

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

***IN THE NAME OF GOD
THE MERCIFUL, THE BENEVOLENT***



INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING MARITIME DELIMITATION
AND TERRITORIAL QUESTIONS**

**BETWEEN
QATAR AND BAHRAIN**

(QATAR V. BAHRAIN)

MEMORIAL

**SUBMITTED BY
THE STATE OF QATAR**

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**CASE CONCERNING MARITIME DELIMITATION
AND TERRITORIAL QUESTIONS
BETWEEN QATAR AND BAHRAIN (QATAR V. BAHRAIN)**

MEMORIAL OF THE STATE OF QATAR

PART I

INTRODUCTION

This Memorial is filed in accordance with the Order of the Court dated 1 February 1996 which extended until 30 September 1996 the time-limit for the filing of Memorials by the State of Qatar ("Qatar") and the State of Bahrain ("Bahrain").

CHAPTER I

BACKGROUND TO THE PRESENT PROCEEDINGS

1.1 For a long time - several decades - Qatar has been seeking justice in the face of what it regards as the illegal occupation by Bahrain of part of the territory of Qatar. The solution of this long-standing dispute with Bahrain is of vital importance for the two States and their people as well as for the restoration of peace and the development of friendly relations between them. Qatar has always refrained from the threat or use of force in any manner inconsistent with the Purposes of the Charter of the United Nations, and has always sought to settle this dispute in accordance with Article 2(3) of the Charter, and therefore "by peaceful means in such a manner that international peace and security, and justice, are not endangered".

Section 1. The Case submitted to the Court

1.2 A solution to the dispute was eventually sought, with the agreement of the Amirs of Bahrain and Qatar, in the context of a mediation, sometimes referred to as "good offices", by the King of Saudi Arabia. That mediation began in 1976 and has lasted for two decades. A set

of "Principles for the Framework for Reaching a Settlement" (hereinafter referred to as the "Framework") was approved during a tripartite meeting in May 1983¹.

1.3 For the next few years, there was no progress towards the settlement of the dispute. The King of Saudi Arabia then sent to the Amirs of Qatar and Bahrain letters in identical terms dated 19 December 1987, in which he put forward new proposals for settlement of the dispute by the International Court of Justice. Those proposals were accepted by letters from the two Amirs, dated respectively 21 and 26 December 1987. These exchanges of letters are hereinafter referred to as the "1987 Agreement". In addition, on 21 December 1987 an announcement was issued by Saudi Arabia, the terms of which had been approved by the two Parties².

1.4 During the work of the Tripartite Committee established by the 1987 Agreement, and following an initiative by Saudi Arabia, on 26 October 1988 the Heir Apparent of Bahrain, when on a visit to Qatar, transmitted to the Heir Apparent of Qatar a text (subsequently known as the "Bahraini formula") which reads as follows:

"Question

The Parties request the Court to decide any matter of territorial right or other title or interest which may be a matter of difference between them; and to draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters³."

The work of the Tripartite Committee came to an end in December 1988.

1.5 On the occasion of the annual meeting of the Co-operation Council of Arab States of the Gulf at Doha in December 1990, Qatar let it be known that it was ready to accept the Bahraini formula. On the sidelines of that meeting, the Foreign Ministers of Bahrain, Qatar and Saudi Arabia signed on 25 December 1990 Minutes placing on record the fact that Qatar had accepted the Bahraini formula and that the dispute could be referred to the Court if it was not

¹ Annex II.10 to the Memorial of Qatar in the phase of the proceedings relating to Questions of Jurisdiction and Admissibility, Vol. III, p. 49. When the need arises for Qatar to refer to such proceedings, the references used will be, for example, Q.M.J.A. or B.C.J.A., as appropriate.

² Annexes II.15 and II.16, Q.M.J.A., Vol. III, pp. 101 and 107, and Annex I.4, B.C.J.A., Vol. II, p. 23.

³ Annex II.29, Q.M.J.A., Vol. III, p. 191.

resolved through the good offices of King Fahd by May 1991⁴. Those Minutes are hereinafter referred to as the "Doha Agreement". Both Parties thus accepted that the Court, once seised, should decide:

"... 'any matter of territorial right or other title or interest which may be a matter of difference between [the Parties]'; and should 'draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters'⁵".

The formula thus adopted determined the limits of the dispute with which the Court would be asked to deal. It was devised to circumscribe that dispute while leaving open the possibility for each of the Parties to present its own claims to the Court, within the framework thus fixed.

1.6 The continuation of the good offices of King Fahd as envisaged in the Doha Agreement did not lead to the desired outcome within the time-limit fixed in that Agreement, and on 8 July 1991 Qatar instituted proceedings before the Court against Bahrain by filing an Application:

"... 'in respect of certain existing disputes between them relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States'⁶."

1.7 Qatar's requests as contained in that Application were as follows:

"Reserving its right to supplement or amend its requests, the State of Qatar requests the Court:

- I. To adjudge and declare in accordance with international law
 - (A) that the State of Qatar has sovereignty over the Hawar islands; and,
 - (B) that the State of Qatar has sovereign rights over Dibal and Qit'at Jaradah shoals;
- and
- II. With due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of

⁴ Annex II.32, Q.M.J.A., Vol. III, p. 205.

⁵ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 123, para. 32.

⁶ *Ibid.*, pp. 119-120, para. 20.

sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain⁷."

1.8 The President of the Court, having consulted the Parties, and taking into account the agreement reached between them concerning procedure, decided by an Order of 11 October 1991 that the written pleadings should first be addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application.

1.9 In its Judgment of 1 July 1994, the Court:

"... decided to afford the Parties the opportunity to ensure the submission to the Court of the entire dispute as it is comprehended within the 1990 Minutes and the Bahraini formula, to which they have both agreed. Such submission of the entire dispute could be effected by a joint act by both Parties ... or by separate acts. Whichever of these methods is chosen, the result should be that the Court has before it 'any matter of territorial right or other title or interest which may be a matter of difference between' the Parties, and a request that it 'draw a single maritime boundary between their respective maritime areas of seabed, subsoil and superjacent waters'⁸."

The Court then fixed 30 November 1994 as the time-limit within which the Parties were, jointly or separately, to take action to submit to the Court the whole of the dispute⁹.

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

⁷ *Ibid.*, p. 124, para. 35.

⁸ *Ibid.*, p. 125, para. 38.

⁹ On 1 July 1994, H.E. Sheikh Mohammed bin Mubarak Al-Khalifa, the Foreign Minister of the State of Bahrain, issued the following declaration: "The State of Bahrain appreciates today's decision of the International Court of Justice which confirms the right of the State of Bahrain to submit to the Court its claim over Zubarah, as well as its claims regarding other rights which are the subject of dispute between the States of Bahrain and Qatar". This statement was sent to the Court under a covering letter from the Agent and Counsel of the State of Bahrain dated 11 July 1994.

"The matters which would be referred to the Court were exhaustively defined in the Tripartite Committee (see paragraph 18 of the Court's Judgment of 1 July 1994). The subject matters of the dispute were described in identical terms in Bahrain's written pleadings and in a draft special agreement proposed by Bahrain on 20 June 1992 (see Bahrain's Rejoinder, Annex 1.3, p. 113).

The following subjects fall within the jurisdiction of the Court by virtue of the rights and obligations created by the international agreements of December 1987 and 25 December 1990 and are, by virtue of Qatar's Application dated 5 July 1991 and the present Act, submitted to the Court:

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

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

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

1.11 In its Judgment of 15 February 1995 the Court held that:

"48. The dispute is thus described in the very terms used by Bahrain at the sixth meeting of the Tripartite Committee held on 6 and 7 December 1988. Nor does it differ from the dispute described in the draft joint acts proposed by Bahrain on 22 October and 12 November 1994, and subsequently withdrawn by it, except in so far as these latter related to *sovereignty* over the Hawar islands and *sovereignty* over Zubarah. It is clear, however, that claims of sovereignty over the Hawar islands and over Zubarah may be presented by either of the Parties, from the moment that the matter of the Hawar islands and that of Zubarah are referred to the Court. As a consequence, it appears that the form of words used by Qatar accurately described the subject of the dispute. In the circumstances, the Court, while regretting that no agreement could be reached between the Parties as to how it should be presented, concludes that it is now seised of the whole of the dispute, and that the Application of Qatar is admissible¹⁰."

¹⁰ *I.C.J. Reports 1995*, p. 25, para. 48.

1.12 Qatar welcomed the Judgment of the Court¹¹, which found "that it has jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain" and "that the Application of the State of Qatar as formulated on 30 November 1994 is admissible". Since then, Qatar has been cooperating with the Court in the conduct of the present proceedings. Qatar is confident that the forthcoming Judgment of the Court, to the Statute of which the two States as members of the United Nations are *ipso facto* parties, will put an end to the dispute between the two States in accordance with international law, and that the decision of the Court will be complied with in accordance with the obligations of the Parties under the 1987 Agreement and the Charter of the United Nations. During the present proceedings, Qatar is remaining at the disposal of the Mediator to study any proposal it might make within the framework of the Doha Agreement which, as the Court decided in operative paragraph 41(1) of its Judgment of 1 July 1994, is an "international agreement ... creating rights and obligations for the Parties".

1.13 On 28 April 1995, having ascertained the views of Qatar and having given Bahrain an opportunity of stating its views, the Court issued an Order fixing 29 February 1996 as the time limit for the simultaneous filing of the written pleadings in accordance with paragraph 39 of the Judgment of 1 July 1994 and paragraph 49 of the Judgment of 15 February 1995. On 1 February 1996, at the request of Bahrain the Court extended this time limit until 30 September 1996.

1.14 It is now for each Party to present its claims to the Court. As the Court stated in its Judgment dated 15 February 1995 "... it falls to Qatar to present its submissions to the Court, as it falls to Bahrain to present its own¹²".

1.15 As the Court is aware, Qatar's claims and initial submissions are to be found in its Application dated 5 July 1991 and in its "Act to comply with paragraphs 3) and 4) of operative paragraph 41 of the Judgment of the Court dated 1 July 1994" filed with the Registry on 30 November 1994. In its Judgment of 15 February 1995 the Court found "that

¹¹ See, for example, Annexes I.3 and I.6, Vol. 2, pp. 9 and 25.

¹² *I.C.J. Reports 1995*, p. 25, para. 49.

the Application of the State of Qatar as formulated on 30 November 1994 is admissible¹³". As of today, Qatar remains incompletely informed of any of the claims and submissions of Bahrain either under the five subject matters of the dispute which are submitted to the Court or under the request that the Court draw a single maritime boundary between their respective maritime areas of sea-bed, subsoil and superjacent waters. In this Memorial Qatar will therefore present its case with respect to those subject matters, without prejudice however to the position that it may take once it has been informed of the claims and submissions of Bahrain.

Section 2. The Violations by Bahrain of the *status quo* Commitments

1.16 Qatar recalls that, as a result of meetings during 1975 and 1976 between the King of Saudi Arabia, the Amir of Qatar and the Amir of Bahrain, it was agreed that the Kingdom of Saudi Arabia would undertake mediation between Qatar and Bahrain to resolve the outstanding disputes. In 1978, in the course of the Mediation, King Khalid of Saudi Arabia proposed the Framework¹⁴. As indicated above, the Framework was approved on 22 May 1983¹⁵. The Second Principle provided for the maintenance of the *status quo* and declared that any act to change the *status quo* would have no legal effect. The Third Principle incorporated undertakings by the Parties to refrain from engaging in propaganda activities against each other or from doing anything to sully the cordial atmosphere necessary to facilitate fruitful negotiations.

1.17 The Second and Third Principles of the Framework were reiterated and embodied in the 1987 Agreement which, to use the words of the Court itself, is an "international agreement ... creating rights and obligations for the Parties"¹⁶.

1.18 The second point of that Agreement reads as follows:

¹³ *Ibid.*, p. 26, para. 50 (2).

¹⁴ Annex II.1, Q.M.J.A., Vol. III, p. 1. For a full account of the events relating to the Framework, *see*, Q.M.J.A., Vol. I, pp. 35-40, paras. 3.09-3.20.

¹⁵ Annex II.10, Q.M.J.A., Vol. III, p. 49.

¹⁶ *I.C.J. Reports 1994*, p. 126, para. 41 (1).

"*Secondly*: Until a final settlement for the disputed matters is reached in accordance with the preceding Article, the two sisterly States of Qatar and Bahrain shall abide by the principles of the framework for a settlement on which they agreed on 10/8/1403 H - corresponding to 22/5/1983 - and by the following in particular:

- (a) Each party shall undertake from to-date to refrain from any action that would strengthen its legal position, weaken the legal position of the other party, or change the status quo with regard to the disputed matters. Any such action shall be regarded null and void and shall have no legal effect in this respect.
- (b) The parties undertake to refrain from to-date from any media activities against each other whether in connection with this dispute or any other matters and until such time as the desired settlement is reached.
- (c) The parties undertake to refrain from any action that would impede the course of the negotiations or disturb the brotherly atmosphere necessary for the achievement of their objectives¹⁷."

1.19 In the course of the proceedings addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application, Qatar communicated a certain number of *notes verbales* with respect to various incidents relating to the Hawar islands, the shoals of Dibal and Qit'at Jaradah and the waters situated on the eastern side of the line indicated in the British decision of 23 December 1947, which were in breach of the Second and Third Principles of the Framework and the second point of the 1987 Agreement relating to the maintenance of the *status quo*. Qatar attaches to this Memorial copies of those *notes verbales*, updated by the addition of more recent exchanges of *notes verbales* between the two States and/or the Co-operation Council of Arab States of the Gulf¹⁸.

1.20 With respect to the Hawar islands, Qatar has also prepared a written report accompanied by photographs on Bahrain's actions and activities in those islands since the beginning of the Mediation¹⁹. It has also prepared photographs of mosaics of slides taken of the Hawar islands from 1958 on²⁰. These documents give evidence of the construction of military and civilian

¹⁷ See, Annexes II.15 and II.16, Q.M.J.A., Vol. III, pp. 101 and 107 and Annex I.4, B.C.J.A., Vol. II, p. 23.

¹⁸ See, Appendix 1, Vol. 14. For the sake of convenience, a brief summary of the content of each *note verbale* has been inserted at the beginning of Appendix 1.

¹⁹ See, Appendix 2, Vol. 15, p. 1, and the video tape entitled "Bahrain Actions and Activities in Hawar Islands Since the Beginning of the Mediation". Twenty copies of the video are being filed with the Registry pursuant to Article 50, paragraph 2, of the Rules of Court.

²⁰ See, Appendix 7, Vol. 16. A mosaic is the composite photograph that is created when a number of aerial photographs are joined together so that broader geographic areas can be studied from a single image.

installations and the introduction of military weapons into Hawar by Bahrain, and also show that Bahrain has been intensifying such activities, in particular from the date of seisin of the Court by Qatar on 8 July 1991. This has become more flagrant since the first Judgment of the Court on 1 July 1994. Indeed, in a *note verbale*, which it forwarded to the Registrar of the Court under cover of a letter of 8 January 1996, Bahrain acknowledges that it has carried out such activities²¹.

1.21 In addition, it is apparent that Bahrain is continuing to undertake military activities on Hawar. For example, on 24 May 1996, the Heir Apparent and Commander-in-Chief of the Defence Force of the State of Bahrain went to the main Hawar island to visit the public security and defensive forces stationed there. Moreover, Bahrain has undertaken other activities in an endeavour to consolidate its position, but these are clearly no more than an artificial attempt to give the impression that there are civilian activities on Hawar. For example, Bahrain has put up bungalows and a hotel for tourism on the main Hawar island, and has taken further steps to encourage tourism on the islands. In particular, in July 1996, a Bahraini tourist company began advertising tourist trips to the islands. Finally, Bahrain is taking legislative and administrative actions in relation to the disputed shoals and maritime areas.

1.22 This situation is viewed very seriously by the Qatari authorities, whose concern was expressed by the Agent of the State of Qatar at the meeting with the President of the Court on 27 April 1995. He indicated that under the 1987 Agreement, by the terms of which Bahrain and Qatar have undertaken legal obligations (as decided by the Court in its Judgment of 1 July 1994), the two Parties had agreed to refrain from hostile actions. He drew the attention of the President of the Court to the necessity for Qatar and Bahrain to refrain from adverse acts and breaches of the *status quo*:

Mosaics are created using either controlled or uncontrolled assembly techniques. Controlled mosaics are created from a sophisticated assembly process which accounts for, and corrects, much of the distortion inherent in aerial photographs, making them a reliable base source of information for topographic mapping. Uncontrolled mosaics, on the other hand, are created from a more simplistic assembly process and may be used for studying land use and natural resources. The mosaics presented in Appendix 7 are all uncontrolled mosaics; as such, they may be used to study features on the ground, but they would not be suitable for making precise distance or aerial measurements.

²¹ See, Appendix 1, Vol. 14, p. 393.

"... Qatar considers that both Governments should refrain from any act likely to impede the gathering of evidence material to the present case and that in regard to the administration of the disputed islands, shoals and maritime area, the situation which prevailed previously should not be modified. In addition, both Parties should refrain from any adverse acts and any infringements of the *status quo*²²."

1.23 To conclude, the Bahraini activities that Qatar has brought to the attention of the Court are flagrant and material breaches of the agreed *status quo*, and in particular of the 1987 Agreement, which has now been confirmed by the Court as being an international agreement creating rights and obligations for the Parties. Moreover, it is clear that under the Second Principle of the Framework agreed in 1983 (as again set out in paragraph (a) of the second point of the 1987 Agreement), any action infringing the *status quo* is null and void and can have no legal effect²³.

Section 3. Outline of Qatar's Memorial

1.24 This Memorial is divided into four Parts. Following this Introductory Part I, Part II addresses "The Geographical and Historical Background to the Dispute", Chapter II containing a geographical description of the general area of the dispute, and Chapter III setting out the historical background from the 17th century until today.

1.25 Part III then addresses "The Hawar Islands and Other Territorial Questions". With regard to the Hawar islands, their geography is considered in Chapter IV, while the territorial integrity of Qatar and Qatar's sovereignty over the Hawar islands is discussed in Chapter V. Chapter VI then explains the defective nature of the British decision of 11 July 1939 that the Hawar islands belonged to Bahrain. Finally, in Chapters VII and VIII, Qatar addresses the questions of Janan island and Zubarah respectively.

²² Agent of Qatar's letter to the Registrar, 28 April 1995, p. 3. *See*, also, the statement, made upon the occasion of the delivery of the Judgment of the Court on 15 February 1995, by the Heir Apparent and Defence Minister of the State of Qatar, now the Amir, H.H. Sheikh Hamad bin Khalifa Al-Thani. He stated that: "The State of Bahrain has, notwithstanding, continued to breach this commitment [maintenance of the *status quo*] by constructing installations and effecting changes in places and positions in dispute such as the islands of Hawar" (Annex I.3, Vol. 2, p. 9).

²³ *See*, in this respect, *Legal Status of the South-Eastern Territory of Greenland, Order of 3 August 1932, P.C.I.J., Series A/B, No. 48*, p. 287.

1.26 Part IV deals with the issue of maritime delimitation before the Court. Chapter IX gives a general presentation of the relevant maritime area for the purposes of this delimitation. Chapter X then considers the 1947 British decision, while Chapter XI addresses the relationship between the line drawn by the British in 1947 and the single maritime boundary which the Court is being asked to draw. Finally, Chapter XII considers the drawing of a single maritime boundary by the Court in the area to the north of a notional line joining the northernmost points of the respective land territories of Qatar and Bahrain.

1.27 This Memorial ends with Qatar's Submissions.

1.28 Attached to this Memorial there are 8 Appendices in 4 volumes, including a Map Atlas, and 12 volumes of Annexes. A list of these Appendices, Annexes and Maps may be found at the end of this Volume. In general, the Annexes are organised according to the Part of the Memorial in which they are referred to. In other words Annexes to Part II of the Memorial are numbered Annex II.1, II.2, etc. However, certain important texts which are referred to throughout the Memorial are only included once - among the Annexes to Part II of the Memorial. A list of certain documents which are being deposited separately with the Registry pursuant to Article 50, paragraph 2, of the Rules of Court is contained in the Agent of Qatar's letter to the Registrar dated 30 September 1996.

1.29 For the sake of convenience, a list of the main abbreviations used from time to time in Qatar's Memorial and its annexes is set forth below.

| | | |
|------|---|--|
| RQ | : | Ruler of Qatar |
| RB | : | Ruler of Bahrain |
| PRPG | : | Political Resident in the Persian Gulf, sometimes referred to simply as the Political Resident |
| PAB | : | Political Agent, Bahrain |
| PAQ | : | Political Agent, Qatar |
| ABG | : | Adviser to the Bahrain Government |
| IO | : | India Office |
| FO | : | Foreign Office |

IOR : India Office Records
BAPCO : Bahrain Petroleum Company
PCL : Petroleum Concessions Limited
EGS : Eastern and General Syndicate Ltd.
APOC : Anglo-Persian Oil Company

Where reference is made in this Memorial to Archives of the State of Qatar, the documents are from the Archives of the Diwan Amiri of the State of Qatar.

PART II

THE GEOGRAPHICAL AND HISTORICAL BACKGROUND TO THE DISPUTE

CHAPTER II

DESCRIPTION OF THE GENERAL AREA OF THE DISPUTE

Section 1. Introduction

2.1 Two geographical areas will be distinguished and briefly described below. The first is the broad one of the Arabian/Persian Gulf which geographically, historically and politically forms a natural configuration with its own particular characteristics which are relevant to this dispute. This general setting is shown on *Map No. 1*, facing this page and is discussed in Section 2 below.

2.2 Within this larger area, a second may be identified which is shown on *Map No. 2*, facing the following page. This covers an area between the Hasa coast in the west and the sea to the east of the peninsula of Qatar. It thus includes the whole of Qatar and Bahrain and the waters surrounding Bahrain. It is within this second area that most of the events which form the background to this dispute occurred.

Section 2. General Setting: The Geography of the Arabian/Persian Gulf

2.3 As can be seen from *Map No. 1* facing this page, Qatar and Bahrain are situated on the southern side of the Arabian/Persian Gulf almost midway between its mouth at the Strait of Hormuz and its termination at the Shatt al Arab. Confined by the landmass of Persia (now the Islamic Republic of Iran) to the north, and the Arabian peninsula to the south, and narrowing at the Strait of Hormuz, the Gulf is a semi-enclosed sea. It has an area of approximately 240,000 square kilometres; its length is approximately 984 kilometres and its breadth varies from a maximum of 336 kilometres to a minimum of 56 kilometres in the Strait of Hormuz.

2.4 The Arabian/Persian Gulf is formed by a shallow depression, constituting an unbroken continental shelf underlying the whole of the Gulf. This depression produces depths averaging only 40 metres in the Gulf as a whole with a maximum depth of 170 metres near the Strait of

Hormuz. However, the basin formed by the depression is markedly asymmetric with the slope of the southern and south-western sides of the Gulf, adjoining the Arabian peninsula, being far gentler than that of the northern Iranian coast. Thus, the waters are deeper near this northern coast and easier for navigation, while on the southern side the waters are generally very shallow¹.

2.5 These characteristics of the two sides of the Gulf are mirrored in the respective shorelines. The northern side of the Gulf is mountainous, with the mountains falling sharply to the shoreline. The southern coast by contrast is, as described in the *Persian Gulf Pilot*, "a desert of white sand". With the exception of the northwest side of the Oman peninsula, this coastline is described by the same source as "exceedingly low; from it, for nearly its whole length, reefs and shoals extend as much as from 30 to 50 miles in places²". The southern coast of the Gulf starts at the tip of the Oman peninsula in the Strait of Hormuz and follows the coastline south-west and then west until it meets the Qatar peninsula. After going round the Qatar peninsula, it turns in a steep north-westerly direction following the coastlines of Saudi Arabia and Kuwait and Iraq to where it meets the border of the Islamic Republic of Iran at the Shatt al Arab. This latter part of the coastline is often referred to as the Hasa coast or the Qatif coast. Bahrain is situated in the gulf that lies between the Qatar peninsula and this coastline.

2.6 There are numerous islands, shoals and reefs in the Gulf, the largest islands being Jazirat-ye Qeshm on the north side of the Strait of Hormuz and the island of Bahrain itself.

Section 3. Qatar, Bahrain and the Hasa Coast

2.7 The area to be discussed in this section is shown on *Map No. 2*, facing this page. This area is at the centre of the dispute. It includes the seabed, subsoil and superjacent waters between Qatar and Bahrain, as well as the shoals of Dibal and Qit'at Jaradah, the Hawar islands, the island of Janan, and Zubarah on the peninsula. The British drew a line of delimitation of the sea-bed on 23 December 1947 at a time when both Bahrain and Qatar asserted claims to a three-mile territorial sea limit³. Both States have since extended their

¹ See, Annex II.1, Vol. 3, p. 13.

² *Ibid.*

³ See, paras. 3.76 *et seq.*, and paras. 11.13 *et seq.*, below.

territorial seas to 12 miles. Thus, in the area where the coasts of Qatar and Bahrain face each other, the waters are now territorial sea. *Map No. 2*, facing the preceding page, reproduces the lines of the existing seabed delimitation agreements between Bahrain and Saudi Arabia, Bahrain and Iran, and Qatar and Iran. Qatar has also concluded a delimitation agreement with Saudi Arabia in the Dawhat Salwah⁴. The detailed description of the geographical characteristics of these specific features will be taken up in detail in Parts III and IV of this Memorial.

A. Qatar

2.8 The peninsula of Qatar juts northward into the Arabian/Persian Gulf from the bay called Dawhat Salwah on the west and, on the east, from south of Khor al-Udaid. The peninsula is about 180 kilometres long north to south and a maximum of 85 kilometres wide and, excluding islands, covers an area of approximately 14,000 square kilometres. Its main ports are Doha, the capital, and Umm Said, on the east side of the peninsula. The Hawar islands and Janan island are located on the western side of the Qatar peninsula. There is a major oil field to the south of Ras Dukhan (just below the Hawar islands) on the west coast. Zubarah's ruins are to be found on the north-western coast. The surface of the peninsula consists of an arch of limestone, in the sand-filled pockets of which are seams of water which support good grazing in the winter and spring. The land of Qatar has numerous hills on the western side. Towards the east the surface of the country becomes a less rugged limestone plain sloping gently into the Arabian/Persian Gulf.

B. Bahrain

2.9 Bahrain is situated at a midway point along the Arabian/Persian Gulf and as a result gained much of its importance as a trading centre, its geographical separation from the mainland making it relatively secure and independent of the mainland's problems.

2.10 According to the latest version of the *Persian Gulf Pilot*, the State of Bahrain consists of the island of Bahrain itself "together with a number of small islands and islets lying close to

⁴ This delimitation agreement is not shown on *Map No. 2*. See, paras. 11.28 *et seq.*, below.

its shores⁵". The name Bahrain has been used variously to refer to the main island of Bahrain itself (previously known as "Awal"), or to the group of three principal islands which form the inhabited part of the State of Bahrain. The other two inhabited islands lie to the north-east and east of the main Bahrain island, the larger being Al Muharraq, and the other Sitrah. Lorimer, writing at the beginning of this century, described the group of islands that formed the sheikhdom of Bahrain as follows:

"... taken all together these form a *compact* group almost in the middle of the gulf which divides the promontory of Qatar from the coast of Qatif⁶."

2.11 The main island of Bahrain is about 43 kilometres in length from north to south, with a breadth of about 12.8 kilometres for most of its length. For Qatar, Bahrain covers an area of approximately 652.8 square kilometres.

C. The Hasa Coast

2.12 The Hasa coast is the third natural feature of the area. The relevant part of this coast for the purposes of this dispute runs from Ras Tannurah in the north to the end of Dawhat Salwah (at the Saudi Arabian town of Salwah), in a general north-west/south-east direction and is shown on *Map No. 2*, facing page 14.

⁵ Annex II.1, Vol. 3, p. 37.

⁶ Annex II.3, Vol. 3, p. 88 (emphasis added). This citation is taken from J.G. Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia*, 1908 and 1915, reprinted by Archive Editions, 1986, Vol. II, p. 234. Lorimer was an employee of the Indian Civil Service, whose career culminated in the post of Political Resident in the Persian Gulf from December 1913 until his death in February 1914, and his *Gazetteer* was compiled as a British governmental project.

CHAPTER III

HISTORICAL BACKGROUND

Section 1. Introduction

3.1 The purpose of this Chapter is to outline the history of Qatar and Bahrain. It will first deal, in Section 2, with the general background history of the presence of foreign powers in the Gulf, and will then turn, in Sections 3 and 4, to the history of Qatar and Bahrain individually. Finally, Sections 5 and 6 will describe the events which are more particularly related to the subject matter of the dispute in the present proceedings, together with the Parties' attempts to resolve the dispute. Facing this page is *Map No. 3* showing the general setting, indicating the various places mentioned in this Chapter.

Section 2. Trade in the Gulf, and Presence of Foreign Powers prior to 1868

3.2 From early times there existed a considerable sea trade between the Gulf and Africa and India. Before the arrival of the Europeans in the area, navigation was traditionally in the hands of the Arabs, on both the Arabian and Persian sides of the Gulf. The first Europeans to arrive, at the end of the 15th century, were the Portuguese who were attracted to the Gulf because it lay along one of the trading routes with India. Their commercial interests lay in controlling the waters of the Gulf and thus assuring the safe flow of trade. They established forts at Hormuz and Bahrain and had a virtual monopoly of trade in the Gulf throughout the 16th century. This monopoly was first challenged by the Dutch, who arrived towards the end of the 16th century, establishing a series of trading posts on the Persian coast. However, the real challenge came somewhat later from the British, in the form of the East India Company, which was anxious to consolidate a presence in the Gulf because of its commercial interests in India¹. Britain subsequently associated with Persia and succeeded in expelling the Portuguese from Hormuz in 1622. Rivalry with the Dutch followed, and in 1766 the last Dutch trading post, on Kharg Island, was abandoned. Thereafter, the British acquired almost a monopoly of the foreign commerce of the Gulf ports, and were left as the only foreign power in the area until the arrival of the Ottomans some decades later.

¹ For further information about the East India Company, see, Appendix 3, Vol. 15, p. 95.

A. The British

3.3 By the end of the 18th century, in addition to its commercial interests, there were other reasons for Britain's increased involvement in the Gulf, including the growing presence of Indian traders who were subject to British protection. More significantly, the growing British presence in India made the Gulf an area of great strategic importance for successive British governments. Maritime trade had considerably increased, as had piracies, with the result that the southern coast of the Gulf came to be known as the "Pirate Coast". It was the intensification of acts of piracy in the first part of the 19th century, directly affecting British commercial interests, which led to the first major change in the British role in the area².

3.4 In 1797, two British vessels were attacked in the Gulf by Arab tribes led by the Qawasim, whose headquarters were in Ras Al-Khaimah. In 1803-1804 and 1805, similar attacks occurred, including the seizure by pirates of the British crew and passengers of a native vessel and, on another occasion, of two merchant vessels owned by the British Resident at Bushire. Since these affairs were too serious to be ignored, the British sent an expedition against the Qawasim in 1805, following which there was a temporary cessation of acts of piracy.

3.5 In 1808, however, piratical attacks against British and Indian vessels began once again, and on two occasions the crews of such vessels were massacred by the pirates. By this time the Qawasim reportedly possessed 63 large vessels and a huge fleet of small ones, and about 19,000 men afloat. This strength even led their sheikh to suggest that the Bombay Government should pay him protection money, in return for which he would guarantee the safety of British commerce in the Gulf. Since the British could not allow this situation to continue, they despatched a second expedition against the Qawasim in 1809-1810. While many of their vessels were destroyed, the piratical tribes made no formal admission of defeat or written engagement for future good conduct, and in 1812 there were already signs of a revival of piracy. In 1813 the Qawasim attacked and robbed several British and native commercial vessels, and other vessels remained confined to port in India, not venturing to sail on account of the increasing danger at sea. Similar offences occurred in 1814 and increased

² For further details relating to the contents of paras. 3.3-3.6, see, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 161-168 and 175-181.

greatly in 1815-1816, when on many occasions the pirates not only robbed ships, but also killed their crews. These depredations continued until 1819.

3.6 In that year, a substantial force of combined British naval and East India Company vessels was led against the Qawasim. The British took control of Ras al Khaimah, and "the other ports of the Pirate Coast were visited, and a clean sweep was made of their military defences and their larger war vessels³". Similar measures were taken against the two Bahraini Sheikhs. Thereafter, individual agreements were signed by the British with the Sheikhs including an undertaking to enter into a General Treaty of Peace in the future⁴. The General Treaty was drawn up on 8 January 1820, and on various dates the Sheikhs of the Pirate Coast, including the two Bahraini Sheikhs, severally became parties thereto⁵.

3.7 By this Treaty the Arab signatories undertook on behalf of themselves and their subjects to abstain for the future from plunder and piracy, as distinguished from "acknowledged war", and various arrangements were prescribed for ensuring strict observance by them of their new obligations, among these being the adoption by the tribes of a common distinctive flag, and the institution of a system of ships' papers for purposes of identification.

3.8 In order to enforce the Treaty of 1820, the British stationed more permanent naval forces in the Gulf, and subsequent acts of piracy, including several believed to have been perpetrated by tribes of Qatar and Bahrain, were dealt with directly by these forces. However, piracy as well as numerous acts of aggression by one Arab tribe against another continued, resulting in severe disruption to both British and Arab trade. Therefore, in 1835, on British suggestion, a maritime truce was established which was to be observed by the leading sheikhs of the Pirate Coast for the period from 21 May to 21 November of that year.⁶ Because of the benefits to trade this agreement brought, it was renewed on a yearly basis, until a Treaty of Maritime Peace in Perpetuity was signed on 24 August 1853⁷. In 1836, the British had also imposed a

³ Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 181.

⁴ *Ibid.* See, also, Annex II.7, Vol. 4, p. 171.

⁵ Annex II.14, Vol. 5, p. 9.

⁶ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 182-183.

⁷ See, *ibid.*, pp. 188-189. The treaty was signed by the Chiefs of Umm Al-Qaiwain, Ajman, Dubai, Abu Dhabi and Ras Al-Khaimah, whose territories thereafter became known as the "trucial sheikhdoms".

de facto restrictive line between the Persian coast and the Arab coast, beyond which the Arab tribes were not allowed to conduct any hostile operations.

3.9 While the aim of these treaties and of the restrictive line was to protect trade by ensuring maritime peace and eliminating piracy, the British were inevitably drawn into resolving local disputes. This they did, for example, by imposing fines and assisting in the recovery of plundered property, and at times by supporting one sheikh rather than another.

3.10 It is worth noting, however, that British ascendancy in the Gulf from 1820 onwards and, in particular, over the affairs of the Arab chiefs, was mainly a *de facto* position and not a position held as of right. In effect, the moves to establish peace at sea referred to above, as well as others between 1838 and 1847 concerning the slave trade, permitted the British to intervene to secure the execution of treaty obligations. But they did not establish any supremacy of Great Britain over the Arab chiefs with regard to their other internal or external affairs. Nor did Great Britain claim suzerainty over them on treaty grounds. This situation was not generally modified until 1892, when most Arab sheikhdoms concluded the so-called "Exclusive Agreements" with Great Britain, a general policy of protection having been adopted at that time⁸.

B. The Ottomans

3.11 Unlike British involvement, which was essentially maritime and directed against interferences with trade, Ottoman involvement in the region was more concerned with the land, and was a reaction against the rise of Wahhabi power⁹. By 1795 the Wahhabis had taken control of Central Arabia and reached the Hasa coast, and were preparing for further expansion "towards Kuwait, Bahrain, Qatar and Oman"¹⁰. In 1802 the holy city of Mecca fell

⁸ See, paras. 3.50-3.51, below.

⁹ The terms "Wahhabi" and "Wahhabism" come from the name of a religious scholar, Muhammad Ibn Abdul Wahhab (1703-1792), who in 1741 launched an appeal for a drastic reform of the religious, political and social life of the Arabs, preaching in essence a return to the faith as known in the days of the Prophet. He came into contact with Muhammed ibn Saud, who adopted his preachings. Indeed, the term "Wahhabi" thereafter began to be associated with Saudi power and gave great impetus to the rise of this power by providing a sense of Arab unity combined with the desire for reformation. The rise of Wahhabi power is dealt with in more detail by Lorimer, *op. cit.*, (Annex II.5, Vol. 3, pp. 354-355) and J.A. Saldanha in the *Persian Gulf Gazetteer* (Annex II.9, Vol. 4, pp. 256-259).

¹⁰ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 354.

to the Wahhabis, and from at least 1803 until 1811 both Bahrain and Qatar were subject to the influence of Abdurrahman bin Saud, the Wahhabi Amir¹¹. The extent of this power was an embarrassment to the Ottoman Sultan, who claimed to be the titular overlord of the Hijaz and the leading Muslim sovereign with the right to control the Holy Places. He therefore invited the Viceroy of Egypt, Muhammad Ali (who was subject to the Ottoman Sultan), to send a military expedition to obtain control over the Wahhabis on his behalf. This first expedition took place between 1811 and 1815, and resulted in the occupation of the Hijaz, Nejd and Hasa. After departure of the Egyptian troops by 1824, the authority of the Ottoman Sultan was not repudiated, and a nominal tribute continued to be paid to him by the Wahhabi Amir¹².

3.12 Soon after the death in 1865 of Faisal bin Turki, the Wahhabi Amir, a conflict broke out between his sons Abdullah and Saud. The Ottoman Turks supported Abdullah and appointed him as Kaimakam (or Deputy Governor) of Nejd on their behalf, obtaining from him an admission of their suzerainty over Central Arabia¹³. When Saud subsequently sought to overthrow his brother Abdullah, the Sublime Porte intervened by sending a military expedition to Hasa and the Nejd in 1871 to restore peace and order¹⁴. This Ottoman involvement in the area confirmed the division between control of the sea by the British and of the land by the Ottomans.

3.13 Already, in 1867 the Ottomans had begun to make surveys of the area and to produce maps on the basis of these surveys¹⁵. The British were aware of the existence of these maps, as witnessed by the stamps they bear. They show Bahrain and Qatar as separate entities, the Ottomans being concerned to demonstrate that the mainland, including Qatar, fell within their sphere of influence¹⁶.

