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دولـــــة البحـــــرين
مكتـب وزيـــر الدولـــة
ص ب ٢٠٨٨
المنـــامة - البحـــرين
هاتف: ٢١٧٧٢١ فاكس: ٢١٥٥٠٨

No: ICJ-QvB/ 318 الرقـم :

Date: 13 July 2000 التاريخ :

H.E. Mr. Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
2517 KJ The Hague
THE NETHERLANDS

Re: **Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)**

Your Excellency,

I have the honour to provide Bahrain's written response to the questions posed by Judges Parra-Aranguren and Kooijmans on 29 June 2000 along with my government's comments on Qatar's letter dated 29 June 2000 responding to Judge Vereshchetin's questions.

QUESTION 1

What is the extent and what are the territorial limits of Zubarah? An accurate description would be appreciated, with indication of the evidence supporting the answer.

1. The Zubarah region is a small, contained, and virtually uninhabited area of approximately 193 square kilometres on the West coast of the Qatar peninsula, representing slightly more than one per cent of Qatar's land territory. The Zubarah region extends from Al Arish, about 10 kilometres north of the town of Zubarah on the coast, to Umm El Ma, about 20 kilometres south of the town of Zubarah. Inland from the coast of the Gulf of Bahrain, the region extends to and includes Al Na'man, Umm al Ghubbur, Masarehah and Al Thagab, approximately 13, 9, 8 and 5 kilometres inland respectively. The territorial limits of the Zubarah region are shown on Map 5 in Volume 7 of Bahrain's Memorial. A copy of this map is attached at Annex 1.

2. The co-ordinates for the locations that establish the eastern perimeter of the Zubarah region are attached at Annex 2.

3. Following the transfer of the Al Khalifa capital from the city of Zubarah to the main island of Bahrain at the end of the 18th Century, the Rulers of Bahrain exercised authority over the northern part of the Qatar peninsula through the Naim tribe. The Naim were the principal tribe in a tribal confederation that inhabited the north of the peninsula. They were subject

to and loyal to the Al Khalifa through the 19th and 20th Century leading up to Qatar's armed attack on 1 July 1937.[1] In the 1930's, the Al-Ramzan branch of the Naim defected to the Ruler of Qatar and went to Doha and its environs, while the Al-Jabr branch of the Naim tribe, whose tribal *dirah* (territory) was situated in and around the town of Zubarah, maintained their allegiance to the Ruler of Bahrain.[2]

4. The geographic extent of the Zubarah region claimed by Bahrain is an area over which Bahrain continuously and openly exercised authority by virtue of the allegiance of the Al-Jabr branch of the Naim tribe.

5. As recognised in the *Dubai-Sharjah Border Arbitration*, Arab tribes distinguished between a town and its associated area (*haram*) and the *dirah* of the tribes in the desert area:

> The term 'dirah' indicates a region within which a nomadic people moves. The term 'haram' means, however, an area in the vicinity of a town or settlement upon which such town or settlement has a claim of exclusive rights for the purpose of obtaining the necessities of its existence."[3]

6. References to "Zubarah", therefore, have three possible meanings: first, to the ruined city of Zubarah; second, to the city of Zubarah and associated settled areas; and third, to the Zubarah Region, the combined *haram* and *dirah* of the Al-Jabr. Lorimer's *Gazetteer of the Persian Gulf*, refers to Zubarah as a "ruined and deserted town". Lorimer observed that the site was still frequented by "the Naim of Bahrain and Qatar" and that it was surrounded by dependent forts "within a radius of 7 miles" [15.4 kilometres] from the main town including "Faraihah, Halwan [Hulwan], Lisha, 'Ain Muhammed, Qal'at Murair [the main Zubarah fort], Rakaiyat, Umm-ash-Shuwail [Umm Al Shuwyy[] and Thagab."[4] These are the same places identified by Bahrain as being within the limits of its claim to the Zubarah Region.

7. In 1937, the Political Agent prepared a briefing note for the British Political Resident on the Zubarah situation and stated that the "Zubarah area may be taken to be an enclave running from the coast south of and including Rubeijah, inland to include the wells at Halwan [Hulwan], Masaichah [Masarehah] and Lashi [Lisha] returning to the coast at and including Faraihah village. The ruined town of Zubarah and the ruined fort of Umm Rear [Murair] will be seen to be included within this area."[5]

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1 BM, para. 85.

2 See BM, paras. 73-103.

3 *Dubai-Sharjah Border Arbitration*, 91 ILR 543, pp. 588.

4 Lorimer, *Gazetteer of the Persian Gulf*, Vol. II, p. 1952, BM, Ann. 74, Vol. 3, p. 398.

5 Report entitled "Zubarah Incident" and a memorandum entitled "Possible basis of a Compromise" by Capt. Hickinbotham, British Political Agent, 3 May 1937, BM, Ann. 126, Vol. 3, pp. 654 and 665. Umm Rear was another name given to Murair, the Al-Khalifa fort in the town of Zubarah.

8. Lorimer and the Political Agent were thus describing Zubarah as including the city and the surrounding settled areas , bounded to the north by Rakaiyat; to the east by Thagab, Masarehah and Lisha; and to Hulwan in the south. These descriptions of Zubarah were to the city of Zubarah and the associated settled areas. This was the home of the *hadar*, the members of the Al-Jabr tribe who had permanent homes.[6] For example, Fadil bin Mohanna al-Naimi, who lived in a house in Lisha for over 20 years, applied to register this property in the Bahraini Land Registration Directorate in 1937.[7] And Saleh bin Muhammed ali bin Ali al Naimi describes how as a child his family lived at the oasis of Lisha and how provisions could be obtained there.[8] This was the core of Al-Jabr territory. Thus, when waiting for the impending Al Thani attack on 1 July 1937, the Al Naim gathered at Lisha and Hulwan and the first sign of the Al Thani intruders was at the guard post in Thagab.[9]

9. The territory of the Zubarah region occupied by the nomadic Al-Jabr was understood, in common with other Arab tribes, in terms of their *dirah*, which was in turn identified by reference to their grazing grounds around specific wells or oases. In 1937, the Zubarah region extended from the city of Zubarah to the wells and settlements that encircled it (the *haram*) and included the Naim grazing grounds (*dirah*) to the north, south and east of the *haram*. Bahrain has limited its claim to that part of the Zubarah region within the line circumscribed by the wells and places described in paragraph 1 above. The locations of these wells and places are easily identified and provide clear points for a delineation line between Bahrain's and Qatar's territory on the peninsula.

10. The territorial extent of the Zubarah region claimed by Bahrain is based on abundant historic and contemporaneous evidence as well as uncontradicted witness statements from members of the Al Jabr tribe. This evidence is set out in Bahrain's Memorial at paragraphs 89-103 and is briefly summarised below.

11. In May 1937, during negotiations with the Ruler of Qatar, Bahrain presented a compromise proposal to the Political Agent that Bahrain's control in northern Qatar would be limited to the Zubarah region and that the Naim could decide by plebiscite which Ruler they would serve.[10] The Al Thani, knowing that they had no claim to the loyalty of the inhabitants of the Zubarah region and knowing that the inhabitants of the Zubarah region considered

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6 Statement of Mohammed bin Mohammed bin Theyab Al Naimi, BM, Ann. 233(a), Vol. 4, p. 1014 and Statement of Saleh bin Muhammed Ali bin Al Naimi, BM, Ann. 234(a), Vol. 4, p. 1025.

