawar. Nor were there hospitals. And the Hawars remain still today without an airport.

55. But it does not follow that there was something absent from Bahrain's authority over the Hawar Islands because of this. There were only two villages on the Hawar Islands. In 1938, there were only two hospitals in all of Bahrain. Not surprisingly, they were located near the main population centres of Bahrain in Manama. So, too, at that time, the schools in Bahrain were located in the major urban centres.

56. It is absurd for Qatar to suggest that Bahrain did not exercise authority over the Hawar Islands merely because there were no government schools or hospitals there. Until the 1950s there

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<sup>54</sup>CR 2000/8, pp. 38-42, paras. 7-18.

<sup>55</sup>CR 2000/17, pp. 38-39, para. 47.

were *no* schools in the entirety of the Qatar peninsula and the first hospital was only opened in Doha in October 1947. Until then, even the Qatari ruling family came to Manama to attend school and receive medical treatment.

57. As recently as the 1950s, Ahmed bin Saif Al-Thani, a former Qatari Cabinet Minister, attended school in Bahrain with the Agent of Bahrain's brother. And in 1951, it is recorded that the Ruler of Qatar was having his rheumatic arthritis treated by the Government of Bahrain Medical Service in Manama.

58. Qataris went to Manama for medical treatment. Just as did the Hawar Islanders. Indeed, the statements of former Hawar Island residents confirm that when they were ill the Government sent them to the main island of Bahrain for treatment<sup>56</sup>. The only difference was that, being Bahraini, the Hawar Islanders did not have to ask the permission of the Ruler of Bahrain.

59. And yet Qatar suggests that the lack of hospitals and schools in the Hawars in the 1930s and earlier is reason to doubt Bahrain's authority over them. If the Court were to follow Qatar's logic, then Qatar can no longer maintain that the Al-Thani exercised authority even over Doha — the centre of over 90 per cent of its population — let alone over the north and west of the Qatar peninsula.

60. The relevant point is that even prior to 1938 there was a degree of administration and exercise of authority over the islands by the Government of Bahrain consistent with the social, political and economic context of Bahrain and the Hawar Islands. The record shows that the administrative and other activities of the Government and Rulers of Bahrain in the Hawars well before the 1938-1939 arbitration included: judicial administration; police administration; the appointment of local guards; the repair of houses and mosques; administering various licenses; constructing and maintaining dams and cisterns; issuing passports; installing a metal pipe in Janan to assist the islanders to avoid nearby shoals; and constructing a pier<sup>57</sup>.

61. The Court might be interested to note that the majority of the activities that I have just listed are recorded to have occurred before 1936 and all of them occurred before Qatar made its claim to the islands in 1938.

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<sup>56</sup>Memorial of Bahrain, Ann. 314 (a), Vol. 6, para. 6.

<sup>57</sup>Memorial of Bahrain, paras. 434, 435, 439, 446, 451, 455-457, 458, 464, 466, 471, 474, 477 and 484.



**Qatar did not challenge the evidence of Bahrain's *effectivités* over the Hawar Islands after the 1939 Award**

62. Finally, Qatar has not contested the existence of Bahrain's *effectivités* on the Hawar Islands after the 1939 Award. Bahrain of course does not rely on these to establish its title. They are presented as confirming Bahrain's consistent exercise of authority in the Hawars. These include:

- Authorizing the mapping of the Hawar Islands by the Bahraini oil concessionaire in 1939<sup>58</sup>.
- Introducing native Arabian fauna to the islands under a wildlife preservation programme and the creation of an animal wildlife preserve on Jazzirat Hawar<sup>59</sup>.
- The further erection and maintenance of maritime markers<sup>60</sup>.
- Regular patrolling of the Hawar Islands *including Janan* by the Bahrain Coastguard<sup>61</sup>.
- The presence of a defensive military capability, and the maintenance of a full military complex on the islands since 1941<sup>62</sup>.
- Reinforcement of Bahrain's military presence on the Islands<sup>63</sup>.
- Constructing and maintaining fresh water infrastructure (including a desalination plant) on the Islands<sup>64</sup>.
- Constructing and maintaining an electricity infrastructure on the islands which is integrated with the rest of Bahrain's power grid<sup>65</sup>.
- Constructing and maintaining a telecommunications system which is fully integrated with the Bahraini BATELCO system<sup>66</sup>.

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<sup>58</sup>Letter from Black (BAPCO) to Belgrave, 8 Oct. 1939. Memorial of Bahrain, Ann. 290, Vol. 5, p. 1187.

<sup>59</sup>Translation of statement of Hamoud bin Muhanna, 7 Sept. 1996. Memorial of Bahrain, Ann. 313 (a), Vol. 6, p. 1366.

<sup>60</sup>Memorial of Bahrain, para. 487.

<sup>61</sup>Memorial of Bahrain, para. 487.