3.14 Indeed, as will be further discussed below, in 1871, with the agreement of the Sheikhs of Qatar, the Qatar peninsula came formally under the control of the Ottoman Empire with the raising of the Ottoman flag at various localities and, in early 1872, the arrival of an Ottoman

¹¹ The leader of the Wahhabis was variously known as the Amir or as the Imam.

¹² See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 172-175.

¹³ *Ibid.*, p. 356.

¹⁴ *Ibid.*, pp. 356-357.

¹⁵ See, *Map No. 4* facing the preceding page and Annexes II.21-II.24, Vol. 5, pp. 51-70.

¹⁶ See, also, paras. 5.15 *et seq.*, below.

garrison¹⁷. Ottoman control in Qatar was to last until 1915. In general, the British did nothing to hinder this control, once they had obtained the necessary assurances from the Porte that it would not interfere in any way in the affairs of Bahrain or the Arab Trucial sheikhdoms nor disturb the peace at sea, which would have had severe adverse effects on British trade¹⁸.

3.15 Against this background, it is now appropriate to turn to the history of Qatar and Bahrain themselves.

Section 3. The History of Qatar and Bahrain up to 1868

A. Events in Qatar

3.16 As the Court will appreciate, written evidence of events in the region of Qatar and Bahrain is understandably scarce for this early period, given the difficult desert conditions and the largely nomadic life that was led by the tribes. Nevertheless, there is evidence to show that a town existed at Zubarah on the northwestern coast of the Qatar peninsula in early Islamic times, and there are also references to Qatari products dating from those times¹⁹. Further evidence shows that at least by the beginning of the 17th century Zubarah was already a fortified town, with its own Sheikh and administration²⁰.

3.17 In 1715 members of the Al-Utub tribe from Central Arabia established themselves outside the walls of Zubarah for about two years, after which they went to Kuwait. During this time three sections emerged in the tribe: the Bin Khalifah, from whom the present ruling family in Bahrain claims descent, and the Bin Sabah and Al-Jalahma²¹. In 1766 the Bin Khalifah and Al-Jalahma sections left Kuwait for Bahrain, which had been occupied by the Persians since 1753, and thence to the Qatar peninsula, where in 1768 they built a fort, known as Al-Murair, at some distance outside the outer wall of Zubarah²².

¹⁷ See, paras. 3.43-3.44, below.

¹⁸ See, para. 3.45, below.

¹⁹ Annexes II.68, II.71-II.73 and II.76, Vol. 5, pp. 333, 385-396 and 405.

²⁰ See, paras. 8.7-8.8, below, and Annexes II.12 and II.13, Vol. 5, pp. 1 and 5.

²¹ These three sections remain in existence today, under the names of Al-Khalifah, Al-Sabah and Al-Jalahma. Only the Al-Khalifah section is present in Bahrain now, whereas members of all three sections live in Qatar. Members of the Al-Khalifah section living in Qatar are citizens of the State of Qatar.

²² See, Mohamed Khalifa Al-Nabhani, *Al-Tuhfah Al-Nabhaniya fi Tarikh Al-Jazira Al-Arabiya*, Beirut and Bahrain, 1986, p. 83 (Annex II.69, Vol. 5, pp. 340-342). Al-Nabhani is an official historian of Bahrain.

3.18 The growth of Zubarah was greatly stimulated by the Persian occupation of Basrah between 1776 and 1779, during which time a number of Basrah merchants together with fugitives from Kuwait resided there temporarily, and the pearl trade and general trade with eastern Arabia centred there. In these circumstances, the "reduction" of Zubarah became an object of importance to the Persian Government²³. Several attacks were therefore made upon the place by the Sheikh of Bushire who was also Persian governor of Bahrain, supported by Persian boats together with tribes from the Pirate Coast. These attempts commenced in 1777, but were unsuccessful²⁴. It was after failure of these attempts that members of the Al-Utub, together with tribes from various parts of Qatar, retaliated and finally took control of Bahrain in 1783²⁵, whereupon the Al-Utub transferred their headquarters to Bahrain²⁶. After these events, and following a struggle for power in Bahrain, the Al-Jalahma section of the Al-Utub were evicted from the island by the Bin Khalifah section²⁷.

3.19 Since Britain was chiefly concerned about its trade, mentions of Qatar in British sources during the following period, up until 1820, refer mainly to the activities of Rahmah bin Jabir of the dissenting Al-Jalahma section of the Al-Utub tribe. He was regarded by the British as a notorious pirate, but his hostility was in fact directed against the Bin Khalifah section of his tribe as a result of their eviction of his own section from Bahrain. Rahmah bin Jabir managed to achieve a substantial degree of control in the peninsula at some periods, in conjunction with the Wahhabis²⁸, and in 1809 the Wahhabis with his help took control of the whole peninsula²⁹. The following year, they extended their control to Bahrain, but in 1811 they were

Consequently, Qatar expresses a formal reservation with respect to any parts of his account which may support Bahrain's position in the present case.

²³ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 194-195.

²⁴ *Ibid.*, p. 195.

²⁵ *Ibid.*, pp. 246-247. The Qatari tribes involved included the Al-Musallam, Al-Bin Ali, Sudan (from Doha), Al-Bu Ainain, Kibisah, Sulutah (from Doha), Manana'ah, Sadah, Al-Bu Kuwarah, and Al-Naim.

²⁶ *Ibid.*, p. 195.

²⁷ *Ibid.*, p. 247.

²⁸ *Ibid.*, pp. 196 *et seq.*

²⁹ *Ibid.*, p. 197.

forced to withdraw from Bahrain and from the peninsula by the Imam of Muscat³⁰. In the course of these events the town of Zubarah was burnt³¹.

3.20 After 1820 and the signature of the General Treaty of Peace³², the British continued to be principally concerned with Qatar as a source of occasional acts of piracy. Although Qatar had not been a party to the Treaty, the British appeared to think that its terms nevertheless applied to the peninsula. However, on a visit to Al-Bida in 1823, the Political Resident observed that "the people seemed to know very little of the conditions of the treaty and [their boats] had neither flag nor register³³".

3.21 During the first half of the 19th century both Qatar and Bahrain were marked by inter- and intra-tribal conflict as well as by a struggle for their control by outside powers.

3.22 In Qatar, the 1850's saw the rise of Mohamed bin Thani bin Ali bin Jassim Al-Bin-Tamim, who increasingly asserted his authority over the tribes of the peninsula and upheld their independence. In 1854, he described himself as Chief of the people of Qatar, and by 1858 had entered into an agreement of friendship and cooperation on behalf of Qatar with Faisal bin Turki, the Wahhabi Amir, thus asserting his control over the country and people of Qatar³⁴.

B. Events in Bahrain

3.23 During the 17th and 18th centuries Bahrain was occupied for most of the time by the Persians, who were finally expelled in 1783 by sections of the Al-Utub tribe and tribes from

³⁰ See, *ibid.*, p. 198 and Annex II.75, Vol. 5, p. 401; Muscat corresponds to present-day Oman, which should not be confused with what was known as Trucial Oman, corresponding to the present-day United Arab Emirates.

³¹ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 198 and 250 and Annex II.75, Vol. 5, p. 401.

³² See, paras. 3.6 *et seq.*, above.

³³ Annex II.15, Vol. 5, p. 21. The town of Al-Bida on the eastern coast of Qatar forms part of what is now called Doha, the capital of Qatar. The name "Doha" began to be used around the middle of the 19th century.

³⁴ See, Annexes II.17 and II.18, Vol. 5, pp. 33-40.

Qatar³⁵. As noted above, the Bin Khalifah section finally achieved ascendancy in Bahrain and evicted the Al-Jalahma section³⁶.

3.24 The Arab occupation of Bahrain in 1783 was followed by a confused period until 1820, with struggles for control over the island by Muscat, the Wahhabis and Persia. During this time the Bin Khalifah from time to time acknowledged their submission to one or other of these powers³⁷.

3.25 In the years following 1820, the year in which the General Treaty of Peace had been signed by Britain with the Sheikhs of Bahrain, a series of further threats were posed by Muscat against Bahrain. All of these were ultimately unsuccessful, the British intervening each time in an attempt to preserve peace in the region³⁸. The 1830s saw renewed threats to Bahrain from the Hasa coast, first by the Wahhabis and then by the Egyptian forces who were engaged in another expedition in the Arabian peninsula in support of the Ottomans³⁹. Despite assurances by Britain that it would protect Bahrain, the Bin Khalifah nevertheless acknowledged Egyptian supremacy in 1839 and paid tribute to the Egyptians, themselves vassals of the Porte, in that year⁴⁰.

3.26 The period from 1840 to 1860 was marked in Bahrain primarily by a conflict between Sheikh Abdullah bin Khalifah and his great-nephew, Sheikh Mohamed bin Khalifah, who were co-rulers at the time. In 1842, Sheikh Mohamed was expelled from Bahrain and took refuge in the Murair fort outside the old walls of Zubarah. Mohamed's presence at Murair did not last long because in April 1843, helped by a contingent of Qataris, he retook Muharraq and ousted Abdullah⁴¹, who was in turn expelled from Bahrain and proceeded to seek alliances with both the Wahhabis and the Persians in an effort to regain control of the island⁴².

³⁵ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 246-247. See, also, para. 3.18, above.

³⁶ See, para. 3.18, above. See, also, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 195 and 247.

³⁷ See, *ibid.*, pp. 248-255.

³⁸ See, *ibid.*, pp. 255-263.

³⁹ See, *ibid.*, pp. 263-266.

⁴⁰ See, *ibid.*, pp. 268-273.

⁴¹ See, *ibid.*, pp. 206 and 276-277.

⁴² See, *ibid.*, pp. 279-286.

In 1848, Sheikh Mohamed requested from the British a new agreement affording him protection, in an effort to secure his control. This request was however ultimately rejected⁴³.

3.27 While they had refused Sheikh Mohamed's request for protection, the British nevertheless rejected various claims of other parties to Bahrain, adopting an increasingly protective attitude towards the island. Thus, in May 1853, when there was renewed tension between the Wahhabi Amir - then nominally subject to the Ottoman Porte - and Sheikh Mohamed, the British were ready to offer every obstacle to an attack upon the island of Bahrain⁴⁴. However, as will be seen below, the British took no step to oppose the Ottoman forces when they moved into Qatar⁴⁵.

3.28 The struggle for control over Bahrain came to a head in 1859, when further preparations for a descent on the island were made by the Wahhabi governor of the littoral. While the British Political Resident had made it clear that he was determined to preserve the independence of Bahrain, the situation was complicated by the Wahhabi Amir's assertion that he had authority over Bahrain as a vassal of the Ottoman Sultan and by the fact that towards the end of 1859 Sheikh Mohamed of Bahrain had made simultaneous applications to both the Persians and the Ottomans for protection⁴⁶.

3.29 In 1861, in response to further Wahhabi threats, Sheikh Mohamed began to blockade the Hasa coast and to harass the pearl fishers of Qatif and Damman. The British intervened with naval forces and the Sheikh was forced to submit, being upbraided by the Political Resident, who had arrived in Bahrain "to preserve the maritime tranquillity now openly endangered by the defiant attitude [the Sheikh has] assumed⁴⁷". Thereafter, on 31 May 1861, Sheikh Mohamed, together with other sheikhs of Bahrain, was required to enter into an agreement proposed by the Political Resident, the purpose of which was stated in the preamble to be "the advancement of trade and the security of all classes of people navigating or residing upon the coasts" of the Gulf. In exchange for an undertaking to abstain from "all maritime aggressions

⁴³ See, *ibid.*, p. 289.

⁴⁴ See, *ibid.*, p. 294.

⁴⁵ See, para. 3.45, below.

⁴⁶ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 294-295.

⁴⁷ *Ibid.*, p. 296 and Annex II.19, Vol. 5, p. 41.

of every description", Sheikh Mohamed, recognised as "independent ruler of Bahrein", was granted British protection against similar aggression from other chiefs or tribes in the Gulf⁴⁸.

C. Events leading to the Agreements of 1868

3.30 In 1867, an increase of the tensions between Mohamed bin Thani in Qatar and the Bin Khalifah in Bahrain occurred as a result of the seizure and deportation to Bahrain of a Qatari bedouin by Sheikh Ahmed bin Mohamed bin Khalifah, the representative of the Sheikh of Bahrain at Wakrah. This caused the headmen of Al-Bida and Wakrah to demand the bedouin's release and, on their request being refused, they took measures to expel Sheikh Ahmed from Wakrah. However, their action was forestalled by his removing himself to Khor Hassan. A seeming reconciliation then took place, the Sheikh of Bahrain releasing the bedouin and the headmen of Qatar apologising to the Sheikh for their behaviour. Sheikh Jassim bin Mohamed, the son of Mohamed bin Thani, was then invited to Bahrain for the purpose of making a permanent arrangement for the administration of the peninsula. As soon as he arrived, however, he was imprisoned⁴⁹.

3.31 Immediately thereafter, Sheikh Mohamed bin Khalifah of Bahrain, in coordination with Sheikh Zayed bin Khalifah Al-Bin-Yas of Abu Dhabi, launched an attack on Qatar, directed at Wakrah and Al-Bida⁵⁰. Al-Bida was totally destroyed, and the victims of this outrage appealed for redress to the Wahhabi Amir, who maintained a claim to authority over Qatar, but whose demand for reparation was rejected by the Sheikh of Bahrain⁵¹.

3.32 At around the same time, an encounter also occurred at Al-Hamroor, between the Al-Naim tribe and the Bin Khalifah led by Sheikh Ahmed bin Mohamed bin Khalifah. This was provoked by Sheikh Ahmed's apparent intention to impose a tax upon the inhabitants of Qatar, which had led to a general movement of hostility throughout the population. In the battle of

⁴⁸ Annex II.20, Vol. 5, p. 45.

⁴⁹ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 299-300.

⁵⁰ *Ibid.*, p. 300 and Annex II.69, Vol. 5, pp. 363-365.

⁵¹ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 300.

Al-Hamroor, Sheikh Ahmed was killed almost immediately, and the Al-Naim defeated the Bin Khalifah forces⁵².

3.33 In retaliation for the Bahraini attack on Wakrah and Al-Bida, in June 1868 the Qataris, led by Mohamed bin Thani, sailed towards Bahrain with an armed force. They were attacked at Damsah, however, by the Bin Khalifah of Bahrain, led by Sheikh Mohamed bin Khalifah, and the engagement resulted in heavy casualties among the Qataris⁵³.

3.34 Since this affair had quickly come to be regarded throughout the Gulf as a test of British preparedness to maintain the peace at sea, the British resolved to intervene in the conflict, viewing Sheikh Mohamed bin Khalifah's attack on Qatar as a violation of the agreement signed by him with them in 1861⁵⁴. Sheikh Mohamed, who was reportedly "well aware that a reckoning was at hand", fled to Qatar upon the arrival at Bahrain of Colonel Pelly, the Political Resident, with three naval vessels⁵⁵.

3.35 As a result of the intervention by Colonel Pelly, on 6 September 1868 Sheikh Ali bin Khalifah, who had been left as Ruler of Bahrain after the flight of Sheikh Mohamed, executed an agreement in settlement of the affair⁵⁶. The Agreement provides as follows:

"We, the undersigned, Ali bin Khalifeh and the inhabitants and subjects of Bahrein in general, do hereby declare that Mahomed bin Khalifeh having repeatedly committed acts of piracy and other irregularities at sea, and having now, after his recent piratical act, fled from Bahrein, has forfeited all claim to his title as principal Shaikh and Chief of Bahrein, and at the present moment there being no other Shaikh, I, Ali bin Khalifeh, received the Resident's letter addressed to Mahomed bin Khalifeh, and have understood the demands therein made, and I hereby agree and accept the conditions as follows:-

1st.-To make over to-morrow morning 19th Jemadi-ool-awul 1285 (7th September 1868), to the high in rank, Captain Brown, Commanding Her Majesty's ships present, all the war buglas and butceels belonging to Mahomed bin Khalifeh and myself.

2nd.-To pay the Resident the sum of one lakh of dollars in the manner specified below: 25,000 dollars cash, payable on the spot on the 7th September 1868.

⁵² See, Annex II.74, Vol. 5, p. 397.

⁵³ See, Annex II.69, Vol. 5, pp. 369-371 and Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 301.

⁵⁴ See, Annex II.67, Vol. 5, p. 329.

⁵⁵ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 302.

⁵⁶ *Ibid.*

75,000 dollars by three annual instalments of 25,000 dollars, each instalment being payable on the 7th September of each successive year until the total sum is paid up.

3rd.-To consider Mahomed bin Khalifeh as permanently excluded from all participation in the affairs of Bahrein and as having no claim to that territory, and in case of his returning to Bahrein I promise to seize and make him over to the Resident. But if I do not act up to the stipulations now agreed I may be considered a pirate, as Mahomed bin Khalifeh himself.

4th.-In view of preserving the peace at sea, and precluding the occurrence of further disturbance, and in order to keep the Resident informed of what happens, I promise to appoint an agent on my part at Bushire⁵⁷."

3.36 After securing this Agreement from Ali bin Khalifah, Colonel Pelly entered into direct contact with Mohamed bin Thani, writing him a letter dated 11 September 1868 which calls upon him to "continue ... the peaceful relations formerly subsisting between Bahrein and Guttur" and invites him to settle the problems immediately⁵⁸. This led, on 12 September 1868, to the conclusion of an Agreement with Mohamed bin Thani, as follows:

"I, Mahomed bin Sanee, of Guttur, 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: -

1st. - I promise to return to Dawka and reside peaceably in that port.

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.

3rd. - I promise on no account to aid Mahomed bin Khalifeh, or in any way connect myself with him.

4th. - If Mahomed bin Khalifeh fall into my hands, I promise to hand him over to the Resident.

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 Resident⁵⁹."

3.37 On 13 September 1868, Colonel Pelly made an address to the tribes of Qatar, warning them that if anyone were found "in any way breaking the peace at sea, he will be treated in the same manner as Shaikh Mahomed bin Khalifeh, of Bahrein, has been". The address continued

⁵⁷ Annex II.26, Vol. 5, p. 75.

⁵⁸ Annex II.27, Vol. 5, p. 79.

⁵⁹ Annex II.28, Vol. 5, p. 83.

"The British Resident, in the most friendly but solemn manner, warns all of you that the English Government are determined to preserve the peace at sea in the Persian Gulf⁶⁰".

3.38 In the Agreements of 1868, the position of Sheikh Mohamed bin Thani as Chief of Qatar was acknowledged, and the two Agreements treated the Chief of Bahrain and the Chief of Qatar on an equal footing. The Agreements also confirm British recognition that the authority of the Sheikh of Bahrain did not extend to the territory of Qatar, since each Sheikh accepted an obligation to hand over Mohamed bin Khalifah, who was said to have fled from Bahrain to Qatar, if he was found on his territory.

3.39 In the fourth condition of his Agreement, Sheikh Ali bin Khalifah, who was already bound to abstain from maritime aggression by the agreement of 1861, was reminded of his obligation to respect the maritime peace and, in that connection, to keep the Political Resident informed. For his part, Sheikh Mohamed bin Thani promised not to put to sea with hostile intention and to refer to the Resident in the event of disputes or misunderstandings arising. Thus, the sea was to act as a buffer between Bahrain and Qatar, and the Resident was to be kept informed so that he could intervene if required to prevent any hostile action arising across the sea by one party against the other.

Section 4. Events from 1868 to 1930

A. British Intervention in Bahrain following the 1868 Agreements

3.40 Some four months after signature of the 1868 Agreements, in January 1869, and despite the terms of the third article of the Agreement signed with Sheikh Ali bin Khalifah, Sheikh Mohamed bin Khalifah was allowed by the British to return to Bahrain. This was at the request of Sheikh Ali, who believed he could keep better control over him if he was in Bahrain rather than elsewhere. However, he soon began to intrigue, and Sheikh Ali deported him to Kuwait. By September 1869 Sheikh Mohamed had moved to Qatif, and from there

⁶⁰ Annex II.29, Vol. 5, p. 87.

attacked Bahrain. In an engagement between the forces of Mohamed and Ali, Ali was killed and his forces were defeated⁶¹.

3.41 When Colonel Pelly learnt of the violation of the maritime peace by Mohamed bin Khalifah and his allies, he proposed, *inter alia*, a blockade of Bahrain until the leaders of the disturbance, including Mohamed bin Khalifah, were surrendered. He also proposed the recognition of Issa, the son of Ali bin Khalifah, as Chief of Bahrain. The Government of India authorised Pelly to proceed with the blockade and stated that his recommendation as to Issa seemed reasonable and that he could act on it after the blockade, if circumstances seemed favourable⁶².

3.42 In November 1869, Pelly blockaded Bahrain, the garrison surrendered, and Mohamed bin Khalifah was taken prisoner. Subsequently, the British invited Issa to assume the government of the country. Following this British intervention, protests were made by Persia and the Porte, who both continued to maintain claims over Bahrain⁶³. However, the British opposed such claims and, as will be shown below, were to increase their involvement in and protection of Bahrain in the following years, supporting the rule of Sheikh Issa and his successors⁶⁴.

B. Formal Arrival of the Ottomans in Qatar: 1871-1873

3.43 As noted above, while the British had become the dominant power in maritime matters in the Gulf by this time, the Ottomans had established their control over large parts of the land on the Arabian side of the Gulf, and in 1867 had already performed various surveys of the area illustrating their view of the territorial limits of both Qatar and Bahrain⁶⁵. In July 1871, shortly after an Ottoman expedition to Nejd, Sheikh Abdullah bin Sabah, who had been appointed Kaimakam of Kuwait by the Ottomans, sailed to Qatar to meet Sheikh Mohamed

⁶¹ See, Saldanha, *op. cit.*, Annex II.7, Vol. 4, pp. 39-40.

⁶² See, *ibid.*, pp. 40-45.

⁶³ See, *ibid.*, pp. 45-46.

⁶⁴ *Ibid.*, and see, paras. 3.46 *et seq.*, below.

⁶⁵ See, para 3.13, above, and Annexes II.21-II.24, Vol. 5, pp. 51-70.

bin Thani and his son Jassim, and to offer them the protection of the Ottoman Empire, handing over to them four Ottoman flags⁶⁶.

3.44 Thereafter, in January 1872 a detachment of Ottoman regular troops arrived to install a garrison in Al-Bida. These were in turn replaced in 1873 by *gendarmes*⁶⁷. However, the immediate effect of these events was not particularly significant as far as the political organisation of Qatar was concerned. Lorimer comments as follows:

"Except in the internal affairs of Qatar, especially the administration of the chief town and its immediate environs, little or no change was produced by the presence of a Turkish post at Dohah; tribal relations generally continued on the same footing as formerly, and the Al Thani Shaikhs of Dohah were still the principal factor in politics⁶⁸."

3.45 The main concern of the British, when they had learnt of the Ottoman expedition to Nejd, seems to have been to establish that the Ottomans would assert no claims over Bahrain. In response to a request for clarification made to the Ottoman Government through the British Ambassador in Constantinople shortly before Sheikh Abdullah bin Sabah's visit to Qatar on behalf of the Ottomans, it was reported on 12 May 1871 that:

"The Ottoman Porte explicitly denies all intention of extending supremacy over Bahrein, Maskat, or the independent tribes of Southern Arabia, and contemplates no attack against them⁶⁹."

A further Ottoman assurance was given that the officer commanding the expedition had instructions "on no account to turn his eyes on Bahrein⁷⁰". Subsequently, having been asked by the British whether the Ottoman intervention at Doha had been authorised by the Ottoman Government, the Vali of Baghdad "claimed that Qatar was not covered by a previous Turkish assurance that there should be no interference with Bahrain⁷¹".

⁶⁶ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 209.

⁶⁷ See, *ibid.*, pp. 209 *et seq.*

⁶⁸ *Ibid.*, p. 210.

⁶⁹ Saldanha, *op. cit.*, Annex II.7, Vol. 4, p. 48.

⁷⁰ *Ibid.*, p. 49.

⁷¹ Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 210.

C. 1874-1892: British Attitudes to Qatar and Bahrain

3.46 British policy towards Bahrain during this period continued to be directed at isolating Bahrain from the problems of the mainland and protecting it from claims of other powers. To this end, the British entered into an Exclusive Agreement with the Sheikh of Bahrain in 1880⁷². This was the only agreement of its kind at the time, and was testimony to the unique commercial and strategic position Bahrain held for the British, especially in view of the growing interest of foreign powers in the Gulf⁷³. By this agreement, the Sheikh of Bahrain undertook, *inter alia*, to abstain from negotiating or entering into treaties of any sort or from establishing diplomatic or consular relations with any other government without British consent.

3.47 British relations with Qatar following the arrival of the Ottomans were marked by a desire to continue to enforce the maritime peace against acts of piracy stemming from Qatari ports and to protect the local Indian traders from Sheikh Jassim's continuous harassment. At the same time the British recognised that the Ottomans had *de facto* control of the peninsula, and they were prepared to acknowledge this control.

3.48 In 1881, the Government of India sought clarification from the British Government as to how it should treat the Ottoman presence in Qatar. The orders of the British Government, issued early in 1882, were to the effect that the Sheikh, "though he had accepted the position of an Ottoman dependent on land, should be encouraged to maintain close and direct relations with the officers of the Government of India and to defer to them, as he appeared inclined to do, in all matters affecting the peace of the seas". Decision in particular cases in event of the Sheikh putting to sea with hostile intentions was left to the Government of India, "upon general considerations of expediency", and "needless questions with Turkish authorities" and "unnecessary encroachment upon the jurisdiction of the Sultan" wherever it was effectually established on the coast to the north of Udeid were to be avoided⁷⁴.

⁷² Annex II.36, Vol. 5, p. 117.

⁷³ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 328 *et seq.*

⁷⁴ See, *ibid.*, p. 217.

3.49 Consequently, when the British became aware of various attempts by the Ottomans to strengthen their position on the peninsula, they did not interfere. For example, when in July 1889 the British Ambassador at Constantinople received a pro-memoria from the Ottoman Foreign Office to the effect that the troops in Qatar were to be reinforced from the Baghdad Army Corps, he raised with the British Government the question of Ottoman rights over the Qatar coast, but he was only instructed to remind the Ottoman Government that "Her Majesty's Government could not view with indifference any attempt on the part of the Turkish authorities at interference or aggression in Oman"⁷⁵.

3.50 At this time, the British were also becoming very concerned about the interest of other powers in the region. It was these concerns, among others, which led to the signing in 1892 of Exclusive Protection Agreements between Britain and the respective chiefs of the sheikhdoms of Abu Dhabi, Sharjah, Dubai, Ajman, Umm al Qaiwain and Ras al Khaimah.

3.51 At the same time, and in confirmation and by way of extension of the Exclusive Agreement signed in 1880 and the previous treaty of 31 May 1861, the British also signed on 13 March 1892 a further exclusive protection agreement with the then Ruler of Bahrain, Sheikh Issa bin Ali. That Agreement provided, notably, that he bound himself and his heirs and successors not to enter into any agreement or correspondence with any Power other than the British Government; not to consent to the residence in Bahrain of the agent of any other Government without the assent of the British Government; and not to cede, sell, mortgage or otherwise give for occupation any part of his territory save to the British Government⁷⁶.

3.52 No such agreement was signed at the time with Qatar, since Qatar was at the time under the authority of the Ottomans. Indeed, in 1891, Sheikh Jassim bin Mohamed bin Thani had sought from the British a treaty "on the same terms as Trucial Chiefs". However, the British rejected this approach on the grounds that the "Sultan would not agree to the proposal and nothing would be gained by making it"⁷⁷.

⁷⁵ Saldanha, *op. cit.*, Annex II.8, Vol. 4, pp. 221-222. In this context, "Oman" refers to what was known as "Trucial Oman", which has now become the United Arab Emirates.

⁷⁶ Annex II.37, Vol. 5, p. 121.

⁷⁷ See, Saldanha, *op. cit.*, Annex II.8, Vol. 4, pp. 225-226.

D. 1892-1916: End of the Ottoman Presence in Qatar and increased British Involvement in Bahrain

1. Events in Qatar

3.53 Although Sheikh Jassim had been appointed Kaimakam by the Ottomans in 1876, his relations with them were not always good. In 1891 he had tendered his resignation, but this was not accepted, and he was instead told "to work with zeal and to discharge the duties he had performed before"⁷⁸. However, in 1893 he came to blows with Ottoman troops when the Vali of Basrah led an army against him to punish him for various acts of insubordination. A battle took place at Wajbah, some distance to the west of Doha. After heavy losses on both sides, agreement was reached on an armistice and settlement whereby Sheikh Jassim resigned his position as Kaimakam and left administrative matters in the hands of his brother Ahmed⁷⁹.

3.54 In March 1895, the Al-bin-Ali, a tribe which had been living in Bahrain since the time of the Arab conquest of the island, fell into dispute with the Ruler of Bahrain and returned to Qatar to settle close to Zubarah with the support of Sheikh Jassim bin Thani⁸⁰. The Ruler of Bahrain complained to the Political Resident about the threat to Bahrain that he alleged was caused by this settlement⁸¹, and the Political Resident warned Sheikh Jassim that Great Britain could not accept it⁸². The Ottomans then sent soldiers into the region⁸³ and the British, concerned to assure the security of Bahrain having regard to the Exclusive Protection Agreements of 1880 and 1892 and the Treaty of 1868, sent a warship. Forty-four boats which had apparently been assembled by the Ottomans and Sheikh Jassim to attack Bahrain were destroyed by the British, after which Sheikh Jassim surrendered and accepted the British conditions, including removal of the Al-bin-Ali⁸⁴. Ottoman protests followed, but the British

⁷⁸ See, *ibid.*, pp. 223-224.

⁷⁹ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 229-230.

⁸⁰ See, Annex II.39, Vol. 5, p. 129.

⁸¹ *Ibid.*

⁸² See, Annex II.38, Vol. 5, p. 125.

⁸³ Annex II.40, Vol. 5, p. 133.

⁸⁴ Annex II.42, Vol. 5, p. 141. See, also, Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 330-333 and Annex II.69, Vol. 5, pp. 375-378.

replied that the measures taken were necessary for the defence of Bahrain, which was under their protection⁸⁵.

2. The 1913 Anglo-Ottoman Convention

3.55 One of the *raisons d'être* for this Convention was that, in the years preceding its negotiation, tensions had come to a head between the British and Ottoman Governments over the Ottoman presence on the Hasa coast and in the Qatar peninsula. As tensions built up it became apparent that it was essential to define and agree upon the extent of British and Ottoman control over the region.

3.56 Negotiations for the Convention began in 1911 and ended with signature on 29 July 1913. Ratification was twice postponed, however, and due to the outbreak of war the Convention was never ratified. Nevertheless, it is by no means devoid of legal value. The provisions relating to Qatar and Bahrain are important. The provisions relating to Qatar read as follows⁸⁶:

"II. Al-Qatar

ART. 11. The Ottoman *sancak* of Najd, the northern limit of which is indicated by the demarcation line defined in Article 7 of this convention, ends in the south at the gulf facing the island of al-Zakhuniyah, which belongs to the said *sancak*. A line beginning at the extreme end of that gulf will go directly south up to the Rub'-al-Khali and will separate the Najd from the peninsula of al-Qatar. The limits of the Najd are indicated by a blue line on the map annexed to the present convention (annex Va). The Ottoman Imperial Government having renounced all its claims to the peninsula of al-Qatar, it is understood by the two Governments that the peninsula will be governed as in the past by the shaykh Jasim-bin-Sami and his successors. The Government of His Britannic Majesty declares that it will not allow the interference of the shaykh of Bahrayn in the internal affairs of al-Qatar, his endangering the autonomy of that area or his annexing it.

ART. 12. The inhabitants of Bahrayn will be allowed to visit the island of al-Zakhuniyah for fishing purposes and to reside there in full freedom during the winter as in the past, without the application of any new tax."

⁸⁵ See, Saldanha, *op. cit.*, Annex II.7, Vol. 4, p. 106 and Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 333. See, also, para. 8.24, below.

⁸⁶ The full text of the Convention can be found in Annex II.44, Vol. 5, p. 151.

The provision relating to the territory of Bahrain noted:

"ART. 13. The Ottoman Imperial Government renounces all its claims to the islands of Bahrayn, including the two islets Lubaynat al-Aliya and Lubaynat al-Safliya, and recognizes the independence of the country. For its part, the Government of His Britannic Majesty declares that it has no intention of annexing the islands of Bahrayn to its territories."

3.57 This Convention thus once again recognised the autonomy of the Qatar peninsula under Bin Thani rule, as in the past. While it did not define the territorial limits of Qatar and Bahrain with any precision, the way it dealt with islands such as the Libainat islands, situated approximately half way between Bahrain and the Hasa coast, and Zakhnuniyah island, situated just off the Hasa coast, is important for this dispute, considering that the Hawar islands, situated just off the Qatar coast, are not mentioned. If they had been considered as appertaining to Bahrain, their location so close to Qatar would surely have required express confirmation of this fact, but the Convention is consistent with the various maps produced by the Ottomans during the 19th century, many of which were seen by the British authorities at the time, and which show the Hawar islands and other features relevant to this dispute as appertaining to Qatar.

3.58 Since the 1913 Convention had not been ratified at the outbreak of the War in 1914, it never came formally into force. However, it appears that Article 11 of that Convention was regarded as binding, since the Anglo-Turkish treaty of 9 March 1914, which was ratified in London on 3 June 1914⁸⁷, refers to that Article 11, whereby the territory of Qatar was separated from the Ottoman sanjak of Nejd.

3.59 A further complication arose as a result of the conquest of Hasa in 1913 by Ibn Saud, at that time Ruler of Nejd. He claimed to regard Qatar as part of his ancestral domains; but at the end of 1913 he was persuaded that non-interference with Qatar was a condition of maintenance of friendly relations with the British Government. Indeed, in a treaty concluded with the British Government on 26 December 1915, he undertook to refrain from aggression on, or interference with, "the territories of ... the Sheikhs of Katr and the Oman coast, who are

⁸⁷ Annex II.45, Vol. 5, p. 161. See, also, Annex II.48, Vol. 5, p. 187.

under the protection of the British Government, and who have treaty relations with the said Government, and the limits of their territories shall be hereafter determined⁸⁸.

3.60 In spite of the signature of the 1913 Convention expressing recognition of the autonomy of Qatar and renouncing all their claims thereto, the Ottomans continued to maintain a garrison at Doha, the remnants of which departed as a consequence of the arrival of a British warship and a landing at Doha effected without opposition on 20 August 1915.

3. The 1916 Agreement

3.61 As a result of the above events, negotiations were carried out directly between the British and Sheikh Abdullah bin Jassim bin Mohamed Al-Thani, the successor of Sheikh Jassim, concerning an exclusive agreement in the same form as those which had been agreed with other Arab Sheikhs in 1892. After the final departure of the Ottomans, these negotiations led to signature of a Treaty by Sheikh Abdullah and the Political Resident on 3 November 1916, and its ratification on 23 March 1918⁸⁹. This Treaty recognised the continuity of Al-Thani rule in Qatar from 1868 to 1916 and set out various obligations for the Sheikh. In particular, he undertook not to "have relations nor correspond with, nor receive the agent of, any other Power without the consent of the High British Government", nor to "cede to any other Power or its subjects, land either on lease, sale, transfer, gift, or in any other way whatsoever" nor to grant any concessions, without the same consent of the British Government. In return, the British Government undertook to accord to the Sheikh, his subjects and vessels the same treatment as it conferred on "the friendly Shaikhs, their subjects and their vessels", to give protection against aggression by sea and to try to exact reparation for injuries suffered at sea, and to grant good offices should the Sheikh or his subjects "be assailed by land within the territories of Qatar".

⁸⁸ Annex II.46, Vol. 5, p. 175. *See*, also, Annex II.10, Vol. 4, p. 274.

⁸⁹ Annex II.47, Vol. 5, p. 181.

Section 5. 1917-1947: The Situation prior to the British Decisions of 1939 and 1947

3.62 This period is close to the beginning of the dispute itself. As a result it will inevitably be dealt with in more detail in the Parts which follow. To avoid repetition, therefore, only a brief summary of the main events will be given here.

A. The Discovery of Oil and its Impact on the Economies of Qatar and Bahrain

1. The economies of Qatar and Bahrain prior to the discovery of oil

3.63 Despite the geographical proximity of Qatar and Bahrain, Bahrain's economy had always been by far the more prosperous of the two until the 1950s, when the balance was redressed by the development of oil in Qatar. This was due to a combination of more fertile land, supporting a diversified system of agriculture, and the long-standing interest of various foreign powers in developing Bahrain as the trading and strategic centre of the Gulf. In particular, the British saw Bahrain as a centre which could be developed for their own commercial and political interests and to counter other foreign influence⁹⁰.

3.64 As mentioned above, like other Arabs of the Gulf States, both Qataris and Bahrainis were involved in the fishing and pearl fishing industries. Fishing was an important activity, affording a livelihood to a proportion of the population and being an important source of food. In addition, a certain amount of dried fish was exported. There was no regulation of fishing activities or fishing areas, and the use of fish traps did not involve any proprietary rights over their location. At that time the person who caught living resources in the sea became their owner.

3.65 Only pearl fishing, on banks to be found along the coast between Kuwait and Oman, was however a real source of income for the Arab tribes. It was an important though seasonal activity in Qatar and Bahrain, which was governed only by custom and local traditions. As noted in 1840: "The right of (pearl) fishing is common to all the Gulf⁹¹". Pearl fishing rights

⁹⁰ See, Saldanha, *op. cit.*, Annex II.7, Vol. 4, pp. 153-154 and Annex II.43, Vol. 5, p. 145.

⁹¹ Q.M.J.A., Annex I.56, p. 342. See, also, Appendix 4, Vol. 15, p. 111.

were thus a collective right or property of all the tribes of the Gulf. This was an exclusive right, to the exclusion of third parties, and a concurrent right of all such tribes.

3.66 Qatar and Bahrain suffered a serious decline in their pearling industries during the early part of the 20th century, being hit by the effects of the introduction of artificial and cultured pearls, and by the recession of the 1930s. The development of oil dealt a death blow to the once important activity of pearling as well as to the other traditional economic activities. From that time on, oil became the predominant industry in both States.