7 BM, Ann. 118, Vol. 3, p. 638.

8 Statement of Saleh bin Muhammed Ali bin Al Naimi, BM, Ann. 234(a), Vol. 4, p. 1025.

9 Statement of Mohammed bin Mohammed bin Theyab Al Naimi, BM, Ann. 233(a), Vol. 4, p. 1014 at 1016.

10 Memorandum from Assistant Political Agent Bahrain, dated 29 May 1937, QM, Annex III.131, Vol. 7, p. 157

themselves subjects of the Ruler of Bahrain, do not appear to have accepted this proposal.[11]

12. The allegiance of the Al-Jabr Naim was confirmed one month later when no less than 536 inhabitants of the Zubarah region sent a petition to the Ruler of Bahrain.[12] A copy of this petition is in the British archives and the original petition, comprising seven large sheets of parchment attested to with thumbprints, seals and names, is in the Government of Bahrain's archives. It is a visible and compelling testament of the Bahraini Naim's allegiance to the Ruler of Bahrain and the territorial extent of the Zubarah region. Since only family heads would have signed the petition, and given the extremely low population of the area, the petition probably represented the overwhelming majority of the families living in the Zubarah region in 1937. The petition states in part:

> ...we the undersigned, the inhabitants within the boundaries of Zubara for over hundred years are belonging to the Khalifah rulers of Bahrain and we have never been under the rule of any other Ruler: the boundaries of Zubara are from Ras Ashairij [Ra's Ushayrij] and Rabaijah and Um al Mai [Umm El Ma] and Na'maan and Halwan and Lisha and Misaichah [Masarehah] and Thagab to Ras al Hiddeyyah [south of Al Arish]and Fraihat [Al Faraihah] to Zubara and these boundaries are the property of the Khalifah Rulers of Bahrain from the oldest time till today."[13]

13. Immediately after the attack on Zubarah, the Ruler of Bahrain informed the Political Agent that Zubarah included: Al Thagab, Fureiha [Al Faraihah], Ain Muhammed, Umm al Sheweel [Umm Al Shuwyyl], Al Zubarah, Qala Umm Rear [Murair], Al Rabaija [Al Rubayqan], Halwan [Hulwan], Lisha, Masuchhi [Masarehah] and Al Maharaqa.[14]

14. In the context of the 1944 settlement negotiations between Bahrain and Qatar, Capt. Hickinbotham, the Political Agent, proposed that the historical claims of the Al-Khalifa to the forts at the wells of Umm El Ma, Al Naman, Al Lisha, Halwan [Hulwan], Umm Sika [Masarehah] and Al Furiha [Faraihah], all ringing the Zubarah area, be recognised.[15]

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11 *Ibid.*

12 *Ibid.*

13 Letter from Charles Belgrave, Advisor to Govt. of Bahrain, to Capt. Hickinbotham, British Political Agent, 20 June 1937, BM, Ann. 130(a), Vol. 3, pp. 679 to 680.

14 Letter from Capt. Hickinbotham, British Political Agent, to Lt. Col. Fowle, British Political Resident, 4 July 1937, BM, Ann. 141, Vol. 4, p. 701.

15 Capt. Hickinbotham's 1944 proposal for the settlement of the Zubarah dispute, February 1944, BM, Ann. 166, Vol. 4, p.751, sent under cover of a letter to Ruler of Qatar, 8 February 1944, BM, Ann. 165, Vol. 4, p. 749.

15. In November 1946, the Ruler of Bahrain described his ancestral territories and the extent of Bahraini land to the British Political Agent, Lieutenant Colonel Galloway, as "the port of Zubara territory, the houses in Zubara and the Lisha, and Halwan [Hulwan] and Um Saicha [Masarehah] and Um-Alma [Umm El Ma] and the mosques and the graveyards and his freedom and that of his people on the sea coast from Al Arish to Um Alma [Umm El Ma] and in the desert of the land without interference."[16]

16. In March 1948, the Ruler of Bahrain again described his territories as including the town of Zubarah, Lisha, Umm El Ma, Rabaijah, Faraihah and Hulwan.[17]

17. In June 1948, Mr. Ballantyne, adviser to the Bahraini oil concessionaire BAPCO, located the southern boundary of the Zubarah area at "Omm al Mai" (Umm El Ma).[18]

18. Former Zubarah residents have attested to the extent of the Zubarah region over which the Ruler of Bahrain exercised control and which the Al-Jabr branch of the Naim inhabited. They confirm that the Zubarah region includes the area within the limits of Al Arish, Al Thagab, Masarehah, Umm al Ghubbur, Al Na'man, Al Maharaqa and Al Judaydah.[19]

19. The map in Montigny-Kozlowska's study *Evolution d'un groupe bédouin dans un pays producteur de petrole: les Al-Na'im de Qatar* demonstrates that the Al-Jabr were the predominant branch of the Naim in the Zubarah region.[20]

20. Bahrain submits that the evidence already before the Court demonstrates a continuous and consistent recognition of the territorial extent of the Zubarah region as described in paragraph 1.

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16 Note by Lt. Col. Galloway on his meeting with Ruler of Bahrain on 2 November 1946, BM, Ann. 182(a), Vol. 4, p. 790.

17 Letter from Ruler of Bahrain to C.J. Pelly, British Political Agent, 2 March 1948, BM, Ann. 186, Vol. 4, p. 798.

18 Letter from Mr. Ballantyne (Adviser to BAPCO), to Charles Belgrave, Adviser to the Govt. of Bahrain, 2 June 1948, Ann. 188, Vol. 4, p. 802.

19 Statement of Mohammed bin Mohammed bin Theyab Al Naimi, BM, Ann. 233(a), Vol. 4, p. 1014 and Statement of Saleh bin Muhammed Ali bin Al Naimi, BM, Ann. 234(a), Vol. 4, p. 1025.

20 A. Montigny-Kozlowska, *Evolution d'un groupe bédouin dans un pays producteur de pétrole: les Al Naim de Qatar*, (Paris, 1985 PhD thesis), p. 53, BM, Ann. 229, Vol. 4, p. 983.

QUESTION 2

Which baselines were used for the determination of the outer limits of the territorial sea before the Parties extended the breadth of the territorial sea to 12 nautical miles in 1992 and 1993, respectively? Are any maps or nautical charts available which reflect these baselines and the outer limits of the territorial sea?

1. Like many other states, Bahrain has not specified baselines or the co-ordinates of basepoints for the determination of the limits of its territorial sea. Nor has Bahrain produced maps or charts that indicate such baselines or basepoints. Nevertheless, Bahrain has consistently maintained that, in accordance with international law, its basepoints are to be measured from the low water line of its islands and the low tide elevations within these islands' territorial waters. Bahrain placed beacons and markers on these islands and low tide elevations in the 1930's. Bahrain's basepoints opposite the Qatar peninsula are located on the low water lines of Qit'at Jaradah, Fasht ad Dibal, Qita'a el Erge and Fasht Bu Thur; multiple basepoints are located on the low water lines of the Hawar Islands, including Janan.

2. Since Bahrain's long-standing claim to the Zubarah region is subject to the Court's jurisdiction, Bahrain has specified basepoints on the coast of the Zubarah region in these proceedings. In the event that the Court declines to restore the Zubarah region to Bahrain, Bahrain would have to use additional basepoints on the low water line of Qit'at ash Shajarah for the measurement of its territorial sea in the area opposite the Zubarah region, as explained in its oral argument.

3. Bahrain has attached to this letter, at Annex 3, a copy of its basepoints. For the Court's reference, these basepoints were provided at tab 115 of the Bahrain's Judge's Folders. An illustration of the maritime boundary claimed by Bahrain in relation to Bahrain's and Qatar's other maritime boundaries is attached at Annex 4.

4. Bahrain has used the above basepoints on its islands and the low-tide elevations in the territorial seas of those islands to measure the breadth of its territorial sea. The Bahraini coastguard patrols Bahrain's territorial sea to the east of these basepoints.[21]

BAHRAIN'S COMMENTS ON QATAR'S RESPONSES TO JUDGE VERESHCHETIN'S QUESTIONS

Pursuant to Article 72 of the Rules of the Court, which affords Bahrain an opportunity to comment upon Qatar's written reply to the questions posed by Judge Vereshchetin, Bahrain respectfully submits the following observations.

Question 1: Treaty Relations of Bahrain and Qatar

1. On page 2 of Qatar's response to the first question, Qatar contends that the 1868 undertaking by Mahomed bin Sanee of Gutter should have been included in the list provided by the United Kingdom in 1971 of treaties establishing special treaty relations

21 See BR, Ann. 24, Vol. 2, p. 148.

between the United Kingdom and Qatar. Bahrain submits that this argument is unsustainable in light of the analysis of the 1868 agreement that appears in CR 2000/22, 28 June 2000, pp. 8-22. Indeed, the fact that Britain did not do so confirms this analysis. Qatar is yet again trying to argue against facts.