<sup>62</sup>J. Crystal, "Oil and Politics in the Gulf: Rulers and Merchants in Kuwait and Qatar" (1990), p. 166, Memorial of Bahrain, Ann. 307, Vol. 6, p. 1285; R. Zahlan, "The Making of the Modern Gulf States" (1989), pp. 140-141, Memorial of Bahrain, Ann. 307, Vol. 6, p. 1285.

<sup>63</sup>Memorial of Bahrain, para. 489.

<sup>64</sup>Memorial of Bahrain, Ann. 307, Vol. 6, p. 1285.

<sup>65</sup>*Ibid.*

<sup>66</sup>Supplemental Documents submitted by State of Bahrain, p. 107. Memorial of Bahrain, Ann. 307, Vol. 6, p. 1285.

- Licensing tourist complexes on both the north and south of the main Hawar Island, and establishing a twice daily passenger shuttle-boat service between Manama and the islands<sup>67</sup>.
- Constructing residences for the Bahrain ruling family<sup>68</sup>.
- Constructing public housing<sup>69</sup>.
- Visits to the islands by the Bahrain ruling family<sup>70</sup>.
- Regulating oil prospecting and concession activities on the islands (including the granting of concessions and the monitoring of oil exploration)<sup>71</sup>.
- Geological mapping of the area by the Bahrain Petroleum Company (BAPCO), acting under authorization from the Government of Bahrain<sup>72</sup>.
- Including the Hawar Islands residents in the Bahrain censuses<sup>73</sup>; and
- Providing postal services.

This photograph, and a close up of the sign, are provided at tab 130 of your judges' folders.

63. The distinguished Agent of Qatar described this photograph as being mislabelled by Bahrain and not, in fact, showing the North Village<sup>74</sup>. In this he was wrong. The Court will discern in the background of this photograph the holiday chalets that appear in other photographs of the North Village submitted by Bahrain. Indeed, the Agent of Qatar himself recognized this fact in his remarks. Furthermore, these chalets appeared in the satellite photographs that the Agent of Qatar showed in his opening statement to the Court. Also in the background, although perhaps more difficult to make out, are the mosque and the ruins of the old Dowasir houses in the North Village, as well, further back, as the modern housing units, the latter of which were also highlighted on the Agent's satellite photographs. The sign shown here is one of several around the

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<sup>67</sup>Advertisement of Gulf Tourism company, 25 June 1996 in Al Ayam newspaper, Ann. 312, Vol. 6, pp. 1359-1362; Map of the Hawar Islands — Location, Memorial of Bahrain, Annex, Vol. 7, map 4.

<sup>68</sup>Memorial of Bahrain, Anns. 1, 2, 3, Vol. 2, pp. 2, 4, 6.

<sup>69</sup>Reply of Bahrain, para. 180.

<sup>70</sup>Note by C. Belgrave, Adviser to the Government of Bahrain, entitled "The Hawar Islands", 29 May 1938. Memorial of Bahrain, Ann. 261, Vol. 5, p. 1108; Memorial of Bahrain, Ann. 274, Vol. 5, pp. 1129-1135.

<sup>71</sup>Memorial of Bahrain, Ann. 295, Vol. 5, p. 1204; Letter from Brown (BAPCO) to Secretary to Government of Bahrain, 13 July 1949, Memorial of Bahrain, Ann. 298, Vol. 5, p. 1211; Letter from Ruler of Bahrain to Schmidt of BAPCO, 2 Nov. 1961, Memorial of Bahrain, Ann. 303, Vol. 5, p. 1225.

<sup>72</sup>Memorial of Bahrain, Ann. 295, Vol. 5, p. 1204; Memorial of Bahrain, Ann. 285, Vol. 5, p. 1179; Memorial of Bahrain, Ann. 290, Vol. 5, p. 1187.

<sup>73</sup>Memorial of Bahrain, para. 41.

<sup>74</sup>CR 2000/19, p. 42, para. 19.

island placed by the Bahrain Defence Forces outside tourist residential areas, instructing the Bahrain Defence Forces personnel not to enter. The English text on the sign does not have the punctuation added in last week, self-servingly, by Qatar. It reads in fact: "No entry soldiers and military vehicles in this area." This is an abbreviation for "No entry for soldiers and military vehicles in this area." This reading is borne out by the Arabic text on the sign, which reads: "*Tah'theer*: Mamnoó dukhool alaskareyín wa alaliyát alaskariyya ila hathihi al mintaqa." This is translated into English literally as: "*Warning*: No entry for military personnel or military equipment into this area."

64. Bahrain is puzzled by Qatar's mistake, and can only attribute it to haste. After all, both sides are able to read Arabic, and some even read a bit out.