2. The discovery and development of oil

3.67 The development of the oil economy occurred much more quickly in Bahrain than in Qatar⁹². In 1923 the representative of the Eastern and General Syndicate Limited ("EGS") prepared a draft agreement to be concluded with Bahrain for a petroleum concession, and the Ruler of Bahrain granted a concession to EGS on 2 December 1925, which was subsequently transferred to BAPCO. Oil was first struck on 1 June 1932, and in 1934 oil storage facilities and a pipeline were constructed, with the first oil shipment being made in the same year. Construction of a refinery began in 1935 and was completed in 1937. Oil from other parts of the Gulf, especially Saudi Arabia, was brought to the refinery, and during the Second World War a plant was constructed for the production of aviation spirit. In 1946 a large port facility, exclusively connected with oil production and delivery, was completed off Sitra Island. The influx of wealth from oil, and foreign influences in the form of oilmen and others, had a considerable influence on the political development and significance of Bahrain, as did the importance of these oil supplies and the refinery in the context of the British war effort.

3.68 Oil development began considerably later in Qatar. There, the first concession agreement was not concluded until 1935. In 1938 the concession-holder, Petroleum Concessions Limited ("PCL"), established its camp at Dukhan on the western side of Qatar and started drilling. It struck oil in the following year. It drilled two more wells with promising results and was about to drill a fourth when it was ordered by the British authorities to close down its operations for the duration of the war and plug the wells it had already

⁹² For further details concerning the development of oil, *see*, paras. 6.12 *et seq.*, below.

drilled. It was not until 1946 that the company resumed its operations, and not until December 1949 that the first shipment of oil took place from Qatar - a whole 15 years after the corresponding event in Bahrain. From the date of the 1947 British decision, Qatar granted offshore concessions in the area of the enclave around the Hawar islands, and also up to the line laid down by the 1947 decision and to the north of that line⁹³.

B. Other Events in Bahrain

3.69 By the 1930s, Bahrain was recognised by the British Government as a protected State (but not a British Protectorate) enjoying special treaty relations with the British Government. The internal administration of the State was formally conducted in the late 1920s by Sheikh Hamad bin Issa Al-Khalifah, the acting Ruler of Bahrain since the deposition of his father by the British Government in 1923, following serious complaints of misrule and oppression. But, in practice, and at least until 1928, internal power in Bahrain was exercised by the British Political Agent⁹⁴. In 1926, a British Financial Adviser, Mr. Charles Dalrymple Belgrave, was appointed by the Bahraini authorities on the advice of the British to assist Sheikh Hamad in the task of internal administration⁹⁵. He rapidly acquired pronounced influence and power, not only in Bahrain, but also in the Gulf more generally. Belgrave's position is described as follows:

"From Isa's deposition until 1928 the Political Agent was the virtual ruler of Bahrain. Hamad was indolent and took little interest in State affairs and from 1928 until his death in 1942 Mr. C. (now Sir Charles) Dalrymple Belgrave, who had been appointed

⁹³ See, Annex II.57, Vol. 5, p. 227. It may be noted that in the sector located in the north, during the presence of the British, Qatar refrained from granting concessions or authorizing drilling west of a line from longitude 51°20' N and latitude 27°E to Ras Rakan. From 1971, Qatar granted concessions and authorized drilling to the west of that line, in accordance with an extension of the line of the segment North Sitrah Light Buoy/Bahrain Light Vessel of the 1947 decision up to its intersection with the seabed delimitation agreement between Iran and Qatar. See, Annex II.66, Vol. 5, p. 325.

⁹⁴ See, Annex II.11, Vol. 4, p. 291.

⁹⁵ Belgrave's education at Oxford University was interrupted by World War I. He became a "temporary officer", receiving his commission through the Officer Training Corps. He served in the Sudan in 1915-1916, and subsequently in Palestine and Egypt. Towards the end of the war he was seconded to the Frontier Districts Administration Camel Corps, where he spent several years in the Western Desert of Egypt. His duties at that time included a certain amount of court and political work. From 1923 to 1925 he was an administrative officer in the Colonial Service in Tanganyika where he also had experience of court work. During his time with the Colonial Service, he passed two of its law examinations. In March 1926 Belgrave took up the appointment of Financial Adviser to the Ruler of Bahrain, although by 1928 he had achieved much wider powers. He retired from Bahrain in 1957 and died in 1970.

Financial Adviser in 1926, so far as internal administration was concerned, was to all intents and purposes the ruler of the State⁹⁶."

3.70 As will be seen, Belgrave's power was exercised during the 1930s not only in relation to matters affecting the internal administration of Bahrain, but also in matters affecting Bahrain's relations with neighbouring sheikhdoms, including Qatar. In particular, he played a leading and, it must be said, discreditable part in the unsavoury manoeuvres surrounding Bahrain's wrongful acquisition of the Hawar islands⁹⁷.

3.71 In addition to these administrative changes, in the 1920s Bahrain became more and more the commercial centre of the Gulf, and by the 1930s had become of vital interest to the British as a key point on the air route to India and beyond, without which a civil aviation service could not be maintained. With the construction of an airport for the Royal Air Force, and with the creation of a new naval base in Bahrain in 1935, Bahrain also became the strategic centre for Britain's position in the Gulf⁹⁸.

3.72 Another factor which operated to strengthen the ties of Britain to Bahrain was the Persian threat. As early as 1922, there were signs that Persia would shortly revive its long-standing claim to sovereignty over Bahrain; and indeed in 1927 the Persian claim was brought before the League of Nations, in the context of a Persian protest against the Saudi/British Treaty of Jeddah of 20 May 1927 (concluded with Ibn Saud) in which Bahrain is described as having "special treaty relations" with the British Government. This Persian protest provoked a strong reply from the British Government repudiating the Persian claim⁹⁹.

C. Other Events in Qatar

3.73 During this same period, Qatar remained under the control of the Al-Thani family, with whom the British Government maintained much more distant relations than it did with the Rulers of Bahrain. This may be attributable to the consideration that the British had maintained a Political Agent in Bahrain since 1904 whereas, no doubt in part because of the

⁹⁶ *Ibid.*

⁹⁷ *See*, in particular, Chap. VI, Sects. 2 and 3, below.

⁹⁸ *See*, Annex II.11, Vol. 4, pp. 296-297.

⁹⁹ *See*, Annex II.10, Vol. 4, pp. 266-271.

Turkish presence in Qatar from 1871 to 1915, they had no such direct representation in Qatar. Indeed, no Political Agent in Qatar was appointed by the British until 1949; prior to 1949, it was the Political Agent in Bahrain who was responsible for reporting on conditions in Qatar. Thus, during the 1930s, British knowledge of the geography of Qatar and of its Rulers and other leading families was inevitably limited; and this was to lead to some mistaken impressions on the part of British officials.

3.74 As mentioned above, the British aeronautical authorities, both civil and military, had strong reasons for supporting the interests of the Ruler of Bahrain. By way of contrast, the Ruler of Qatar in the 1930s was reluctant to afford aeronautical facilities in response to British requests¹⁰⁰. However, on 11 May 1935, at a time when the Ruler of Qatar was under the pressure of a serious dispute with Ibn Saud over the limits of Qatar's southern border, the British wrote to the Ruler of Qatar concerning the protection which they were prepared to extend to him on land¹⁰¹. It was pointed out at that time that, in order to enable the British to implement their guarantee of protection, it was necessary that the Royal Air Force should be accorded certain facilities, and thereafter the Ruler raised no objection to the construction of a landing ground¹⁰². It was also a condition for this extended British protection that an oil concession was granted by the Ruler of Qatar to the British company Anglo-Persian Oil Company ("APOC") on 17 May 1935, to be transferred to Petroleum Development (Qatar) Ltd. in October of the next year.

D. The Issue of the Hawar Islands and Qatar's Protest

3.75 On 28 April 1936 a formal claim to the Hawar islands was submitted by Belgrave, the Ruler of Bahrain's British adviser, in a letter to the Political Agent in Bahrain¹⁰³. The events following Bahrain's formal claim and the procedure adopted thereafter by the British are discussed in detail below in Chapter VI. The British decision that the Hawar islands belonged to Bahrain was eventually communicated to the two Rulers by letters of 11 July 1939. The

¹⁰⁰ See, Annex II.11, Vol. 4, p. 310.

¹⁰¹ *Ibid.*, p. 311.

¹⁰² *Ibid.*, p. 310.

¹⁰³ The history of Bahrain's claim to the Hawar islands and the procedure adopted by the British are dealt with in greater detail in Chap. VI, below.

Ruler of Qatar immediately protested this decision, but, in spite of serious doubts about the correctness of the decision by certain British officials, this and subsequent protests were rejected or ignored by the British.

E. Events leading up to the British Decision of 1947

3.76 Although the necessity for some kind of maritime delimitation had been recognised in 1940, the Second World War and the resulting suspension of oil company activities put an end to further discussions of the territorial issues between Bahrain and Qatar for several years.

3.77 Immediately after the war a change took place in British administrative arrangements in the area. In 1946, the Political Residency was transferred from Bushire in Persia to Bahrain, confirming Bahrain's position at the centre of British interests in the Gulf. In 1947, Her Majesty's Government took over responsibility for Gulf affairs from the Government of India, and the Political Resident now became answerable to the Commonwealth Relations Office until 1 April 1948, when full control was transferred to the Foreign Office¹⁰⁴.

3.78 The end of World War II, the Truman Proclamation and the resumption of oil company activities gave a new urgency to the maritime delimitation issue. In May 1946, BAPCO asked for permission to drill in certain areas, some of which the British considered might eventually be found to belong to Qatar. The British Government decided that this permission could not be granted until there had been a division of the sea-bed between Bahrain and Qatar¹⁰⁵.

3.79 At the same time, the British authorities resumed the review of the status of Fasht ad Dibal and Qit'at Jaradah which had started before the war. The review concerned not only the status of these features but also whether Bahrain or Qatar asserted any rights over them and, if so, the nature of such rights. It was considered by the British that any delimitation would have to take account of these features, and also of the 1939 decision over the Hawar islands¹⁰⁶.

¹⁰⁴ See, Appendix 3, Vol. 15, p. 95.

¹⁰⁵ See, Annex II.11, Vol. 4, p. 293. The history of the sea-bed division is dealt with in greater detail in Chap. X, below.

¹⁰⁶ See, paras. 10.44 *et seq.*, below.

3.80 The subsequent British decision was communicated to the two Rulers by letters of 23 December 1947 issued by the British Political Agent in Bahrain. The letters stated, *inter alia*, that the operations of the oil companies in the territories of Qatar and Bahrain made a delimitation necessary, that the British Government considered the line "divides in accordance with equitable principles" the sea-bed between Qatar and Bahrain, and that this was a median line based generally on the configuration of the coastline of the Bahrain main island and the peninsula of Qatar¹⁰⁷.

3.81 The decision specified two exceptions. The first purported to recognise that Bahrain had "sovereign rights" in "the areas of the Dibal and Jaradeh shoals" lying east of the line on the Qatar side. It was further stated that "After a full examination of the position under international law", the British Government was of the opinion that "these shoals should not be considered to be islands having territorial waters". The second exception was the drawing of the line with the intention of giving effect to the British decision of 11 July 1939 that the Hawar islands belonged to Bahrain.

¹⁰⁷ Annexes II.52 and II.53, Vol. 5, pp. 205 and 209; *see*, paras. 10.13 *et seq.*, below. Qatar has, for illustrative purposes only, prepared a map (*Map No. 12*, facing page 215) showing the 1947 line based on the text of the British decision. The map showing the 1947 line attached to Qatar's Application, and of which a further enlarged copy was given to the Court upon the request of the Registry, was not the map attached to the letter sent by the British to the Ruler of Qatar in 1947. In this regard, since the filing of its Application, Qatar has found a copy of a letter dated 10 April 1961 from the Political Agency in Doha to the British Residency reporting a request from Qatar for a copy of the 1947 letter and a copy of the map which was enclosed, since this, along with many other of Qatar's official documents, was believed to have been stolen; *see*, Annex III.286, Vol. 8, p. 421 and paras. 6.197-6.198, below. However, as of today, Qatar is still not in possession of this map.

The 1947 line starts in the south from point "M", defined as "180° true 18.03 Nautical Miles from the Triangulation Station No. 102 at Ras al Barr" and ends in the north at the "Bahrain Light Vessel", the position of which was assigned in 1947 at "046 1/4° true 28.05 Nautical Miles from the Political Agent's flagstaff Latitude 26°14'.1N, Longitude 50°35'.2E (approximately), as the positions of floating marks are subject to frequent alteration". This northern point is hereinafter referred to as "BLV", in order to avoid confusion with another Bahrain Light Float, which is today located at the following coordinates: 26°33'N, 51°03'E (*see* Annex II.1, Vol. 3, p. 39), *i.e.*, it is moored 23 miles NNW of Ras Rakan Light and "28 miles northeastward of the northern extremity of Jazirat al Muharraq" (*see*, Annex II.2, Vol. 3, p. 60).

Section 6. Protests over the 1939 and 1947 British Decisions, and Negotiations

A. Protests

3.82 As noted above, the Ruler of Qatar had immediately protested the 1939 decision. He requested reconsideration and further enquiries into the facts, while reserving his rights to the Hawar islands. This protest was followed by renewed protests, *inter alia* on 18 November 1939 and 7 June 1940 and, after the War, on 13 July 1946 and 21 February 1948¹⁰⁸.

3.83 The British decision of 1947 was protested by both Qatar and Bahrain¹⁰⁹. The Ruler of Qatar accepted the line drawn by the British but could not accept the two exceptions made for the Hawar islands and for the shoals of Dibal and Qit'at Jaradah. The Ruler of Bahrain contended that the line should run further to the east, and asserted alleged rights to all the seas, shoals and reefs between Bahrain and Qatar. Specifically, he protested the fact that the two shoals had been treated as "enclaves" on the Qatar side of the line. He also protested against the fact that Janan island was attributed to Qatar in the 1947 decision, although he regarded it as part of the Hawar group and therefore as belonging to Bahrain.

3.84 There were further protests into the early 1950s from both Rulers and also from the oil companies themselves. Although there is a good deal of evidence, from internal British correspondence of the period, that the British authorities might have been prepared to reconsider certain elements of the 1947 decision (including questions over the real geographical nature and legal status of the shoals of Dibal and Qit'at Jaradah and over the identity of the Hawar islands), the British repeatedly confirmed in response to protests that they regarded the decision as final.

¹⁰⁸ Annexes II.49-II.51 and II.54, Vol. 5, pp. 191-204 and 213.

¹⁰⁹ See, Chap. X, Sect. 3, below.

3.85 Nevertheless, the British encouraged Qatar and Bahrain to make sea-bed proclamations in 1949, on the basis of texts that the British had themselves prepared¹¹⁰. Two features of these proclamations are of note. *First*, they stress that the sea-bed boundaries should be delimited on the basis of equitable principles, and *second* they contain express reservations regarding sovereignty over islands and for "fishing and traditional pearling rights".

B. Negotiations

3.86 It was not until the 1960s that any progress was made on the disputes over the Ilawar islands, Dibal and Qit'at Jaradah and the 1947 line. At this time both Qatar and Bahrain were still under British protection. In a Memorandum of 1961 the Government of Bahrain requested the British to make a modification of the 1947 line, alleging that Dibal and Qit'at Jaradah were islands with territorial waters and belonged to Bahrain, and that the fact that Bahrainis fished for pearls in the area to the east of the 1947 line was a special circumstance within the meaning of Article 6 of the 1958 Geneva Convention, justifying modification of the line¹¹¹. The extent of the proposed modification was shown on a map attached to the Memorandum. It will be noted that it passed to the east of Dibal and Qit'at Jaradah and extended in a way not defined in the Memorandum into the maritime area to the north of the Qatar peninsula. This Memorandum was not made known to the Government of Qatar until September 1964¹¹².

3.87 A detailed description of the various steps taken after that date with a view to resolving the dispute between the two States may be found at paragraphs 3.02 to 3.65 of Qatar's Memorial in the phase of this case relating to Questions of Jurisdiction and Admissibility. Briefly summarised, there were first attempts, under the auspices of the British Government, to settle the matter through arbitration, but these attempts failed. Following the final withdrawal of British troops from the Gulf in 1971, it was agreed as a result of meetings in

¹¹⁰ Copies of these proclamations are included in Annexes II.55 and II.56, Vol. 5, pp. 219 and 223.

¹¹¹ Annex II.59, Vol. 5, p. 237.

¹¹² See, para. 10.37, footnote 61, below.

1975 and 1976 that the Kingdom of Saudi Arabia would undertake mediation between the two States. During the following years, the King of Saudi Arabia directed his efforts, at different times, at securing a settlement of the substance of the disputes, at submitting the matter to adjudication, and at preventing or resolving incidents creating tension between the two States. It was in the context of this mediation that the Parties entered into the agreements of December 1987 and 25 December 1990 whereby they undertook, *inter alia*, to submit to the Court the whole of the dispute between them.

PART III

THE HAWAR ISLANDS AND OTHER TERRITORIAL QUESTIONS

CHAPTER IV

THE GEOGRAPHY OF THE HAWAR ISLANDS

Section 1. Location and Composition

4.1 For the purpose of this presentation the Hawar islands are defined as the collection of islands and islets situated within the enclave described by the British on 23 December 1947¹. These islands are situated in a compact cluster along the central portion of Qatar's west coast, just north of the parallel 25°30'N, and just east of the meridian 50°40'E.

4.2 Upon first examination of *Maps Nos. 2 and 5*, facing pages 14 and 50, one is struck immediately by the shape of this island group, which fits neatly within the general shape of the Qatari coast². The group's distinguishing characteristic is the presence of a rather long, narrow island shaped a little like a crescent, positioned so that its southeastern tip starts from, and its northeastern tip returns to, the mainland of Qatar. This is the main Hawar island, whose name was used in the 1939 decision to describe the group of islands of which it forms part. It can be seen that the island of Hawar is a direct continuation of Qatar's western coast which, starting from the southern reaches of Dawhat Salwah, proceeds north to Hawar, then bends slightly to the north-northeast until it reaches Ras Rakan, where it turns sharply to the east. Qatar's western coast in the vicinity of the Hawar islands is very ragged, resembling a jigsaw puzzle with a few missing pieces. The Hawar islands appear to be the missing pieces that would be needed to complete the curve of Qatar's western coast between Ras Uwaynat and Ras Umm Hish. When fitted together, these pieces reflect the continuous geographical structure of Qatar. In fact, the Hawar islands are physically an integral part of the landmass of Qatar.

¹ The line as so described is shown on *Map No. 12*, facing p. 215.

² The expressions "the Hawar islands" and "the Hawar group" are used interchangeably in this Memorial.

4.3 Several recent surveys³ indicate that approximately 31 islands and islets are situated within the perimeter of the enclave described in the 1947 British decision.

4.4 The area of the islands at high tide is extremely varied, ranging from less than 1 square kilometre for several of the islets found just south and southeast of Suwad al Janubiyah to 27 square kilometres for the main island of Hawar. Hawar is by far the largest island in the group. Its total length from north to south is 21.3 kilometres and its maximum width is 5.3 kilometres. Hawar island also forms the western perimeter of the island group. A video film documenting the recent construction on Hawar island and the geographic situation of the island group relative to both Qatar and Bahrain was prepared in September 1995⁴.

4.5 As illustrated on *Map No. 5* facing this page, the distance between the main island of Hawar and the nearest coastal point on Bahrain's main island is 21.85 kilometres; the distance between the island in the Hawar group that is closest to Bahrain (Rabad al Gharbiyah) and the nearest point on the Bahraini coast is 18.75 kilometres. In other words, the Hawar islands are separated from Bahrain by a sizeable expanse of open water. In general, the waters between the Hawar islands and the mainland of Qatar are extremely shallow even at high tide. At low tide the distance between the tip of the spit of Hawar island and the nearest point on the Qatari coast is only 250 metres. Approximately half of the islands of the Hawar group lie either wholly or partially within 3 nautical miles of Qatar's mainland coast. The 3-mile limit from Qatar's high tide coast depicted on *Map No. 5* shows that Suwad ash Shamaliyah, Suwad al Janubiyah, the Wakurs and the Bu Sadads are all wholly within this area; Umm Haswarah is just touched by the line and the entire southern half of Hawar lies within 3 nautical miles. In the northern part of Hawar, Rabad al Gharbiyah, Rabad ash Sharqiyah, Ajira and several other small islets to the north of Hawar lie just beyond the 3-mile limit; while in the south, Janan is

³ A satellite photo (Landsat thematic mapper image, prepared by Barringer, Golden, Colorado); "Qatar", 1:100,000, Doha, Edition of 1982 (Sheet 1540); "The State of Bahrain", 1:50,000, 1986, Sheet 3, Edn. 2. A copy of each of these documents is being deposited with the Registry of the Court in accordance with Article 50, paragraph 2 of the Rules of Court.

⁴ See, Appendix 2, Vol. 15, p. 1, and the video "Bahrain Actions and Activities in Hawar Islands Since the Beginning of the Mediation". Twenty copies of the video have been deposited with the Registry pursuant to Article 50 of the Rules of Court. See, also, Appendix 7, Vol. 16, which contains mosaics of the Hawar islands.

practically bisected by the line⁵. An examination of *Map No. 5* clearly illustrates the compact nature of the Hawar group.

Section 2. Geology and Geomorphology

4.6 Geologically, it is likely that the bedrock of the Hawar islands is the same age and type as that of the adjacent Qatar Peninsula⁶. The folding along the Dukhan structure created a single landscape from which the present bedrock surfaces of both the peninsula and the islands were eroded by the sea, by wind and possibly by rivers. This landscape was lower than, and quite separate from the initial folded landscape of Bahrain, which was developed along different structures. Thereafter the sea level rose and flooded the fringes of the landscape of the Qatar Peninsula to create a series of islands, including Hawar. This rise of sea level probably occurred about 5,000 - 8,000 years ago. Since then, sea level has fallen slightly exposing coastal sediments around some of the islands and shoals. This has also created an area between the Hawar islands and the peninsula which is subject to coastal deposition. In terms of coastal processes, this area is part of the western Qatar coastal system. Today, this zone of small islands, shoals and shallow waters is protected against the "shamal" winds and the wave erosion that accompanies them by the shield provided by Hawar island and its "spit". This sheltered zone between the Hawar islands and the Qatar mainland appears to be characterized by sediment accumulation, and the intervening areas of water are becoming narrower and shallower. If the sea level remains the same, it is probable that the islands will grow, join together and link up with the peninsula - in other words, for the Hawar islands to be physically reunited with the mainland. This phenomenon has already occurred at a number of locations along the western coast of the Arabian Gulf. The reuniting is only likely to be fully achieved, however, over centuries and only affects the area described⁷.

⁵ It may be noted that Janan was not included within the perimeter of the enclave described in the 1947 British decision.

⁶ See, the Geological Map of Qatar, 1:200,000, 1970. A copy of this map is being deposited with the Registry of the Court in accordance with Article 50, paragraph 2 of the Rules of Court.

⁷ See, A.I.M. Alsheeb, 1988, *Coastal Geomorphology of the Qatar Peninsula*, Ph.D. Thesis, University College of Swansea, University of Wales; A.A.A. Babikir, 1986, "The vegetation of natural depressions in Qatar in relation to climate and soil", *J. Arid Environments*, 10, (3), pp. 165-73; C. Cavelier, 1975, "Le Tertiaire du Qatar en affleurement", *Lexique Stratégraphique International*, pp. 3, 10, 63, 89-120; Department of Petroleum Affairs, Qatar, 1988, *Interpretation of Subaqueous Structures with Structural Overlay*; Director of Petroleum Affairs, Qatar, 1970, *Geological Map of Qatar, 1:200,000*; J.C. Doornkamp *et al.*, 1980, *Geology, Geomorphology and Pedology of Bahrain*, Geobooks, Norwich; J.J.H.C. Houbolt, 1957, *Surface sediments of the Persian Gulf near the Qatar Peninsula*, Ph.D. thesis, University of Utrecht; P. Kassler, 1973, "The structural

4.7 Hawar island and its associated islands are part of the major evolving coastal system of the western Qatar peninsula. The Hawar islands are therefore a flanking offshore island group that, in terms of coastal dynamics, is part of Qatar. Furthermore, this coastal system is entirely separate from that of Bahrain. Indeed it is a long way from Bahrain and separated by relatively deep waters or a channel. The occurrence of fine muddy sands and muds in these deep waters separating Bahrain and Qatar suggests that there are probably no transfers of sediment between the Qatar coastal system and the Bahrain island coastal system, and that the two systems are dynamically separate. The occurrence of some shoals and reefs, trending NNE/SSW, in the expanse of sea between Bahrain and Qatar reinforces this view, because they were probably created by strong tidal currents running in the deep waters or channel.

and geomorphic evolution of the Persian Gulf", in B.H. Purser (ed.), *The Persian Gulf*, Springer-Verlag, Berlin, pp. 11-32; R.W. Powers *et al.*, 1966, "Geology of the Arabian Peninsula: sedimentary geology of Saudi Arabia", *U.S. Geological Survey Professional Paper*, 560-D; E.A. Shinn, 1973, "Carbonate coastal accretion in an area of longshore transport, NE Qatar, Persian Gulf", in B.H. Purser (ed.), *The Persian Gulf*, Springer-Verlag, Berlin, pp. 180-98; J.C.M. Taylor and L.V. Illing, 1969, "Holocene intertidal calcium carbonate cementation, Qatar, Persian Gulf", *Sedimentology*, 12, pp. 69-107; J.W. Tleel, 1973, "Surface geology of the Dammam Dome, Eastern Province, Saudi Arabia", *Am. Ass. Pet. Geol. Bull.*, 57, pp. 558-76. See, also, Annex III.301, Vol. 8, p. 507.

CHAPTER V

THE TERRITORIAL INTEGRITY OF QATAR AND QATAR'S SOVEREIGNTY OVER THE HAWAR ISLANDS

Section 1. Introduction

5.1 In this Chapter, it will be shown that the territorial integrity of Qatar, together with all islands immediately adjoining the mainland, was recognized and confirmed, from at least the middle of the nineteenth century by the British in the course of their efforts to maintain maritime peace in the Gulf area; and that it was further confirmed by specific Ottoman surveys carried out in the second half of the 19th century, surveys which were also acquiesced in or formally accepted by the British. It will be shown that the Hawar islands, and Zubarah, were similarly always accepted as being part of Qatar by countries in the region. The Ruler of Bahrain is himself on record in 1907 as having accepted Qatar's sovereignty over the Hawar islands. The extent of Qatar's territory, including the Hawar islands, was confirmed in numerous maps covering a period of some seventy-five years, in a description recorded in 1908 by Lorimer, in the Anglo-Ottoman Convention of 1913, in a British Admiralty survey of 1915, read with the British-Qatar Treaty of 1916, and otherwise in British Government records until at least 1933. This long-standing state of affairs was only brought into question with regard to the Hawar islands by the British, giving entirely unjustified credence to a Bahraini claim to the Hawar islands from 1936, after oil became a significant feature in the Gulf area; and thereafter making the decision of July 1939 that the Hawar islands belonged to Bahrain - a decision which was almost immediately seriously attacked as wrong by a senior British official and eventually acknowledged by the British Government itself as being an appropriate subject of dispute to be arbitrated.

5.2 As shown in Chapter III, from early in the nineteenth century, Bahrain became an important mainstay of British policy in the Gulf, the main objective of which was to maintain the maritime peace in order to facilitate sea trade with and a safe sea-route to India. Beginning with the General Treaty of Peace of 1820 concluded with the Sheikhs of the Pirate Coast and with Bahrain with a view to eliminating piracy, the British entered into a number of treaties mentioned hereafter to ensure such maritime peace. The importance of the Bahrain islands in

particular to the British was stressed a few years later in a letter of 6 February 1851 from the Foreign Office to the Government of India stating:

"... it would be injurious to British interests that the Islands of Bahrein should be placed under the sovereignty, the protection or the directing influence of any foreign Power; and that there is a danger ... that Islands might fall under the control of France, of Turkey, or of Persia¹."

5.3 When violations of maritime peace originating in Bahrain continued to occur, the British Resident in the Persian Gulf wrote to Sheikh Mohamed bin Khalifah of Bahrain on 18 May 1861, reaffirming his determination sternly to repress any hostile attempts on the neighbouring tribes, made by Bahrain or in the name of Bahrain. He went on to say:

"... you are now engaged in aggressions on the coast of your neighbours, the Wahabees ... Hence my arrival here to preserve the maritime tranquillity now openly endangered by the defiant attitude you have assumed²."

5.4 This letter was followed by the signing of the "Friendly Convention" between the Ruler of Bahrain and the British Political Resident on 31 May 1861. By Article 2 of this Convention, the Ruler undertook to "*abstain from all maritime aggressions* of every description, from the prosecution of war, piracy, and slavery by sea, so long as I receive the support of the British Government in the maintenance of the security of my own possessions against similar aggressions directed against them by the Chiefs and tribes of this Gulf³".

5.5 However, rivalries among the ruling family of Bahrain on the one hand, and between them and other local Sheikhs of the Gulf, on the other, continued during this period⁴. Friction between Bahrain and Qatar had become endemic in the first half of the nineteenth century as Qatar was frequently used as a base for dissident members of the Bin Khalifah family to pursue their quarrels with the ruling section in Bahrain. This effectively ceased by the middle of the century, when the whole of Qatar was generally under the leadership of Sheikh

¹ Annex III.4, Vol. 6, p. 13.

² Annex III.5, Vol. 6, p. 27.

³ Annex III.6, Vol. 6, p. 31; emphasis added.

⁴ See, Annex III.297, Vol. 8, p. 487 and Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 294 *et seq.*

Mohamed bin Thani⁵. The later Bahraini attacks in the battles of 1867 and 1868 described in Chapter III⁶ were regarded by the British as aggression contrary to the Agreement of 1861 and they therefore decided to punish the Ruler, denounced him as a "pirate" and replaced him by his brother Sheikh Ali⁷.

5.6 As described above, these events led to two British agreements in 1868 - one with the Chief of Bahrain and another with the Chief of Qatar. The principal object of these agreements again was the maintenance of maritime peace and each agreement incorporated an undertaking by each Ruler to preserve peace at sea. As a result of these agreements, the sea was to act as a buffer between Bahrain and Qatar, which were thus considered as distinct and separate entities. As the object of these agreements was to achieve peace at sea they clearly also recognised the territorial integrity of the peninsula of Qatar and its immediately adjoining islands. It could not have been and was not within the contemplation of any of the parties that Bahrain had or could have any rights over any part of the peninsula or its adjoining islands, including the Hawar islands, located mostly within Qatar's territorial waters and almost eighteen nautical miles away from Bahrain. A contrary view would deprive the Agreements of 1868 of any meaning or purpose.

5.7 As already described in Chapter III, early in the 19th century, the Ottoman Sultan had begun to take effective steps to displace the Wahhabi control over the Muslim holy places and other areas in the Arabian peninsula⁸. After the death of Faisal Bin Turki in 1865, his successor acknowledged to the British that he was ruling under the effective control of the Ottoman Government. Although the British attitude was ambivalent about Ottoman rights in Qatar, they did not want to intervene so long as the Ottomans remained within the territorial limits of Qatar and did not interfere with the British or their influence and authority in Bahrain. Indeed, the British sought and were able to obtain from the Ottomans in May 1871 an assurance that the Ottoman Porte had no intention of extending supremacy over Bahrain, Muscat, or the independent tribes of Southern Arabia⁹. The Ottomans reassured the British

⁵ See, Annexes II.17 and II.18, Vol. 5, pp. 33 and 37.

⁶ See, paras. 3.30 *et seq.*, above.

⁷ See, Annex III.297, Vol. 8, p. 487 and Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 207-209.

⁸ See, paras. 3.11 *et seq.*, above.

⁹ See, Saldanha, *op. cit.*, Annex II.7, Vol. 4, pp. 48-49.

again soon thereafter that on no account did they want to turn their "eyes on Bahrein"¹⁰. As a result, the British did nothing to hinder the Ottoman expansion to include the peninsula of Qatar, its immediately adjoining islands and waters.

5.8 During the latter part of the 19th century, Bahrain from time to time advanced vague pretensions to various islands (including Zakhnuniyah and the Hawar islands) where fishermen from different countries in the region (Oman, Hasa, Qatar, Abu Dhabi, Bahrain, and the Persian Coast) undertook seasonal fishing activities¹¹. Its pretensions also extended to Zubarah on the mainland of the Qatar peninsula and even the shoals of Dibal (Mamzoor) and Qit'at Jaradah - pretensions which were either not accepted or firmly rejected both by the British and the Ottomans as well as other countries in the region. In particular, the Ruler of Abu Dhabi (in spite of the fact he had fought many battles with Qatar over their own border differences) repeatedly confirmed that the Hawar islands, Janan, the shoals of Dibal and Qit'at Jaradah, and Zubarah belonged to Qatar.

Section 2. Recognition of Territory

A. General

5.9 Qatar submits that recognition by third countries of the extent of territory controlled by a State or other entity is highly significant in establishing title to that territory. Even more significant is recognition by the other party to the territorial dispute which can also form the basis of an estoppel.

5.10 As pointed out by Shaw, the principle of effective control of a territory to demonstrate title:

"... comprises a series of elements, and clearly the more such elements are satisfied the stronger and more certain will the title be. But this principle, which relies upon acts performed or assimilated by a State authority, must be seen in conjunction with the important principle of recognition.

¹⁰ See, *ibid.*, p. 49.

¹¹ See, Annexes III.15, III.25 and III.26, Vol. 6, pp. 75, 125 and 129; and Annex III.128, Vol. 7, p. 141.

With regard to this principle, one must distinguish between international recognition and bilateral recognition. In the former case, one is concerned with the acceptance by the international community as a whole of a particular situation as a valid one despite any ambiguous or illegal origin, while in the latter case one or more States recognize a particular situation and may therefore be estopped from denying the validity of the same in the future; that is, the situation is opposable to such States but not necessarily to others. The two may shade into one another, but it is believed that a fundamental distinction lies between the two. Bilateral recognition is important as regards evidence of effective control and should therefore be treated as an element within that principle¹²."

That the probative nature of recognition is well recognised was also noted by Professor R.Y. Jennings who wrote:

"... it is, of course, obvious that all forms of acknowledgement of a legal or factual position may be of great probative or evidentiary value even when not themselves an element in the substantive law of title. Recognition - and also acquiescence - is likely, therefore, for that reason alone, to have a prominent place in territorial questions¹³."

5.11 International jurisprudence generally confirms the probative character of recognition, in particular in matters of territorial title. In the *Delagoa Bay* case (1875), the Arbitral Tribunal cited, in support of its decision in favour of the territorial title claimed by Portugal, the recognition of this title by Holland and Austria on the basis that:

"Attendu que, les actes par lesquels le Portugal a appuyé ses prétentions n'ont soulevé aucune réclamation de la part du Gouvernement des Provinces Unies; qu'en 1782, ces prétentions ont été tacitement acceptées par l'Autriche, à la suite d'explications diplomatiques échangées entre cette Puissance et le Portugal¹⁴."

5.12 Similarly, in the *Rann of Kutch* case (1968), the majority decision of the Arbitration Tribunal relied on British declarations recognising that the territory in dispute between India and Pakistan belonged to Kutch, the State of which India was the successor:

¹² Annex III.310, Vol. 8, pp. 566-567. See, also, Annex III.307, Vol. 8, p. 550 reproducing an extract from Oppenheim's International Law, stressing the importance of recognition in relation to consolidation of title over a period of time, and stating, "One of the most important of the new factors is the attitude towards a given situation of the international community, partly by the process of recognition..."

¹³ Annex III.304, Vol. 8, p. 531.

¹⁴ Annex III.290, Vol. 8, p. 454.

"The statements made on the British side that the Rann was Kutch territory carry greater weight ... the attitude was most clearly expressed in the Bombay Gazetteers for the years 1905 and 1914 in which it was stated that the total area of 9,000 square miles of the Rann belonged to Kutch¹⁵."

5.13 Again, in the *Dubai/Sharjah* case (1981), the Tribunal took note of the fact that:

"... the British authorities ... always recognised the territory of the Bani Qitab as forming part of Sharjah¹⁶"

and therefore concluded from this that this territory did indeed belong to Sharjah.

5.14 In the present case, apart from the recognition accorded by other countries in the region, the recognition by the British of Qatar's sovereignty over the Hawar islands until oil became a factor in the Gulf area can similarly be regarded as significant evidence of this sovereignty.

B. Specific Instances demonstrating Recognition

1. The Turkish presence, their survey maps, and British and regional recognition

5.15 In the 1860s, the Turkish authorities were anxious to extend Ottoman influence in the Gulf area by bringing certain territories under Ottoman control. These territories included Qatar, with which at the time the British had no treaty relations. Ottoman Marine Commanders therefore undertook surveys of the territory of Qatar and its adjoining islands. A survey map of the borders of Qatar (including Zubarah, the Hawar islands and the Dibal and Jaradah shoals) was completed by an Ottoman Exploratory Marine Captain in September 1867¹⁷. Another Ottoman survey map, completed in November 1867, shows the distances in leagues between the mainland and the shoals of Dibal and Jaradah¹⁸. A third Ottoman survey map of 1867 similarly shows the boundaries of Qatar and Bahrain¹⁹, and a further map, of

¹⁵ Annex III.294, Vol. 8, p. 472.

¹⁶ Annex III.295, Vol. 8, p. 481.

¹⁷ Annex III.8, Vol. 6, p. 41.

¹⁸ Annex III.10, Vol. 6, p. 51; *see*, also, Q.M.J.A., Annex I.11, Vol. II, p. 49, where the date was erroneously translated as "November 1884". On the copy of the same map filed with the present Memorial, Qatar has corrected this material error.

¹⁹ Annex III.7, Vol. 6, p. 37.

October 1867, shows the boundaries of Bahrain²⁰. Many of these survey maps were shown to and apparently approved by British officials at different times.

5.16 A later survey report of 5 October 1870 made by the Vice Commander of the Sultanic Marine Fleet to the Provincial Governor of the Province of Basra states, *inter alia*, that: "Hawar island ... is linked to the land of Qatar²¹". A second report states, *inter alia*, that "The borders of Bahrain ... *end before Hawar island by three marine leagues, and before the city of Zubarah by ten marine leagues*", and that the Ruler of Bahrain "... *does not possess any island or lands in land of Qatar*²²".

5.17 The Ottoman authorities had already collected material with regard to the ownership, nature and activity of even the main Hawar island. In a report dated 15 April 1871 an Ottoman Naval Captain stated:

"The huts that we have seen in Hawar belong to fishermen from the country of Al-Hassa, the country of Qatar, the country of Oman and some from Bahrain.