2. The second paragraph of page 2 states that Great Britain "considered the State of Qatar to be an independent State with the capacity to enter into international agreements." Qatar then lists a number of treaties that the State of Qatar entered "in its own right". Qatar fails to mention that prior to 1971, Qatar's right to enter into international agreements was subject to, and limited by, its special treaty relations with Great Britain, as were other important sovereign rights, such as the right to grant concessions over natural resources. This was the essence of the lack of international political independence. The nature and effect of Qatar's special treaty relations was fully addressed by Bahrain in its oral pleadings.[22]

Question 2: The Meaning of "Bahrain and its Dependencies"

1. Qatar's statement in the first paragraph of section (a) of its comment regarding the "Official denomination of the State of Bahrain" to the effect that "this reference to 'dependencies' is not opposable to Qatar" is factually and legally incorrect. The national denomination of "Bahrain and its Dependencies", which was used by Britain and Bahrain for decades prior to 1971 in official documents including passports, represented an unequivocal territorial description, with unmistakable references to the Hawar Islands, maritime features and the Zubarah region. There is no record of any protest by Qatar of these territorial implications. Qatar cannot have been unaware of the official name of Bahrain as used by Britain in its Exchange of Notes with Bahrain dated 15 August 1971 or of the implications for the Hawar Islands and Zubarah of the use of the name "State of Bahrain and its Dependencies", in contrast to the reference to Qatar as simply "the State of Qatar" in the notes exchanged between Britain and it on 3 September 1971. Regard must be had to the previous history of Britain's attitude regarding Zubarah as well as the Hawar Islands and, especially as to the latter, to the British Government's 1939 Award.

2. Bahrain wishes to draw attention to the fact that the word "Dependencies" as used in the Exchange of Notes of 15 August 1971 was spelled with a capital "D" indicative that the word is part of the official name of the State of Bahrain, and not merely a geographical description as might have been suggested if the word were not introduced by a capital letter.

3. In the second paragraph of page 2, Qatar once again asserts that the treaties of 1868, 1880 and 1892 between Britain and Bahrain "were entered into at the time of, or subsequent to, Britain's first recognition of Qatar as a separate entity". The assertion that Qatar was recognised as a separate entity from Bahrain in 1868 is repeated in paragraph (c) of Qatar's comments.

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22 CR 2000/11 p. 25, paras. 37-42; p. 26, para. 42;CR 2000/13 pp. 50-66, paras. 2-128, CR 2000/21 p. 8, paras. 4-5; pp. 9-12, paras. 8-18; pp. 21-32, paras. 1-80; and CR 2000/22 p. 8, para. 3.

4. Bahrain will not repeat its detailed refutation of Qatar's imaginative narrative about the supposed development of Qatar as an "entity" that appears in CR 2000/22, 28 June 2000, pp.8-22, but will merely recall that that analysis excludes any identification of a separate identity, in any meaningful sense of the word, called "Qatar" prior to mention of it in the unratified Anglo-Ottoman Treaty of 1913.

5. The statement in the fourth paragraph on the same page (page 2) of Qatar's comments, that "[s]ubsequently, official Bahraini documents were headed "Government of Bahrain"", is misleading. Though some were headed in this way, others were headed "State of Bahrain and its Dependencies". For example, passports issued by Bahrain from the late 1950's until 1971 were headed "Government of Bahrain and Dependencies".

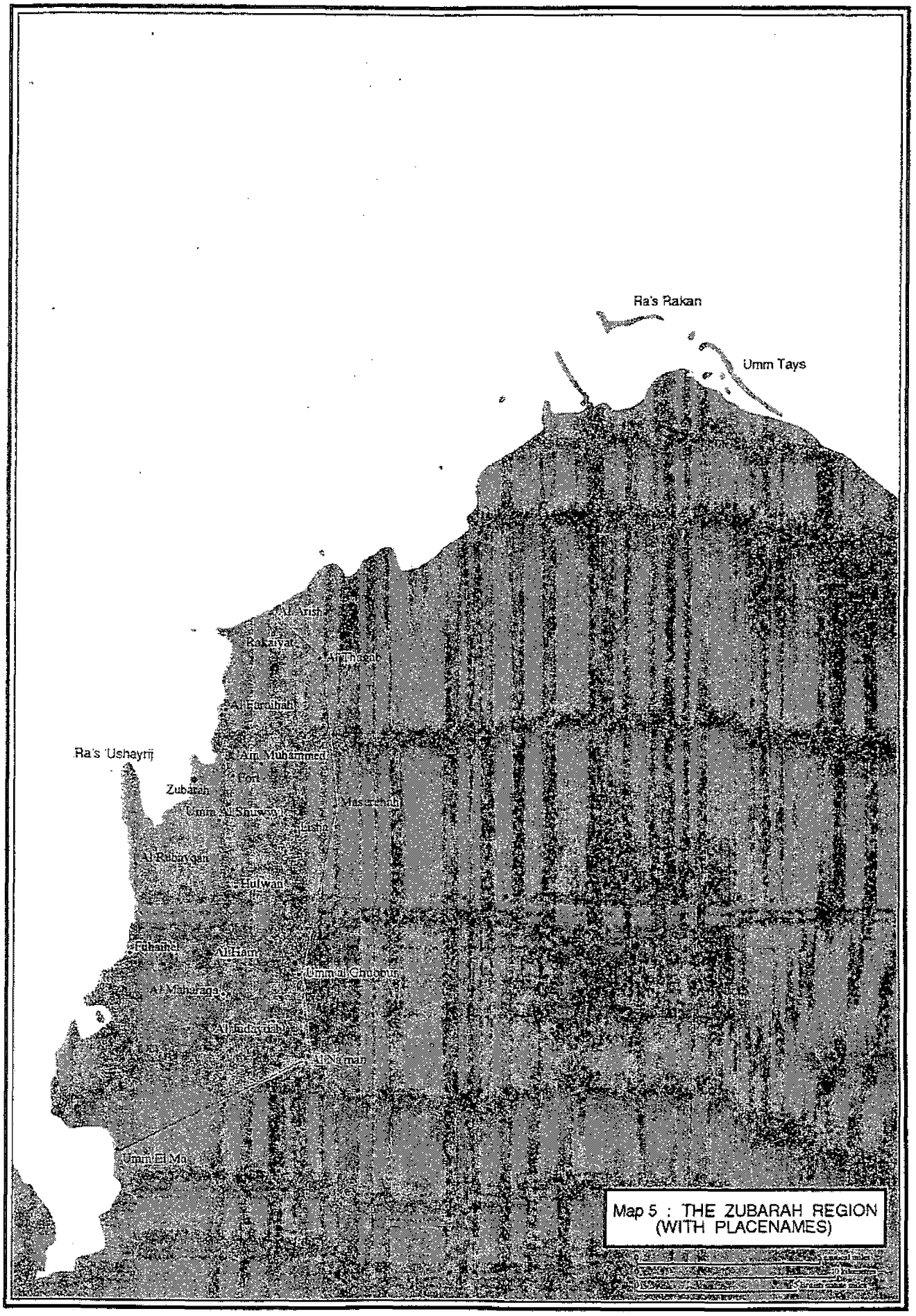
6. In the third paragraph of section (b), entitled "Meaning of the term "dependencies"", that begins on page 3 of Qatar's response, Qatar states: "The use of the wording in the 1913 British Order-in-Council "which may be included in the Principality..." suggests that reference was being made to possible future expansion of the Principality of Bahrain". Bahrain submits that this is a self-serving and incorrect interpretation of the words "which may be included". It is also counter-intuitive to suggest that in relation to Bahrain alone and no other of the territories, for which it was responsible, Britain legislated with specific reference to possible future territorial expansion. The words used are the standard way of referring to, without listing specifically, areas that are included in the territory of Bahrain, whether before or after the date of the Order. Since the words preceding "other territories" fully describe Bahrain's islands and maritime features, the additional reference to "other territories" by the drafters of the Order must have been intended to mean Bahrain's dependencies on the Qatar peninsula.

7. Finally, as to the Qatar's reference on page 4 to Laithwaite's description of Bahrain as a "compact group of five islands", the uninformed and hesitant nature of Laithwaite's views on the territories of Bahrain was addressed by Bahrain on 28 June 2000 (CR2000/21, pp. 36-37, paras. 21–28). Laithwaite's geographic description was manifestly incorrect, was not a legal decision and has no bearing on the territorial extent of Bahrain.

Accept, Sir, the assurance of my highest consideration.