65. One more clarification must be made about the images submitted by Bahrain. The Court will no doubt recall this image of the tail of Hawar at low tide looking towards the Qatar peninsula and Qatar's insinuation that this photograph somehow was subject to manipulation by Bahrain. I assure the Court that this is not the case at all. But the obvious way for Qatar to have shown that this photograph is wrong would have been to submit a photograph of its own showing the tail at low tide otherwise than as this. But Qatar has not submitted such a photograph either now or in its written pleadings. Yet Qatar submitted over the course of its written and oral pleadings, a considerable number of photographs and satellite images of the Hawar Islands. Many of them were of high resolution and some of them showed great detail. Qatar has told the Court how it scoured the ends of the earth for documents to support its case. It clearly spent considerable time and effort over a period of more than a decade photographing the Hawar Islands from various angles. And yet not one of Qatar's photographs shows details of the tail of the main Hawar Island that contradict this photograph or shows the island as being so close to the Qatar peninsula as Qatar would like you to believe it is. We can be confident that if it were otherwise Qatar would have submitted such a photograph.

66. I must add, there were no other kinds of manipulation either.

67. Bahrain did not spend tens of millions of dollars to excavate and obliterate 4 km of ridge. And, if it had, Qatar would have noticed it. What is, *is*.

68. Qatar would prefer the Court to look at its maps and images prepared especially for these pleadings, rather than that the Court see the reality. Bahrain affirms to the Court that at low tide the distance from the tail of Hawar to the Qatar peninsula is 3 km, and at high tide more than 4 km. And finally, may I show without comment the view from Qatar of the very closest point of the main Hawar island. Qatar's message to the Court was that it wished that these photographs did not show this to be the reality.

69. And so, Mr. President, the historical record has been restored in its entirety. You can find a copy of this slide at tab 130 of the judges' folders. There is no blank slate upon which Qatar can draw its fanciful theories about a sudden occupation of empty islands in 1937. Bahrain has a wealth of evidence demonstrating Bahraini activities over the Hawar Islands from the early 1800s. The majority of these occurred before the British arbitration of 1938, and even before 1936. There was no blank slate in 1868. There was none in 1937. The record of Bahrain's uninterrupted continuum of sovereignty over the Hawar Islands is unassailable.

70. As in its first round, Qatar's rebuttal of Bahraini activities on the Hawar Islands during the second round was in fact nothing more than an attempt to refute specific evidence with generalized theories to the contrary, based on extrapolations from documents that were not warranted by the texts of those documents. Despite having had more than 60 years since the last arbitration to scour the world for documents, Qatar does not have a single piece of evidence of any Qatari activities on the Hawar Islands. The inevitable conclusion is that there were none.

71. Qatar's attempt to do a conjuring trick, to make the historical record of Bahrain's activities disappear, has been exposed. The record has been restored intact. There is no blank slate on which Qatar can compose its imaginative story of the sudden illegal occupation of empty islands in 1937.

Mr. President, Members of the Court, I thank you for your attention during my presentation. I ask if you could now call upon Mr. Jan Paulsson to continue with Bahrain's case.

The PRESIDENT: Thank you very much, Mr. Volterra. Je donne maintenant la parole à M<sup>e</sup> Jan Paulsson.

M. PAULSSON : Merci. Monsieur le président, Madame et Messieurs les juges.

### ZUBARAH

1. A Zubarah, il y a eu agression. A Zubarah, il y a eu mort d'homme. A Zubarah, il y a eu une communauté dépossédée, déracinée, exilée.

2. En une phrase : il y a eu une occupation illégale dans ce conflit, et ce sont les Naïm de Bahreïn qui en furent les victimes.

3. L'histoire de Zubarah est bien plus dense que celle des îles Hawar. Zubarah, aujourd'hui en ruines, fut jadis une ville prospère et cosmopolite, la capitale d'une dynastie, l'objet de convoitise de la part des Ottomans et des cheikhs de Doha.

4. Les détails de cette riche histoire ne se prêtent pas à un débat oral dans cette enceinte il nous faudrait des sessions entières. M. le professeur David nous a fait le reproche que pour rappeler les éléments de l'histoire de Zubarah qui sont décisifs aux yeux de Bahreïn, nous nous sommes référés aux développements très fouillés du mémoire de Bahreïn sans tenir compte de l'ensemble des tentatives de réfutation du contre-mémoire de Qatar.

5. C'est partiellement vrai, mais alors il ne faut pas oublier qu'il y a eu ensuite le mémoire en réponse de Bahreïn qui, selon nous, a neutralisé ces tentatives de réfutation. Qatar devient alors l'arroseur arrosé, car M. le professeur David n'a pas tenu compte de notre réfutation écrite des prétendues réfutations qatariennes.

6. En vérité, les plaidoiries orales ne donnent pas l'occasion appropriée pour aller au bout d'un débat de détails. Dans la mesure où la Cour estime que tel ou tel aspect de l'histoire est pertinent pour sa décision, elle ne se fiera pas aux affirmations des conseils, mais procédera à sa propre vérification des éléments de preuve. Plutôt que de tenter de faire un long résumé de ce qui est, au bout de compte, l'histoire presque intégrale de deux nations, j'ai fait établir une liste de références au dossier, question par question. Par exemple, sous la rubrique «Zubarah» vous lirez en sous-titre «visées Ottomanes» avec les références aux pages des mémoire, contre-mémoire, mémoire en réponse et compte rendu d'audience où est traitée cette matière. Nous pourrions en faire la lecture, mais ce serait d'une épouvantable aridité, et heureusement la pratique nous permet d'inclure ces références sans une telle lecture. Afin que les références puissent comprendre les

dernières interventions orales, Bahreïn se propose de joindre ces références à la dernière intervention de Son Excellence l'agent de Bahreïn.