There is no structure, and there is no water. The fishermen say that it is an island which belongs to the land of Qatar²³."

5.18 A further report, dated 22 May 1871, by an Ottoman Marine Vice-Commander stated:

"... we met, in the sea of Qatar, two groups of Hassawi fishermen coming from Hawar island. They confirm that the island is empty of English military personnel; and that the island is open to all fishermen. The two groups confirm that there are in Hawar huts similar to the huts at the marshes at Shat Al-Arab. There is no water; there are no houses; there is no fort. In the summer it is empty of inhabitants; empty of people. There are some people who hunt birds in the winter. Water is brought only from the land of Qatar, from the spring of Al-Dawakhil. There are no animals *i.e.* donkeys, mules or goats.

²⁰ Annex III.9, Vol. 6, p. 45.

²¹ Annex III.14, Vol. 6, p. 69.

²² Annex III.19, Vol. 6, p. 93; emphasis added.

²³ Annex III.15, Vol. 6, p. 75.

We assure you that we will visit it in two days time. We need your prayers²⁴."

5.19 By 1871, the Qatar peninsula, with its adjoining islands including the Hawar islands as shown in the Ottoman survey maps had come under the control of the Ottoman Empire, as had the Nejd and the Hasa coast. In 1872, having already persuaded Sheikh Jassim bin Thani, the son of the then Chief of Qatar, to agree to their presence in Qatar, the Ottomans installed a small garrison in Doha. They also presented Sheikh Jassim bin Thani with a steam launch to enable him to control the coasts and waters within his jurisdiction²⁵.

5.20 Apart from exploring the extent of the territories of Qatar and Bahrain through the surveys mentioned above, the Ottomans also made specific inquiries from Qatar's neighbours, in particular from the Rulers of Abu Dhabi. There was considerable correspondence in this connection between the Ottomans and Sheikh Zayed bin Khalifah, who was the Ruler of Abu Dhabi from 1860 to 1909 (which covers most of the period of the Ottoman presence in the Gulf area). Kelly writes that after the eclipse of the Wahhabi power in Eastern Arabia followed by the occupation of Hasa by the Turks in 1871, the politics of the area:

"... south of Hasa, came to be dominated ... by the figure of Zaid ibn Khalifah ... the ruler of Abu Dhabi. Zaid, who had succeeded to the chieftainship on the deposition of his cousin, Sa'id ibn Tahnun, in 1855, had become the most powerful of the Trucial Shaikhs by the early eighteen-seventies ... By the last decade of the century Zaid ibn Khalifah had extended his authority over the greater part of the hinterland of Trucial Oman, and even into the Dhahirah province of Oman, where his influence exceeded that of the Al Bu Sa'id Sultan, who consequently entrusted him with the care of his interests there. Indeed, the only serious challenge that Zaid had to contend with in these years came from the Al Thani Shaikh of Qatar, who endeavoured, in the eighteen-seventies and eighteen-eighties, ... to take possession of Khaur al-Udaid²⁶."

5.21 On a number of occasions, the Ottoman authorities inquired from Sheikh Zayed about the extent of Qatar's territories and about Bahrain's ambitions towards such territories. In his responses to such inquiries, Sheikh Zayed's descriptions of Qatar's territories were always consistent with the Ottoman survey maps of 1867 onwards. Furthermore, he constantly

²⁴ Annex III.16, Vol. 6, p. 81.

²⁵ See, Q.M.J.A., Annex I.13, Vol. II, p. 59.

²⁶ Annex III.305, Vol. 8, p. 535.

warned the Ottomans of Bahraini intentions to make claims on Qatari territory and in a letter of 4 June 1870 advised:

"Do not allow Bahrain to snatch what it can and to dump what it cannot²⁷."

5.22 It was against this background that the Ottoman Vali of Hasa in a communication addressed to the Ruler of Bahrain, Sheikh Issa, in October 1871 sternly warned against any Bahraini pretensions to Qatar territory and stated:

"According to what has been proved to us, Zubarah and its surrounding area and *the islands of Qatar opposite your country are all clearly and absolutely the property of Qatar*. This is a warning to you and you must be aware that we have the demarcation of your borders and that the British Ambassador to Constantinople has seen it²⁸."

5.23 Sheikh Zayed bin Khalifah of Abu Dhabi, in another letter to the Ottoman Vali of Hasa on 17 November 1871 in the context of any Al-Khalifah interests in the territories of Qatar, stated:

"As for Qatar, we know it well, and the fighting which has been going on between Khalifah's and its [Qatar's] people is well known. It is a big country and if you intend to take it, do not forget to take its sea and diving spots. They are commendable and rich. If dates are in Al-Qateef, money is in Qatar [an old proverb - if Al-Qateef is known for dates, Qatar is known for wealth].

It has a spring of fresh water in its north-west sea which they call Al-Mamzoor. Below, there is Jaradah which belongs to the sea of Qatar. To its east lies Zubarah and below Zubarah you find the islands of Hawar opposite to the mountain on it [the mainland *i.e.* Brooq].

I have already been asked by people who came before you about Hawar. I told them all I knew about it. Al-Hassa has not got a nail on this island [they own nothing] nor has Bahrain any hand over it. You can go to it from the shore of Qatar on foot. We were informed a long time ago that there were huts and a rain-water pool which belonged to some people of Faris [Persians]. There were also Shiites from Qateef who came there as fishermen at the time of Al-Btain [severe winter].

Do not worry. It belongs neither to Bin Khalifah nor to anyone from the people of Al-Hassa. It belongs to Qatar²⁹."

²⁷ Annex III.13, Vol. 6, p. 65.

²⁸ Annex III.17, Vol. 6, p. 85; emphasis added.

²⁹ Annex III.18, Vol. 6, p. 89.

In fact, Sheikh Zayed bin Khalifah, in the same letter, went on to make a proposal of his own to the Ottomans when he stated:

"If you want a refuge from which to monitor the English, Hawar is the place. Your reputation and your understanding with Bin Thani would make Bin Thani give it to you. We are in disagreement with Bin Thani, otherwise we would have helped you³⁰."

5.24 Soon after the Ottoman presence in Qatar had been established and upon a complaint by Sheikh Jassim bin Thani against Bahrain's conduct in relation to the territories of Qatar, the Ottoman Vali of Hasa in March 1872 responded to Sheikh Jassim by stating:

"We have received your letter and we do not accept Bin Khalifah's conduct in Bida and Wakrah. On the basis of orders from our Vali, the Vali of Baghdad, and orders from the Sublime Porte, may his shadow last forever [may he live forever], we have carried out a survey of your country, Al-Qatar, including its sea, land and islands. The survey was carried out by Mohammed Quli Abdu, a Sultanic Marine Commander, who is an exploratory marine captain. He has done a lot of surveys in the Ottoman Sultanic world. These surveys have been approved by the Sublime Porte and by the ambassador of Great Britain to Constantinople.

On each map there is a small signature, a decorated Latin Letter. He signed and agrees to that³¹."

5.25 Shortly after that, the Ottoman Vali of Hasa obtained further information concerning Hawar from Sheikh Zayed bin Khalifah of Abu Dhabi who wrote in his letter dated 7 October 1872:

"Regarding Hawar, you are free to say whatever you think about it. No-one understands more than you do and no-one knows as much as you do, but we want you to understand that Hawar has been [part] of Qatar since the time of our fathers and grandfathers, and no-one has any right to it. This is what we are sure of by virtue of all we have known and all whom we have mentioned ... We have people who [would] tell you about Hawar and that it is a fishermen's refuge belonging to Qatar, and its Sheikh is Bin Thani not Bin Khalifah³²."

³⁰ *Ibid.*

³¹ Annex III.20, Vol. 6, p. 99.

³² Annex III.21, Vol. 6, p. 103.

5.26 By contrast, British knowledge about Qatar (in which it had shown no interest) including its territory, its tribes and its activities was extremely meagre. This is demonstrated by the contents of a letter from the Political Resident in the Persian Gulf, Col. E.C. Ross dated 4 September 1873 to the Secretary to the Government of India where he states:

"4. The position of the Turks on that coast, however, had perhaps better be again brought to notice, in reference to their proceedings now reported.

5. The accompanying slight sketch of that part of the Coast may serve to illustrate my report. The red marks denote places where there are Turkish troops quartered.

6. It will be observed that there is an extensive cape or promontory called by the general name of Guttur, or properly, Katr. The greater part of this tract is desert land, but a few Bedouin tribes find pasture for their flocks. On the coast are fishing villages, such as Zobarah, Khor Hassan, el Biddah &c. - the most considerable being Biddah. The whole coast is called the Guttur Coast and the population is fluctuating.

7. The question of the sovereignty over Guttur, generally, has never yet been decided. It has, perhaps, been a debatable land, between Oman on the one side and Wahabee Power on the other. At one time the Chief of Aboothabee is said to have exercised authority in Guttur. Later the Uthoobees having settled there and at Bahrain, became paramount. These in time had to pay religious tithe to the Wahabee Amcer - who established a Governor of his own at Biddah.

8. Since the Turkish occupation of El Hassa, the whole line of Coast as far as Odeyed had fallen under Turkish influence, and the chiefs in [question?] have been forced to accept the Turkish flag. Biddah has been actually occupied, and a body of Turkish troops is now quartered there.

9. In October 1871 Government of Bombay requested Colonel Pelly to report on the question of sovereignty over Guttur, but Colonel Pelly asked permission to defer this, as there was a probability of the Turks withdrawing from Najd.

10. Such is, briefly, the present position of affairs at Guttur, and there does not appear at present to be cause of complaint against the proceedings of the Turkish authorities³³."

³³ Annex III,24, Vol. 6, p. 117. *See*, also B.C.J.A., Annex III,4, Vol. III, p. 15. The archaic spellings in the original text correspond to the following present-day spellings: Guttur or Katr = Qatar; el Biddah or Biddah = Bida, now known as Doha; Wahabee = Wahhabi; Aboothabee = Abu Dhabi; Uthoobees = Al-Utub; Odeyed = Udeid.

5.27 In 1873, an Ottoman detachment was reported to be arriving in Zubarah³⁴ and the Chief of Bahrain wished to offer help to the Naim who he claimed owed allegiance to him³⁵. The British advised him not to involve himself on the mainland³⁶ so as to avoid complications with the Ottomans³⁷, and warned him of dire consequences if he ignored this advice³⁸. While the British accepted that the Ottomans exercised *de facto* control over the Qatar peninsula, they never formally recognized Ottoman sovereignty over the peninsula³⁹. Indeed, they insisted on maintaining direct relations with the Ruler of Qatar and the rights they had acquired by treaty -

"... in order to preserve the peace of the seas or to obtain redress for outrages on British subjects or persons entitled to British protection⁴⁰."

5.28 But the British did not want to intervene so long as the Ottomans remained within Qatar's territorial limits, as understood and recognized by the British, and thus did not threaten maritime peace or British interests in Bahrain and other Sheikhdoms with whom Britain had treaty relationships. However, being suspicious of Ottoman intentions, the British concluded an Exclusive Agreement with Bahrain in December 1880, mainly to prevent any arrangement being reached between the Ottomans and the Sheikh of Bahrain⁴¹. A further agreement was concluded on 13 March 1892 by which the Sheikh of Bahrain agreed not to "enter into any agreement or correspondence with any Power other than the British Government", not to permit the agent of any other Government to reside in Bahrain without the consent of the British Government, and also not to "cede, sell, mortgage or otherwise give for occupation" any part of his territory, save to the British Government⁴². It is important to note that the British, having accepted Qatar (as shown in the Ottoman survey maps) as being part of the area of Ottoman influence, made no attempt to enter into any such agreement with the Ruler of Qatar at this time.

³⁴ See, Saldanha, *op. cit.*, Annex II.7, Vol. 4, p. 53.

³⁵ See, B.C.J.A., Vol. 3, Annexes III.2 and III.3.

³⁶ See, Saldanha, *op. cit.*, Annex II.7, Vol. 4, p. 53.

³⁷ See, *ibid.*, p. 54.

³⁸ See, Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 223.

³⁹ See, paras. 3.47 *et seq.*, above.

⁴⁰ Saldanha, *op. cit.*, Annex II.8, Vol. 4, p. 214.

⁴¹ See, Annex III.35, Vol. 6, p. 165.

⁴² Annex III.41, Vol. 6, p. 189.

5.29 At about the same time as Col. Ross was addressing his above communication of September 1873 to the Secretary to the Government of India displaying vague overall knowledge about Qatar, the Ottomans were surveying and increasing their control over territories which included Hawar. With regard to Hawar island, by a communication dated 27 November 1873, the Ottoman Vali of Hasa writing to the Vali of Baghdad stated:

"As for your queries regarding Hawar Island, which belongs to Qatar, no-one inhabits the island except sailors from the countries of the Persian Coast and the Omani land, people of Qatar and Shiites of Bahrain. In all, there are thirty of them and there are no houses or permanent homes⁴³."

Two days later, the Ottoman Naval Captain Mohammed Quli Abdu on 29 November 1873 reported to his Marine Vice-Commander as follows:

"Sir, we have been to the intended place. We raised the flag of the sublime Sultan, may his shadow [life and authority] last on earth, on Hawar island without any objection. The English were aware of this and were present, but did not approach us.

Regarding the matter of urgency that we have received from you, we went and measured the sea from the coast of Qatar. Down below the island appears a strip in the sea which can be walked on for three quarters of an hour with water at knee level. We found on it [Hawar] fishermen from Oman and from Al-Hassa and we found one person from Qatar repairing a ship. There is no one from Bahrain and no English. This is what we wanted to inform you. There is no fear of the inhabitants [for they are] very weak. We have also seen the maps of Hawar and Qatar on the Sultan's ship. We recommend modification of the shape of Hawar in the file of Qatar. We shall send you maps of the island later, God willing⁴⁴."

5.30 On 10 December 1873, about ten days later, Capt. Mohammed Quli Abdu did in fact finalise a survey map of Hawar (*Map No. 6* facing the preceding page) which clearly illustrates that Hawar belongs to Qatar.

⁴³ Annex III.25, Vol. 6, p. 125.

⁴⁴ Annex III.26, Vol. 6, p. 129.

5.31 It is significant that in a British memorandum of March 1874 concerning the claims of Persia and the Ottomans to Bahrain, the extent of Bahraini territory was described as consisting only of the following:

"The Bahrein Islands are a small group of islands, three in number, on the south-west side of the Persian Gulf, in the centre of Bahrein Bay, the principal of which is Bahrein (or Aval), lying about ten miles off the Coast of Arabia⁴⁵."

This description of Bahrain self-evidently could not include the Hawar islands.

5.32 It would appear that there were recurring changes in the Ottoman officials (Valis) posted in the Gulf area and a new official would often seek information from Sheikh Zayed bin Khalifah of Abu Dhabi. In response to one such inquiry in a communication dated 23 December 1874 to the Vali of Hasa, Sheikh Zayed bin Khalifah wrote:

"... with reference to what we have been discussing with you concerning Al-Mamzoor and Jaradah, you know what the Al-Hala is. Al-Hala [a piece of land usually submerged by the sea at high tide] is a piece of uninhabited land as you were told by the one who came to you from Bahrain. You see, these [Halas] belong to Qatar and they are Qatari territories and Bahrain has no hand over them [rights]. You see the English know nothing about them except through what they hear. As for Al-Zubarah we have already told you that it belongs to Qatar and the Al-Khalifah inhabited it but did not stay long. As for Hawar I cannot say more than what we have already said to your predecessors; it belongs to Qatar. If we were entitled to it, then Bin Khalifah would be rightly entitled to it. If it is to be judged by its population, there are more of our people and more people from the Persian Coast who are ruled by Al-Qawasim [than there are Bahrainis]⁴⁶."

5.33 In another such communication three years later of 22 July 1877 to a new Vali of Hasa, Sheikh Zayed bin Khalifah wrote:

"As for Hawar, we have said to your predecessor what we know: that it belongs to Qatar. Because we are neither afraid of anybody nor in awe of anyone. Yes, we took Bin Khalifah's side in hostility to Jassim. We did not think that matters would develop in this way. Undoubtedly, dialogue between Bin Khalifah and Jassim would

⁴⁵ Annex III.28, Vol. 6, p. 137.

⁴⁶ Annex III.31, Vol. 6, p. 149.

extinguish the fire - but to take Hawar by deception is neither good for them nor for us⁴⁷."

5.34 It is also relevant to note that, from time to time, Sheikh Zayed bin Khalifah was resisting claims on his own territory in Udeid by Sheikh Jassim bin Thani of Qatar. Differences over these territorial claims became extremely severe between 1881 and 1889, when they fought a number of battles.

5.35 Thus, although Sheikh Zayed bin Khalifah had serious differences with Sheikh Jassim of Qatar, in respect of their own territorial borders and engaged in numerous battles against Qatar (at times with the support of Bahrain), he continued to reaffirm his strongly held view as to the extent of the territories of Qatar, consistently asserting that Hawar constituted an integral part of Qatar and that Bahrain had no valid claims to those islands or indeed to Zubarah. He continued to maintain these opinions up to the time of his death in 1909 and, as shown below, his successors reiterated the same view from time to time.

5.36 It is important to note that the Ottoman authorities had continued to arrange for more detailed surveys of the borders of Qatar and even Hawar to be carried out from time to time. Such survey maps were also presented to other governments and authorities (including the British), as shown by the stamps which they bear. Survey maps in respect of Qatar of the years 1874 and 1891/98 are Annexes III.29 and III.46⁴⁸ and the survey map in respect of Hawar of 7 July 1890 is Annex III.37⁴⁹. It is particularly significant to note that the territories of Qatar and Bahrain shown in the Ottoman maps from 1867 to 1889 are also substantially similar to those shown in a number of other maps of the period published in the West in the years following⁵⁰.

5.37 There is other evidence from the turn of the century which demonstrates that the Hawar islands (and Zubarah) were recognised as belonging to Qatar.

⁴⁷ Annex III.34, Vol. 6, p. 161.

⁴⁸ Annexes III.29 and III.46, Vol. 6, pp. 141 and 209.

⁴⁹ Annex III.37, Vol. 6, p. 173.

⁵⁰ See, para. 5.46, below.

5.38 A geographical dictionary of the Gulf region, compiled by Lorimer in 1908, also clearly listed the Hawar islands under Qatar as one of the places and features on its west coast and provided a detailed description of Hawar and adjoining islands:

"About 10 miles long, north and south, and roughly parallel to the Qatar coast. There are no wells, but there is a cistern to hold rain-water built by the Dawasir of Zallaq in Bahrain, who have houses at two places on the island and use them in winter as shooting boxes. Fishermen also frequent Hawar. The island is adjoined on the north by Jazirat Rubadh and on the south by Jazirat Janan, while Jabalat Ajirah and Jazirat Suwad lie in the channel between it and the mainland⁵¹."

On the other hand, Lorimer described Bahrain as follows:

"The present Shaikhdom of Bahrain consists of the archipelago formed by the Bahrain, Muharraq, Umm Na'asan, Sitrah and Nabi Salih islands and by a number of lesser islets and rocks which are enumerated in the articles upon the islands: taken all together these form a compact group almost in the middle of the gulf which divides the promontory of Qatar from the coast of Qatif⁵²."

5.39 After a visit to the island of Zakhnuniya and the Hawar islands in March 1909, Major F.B. Prideaux, the Political Agent in Bahrain, reporting to the Political Resident, appeared to be concerned about the fact that the Ottoman officials might seek to extend their authority more securely in the district generally. He noted in his letter of 20 March 1909:

"The facts are that Dowasir of Budaiya and Zellaq on the north-west coast of Bahrain are in the habit of every winter partially migrating to Zakhnuniya and Hawar Islands for fishing (sharks as well as edible fish) and hawking. A Dosiri is said to have built the Zakhnuniya fort many decades ago, and Shaikh Ali bin Khalifa (Esa's father) rebuilt the fort during the reign of his brother Muhammad whom we deposed. Since then, the Dowasir have once again repaired the fort, but now it is in ruin and only the four unroofed bastions are standing⁵³."

5.40 The Political Agent hoped the Ruler of Bahrain would lay claim to Zakhnuniya and Hawar Islands so as to be able to try and challenge Ottoman authority over these islands. He therefore stated in his letter of 20 March 1909:

⁵¹ Lorimer, *op. cit.*, Annex II.4, Vol. 3, pp. 120-121.

⁵² Lorimer, *op. cit.*, Annex II.3, Vol. 3, p. 88.

⁵³ Annex III.51, Vol. 6, p. 233.

"If Shaikh Esa is willing to claim sovereignty over Zakhnuniya our position will be fairly plain sailing ... but if Shaikh Esa doesn't want or dare assert his sovereignty over Hawar we shall be in rather a quandary. However, I hope next week to be able to give a satisfactory report about his attitude⁵⁴."

As it happened, the Ruler of Bahrain did in fact lay claim to Zakhnuniya by his letter of 30 March 1909 addressed to the Political Agent⁵⁵ but obviously refrained from daring to do so in respect of Hawar.

5.41 The successors of Sheikh Zayed bin Khalifah continued to maintain the position that the Hawar islands (and Zubarah) belonged to Qatar. In fact Sheikh Tahnoon bin Zayed, the immediate successor of Shaikh Zayed, in a communication dated May 1909 addressed to Sheikh Issa, the Ruler of Bahrain, advised him:

"... We do not question what you say except from worrying about you. *You see, O brother, you must tell the truth to us and to yourself.* A man is bound by his own word, as are his children after him.

As for Zubarah, by Allah, no brother, you must not get into hostility with Bin Thani; these lands, as you and we know, do not belong to you. They belong to Qatar. As regards the dividing up [of these lands] you have told us about, you see it is not fair to divide up already-recognised countries; this is the first thing I want to say. Second: yes we know Hawar well due to what our predecessors, who have been to it, have told us. Some of our friends had given the messenger of Jassim Bin Thani a slave by the name of Naseeb as a levy. Those who had nothing to give, gave either a fishing net or fish. We are certain of this. Third: Father, may God have mercy on him, gave his fingerprint to the soldiers in Hassa⁵⁶ to testify that Hawar is one of the lands of Qatar and that Al-Zubarah is the same... Leave Zubarah and Hawar to their owner Bin Thani. There are no gains from conflict⁵⁷."

It is important to notice that in this communication, the new Ruler of Abu Dhabi not only reiterated his country's recognition of Qatar's ownership of Zubarah and Hawar but also stated that he had been told that a levy (in the form of a slave, a fishing net or fish) had been

⁵⁴ *Ibid.*

⁵⁵ Annex III.52, Vol. 6, p. 241.

⁵⁶ The reference clearly is to various communications addressed by Sheikh Zayed to the Turkish authorities.

⁵⁷ Annex III.54, Vol. 6, p. 251; emphasis added.

given to the messenger of the Ruler of Qatar, apparently by itinerant fishermen who were visiting the islands. This confirms other contemporary evidence of the payment of levies to the Ruler of Qatar by itinerant fisherman visiting Hawar⁵⁸.

5.42 As shown earlier, in view of certain tensions that had developed between the British and Ottoman Governments, negotiations between them led to the signing of the Anglo-Ottoman Convention of 1913. By Article 11 of the Convention, the Ottoman Government "renounced all their claims with regard to the El-Katr peninsula", and the two Governments agreed that it "shall be governed, as heretofore by Sheikh Jassim-bin-Sani and his successors". Consistent with their stand of nearly fifty years (reaffirmed on numerous occasions), the British Government declared "that they 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"⁵⁹.

5.43 The 1913 Convention did not specifically define the territorial limits of Qatar and Bahrain. However, as explained above, the inference must be that the Hawar islands were considered to be part of Qatar⁶⁰.

5.44 Thereafter, a survey by the British Admiralty War Staff (Intelligence Division) carried out in 1915 included Hawar (and Janan) in the description of the territory of Qatar⁶¹.

5.45 Although the Ottomans recognized the autonomy of Qatar by the 1913 Convention, they continued to maintain a garrison at Doha which did not leave until the arrival of a British warship on 20 August 1915⁶². To formalise their position, the British signed the 1916 Treaty with the Sheikh of Qatar containing the various mutual obligations described above⁶³. The

⁵⁸ See, paras. 6.178 *et seq.*, below. See, also, paras. 6.180 *et seq.*, below, describing other actions of exercise of Qatari sovereignty over the Hawar islands including controlling access to the island for fishing (Annexes III.48, III.49 and III.50, Vol. 6, pp. 221, 225 and 229), expelling those refusing to pay levies, granting recognition to ownership of fishing traps (Annex III.40, Vol. 6, p. 185), pursuing and arranging arrests of criminals (Annex III.39, Vol. 6, p. 181), Qatari officials raising a banner on the island (Annex III.36, Vol. 6, p. 169) and visits by the Sheikh's representative or by the Sheikh himself to the island (Annexes III.36 and III.71, Vol. 6, pp. 169 and 375).

⁵⁹ See, paras. 3.55 *et seq.*, above. See, also, the Map which was Annex V to the Convention and which is being deposited with the Registry, pursuant to Article 50, paragraph 2 of the Rules of Court.

⁶⁰ See, para. 3.57, above.

⁶¹ See, Annex III.296, Vol. 8, p. 483.

⁶² See, Annex III.61, Vol. 6, p. 291.

⁶³ See, para. 3.61, above.

opening recital of the Treaty refers to the Agreement of 1868 whereby the Ruler of Qatar undertook "not to commit any breach of the Maritime Peace" and the Ruler confirms that "these obligations to the British Government have developed [*sic*: ? devolved] on me his successor in Qatar". The British, in turn, undertook to protect the Sheikhdome against aggressions by sea⁶⁴. A clear implication of this provision must necessarily be that the land territory of Qatar (including the Hawar islands) was to be protected against any aggression by sea by anyone including Bahrain (in the same way as it was not to be violated under the 1868 Agreement).

5.46 A German map published by Freytag and Berndt in 1914, and another by Geographia Ltd. London, published in 1919 (*Maps Nos. 7 and 8*, both preceding this page), show the Qatar peninsula and the Hawar islands in one colour and Bahrain in another. Consistent with these maps are those of Bahrain alone: one to be found in the proceedings of the Royal Geographic Society, 1890 Atlas⁶⁵, and another being Tivener's map of 1898 from the records of the same Society⁶⁶.

5.47 As at the time of signing the Anglo-Ottoman Convention of 1913, no need was felt when signing the British-Qatar Treaty of 1916 to define Qatar territory or to refer specifically to Hawar or Janan islands as the British and Qatar were clear about the fact that the Hawar islands were part of Qatar.

5.48 It is important to note that the British Government in fact continued to regard the Hawar islands as part of Qatar almost until the so-called "provisional" decision of 1936 to the effect that the islands *prima facie* belonged to Bahrain⁶⁷. This is apparent from the following:

⁶⁴ Annex III.63, Vol. 6, p. 301.

⁶⁵ Annex III.38, Vol. 6, p. 177.

⁶⁶ Annex III.45, Vol. 6, p. 205. *See*, also, the maps of the Persian Gulf published in the 1891, 1905 and 1914 editions of Stieler's Hand Atlas, Bartholomew's Library Reference Atlas of 1890, the English Imperial Atlas of 1891 and Philips International Atlas of 1931, all of which show the Qatar peninsula and the Hawar islands in one colour and Bahrain in another. Copies of these maps have been deposited with the Registry in accordance with Article 50, paragraph 2 of the Rules of Court.

⁶⁷ *See*, para. 6.38, below.

- (i) In a report of the British India Office of 1928 entitled "Status of Certain Groups of Islands in the Persian Gulf", the Bahrain archipelago is defined as consisting only of "the islands of Bahrain, Muharraq, Umm Na'assan, Sitrah, and Nabi Salih, and a number of lesser islets and rocks forming part of the same compact geographical group⁶⁸."
- (ii) Again on 3 May 1933, Laithwaite, of the India Office, referring to the territories of Bahrain, gave an almost identical description and stated that the dominions of the Ruler of Bahrain may be regarded as consisting of "the Island of Bahrein, and of the adjoining islands of Muharraq, Umm Na'assan, Sitrah and Nabi Salih ... in considering any grant of a concession in respect of his 'dominions' or 'Bahrain'⁶⁹."
- (iii) In connection with the concession for the unallotted area, when the Secretary of State for India requested a "marked map showing area recognized as Bahrain Islands⁷⁰", the acting Political Resident's response of 4 August 1933 and the accompanying map showed that Bahrain's territory did not include the Hawar islands⁷¹.
- (iv) As shown hereafter⁷², also in 1933 and in the same context, when the Ruler of Bahrain had suggested to the Political Agent that the Bahrain islands should not be listed by name because of an alleged ninety-year old agreement that the islands off Qatar were dependencies of Bahrain⁷³, the Political Resident was content to recommend acceptance of the suggestion "as Hawar Island is clearly not one of the Bahrain group⁷⁴". The India Office agreed that the area under the Ruler of Bahrain's

⁶⁸ Q.M.J.A., Annex I.18, Vol. II, p. 99. *See, also*, Q.M.J.A., Vol. I, p. 17. Reference is also invited to para. 5.31, above, reproducing the description of Bahraini territory in a British memorandum of nearly 50 years earlier (in 1874), confining such territory to three islands; and to para. 5.38 reproducing Lorimer's description of Bahrain in 1908 as consisting of the same islands as mentioned in the 1928 report reproduced here. None of these descriptions included the Hawar islands.

⁶⁹ *See*, Annex III.84, Vol. 6, p. 431.

⁷⁰ Annex III.89, Vol. 6, p. 453.

⁷¹ Annex III.90, Vol. 6, p. 457. *See, also*, para. 6.22, below.

⁷² *See*, para. 6.20, below.

⁷³ Annex III.87, Vol. 6, p. 445.

⁷⁴ Annex III.88, Vol. 6, p. 449.

sovereignty for this purpose did *not* include Hawar, which was not under his control and belonged geographically to Qatar⁷⁵.

- (v) Other evidence reviewed in detail in Chapter VI below demonstrates that the British Government consistently denied, even as late in the day as 1933, that the Hawar islands belonged to Bahrain⁷⁶ and that indeed the 1935 Concession Agreement between the Ruler of Qatar and APOC covered the Hawar islands as part of the territory of Qatar⁷⁷. In fact, it was not until 1936 that the British Government suddenly, and without apparently being conscious that it had previously denied any validity to Bahrain's designs upon Hawar, took its "provisional decision" in favour of the Bahraini claim to Hawar.

2. Bahraini Recognition of Qatar's Sovereignty over the Hawar Islands

5.49 There was good reason for Sheikh Tahnoon bin Zayed of Abu Dhabi to advise the Bahraini Ruler Sheikh Issa in his letter of May 1909 quoted above "to tell the truth to us and to yourself⁷⁸". As will be seen from a letter of 7 July 1907 addressed to Sheikh Saeed Al-Mutawwa Al-Binhajer, who was Sheikh Jassim's representative on the western side of Qatar, Sheikh Issa himself pleaded for citizens of Bahrain to be permitted to visit Hawar, promising to meet "your demands" and undertaking responsibility for the behaviour of Bahrainis visiting Hawar. Sheikh Issa wrote:

"Sheikh, we are ready to meet your demands. But we want nothing but your permission for our people to anchor at Hawar. We, by God, ask for nothing but your satisfaction and forgiveness. Our people have pestered us in their demands to write to you and to send you a letter. We are responsible for any misbehaviour that may occur by our people on *your island and in your country*⁷⁹."

⁷⁵ Annex III.91, Vol. 6, p. 461.

⁷⁶ See, paras. 6.18 *et seq.*, below.

⁷⁷ See, para. 6.26, below.

⁷⁸ See, para. 5.41, above.

⁷⁹ Annex III.49, Vol. 6, p. 225; emphasis added.

Earlier in the same year, on 15 February 1907, Sheikh Issa also endorsed and sealed a request from one of the Bahraini fishermen to visit Hawar⁸⁰.

5.50 Bahrain's Ruler therefore acknowledged Qatar's sovereignty over the Hawar islands and secured advantages by way of access and fishing rights for "his people". Having thus recognised the original title of Qatar to the Hawar islands, it was hardly open to Bahrain to challenge this title.

5.51 Another important event that demonstrates Bahrain's assumption and therefore its recognition that the Hawar islands belonged to Qatar occurred in the early days of the development of prospects of discovery of oil. As described in Chapter III above, on 2 December 1925, the Ruler of Bahrain granted a concession to the Eastern and General Syndicate Limited ("EGS") to explore the whole of the Ruler's territories for oil. This concession was subsequently transferred to the Bahrain Petroleum Company ("BAPCO"). A review of the negotiations leading up to the 1925 Agreement shows that in 1923 when Major Holmes, then representing EGS, drew up the draft of the Concession Agreement, Article I of the draft referred to the territory of the concession as being that portion of the land known as "THE BAHRAIN ISLANDS ... more particularly shown and delineated on the Map attached to this Agreement, and MARKED in RED colouration thereon...⁸¹". It is to be noted that on this map, the Bahrain islands are coloured red while the Hawar islands are coloured white like Qatar⁸².

5.52 Later oil concession negotiations confirm that, in the late 1920s and early 1930s, neither Bahrain's concessionaire under the 1925 concession (EGS) nor its successor (BAPCO) considered the Hawar islands to be part of the territories of Bahrain. There is clear evidence, which is reviewed in detail in Chapter VI below, that when Major Frank Holmes (representing EGS) applied in 1928 for permission to negotiate for a concession over the so-called "unallotted" area (*i.e.*, the area of Bahrain and its territorial waters remaining after EGS/BAPCO had chosen the 100,000 acres of Bahrain territory for the mining lease to which

⁸⁰ Annex III.48, Vol. 6, p. 221. *See*, also, para. 6.180, below.

⁸¹ *See*, Annex III.66, Vol. 6, p. 327.

⁸² *Ibid.*, p. 345.

it was entitled under the 1925 concession), he did *not* regard the Hawar islands as falling within the "unallotted" area. As will be seen, Major Holmes had calculated that the "unallotted" area amounted to 97,920 acres, an area altogether too small to include the Hawar Islands, Fasht Dibal or Qit'at Jaradah⁸³. Neither the Ruler of Bahrain nor the Political Agent demurred from these calculations at the time.

5.53 Another instance of Bahraini recognition of Qatar's ownership of the Hawar islands is the express admission in a letter of 21 September 1926 from the Ruler of Bahrain to the Ruler of Dubai wherein he states that "we have reached an understanding with the English here [in Bahrain]: that they will give us the *island of Hawar which belongs to Bin Thani*⁸⁴". To similar effect is the admission in the letter of 20 July 1938 from Belgrave to the Representative of the British State in Sharjah informing him that Bahrain, "by the approval of the British State, is going to take *the Island of Hawar which belongs to Qatar*⁸⁵". And again, in a letter of 15 February 1939 to a subordinate of the British Political Resident in the Trucial States, Belgrave states that: "*even if Hawar belongs to Qatar we don't disagree with this, it is in the interests of the British State that it should belong to Bahrain*⁸⁶".

5.54 These documents represent firm evidence that, over a long period, Bahrain expressly recognised or assumed that Qatar had sovereignty over the Hawar islands. In such circumstances, Bahrain has no valid basis for having changed its position or for questioning Qatar's sovereignty over the Hawar islands.

Section 3. The Subsequent Change in Bahrain's Position and its Efforts to secure Support for its Claim

A. The Discovery of Oil and Bahrain's Initial Efforts to secure Support for its Claim

5.55 As described earlier, the British had considered Bahrain, ever since the beginning of the nineteenth century, as the centre of their activity in the Arabian/Persian Gulf; by 1904, it was

⁸³ See, paras. 6.16 *et seq.*, below.

⁸⁴ Annex III.69, Vol. 6, p. 365; emphasis added.

⁸⁵ Annex III.167, Vol. 7, p. 339; emphasis added.

⁸⁶ See, Annex III.180, Vol. 7, p. 405; emphasis added.

considered important enough by them to appoint a Political Agent for Bahrain. The importance of Bahrain was further increased in the 1920s when there came the promise of oil. Soon after Bahrain granted the first prospecting licence for oil in December 1925 to EGS, Belgrave, in collusion with the Ruler of Bahrain, Sheikh Hamad, began to plan the eventual mounting of a formal claim to the Hawar islands in the expectation that oil would be found in these islands. At about that time and for the same reason, even Ibn Saud began to make an "ancient claim" to Qatar and to include the peninsula in the tract of country for which he was prepared to negotiate an oil concession⁸⁷. However, the British quickly and effectively restrained Ibn Saud from pursuing any such claim. But, as will be seen, in the years to come, the British were prepared to lend encouragement to a Bahraini claim⁸⁸. The Bahraini Ruler also sought, though unsuccessfully, the support of other rulers in the area. He had sought support for his claims to Hawar from successive Rulers of Abu Dhabi but instead of securing any such support was continually advised not only that there was no justification for any such claims but even to avoid making them.

5.56 In the light of the fact that up until 1933 the British had always taken the view that the Hawar islands belonged to Qatar and that a similar view had been taken by the rulers of other sheikhdoms in the Gulf, Belgrave set about implementing plans in an effort to show that the main Hawar island belonged to Bahrain. As described in detail in Chapter VI, Belgrave set about fabricating evidence for this purpose. On 28 April 1936, Belgrave formally wrote to the British Political Agent in Bahrain that:

"In connection with the present negotiations for an oil concession over the territory of Bahrain which is not included in the 1925 oil concession, [Sheikh Hamad of Bahrain] has instructed me to state to you that the Hawar group of islands lying between the southern extremity of Bahrain island and the coast of Qatar is indisputably part of the State of Bahrain⁸⁹."

There is evidence to show that the British Political Agent in Bahrain was at least partly aware of, if not actively initiating or supporting, Belgrave's plans, presumably to show his superiors gains in increasing the area of British influence. It is interesting to note that in his letter to the

⁸⁷ See, Annex II.11, Vol. 4, pp. 307-308.

⁸⁸ See, paras. 6.35 *et seq.*, below.

⁸⁹ See, Annex III.103, Vol. 7, p. 15.

Political Resident dated 6 May 1936, forwarding Belgrave's above letter of 28 April 1936, the Political Agent supported Bahrain's claim and also suggested that:

"... it might in certain circumstances suit us politically to have as large an area as possible included under Bahrain⁹⁰."

5.57 In other words, efforts were to be made to add to the territory of Bahrain. This "plot", which began to be implemented from around 1930, and evidence which subsequently became available about the false basis of Bahrain's claims to the Hawar islands is dealt with in detail in the next Chapter.