JAWAD SALIM AL ARAYED
MINISTER OF STATE
AGENT OF THE STATE OF BAHRAIN BEFORE THE ICJ

Annex 1


Ra's Rakan
Umm Tays
Al 'Arish
Rakaiyat
Am Thasib
Al Ramlah
Ra's 'Ushayrij
Am Muhammed
Fort
Zubarah
Umm Al Shuwayir
Mastamith
Lisha
Al Rabiyqah
Hulwan
Fuhaihil
Al Haim
Umm al Ghubaiyn
Al Maharaga
Al Jadayriah
Al Naman
Umm El Ma
Map 5 : THE ZUBARAH REGION
(WITH PLACENAMES)

Annex 2

Boundary Coorinates of the Zubarah Region

	Location Name	Latitude	Longitude
1.	Al Arish	26°03.15'N	051°03.30'E
2.	Al Thagab	26°02.00'N	051°05.10'E
3.	Masarehah	25°57.30'N	051°06.00'E
4.	Umm Al Ghubbur	25°53.80'N	051°04.55'E
5.	Al Na'man	25°52.00'N	051°05.20'E
6.	Um El Ma	25°49.00'N	050°59.20'E

Annex 3

State of Bahrain Territorial Sea Basepoints

Approximate Territorial Sea Basepoints for the determination of the Boundary between Bahrain and Qatar to the nearest second of arc on Ain al Abd Datum (1970).

<u>Northern Sector</u>

Fasht ad Dibal

B1. 26° 17′ 35″N 50° 57′ 33″E

<u>Southern Sector</u>

Line O_1 - Y

Fasht ad Dibal

B2. 26° 16′ 41″N 50° 58′ 44″E
B3. 26° 15′ 51″N 50° 58′ 45″E
B4. 26° 15′ 28″N 50° 58′ 52″E
B5. 26° 13′ 08″N 50° 57′ 02″E

Qit'at Jarādah

B6. 26° 10′ 59″N 50° 54′ 36″E

Zubarah

Y. 26° 03′ 14″N 51° 03′ 17″E
B7. 26° 04′ 58″N 51° 02′ 02″E
B8. 26° 02′ 36″N 51° 01′ 16″E

Line X – 25° 30′N

Zubarah

X. 25° 49′ 12″N 50° 59′ 10″E
B9. 25° 49′ 36″N 50° 57′ 48″E
B10. 25° 49′ 59″N 50° 57′ 16″E
B11. 25° 52′ 15″N 50° 56′ 48″E

Qita'a el Erge

B12. 25° 53′ 17″N 50° 50′ 19″E

Fasht Bū Thūr

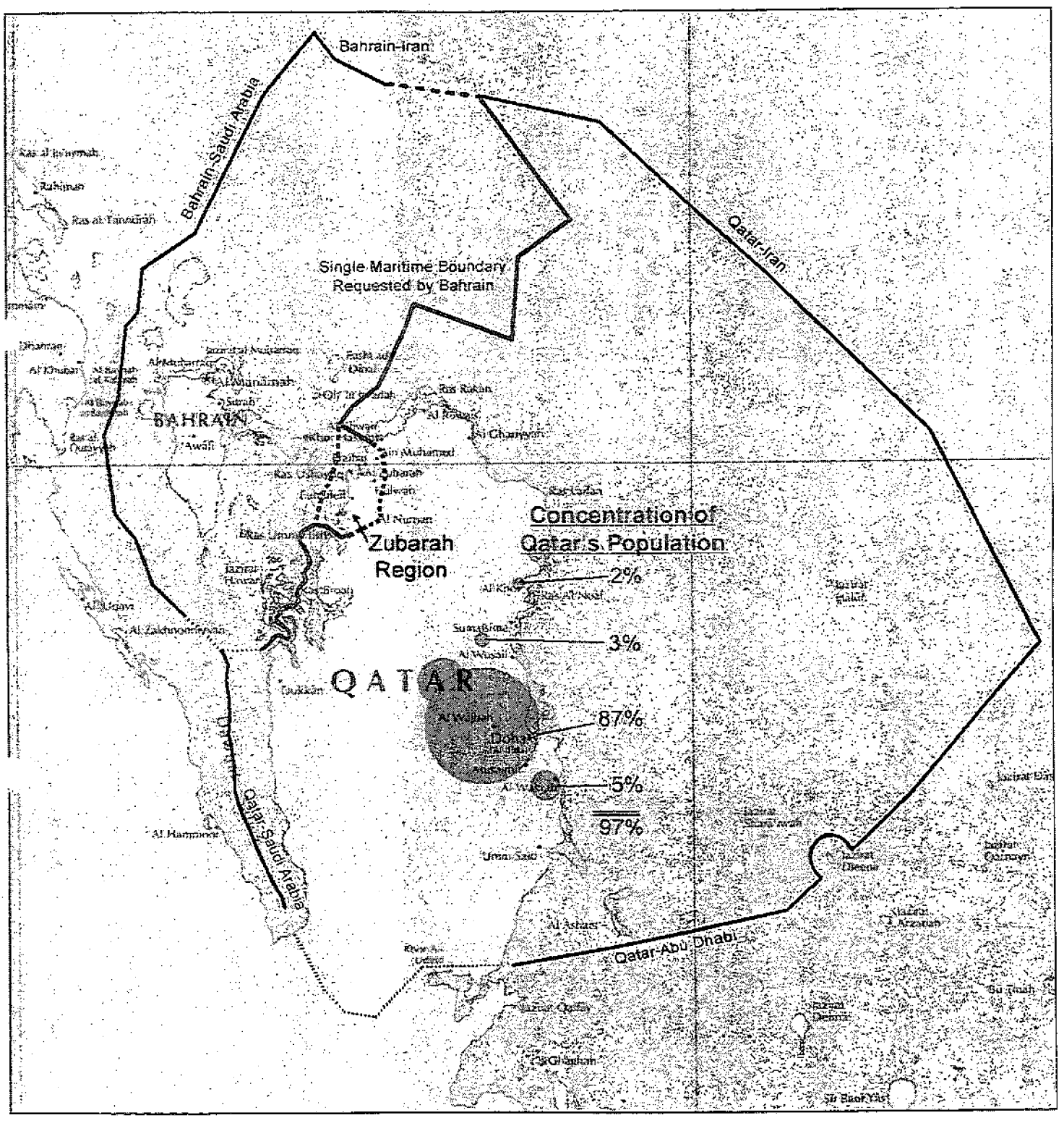
B13. 25° 49′ 25″N 50° 46′ 24″E

Hawar Islands

B14. 25° 45′ 54″N 50° 47′ 31″E
B15. 25° 44′ 23″N 50° 49′ 32″E
B16. 25° 41′ 22″N 50° 48′ 52″E
B17. 25° 40′ 45″N 50° 49′ 28″E
B18. 25° 39′ 17″N 50° 49′ 27″E
B19. 25° 37′ 55″N 50° 49′ 02″E
B20. 25° 37′ 23″N 50° 48′ 16″E
B21. 25° 36′ 41″N 50° 47′ 18″E
B22. 25° 36′ 24″N 50° 47′ 01″E
B23. 25° 35′ 50″N 50° 45′ 53″E
B24. 25° 34′ 48″N 50° 46′ 02″E
B25. 25° 34′ 04″N 50° 47′ 19″E
B26. 25° 33′ 32″N 50° 48′ 11″E
B27. 25° 32′ 39″N 50° 48′ 47″E
B28. 25° 33′ 09″N 50° 44′ 48″E
B29. 25° 32′ 06″N 50° 44′ 23″E

Annex 4

Single Maritime Boundary Requested by Bahrain



بسم الله الرحمن الرحيم

Agent of the State of Qatar before the International Court of Justice

وكيـــل دولـــة قطـــر
لـــدى محكمـــة العـــدل الدوليـــة

H.E. Mr. Philippe Couvreur
Registrar
International Court of Justice
Peace Palace
2517 KJ The Hague
The Netherlands

13 July 2000

Re. Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)

Sir,

In accordance with the instructions of the President of the Court, announced at the close of the oral proceedings on 29 June 2000, I have the honour to enclose herewith the following:

- Qatar's answers to the questions addressed to both Parties, at the Court's session of 29 June 2000, by Judges Parra-Aranguren and Kooijmans, respectively;

- Qatar's comments on Bahrain's answers to the questions of Judge Vereshchetin; and

- Qatar's comments on the arguments advanced by Bahrain during its second round of pleading with regard to the five new documents concerning Zubarah that Bahrain had originally proposed to produce with its answer to the questions of Judge Vereshchetin, together with Qatar's comments on the documents themselves.

Please accept, Sir, the assurance of my highest consideration.

A. A. Muslemani

Dr. Abdullah bin Abdulatif Al-Muslemani
Agent of the State of Qatar

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Tel (44.171) 493 22 00 - Fax (44.171) 493 26 61

13 July 2000

QATAR'S RESPONSE TO THE QUESTION PUT BY JUDGE PARRA-ARANGUREN TO QATAR AND BAHRAIN

At the hearing of 29 June 2000, Judge Parra-Aranguren addressed the following question to both Parties:

> "What is the extent and what are the territorial limits of Zubarah? An accurate description would be appreciated, with indication of the evidence supporting the answer".