7. Pour l'instant, j'aimerais traiter le problème de Zubarah d'une manière *synthétique*. Voici ce qu'il convient de retenir selon Bahreïn.

8. *Primo*, les deux Parties conviennent que jusqu'en 1868 toute la péninsule de Qatar fut sous l'autorité de Bahreïn.

9. *Secundo*, Qatar a tenté en vain de prouver que diverses conventions, de 1868 et de 1916, en passant par les années 1913 et 1914, ont créé un Etat de Qatar avec une étendue territoriale comprenant l'ensemble de la péninsule. Sir Elihu Lauterpacht a mis à néant cette tentative désespérée, née de la «perte» des quatre-vingt-deux documents.

10. *Tertio*, Qatar n'a jamais pu prouver quand et comment il a pu établir son autorité sur Zubarah avant 1937. En cette matière, les éléments de preuve sont parcellaires. C'est vrai, il n'y avait pas de cadastre à Zubarah il y a un siècle. Mais toutes les preuves qui existent et les mémoires de Bahreïn en contiennent un nombre impressionnant sont à 100 % favorables à la thèse de Bahreïn, car du côté des Al-Thani, jusqu'au 1<sup>er</sup> juillet 1937, il n'y avait strictement rien.

11. *Quarto*, Bahreïn n'a jamais renoncé à Zubarah. A diverses reprises, Bahreïn était *prêt* à le faire, dans l'intérêt de la paix mais seulement à certaines conditions. Celles-ci n'ont jamais été acceptées. Bahreïn a proposé un plébiscite parmi les Naïm, ce qui fut refusé par les Al-Thani. La signature de l'accord de 1944, loin de valoir renonciation sur Zubarah, ne parlait que de la restauration de la paix comme par le passé *the restoration of friendly relations... as they were in the past* ce qui implique plutôt la restauration de Bahreïn dans ses droits à Zubarah<sup>1</sup>.

12. Dans ce contexte, la lettre officielle que le *Political Agent* adressa au conseil de l'émir de Bahreïn le 18 mars 1950<sup>2</sup> est plus que significative. Elle intervient — il faut le rappeler — plusieurs années *après* l'accord que Qatar persiste faussement à présenter comme valant renonciation aux droits de Bahreïn à Zubarah.

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<sup>1</sup>CR 2000/12, p. 23, par. 102.

<sup>2</sup>*Ibid.*

13. Il est question ici d'un décret que l'émir se propose de proclamer au sujet de ressortissants de Bahreïn voulant se rendre à Zubarah. La lettre du *Political Agent* est instructive à plus d'un titre.

14. Tout d'abord, nous constatons que les décrets de l'émir sont soumis à l'approbation préalable des autorités britanniques. On est assez loin de la vision du professeur Salmon d'un Etat de Bahreïn souverain.

15. D'ailleurs, la lettre dit tout à fait explicitement :

«Il n'appartient pas au Gouvernement de Bahreïn d'autoriser des particuliers à se rendre à Qatar (ou à Koweït ou à n'importe quel autre Etat du golfe Persique). Le Gouvernement britannique se réserve le droit de donner des visas pour des particuliers se rendant à ces Etats (Bahreïn y compris).»

16. Ensuite, le *Political Agent* exprime une restriction lourde de sens. Il appartient aux autorités anglaises de donner des visas pour des gens se rendant à Qatar, sauf — et j'insiste — : «sauf qu'il ne serait évidemment pas question d'insister sur des visas pour ceux qui se rendent avec la permission de Son Altesse [l'émir de Bahreïn] à Zubarah.» Enfin, le *Political Agent* indique ce qui suit, au paragraphe 3 : «J'espère vous écrire séparément au sujet des concessions que Son Altesse le cheikh Salman a promis pour Qatar afin de régler cette affaire.»

17. C'est clair comme de l'eau de roche : l'affaire de Zubarah n'est pas encore réglée, et elle ne l'est pas jusqu'à ce jour.

18. Jointe à la lettre se trouve un projet de proclamation où le *Political Agent* propose la formule suivante :

«2) Aucun de nos sujets ne pourra se rendre de l'Etat de Bahreïn à la région de Zubarah de Qatar sans au préalable, comme par le passé, avoir reçu l'autorisation de Son Altesse l'émir de Bahreïn.»

19. L'expression «la région de Zubarah de Qatar» a immédiatement fait réagir le cheikh de Bahreïn, compte tenu de son ambiguïté. Il ne saurait être question d'assimiler «région de Qatar» à «région des Al-Thani». Il rectifie la formule. La proclamation est faite, vous la trouverez au n° 132 du dossier d'audiences sous le sous-titre *b*) : «Aucun de nos sujets ne pourra se rendre à Zubarah sans au préalable, comme par le passé, avoir reçu notre autorisation.»<sup>3</sup>

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<sup>3</sup>Soumis à la Cour le 21 juin 2000.