B. Bahrain's Illegal Occupation of Hawar Island

5.58 However, in regard to Bahrain's claims of exercise or recognition of its sovereignty, it is most important to consider that when Bahrain began seriously to press its claim to the Hawar islands in the 1930s, it did so through a clandestine occupation by moving a garrison to the islands. This occupation took place at around the time when Bahrain made a written claim to the Hawar islands in Belgrave's letter of 28 April 1936 to the Political Agent in Bahrain⁹¹. The Ruler of Qatar took the view that this action clearly amounted to aggression within Article X of the 1916 Treaty, and complained to the British on 10 May 1938 in view of:

"the treaties which exist between me and H.B.M.'s Government upon which I rely..."

requesting:

"prompt action and to prevent the aggressors who ventured to take these actions without my knowledge. I am quite confident that you will, in order to keep the peace and tranquillity, do what is necessary in the matter⁹²."

⁹⁰ See, Annex III.106, Vol. 7, p. 27.

⁹¹ See, Belgrave's letter dated 22 December 1938 confirming "a military garrison was only posted there recently" and also referring to the building of "fortifications" on the islands (Annex III.174, Vol. 7, p. 371). See, also, the Political Agent Alban's note of 1941 to the Political Resident, Prior, where he draws attention to the "building' of a fort there" and "garrisoning it with police" (Annex III.228, Vol. 8, p. 123).

⁹² See, Annex III.150, Vol. 7, p. 253. It appears the Ruler of Qatar may in addition have been invoking the more recent assurance of protection against aggression granted to him by the Political Resident's letter of 11 May 1935 subject to his granting the oil concession to APOC. See, Annex III.98, Vol. 6, p. 501.

In his subsequent letter of protest of 27 May 1938, the Ruler of Qatar again characterised Bahrain's action as "an aggressive act"⁹³.

5.59 Bahrain's aggression and hostile occupation is clearly unsupportable in international law and would have no basis in law. As stated in Oppenheim:

"The principle *ex iniuria ius non oritur* is well established in international law, and according to it acts which are contrary to international law cannot become a source of legal rights for a wrongdoer"⁹⁴.

In support of this proposition, the learned authors point out that "The ICJ has repeatedly held that a unilateral act which is not in accordance with law cannot confer upon a State a legal right"⁹⁵.

C. Bahrain's continued Failure to secure Regional Support

5.60 It appears that during this period Belgrave was also seeking support for Bahrain's claim to the Hawar islands by writing to the various rulers in the region. In response to one approach, Sheikh Shakhboot bin Sultan, the then Ruler of Abu Dhabi, in a letter of 27 July 1930 informed Belgrave:

"Regarding your queries concerning whether the Hawar islands belong to Qatar, to Qatar and Bahrain, or to Bahrain only, we inform you that the Hawar are uninhabited islands which belong to Qatar, as we have been told by people whom we trust, and we believe what they say. Bahrain has no right to them [the islands] neither in the past nor in the future.

They [the Hawar Islands], as reported by people who have been there are [made up of] seven or eight pieces [islands] the largest of which is Hawar surrounded by smaller [islands]. They say that its name Hawar is like Hawar Al-Naqa [baby camel], the camel being the country of Qatar.

⁹³ See, Annex III.157, Vol. 7, p. 285.

⁹⁴ Annex III.307, Vol. 8, pp. 545-546, and footnote 4 thereto and the cases there cited.

⁹⁵ *Ibid.*, footnote 4.

Why do you ask about it? I hope there is no dispute about it, for we are ready to testify⁹⁶."

5.61 Thus Sheikh Shakhboot bin Sultan from the time he became the Ruler of Abu Dhabi in 1927 (until 1966) continued, as did his predecessors, to reaffirm Qatar's ownership of Hawar. In a further letter of 22 August 1934 to the Ruler of Bahrain himself, he was strongly critical of Bahrain's designs to take the Hawar islands from Qatar. He wrote:

"You know, as well as we do and those who are present with us, that those islands belong to Qatar. It is one of Qatar's islands. So, dear [sir], if one took all one wants, we would take part of Persia, part of the Levant and part of Egypt. We hope that the Adviser will not compel you to take our country as well. What you have done will not escape the notice of those who will come after you and, my dear [sir], injustice is a terrible thing. What you have done is too much. You have never wanted a reconciliation with Bin Thani.

Our son in Qatar has told us that poor Bin Thani is trapped by those whom you and we know. If, my dear [sir], they are not loyal to their country how can they be loyal to you? The one who does harm to his country would not mind doing harm to other countries as well. We know that all those with Bin Thani - Darwish, Al-Hitmi and Al-Jabor - keep the old man in the dark⁹⁷."

5.62 In view of his frustration upon failing to secure the support of the Sheikh of Abu Dhabi, Belgrave even wrote to one of Sheikh Shakhboot's representatives (in the eastern province of Abu Dhabi) to enlist his support in persuading Sheikh Shakhboot that it would be in his interest to cooperate with Bahrain. By a letter of 15 March 1936, he wrote to Al-Sheikh Ahmed bin Hilal Al-Dhahiri:

"We inform you that Sheikh Abdullah Bin Jassim, Sheikh of Qatar, has asked his adviser to define the borders [of the lands] which belong to him and to Sheikh Shakhboot, in which he knows there is oil. Sheikh Shakhboot did not listen to what we had told him and did not listen to the advice. We would like you to bring to his attention that Bahrain seeks what is good for him. This is to keep the Sheikh of Qatar preoccupied with more than one issue, coming from all directions. With this letter you get 200 rupees, three sacks of rice, three of sugar and 25 sacks, made of palm leaves,

⁹⁶ Annex III.76, Vol. 6, p. 397.

⁹⁷ Annex III.95, Vol. 6, p. 489. Underlined as in the original.

full of Qateefi dates from the Sheikhs [of Bahrain] for your people. We are awaiting your reply⁹⁸."

5.63 This attempt to put indirect pressure on Sheikh Shakhboot to support Bahrain also failed. Indeed, Sheikh Shakhboot was becoming annoyed at the persistent attempts by Bahrain to enlist his support in its designs against Qatar. In a strongly-worded letter to Belgrave of May 1937, Sheikh Shakhboot states:

"We have received your respected letter at the most blessed hour. We have noted what you said. Yes, we talked about the subject of our people living in Hawar. This cannot be denied by any sane person who knows the sea of our country and the region. I have got the names of each and every one of those who inhabited it. I think you know that the Al-Dawasir, who allege that they are its owners, have no right to it. They are, as we and you know, followers of Bin Saud and they live in Zallaq in Bahrain.

If you give them Hawar, we will ask for compensation from you for our people here. This means that you have no right to ask us not to interfere. We communicate with our brother Sheikhs of Qatar in the eyes of Allah and His creatures [openly].

We see and understand everything and keep silent but without making any concession. We inform you that we do not want you to take our side in the matter of Al-Udeid as it is the home of our people, the Al-Manaseer. As for Dass and Delma, let whoever is entitled to them speak up.

We are not disagreeing with Bin Thani. Let bygones be bygones. It was the custom of our ancestors to invade and their descendants should not be harmed by their deeds.

We demand that you keep out of our country's affairs, whether your intentions are good or evil. We know how to protect them without you. We will not accept your communicating with us unless it is only for greeting. If you need something let your man here, Bin Rizoogi, inform us. He is assigned the task of taking this letter to you. May Allah's peace and blessing be upon Muslims only; one and all⁹⁹."

This communication is particularly important in demonstrating that Sheikh Shakhboot also rejected Bahrain's support in its territorial differences with Qatar relating to Al-Udeid in exchange for Abu Dhabi support to Bahrain on its claim to Hawar islands.

⁹⁸ Annex III.101, Vol. 7, p. 5.

⁹⁹ Annex III.128, Vol. 7, p. 141.

5.64 Another important communication which demonstrates Bahrain's failure to secure support from rulers in the region for its claim to the Hawar islands is a letter of 13 December 1937 from Sheikh Shakhboot of Abu Dhabi to Sheikh Saeed bin Maktoom of Dubai where he states:

"Well, you see the treachery of taking Hawar. Hawar is an absolute right of Bin Thani; we expect this treachery from Al-Khalifah and the English. It is an absolute injustice. We fear they will turn against us and that we will be taken off guard. The point in your message is fully understood and will always be kept in mind. We hope nothing will upset us as the case with Bin Thani did. His messenger came to us and we spoke with him and informed him [of what is going on]. He who is in a weak position has got to make promises to the one who is in a stronger position. I believe the meaning of this does not escape your notice. *You see, his [Bin Thani] weakness is caused by those who are beside and around him,* and we cannot speak for fear of the messenger who is a bastard. He is the source of our plight, the one-eyed man and nobody else. May Allah help us treat him in the way he deserves¹⁰⁰."

5.65 Closer to the time of the July 1939 decision, Belgrave made further and firmer efforts to secure the support of the regional rulers. In a letter dated 20 July 1938 addressed to Khan Bahador Issa Abdul Lateef Al-Sarkal, representative of the British government in Sharjah, Belgrave wrote:

"After inquiring about your health and your children's health, we order you to inform the Sheikhs around you, in each of Sharjah, Dubai and Abu Dhabi, of the following:

First, to inform them, Bahrain, by the approval of the British State, is going to take the Island of Hawar which belongs to Qatar.

Second, we are going to give them a copy of the signed document concerning the issue when it is disclosed after it is signed by the Government.

Third, we do not want anybody to interfere in the issue or to take Qatar's side until the entire issue is revealed and we do not want anybody to support what Qatar says.

Fourth, the matter of taking Hawar from Qatar is over, and if anybody from any of these cited countries gives witness, the ruler will be responsible for it, and nobody else, since the people of these countries have huts in Hawar and they have been sold since olden times to the people of Bahrain. Please inform the Sheikhs of all these

¹⁰⁰ Annex III.141, Vol. 7, p. 203; emphasis added.

matters. Give them our regards and relay to them the Government's satisfaction with them¹⁰¹."

5.66 In another letter of 15 February 1939 addressed to Abdul Razag Rizoogi, a subordinate of the Political Resident in the Trucial States, Belgrave stated:

"... The issue of Hawar does not concern the Rulers of the Trucial Coast, therefore it is better for them to change the subject. But we inform you that *even if Hawar belongs to Qatar and we don't disagree with this*, it is in the interests of the British State that it should belong to Bahrain. This is what the honourable officials who preceded us decided. We carry out what we have been asked to do, especially because to us the interests of Bahrain are superior to the interests of Qatar and its Sheikhs.

It is in the month of July a royal decree will be issued to *annex Hawar of Qatar to Bahrain*. We inform you that we have prepared everything that will guarantee the right of Bahrain to it, including reports and help [other necessary things]. We ask you to give the rulers of the countries our regards and the regards of Sheikh Hamad Bin Issa Al-Khalifah who expects them to stand with him and does not forget the stands taken by the Sheikhs of Qatar with regard to their countries in their [Qataris'] repeated attacks and the attacks on their relatives in Oman¹⁰²."

5.67 In fact, in a letter of 2 December 1939, from Abdul-Aziz bin Abdul-Rahman Al-Faisal of Saudi Arabia addressed to Sheikh Shakhboot on the subject of Bahrain's taking of Hawar, he had stated:

"As for the Qatari Sheikh's arguments. Allah knows that we are on his side, but we are still waiting for his reply to Bahrain's claims. If Bahrain acts in this way it is [because] Bahrain is coerced and not endowed with free will. O mare, join the horses [i.e. when in Rome, do as the Romans do]. I was angry with Mohammed Bin Hazeem and with Ahmed Bin Rashid's sons regarding the document which they had sent to the English. For they are my subjects in Al-Khubar and Al-Dammam. They have made me a promise not to harm anybody and not to interfere in the matters going on in Bahrain, if they want to be safe¹⁰³."

It is significant to note that Mohammed bin Hazeem and Ahmed bin Rashid's sons were signatories to a document forwarded by Belgrave in January 1939 to the British which was intended to establish that these persons belonged to the Dawasir tribe, lived in Hawar and

¹⁰¹ Annex III.167, Vol. 7, p. 339.

¹⁰² Annex III.180, Vol. 7, p. 405; emphasis added.

¹⁰³ Annex III.216, Vol. 8, p. 73.

owed allegiance to Bahrain. Repudiations of signatures to this document by a number of other signatories are referred to in detail in Chapter VI, below¹⁰⁴.

5.68 It is also relevant to refer to yet another communication to the Ruler of Abu Dhabi, Sheikh Shakhboot bin Sultan on 4 October 1940, addressed by his representative in Bahrain, where he states:

"You have been aware of the situation between Qatar and Bahrain, since you heard of the taking of Hawar from Qatar, and [the fact that] the Adviser has paved the way for Bahrain into the Island [Hawar] *by settling the Al-Dowasir there*, the reason for which was not understood by people at the time.

We have been aware of the taking of Hawar since the issue of Al-Zakhnooniyah; and since the Al-Dowasir's departure to Al-Zallaq and the visit of Qatar's Adviser with Nassir Bin Atiyyah after Al-Zubarah [battle]. But what keeps us worried is the news regarding the issue of the maritime boundaries between Qatar and Bahrain: that many islands will be taken by Bahrain in the same process. The fear is that we may suffer the same¹⁰⁵."

5.69 Finally, in a letter of 13 December 1940 addressed to Sheikh Shakhboot, Sheikh Saeed bin Maktoom of Dubai confirmed that:

"With reference to your question about what we think of your reply to the Sheikh of Qatar, we would like to inform you that we suggest you send a word to the Sheikh there that you, along with Bin Maktoom, hold the same views, and that annexation (taking things by force) is something that Allah and his creation would not approve of. We see that the issue of Hawar, ad-Dibal and Jaradah is a plot the British are making to divide us¹⁰⁶."

He further went on to say:

"We have known of Sheikh Bin Thani's arguments and I suggest that he submit his complaints to King Bin Saud since the English are his friends. I also suggest that he write to the Sultan Master of Oman since there has been an issue between them. We see that Bahrain has no rights whatsoever. This is what we said in our letter to Sheikh Hamad Bin Issa. May you live long for your sincere brother¹⁰⁷."

¹⁰⁴ See, paras. 6.58 *et seq.*, below.

¹⁰⁵ Annex III.223, Vol. 8, p. 103; emphasis added.

¹⁰⁶ Annex III.224, Vol. 8, p. 107.

¹⁰⁷ *Ibid.*

Section 4. Qatar's Territorial Integrity and its Security

5.70 As shown in Chapter IV, most of the main Hawar island as well as many of the other islands in the group fall within three nautical miles of the coast of Qatar¹⁰⁸. It will also be seen from *Map No. 14*, facing page 250, that after Qatar's extension of its territorial sea in 1992 up to 12 nautical miles, the entire group of the Hawar islands falls within Qatar's territorial waters.

5.71 It is well known that the territorial sea had almost universally come to be regarded ever since the 17th century as so essential to the security of the coastal State that it was accepted as part of its territory and subject to its complete sovereign jurisdiction and control. This aspect is of particular importance in relation to the security of Qatar in view of the close proximity of the Hawar islands to the mainland, and given Bahrain's actions on the islands. A description is given in Appendix 2 of the fortifications constructed by Bahrain on Hawar in recent years as well as its placing military arms and equipment there, posing a direct danger to the security of the territory of Qatar. It is particularly important to draw attention to the fact that this threat to Qatar's security is posed to its south-west region where its principal oil fields are located.

5.72 It seems pertinent to refer here to the very old and well known *Anna* case of 1805, dealing with the status of certain alluvial islands formed off the coast of the Mississippi River and emphasising that the security of a coastal State was a paramount consideration. In that case, it was stated:

"Consider what the consequence would be if lands of this description were not considered as appendant to the mainland, and as comprised within the bounds of territory. If they do not belong to the United States of America, any other power might occupy them; they might be embanked and fortified. What a thorn would this be in the side of America! It is physically possible at least that they might be so occupied by European nations, and then the command of the river would be no longer in America but in such settlements. The possibility of such a consequence is enough to expose the fallacy of any arguments that are addressed to shew, that these islands are not to be considered as part of the territory of America. Whether they are composed of earth or

¹⁰⁸ See, para. 4.5, above and *Map No. 5*, facing page 50.

solid rock, will not vary the right of dominion, for the right of dominion does not depend upon the texture of the soil¹⁰⁹."

In an Indian appeal to the Privy Council of Great Britain, Lord Shaw cited with approval the above-mentioned judgment of Lord Stowell in the *Anna* case, and stressed:

"The confusion that might be produced by leaving islands, emergent within the three-mile limit, to be seized by the first comer is clear beyond controversy. He might be a foreign citizen: he would of course hoist the flag of his own nation, and that nation might proceed to fortify the emergent lands...¹¹⁰."

5.73 It is relevant to note that the very British officials (Fowle and Weightman) who recommended the decision of 11 July 1939 on the Hawar islands were themselves fully aware of the rule relating to islands falling within territorial waters. At about the same time as the decision about the Hawar islands was being made, Fowle and Weightman proposed the application of the rule in determining the ownership of two islands claimed by both Bahrain and Saudi Arabia. In his letter of 10 November 1938¹¹¹, Fowle (the Political Resident) wrote that one of the islands "is within 3 miles of the Umm Na'san island i.e. within the territorial waters of that island which undoubtedly belongs to Bahrain". Accordingly, he and Weightman (the Political Agent in Bahrain) took the view that the island belonged to Bahrain - a view that was supported on the same ground by the Foreign Office in its letter of 20 December 1938¹¹² and by the India Office in its letter of 4 January 1939¹¹³.

5.74 It is therefore Qatar's submission that if the fact that most of the Hawar islands were located in Qatar's territorial waters had been taken into account, the British decision would necessarily have been different.

¹⁰⁹ Annex III.289, Vol. 8, p. 447.

¹¹⁰ Annex III.291, Vol. 8, p. 455.

¹¹¹ Annex III.171, Vol. 7, p. 357.

¹¹² Annex III.172, Vol. 7, p. 363.

¹¹³ Annex III.176, Vol. 7, p. 389. The letter is erroneously dated 1938. In the event, when the Saudi Arabian Government pointed out that the island in question was somewhat more than 4 miles from Umm Na'san, the view was abandoned both by the Political Resident and the India Office. *See*, Annex III.196, Vol. 7, p. 507 and Annex III.205, Vol. 8, p. 23.

Section 5. Conclusion

5.75 The above review of the records establishes that the integrity of the territory of Qatar, including the islands of Hawar, was clearly accepted and recognised by the British and the Turks as also by rulers of other countries in the region, and by Bahrain itself. In fact, until a short period before the "provisional" British decision of 1936 that the Hawar islands belonged to Bahrain, the British authorities in London and in India had consistently recognised that the Hawar islands were part of Qatar. The British decision of 1939 is accordingly indefensible, particularly when account is taken of the fact that the Hawar islands fall mostly within three nautical miles of the Qatar mainland coast.

CHAPTER VI

THE DEFECTIVE NATURE OF THE BRITISH DECISION OF 1939

Section 1. Background to the 1939 Decision

A. Nature of British Relations with Qatar and Bahrain

6.1 The nature of the relations between the British Government, on the one hand, and the Rulers of Qatar and Bahrain, on the other hand, is relevant to the issue whether, in 1939, the British Government had the power unilaterally to determine with binding effect whether title to the Hawar group of islands was vested in Qatar or in Bahrain. The historical survey in Chapter III above shows that by 1939, both Qatar and Bahrain, like other Gulf sheikhdoms, were British protected States in special treaty relations with the British Government. The content of these treaty engagements is spelt out in the *Précis of the Treaties and Engagements between the British Government and the Chiefs of the Arabian Coast of the Persian Gulf*¹. In the case of Qatar, there is, in addition to the treaty of 1916, the new assurance of protection against attacks on Qatari land territory given by the Political Resident to the Ruler of Qatar on 11 May 1935².

6.2 It is further explained in the Political Resident's letter of 11 May 1935 that the protection from the British Government would be:

"... against serious and unprovoked attacks which may be made on your territory from outside your frontier."

6.3 The protection "naturally refers to serious incursions, and not to small raids"; and the British Government "... naturally expect you to take all reasonable steps for your own defence and for maintaining order within your own frontier". The protection was to be afforded by use

¹ Revised up to 29 September 1928, constituting an Appendix to *The Persian Gulf Historical Summaries, 1907-1953* (pp. 165-170). An excerpt from this *Précis* covering treaties with Bahrain and Qatar is at Annex II.10, Vol. 4, pp. 280-281.

² The full text of this additional assurance of protection given in 1935 is at Annex II.11, Vol. 4, p. 311. It will be seen from the text of the Political Resident's letter that the British Government conditionally undertook to afford the protection. The condition was that the Ruler of Qatar give the oil concession about which the Anglo-Persian Oil Company had been negotiating to that company; and it may be noted that this condition was met.

of the Royal Air Force, and certain facilities were requested "... in order that ... aircraft should be able to come to your assistance as soon as possible and be able to take action swiftly and effectively when they have arrived".

6.4 A brief summary of the engagements undertaken by the Arab rulers in the Gulf towards the British Government is given at the end of the *Précis*³. It should be noted that many of the engagements undertaken by the Arab rulers in the Gulf towards the British Government are common to all (or virtually all) these rulers because this is a significant feature which may well be decisive in determining whether, and if so to what extent, the British Government had the power in 1939 unilaterally to decide whether title to the Hawar group of islands was vested in Qatar or Bahrain. This is because the award of the Court of Arbitration constituted in 1978 to resolve the dispute between Dubai and Sharjah (both by then forming constituent parts of the United Arab Emirates) concerning the demarcation of their boundaries touches upon the nature and extent of the power of the British Government in this context. The award of the Court of Arbitration in the *Dubai/Sharjah Border* case has been published in the *International Law Reports*⁴. In its award, the Court of Arbitration reviewed the content of the undertakings given by the Rulers of Dubai and Sharjah towards the British Government. It found that they corresponded approximately to those set out in points 1 and 2 of the summary of the *Précis*⁵. From this, the Court concluded:

"It is therefore clear that no treaty authorised the British authorities to delimit unilaterally the boundaries between the Emirates and that no British administration ever asserted that it had the right to do so. The Court has therefore come to the

³ Annex II.10, Vol. 4, p. 283.

⁴ Lauterpacht, E. and Greenwood C., *International Law Reports*, Grotius Publications Ltd., 1993, Vol. 91, pp. 549-701. Extracts of this Award may be found at Annex III.295, Vol. 8, p. 475.

⁵ See, Annex II.10, Vol. 4, p. 283. Points 1 and 2 of the summary read as follows:

"1. The following are common to the engagements of all the above Arab States to the British Government:-

The undertaking not to cede, sell, mortgage, &c., any of their territory except to the British Government, or to give any oil concession without permission.

The undertaking to prohibit the traffic of arms in their territories, and (except in the case of Koweit) the undertaking to suppress slave trade.

2. The following is common to all, except Muscat:-

The undertaking to have no negotiations with, or receive the representative of, any Power other than the British Government, except with the consent of the British Government, and the undertaking not to give any pearling or sponge fishing concession without permission."

conclusion that the consent of the Rulers concerned was necessary before any such delimitation could have been undertaken⁶."

6.5 The Court of Arbitration in the *Dubai/Sharjah Border* case then proceeded to examine whether Dubai had ever given its consent to the delimitation of its boundaries by the British authorities. It found that such consent had been given (on 18 March 1955 and on 14 June 1956), and that it had not, as Dubai sought to argue, been vitiated by duress, coercion or the threat of force:

"Having considered all of the very considerable documentation presented to it on this point, the Court has arrived at the conclusion that the consent given to the British authorities by the Ruler of Dubai in 1955 permitting them to delimit his boundaries with Sharjah was not given under the threat of force and was a valid consent⁷."

6.6 Thus, in the *Dubai/Sharjah Border* case, the Ruler of Dubai, who was challenging the validity of the decisions on the boundary taken by the British Political Agent in the Trucial States (Mr. Peter Tripp) on the basis of reports prepared by the Assistant Political Agent (Mr. Julian Walker), had, as the Court of Arbitration found, consented in advance to the determination of his boundary with Sharjah by the British authorities.

6.7 Here, there is a substantial and crucial difference between the procedure followed in the case of the decisions on the Dubai/Sharjah boundaries taken by the British authorities in 1956 and 1957 and the procedure followed in the case of the decision of the British authorities in 1939 on the attribution to Bahrain of the Hawar group of islands. In the case of the British decision of 1939 on the Hawar group of islands, no attempt had been made by the British authorities to obtain in advance the consent of the Rulers of Qatar and Bahrain to the determination by the British authorities of title to the Hawar Islands; and no consent was in fact ever given by the Ruler of Qatar.

⁶ Annex III.295, Vol. 8, p. 477. It may be noted that at the time of the British decisions concerned in that case, Dubai and Sharjah were not part of a federation, as they are now, but were independent sheikhdoms.

⁷ *Ibid.*, p. 478.

6.8 This is in sharp contrast to the position in the *Dubai/Sharjah Border* case. Nowhere in the British archives relating to Qatar and Bahrain is there to be found any authorisation similar to that given by the Ruler of Dubai on 18 March 1955, when he gave a written undertaking on his own behalf and on behalf of all his successors as Rulers of Dubai that they would not:

"... dispute or object to any decision that may be decided by the Political Agent regarding the question of the boundaries between our Emirate and the Emirate of Sharjah towards the Coast⁸."

6.9 Qatar accordingly contends that, in the period immediately preceding the British Government's decision of 11 July 1939, purporting to give the Hawar islands to Bahrain, no consent was either sought or given by the Ruler of Qatar to the making of a determination by the British Government as to whether Qatar or Bahrain had sovereignty over the Hawar islands. As will be demonstrated in Sections 2 and 3 of this Chapter, the procedure followed by the British Government in 1939 in reaching its decision on whether Qatar or Bahrain had title to the Hawar islands was so defective, and the evidence on which the British Government based that decision was so suspect, that, even if it could be established that Qatar had given its prior consent to the making of such a decision, the decision itself was vitiated on a number of grounds, including error, and cannot be permitted to stand.

B. Events leading up to the 1939 Decision

6.10 In Chapter III, Sections 4 and 5 of this Memorial⁹, Qatar has drawn attention to the evolution of relations between the British Government, on the one hand, and the Rulers of Qatar and Bahrain, on the other hand. These relations developed as a result of the separate histories of Qatar and Bahrain. It will have been noted that the British authorities in the Gulf maintained a much closer relationship with the Rulers of Bahrain than they did with the Rulers of Qatar, partly in consequence of the fact that the Government of India (responsible

⁸ Cited in *Dubai/Sharjah Border* case, *ibid.*, p. 480.

⁹ See, also, Chap. V, above.

for the exercise of political control in the Gulf until 1947) had maintained permanent representatives in Bahrain (known as Political Agents) since 1904. No doubt in part because of the Turkish presence in Qatar from 1871 to 1915, and in part also because of opposition to the appointment of British representatives in Doha by successive Rulers of Qatar, the British had no such direct representation in Qatar. Indeed, it was not until 1949 that the British Government (who had assumed responsibility from the Government of India in 1947/48) appointed a Political Agent in Qatar. Thus, during the 1920's and the 1930's, a crucial period in the history of the Gulf, there was no direct British official representation in Qatar¹⁰.

6.11 Other factors operated in the 1920's and the 1930's to strengthen the ties of Britain to Bahrain and to weaken any potential Qatari influence. As has already been noted, these included:

- (1) the continuing Persian threat to Bahrain based upon its long-standing claim of sovereignty¹¹.
- (2) the arrival of Belgrave in Bahrain in 1926¹².
- (3) the willingness of Bahrain, in response to British requests, to provide aeronautical facilities, both civil and military, for a major staging-post on the route from Britain to India and beyond, when contrasted with the reluctance of Qatar to permit the development of air links¹³.

1. The discovery of oil and its impact

6.12 But it was the discovery of oil in the Gulf during the 1930s which had an immediate impact on the traditional local economies and indeed on the relations between Qatar, Bahrain

¹⁰ See, Appendix 3, Vol. 15, p. 95.

¹¹ See, para. 3.72, above.

¹² See, paras. 3.69-3.70, above.

¹³ See, paras. 3.71 and 3.74, above.

and Britain. Attention has already been focussed on certain aspects of this development, including the conclusion of the first petroleum concession by the Ruler of Bahrain with Eastern and General Syndicate Ltd. (EGS) in 1925, and the conclusion of the first petroleum concession between the Ruler of Qatar and the Anglo-Persian Oil Company (APOC) in 1935.

6.13 There is strong evidence that throughout the negotiations on an additional area between 1928 and 1933, both the British officials and the oil companies themselves were clearly of the view that the Hawar islands did not belong to Bahrain.

6.14 Under the terms of the Concession Agreement with EGS of 2 December 1925, the Ruler of Bahrain had granted to the Company (EGS) an exclusive exploration licence for a period not exceeding two years (with the possibility of extension for a further period of two years):

"... throughout the whole of the territories under his [the Ruler's] control...¹⁴."

He also undertook to grant it, either during the currency of the exploration licence or upon its expiry, a prospecting licence over areas to be selected by the Company with the approval of the Ruler and with the cognizance of the Political Resident. In addition, the Ruler undertook to grant to the Company, on the expiry of the prospecting licence, a "mining lease over an aggregate area not exceeding 100,000 acres" divided into blocks to be selected by the Company.

6.15 Beginning in 1928, negotiations were conducted between EGS, its successor BAPCO (who in fact took over in 1930 the EGS interest in the 1925 concession), and the Ruler of Bahrain for a concession over that portion of the Bahrain islands and territorial waters remaining after the company had chosen its 100,000 acres. This further area became known as the "additional", "remaining" or, more usually, "unallotted" area. During the negotiations,

¹⁴ See, Annex III.68, Vol. 6, p. 353.

which were suspended in 1933 at BAPCO's request and resumed only in 1936, it was necessary for the negotiators to identify the acreage of land and territorial waters which would be comprised in the unallotted area.

6.16 On 23 April 1928, Major Frank Holmes, the local representative of EGS and later to be the local representative of BAPCO until 1933, had written to the Political Agent in Bahrain applying, on behalf of EGS, for permission to negotiate an oil concession covering:

"... that portion of the Bahrain Islands and its Territorial Waters which is not included in the Bahrain Oil Concession Agreement..."¹⁵

by which 100,000 acres of the Bahrain Islands was granted to EGS by the Ruler of Bahrain on 2 December 1925. The letter of 23 April 1928 continued:

"The total area of the Bahrain Islands including its Territorial Waters is roughly 198,000 acres approximately 309 square miles. The area granted under the Bahrain Oil Concession Agreement is 156 square miles. Therefore this request is for permission to negotiate for the balance of the total area including Territorial Waters which is 153 square miles equalling 97,920 square [*sic*] acres."

6.17 Now, it is clear that the acreage of the "Area Remaining" applied for by Major Holmes in 1928 (amounting to 97,920 acres) is altogether too small to be capable of being interpreted as including such areas as the Hawar islands, Fasht Dibal or Qit'at Jaradah; and the further explanation given by Major Holmes in his letter to Ballantyne of 6 September 1933¹⁶ only serves to corroborate the conclusion that neither the Hawar islands, nor Fasht Dibal, nor Qit'at Jaradah could have been included in the area calculations made in 1928.

6.18 Independent calculations were made by the Petroleum Department (Mines Department) in London in 1933 for the area of the Bahrain Islands and that part of the territorial waters of the islands regarded at the time as workable for oil exploitation. In a letter from Starling (Petroleum Department) to Laithwaite (India Office) of 17 August 1933, it is stated:

¹⁵ Annex III.74, Vol. 6, p. 389.

¹⁶ Annex III.93, Vol. 6, p. 475.

"We have measured the area of the islands and the territorial waters up to a limit of 1 mile, and the result is as follows:-

| <u>Island</u> | <u>Area of Land.</u> | | <u>Shoal Water Area.</u> | |
|------------------------|---------------------------|----------------|---------------------------|---------------|
| | <u>Sq. miles = Acres.</u> | | <u>Sq. miles = Acres.</u> | |
| Bahrein | 210.15 | 134,496) | 74.25 | 47,521 |
| Sitra | 3.25 | 2,080) | | |
| Nabbi Salib | 0.25 | 160) | | |
| Muharrak | 5.25 | 3,360 | | 8,960 |
| Um Nassan | 5.55 | 3,552 | 15.70 | 10,048 |
| Cliff | 0.25 | 160 | 4.45 | 2,848 |
| Jadum (Fasht al Yarim) | <u>1.50</u> | <u>960</u> | <u>11.00</u> | <u>7,040</u> |
| TOTALS | 226.20 | 144,768 | 105.40 | 76,417 |

It is doubtful whether Jadum Island (Fasht al Yarim) is of any value, as a drilling area, being remote from land and surrounded by a large area of shoal water, the latter often dry at low water.

The total area of these Islands, plus a belt of water 1 mile wide surrounding their land area = 221,185 acres, available for possible drilling¹⁷."

6.19 These independent calculations are not all that far removed from the original calculations made in 1928 (221,185 acres as compared with the earlier 198,000 acres). The difference may be attributable in large part to the method of calculating the acreage of territorial waters (or shoal water area) to be taken into account. What is beyond question is that the 1933 calculation did not include the acreage of the Hawar islands, Fasht Dibal or Qit'at Jaradah since none of these geographical features figures in the specific list of the Bahrain Islands incorporated in Starling's letter to Laithwaite of 17 August 1933¹⁸.

6.20 There is further evidence that neither British officials in London or the Gulf nor the oil company representatives concerned considered, in 1933, that the Hawar islands were included in the Bahrain group of islands. Firstly, the acting Political Resident (Loch) recommended, in telegram No. 27 to the Secretary of State for the Colonies (Colonial Secretary) in London of 23 July 1933, that in any new concession it would:

¹⁷ Annex III.92, Vol. 6, p. 469.

¹⁸ *Ibid.*

"... be prudent to name islands i.e. Bahrain Island, Muharraq and Sitrah (Umm Nassan and other islets near main island might be included if question is raised), otherwise controversy may arise over Hawar Island and Bahrain claim to certain places on west coast of Qatar peninsula¹⁹."

Although the Colonial Secretary accepted this recommendation, the Political Agent in Bahrain was unable to obtain the agreement of the Ruler of Bahrain, who wished the area to be called "Bahrain Islands" in the new concession "so that question of Hawar Island and Qatar will not be made prominent by their omission²⁰". The acting Political Resident thought that the Ruler's view on this issue could be accepted:

"I think that we may accept this as Hawar Island is clearly not one of the Bahrain group²¹."

6.21 The India Office were concerned at this time about the risk that EGS and its successor BAPCO might attempt to claim that they had rights in respect of Hawar, having regard to the reference to the Ruler of Bahrain's "territories" in the 1925 concession. But Laithwaite managed to persuade himself that this risk was negligible:

"The exploration licence granted under the Agreement of 2nd December, 1925 (from the area specified in which the areas under the prospecting licence and mining lease must be selected) is, however, in respect of 'the whole of the territories under' the Sheikh's 'control'. This seems clearly to exclude areas in Qatar and presumably also would exclude Hawar which belongs in any case geographically to Qatar, and is the westernmost and largest of a group of islands just off the Qatar coast...²²."

6.22 There is a final piece of evidence which goes far towards confirming the above account of the understanding of British officials in 1933. In response to a telegraphic request from London on 2 August 1933, for a marked map showing the area recognised as the Bahrain Islands, the acting Political Resident sent a despatch on 4 August enclosing a map published in 1906 by the Survey of India. The map enclosed with this despatch is unfortunately missing from the British archives, but the despatch itself describes it as showing "... the main island of Bahrain, the islands of Muharraq, Sitrah and Nabi Salih and certain islets". The despatch also

¹⁹ Annex III.85, Vol. 6, p. 437.

²⁰ Annex III.86, Vol. 6, p. 441.

²¹ Annex III.88, Vol. 6, p. 449.

²² Annex III.91, Vol. 6, p. 461.

states that the enclosed map "... does not show the island of Umm Nassan (and some petty islets) which lies about two miles off the west coast of Manama island...". Finally, paragraph 3 of the despatch summarizes the position as follows:

"The whole of the islands shown on the enclosed map, and also Umm Nassan and the petty islands mentioned in the second paragraph of this letter are included in the general term Bahrain Islands²³."

It hardly needs stressing that this definition of the term Bahrain Islands pointedly excludes the Hawar islands.

6.23 The negotiations with EGS/BAPCO for a new concession covering the "unallotted" area of Bahrain were suspended in the second half of 1933 at the request of BAPCO and were not resumed until 1936 when Petroleum Concessions Ltd. (PCL), by this time Qatar's concessionaire, joined in the bidding.

6.24 While these negotiations for a new concession were in progress, there had been significant developments on the ground, including the discovery of oil in Bahrain in 1932, and the subsequent building of a pipeline and storage facilities in 1934, and of a refinery in 1935²⁴.

6.25 Oil development began later in Qatar than in Bahrain; and this was to have a decisive impact on developments in the area. As already noted, Qatar's initial concessionaire was the Anglo-Persian Oil Company ("APOC")²⁵; APOC promptly assigned its interest under its 1935 concession to Petroleum Concessions Ltd ("PCL"), which in turn passed on its interest to its subsidiary, Petroleum Concessions (Qatar) Ltd. These were all British companies although ultimately there were substantive non-British interests in the parent company, the Iraq Petroleum Company.

²³ Annex III.90, Vol. 6, p. 457.

²⁴ See, para. 3.67, above.

²⁵ The text of the 1935 Concession Agreement between the Ruler of Qatar and APOC is at Annex III.99, Vol. 6, p. 507.

6.26 It will be seen that, in Article 1 of the 1935 Concession Agreement with APOC, the Ruler of Qatar grants to the Company various enumerated rights to explore, to prospect, to drill for and to extract petroleum and other specified substances "throughout the principality of Qatr". The territorial scope of the 1935 Concession Agreement is further defined in Article 2 which states *inter alia*:

"The State of Qatr means the whole area over which the Shaikh rules and which is marked on the north of the line drawn on the map attached to this Agreement²⁶."

The map attached to the 1935 Concession Agreement shows that the Hawar group of islands is unmistakably comprehended within the territory of the State of Qatar as so defined²⁷.