Qatar's response is as follows:

Zubarah is a ruined town, located on the north-western coast of Qatar. It was a fortified town, with an inner and an outer wall. The outer wall meets the coast at two points, the coordinates of which are approximately 25°59'05"N, 51°01'21"E and 25°58'25"N, 51°01'17"E.

Qatar encloses herewith a copy of a recent aerial photograph of Zubarah, on which the location of the outer wall may be clearly seen.

The town covered an area of approximately 60 hectares, being about 1500 metres long from north to south and 400 metres wide from east to west. It is depicted on Map No. 10, facing page 189 of Qatar's Memorial. Today, Zubarah is an archaeological site, having the legal status of public property owned by the State of Qatar. The site is protected under Law No. 2 of 1980 relating to Antiquities.

Also depicted on Map No. 10 is the location of the ruined Murair fort, which was built by the Al-Utub tribe, about 1500 metres from the outside wall of the town, together with a channel and four walls lying between the town and Murair fort, and a cemetery some 2100 metres outside the town. Finally, the fort (or "police post") that was built by the Ruler of Qatar is shown.

Traditionally, "Zubarah" has always meant the old town. Loosely, the Murair fort and the fort built by the Ruler of Qatar might also be referred to as being part of Zubarah. There is, however, no defined "Zubarah region" as now claimed by Bahrain. In addition, Qatar would point out that when the various issues were submitted to the Court by virtue of Qatar's Act of 30 November 1994, the relevant issue was stated to be "Zubarah", with no mention of any so-called "Zubarah region". At paragraph 48 of its Judgment of 15 February 1995, the Court held that:

> "It is clear... that claims of sovereignty over the Hawar islands and over Zubarah may be presented by either of the Parties, from the moment that the matter of the Hawar islands and that of Zubarah are referred to the Court. As a consequence, it appears that the form of words used by Qatar accurately described the subject of the dispute"[1].

[1] *I.C.J. Reports 1995*, p. 6, at p. 25.

13 July 2000

QATAR'S RESPONSE TO THE QUESTIONS PUT BY JUDGE KOOIJMANS TO QATAR AND BAHRAIN

At the hearing of 29 June 2000, Judge Kooijmans addressed the following questions to both Parties:

> "Which baselines were used for the determination of the outer limits of the territorial sea, before the Parties extended the breadth of the territorial sea to 12 nautical miles in 1992 and 1993, respectively?
>
> Are any maps or nautical charts available which reflect these baselines and the outer limits of the territorial sea?".

Qatar's response is as follows:

Prior to Amiri Decree No. 40 of 1992 defining the breadth of the territorial sea and contiguous zone of the State of Qatar, Qatar had no legislation specifically concerning its territorial sea, and the baselines for the determination of the outer limits of its territorial sea were, therefore, determined in accordance with customary international law.

To the best of Qatar's knowledge and belief, Bahrain similarly had no legislation concerning baselines for the determination of its territorial sea.

Also to the best of Qatar's knowledge and belief, no maps or nautical charts are available which reflect baselines or the outer limits of the territorial seas of Qatar or Bahrain, as they existed prior to 1992 and 1993, respectively.

13 July 2000

QATAR'S COMMENTS ON BAHRAIN'S RESPONSE TO THE QUESTIONS POSED BY JUDGE VERESHCHETIN

By letter of 29 June 2000, Bahrain responded to the questions that were posed by Judge Vereshchetin at the close of the session on 15 June 2000. Those questions were the following:

> First question
>
> "Before 1971, were there any international agreements concluded by the United Kingdom with Qatar and Bahrain respectively other than those establishing their relationship of protection?
>
> Were there any international agreements concluded by the United Kingdom with third States in the name of or on behalf of Qatar and Bahrain before 1971? If so, what is the status of these agreements for Qatar and Bahrain now?"
>
> Second question
>
> "The British Note of 1971 concerning the termination of special treaty relations between the United Kingdom and the State of Bahrain refers to Bahrain as 'Bahrain and its dependencies'.
>
> What was and what is now the official denomination of the State of Bahrain? What was the meaning of the term 'dependencies'? What was the legal status of 'the dependencies of Bahrain', in relation to Bahrain proper before 1971?"

1. International Agreements

Qatar has the following comment on Bahrain's response to the first question.

In answer to the question whether there were any international agreements concluded by the United Kingdom with third States in the name of or on behalf of Qatar and Bahrain before 1971, Bahrain has referred to its agreement of 22 February 1958 with Saudi Arabia[1]. In this regard it states that "On one occasion, the United Kingdom authorised the Bahrain

[1] QM, Annex IV.216, Vol. 11, p. 235.

Government to conclude a treaty directly with Saudi Arabia", and refers to an article by E. Lauterpacht entitled "The Contemporary Practice of the United Kingdom in the Field of International Law - Survey and Commentary, VI"[2].

In its comments, Bahrain has however failed to point out that the author spoke of the "validation" of the agreement with Saudi Arabia, and that he further noted that "Although Bahrain is a British protected State, the Agreement appears to have been concluded without the direct participation of the British Government"[3].

2. "Bahrain and its dependencies"

With regard to Bahrain's response to the second question, concerning "Bahrain and its dependencies", Qatar would comment as follows.

Bahrain maintains that before 1971, the official denomination of Bahrain was "Bahrain and its Dependencies". No evidence has been provided in support of this allegation.

On the contrary, after 1861, as Qatar has shown in its observations of 29 June 2000 on Judge Vereshchetin's question, in none of the treaties or official documents mentioned by Qatar and dating from prior to 1971 was Bahrain's official denomination given as "Bahrain and its dependencies". Moreover, the practice of Bahrain prior to 1971, in the context of the conclusion of international agreements in its own right, was not to utilise what it now claims to have been the official denomination of the territory at that time. Thus, Bahrain's agreements with Saudi Arabia of 22 February 1958[4] and with Iran of 17 June 1971[5], refer only to "the Government of the Shaykhdom of Bahrain" and the Government of "the State of Bahrain", respectively.

Nor indeed did the United Kingdom, in taking the necessary action to secure the extension of multilateral conventions to Bahrain, use the expression "Bahrain and its Dependencies" in its

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[2] 7 *I.C.L.Q.*, (1958) 519.
[3] *Ibid.*, p. 518.
[4] QM, Annex IV.216, Vol. 11, p. 235.
[5] QM, Annex IV.264, Vol. 12, p. 111.

notifications to the depositary power; instead, it consistently referred simply to "Bahrain". Such was the case, for example, with regard to the four Geneva Conventions of 12 August 1949 for the Protection of War Victims[6], the Exchange of Notes of 9 April 1968 between the United Kingdom Government and UNICEF[7], the Convention of 7 September 1956 on the Abolition of Slavery[8], the Exchange of Notes of 18 January 1968 between the United Kingdom Government and the United Nations Special Fund[9] and the Convention against Discrimination in Education of 15 December 1960[10].

Bahrain has, moreover, provided no evidence for its statement, at footnote 2 of its response, that "The term 'and its Dependencies' was used by Britain throughout the Gulf to describe the various continental and/or island appurtenances of Gulf States".

As for the meaning of the term "dependencies", Bahrain acknowledges that "there is no established definition of the term 'dependencies' as used in relation to Bahrain".

Bahrain then makes a series of references to various documents in an attempt to establish such a definition. First, it relies on the appearance of the word "dependencies" in the 1820 and 1861 treaties. However, as Qatar has already pointed out in its own observations on Judge Vereshchetin's second question, the word disappeared in *subsequent* treaties and official documents concerning Bahrain, following the recognition of Qatar as a separate entity in 1868.

Bahrain notes that, in its Application, Qatar stated that until 1868 the peninsula was considered a "dependency of Bahrain". However, Qatar has also demonstrated that any such link was tenuous at best, and that Lorimer observed that the Sheikh of Bahrain's "suzerainty"

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[6] Treaty Series No. 39/1958.
[7] Treaty Series No. 71/1968.
[8] Treaty Series No. 73/1957.
[9] Treaty Series No. 77/1968. The precise wording of this Exchange of Notes is significant, as it demonstrates that the Government of Bahrain was fully aware that reference was being made simply to Bahrain, and not to "Bahrain and its Dependencies":

> "I have the honour to propose that, in accordance with the desire of the Government of Bahrain, the following agreements shall be regarded as extended to Bahrain, for the conduct of whose international relations the Government of the United Kingdom of Great Britain and Northern Ireland are responsible".