20. Dans les semaines qui suivent, le *Political Agent* s'enquiert du nombre des gens qui vont retourner à Zubarah. Le cheikh de Bahreïn, après avoir établi que ces gens :

— ne seront pas soumis à l'autorité de Qatar,

— ne s'acquitteront pas des droits de douane à Qatar, et que

— le fort construit par les Al-Thani à Zubarah sera vide (lettre du 1<sup>er</sup> février 1950),<sup>4</sup>

répondra qu'il s'agira d'environ cent cinquante à deux cents personnes *avec leurs familles* (lettre du 4 février 1950)<sup>5</sup> — un nombre tout à fait considérable compte tenu de la faible population de cette région de la péninsule. (Rappelons que pour toute la côte ouest de Qatar, l'estimation de source qatarienne est de huit cents personnes).

21. Par la suite, au mois de mars, le cheikh Salman fournira une liste détaillée des familles et des particuliers qui sont repartis à Zubarah avec leurs effets — y compris «chèvres, vaches, et chameaux» (lettre du 21 mars 1950)<sup>6</sup>.

22. Je le répète, la question de Zubarah n'était pas réglée, et la réalité sur le terrain semble plutôt avoir été une réalité bahreïnite.

23. Avant de quitter le sujet des Naïm de Bahreïn résidant à Zubarah, permettez-moi de rappeler à la Cour que la branche bin Jabbar des Naïm — celle-là même qui a toujours prédominé à Zubarah — fut intégrée à la société bahreïnite depuis longtemps. A titre d'exemple, la Cour peut se rapporter au *Civil Lists* de Bahreïn pour les années 1924 et 1925, où figuraient des personnalités dont la contribution à Bahreïn était suffisamment importante qu'elles recevaient une dotation annuelle, sur ces *Civil Lists*, vous trouvez plusieurs de ces bin Jabbar<sup>7</sup>.

24. Monsieur le président, nous sommes arrivés au terme des présentations de Bahreïn sur les questions territoriales relatives aux îles Hawar et de Zubarah. Mais avant qu'il plaira à la Cour d'entendre les professeurs Reisman et Weil sur la délimitation maritime et les questions territoriales propres à la zone maritime, permettez-moi d'évoquer, en guise de conclusion, deux sujets qui revêtent pour Bahreïn une importance fondamentale.

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<sup>4</sup>*Ibid.*

<sup>5</sup>*Ibid.*

<sup>6</sup>*Ibid.*

<sup>7</sup>Contre-mémoire de Bahreïn, vol. 2, annexe 54, p. 174; annexe 55, p. 179.



## ACQUIESCEMENT

25. Aujourd'hui, Qatar s'emploie à nourrir l'impression que le rejet par le Gouvernement britannique de sa revendication sur les îles Hawar en 1939 n'a, depuis cette date, cessé d'être la source de plaintes aiguës et amères de sa part. Mais il s'agit, à ne pas s'y tromper, d'une attitude de circonstance. Qatar feint d'avoir été meurtri par «la perte» des Hawar depuis des générations. Les éléments de preuve historiques sont clairs; ils démontrent que cette attitude est de facture toute récente.

26. J'aimerais, à ce propos, évoquer deux rencontres, toutes deux entre un cheikh de Qatar et un fonctionnaire britannique. Ces deux rencontres sont, nous semble-t-il, hautement révélatrices. Elles ont eu lieu en 1941 et 1961. La Cour est, en mesure de se référer à des comptes rendus contemporains. L'image que donnent ces notes ne ressemble en rien à celle décrite par Qatar pour les besoins de son argumentation aujourd'hui.

27. La première rencontre fut celle à laquelle j'ai eu l'occasion de faire allusion au cours d'une intervention précédente<sup>8</sup>; les protagonistes furent le cheikh Abdullah Al-Thani de Qatar et sir Rupert Hay, le *Political Resident* britannique, en 1941. Vous vous souvenez que sir Rupert, le plus haut fonctionnaire britannique dans le Golfe, quitte Manama dans une chaloupe le matin pour inspecter les opérations pétrolières de PCL à Dukhan avant de déjeuner sur place. Ensuite il traverse le "*stony and uninhabited desert*", comme il l'écrira dans son rapport, pour atteindre la côte est de Qatar où il est reçu par le cheikh Abdullah. Et sir Rupert d'écrire à ce propos :

«[Le cheikh Abdullah] est un vieil homme vénérable de 65 ans avec une longue barbe blanche et il s'est montré très aimable. Certes, les revenus de la société pétrolière ont grandement accru sa prospérité.»<sup>9</sup>

*"He [Cheikh Abdullah] is a venerable old man of 65 years with a long white beard and appeared very friendly. The Oil Company's operations have of course greatly increased his prosperity."*<sup>10</sup>

28. C'est tout, et c'est remarquable. Remarquable d'abord du fait de l'identité des deux hommes. D'un côté, il y a sir Rupert Hay — le plus haut représentant britannique dans toute la région. Puisqu'il évoque la «longue barbe blanche» du cheikh, on peut raisonnablement déduire

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<sup>8</sup>CR 2000/12, p. 27, par. 127.