6.27 This is confirmed by a "Reconnaissance of Qatar" carried out on 9 May 1934, by Royal Air Force aircraft coming under the command of Air Headquarters, British Forces in Iraq, although operating from Bahrain²⁸. What is of interest in these reconnaissance reports is that Hawar island is treated as unquestionably being Qatar territory. Thus, in Wing-Commander Oxland's covering report of 30 May 1934, the following sentence is included:

"As regards flying boats the foot of DOHAT AS SALWA near SALWA Wells is quite suitable for flying boats except when the 'shamal' (north wind) is blowing, and in those circumstances flying boats could take refuge in the southernmost bay of DJEZIRA HAWAR²⁹."

The report by the flying-boat squadron³⁰ confirms that "the southernmost bay of HAWAR ISLAND would possibly afford good shelter in emergency...". The RAF was thus in no doubt at this time that Hawar island belonged to Qatar.

6.28 As already noted, oil was first discovered in the western part of Qatar in 1939; but, with the outbreak of war in that year, the British Government ordered PCL to close down their

²⁶ *Ibid.*, p. 511.

²⁷ *Ibid.*, p. 529.

²⁸ Full details of this reconnaissance are contained in Annex III.94, Vol. 6, p. 479.

²⁹ *Ibid.*, p. 483.

³⁰ Appendix B to the main report, *ibid.*, p. 486.

operations for the duration. Thus, it was not until 1949 that the first shipment of oil took place from Qatar - some 15 years after the corresponding event in Bahrain.

6.29 Thus, during the crucial period from about 1932 to 1947, when the significance of sovereignty and sovereign rights over islands, shoals and the seabed and subsoil of the area was becoming increasingly apparent, when the rival oil companies were seeking to exploit and extend their concessions, and when the British authorities were grappling with the sudden impact of oil wealth on traditional Arab societies combined with a world war in which oil supplies were of paramount importance, the advantage gained by Bahrain with its relatively early development as an oil producer in the Gulf was to be enormously beneficial in the context of its dispute with Qatar as regards sovereignty over the Hawar islands. Inevitably, British sympathies lay with Bahrain rather than with Qatar, which was far behind Bahrain both in production and a sophisticated appreciation of what was involved.

6.30 Negotiations for a concession over the "unallotted" area of Bahrain were resumed in 1936, the competition being between BAPCO and PCL. Correspondence and records in the British archives dating from the period throw an interesting light on the developing situation. There is first of all a record of a meeting held in the India Office on 1 October 1936, which was attended by Walton (India Office), Belgrave and Fowle³¹. This record embodies the frank admission that, when they made their offer originally, "the Bahrein Petroleum Company were unaware of the fact that the Hawar Islands were anything to do with Bahrein". This frankness carries over into the marginal comments made by Belgrave on a letter to him from Ballantyne (BAPCO) of 5 October 1936³². Against a sentence in the letter stating that, throughout the earlier negotiations (*semble* from 1928 to 1933) conducted by Holmes and himself, all parties had in mind as the additional area the balance of the territory coming within the jurisdiction of the Sheikh after the deduction of the 100,000 acres covered by the 1925 Concession, Belgrave comments significantly:

"During Holmes' negotiations, no mention was made of Hawar."

³¹ Annex III.113, Vol. 7, p. 59.

³² Annex III.114, Vol. 7, p. 63.

6.31 Nevertheless, it was clearly in the interest of the Ruler of Bahrain in 1936 to maximize the territory over which he could claim sovereign rights and thereby grant valuable oil concessions. It was also in BAPCO's interest to support such claims. APOC/PCL had already been granted a concession over the whole of the Ruler of Qatar's territories, so that BAPCO's only chance of obtaining rights to prospect in the Hawar islands was if Bahrain were determined to have sovereignty over them. At first sight, it might therefore seem that PCL, as Qatar's concessionaire, would have an interest in pressing the claim of Qatar to sovereignty over the Hawar islands; and indeed, it did so.

6.32 Thus, on 30 June 1939, PCL wrote to Peel (India Office) making the point that the original negotiator of the Qatar concession in 1935, Mr. Mylles, "was and remained under the impression that Hawar formed part of the Concession area³³". However, once PCL entered the bidding for the Bahrain unallotted area in competition with BAPCO, it had no interest in antagonising the Ruler of Bahrain by opposing his claim to the Hawar islands; this would be virtually certain to drive him into the arms of BAPCO. If, on the other hand, the Hawar islands were held to appertain to Qatar, PCL was assured of its rights over them anyway, since its concession covered the whole of Qatar's territories. PCL therefore soon made it clear that it did not much mind who was awarded sovereignty over Hawar, as long as it got the right to exploit any resources found there.

6.33 It is also apparent that, at this time, the oil companies were very interested in the potential resources of the Hawar islands. In reporting on 30 July 1936 on the progress of the negotiations, Walton (India Office) states that Belgrave had said that:

"... they both, the Bahrein Petroleum Company in particular, appeared to attach great value to the oil prospects of the Hawar Islands³⁴."

6.34 Notwithstanding that there had been hints in 1933 that the Ruler of Bahrain might advance a claim to sovereignty over the Hawar islands, it was not until 1936 that the Ruler put forward a formal claim. The Bahraini claim to the Hawar islands was first advanced in

³³ Annex III.206, Vol. 8, p. 27.

³⁴ Annex III.112, Vol. 7, p. 55.

Belgrave's letter to the then Political Agent in Bahrain (Loch) of 28 April 1936³⁵. It will be seen that the claim was specifically linked to the on-going negotiations for an oil concession over Bahrain's "unallotted area". Bahrain, no doubt egged on by BAPCO, who attached great importance to the oil prospects of the Hawar islands, was clearly covetous of the enormous potential for wealth represented by a group of islands which were thought at the time to be oil-rich. Some of the unsavoury and indeed unlawful activities engaged in by Belgrave and others in the 1930s in an attempt to provide support for a Bahraini claim to the Hawar islands are set out in detail below³⁶. At this point in the narrative, it is sufficient to record that, as will be demonstrated at a later stage, the campaign engaged in by Belgrave and others in his pay to secure recognition of a Bahraini claim to the Hawar islands was already under way in 1930; and that, as will be seen, it involved *inter alia* the blatant manufacturing of evidence designed to mislead any third party.

6.35 The reaction of the Political Agent (Loch) and the Political Resident (Fowle) to this Bahraini written claim to the Hawar islands is strange. In his letter to Fowle of 6 May 1936, Loch concedes that he had "never landed at Hawar Island", but that he had "flown over it". He describes it as "a low, desolate looking place near to the mainland of Qatar", but he does not discount the possibility that it may have considerable value because of the discovery of oil in Bahrain. He confesses that he has not yet been able to trace certain records relating to Zubarah and Zaknuniyah island in which Hawar might have been mentioned. He goes on to say:

"I do not recollect that Hawar Island was mentioned in the course of those proceedings, probably not as I do not think that the Turks made any attempt to raise their flag on it"³⁷.

He then concludes this cursory and inconclusive survey of the position by expressing his view that:

³⁵ Annex III.103, Vol. 7, p. 15.

³⁶ See, paras. 6.51 *et seq.*, below.

³⁷ Annex III.106, Vol. 7, p. 27. It should be noted here that the statement that the Turks did not raise their flag on Hawar is demonstrably mistaken in view of the evidence presented in Chapter V about Turkish naval surveys of Qatar and its offshore islands in the early 1870s; see, paras. 5.15 *et seq.*, above, and in particular Annex III.26, Vol. 6, p. 129.

"... subject to any past correspondence which is not available to me, ... there is real substance in [the Ruler of Bahrain's] claim and ... it might in certain circumstances suit us politically to have as large an area as possible included under Bahrain."

6.36 The reaction of the Political Resident (Fowle) is equally casual. In an express letter to the Secretary of State for India of 25 May 1936, Fowle pursues the red herring of earlier correspondence relating to Zubarah, but, in favouring the Bahraini claim to Hawar, he relies more on "evidence" dating from 1909 that "the Island has long been occupied by the Dowasir tribe of Bahrain", and on Belgrave's assertion that the present Ruler of Bahrain and his father had exercised active jurisdiction in Hawar "down to the present day". He therefore inclines to the view:

"... that Hawar should be regarded as belonging to the Shaikh of Bahrain and that the burden of disproving his claim lies on the Shaikh of Qatar³⁸."

6.37 It will be noted that:

- (a) no attempt was made by the Political Agent or the Political Resident to investigate the truth of the assertions made by Belgrave in his letter of 28 April 1936³⁹;
- (b) no attempt was made by either official to inform the Ruler of Qatar that a claim to Hawar had been advanced on behalf of Bahrain, notwithstanding that the Political Resident himself was prepared to acknowledge Qatar's interest by recommending that "the burden of disproving [Bahrain's] claim" should rest on the Ruler of Qatar.

6.38 On the basis of these recommendations of the Political Agent in Bahrain and the Political Resident, the British Government made a "provisional decision" in favour of the Bahraini claim to the Hawar Islands in July 1936⁴⁰. There is no evidence that the "provisional decision" itself was ever communicated to the Ruler of Qatar, although it was certainly communicated through Belgrave to the Ruler of Bahrain, as is clearly shown by the following minute:

³⁸ Annex III.107, Vol. 7, p. 31.

³⁹ Annex III.103, Vol. 7, p. 15.

⁴⁰ Annex III.109, Vol. 7, p. 41.

"Mr. Clauson and I saw Mr. Belgrave on 10th July, and explained to him the position in regard to Hawar, viz., that on the evidence at present before H.M.G. it appears to belong to the Sheikh of Bahrein, and that the burden of disproving his claim lies on any other potential claimant. It was explained to him that it would be impossible to give a final ruling without knowing whether the Sheikh of Qatr has a claim, and hearing it if he had one. Mr. Belgrave understood the position. He said that the Sheikh would enter the island in the list of his possessions to be given to Petroleum Concessions Ltd.⁴¹."

Qatar's oil concessionaire (PCL) was also informed of this development on 14 July 1936⁴².

6.39 As will have been seen, the "evidence" on which this "provisional decision" was based was fragmentary and inconclusive. Moreover, *ex parte* statements by Belgrave were given full credence without any attempt being made to test their veracity. Political considerations were also clearly being taken into account. It is difficult to escape the conclusion that this "provisional decision" was taken on the basis of "evidence" which was both unconvincing and highly disputable. Further analysis of the substance of this first formal claim by Bahrain to sovereignty over the Hawar islands will be found in Section 3.A.1. of this Chapter⁴³.

6.40 Reverting to the oil concession negotiations on the "unallotted" area, the Ruler of Bahrain eventually decided in 1938 in favour of the bid from BAPCO, but the possibility was left open that PCL might be awarded a concession over the Hawar islands⁴⁴. Indeed, the British Government suggested to the Ruler in early 1939 that he award a concession over the Hawar islands to PCL if it was decided that Hawar belonged to Bahrain; but the Ruler was faced with a threat from BAPCO that they would slow down oil production if the whole of the unallotted area were not conceded to them, and he succumbed to this pressure⁴⁵. Accordingly, a concession was granted to BAPCO by the Ruler of Bahrain on 19 June 1940, in the form of a Deed of Further Modification extending the Mining Lease and covering "all lands, islands, shoals, reefs, waters and submerged lands over which the Shaikh now has dominion or which may ... come under the dominion of the Shaikh or his Successors" during a fifty-five year

⁴¹ Annex III.111, Vol. 7, p. 51.

⁴² Annex III.110, Vol. 7, p. 47.

⁴³ See, paras. 6.146 *et seq.*, below.

⁴⁴ Annex II.11, Vol. 4, pp. 294-295.

⁴⁵ *Ibid.*

period from the date of the Deed⁴⁶. By this time the British Government had of course decided in favour of the Bahraini claim to sovereignty over the Hawar islands.

2. Beaconing of islets in the Hawar Group

6.41 It was following this so-called "provisional decision" in 1936 that Belgrave, on behalf of the Ruler of Bahrain, began to take additional steps to bolster Bahrain's claim to Hawar by the carrying out of various acts of construction on Hawar island itself and on some of the uninhabited islets forming part of the Hawar group. These acts of construction date from the period mid-1936 to mid-1938, and they were all put in hand and supervised by Belgrave. They included the construction of a stone fort with tower, the building of a mosque, and an attempt to drill an artesian well, all on the main Hawar island. Details of these activities, so clearly designed to give a semblance of credence to the Bahraini claim to Hawar, are given in Section 3.A.1 of this Chapter⁴⁷.

6.42 In addition, much effort was expended by Bahrain during this period (particularly during the winter months of 1937/38) in erecting beacons, cairns or marks on a number of uninhabited islands, islets, rocks and shoals in the Hawar group. Belgrave himself makes reference to this in his private diary entry for 29 April 1938, on which date he was in Hawar:

"... went in the launch round the other side among the islands, which have all got cairns on them now painted red and white⁴⁸."

6.43 Furthermore, in the *Government of Bahrain Annual Report* covering the period March 1938 to February 1939, a reference is made in the context of the costs relating to the construction of the fort on Hawar to "the cost of erecting about twenty stone beacons on various islands in the Bahrain waters⁴⁹". Finally, in response to an enquiry from the Political Agent in Bahrain in July 1946, requesting a list of all the cairns erected by the Bahrain Government in the waters and on the shoals and islands between Qatar and Bahrain, and the

⁴⁶ The text of this Deed of Further Modification is at Annex III.221, Vol. 8, p. 93.

⁴⁷ See, paras. 6.146 *et seq.*, below.

⁴⁸ Annex III.143, Vol. 7, p. 213.

⁴⁹ Annex III.178, Vol. 7, p. 397.

dates of their erection, Belgrave sent him, on 10 July 1946, a list of the cairns "built during 1357 [March 1937 to February 1938] and 1358 [March 1938 to February 1939]"⁵⁰.

6.44 There is no doubt that these beacons or cairns were erected by the Bahrainis on islands, islets, rocks and shoals in the Hawar group of islands on the instructions of Belgrave, with the clear purpose of strengthening the claim of Bahrain to the Hawar group. In the Bahrain "preliminary statement" of 29 May 1938 (a copy of which was *not* conveyed to the Ruler of Qatar), reference is made to "stone beacons" surmounted by a pole on top of which is an oil drum painted in the Bahraini colours. Sixteen such beacons are identified⁵¹. What is carefully not disclosed is that the beacons had been erected only a few months beforehand, during the winter of 1937/38. It is highly significant that no mention is made of such beacons in Belgrave's letter to Loch of 28 April 1936⁵².

6.45 As will subsequently be shown⁵³, both Alban (successor to Weightman as Political Agent in Bahrain) and Prior (successor to Fowle as Political Resident) treated with contempt the Bahraini claim to sovereignty over the Hawar islands insofar as it was founded on the erection of beacons or "national marks"⁵⁴. Even more importantly, the Court, in its Judgment in the *Minquiers and Ecrehos* case, attached no legal significance to the placing of beacons as evidence of the exercise of sovereignty⁵⁵.

Section 2. The Defects in the Procedure followed by the British Government

A. Description of the Procedure

6.46 Attention has already been drawn to some of the considerations which impelled the British Government in 1938/39 to make a formal decision, as between Bahrain and Qatar, on the ownership of the Hawar islands. The Political Resident was asked for his views on what

⁵⁰ Annex III.243, Vol. 8, p. 195.

⁵¹ Annex III.158, Vol. 7, p. 291.

⁵² Annex III.103, Vol. 7, p. 15.

⁵³ See, paras. 6.101 *et seq.*, below.

⁵⁴ Annexes III.220 and III.228, Vol. 8, pp. 89 and 123.

⁵⁵ See, paras. 6.223 *et seq.*, below.

procedure should be followed in determining the question of sovereignty. In a memorandum of 5 April 1938, Fowle proposed the following scenario⁵⁶:

1. The Ruler of Qatar should be informed that, on the evidence at present available, the Hawar islands appeared to belong to Bahrain;
2. He should be given an opportunity of advancing a claim to the islands, but this was to be subject to compliance within a short time-limit (a period of two months being suggested);
3. Any claims presented after this period would not be considered;
4. The Bahrain Government would be sent a copy of the letter sent to the Ruler of Qatar and of the latter's reply when received, and would be given an opportunity to rebut any claim to the islands advanced by the Ruler of Qatar.

6.47 It was thus contemplated that the burden of *disproving* Bahrain's claim to the Hawar islands would lie on Qatar; but there was no room in Fowle's scenario for granting to the Ruler of Qatar any information about the evidence on which Bahrain's claim was based, or any opportunity to rebut that evidence.

6.48 Fowle's procedural proposals were endorsed without comment by the India Office, in the letter of 7 April 1938, from Gibson (India Office) to Brenan (Foreign Office), and by the Foreign Office, in the letter of 13 April 1938, from Brenan to Gibson⁵⁷.

6.49 In consequence of this agreed procedure, the Ruler of Qatar was formally invited to state his case on Hawar by a letter dated 20 May 1938 from Weightman, the Political Agent in Bahrain⁵⁸. It will be noted that the Ruler is invited to submit to Weightman his formal claim

⁵⁶ Annex III.146, Vol. 7, p. 233.

⁵⁷ Annexes III.147 and III.149, Vol. 7, pp. 237 and 249.

⁵⁸ Annex III.156, Vol. 7, p. 279. Weightman was Political Agent in Bahrain from October 1937 until October 1940, serving as Acting Resident from August 1938 until September 1938. Upon leaving Bahrain he went to Delhi, where he became Foreign Secretary to the Government of India. By 1949, following his retirement from public service, he was working for the Superior Oil Company.

supported by all the evidence which he could produce "at the earliest possible moment"; even the short time-limit of two months suggested in the Fowle memorandum⁵⁹ has been dropped.

6.50 It will of course be recalled that the British Government had already provisionally decided (in July 1936) in favour of the Bahraini claim to Hawar. The gap of nearly two years before the Ruler of Qatar was invited to present his formal claim to sovereignty over Hawar allowed the Ruler of Bahrain and Belgrave to reinforce and (apparently) strengthen a Bahraini claim to the Hawar group by engaging in activities in and in relation to the islands designed to demonstrate that they were under active Bahraini control. As we have seen in Section 1.B of this Chapter, these activities included the erection of beacons or cairns on various uninhabited islands or islets in the Hawar group. During the year 1937, and particularly during the winter of 1937/38, Belgrave arranged for the building of a fort, and the construction of a pier and a mosque on Hawar island. He also set in train drilling for an artesian well on the island. What may have escaped the British authorities, at least in London, was that Belgrave was following a carefully prepared plan whereby Bahrain would eventually be recognised by the British as having sovereignty over the Hawar group of islands.

1. The Belgrave plan and the Dowasir

6.51 Preparations for this plan had already begun in the year 1930. Evidence is available which establishes that, in that year, Belgrave was instrumental in the procuring of "evidence" designed to mislead any third party.

6.52 The Court may be puzzled as to why Belgrave began his preparations for the takeover of Hawar as early as the year 1930. The reason is relatively simple. Belgrave was far-sighted. Negotiations had already commenced in 1928 for a new oil concession agreement covering the "unallotted" area of Bahrain. Major Holmes (of EGS and later BAPCO) may, as Belgrave was to claim later in 1936, have had no idea during the earlier negotiations between 1928 and

⁵⁹ *Ibid.*

1933 that Bahrain had any conceivable claim to Hawar. Belgrave himself was quite unprepared at this time to advance any claim to Hawar on behalf of Bahrain; he wished to prepare the ground very carefully. So in 1930 he began to take the first steps in this direction by seeking to build up supposed "evidence" of a permanent presence on the main Hawar island of members of the Dowasir tribe.

6.53 The nomadic Dowasir tribe was ideal for this purpose. It has already been noted how members of the Dowasir tribe from Budaiya and Zallaq had traditionally been in the habit of partially migrating to Zakhuniya and the Hawar islands during the winter months for fishing purposes⁶⁰. This was part of the pattern of their nomadic life. Their allegiance to the Ruler of Bahrain was in fact highly doubtful, for this and other reasons. During the 1920s, the Dowasirs had had a troubled relationship with the British authorities and also with successive Rulers of Bahrain. The Dowasir, as Sunnis, had traditionally held a privileged position in Bahrain; they resided in the north-east of the Island of Bahrain at Budaiya and many of them were divers on the pearl banks off Qatar and Bahrain. Following the deposition by the British of the former Ruler of Bahrain (Sheikh Issa) in 1923 on grounds of misgovernment, the Dowasir, as partisans of the old régime, created disturbances. A despatch from the then Political Resident (Col. Prideaux) to the Foreign Secretary of the Government of India of 4 December 1926 gives more details of subsequent developments:

"On the introduction of the reforms in Bahrain in 1923 this tribe gave trouble, and it was found necessary to punish them by inflicting a fine of Rs. 15,000/- on their leading Shaikh. The fine was paid, but rather than submit to the new *régime* the tribe left their native town of Budaiya and migrated to the promontory of Dammam on the coast of Qatif, forfeiting their property in Bahrain and - theoretically, though apparently not in practice - their diving rights on the Bahrain pearl banks⁶¹."

6.54 Following approval by the Government of India of the line which the Political Resident had taken in his talks with the three Dowasir Shaikhs in September 1926, in response to the declared wish of the tribe to return to Bahrain⁶², the Political Agent wrote to Shaikh Hamad of

⁶⁰ See, paras. 5.38-5.39, above and especially Prideaux's report to the Political Resident of 20 March 1909, Annex III.51, Vol. 6, p. 233.

⁶¹ Annex III.70, Vol. 6, p. 369.

⁶² *Ibid.*

Bahrain on 20 February 1927, expressing the view of the Government of India and indeed of Col. Prideaux:

"... that the Dowasir should not be allowed to return to Bahrein, where conditions have much improved since they left, unless they agree to be bound by the following conditions:-

1. They must be obedient in every way to the Bahrein Government and must neither claim nor exercise any independent status whatever.
2. They must pay the same taxes as other agriculturists and traders.
3. They must be submissive to the Courts in Bahrein established by Your Excellency.
4. They must accept a police post at Badaya.
5. They must accept any headman appointed by Your Excellency...
6. The Bahrain tenants and negro divers of the Dowasir should have equal rights of citizenship with others of their class in Bahrein."

The Political Agent concludes this letter by stating:

"I am sure that Your Excellency... is convinced that the return of the Dowasir under any other conditions would be a danger to the safety and good Government of the islands which are much too small to admit of the establishment of any authority whatever, independent of your own⁶³."

6.55 Shaikh Hamad was nonetheless anxious that the property confiscated from the Dowasir at the time of their departure from Bahrain should be returned to them, pointing out that it was a slur on his honour that he should be considered by his neighbours to have confiscated the property of his subjects and put it in his own pocket. The new Political Resident (Col. Haworth) eventually raised no objection to the return of the confiscated property on receiving an assurance from Shaikh Hamad that, if the Dowasir still wished to return to Bahrain, they would be permitted to do so only as ordinary members of society and with no special privileges⁶⁴.

⁶³ Annex III.72, Vol. 6, p. 379.

⁶⁴ Annex III.73, Vol. 6, p. 383.

6.56 The Dowasir began to show signs of returning to Bahrain in 1928, following upon the return to them of their confiscated property⁶⁵.

6.57 So it was members of this independent and rebellious tribe, only permitted to return to Bahrain a year or two previously under stringent conditions, which Belgrave used in 1930 in the manufacture of "evidence" that the Dowasirs (claimed to be Bahraini subjects) were permanent inhabitants of Hawar. (Parenthetically, it may be noted that Col. Haworth, the new Political Resident, carefully distinguished the Dowasir from ordinary Bahrainis by reporting that "when the Dowasir were expelled and the town forfeited we had attempted to populate it with Bahrainis...⁶⁶").

6.58 All this is by way of introduction to the following documents which disclose that Belgrave was responsible for the production of false documents from 1930 onwards about the alleged Dowasir presence in Hawar, as evidence of Bahraini title to the islands.

6.59 There is first a confession, written in November 1930, from Ahmed bin Ali Al-Ghatam, Yousuf bin Ahmed and Irhama bin Ahmed Al-Dosari that none of the three gentlemen had ever set foot on Hawar and that it had belonged to the Ruler of Qatar "for ages". The confession also relates that Belgrave made them put their fingerprints on a written paper on the orders of the Sheikh of Bahrain⁶⁷.

6.60 The significance of this confession becomes apparent when one studies the evidence adduced by Belgrave in early 1939 to support the Bahraini claim to the Hawar islands⁶⁸. It may be noted that the principal piece of evidence in the Bahraini "counter-claim" of 3 January 1939, is a petition supposedly subscribed to, whether by signature, fingerprints or seals, by a number of persons (ten of whom are from the Dowasir tribe) claiming to be permanent residents of Hawar⁶⁹.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Annex III.77, Vol. 6, p. 401.

⁶⁸ See, paras. 6.164 *et seq.*, below.

⁶⁹ Annex III.174, Vol. 7, p. 371.

6.61 In that petition, the petitioners affirm that the Hawar islands belong to Bahrain, that they are subjects of the Ruler of Bahrain and that Hawar is their home. The worthlessness of this supposed "piece of evidence" is demonstrated by the fact that three of those who are said to have subscribed to it have testified to the fact that, some eight or nine years prior to its production by Belgrave, they were forced by him to put their fingerprints on a blank piece of paper; they also testified in 1930 that they had never set foot on Hawar.

6.62 A further document which supplements the confession made in November 1930 is a letter which Yousuf bin Ahmed wrote to the Ruler of Bahrain in which he repeats that he had been coerced into providing his fingerprints for the document, that he totally repudiates whatever may appear in the document and that he has never set foot on Hawar⁷⁰.

2. Further evidence of Bahraini activities

6.63 Belgrave's subsequent correspondence with intelligence agents whom he had obviously recruited and with the Rulers of other Gulf sheikhdoms during the period till 1938 reveals the pattern of the web he was weaving in order to obtain Hawar for Bahrain. Some examples of his activities will demonstrate this. They will show the glaring gap between appearance and reality. The *appearance* is reflected in the official documents in the British archives on which reliance has been placed in constructing the main narrative in this Chapter. The unpleasant *reality* is reflected in a number of documents dating from the mid-1930s which are in the Qatari archives. Some of these documents refer to named individuals; and Qatar will seek to disclose the part which these named individuals played in the unfolding drama.

6.64 The first document is a letter of 18 August 1935 from Sheikh Hamad, Ruler of Bahrain, to Sheikh Shakhboot, Ruler of Abu Dhabi, this letter being counter-signed by Belgrave⁷¹. In the letter, Sheikh Hamad is clearly endeavouring, as he had done on previous occasions, to enlist Sheikh Shakhboot's support in the plot for Bahrain to take over Hawar. He does so by claiming that "the English have promised us that we will take it from Bin Thani one of these

⁷⁰ Annex III.79, Vol. 6, p. 409.

⁷¹ Annex III.100, Vol. 7, p. 1. *See*, also, Annexes III.76 and III.95, Vol. 6, pp. 397 and 489.

days". Sheikh Hamad goes on, in a relatively frank way, to promise support to Sheikh Shakhboot for his claims on the Qatari possessions of Delma and Halul in return for the latter's support for the Bahraini claim to Hawar. Sheikh Shakhboot had already (in 1934) warned Sheikh Hamad not to pursue his claim to Hawar, stating unequivocally that the Hawar islands belonged to Qatar⁷².

6.65 Salim bin Nasser Al-Muzaire was in the 1930s Imam of the mosque of Sheikh Abdullah bin Jassim, Ruler of Qatar. He also provided intelligence to Bahrain. The following letter addressed to Sheikh Hamad of Bahrain, and dated 12 January 1937, confirms this beyond question⁷³. The writer claims to have "... secretly met the people in Hawar and they have agreed to be eyes for you in the country there". He also advises Shcikh Hamad to offer money for Hawar, stating that he has been informed that the Ruler of Qatar is short of money. There are also references in the letter to "Al Balyooz", which was apparently the term used for the official rank of British Political Agent in the Gulf. The British Political Agent in Bahrain in 1936/37 was still Lt.-Col. Loch, who was replaced by Weightman only in 1937; so it may be assumed that the "Al-Balyooz" to which reference is made in the letter is Loch rather than Weightman (as the letter is dated early in January 1937, and reference is made in it to the fact that Al-Balyooz "will be replaced"). How much of the attitude attributed to "Al Balyooz" is to be believed is open to conjecture; Qatar simply wishes the Court to be aware of what was being reported to Sheikh Hamad at the time by one of his intelligence agents.

6.66 An earlier letter from Salim bin Nasser Al-Muzaire to "Al Balyooz" in Bahrain dates from 15 January 1935. The writer confesses that he had "burnt the huts of the Qatari people as you instructed us" and that "no-one knew about our act". The writer also reports that the Ruler of Qatar is lacking in weaponry but is aware that the country has oil⁷⁴.

6.67 Even more damning is the confession made by Belgrave in his secret letter to Abdul Razag bin Rizoogi of 26 March 1938⁷⁵. Abdul Razag bin Rizoogi was in 1938 the British Residency Agent in the Trucial States (the post being abolished in 1949). He was of Iranian

⁷² See, para. 5.61, above.

⁷³ Annex III.115, Vol. 7, p. 69.

⁷⁴ Annex III.97, Vol. 6, p. 497.

⁷⁵ Annex III.145, Vol. 7, p. 229.

origin and had ties of citizenship with both Kuwait and Dubai. He died in 1992 at the great age of 92. Belgrave's letter of 26 March 1938 states boldly that "we have set up many houses" in Hawar; and that "we have built a fort" and are in process of "building a mosque". Belgrave also admits openly that "the people who are in Hawar neither want Bahrain nor Al-Khalifah" and that for them it is better to be part of Qatar especially since the visit of the son of the Ruler of Qatar a month previously. Belgrave also urges his correspondent not to "allow your Sheikhs to interfere in the issues of Qatar and Bahrain".

6.68 Belgrave's letter to Abdul Razag bin Rizoogi of 26 March 1938 also states that "in five days I will leave for Hawar to see what they have done there⁷⁶". It is noteworthy that this is confirmed in the *Extracts from Belgrave's Diaries* where the entry for 31 March 1938 states:

"Took under three hours to reach Hawar. The fort showed up from a long distance away The fort is exactly what I had planned and looks most effective...⁷⁷."

6.69 Almost equally damning is a letter which Belgrave wrote to Abdul Rahman Al-Qusaibi on 10 May 1938⁷⁸. The recipient of this letter acted at this time as the link-man between the Bahraini intelligence agents in Qatar. He was also close to the British authorities in Bahrain and to the Saudis. In this letter, Belgrave admits that one of Bahrain's intelligence agents is keeping a close eye on the Ruler of Qatar and his people. He also asserts that the interests of Bahrain have priority over those of the people of Qatar. Finally, he reminds his correspondent of the time when he went "... with the Al-Dawasir to Hawar to reconstruct the buildings so that they could live there".

6.70 Here is a cloud of witnesses testifying to the malpractices of Belgrave and his associates in manufacturing evidence of Bahraini activities in and in relation to the Hawar group of islands during the key period between 1935 and 1938, and in seeking to cajole the Rulers of other sheikhdoms in the Gulf to support the Bahraini cause.

⁷⁶ *Ibid.*

⁷⁷ Annex III.143, Vol. 7, p. 213.

⁷⁸ Annex III.151, Vol. 7, p. 257.

3. Belgrave's relations with Weightman

6.71 Qatar is not alleging that the most senior British officials in the Gulf (such as the Political Resident), let alone British officials in London, were privy to the misdeeds of Belgrave and others in making arrangements for the take-over of the Hawar group of islands by Bahrain in the mid- to late 1930s. And yet the pronounced bias entertained by British officials during the 1930s in favour of Bahrain, to which reference has already been made in general terms, almost certainly led them to look favourably on such "evidence" of ownership as Bahrain was able to produce in 1939 and to refrain from scrutinising too closely that so-called "evidence". In any event, there must be a strong suspicion that Weightman at least (who took over as Political Agent in Bahrain in 1937) was aware of (if not a participant in) some at least of Belgrave's misdeeds. It will be noted that Weightman apparently failed to report to the Political Resident an oral protest against Bahraini activities on Hawar which the Ruler of Qatar had made to him in February 1938, at least until the Ruler of Qatar had followed this up with a written protest in May 1938⁷⁹. Weightman's conduct will be analysed in greater detail at a later stage⁸⁰.

6.72 There is independent evidence about the close relations between Belgrave and Weightman, and about his ease of access to the Political Agent's office ("the Agency") which was no doubt encouraged by successive Political Agents because of Belgrave's influence on the Ruler. The following entries in Belgrave's diaries confirm this beyond question:

"1938

May 21 Went over to Agency, Shaikhs A and S came in with the Qattar shaikhs who we talked to, a pretty little intrigue which was my idea and which I hope will be successful.

May 22: Very busy, lots of people. Weightman re oil maps ...

May 29: ... Weightman left in Bideford for Qattar and Trucial Coast.

...

1939

Jan 2: Went to Agency and there had a long talk with Davies Went to see Weightman again in the evening... .

...

⁷⁹ Annex III.152, Vol. 7, p. 261.

⁸⁰ See, paras. 6.129 *et seq.*, below.

- Jan 12: Went over to the Agency and had a talk with W[eightman], oil and other matters.
- Jan 16: With Weightman to Sakhrir, all the shaikhs present. Oil talk. W left and I and the three shaikhs drove to Awali and had a long talk with Davies in his office about including Hawar. He was very upset ...
- Jan 18: Weightman back, had a talk to him about oil events since he left.
- Jan 30: Went over to see Weightman and discussed the oil business.
- Feb 2: Spent some time at Agency discussing oil⁸¹."

6.73 These particular citations from Belgrave's diaries testify to the very close relationship which he had with Weightman in 1938 and 1939. They must be read in conjunction with the entries for 18, 20 and 22 April 1939, which are cited at paragraphs 6.88-6.90, below. They must also be read in conjunction with the following extract from Belgrave's memoirs, published in Lebanon in 1972:

"Hugh Weightman left Bahrain for Delhi in August [1940] and subsequently became Foreign Secretary to the Government of [British] India. I and many others much regretted his departure. Both he and, later, E.B. Wakefield, who also served in Bahrain and then in Delhi, were very valuable friends at court; they did much to keep Bahrain on the map and helped us to maintain a supply of food from India⁸²."

6.74 It may not be altogether irrelevant that, after his retirement, Weightman re-appeared in the Gulf as a representative of the (American-owned) Superior Oil Company. In 1949, Weightman arrived in Abu Dhabi seeking to interest Sheikh Shakhboot in a new oil concession. The then Political Officer in the Trucial States (Mr. Stobart), in writing to his superior (Mr. Pelly) on 8 April 1949, took a very jaundiced view of Weightman's activities on behalf of the oil company employing him, particularly as it seemed that Weightman was tempting Sheikh Shakhboot to sign the new concession agreement in advance of securing the consent of HMG:

"I feel it to be intolerable that a distinguished public servant in retirement should have facilities for visiting an area for which he was formerly responsible and there, trading upon the fact that he is known and respected, blatantly encourage the Ruler to break faith with H.M.G.⁸³."

⁸¹ Annex III.143, Vol. 7, p. 213.

⁸² Annex III.299, Vol. 8, p. 501.

⁸³ Annex III.263, Vol. 8, p. 305.

4. Opening of the formal procedure

6.75 It is time to revert to the opening of the formal procedure followed by the British Government in 1938. Acting upon instructions from the Political Resident, Weightman wrote to the Ruler of Qatar on 20 May 1938⁸⁴, peremptorily inviting him to state his case on Hawar "at the earliest possible moment". The Ruler evidently took this request literally, for he replied within one week (on 27 May 1938)⁸⁵. It will be seen that the Ruler reiterated his protest against recent Bahraini activities on Hawar and totally denied any alleged Bahraini "occupation" of the islands in the past. On 30 May, Weightman had a further meeting with the Ruler of Qatar at which the latter demanded that he be permitted to see Bahrain's counter-claim in order to enable him to rebut it. In his report to the Political Resident of 3 June on this meeting, Weightman states:

"I replied that I was unable to give him an assurance that His Majesty's Government would agree to any such procedure, and that in my own opinion it was impossible to contemplate a procedure enabling each party in turn to traverse the arguments, counter-arguments, rebuttal, counter-rebuttal and so on of the other, since this would render a decision impossible in his life-time or in mine⁸⁶."

6.76 Weightman's letter to the Political Resident of 3 June also forwards "for information" a "preliminary statement" of the Bahraini case which he had received from Belgrave on 29 May⁸⁷. Weightman had already indicated to Belgrave in a letter which he had written to the latter on 20 May enclosing a copy of his letter to the Ruler of Qatar of the same date:

"Should it become necessary to request the Bahrain Government to submit a counter-claim supported by evidence, I will address you again in due course⁸⁸."

6.77 So the "preliminary statement" of the Bahraini case had not been requested by Weightman. And it is instructive to observe that Weightman was already in possession of the "preliminary statement" at the time that he was refusing to the Ruler of Qatar any opportunity

⁸⁴ Annex III.156, Vol. 7, p. 279.

⁸⁵ A copy in translation of his letter to Weightman of that date is at Annex III.157, Vol. 7, p. 285.

⁸⁶ Annex III.159, Vol. 7, p. 299.

⁸⁷ A copy of this anonymous "preliminary statement" (obviously drafted by Belgrave) is at Annex III.158, Vol. 7, p. 291.

⁸⁸ Annex III.154, Vol. 7, p. 271.

to see the Bahraini case. Weightman apparently saw no contradiction between the response which he had given to the Ruler of Qatar on 30 May and the decision which the British Government had already taken to allow the Ruler of Bahrain an opportunity to comment on the case presented by Qatar.

6.78 Nor indeed did the Political Resident (Fowle) see any such contradiction. In his letter to the Secretary of State for India of 20 June 1938, the Political Resident recommended that the Ruler of Qatar's "detailed claim" to the Hawar islands now be given officially to the Bahrain Government with a request that they in turn submit a detailed statement of their claim to Hawar. But the Political Resident went on to recommend that the request of the Ruler of Qatar to see the Bahrain Government's counter-claim should be rejected⁸⁹.