[10] Treaty Series No. 44/1962.

over Qatar by the middle of the 19th century was more apparent than real[11]. Lorimer further observed that:

> "In 1868 direct negotiations took place between the British Government and the tribal Shaikhs of Qatar; and, in the result, the interest of the Shaikh of Bahrain in Qatar was limited to the receipt of tributes probably on behalf of the Wahhabi Government of Najd. In 1872 the Turks established a garrison in Dohah; and with the cessation of the Wahhabi Zakat the political connection, such as it was, between Bahrain and Qatar came to an end"[12].

For the period after 1868, Bahrain has produced a number of extracts from documents dating from 1873-1874 in an attempt to show that at that time Zubarah was a "dependency" of Bahrain. Leaving aside the fact that these are merely statements made by or attributed to the Ruler of Bahrain at the time, Bahrain fails to indicate that the British had always rejected this idea, stating in particular in 1873 that "the Chief of Bahrein should, as far as practicable, abstain from interfering in complications on the mainland"[13] and that "the Chief of Bahrein had no possessions on the mainland"[14] and, in 1875, that he should not "entangle himself in the affairs of the mainland of Katar"[15].

Bahrain next refers to the Political Agent's letter of 30 July 1933 which mentions the Ruler of Bahrain having stated "that the Foreign Office knew that these islands are the dependencies of Bahrain and that there is a ninety year old agreement somewhere to this effect"[16]. In addition to the fact that Bahrain appears to have been unable to find any relevant documents for the period from 1874 to 1933 concerning its alleged "dependencies", Qatar has already shown that the reference to the so-called "agreement" is pure conjecture based on hearsay and that this document had never been produced or ever seen by anyone[17]. Furthermore, Bahrain does not mention the fact that immediately following the Ruler's letter of 30 July 1933, the British:

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[11] QM, Annex II.4, Vol. 3, p. 109, at p. 141.
[12] *Ibid.*
[13] QM, Annex II.7, Vol. 4, p. 9, at p. 54.
[14] *Ibid.*, p. 61.
[15] *Ibid.*, p. 63.
[16] QM, Annex III.87, Vol. 6, p. 448.
[17] CR 2000/17, p. 29, para. 14 and CR 2000/18, pp. 17-18, paras. 6-8.

- declared that "Hawar Island is clearly not one of the Bahrain group" (Telegram dated 31 July 1933)[18];

- referring to a map that showed "the main island of Bahrain, the islands of Muharraq, Sitrah and Nabi Salih and certain islets", but not "the island of Umm Nassan (and some petty islets)", concluded that "The whole of the islands shown on the enclosed map, and also Umm Nassan and the petty islands... are included in the general term Bahrain Islands" (Despatch dated 4 August 1933)[19]: in other words, there is no mention in this description of the Hawar islands, *inter alia*, as being "dependencies" of Bahrain; and

- considered that the prospecting licence granted by Bahrain concerned "'the whole of the territories under' the Sheikh's 'control'" and that "This seems clearly to exclude areas in Qatar and presumably also would exclude Hawar which belongs in any case geographically to Qatar..." (Letter dated 9 August 1933)[20].

Bahrain finally invokes the fact that in 1950, it was the United Kingdom's role to issue visas for travel to Qatar whereas there was no visa requirement for Bahrainis travelling to Zubarah. Qatar's comments of 13 July 2000, concerning Bahrain's use of five documents dating from 1950 in its oral pleadings, respond to this argument by demonstrating what was the true import of the 1950 arrangement entered into by Bahrain and Qatar through British mediation.

The foregoing points confirm what Qatar has already stated in its observations of 29 June 2000 on Judge Vereshchetin's second question concerning the meaning of the term "dependencies" of Bahrain. Furthermore, contrary to what Bahrain states at page 4 of its answer, the items that it has listed can hardly be said to establish or to reflect a practice, and they even fail to mention some of the territories or features that Bahrain asserts were covered by the term "dependencies" in the Exchange of Notes of 15 August 1971. Qatar can only surmise that the United Kingdom Government made reference, in Sir Geoffrey Arthur's letter

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[18] QM, Annex III.88, Vol. 6, p. 451.
[19] QM, Annex III.90, Vol. 6, p. 459.
[20] QM, Annex III.91, Vol. 6, p. 467.

of 15 August 1971 to the Ruler of Bahrain, to "the State of Bahrain and its Dependencies" because certain of the instruments constituting the "special treaty relations" between Bahrain and the United Kingdom which it was proposing to terminate, notably the Preliminary Treaty of 1820 and the Friendly Convention of 1861, contained reference to the "dependencies" of Bahrain. The logical conclusion is that the term had no particular meaning at the time of the Exchange of Notes, other than possibly a geographical distinction between the principal island of Bahrain and the other islands in its immediate vicinity.

Moreover, with regard to the legal status of its "dependencies" before 1971, Bahrain states in its response to Judge Vereshchetin that there was no legal distinction between "Bahrain proper" and "its dependencies". If there is no legal distinction between Bahrain and its "dependencies", the meaning of "dependencies" is devoid of any specific official significance.

Insofar as Bahrain appears to be introducing additional arguments by suggesting that there was British recognition of Zubarah as a dependency of Bahrain, the true facts of the case provide no support for such a suggestion. This aspect will be dealt with more fully in the context of Qatar's separate response to the contentions advanced by Bahrain, on the basis of five new documents, in its second-round oral pleading.

Finally, in footnote 12 at page 4 of its answers, Bahrain states that "It will be observed that Qatar did not have dependencies". This statement is irrelevant to Judge Vereshchetin's question, which did not concern the dependencies of Qatar. Nevertheless, Qatar must take issue with it, insofar as it is unfounded. In this connection, it may be noted that Article 1 of the Qatar Order in Council of 9 March 1939 stated as follows:

> "The limits of this order are Qatar and the coast and islands of the Persian Gulf, being within the territories of the ruling Sheikh of Qatar, including the territorial waters of Qatar adjacent to the said coast and islands, and all territories, islands, and islets which may be included in the territories and be the possessions of the ruling Sheikh of Qatar, together with their territorial waters"[21].

[21] *British and Foreign State Papers 1939*, Vol. 143, His Majesty's Stationery Office, London, 1951, p. 19.

While this Order in Council does not use the term "dependencies" in referring to the territories to which it pertains, the same is true of the Bahrain Order in Council of 1913[22], which is couched in similar terms. In other words, although Qatar has never used the term "dependencies" to refer to its territories beyond the limits of the peninsula *stricto sensu*, it was clearly on the same footing as Bahrain as regarded possessions outside its main territory. There is thus no basis for Bahrain's contention that its "dependencies" include, *inter alia*, all the islands and low-tide elevations lying between its eastern coast and the western coast of Qatar.

[22] BSD, Annex 2, p. 35.

13 July 2000

QATAR'S COMMENTS ON THE CONTENTIONS ADVANCED BY BAHRAIN IN ITS SECOND-ROUND PLEADINGS WITH REGARD TO THE FIVE NEW DOCUMENTS CONCERNING ZUBARAH

1. By letter to the President of the Court dated 21 June 2000, Bahrain sought authorisation to produce new documents with a view to responding to Judge Vereshchetin's question as to the meaning of the expression "Dependencies of Bahrain". Qatar did not object to the production of such documents. Since Bahrain used those documents during its second-round pleadings, whereas it was allowed to use them only in the context of its responses to Judge Vereshchetin, the Court authorised Qatar to comment upon the contentions put forward on 28 June 2000 by Bahrain on the basis of those documents, and to submit its comments by 13 July 2000[1]. The comments that follow show that the documents that Bahrain requested authorisation to produce in response to Judge Vereshchetin's questions and which it used in its oral pleadings provide no support for any of the arguments put forward in this regard, once they have been put in their proper historical context.

2. The documents that have been produced by Bahrain, all dating from 1950, relate to an arrangement that was entered into by Bahrain and Qatar through British mediation. For a proper understanding of the meaning of these documents, they must be examined in the context in which they arose.