<sup>9</sup>Mémoire de Bahreïn, vol. 5, annexe 296.

<sup>10</sup>Mémoire de Bahreïn, vol. 5, ann. 296.

que c'est leur première rencontre. Et si le cheikh Abdullah avait à cœur un sujet important à porter à l'attention du Gouvernement britannique, ce serait par l'intermédiaire de cet homme. S'il y avait une personne qu'il convenait de convaincre de l'existence d'un grief, c'est bien ce *Political Resident*. Aucun *Political Agent* n'est basé à Doha à cette époque — il n'y en aura pas avant 1949. Voici donc une occasion importante pour soulever un problème.

29. En face, le cheikh Abdullah. Ce fut bien sûr en son nom que les Hawar ont été revendiquées — avec ou sans l'ombre de M. Skliros de PCL derrière lui. Cette rencontre met ainsi face à face la victime supposée d'une injustice, d'un côté, et le représentant de l'auteur de cette prétendue injustice de l'autre côté.

30. Et pourtant : le nom des îles Hawar ne paraît même pas avoir été prononcé; en tous cas, leur importance dans la discussion n'est pas telle que ces îles méritent la moindre mention dans le rapport de sir Rupert — pas un mot de la décision «sordide et honteuse» pourtant rendue seulement vingt et un mois auparavant, ni d'une plainte quelconque à ce titre.

31. Il est catégoriquement exclu que le cheikh Abdullah ne se rende pas compte de l'importance de son visiteur. En ce temps là, l'autorité et la capacité d'initiative des *Political Residents* sont formidables. Le propre grand-père du cheikh Abdullah, Mohammed Al-Thani, avait pu constater le pouvoir du *Political Resident* en 1868 de la manière la plus décisive. La Cour a souvent entendu parler de cet épisode. Le cheikh de Bahreïn fut sévèrement puni, destitué, par le *Political Resident*. Ses navires furent brûlés. Parallèlement, les autorités anglaises ont obtenu des tribus de Doha qu'elles reprennent le paiement de l'impôt, avec Mohammed Al-Thani comme collecteur principal<sup>11</sup>. Vous venez de le voir au cours de la présentation de sir Ian.

32. Revenons-en à 1941. Deux générations plus tard, voici le petit-fils de Mohammed devenu cheikh de Qatar à son tour. Il se trouve face à un nouveau *Political Resident*, le successeur de celui qui lui a notifié la décision anglaise en juillet 1939. Voici donc l'occasion de se plaindre de la mainmise sur les îles Hawar — après tout, ce nouveau *Political Resident* vient d'arriver sur scène et n'a joué aucun rôle dans la procédure qui a mené à la reconnaissance de la souveraineté de Bahreïn sur les îles Hawar. Mais le cheikh Abdullah ne dit mot : il se révèle à sir Rupert comme

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<sup>11</sup>Mémoire de Bahreïn, vol. 2, ann. 13, p. 160.

«un personnage très aimable» dans sa récente prospérité pétrolière. Comme le cheikh Abdullah n'a jamais mis les pieds sur les îles Hawar, et comme il ne savait même pas où elles se trouvaient, ou quelle était leur superficie même approximative, on comprend qu'il ne déplore guère la perte de ce qu'il n'a jamais eu.

33. Vingt années passent. Le cheikh Ali succède à son père Abdullah; il est cheikh de Qatar entre 1948 et 1960. Cet Ali bin Abdullah a-t-il même prononcé le nom des îles Hawar ? Personne ne peut l'affirmer. En tout cas, tout au long de son règne il n'y a pas la moindre trace de plainte de sa part à ce sujet. En 1960, son fils Ahmed devient cheikh de Qatar. A cette époque là, il y a un *Political Agent* à Qatar même, en la personne de M. John Moberly — ultérieurement sir John Moberly. C'est avec lui qu'a lieu la deuxième rencontre que je voulais évoquer.

34. La date est d'une importance capitale. Vous avez entendu la semaine dernière le professeur Salmon s'étendre assez longtemps sur une suite de correspondances au milieu des années soixante concernant les diverses pommes de discorde entre Bahreïn et Qatar. A son tour, le professeur David s'est exprimé le lendemain avec une très grande assurance. Je le cite :

«La Cour appréciera qui, de Qatar ou de Bahreïn, utilise le règlement judiciaire des différends à des fins essentiellement tactiques, mais en gardant à l'esprit que les tentatives répétées par Qatar de soumettre la question des îles Hawar au règlement arbitral ou judiciaire remontent à 1964, alors que la volonté par Bahreïn de soumettre la question de Zubarah à un tel règlement n'a été introduite qu'en 1988.»<sup>12</sup> (Les italiques sont de moi.)