6.79 Meanwhile, the Ruler of Qatar had written again to Weightman on 15 June 1938⁹⁰. In this letter, the Ruler hinted that further evidence on the question of the ownership of Hawar might be available to him; but this depended in part on his knowing the case he had to meet. Weightman was wholly unsympathetic to this renewed plea by the Ruler of Qatar that he should be afforded an opportunity to be informed of the grounds on which Bahrain based its claim; in forwarding the relevant extract from this letter to the Political Resident, Weightman proposed that no notice need be taken of the Ruler's suggestion that further evidence might be available, since the Ruler had been very clearly instructed (on 20 May 1938) "to produce at once all the evidence which he has"⁹¹. The Political Resident agreed. So also did the India Office. But the Foreign Office, when consulted, took a more balanced view. Mr. (later Sir Eric) Beckett (at the time Second Legal Adviser, and later Chief Legal Adviser, to the Foreign Office) was apparently of the view that it would be more regular to let Qatar see the Bahrain reply and then let Bahrain see the Qatar comments, on which the matter could be submitted to the British Government⁹². The reasons for the Foreign Office preference were more fully expressed in Baxter's reply to Peel of 12 July 1938. The Foreign Office did not fail to point out that under the procedure proposed by Weightman and approved by the Political Resident:

⁸⁹ Annex III.161, Vol. 7, p. 311.

⁹⁰ Annex III.160, Vol. 7, p. 305.

⁹¹ Annex III.162, Vol. 7, p. 315.

⁹² See, the marginal comment on the draft letter from Peel (India Office) to Baggallay (Foreign Office) of 6 July 1938 at Annex III.164, Vol. 7, p. 323.

"... unless we deliver a long and reasoned decision, the Sheikh of Qatar will not know what the Sheikh of Bahrein has advanced in support of his claim, nor will he have any opportunity of answering any statements made by the Sheikh of Bahrein⁹³."

The Foreign Office went on to argue:

"Normally, as you will of course appreciate, when one is assuming an arbitral rule (sic) [? role] of this character, one would first cause each party to state his own claim, with the grounds upon which it is based, then communicate both parties' statement of claim to the other, appoint a time for answers, and then decide the matter in the light of the four documents. Under this procedure, the party who loses the case at least knows the grounds on which the decision was given, and has no opportunity of feeling that some erroneous statement, which he was able to controvert, has been relied upon in reaching a decision⁹⁴."

6.80 Baxter's letter to Peel, however, concludes mildly by simply stating that "we do not, however, wish to do more than place these considerations before you", leaving the final decision to the India Office.

6.81 This highly sensible advice from the Foreign Office, obviously based on Beckett's advice, came however too late in the day to affect materially the way in which the British decision was eventually taken in 1939. Indeed, although officials in the India Office were prepared to accept the advice given in Baxter's letter to Peel of 12 July 1938, they did so in terms which make it clear that they were already *parti pris*. Thus, in an internal manuscript minute of 14 July 1938, Gibson (India Office), in recommending acceptance of the Foreign Office view on the procedural point, openly argued that:

"... since the issue will almost certainly be decided in favour of Bahrein, it would be as well to leave the Sheikh of Qatar with no feeling of grievance that his case had not been fully heard⁹⁵."

6.82 As a result of these exchanges in London, the Secretary of State for India instructed the Political Resident to communicate the statement of the Bahrain Government, when received,

⁹³ Annex III.165, Vol. 7, p. 327.

⁹⁴ *Ibid.*

⁹⁵ Annex III.166, Vol. 7, p. 333.

to the Ruler of Qatar and to allow him a "reasonable period" to comment on it and adduce further evidence. On 14 August 1938, the Officiating Political Agent in Bahrain formally sent to Belgrave a copy of the Ruler of Qatar's "detailed claim" and requested that the Bahrain Government should now submit a full and detailed statement of their "counter-claim" to Hawar, covering the Ruler of Qatar's claim as well as any other point they wished to make⁹⁶.

6.83 Three points should be noted about the treatment accorded to the respective Rulers in requesting each of them to state his respective claim to the Hawar group of islands:

- (1) Qatar is treated throughout as the claimant (*demandeur*) in the face of a provisional British decision taken in 1936 to attribute the islands to Bahrain, and in the face of Bahraini *de facto* occupation of the islands;
- (2) At the time when Qatar was being required to produce its formal claim it was being denied access to the "evidence" on which Bahrain was relying in support of its claim to Hawar; by way of contrast, Bahrain not only submitted (uninvited) a "preliminary statement", but was then given a copy of the Ruler of Qatar's letter of 27 May 1938 at the time when it was asked to submit its "counter-claim";
- (3) Qatar was requested to produce its claim "at the earliest possible moment" whereas no time-limit was put on the submission by Bahrain of its "counter-claim"; in the event, the Qatar claim was presented within one week of Weightman's request, whereas Bahrain's "counter-claim" was not submitted to Weightman until 3 January 1939, nearly five *months* from the date of the request from the Officiating Political Agent in Bahrain.

6.84 Attention has already been drawn to the bias in favour of the Bahrain claim to Hawar shown by both Weightman and the Political Resident in the years immediately preceding the British decision of 1939. Further evidence of this bias is shown in the Political Resident's letter to the Secretary of State for India of 3 November 1938 (written at a time when Bahrain

⁹⁶ Annex III.168, Vol. 7, p. 343.

had not yet submitted its "counter-claim" to Hawar in accordance with the agreed procedure) in which he makes the wholly premature (and unwarranted) assumption that a concession over Hawar is within the gift of the Ruler of Bahrain in the context of the competition between BAPCO and PCL over the so-called "Bahrain unallotted area":

"It will be seen that the Shaikh [of Bahrain] now does not even wish to give Hawar to Petroleum Concessions Limited. I am not of opinion that we should accept this⁹⁷."

6.85 At a time when the Political Resident was playing a key role in the decision-making process as to whether the Hawar group of islands belonged to Bahrain or to Qatar, it is well-nigh unbelievable that he should calmly be assuming that the award of an oil concession on Hawar to a particular oil company is a matter for the Ruler of Bahrain. Indeed, the Secretary of State for India was obliged to warn both the Political Resident and Weightman on 1 March 1939, in the context of a proposal that a concession over the whole of the "Bahrain unallotted area" should be given to BAPCO, that a warning should be given to the Ruler of Bahrain and also to the company:

"... that the question whether the Hawar Islands are included in the concessional area depends on whatever decision is eventually given by His Majesty's Government regarding the sovereignty over the islands...⁹⁸."

6.86 It remains to conclude the description of the procedure followed by the British Government in 1938/39 in assessing the strength of the respective claims of Bahrain and Qatar to the Hawar group of islands. Following receipt of the formal Bahrain counter-claim on 3 January 1939, Weightman wrote to the Ruler of Qatar on 5 January 1939, enclosing a copy of Bahrain's counter-claim in English and asking to be informed as soon as possible whether he wished to put forward any further arguments or adduce any further evidence⁹⁹. An Arabic version of Bahrain's counter-claim was not however furnished to the Ruler (who could not speak or understand English) until 10 January 1939¹⁰⁰. It will of course be recalled that Belgrave had already submitted an anonymous and uninvited "preliminary statement" of

⁹⁷ Annex III.170, Vol. 7, p. 351.

⁹⁸ Annex III.183, Vol. 7, p. 417.

⁹⁹ Annex III.177, Vol. 7, p. 393.

¹⁰⁰ See, Weightman's letter to the Political Resident of 5 March 1939, at Annex III.184, Vol. 7, p. 421.

Bahrain's claim to Hawar on 29 May 1938¹⁰¹. This "preliminary statement" of 29 May 1938, had not, however, been transmitted to the Ruler of Qatar although it was subsequently to be treated by Weightman as one of the key documents in the case¹⁰².

5. The influence of the oil negotiations on the formal procedure

6.87 By March 1939, the oil concession negotiations were coming to a head, and pressure was accordingly put on the Ruler of Qatar to respond to the Bahrain "counter-claim". Having consulted the Political Resident, Weightman accordingly informed the Ruler of Qatar on 17 March 1939 that he must respond to the Bahrain "counter-claim" by 31 March 1939; otherwise it would be assumed that the Ruler did not wish to put forward any further arguments beyond those which he had already submitted¹⁰³. The Ruler immediately protested against this imposed time-limit, insisting that a reply to the Hawar case needed careful study and that he had not had "even half of the time taken by the Bahrain Government in preparing their reply¹⁰⁴". But Weightman refused any concession, insisting in his letter of 22 March 1939 that the Ruler of Qatar had had "unlimited time in which to make [his] original claim¹⁰⁵". Weightman had no doubt conveniently forgotten that he had required, in his letter to the Ruler of Qatar of 20 May 1938, that the latter submit his formal claim to Hawar "at the earliest possible moment¹⁰⁶"; and that the Ruler of Qatar had in fact submitted his formal claim on 27 May 1938¹⁰⁷. Weightman's letter of 22 March 1939 prompted a bitter response on 24 March 1939 from the Ruler of Qatar. The Ruler complained that, although he had protested against Bahraini activities in Hawar in early 1938, he had never been informed of the grounds on which Bahrain relied "in putting their hands on a part of Qatar". The Ruler also insisted that "we were not claimants¹⁰⁸". Nonetheless, the Ruler did provide his comments on the Bahrain "counter-claim" on 30 March 1939, noting again the shortness of the time made available to him for their preparation.

¹⁰¹ See, para. 6.76, above.

¹⁰² See, para. 6.93, below.

¹⁰³ Annex III.188, Vol. 7, p. 437.

¹⁰⁴ Annex III.189, Vol. 7, p. 441.

¹⁰⁵ Annex III.190, Vol. 7, p. 445.

¹⁰⁶ Annex III.156, Vol. 7, p. 279.

¹⁰⁷ Annex III.157, Vol. 7, p. 285.

¹⁰⁸ Annex III.191, Vol. 7, p. 449.

6. Developments following the close of the formal procedure and the question of bias

6.88 The submission to Weightman, on 30 March 1939, of the Ruler of Qatar's observations on the Bahraini "counter-claim" brought to a close the formal procedure. It will be noted that there was no oral hearing and no opportunity to examine or cross-examine witnesses as to matters of fact. In addition, and notwithstanding the closure of the formal procedure, there is unmistakable evidence from the Belgrave diaries that Weightman had further private contacts with Belgrave during the period in which Weightman was preparing his report to the Political Resident analysing the strength of the opposing claims of Qatar and Bahrain to Hawar. In Weightman's report to the Political Resident of 22 April 1939, analysing the respective claims of Qatar and Bahrain to Hawar, to which fuller reference will be made in Section 3 of this Chapter, the writer, in speaking of Hawar, refers in passing in paragraph 9 to "my visit there last week¹⁰⁹". This matches perfectly with the entry in Belgrave's diary for 18 April 1939, where there is mention of a hill:

"... from where we could see the fort at Hawar and also HW's launch returning from there, he went to visit the place¹¹⁰."

In this entry and also in the entries for 20 and 22 April, "HW" or "H" clearly refers to Weightman.

6.89 Three entries from Belgrave's diary demonstrate the pernicious influence which Belgrave exercised over Weightman at a time when the latter was purportedly engaged in a quasi-judicial task in which Belgrave had an undoubted interest. These are the entries for 18, 20 and 22 April 1939. Attention has already been drawn to the entry for 18 April. The entry for 20 April is equally revealing:

"At Agency for some time in morning hearing about H's trip to Hawar. It seems to have been satisfactory from our point of view¹¹¹."

¹⁰⁹ Annex III.195, Vol. 7, p. 497.

¹¹⁰ Annex III.143, Vol. 7, p. 213.

¹¹¹ *Ibid.*

6.90 Weightman should not of course have discussed with Belgrave (a representative of one of the two parties in dispute) his trip to Hawar, far less conveyed the impression that the trip was "satisfactory" from Bahrain's point of view. But even more damning, and even more indicative of the bias which Weightman showed in favour of Bahrain and against Qatar over the issue of Hawar is the entry for 22 April from which the following passage is taken:

"At Agency for some time in the morning, *discussed the Hawar claim, saw HW's letter regarding the whole thing, our case looks strong*¹¹²."

6.91 So we find the (British) Political Agent, to whom has been confided the task of assessing objectively the respective strengths and weaknesses of the claims to Hawar advanced by Bahrain and Qatar, engaging in discussions with a representative of Bahrain (indeed the Ruler's principal adviser) while drawing up his report and indeed showing that report to Belgrave before it has even been despatched. There can be no more glaring illustration of bias in favour of the Bahraini claim to Hawar during the 1930s than is provided by this episode.

6.92 It is no doubt also a consequence of Belgrave's discussion with Weightman on 20 April (of which the Ruler of Qatar was and remained wholly ignorant) that Belgrave, in a letter of that date to Weightman, retracted an assertion in Bahrain's "preliminary statement" that the permanent fish traps at Hawar were registered in the Land Department of the Bahrain Government, and elaborated on another assertion about the alleged ownership of fish traps by a resident of Hawar¹¹³. It is clear from paragraph 10 of Weightman's report to the Political Resident of 22 April 1939 that Weightman took this additional "evidence" (not of course conveyed to the Ruler of Qatar) into account in reaching his conclusion¹¹⁴.

6.93 Weightman submitted his report to the Political Resident on 22 April 1939¹¹⁵. At the outset, he identified the documents in this case. Among these documents was Bahrain's "preliminary statement" of 29 May 1938, a copy of which had never at any stage been shown

¹¹² *Ibid.*, emphasis added.

¹¹³ Belgrave's letter to Weightman of 20 April 1939, conveying the additional "evidence", is at Annex III.193, Vol. 7, p. 489.

¹¹⁴ Annex III.195, Vol. 7, p. 497.

¹¹⁵ *Ibid.*

to the Ruler of Qatar. Weightman also took into account the information confirmed in Belgrave's letter to him of 20 April 1939¹¹⁶, despite the fact that that information was equally never conveyed to the Ruler of Qatar. In evaluating the evidence put forward by the Rulers, Weightman also expressly drew on sources which were not put to the Ruler of Qatar, and to which the Ruler of Qatar otherwise had no access, such as statements in Lorimer's Gazetteer of the Persian Gulf, Oman and Arabia; Agency archives dating from 1909; and on his own "knowledge" derived from two brief visits to Hawar in 1938 and 1939.

6.94 Weightman found that Qatar had made no real case for sovereignty over Hawar. He was obviously unaware of, or was deliberately ignoring, the substantial evidence dating from the period of the Ottoman presence in Qatar from 1871 to 1915 establishing Qatar's original title to the Hawar group of islands¹¹⁷. Although treating as "valueless" the written evidence of the witnesses produced by Qatar (on the ground *inter alia* that the signatures were unsupported by thumb prints or seals), he seems to have accepted without question the written evidence of the witnesses produced by Bahrain, notwithstanding that, as is now known, Belgrave had, as early as 1930, arranged for the finger-prints of particular individuals to be affixed on a blank piece of paper, later to be produced as "evidence" of the alleged long-standing occupation of Hawar by the Dowasir of Zallaq¹¹⁸.

6.95 At this stage, however, it is not necessary to establish definitively that Weightman was in error in 1939 in recommending that Hawar should be regarded as belonging to Bahrain, but it has been shown that Weightman was less than objective in assessing the claims of the disputing parties. Sufficient evidence has already been adduced by Qatar in this Memorial to prove beyond question that, in the period from 1937 to 1939, Weightman exhibited a marked bias in favour of Bahrain as regards the respective claims of the two sheikhdoms to Hawar. Reference need only be made to the demand which he made of the Ruler of Qatar on 20 May 1938, to produce his claim to Hawar "at the earliest possible moment"¹¹⁹; to his treatment of the Ruler of Qatar's repeated requests to be informed of the grounds on which Bahrain relied

¹¹⁶ Annex III.193, Vol. 7, p. 489.

¹¹⁷ See, paras. 5.15 *et seq.*, above.

¹¹⁸ See, paras. 6.51 *et seq.*, above and Annexes III.77-III.79, Vol. 6, pp. 401-412.

¹¹⁹ Annex III.156, Vol. 7, p. 279.

in support of its claim¹²⁰; to his adamant refusal to allow the Ruler of Qatar anything like the same amount of time to prepare his case as was accorded to the Ruler of Bahrain¹²¹; and, above all, to the preferential treatment given to Belgrave in the key month of April 1939, when he was preparing his report to the Political Resident on the respective claims of Bahrain and Qatar to the Hawar group of islands¹²².

6.96 Qatar is not suggesting that Weightman's recommendation that Hawar be given to Bahrain is itself proof of bias; the proof of bias results from the other materials to which Qatar has drawn attention. What Qatar is submitting is that the whole conduct of the procedure leading up to the British decision of 1939 was unfair and one-sided; and that, indeed, the procedure was flawed from the outset, since it started from the premise that the burden was on Qatar to disprove Bahrain's claim to Hawar, a provisional decision (unknown to Qatar) in favour of the Bahraini claim having already been reached by the British Government in 1936.

7. The Decision of 11 July 1939

6.97 Weightman's report and conclusions were endorsed by the Political Resident (Fowle) who suggested that, if the British Government concurred in this opinion, he should be authorised to convey their decision to the Rulers¹²³. Hemingway (India Office) recommended approval of the proposed decision in a manuscript minute of 12 May 1939¹²⁴, essentially for the reasons summarised in paragraph 13 of Weightman's report to the Political Resident¹²⁵. Hemingway added that the proposed decision in favour of Bahrain:

"... affords, incidentally, an opportunity to mollify any resentment which he [the Ruler of Bahrain] may feel at our treatment of the Zubara question in 1937."

6.98 Peel, Under-Secretary at the India Office, also agreed with Weightman's recommendation, as did the Foreign Office and the Government of India, none of the British officials in London or in Simla being aware of Weightman's private contacts with Belgrave in

¹²⁰ Annexes III.159 and III.162, Vol. 7, pp. 299 and 315.

¹²¹ Annexes III.177, III.184, III.188 and III.190, Vol. 7, pp. 393, 421, 437 and 445.

¹²² Annexes III.143 and III.193, Vol. 7, pp. 213 and 489.

¹²³ Annex III.199, Vol. 7, p. 519.

¹²⁴ Annex III.203, Vol. 8, p. 13.

¹²⁵ Annex III.195, Vol. 7, p. 497.

the preparation of his report to the Political Resident. In short, the 1939 decision to give Hawar to Bahrain was based almost exclusively on Weightman's report.

6.99 Letters communicating the British Government's decision were sent by the Political Resident to both Rulers on 11 July 1939¹²⁶. It will be seen that no reasons were given for the decision in favour of Bahrain. This absence of reasons was immediately remarked upon by the Ruler of Qatar who, in his eloquent protest to the Political Resident of 4 August 1939, remarked that he had "... tried to find the cause for what His Majesty's Government have made the basis of their opinion on this question¹²⁷".

8. The Reactions of Prior and Alban

6.100 It is of course noteworthy that the strong bias displayed towards Bahrain by Weightman (as Political Agent) and, to a lesser extent, by Fowle (as Political Resident) was not shared by their immediate successors. A new Political Resident (Lt.-Col. Prior) took office in September 1939, some two months after the decision of 11 July 1939 had been issued. Prior had previously served as British Political Agent in Bahrain from April 1929 to November 1932, and was therefore familiar not only with the area but also with the subject-matter of the dispute. That Prior was immediately struck by the unfairness of the decision is evident from the following developments. The Ruler of Qatar's protest of 4 August 1939 had been seen by the departing Political Resident (Fowle) on its receipt in Bushire. As will be seen from the attached copy of the manuscript minutes extracted from the Residency files, the Ruler of Qatar's letter of 4 August 1939 was entered on the relevant Residency file as item number "6"¹²⁸. One of Fowle's subordinates recommended to him on 29 August that a reply should be sent to the Ruler of Qatar stating that HMG's decision was final and that the question could not be re-opened; but Fowle obviously had some hesitations about this and gave a written instruction in the following terms on 30 August:

"Put up to Major [*sic*] Prior, when I have handed over¹²⁹."

¹²⁶ Annexes III.208-III.209, Vol. 8, pp. 37-44.

¹²⁷ Annex III.211, Vol. 8, p. 49.

¹²⁸ Annex III.212, Vol. 8, p. 53.

¹²⁹ *Ibid.*

6.101 On 25 September 1939, Prior approved the draft of a message in reply to the Ruler of Qatar informing him that HMG's earlier decision of 11 July 1939 was final and that the matter could not be re-opened. In doing so, however, he privately expressed his deep unease about the way in which the matter had been handled in a manuscript minute of 25 September 1939:

"As regards p.u.c. [piece under consideration] 6, I have little doubt that a grave miscarriage of justice has occurred, and I am not surprised that my predecessor wished the case to be put up after he had handed over. It is too late to do anything now and the Shaikh can only [?] be informed that HMG have already passed [?] final orders and that the matter cannot be re-opened¹³⁰."

6.102 Prior did not immediately report his doubts to his political superiors in London, but he did so in a preliminary way in his telegram No. 366 of 7 June 1940 to the Secretary of State for India where, after criticising the notion that territory could be acquired in small islets in the waters of the Gulf by the erection of "national marks" or beacons, he states (in paragraph 4):

"I have grave doubts regarding justice of decision in Hawar Islands case and am raising question after making further inquiries¹³¹."

6.103 At this point, Weightman, who was still Political Agent in Bahrain, entered the fray, believing that his honour was being challenged. In a letter to the Political Resident of 3 July 1940, he claims that Fowle had been aware of the fact that Bahrain had erected "national marks" on all islets to which they laid claim in the winter of 1937/38. More generally, and possibly reflecting his own uneasy conscience, he voices a fear "... that the inference might be drawn that there was some question of my entire impartiality¹³²".

6.104 Prior was obviously not satisfied with this explanation. But he decided to await events. In October 1940, Weightman was succeeded as Political Agent in Bahrain by Major (later Lt.-Col.) Alban. On 23 October 1941, Prior sent a telegram to Alban instructing him to "... have tabulated and shown to me on arrival any information you have been able to collect regarding

¹³⁰ *Ibid.*

¹³¹ Annex III.220, Vol. 8, p. 89.

¹³² Annex III.222, Vol. 8, p. 99.

Bahrain claim to Hawar Island" (this telegram was obviously sent in advance of a visit by Prior to Bahrain). The response to this instruction was a Note entitled "Ownership of Hawar" prepared by Alban, probably between 23 and 26 October 1941¹³³. The statements made in the Note strongly challenge, on several grounds, the assumptions on which the 1939 decision was apparently made. Thus, the 1939 decision assumed that the Dowasir were permanent residents of Hawar and that they owed allegiance to the Ruler of Bahrain. This is firmly disputed in the 1941 Note which argues that "the Dowasir are rather independent as can be seen from the way they deserted their town of Budaya in Bahrain for the mainland"; that "they are not true inhabitants of Bahrain and are able to change their allegiance at will if displeased"; and that "their settlement in any spot does not therefore mean much more than the settlement of a migratory tribe in a neighbouring state". The Note also reveals what might well have been overlooked by officials in London and elsewhere ignorant of the geography of the Gulf that "it is possible to wade from Hawar to the mainland [of Qatar] at low water and any boundary cutting off the group from the mainland would be very artificial". Finally, it draws attention to the consideration that the Ruler of Bahrain had always been discouraged from busying himself with affairs in Qatar and cites as an example Zubarah "... where there were far more of his followers and concrete signs of occupation than at Hawar".

6.105 What is said in the 1941 Note about the Dowasir is of course confirmed by the evidence which Qatar has now drawn to the attention of the Court¹³⁴. The 1941 Note indeed is much more objective and fair-minded than any document produced by Weightman or Fowle; and, had its contents been known to senior officials in the India Office and the Foreign Office in 1939, it is extremely unlikely that a decision in favour of Bahrain would have been taken.

6.106 Prior did not let matters rest. On 26 October 1941, he wrote to Peel (Under-Secretary at the India Office) conveying his deep-seated disquiet about the correctness of the 1939 decision¹³⁵. He characterised it as "... most unfair to Qatar" and he stoutly maintained that the

¹³³ Annex III.228, Vol. 8, p. 123.

¹³⁴ Annexes III.51, III.72-III.73, III.77-III.79, Vol. 6, pp. 233, 379-388 and 401-412; and Annex III.128, Vol. 7, p. 141.

¹³⁵ Annex III.229, Vol. 8, p. 127.

explanations which Fowle had given him for his recommendations "... were not ones which would carry any weight with any Arab". The conflicting claims to the Hawar islands had been decided "... according to western ideas, and no allowance [had] been made for local custom and sentiment". Reverting to his own previous service in Bahrain, Prior says:

"During 3½ years in Bahrain I never heard anything to suggest that these islands belonged to Bahrain, and believed them to belong to Qatar, a view supported by Lorimer¹³⁶."

6.107 Prior then considers, and responds to six arguments advanced by Belgrave. In this context, Qatar would draw particular attention to one sentence in paragraph 4(f) of Prior's letter, where the writer states:

"Bahrain never had any rules and regulations till it had an Adviser, and he has been collecting evidence of administration in Hawar for many years past with the object of making this claim, in which he has been very successful. Had Qatar had a British Adviser this claim could not have been made¹³⁷."

6.108 The general thrust of Prior's comment can hardly be denied; but it fell well short of the truth, since Prior was almost certainly unaware of the true position revealed in the evidence now before the Court - namely, that Belgrave was not simply "collecting evidence", he was "manufacturing" it. Prior concluded his letter to Peel by expressing his conviction that the 1939 decision on Hawar was "inequitable", but that it was not practical politics to reverse it now. He suggested that the question be submitted to C.K. Daly (who had been Political Agent in Bahrain from 1921 to 1926) for his opinion. A copy of Prior's letter to Peel of 26 October 1941 had gone to Mr. O.K. (later Sir Olaf) Caroe (Secretary to the Government of India in New Delhi) who took the view, in a letter to Peel of 19 November 1941, that:

"Where the local experts differ so markedly as in this case, it is difficult to adjudicate, and the Government of India are of the view that the only safe course is to follow Prior's own advice ... and decide that it is now outside practical politics to reverse the decision made in 1939 and communicated to both Rulers¹³⁸."

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ Annex III.230, Vol. 8, p. 133.

6.109 Caroe's view was accepted by the India Office, and it is no doubt understandable in the state of knowledge of the principal actors at the time. In the light of present knowledge, however, several of the statements made in Caroe's letter are highly questionable. Thus, Caroe says:

"That report [the Weightman report] is certainly a considered document based on visits to Hawar main Island itself, and it is reasonable to observe that the counter opinion now given is not related directly to it, but to the claims put forward by the Bahrein Adviser¹³⁹."

But this takes no account of what is now known from the *Extracts from the Belgrave Diaries* of 1939 that Weightman was working hand in glove with Belgrave on this issue and had indeed shown to Belgrave his report to Fowle of 22 April 1939 before despatching it to the latter¹⁴⁰. Caroe also asserts that, taking into consideration matters of use, occupancy and exercise of the attributes of sovereignty, "... the weight of the evidence so far adduced would appear to be in favour of Bahrain". But "the evidence so far adduced" had been produced almost entirely by Belgrave and had not been subjected to critical examination by any British authority; on the contrary, it had been accepted without question by Weightman. And, of course, it is now known that the evidence provided by Belgrave on which reliance was placed by Weightman and other British officials in 1939 was highly suspect where not wholly fictitious.

6.110 This concludes the description of the procedure followed by British officials in the Gulf and also in London in reaching a decision on the respective claims of Bahrain and Qatar to the Hawar group of islands. A full and detailed description has been given, since it is only in the light of such a description that a view can be formed on the procedural fairness and propriety of the conduct of the enquiry leading to the British decision of 11 July 1939. Accordingly, attention is now directed to formal defects in the procedure.

¹³⁹ *Ibid.*

¹⁴⁰ Annex III.143, Vol. 7, p. 213.

B. Formal Defects

1. Absence of consent and other procedural deficiencies

6.111 The question whether the Ruler of Qatar gave his consent in 1938/39 to the determination by the British Government of his claim to sovereignty over the Hawar group of islands has already been touched upon in Section 1.A of this Chapter¹⁴¹.

6.112 Qatar denies that its then Ruler gave his consent in 1938/39 to the determination by the British Government of his claim to sovereignty over the Hawar group of islands. In addition, the Ruler of Qatar most assuredly did not give any undertaking in 1938/39 that he would not dispute or object to any decision that might be taken by the British Government on the conflicting claims of Qatar and Bahrain to the Hawar Islands. In this respect, the position is quite different from that which obtained in the *Dubai/Sharjah Border* case where the two Rulers, when consenting to the delimitation of their boundaries by the British authorities, did specifically undertake not to dispute or object to any decision by the Political Agent that might be forthcoming¹⁴².

6.113 The Court will recall that, in the *Dubai/Sharjah Border* case, the Court of Arbitration rejected the argument put forward by Sharjah that the decisions taken by the two British officials assigned to effect the delimitation of the boundaries between Dubai and Sharjah (Messrs. Tripp and Walker) must be interpreted as if they were arbitral awards. Dubai raised four objections to characterising the Tripp decisions as arbitral awards:

- (1) there was no arbitration agreement;
- (2) the arbitrator was not independent;
- (3) the parties had been unable to present their arguments; and
- (4) the awards had not been reasoned.

¹⁴¹ See, paras. 6.1 *et seq.*, above.

¹⁴² Annex III.295, Vol. 8, p. 480.

6.114 The Court of Arbitration denied the first of these objections, on the ground that "... international law does not require here an excessive formalism¹⁴³". It also rejected the second objection on the ground that "... the alleged lack of independence of Mr. Walker and Mr. Tripp has not been proven¹⁴⁴". But the Court of Arbitration upheld the third and fourth objections and concluded:

"For these two reasons, the lack of opportunity for the Parties to present their arguments and the absence of reasoning for the decisions, the Court has come to the conclusion that the Tripp decisions cannot be said to have constituted arbitral awards¹⁴⁵."

6.115 The 1939 British decision on the Hawar islands is an *a fortiori* case. Obviously, there was no arbitration agreement authorising the British Government to act as arbitrator between Qatar and Bahrain in the matter of the dispute over title to the Hawar group of islands. The Judgment of the Court of 1 July 1994 in the jurisdictional phase of the present case confirms that international law does not require consents to be expressed only in the form of an arbitration agreement. Qatar does however rely on the three remaining objections raised by Dubai in the *Dubai/Sharjah Border* arbitration, in addition to the absence of consent. Qatar has already demonstrated that in 1938/39, British officials exercising authority in the Gulf did not always act impartially as regards conflicting claims to areas where oil deposits were thought to be at stake. In the *Dubai/Sharjah Border* case, the Court of Arbitration was in a position to state not only that the reaching of a settlement was clearly both in the interests of the British authorities and of the Rulers themselves but also that:

"... there is no evidence to suggest that the British authorities wished to favour one Emirate more than the other¹⁴⁶."

6.116 In the face of all the evidence which Qatar has now produced about the partiality of Weightman (and, to a lesser extent, Fowle) for Bahrain in 1938/39, it requires little imagination to justify the conclusion that the British authorities at this time were intent on

¹⁴³ *Ibid.*, p. 479.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*, p. 480.

¹⁴⁶ *Ibid.*, p. 479.

finding any possible justification (however flimsy) for giving the Hawar islands to Bahrain. So the objection that the "arbitrator" in the dispute over the Hawar islands in the 1930s was less than fully impartial has been sufficiently proven in the present case.

6.117 The remaining two objections raised by Dubai in the *Dubai/Sharjah Border* case can be invoked equally by Qatar in the present case. As the Court of Arbitration said in their award in the *Dubai/Sharjah Border* case:

"... the Court must emphasise that it is of the essence of arbitration that the parties to a dispute must be able to address their arguments to a tribunal through their own representatives and that a dialogue between the parties, each replying to the other, must be established¹⁴⁷."

6.118 The Court will be able to judge for itself the extent to which the procedures adopted by the British Government in the present case, as described in Section 2.A¹⁴⁸, fall short of the minimum standards required to justify describing the process as one of arbitration.

6.119 That neither Qatar nor Bahrain was afforded in 1939 any reason for the decision purporting to give the Hawar group of islands to Bahrain cannot be disputed. It was indeed the principal ground on which the Ruler of Qatar relied in protesting strenuously against the decision at the time. So here again is a reason for distinguishing the 1939 decision on the Hawar islands from an arbitral award.

6.120 At most, therefore, and even if not invalidated on the grounds which Qatar has invoked, the British decision of 11 July 1939, purporting to give the Hawar islands to Bahrain amounted to a non-binding decision which would have had legal force only to the extent that it was accepted by both of the parties in dispute (Qatar and Bahrain). It is clear beyond question that the Ruler of Qatar immediately protested against the British decision of 11 July

¹⁴⁷ *Ibid.*

¹⁴⁸ *See*, paras. 6.46 *et seq.*, above.

1939¹⁴⁹. He repeated this protest in another letter to the Political Resident of 18 November 1939¹⁵⁰. Not content with this, he addressed another letter to the Political Agent in Bahrain on 7 June 1940¹⁵¹, renewing his protest against Bahraini actions in the Hawar islands and complaining in particular about secret landings on the western coast of the mainland of Qatar from boats normally anchored at Hawar, and the kidnapping of Qatar citizens. These early protests express the Ruler's amazement and indeed incredulity at the British decision; this is hardly surprising in view of his knowledge that the vast majority of Gulf rulers, and indeed of the Arab population of the Gulf region, were convinced that the Hawar islands belonged to Qatar, a conviction of which Prior, for one, was aware¹⁵². These protests by the Ruler of Qatar over the seizure of Hawar were repeated regularly in subsequent years, whenever opportunity presented itself. So it cannot be argued that the Ruler of Qatar at any time acquiesced in the 1939 British decision or in the take-over of Hawar by Bahrain.

2. Unfairness of the procedure

6.121 In the description of the procedures followed by the British Government in the late 1930s in Section 2.A of this Chapter, attention has been directed to certain features of those procedures which operated to the advantage of Bahrain and, more tellingly, to the manifest disadvantage of Qatar in the determination by the British Government of the conflicting claims of Bahrain and Qatar to sovereignty over the Hawar group of islands. Attention has also been directed to certain instances of bias in favour of Bahrain and against Qatar displayed by British officials in the Gulf during the 1930s.

6.122 It is now necessary to consider the legal consequences of these shortcomings in the procedures followed and the bias displayed by the British authorities in their capacity as "decision-maker". There is a consensus among the leading publicists on international law that there are certain fundamental rules whose observance is essential to sustain the validity of any

¹⁴⁹ See, Annex III.211, Vol. 8, p. 49.

¹⁵⁰ Annex III.213, Vol. 8, p. 59.

¹⁵¹ Annex III.219, Vol. 8, p. 85.

¹⁵² See, para. 6.106, above.

decision reached or award given as a result of international judicial or arbitral process. These rules have been described as rules "inherent in the judicial process, or which are generally recognised by civilised nations"¹⁵³. In the submission of Qatar, these rules are applicable equally to the exercise of quasi-judicial powers of the kind which the British authorities were purporting to apply to the determination of the conflicting claims of Qatar and Bahrain to sovereignty over the Hawar group of islands. The principal rules in this category (which to some extent may overlap) are the following:

- (1) the rule that both parties must have a proper and equal opportunity to present their case at all stages (the *audi alteram partem* rule);
- (2) the rule that no one should be judge in his own cause (*nemo iudex in causa sua*);
- (3) the requirement that the proceedings should be free from corruption, fraud and bias; and
- (4) the right of the parties to a reasoned decision.

6.123 In the following paragraphs these rules will be looked at more closely and an assessment will be made of the extent to which there may have been a failure to observe them in the choice and conduct of the procedure preceding the 1939 decision.

Audi alteram partem rule

6.124 As the Court will be well aware, this rule requires in essence that each party must have an equal and proper opportunity to present its case at all stages of the proceedings. It thus has two main elements: (a) the right to a proper opportunity to present one's case and (b) the right to an equal opportunity to do so.

6.125 The right to a proper opportunity to present one's case entails that each party be given adequate notice of the case to be met and an adequate opportunity to comment on it. The consequence that attaches to a failure to observe this requirement is that the proceedings are a nullity¹⁵⁴.

¹⁵³ Annex III.311, Vol. 8, p. 569.

¹⁵⁴ See, Annexes III.306 and III.309, Vol. 8, pp. 539 and 555.

6.126 From the description of the procedures followed by the British authorities in the years leading up to the formal decision of 11 July 1939, it is abundantly clear that this principle was not observed. In particular, it was not observed in 1936. The Court will recall that, in that year, Bahrain submitted for the first time a formal claim to the Hawar islands. The British authorities did not even inform the Ruler of Qatar that Bahrain had made such a claim. Instead, and again without informing Qatar, the British Government, on the advice of its representatives in the Gulf, made a "provisional decision" in favour of the Bahrain claim to Hawar. They do not even appear to have informed the Ruler of Qatar in 1936 that they had made such a "provisional decision". There was not even an appearance of affording Qatar an opportunity to present its case before the "provisional decision" was reached in 1936. There could hardly be a more flagrant case of a failure to observe the fundamental rule of fairness in quasi-judicial procedures. As Qatar has already submitted, the procedures were thus fundamentally flawed from the outset by the action taken in 1936.

6.127 The second limb of the *audi alteram partem* rule is the principle of the equality of the parties. The present Court has emphasized that "The principle of equality of the parties follows from the requirements of good administration of justice"¹⁵⁵.

6.128 By definition, equality of the parties precludes *ex parte* communications between the decision-maker and one of the parties. It is accordingly the duty of the decision-maker not to take evidence privately from one side; not to use information without putting it to both sides; and not to see one party in the absence of the other.

6.129 As has been seen¹⁵⁶, the procedure followed by the British authorities (and particularly by Weightman and, to a lesser extent, Fowle) breached each and every one of these specific incidents of the *audi alteram partem* rule. Moving forward from what happened in 1936 to the procedures followed in 1938/39, it will be seen immediately that there was a glaring departure

¹⁵⁵ *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against Unesco, Advisory Opinion, I.C.J. Reports 1956*, p. 86.

¹⁵⁶ See, paras. 6.46 *et seq.*, above.

from the *audi alteram partem* rule in the initial assumption made, namely, that it was for Qatar to disprove the Bahrain claim of sovereignty.