3. It will be recalled that, following the 1937 incidents[2], relations between Qatar and Bahrain had deteriorated significantly, with the imposition by each side of a kind of embargo on the circulation of persons and goods[3]. In an attempt to calm the situation, the British succeeded in obtaining the signature by the two Rulers, on 24 June 1944, of an agreement that, in sum, provided for the restoration of friendly relations between Qatar and Bahrain, and the maintenance of Zubarah in the same state as in the past, without prejudice to Qatar's rights

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[1] Letter from the Registrar of the Court to Qatar, dated 28 June 2000.
[2] QM, paras. 8.39-8.43.
[3] *Ibid.*, para. 8.44.

to exploit any oil that might be discovered there[4]. Nevertheless, the Ruler of Bahrain continued thereafter to claim that he should be acknowledged to have private rights at Zubarah[5].

4. It is against this background of repeated claims by the Ruler of Bahrain that the 1950 arrangement must be viewed. The sequence of events was as follows:

- On 3 September 1949, the Foreign Office took the view that Great Britain should try to remove the Ruler of Bahrain's "sense of grievance"[6]. The Foreign Office noted that the Ruler of Bahrain was not claiming extraterritorial rights at Zubarah and that he recognised "Zubarah as Qatar territory", but it considered that the Ruler had private or tribal rights at Zubarah[7]. However, the Foreign Office admitted that "we could not impose an interpretation of the 1944 agreement favourable to him" (the Ruler of Bahrain) and that they could do no more than use "our good offices to secure an agreed interpretation [of the 1944 agreement] between the two Sheikhs"[8]. Accordingly, the Foreign Office suggested that a solution should be sought whereby the Ruler of Qatar would agree that certain members of the Al-Khalifah family could go to Zubarah, on condition that the Ruler of Bahrain would not abuse this "permission". An attempt might also be made to find a compromise over the fort at Zubarah, with regard to which the Political Resident considered that the Ruler of Qatar was "fully justified in maintaining the garrison"[9]. It may be noted, in passing, that contrary to Bahrain's assertion (*see*, paragraph 7, below), this was far from being a colonial situation, with the administering power imposing its authority at will.

- On 12 October 1949, the Foreign Office expressed the view that an attempt might be made to obtain from the Ruler of Qatar the admission of:

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[4] *Ibid.*, para. 8.46.
[5] *Ibid.*, paras. 8.47-8.49; QCM, para. 5.38(1)(ii)-(vi).
[6] BM, Annex 194, Vol. 4, p. 838.
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*

"some vague rights which might be likened to the rights which Bedouin completely unfamiliar with notions of territorial sovereignty and artificially drawn frontiers claim in moving across desert frontiers"[10].

The main objective would be to find for the Ruler of Bahrain "some face-saving device" which would make a settlement possible, while conserving "the reasonable rights of the Sheikh of Qatar"[11].

- As was usual on questions of this kind, the Ruler of Qatar was consulted. Thus, on 25 January 1950, the Political Agent in Bahrain wrote to the Ruler of Qatar that the Ruler of Bahrain "does not claim sovereignty over Zubarah or any other part of Qatar territory" but simply wished to:

"send his dependents with their flocks for grazing to the Zubarah area without supervision from anyone and without the imposition of Customs or other controls on such people, as was the custom in the past"[12].

The Political Agent added that he hoped that the Ruler of Qatar would "give the deepest consideration to this proposal"[13].

- Following direct discussions between the Political Agent in Bahrain and the Ruler of Qatar on 16 and 30 January, and the Ruler of Bahrain on 1 and 22 February 1950[14], and various exchanges of correspondence, arrangements were made through the British authorities. These arrangements may be ascertained from the discussions and the correspondence exchanged between the parties and the British over a period of more than one month. Without entering into the details of these negotiations, it may be seen that an arrangement was adopted on, *inter alia*, the following points:

- the Ruler of Qatar agreed that the Ruler of Bahrain could send approximately 150 to 200 persons to Zubarah;

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[10] BM, Annex 195, Vol. 4, p. 840.
[11] *Ibid.*
[12] QM, Annex III.266, Vol. 8, pp. 320-321.
[13] *Ibid.*, p. 321.
[14] QM, Annex III.269, Vol. 8, pp. 333-337.

- neither such persons nor the Al-Khalifah would undertake any building works or cultivation at Zubarah;
- no Bahraini resident who had migrated from Qatar could come to Zubarah;
- ten subjects of the Ruler of Qatar could go to Bahrain without a "pass";
- Qatar's sovereignty and administrative rights at Zubarah were preserved;
- the Ruler of Qatar's fort at Zubarah would remain empty; its two watchmen would live in a tent close by;
- the transit dues levied by Bahrain on goods destined for Qatar would be reduced from 5% to 2% *ad valorem*[15].

5. It was in this context that on 21 March 1950 the Ruler of Bahrain issued a proclamation authorising his subjects to travel freely to Qatar, except to Zubarah, where they could go only if so authorised by the Ruler of Bahrain[16].

As will be shown in paragraph 9, below, even this arrangement was terminated by the Ruler of Qatar in 1953.

6. In his pleading of 28 June 2000, Mr. Jan Paulsson made four contentions, based on the five new documents[17]:

(1) Bahrain was not a sovereign State;

(2) Zubarah was not Qatar;

(3) the question of Zubarah has remained unsettled; and

(4) the reality on the ground was Bahraini.

These four contentions will be examined in turn.

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[15] *Ibid.*, pp. 335-339.
[16] *Ibid.*, p. 338.
[17] CR 2000/22, pp. 54-56, paras. 12-22.

(1) Bahrain was allegedly not a sovereign State

7. In the first document produced by Bahrain, which was a letter to Belgrave dated 18 March 1950, the Political Agent wrote that Great Britain retained the right, and it was not for Bahrain, to grant visas for persons to visit Qatar, Kuwait or other Gulf States. In addition, Mr. Paulsson inferred, from the same letter, that the Ruler's decrees were subject to the prior approval of the British authorities. On this basis, he concluded that Bahrain was not a sovereign State[18].

In fact, the document is ambiguous and does not prove much: first, with regard to visas, generally speaking, the granting of visas falls within the jurisdiction of the State that is visited, and not within that of the State from which the visitor originates. Even if the rules that were applicable at the time to relations between Great Britain and Bahrain provided that Great Britain retained the right to authorise Bahraini residents to travel abroad - and Bahrain should have demonstrated this by citing a specific legal text, which it did not do - this prerogative might seem to be a normal consequence of Great Britain's responsibility for the conduct of the foreign relations of Bahrain and Qatar, in accordance with the provisions of the treaties of 22 December 1880[19], 13 March 1892[20] and 3 November 1916[21]. This did not mean that, otherwise, Bahrain and Qatar were not sovereign States.

Moreover, it will be seen from the two letters annexed hereto that in 1959 the Ruler of Qatar himself requested the Political Agent not to issue visas to certain persons[22], and that in 1960 the Political Agent declined a request for assistance in obtaining a visa, explaining that "this was a matter for the Immigration Department of the Qatar Government"[23]. This shows that at least in Qatar, even if it was the British authorities who retained the right formally to deliver visas, the issuance of visas was subject to the approval of the Qatari authorities.

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[18] *Ibid.*, p. 55, paras. 14-15.
[19] QM, Annex II.36, Vol. 5, p. 117.
[20] QM, Annex II.37, Vol. 5, p. 121.
[21] QM, Annex II.47, Vol. 5, p. 181.
[22] Letter from Commandant of Police to Political Agent in Qatar, dated 2 August 1959.
[23] Letter from Political Agent in Qatar to Commandant of Police, dated 5 July 1960.

As regards Bahrain's assertion that the decrees of the Ruler of Bahrain were subject to prior approval by the British authorities, no basis for such an assertion is to be found in the letter of 18 March 1950. The particular proclamation in question concerned a matter of foreign relations between Qatar and Bahrain, for which the British were responsible by virtue of their special treaty relations with Bahrain and, moreover, it was being issued pursuant to the arrangements negotiated by the British for Bahraini visits to Zubarah (*see*, paragraph 4, above).

Consequently, the letter of 18 March 1950 provides no support for Bahrain's assertion that Bahrain was not a sovereign State.

(2) **Zubarah is allegedly not a part of Qatar**

8. Bahrain contends that in the draft proclamation whereby Bahrain authorised its subjects to go to Zubarah, the Ruler of Bahrain replaced the expression "the Zubarah area of Qatar", which had been used in the draft prepared by the Political Agent, by "Zubarah", without mentioning Qatar. Bahrain seems to conclude from this that the Zubarah area was not considered to be part of Qatar.