35. Mais voyons. Bahreïn est parfaitement d'accord pour laisser la Cour apprécier qui fait de la tactique, et qui utilise quoi comme contre-poids. Mais ce faisant, la Cour ne tombera pas dans le piège de s'arrêter à la date choisie par Qatar, à savoir 1964, comme le début de l'histoire.

36. Car la rencontre entre M. Moberly et le nouveau cheikh eut lieu en 1961. Voici en réalité le début des hostilités juridico-politiques.

37. M. Moberly décrit cette rencontre dans son rapport du 1<sup>er</sup> mars 1961 sur les événements du premier trimestre de cette année-là. Vous trouverez ce rapport dans votre dossier d'audience. Sous la rubrique "*Relations with Bahrain*", il écrit ceci :

«[le cheikh Ahmed Al-Thani] a été fortement irrité par la parution d'un rapport dans le *Daily Telegraph*, qui suggère que le souverain de Bahreïn a engagé des avocats pour faire avancer ses revendications sur Zubarah. Il avait du mal à croire que le

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<sup>12</sup>CR 2000/18, p. 43, par. 3

cheikh Salman [de Bahreïn] aurait pris cette initiative sans consultation préalable avec le Gouvernement britannique et qu'en conséquence a insinué que ce dernier n'avait pas joué franc jeu. *Il a dit que si Salman persiste à faire valoir sa revendication sur Zubarah, il soulèverait la question de l'île de Hawar [sic].* Qatar n'a jamais été satisfait de l'attribution de cette île à Bahreïn en 1939 par le *Political Resident* [sic] et a seulement gardé le silence par déférence vis-à-vis du Gouvernement britannique. Son intention est que les deux différends doivent être soumis à l'arbitrage international. Cependant, le fait d'avoir reçu l'assurance [*an assurance* en anglais] du *Political Resident* selon laquelle le Gouvernement britannique n'a jamais reconnu, et ne reconnaît toujours pas, un droit de souveraineté de Bahreïn à Zubarah l'a calmé, et selon toute vraisemblance il laissera tomber cette question à moins qu'elle ne soit soulevée à nouveau du côté de Bahreïn.»<sup>13</sup>

*["The Ruler [Cheikh Ahmed Al Thani] was very irritated by the appearance in the Daily Telegraph of a report suggesting that the Ruler of Bahrain was employing lawyers to further his claim to Zubarah. He found it difficult to believe that Sheikh Salman [the Emir of Bahrain] would have taken this step without previous consultation with H.M.G. and as a result suggested that H.M.G. had been less than frank with him over this. He said that if Salman persisted in pursuing his claim to Zubarah he for his part would raise the question of Hawar Island. Qatar had never been satisfied with the award of this island in 1939 to Bahrain by the Political Resident and had only remained silent about it in deference to H.M.G. His intention was that both disputes should be referred to international arbitration. However, the receipt of an assurance from the Political Resident that H.M.G. had never recognized and still did not recognize any Bahraini right to sovereignty in Zubarah mollified him and the probability is that he will let the matter drop unless it is raised again from the Bahrain side."]<sup>14</sup>*

38. Ceci n'a guère besoin d'être commenté. Puisque Bahreïn n'a jamais abandonné sa plainte au sujet de Zubarah, Qatar s'est servi très précisément du contre-poids annoncé par le cheikh Ahmed en 1961 : Qatar a ressuscité sa vieille revendication sur les îles Hawar. Quarante ans plus tard, Qatar met le monde à l'envers, et répète inlassablement que c'est Bahreïn qui est allé chercher Zubarah comme contre-poids. Ceci est peut-être de bonne guerre, mais c'est une dénaturation totale de la vérité historique.

39. La seconde et dernière de mes observations finales concerne les considérations morales introduites par Qatar dans ses plaidoiries.

40. Nous avons en effet été témoins d'une présentation qui doit assurément être très peu fréquente. Un ancien haut fonctionnaire intervient en tant qu'avocat d'un autre pays pour déclarer que les agissements de son propre gouvernement ont été «sordides et honteux». Nous comprenons certes, ainsi que M. le professeur Reisman l'a expliqué, qu'il faut s'attendre à une rhétorique

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<sup>13</sup>Mémoire de Bahreïn, vol. 5, ann. 301, p. 1216-1217.

<sup>14</sup>Mémoire de Bahreïn, vol. 5, ann. 301, p. 1216-1217.

désespérée lorsqu'on veut faire annuler une délimitation frontalière décidée par une autorité compétente soixante ans auparavant.