Regardless of the fact that such a conclusion would be in contradiction with the consistent declarations by the British, since 1873, that Bahrain had no rights in or to Zubarah[24], the history of the events forming the background to the documents produced by Bahrain shows that this conclusion in no way corresponds to the historical reality.

Furthermore, against the background detailed above, the fact that the words "of Qatar" were crossed out of the original draft proclamation, prepared by the Political Agent, cannot in any way imply recognition that Zubarah belonged to Bahrain[25]. The arrangement viewed as a whole shows, on the contrary, that it was within the framework of its own sovereignty, expressly recognised under the arrangement, that Qatar accepted certain "concessions"[26] in

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[24] QM, paras. 8.16, 8.19, *et seq.*, 8.24, *et seq.*, 8.42, *et seq.*, etc.
[25] It may be noted that there is no indication of who crossed out the words "of Qatar" in the draft proclamation, or of when they were crossed out.
[26] QM, Annex III.269, Vol. 8, p. 339.

exchange for certain advantages that were granted by Bahrain, essentially related to customs - the reduction in transit dues on goods destined for Qatar.

(3) The question of Zubarah allegedly remains unsettled

9. Mr. Paulsson referred to a sentence in the letter from the Political Agent to Belgrave dated 18 March 1950. According to Mr. Paulsson, the Political Agent wrote that he would be writing to Belgrave again "about the concessions which His Highness Shaikh Salman promised for Qatar in order to settle this affair"[27]. Mr. Paulsson seems to infer from this that the question of Zubarah was not yet settled and that it remains unsettled today[28].

The logic of this reasoning and the aim of the argument are not easy to understand. First of all, the argument appears to result from a simple mistranslation of the original English text of the letter. That text does not say "in order to settle this affair", as was asserted by Mr. Paulsson, but "as a result of the settlement of this affair" (emphasis added), thus clearly implying that the affair had already been settled.

In any event, the concessions by the Ruler of Bahrain to which the Political Agent was alluding were the reduction in transit dues and the right for certain subjects of the Ruler of Qatar to travel easily to Bahrain; this did not imply that the question of Zubarah had not already been dealt with. It is true that, subsequently, the Ruler of Qatar was to terminate the 1950 arrangement because of provocative and irresponsible behaviour by Bahrain in 1952[29] and in 1953[30], but the position as regards Zubarah was made perfectly clear in 1957. At that time, the British stated to the Ruler of Bahrain that "HMG have never supported any claim by Bahrain to sovereignty in Zubarah" and that although, in the past, they had been able to promote "by negotiation arrangements for certain special facilities for Bahrainis in the area, and certain limitations on the exercise of sovereignty by the Ruler of Qatar", today (in 1957), "it does not seem possible for these arrangements and limitations to be continued as they were

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[27] CR 2000/22, p. 55, para. 16: "J'espère vous écrire séparément au sujet des concessions que Son Altesse le cheikh Salman a promis [*sic*] pour Qatar afin de régler cette affaire".
[28] *Ibid.*, p. 55, para. 17; *see*, also, p. 56, para. 22.
[29] QM, Annex III.272, Vol. 8, p. 351.
[30] QM, Annex III.270, Vol. 8, p. 343.

before"[31]. This point was mentioned by Qatar in the oral pleadings[32], but Bahrain did not directly respond to it.

(4) The reality on the ground was allegedly Bahraini

10. Rather obscurely, Mr. Paulsson concluded from the documents produced by Bahrain, and from the authorisation granted to 150-200 persons and their families to go to Zubarah (and not to "return" to Zubarah, as Mr. Paulsson mistakenly stated[33]), that the reality on the ground "seems rather to have been a Bahraini reality"[34].

On the contrary, Qatar has shown that Zubarah was uninhabited[35]. The fact that in 1950 Qatar authorised the Ruler of Bahrain to allow a maximum of 200 of his subjects to visit Zubarah (the number being reduced to 50-60 in the Ruler of Bahrain's letter of 21 March 1950[36]) does not mean that the local "reality" actually became "Bahraini". These few visitors obviously in no way changed the legal status of Zubarah, which remained under Qatari sovereignty. In any event, the arrangements as to such visits were terminated after only a short period, in 1953 (*see*, paragraph 9, above).

Finally, the so-called "Bahraini reality" on the ground is put into perspective by a report of the Political Agent dated 23 April 1950, which noted that:

> "... I have heard nothing about the Bahraini visitors to the Zubarah area except that they landed there and were not particularly enthusiastic about being there"[37].

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[31] QM, Annex III.284, Vol. 8, p. 411.
[32] CR 2000/9, p. 17, para. 34 and p. 30, para. 16.
[33] CR 2000/22, p. 56, para. 20: "... le Political Agent s'enquiert du nombre des gens qui vont retourner à Zubarah" (emphasis added).
[34] CR 2000/22, p. 56, para. 22.
[35] CR 2000/9, p. 24, para. 52.
[36] It may be noted that in that letter the words "and its environs" have been inserted in the Arabic text twice, after the word "Zubarah". There is no indication of who inserted these words, or when they were inserted. Also, in the Ruler of Bahrain's letter of 4 February 1950, the word in Arabic that has been translated as "area" in fact means "courtyard", implying that the so-called "Zubarah area" was restricted to the immediate surroundings of the ruined town.
[37] QM, Annex III.269, Vol. 8, p. 331, at p. 339; emphasis added.

The Political Agent added that:

> "... it now seems that few of the people who migrated from Zubarah and, whom the Shaikh [of Bahrain] has always described as yearning to return there, now want to go back. This somewhat comic situation Shaikh Salman is, not unnaturally, not prepared to admit"[38].

* * *

In conclusion, the five new documents provide absolutely no support for the arguments put forward by Bahrain and provide no answer to the questions posed by Judge Vereshchetin.

[38] *Ibid.*, at pp. 337-338.

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CP/O.15

Police Headquarters
The Fort - Rumailah
D O H A

2nd August, 1959.

Confidential

H.B.M's Political Agent,
D O H A.

Sir,

I have the honour to inform you that I am instructed by His Highness Shaikh Ahmed bin Ali Al Thani to request that applications for visas made by Representatives of the Firm TEKA - EXPORT G.M.B.H., Ost-strasse No 154, Dusseldorf, be refused.

I have the honour to be,

Sir,

Your obedient servant,

Commandant of Police.

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MUFTI-E-AZAM
Abdul Hannan of Bhutan Sharif
HASSAN IBRAHIM MANZIL,
NEWNHAM ROAD, KARACHI.

POLITICAL AGENCY,
DOHA.

July 5, 1960.

Dear Ron

With reference to our telephone conversation yesterday I enclose a visiting card of Sahebzada Abdul Hannan of Bhutan Sharif.

Abdul Hannan has been trying for sometime to obtain visas to come here from Pakistan for himself and for twenty four of his followers. They have said that they wish to visit the Afridi community in Doha. On instructions from the Immigration Department visas have in the past been refused both for him and for his companions, but he has apparently managed to enter Qatar as a pilgrim returning from the Haj.

When Abdul Hannan came to see me yesterday, he sought my help in obtaining visas for his twenty four companions to join him here. I explained that this was a matter for the Immigration Department of the Qatar Government and that they had turned down this request in the past. He then asked whether I would write a letter recommending him to Shaikh Ahmad so that he could make his request personally to the Shaikh. I said that I was not prepared to do this in the absence of any recommendation for him from the Pakistan authorities. Abdul Hannan showed me a letter from the Political Agency in Bahrain with a 1958 date and also a letter he had been given by the United Kingdom High Commissioner in Karachi which referred simply to their previous correspondence with us about this man and his followers. As I was unwilling to help him Abdul Hannan said that he would himself arrange to see Shaikh Ahmad.

As I mentioned on the telephone I think that before Shaikh Ahmad makes a decision about this man and his followers he should know that the Pakistani Political Agent for the Khyber district has said that Abdul Hannan is an untrustworthy individual. He has also cast doubt on the authenticity of Abdul Hannan's credentials signed by a number of tribal Maliks from the area. The Political Agent, Khyber also casts doubt on Abdul Hannan professed motives for visiting Qatar with his companions. He says that there must be very few Afridis resident here and that those there would hardly be edified by the prospect of having to house and feed Abdul Hannan and his personal followers during their stay.

see HB PARA 2

Yours sincerely

John.

(J.C. Moberly)

R. Cochrane, Esq., MBE,
Commandant of Police,
DOHA.

RESTRICTED