41. Mais dans son empressement iconoclaste Qatar a très précisément compris les choses de travers. Loin de mériter d'être taxée de toutes les turpitudes, la conduite du Gouvernement britannique en 1939 fut très exactement ce qui était *nécessaire afin ... d'éviter le sordide et la honte.*

42. Jugez plutôt vous-même. En décembre 1937, M. Rendel du Foreign Office, un des rares Anglais à trouver grâce au yeux de Qatar lorsqu'il s'agit des Hawar — on remarquera par ailleurs que tous les Anglais semblent héroïques dès que surgit la question de Zubarah — M. Rendel écrit dans une note que sir Ian a jugé utile d'insérer dans le dossier d'audience de Qatar. J'ai suivi son exemple pour aller plus vite; vous trouverez cette note dans le dossier d'audience de Bahreïn. «Pour ce qui est des îles Hawar», écrit Rendel,

«Je ne peux que regretter que l'India Office soit allé aussi loin qu'il semble avoir fait en attribuant ces îles à Bahreïn. De toute évidence, elles font du point de vue géographique, partie de Qatar, et puisque la concession pétrolière à Qatar est tenue par une société britannique, alors que la concession à Bahreïn est tenue par une société purement américaine, j'aurais pensé que notre intérêt, ainsi que des considérations géographiques, aurait dû nous inciter à les attribuer à Qatar.»

*["I cannot help regretting that the India Office went so far as they seem to have done in allotting these Islands to Bahrain. They are obviously, from the geographic point of view, a part of Qatar, and since the Qatar oil concession is held by a British company, while the Bahrain 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."]<sup>15</sup>*

Sir Ian Sinclair a ajouté devant vous que :

«Cette observation de Rendel ... est aussi pertinente aujourd'hui qu'alors et l'on ne trouve aucune réponse véritable à son argument, ni dans les archives britanniques ni ailleurs.»<sup>16</sup>

*["Rendel's comment . . . is as cogent today as when it was first expressed; and no real answer to the point which he makes is forthcoming from the British Archives or indeed from anywhere else."]<sup>17</sup>*

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<sup>15</sup>Réplique de Qatar, ann. III.56, vol. 3, p. 349.

<sup>16</sup>CR 2000/6, trad. fr. , p. 50, par. 38.

<sup>17</sup>CR 2000/6, p. 53, par. 38.

43. «Aucune réponse véritable ?» [*No real answer ?*] Mais, Monsieur le président, la réponse est évidente. Il n'appartient pas à Bahreïn de défendre la politique britannique, mais dans cette affaire force est de constater que la conduite du Gouvernement britannique fut irréprochable.

44. L'idée de M. Rendel, que sir Ian trouve si «pertinente» (*cogent*) est que la Grande-Bretagne ne devrait pas agir en conformité avec des principes, mais avec son propre «intérêt» — le mot est là, brutal, sans la moindre restriction «puisque la concession pétrolière à Qatar est tenue par une société britannique, alors que la concession à Bahreïn est tenue par une société purement américaine».

45. Le prétexte de ces agissements en fonction de son intérêt aurait, selon Rendel, été la proximité. La proximité comme prétexte. Ceci aurait été de «*l'hypocrisie*» — pour employer une autre expression de sir Ian — puisque Rendel et le Foreign Office ne croyait pas une seconde que proximité confère souveraineté. Quel fonctionnaire du Foreign Office n'était pas au courant de la position du Gouvernement britannique à l'égard des îles anglo-normandes, pourtant dans les eaux territoriales de la France ? Faut-il rappeler que la question était d'actualité, car l'affaire des *Minquiers et des Ecréhous* ne devrait être décidée qu'en 1953 ?

46. Comme Bahreïn a déjà eu l'occasion de le dire, les actes d'une puissance coloniale dans la poursuite de ses intérêts propres sont tout sauf surprenants. Quelle que soit l'absence de moralité dans de telles décisions, le droit international a, d'une manière constante, insisté sur la pérennité des frontières dans l'intérêt de la paix. Mais ici, dans notre affaire, au moins *la puissance dominatrice a agi contre son intérêt propre; sa conduite a trouvé son fondement dans des principes, en l'occurrence l'exercice de la souveraineté de Bahreïn sur les îles Hawar, et l'absence totale des liens entre l'Etat de Qatar in statu nascendi avec ces îles.*

47. En somme, ce fut M. Rendel qui avait préconisé une manœuvre «sordide» (le mot n'est pas de moi, vous l'aurez compris). Très heureusement, le Gouvernement britannique n'a pas donné suite à sa suggestion «honteuse».

48. Monsieur le président, Madame et Messieurs de la Cour, je quitte la barre en vous remerciant de votre patiente courtoisie au cours de mes présentations. S'il plaît à la Cour, je vous prie d'appeler M. le professeur Reisman demain matin pour traiter des questions maritimes.

Le PRESIDENT : Je vous remercie, Maître Paulsson. Ceci met un terme à la séance de ce matin. La prochaine séance de la Cour aura lieu cet après-midi à 16 heures dans l'affaire concernant le Congo et l'Ouganda. En ce qui concerne la présente affaire, la prochaine séance aura lieu demain matin à 10 heures. La séance est levée.

*L'audience est levée à 13 heures.*

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