6.130 A closer look must be taken at what actually happened during the formal procedures which opened with Weightman's letter to the Ruler of Qatar of 20 May 1938, and closed with the letters of 11 July 1939 from Fowle to both Rulers conveying the decision of the British Government. It has been noted that there was an initial and flagrant breach of the principle of equality in requiring Qatar to disprove the Bahrain claim, thereby shifting the burden of proof in Bahrain's favour. But (and here it is unfortunately necessary for Qatar to refer again to facts to which it has already drawn attention in other contexts) the following summary of specific incidents, which testify to the discriminatory treatment accorded to the Ruler of Qatar during the course of the formal procedure, in gross breach of the principle of equality, is hereby presented for the convenience of the Court:

- (1) the Ruler of Qatar is requested, on 20 May 1938, to submit his claim to Hawar "at the earliest possible moment", and in fact responds on 27 May 1938, whereas no time-limit is put on the submission of Bahrain's "counter-claim" which was not in the event submitted until 3 January 1939, some four and a half months after it had been requested.
- (2) the Ruler of Qatar was never, so far as can be ascertained from British archives, informed of the content of the (uninvited) "preliminary statement" of 29 May 1938 of the Bahrain case on Hawar, despite the fact that Weightman expressly identified that document as one of the documents in the case upon which he drew when evaluating the evidence in his letter to Fowle of 22 April 1939¹⁵⁷.
- (3) Nor was the Ruler of Qatar informed of the last-minute evidence about fish-traps submitted by Belgrave to Weightman on 20 April 1939¹⁵⁸, and taken into account in paragraph 10 of Weightman's report to Fowle of 22 April 1939¹⁵⁹.

¹⁵⁷ Annex III.195, Vol. 7, p. 497.

¹⁵⁸ Annex III.193, Vol. 7, p. 489.

¹⁵⁹ Annex III.195, Vol. 7, p. 497.

- (4) The inequality of treatment as regards time-limits (see point (1) above) was repeated when Qatar was made aware of Bahrain's "counter-claim"¹⁶⁰.
- (5) As is evident from Belgrave's diary entries for 18, 20 and 22 April 1939¹⁶¹, meetings took place between Belgrave and Weightman during the sensitive period when Weightman was engaged in preparing his report to Fowle on the relative strengths and weaknesses of the claims to Hawar submitted by Bahrain and Qatar. These meetings took place without the knowledge of the Ruler of Qatar. Moreover, it is admitted by Belgrave in his diary entry for 22 April that he saw Weightman's letter regarding the whole thing (possibly even in draft).

6.131 Indeed, this analysis of the manner in which the competent British officials in the Gulf failed to observe even the most basic tenets of the *audi alteram partem* rule in their treatment of the dispute about sovereignty over the Hawar islands in the 1930s inevitably leads one to consider whether there is sufficient proof of bias on the part of individual British officials in the Gulf or elsewhere which would or could have had an impact upon the final decision to give Hawar to Bahrain.

3. Bias

6.132 There are two main elements underlying the rule which prohibits bias in a decision-maker on the international plane, namely:

- (1) that no-one may be judge in his own cause (*nemo iudex in causa sua*), which is generally understood to mean that the decision should not be made on the basis of the decision-maker's self-interest, but with due regard to the merits of the respective cases of the disputing parties;

¹⁶⁰ See, para. 6.83, above.

¹⁶¹ Annex III.143, Vol. 7, p. 213.

- (2) that the decision-maker must not be prejudiced for or against either of the parties; nor must he have prejudged the case, by making up his mind before having given the parties a proper and equal opportunity to be heard.

6.133 Again, there is some overlap between these two elements. Sometimes, indeed, it may be a matter of personal choice whether a particular instance of conduct is regarded as falling under element (1) or element (2).

6.134 We know for example that several British officials, both in the Gulf and in London, were quite open in arguing for a decision favourable to Bahrain on Hawar on political and strategic grounds. Others simply stressed the more general advantages to Britain of a decision on Hawar favourable to Bahrain. It will be recalled, for example, that Lt.-Col. Loch, the then British Political Agent in Bahrain, when forwarding to the Political Resident Belgrave's letter of 28 April 1936, outlining Bahrain's formal claim to Hawar, commented that "it might in certain circumstances suit us politically to have as large an area as possible included under Bahrain¹⁶²". What would or would not suit Britain politically is not, it is submitted, a proper consideration to be taken into account by an impartial decision-maker. The Political Resident in the Gulf at the time (Fowle) was even more blatant in seeking to distance any eventual decision on Hawar from a careful and impartial consideration of the merits. In formulating, in a memorandum of 5 April 1938, his one-sided proposals on the procedure to be followed in determining the question of sovereignty over Hawar, Fowle had no hesitation in adding:

"From the political point of view it will suit quite well if we give Hawar to Bahrein...¹⁶³."

6.135 Finally, Hemingway of the India Office in London, when minuting on the recommendations made by Weightman and Fowle in April 1939 that the Hawar islands be awarded to Bahrain, thought it appropriate to add, as an argument favouring such a decision:

¹⁶² Annex III.106, Vol. 7, p. 27.

¹⁶³ Annex III.146, Vol. 7, p. 233.

"... the present dispute affords, incidentally, an opportunity to mollify any resentment which he [the Sheikh of Bahrain] may feel at our treatment of the Zubara question in 1937¹⁶⁴."

6.136 Something more needs to be said about the conduct of Weightman in relation to the question of bias. Qatar is conscious of the gravity of voicing a suspicion about the integrity of the British Political Agent in Bahrain in 1939, particularly after the passage of some 57 years. But the documents speak for themselves. They strongly suggest an unacceptable degree of collusion between Belgrave and Weightman. This is particularly evidenced by Belgrave's diary entries for 18, 20 and 22 April 1939¹⁶⁵. It was clearly quite improper for Weightman, when acting in a quasi-judicial capacity, to discuss with the official representative of one of the parties, in the absence of an official representative of the other party, a visit which he had made to the islands in dispute. It was even more improper, and indeed a strikingly flagrant departure from the attitude of impartiality which Weightman was called upon to display, for him to show Belgrave a copy of his substantive report to the Political Resident before its despatch on 22 April 1939.

6.137 What is remarkable in this story is that both Prior, the new Political Resident in the Gulf appointed to succeed Fowle in September 1939, and Alban, the new Political Agent in Bahrain appointed to succeed Weightman in 1940, should have expressed such unease and disquiet about the correctness of the British decision of 1939 on the Hawar islands. They did not particularise their unease and disquiet by pointing to specific procedural irregularities, but it is clear that both of them were anxious to have the decision re-opened; and the refusal of the British officials to re-open it in 1941 was attributed not so much to a firm belief on the part of Caroe¹⁶⁶ that Fowle and Weightman were right, but rather to the political undesirability, if not impracticability, of reversing the decision made in 1939.

6.138 The second element underlying the rule prohibiting bias in a decision-maker is that the decision-maker must not be prejudiced for or against either of the parties; nor must he have prejudged the case by making up his mind before having given the parties a proper and equal

¹⁶⁴ Annex III.203, Vol. 8, p. 13.

¹⁶⁵ Annex III.143, Vol. 7, p. 213.

¹⁶⁶ Annex III.230, Vol. 8, p. 133.

opportunity to be heard. We have already reviewed the evidence which shows that, in the 1930s, there was, among British officials in the Gulf, a substantial general prejudice in favour of Bahrain. There remains the separate issue of pre-judgment; and here there is clear and compelling evidence that British officials centrally involved in the decision-making process over Hawar on several occasions prejudged the outcome of that process by acting or threatening to act on the assumption that the Hawar islands belonged to Bahrain. Here again it is necessary for Qatar to refer, as examples of pre-judgment, to evidence which it has already reviewed in other contexts. The most significant example of pre-judgment is afforded by the British "provisional decision" of 1936 in favour of the Bahraini claim to Hawar.

6.139 Further evidence of prejudgment is provided by the overt and strangely candid tendency of some British officials in the Gulf and indeed in London to treat that "provisional decision" of 1936 in favour of the Bahraini claim to Hawar as a final decision. Thus, we see in the draft letter from Peel (India Office) to Baggallay (Foreign Office) of 6 July 1938¹⁶⁷ that the reason given for not affording the Ruler of Qatar an opportunity to put forward observations on Bahrain's counter-claim is that "... it is pretty clear that he has no evidence to bring forward in his own support". Further evidence of prejudgment in the India Office in London is afforded by an internal minute of Gibson (India Office) of 14 July 1938, in which, while recommending acceptance of the Foreign Office view that the Ruler of Qatar should be afforded an opportunity to see and comment on the Bahrain "counter-claim" to Hawar, he frankly (and quite improperly) comments that "... since the issue will almost certainly be decided in favour of Bahrein, it would be as well to leave the Sheikh of Qatar with no feeling of grievance that his case had not been fully heard¹⁶⁸".

6.140 There is accordingly ample evidence of the bias of certain British officials in favour of Bahrain in the conduct of the quasi-judicial procedures adopted in 1938 to decide upon the respective claims of Qatar and Bahrain. Some of the bias displayed may have been unwitting and unintended; but, viewed objectively, it was bias nonetheless.

¹⁶⁷ Annex III.164, Vol. 7, p. 323.

¹⁶⁸ Annex III.166, Vol. 7, p. 333.

4. Absence of reasons

6.141 It remains to consider the legal significance of the fact that the British decision of 11 July 1939 was unsupported by reasons. It will be recalled that the Court of Arbitration in the *Dubai/Sharjah Border* case upheld the objection raised on this ground by Dubai in regard to the Tripp decisions, in the following terms:

"It is true that on occasions in the past arbitral awards have been given without reasoning, especially when rendered by Heads of State. This however is contrary to the modern concept of arbitration and the 1958 Model Rules on Arbitral Procedure indicate, in Article 35(c), that a failure to state the reasons for an award may afford either party a ground to challenge the validity of an award¹⁶⁹."

6.142 Although the award in the *Dubai/Sharjah Border* case was rendered as recently as 1981 and, on the point at issue, seeks to determine the validity, as arbitral awards, of decisions made by representatives of the British Government in 1956 and 1957, Qatar entertains no doubt that the "modern concept of arbitration" had already emerged by 1939 so as to deprive the 1939 British decision on Hawar of any claim to the status of an arbitral award if only by reason of the total lack of reasoning in the decision.

6.143 On this point, Qatar would simply add that, as the Court will be well aware, the Judgment of the present Court in the *Case concerning the Arbitral Award Made by the King of Spain on 23 December 1906*, confirms that an arbitral award must be supported by reasons¹⁷⁰.

6.144 For all the reasons which Qatar has invoked - namely, the essential unfairness of the procedure adopted to determine the respective claims to Hawar of Bahrain and Qatar, the failure of the British authorities to apply the *audi alteram partem* rule, the bias in favour of Bahrain and against Qatar displayed by the British authorities in the Gulf with regard to the question of Hawar, and the absence of reasons to motivate the 1939 decision - Qatar submits that that decision cannot be equated to an arbitral award and that, whether or not it is to be so

¹⁶⁹ Annex III.295, Vol. 8, p. 480.

¹⁷⁰ *I.C.J. Reports 1960*, p. 192, at p. 216.

treated, it would in any event be invalidated by reason of the serious procedural defects to which Qatar has drawn attention. Moreover, Qatar intends to present further proof that not only is the 1939 British decision vitiated by these procedural defects, but that the substance of the 1939 British decision was perverted by reason of the false and distorted "evidence" presented to the British authorities by Belgrave (representing the Ruler of Bahrain) during the period between 1936 and 1939.

Section 3. The Defects in the Basis of the 1939 Decision

6.145 There is ample evidence to establish not only that the British decision of 1939 was rendered null and void by reason of the significant procedural defects to which attention has already been directed, but also that the decision was based on false and manufactured evidence presented by Belgrave on behalf of Bahrain. Some of that evidence Qatar has already presented¹⁷¹. Qatar regrets the need to refer in the context of this Section to evidence already submitted in other contexts, but will now supplement that evidence by other materials.

A. Evidence presented to the British Authorities

1. By Bahrain

a) The first formal claim by Bahrain

6.146 The first formal claim by Bahrain to sovereignty over the Hawar islands was presented by Belgrave to the then Political Agent in Bahrain (Lt.-Col. Loch) in a letter dated 28 April 1936¹⁷².

6.147 There are four assertions in this letter on which the Bahraini claim to sovereignty is presumably based:

- (1) The Hawar group of islands is defined as including the following named islands as well as "a number of small islets":

¹⁷¹ See, Sects. 1.A and 2.A of this Chapter, paras. 6.1 *et seq.* and 6.46 *et seq.*, above.

¹⁷² Annex III.103, Vol. 7, p. 15.

Noon
Meshtaan
Al-Materrad
Rubadh
Hawar
Ginan
Mahazwarah

So the Hawar group is claimed to comprise seven islands in addition to a number of small islets.

- (2) It is claimed that "at least four of the larger islands are permanently occupied" by subjects of the Ruler of Bahrain "who live there in stone houses as well as barastis and who are the owners of valuable fish-traps round the coasts of the islands".
- (3) It is also claimed that "the inhabitants of the Hawar islands and their forefathers are and always have been the subjects of the Shaikh of Bahrain in whose territory they are living".
- (4) It is likewise asserted that "the people of Hawar are today and always have been under the jurisdiction of the Shaikh of Bahrain" in that "they appear in the Bahrain Courts in answer to summonses which are served on them in Hawar and all their cases and disputes are dealt with in the Bahrain Courts"; and that "recently" the Bahrain police had occasion to make several arrests in Hawar and to produce the persons in the Bahrain Court.

6.148 All these are bare assertions presented without any proof or any supporting evidence; and it will be recalled that, as recently as 1933, the India Office in London had already considered and expressly rejected the possibility that Hawar island, to which the Ruler of Bahrain maintained what was characterised then as a "vague claim", could be regarded as

included in the territories covered by the 1925 concession¹⁷³. And yet both the Political Agent in Bahrain (Loch) and the Political Resident (Fowle) combined to recommend in 1936 that "Hawar should be regarded as belonging to the Shaikh of Bahrain and that the burden of disproving his claim lies on the Shaikh of Qatar¹⁷⁴". No British official in the Gulf nor indeed in London seems to have consulted the correspondence dating from as recently as 1933 and expressing the British Government's firm view at that time that the Hawar islands belonged to Qatar¹⁷⁵. This may be attributable to the fact that a Cabinet decision of July 1933 had resolved that, because of its greater experience, the India Office should take over from the Colonial Office as the department responsible for Persian Gulf Affairs¹⁷⁶. There is no hint in Loch's letter to Fowle of 6 May 1936¹⁷⁷, nor in Fowle's letter to the Secretary of State for India of 25 May 1936¹⁷⁸, that either official was prepared to undertake an independent investigation to establish whether the bare assertions made by Belgrave were justified. They were simply accepted unquestioningly, with Fowle adding some argument based on Hawar's proximity to Zubarah while denying the relevance of Hawar's much closer proximity to mainland Qatar.

b) Bahrain's "preliminary statement" of 29 May 1938

6.149 This "preliminary statement", which Belgrave transmitted to Weightman on 29 May 1938¹⁷⁹ had not been requested by Weightman¹⁸⁰.

6.150 The "preliminary statement" had annexed to it a description of the Hawar islands which differs materially from the description given by Belgrave in 1936 when submitting Bahrain's prior formal claim to the Hawar group of islands. The annex to the "preliminary statement" includes the following passage:

"This group of islands consists of one large island approximately 11 miles long and at the widest point 2 miles in width, with an area of about 17 square miles which is

¹⁷³ Annex III.91, Vol. 6, p. 461.

¹⁷⁴ Annex III.107, Vol. 7, p. 31.

¹⁷⁵ See, for example, the letters and documents cited in paras. 6.18-6.22, above and reproduced as Annexes III.85-III.86, III.88 and III.90-III.92, Vol. 6, pp. 437-444, 449 and 457-474.

¹⁷⁶ See, Appendix 3, Vol. 15, p. 95.

¹⁷⁷ Annex III.106, Vol. 7, p. 27.

¹⁷⁸ Annex III.107, Vol. 7, p. 31.

¹⁷⁹ Annex III.158, Vol. 7, p. 291.

¹⁸⁰ See, paras. 6.76-6.77, above.

known as Hawar island and also a number of islands and rocky islets which are adjacent to Hawar island."

The annex to the "preliminary statement" continues:

"On each of the islands there is a stone beacon about 6 feet high surmounted by a pole on the top of which is an oil drum painted red and white, the Bahrain colours. The beacons are numbered as follows:-

1. South Sawad (Sawad = Black)
2. Al Wakara (1) (Hawk's stand)
3. " (2)
4. " (3)
5. Bu Sedad rocks, four rocks
6. Bu Saada islands, four small islands
7. "
8. "
9. "
10. Al Mahzoura
11. North Sawad
12. Al Hajiat (the female Hajis)
13. " (two islands)
14. Ajaira (the widow)
15. Rabadh
16. Al Maotaradh (the intervener)."

All these islands and islets can be seen on *Map No. 9* facing this page, some of them under different names, but bearing numbers corresponding to the above numbers, the main Hawar island being No. 17¹⁸¹.

¹⁸¹ The names which appear on *Map No. 9* are the usual names taken from the surveys referred to at para. 4.3, footnote 3, above. In order to reconcile the names of the islands given in Bahrain's preliminary statement which Belgrave transmitted to Weightman on 29 May 1938 with those given on *Map No. 9*, the following list has been prepared, indicating first the name in the 1938 statement followed by the name on *Map No. 9*: 1. South Sawad/Suwad al Janubiyah; 2-4. Al Wakara/Juzur al Wakur; 5-9. Bu Sedad or Bu Saada/Juzur Bu Sadad; 10. Al Mahzoura/Umm Kharurah; 11. North Sawad/Suwad ash Shamaliyah; 12-13. Al

6.151 A comparison of this list with the list included in Belgrave's letter to Loch of 28 April 1936¹⁸² discloses that Bahrain is no longer claiming that Noon, Meshtaan and Al Materrad (which lie closer to Bahrain than to Qatar) form part of the Hawar group. Nor does it any longer claim that Janan island forms part of the group. By way of contrast, the second and third largest islands in the Hawar group - Suwad al Janubiyah and Suwad ash Shamaliyah - are omitted from the 1936 list but, under the names "South Sawad" and "North Sawad", included in the list contained in the annex to the "preliminary statement" of 29 May 1938. So, right from the beginning, there was complete confusion on the Bahraini side as to the precise composition of the Hawar group. This can only be attributed to the fact that Belgrave and those acting for him were wholly ignorant of the geography of the Hawar group because, contrary to what Bahrain was asserting, there was no permanent Bahraini or even Dowasir presence on Hawar in 1935/36. It defies belief that Bahrain should have been unable to identify by name even the principal islands and islets in the Hawar group in 1936 if, as Belgrave claimed in his letter to Loch of 28 April 1936, "the Hawar group of islands ... is indisputably part of the State of Bahrain" and "at least four of the larger islands are permanently occupied by [the Ruler of Bahrain's] subjects"¹⁸³. The accuracy of this latter statement can in any event be wholly discounted when it is recalled that the 1936 list does not even include the second and third largest islands in the Hawar group.

6.152 Another feature of the revised list in the annex to the "preliminary statement" is that it makes reference to the beacons erected on a number of islands, islets and rocks adjacent to Hawar island. These beacons were of course put up by Bahrain, on the directions and under the supervision of Belgrave, during the winter of 1937/38, in an obvious attempt to bolster Bahrain's claim to the Hawar islands¹⁸⁴. It could well be that the process of beaconing also served a secondary purpose - to remedy the woeful ignorance of Bahrain about the composition of the Hawar group. It is just worth recalling here that, in 1941, the new Political Agent (Alban) stated, in a note which he had prepared for Prior:

Hajiat/unnamed islets; 14. Ajaira/Jazirat Ajirah; 15. Rabadh/Rabad ash Sharqiyah; and 16. Al Maotoradh/Rabad al Gharbiyah. There may be some doubt as to the identification of the islets numbered 8 and 9.

¹⁸² Annex III.103, Vol. 7, p. 15.

¹⁸³ *Ibid.*

¹⁸⁴ See, paras. 6.41 *et seq.*, above.

"It is not the custom in these parts to erect 'national marks' of the sort used by the Bahrain Authorities and then wait for other parties to dispute them. In any case to do it so hurriedly just before the ownership question was raised seems rather like sharp practice. The same applies to the building of a fort there and garrisoning it with police¹⁸⁵."

6.153 Prior himself had earlier expressed himself forcibly on the notion that territory could be acquired in the Gulf by the erection of beacons:

"It is ridiculous to suppose that territory can be acquired in these waters by the erection of 'national marks' and it is unfortunate that the Political Agent did not report it before¹⁸⁶."

6.154 There seems little doubt that this evidence of the lengths to which Belgrave (tacitly supported by Weightman) was prepared to go to obtain for Bahrain title to the Hawar islands contributed to the grave disquiet which Prior continued to entertain about the justice of the British decision of 1939.

6.155 Turning to the "preliminary statement" itself, it is noteworthy that the final sentence of the first paragraph refers (correctly) to the fact that Hawar means "a young camel" and then goes on (falsely) to state that

"... the island is locally known as the offspring of Bahrain island which it resembles somewhat in shape¹⁸⁷."

6.156 It is obvious that Belgrave has distorted completely a metaphor deriving from an undated report made by the Bahrain agent Salim bin Nasser Al-Muzaire to the Ruler of Bahrain. In this report, the writer seeks to describe Hawar in the following terms:

"O Sheikh, Hawar is an island adjacent to the shore of Qatar. It is an island [which is connected to the mainland] as a baby camel is tied to its mother¹⁸⁸."

¹⁸⁵ Annex III.228, Vol. 8, p. 123.

¹⁸⁶ Annex III.220, Vol. 8, p. 89.

¹⁸⁷ Annex III.158, Vol. 7, p. 291.

¹⁸⁸ Annex III.82, Vol. 6, p. 421.

6.157 A mere glance at the map suffices to show that the relationship between a baby camel and its mother is much more appropriate to the relationship between Hawar and the mainland of Qatar than it is to the relationship between Hawar and Bahrain.

6.158 Much is made in paragraph 4 of the "preliminary statement" of the permanent occupation of the Hawar islands by subjects of the Ruler of Bahrain since shortly after 1783. It is flatly asserted:

"The principal families who lived in Hawar are of the Dawasir tribe whose headquarters in Bahrain are Zellaq and Budeya¹⁸⁹."

This assertion is specifically contradicted in a letter which Belgrave himself wrote to Abdul Razag Rizoogi on 20 November 1937:

"The Glorious State has ordered the Rulers of Bahrain to settle the Dawasir in it. We transported them there in four days with their cattle, donkeys and water, so that it will appear, when the report is written, that it is inhabited by the people of Bahrain, who wrote a document that the island is theirs from father to grandfather; that is all¹⁹⁰."

6.159 The fact that it was Belgrave himself who arranged for the transportation of members of the Dowasir tribe to Hawar at the relevant time is confirmed by a letter from Ali bin Khadim Al-Hamily (an agent of Sheikh Shakhboot, the Ruler of Abu Dhabi) to Sheikh Shakhboot himself, written on 4 October 1940. The writer states *inter alia*:

"You have been aware of the situation between Qatar and Bahrain, since you heard of the taking of Hawar from Qatar, and [the fact that] the Adviser has paved the way for Bahrain into the Island [Hawar] by settling the Al-Dawasir there...¹⁹¹."

6.160 Reference is made in paragraph 3 of the "preliminary statement" to the fact that "on the high ground above the bay there is a stone fort with a tower, which is visible in Bahrain". The clear implication is that this stone fort had been in existence for a number of years prior to 1938, this being further evidence of permanent occupation. What is carefully not revealed is

¹⁸⁹ Annex III.158, Vol. 7, p. 291.

¹⁹⁰ Annex III.140, Vol. 7, p. 199.

¹⁹¹ Annex III.223, Vol. 8, p. 103.

that it was Belgrave himself who made arrangements for the construction of the stone fort on Hawar island. Thus, in a letter to Abdul Razag bin Sayed Rizoogi of 27 September 1944, Belgrave admits, with unconcealed pride:

"But if your messenger comes to us we will tell him I have contrived how a fort was built on Hawar while there was no fort before that¹⁹²."

This fort on Hawar appears to have been completed in early 1938¹⁹³.

6.161 In paragraph 5 of the "preliminary statement", it is suggested that fishing rights off the shore of Hawar were originally granted to the people of Hawar by the Sheikh of Bahrain; and it is stated that "if these documents are available they will be forwarded". The alleged documents appear to be another figment of Belgrave's lively imagination, for they were never forwarded. The unjustified assertion in the "preliminary statement" that Hawar fish-traps were registered in the Land Department of the Bahrain Government had to be abruptly withdrawn on 20 April 1939, when it was found that they were not so registered¹⁹⁴.

6.162 So there were many assertions in the "preliminary statement" which were either false or unsupported by evidence or distorted. Attention has been drawn only to those which can immediately be shown to be less than fully accurate. Prior, in his letter to Peel of 26 October 1941¹⁹⁵, takes issue with some of the other "evidence" addressed in this "preliminary statement". In particular, he refutes the significance of Sheikh Issa's alleged annual visit to Hawar by pointing out that Sheikh Issa made annual visits to Linge and Hasa (neither of which were territories subject to the sovereignty of the Ruler of Bahrain). Prior also discredits much of the so-called "evidence" of the exercise of Bahraini jurisdiction in and in relation to Hawar.

6.163 In short, had the "evidence" adduced in Bahrain's "preliminary statement" of 29 May 1938 been subjected to vigorous scrutiny by Weightman or Fowle at the time, it could not

¹⁹² Annex III.241, Vol. 8, p. 187.

¹⁹³ See, the entry for 31 March 1938 in the extracts from Belgrave's Diaries, Annex III.143, Vol. 7, p. 213.

¹⁹⁴ Annex III.193, Vol. 7, p. 489.

¹⁹⁵ Annex III.229, Vol. 8, p. 127.

have been relied upon to support the Bahraini claim to sovereignty. Even the less than fully rigorous scrutiny carried out by Alban and Prior in 1940 and 1941 revealed some (but not all) of the flaws in the Bahraini argument as set out in the "preliminary statement".

c) Bahrain's "counter-claim" of 3 January 1939

6.164 Bahrain's "counter-claim" to the Hawar islands, submitted by Belgrave to Weightman on 3 January 1939 (although dated 22 December 1938), does not add very much¹⁹⁶.

6.165 The main piece of evidence presented by Belgrave is a petition subscribed to, whether by signature, thumb impressions or seals, by a number of persons (ten of whom are from the Dowasir - here spelt "Dosari" - tribe) claiming to be permanent residents of Hawar. The reliability of this so-called piece of "evidence" has been wholly undermined by the confession from Ahmed bin Ali Al-Ghatam, Yousuf bin Ahmed and Irhama bin Ahmed Al-Dosari, written in November 1930, that they had been cajoled by Belgrave into putting their fingerprints onto a blank piece of paper, and that they had never set foot on Hawar, and had nothing there in the way of property¹⁹⁷. This confession is of course repeated in two further letters of December 1930 from Yousuf bin Ahmed¹⁹⁸. It is corroborated by the letter of 2 December 1939 from Abdul Aziz bin Abdul-Rahman Al-Faisal of Saudi Arabia to Sheikh Shakhboot of Abu Dhabi, in which he expresses his anger at the signature of the Bahraini petition by Mohamed bin Hazeem among others¹⁹⁹. The effect is wholly to destroy the unwarranted claim that there were permanent residents on Hawar living in stone houses inherited by the petitioners from their fathers and their predecessors.

6.166 Qatar also has evidence which demonstrates beyond a peradventure that some of the signatories of the petition presented by Bahrain had acquired property on Hawar by purchase from Qatari subjects only a few years before the dispute as to sovereignty over Hawar arose - and had no doubt done so at the behest of Belgrave. There is for example the statement of

¹⁹⁶ Annex III.174, Vol. 7, p. 371.

¹⁹⁷ Annex III.77, Vol. 6, p. 401.

¹⁹⁸ Annexes III.78 and III.79, Vol. 6, pp. 405 and 409.

¹⁹⁹ Annex III.216, Vol. 8, p. 73.

Saleh bin Hamad Al-Mannai (a Qatari subject) made on 7 December 1934²⁰⁰ where he claims to have sold to Abdullah Bu Jabor Al-Dosari, in return for a money payment and a piece of land in Al-Zallaq, all the property in Hawar which he had inherited from his family, and consisting of land with huts on it, and a fish-trap. This is completed by an instruction from Belgrave dated 1935 ordering the land to be registered in the name of Abdullah Bu Jabor Al-Dosari, who is not permitted to sell it for 30 years.

6.167 Then there is the settlement of a dispute as to property on Hawar which was recorded by the Bahraini judge Abdullah Al-Mihza on 11 March 1939, in the presence of Belgrave. This settlement shows that Ali bin Rashid Al-Dosari (stated to be from Al-Zallaq although, as someone whose seal is affixed to the Bahraini petition, professedly also having his "dwelling-place" in Hawar) was in the process of purchasing some land with a hut on it on Hawar from Abdul Hussain Al-Shihri, who had previously acquired the property for ten Austrian riyals from a person in northern Qatar²⁰¹. Belgrave was present when this settlement was recorded. There is additional evidence, however, that this transaction may have been concluded under duress, in the form of an undated letter which Belgrave wrote to Saleh Shihri in which Belgrave threatens to take Saleh Shihri's hut on Hawar by force if he refuses to sell it to Ali bin Rashid²⁰².

6.168 It would seem that some of the signatories of the Bahraini petition were now getting rewards for their false testimony. One of the signatories of the Bahraini petition presented by Belgrave as "evidence" of the permanent occupation of Hawar is Salman bin Ahmed Al-Ghatam. In a settlement recorded by a Bahraini judge (Salmeen bin Rabee) on 18 May 1939, Salman bin Ahmed Al-Ghatam is stated to be "an inhabitant of Al-Zallaq" (and not an inhabitant of Hawar)²⁰³. The document records the purchase by Salman bin Ahmed Al-Ghatam of a hut in Hawar which the owner (Saleh bin Abdullah Al-Hasawi) had himself bought from its original owners "the inhabitants of Qatar", the judge having seen the deed testifying to this latter transaction. The buyer was to pay ten Austrian silver riyals cash with a further sum of forty silver riyals guaranteed by Belgrave on certain conditions.

²⁰⁰ Annex III.96, Vol. 6, p. 493.

²⁰¹ Annex III.186, Vol. 7, p. 429.

²⁰² Annex III.187, Vol. 7, p. 433.

²⁰³ Annex III.202, Vol. 8, p. 9.

6.169 There is even more evidence of Belgrave's duplicity in the early months of 1939. This would have been a testing time for him, as he awaited the British decision on whether Qatar or Bahrain had sovereignty over Hawar. The last thing he wanted, therefore, was evidence from independent sources testifying to close links between Hawar and Qatar. That is why the letter which Belgrave wrote on 10 May 1939 to Khan Bahadur Issa Abdul Latcef Al-Sarkal (the former Residency Agent in the Trucial States) is of such interest²⁰⁴. It will be seen that Belgrave is using his influence to persuade his correspondent to intercede in such a way as to prevent two named Sheikhs from testifying in favour of Qatar in relation to huts which the Sheikhs owned on Hawar. This demonstrates the lengths to which Belgrave was prepared to go to suppress evidence which might not be favourable to the Bahraini case.

6.170 To complete the picture about properties in Hawar, Qatar would wish to refer to the letter of 20 May 1938, from "the political agent in Bahrain" to Saleh Abdul Hussain Shihri²⁰⁵, who was later to sell his land (with a hut on it) in Hawar to Ali bin Rashid Al-Dosari²⁰⁶. Leaving aside the question of the authorship of this letter, its content is entirely consistent with what the Court will now know of Belgrave's activities. There is first the wholly false statement that "we" (presumably the British) "have purchased Hawar from Qatar who sold Hawar to the Sheikh of Bahrain a month ago". There is no truth in either limb of this statement. This is accompanied by a threat that the recipient's huts will be either confiscated or dismantled. Then the recipient of the letter is informed that it is prohibited for any non-Bahraini to "inhabit" Hawar which is reserved to "the Dowasir of Bahrain". The letter also concedes in terms that "Hawar was previously a property of Qatar" (presumably before its non-existent "sale" to the Sheikh of Bahrain).

6.171 The pressure being put on Saleh Abdul Hussain Al-Shihri by Belgrave is further evidenced by an undated letter, probably sent in 1939²⁰⁷. In this letter, the recipient is requested to disavow a document which he was reported to have signed in favour of the Sheikh of Qatar. One hundred rupees is enclosed with the letter, "for your expenses".

²⁰⁴ Annex III.201, Vol. 8, p. 5.

²⁰⁵ See, Annex III.155, Vol. 7, p. 275.

²⁰⁶ Annex III.186, Vol. 7, p. 429.

²⁰⁷ Annex III.214, Vol. 8, p. 65.

6.172 The Court will now be in a position to assess the truth of the statements made in the Bahrain "counter-claim" about properties in Hawar. Is the evidence which Qatar has now produced²⁰⁸ consistent with the assertions advanced in the Bahrain "counter-claim"? The answer is surely in the negative. What the new evidence discloses is that Belgrave arranged for the transportation to Hawar, together with their cattle, of a small group of members of the Dowasir tribe who may have been rewarded for their compliance with Belgrave's instructions by the making over to them of properties on Hawar bought privately from their original owners in Qatar. In no way can it be said that, in 1939, Hawar was "... a place containing a long-established settled community of Arabs living in permanent stone houses with their wives and families and their cattle, sheep and donkeys²⁰⁹". This is pure fantasy; and it is remarkable that so little credence was given at the time to the Ruler of Qatar's firm denial of this assertion in his letter to Weightman of 30 March 1939²¹⁰.

6.173 But this does not exhaust Belgrave's highly suspect activities. As supposed proof of a long-standing occupation of properties in Hawar by members of the Dowasir tribe, Belgrave produces details of two judgments given in 1909/10 by a Bahrain court and relating to land and sea properties in Hawar. A transcription of each of these two judgments is annexed to the Bahrain "counter-claim". It will be seen that the judgments are stated to have been written and sealed by the Qadi, "Sharaf bin Ahmad"²¹¹. Considerable doubt is cast on the validity of these two judgments if one studies the content of a letter written by Sharq bin Ahmed to Sheikh Issa bin Abdul Lateef Al-Sarkal (formerly Residency Agent in Sharjah) on 1 December 1939²¹². In this letter, written from Ras-al-Khaimah, the writer complains that he is about to be deported from Bahrain unjustly after having served the Ruler and Belgrave faithfully and "helped them a lot". The nature of the help he has given is not revealed, but he threatens to reveal the truth. He goes on to complain that he has not received his monthly payment from the Sheikhs; and he likewise complains that Belgrave owes him 100 rupees "which they promised me if I did

²⁰⁸ In Annexes III.82 and III.96, Vol. 6, pp. 421 and 493; Annexes III.140, III.155, III.186 and III.187, Vol. 7, pp. 199, 275, 429 and 433; and Annexes III.201, III.202, III.214 and III.223, Vol. 8, pp. 5, 9, 65 and 103.

²⁰⁹ Annex III.174, Vol. 7, p. 371.

²¹⁰ Annex III.192, Vol. 7, p. 453.

²¹¹ The Qadi's first name was in fact "Sharq" and not "Sharaf", which is an error in transcription resulting from the fact that the Arabic letters corresponding to "r" and "q" are very similar.

²¹² Annex III.215, Vol. 8, p. 69.

some job for them in my name". It should be emphasized that Qatar attaches evidentiary value to this letter only in so far as it may suggest that the two supposed judgments of 1909/10 were fabricated by Sharq bin Ahmed at the behest of Belgrave. The letter is not proof of fabrication, but it inevitably implies that Belgrave was indebted to Sharq bin Ahmed, but wanted him out of the way in case he revealed the truth about the alleged 1909/10 judgments.

6.174 What we have therefore in the Bahrain "counter-claim" is a series of extravagant assertions, allegedly supported by evidence which proves, on close inspection, to be highly suspect, if not demonstrably false. Mere common-sense would, in addition, operate to cast severe doubt on some of the Bahraini assertions. This is particularly true of the claim that Hawar had been occupied by subjects of the Ruler of Bahrain for over a century and that it contained a long established settled community of Arabs living in permanent stone houses. It is a fact of nature that Hawar could not have been occupied permanently before Bahrain took it over in 1936/37. In the 1930s and earlier, there was no regular water-supply on Hawar and people who ventured to live there for short periods had to rely on whatever water might have been collected in cisterns on Hawar or was brought from Qatar. Weightman himself, citing the reports of local people, admits that, although there had been heavy rain in Hawar a month before his brief visit in April 1939, "... this water would be exhausted within three months²¹³". In fact, there is independent evidence that, in 1938/39, most of the cisterns on Hawar were not in working order. Thus, in the Government of Bahrain Annual Report for 1938-1939, it is freely admitted:

"There is no water supply at Hawar except the old cisterns or catchments which were built many years ago by the people of Hawar. Most of the cisterns are out of repair and do not hold water. They are to be repaired²¹⁴."

6.175 Qatar does not dispute that, many years before 1939, attempts were made by the itinerant fishermen who occasionally ventured to stay on Hawar for a limited period to construct cisterns or other receptacles to hold water. But clearly their efforts were not such as to ensure a permanent water-supply. Even Weightman, in his report to Fowle of 22 April

²¹³ Annex III.195, Vol. 7, p. 497.

²¹⁴ Annex III.178, Vol. 7, p. 397.

1939²¹⁵, admits that during much of the year, water has to be brought across from Bahrain. This in itself is puzzling, since there must be a question as to where this "imported" water was to be stored if, as the Government of Bahrain conceded, most of the cisterns required repair. Even Weightman, though continuing to insist that "... a few people do remain there [in Hawar] throughout the year", is obliged to admit ignorance of "whether this is equally true of the past²¹⁶".

6.176 Five independent sources testify to the fact that Hawar was never permanently occupied, although some people may have stayed on the island during the winter months:

- (1) Various Ottoman documents refer to the fact that the Hawar islands were only frequented by fishermen²¹⁷.
- (2) Lorimer, in his *Gazetteer of the Persian Gulf* dated 1907, states that "the Dawasir of Zallaq in Bahrain... have houses at two places on the island and use them in winter as shooting boxes²¹⁸". It will be noted that Lorimer makes no mention of "villages" on Hawar.
- (3) The first edition of the *Persian Gulf Pilot* appeared in 1864. Its description of the Hawar group of islands is suitably vague. It refers simply to:

"... a group of islands, little explored, the largest of which is called Hawar, and is about 10 miles long, and frequented by fishermen²¹⁹."
- (4) In 1909, Prideaux, at that time Political Agent in Bahrain, paid a visit to Hawar and reported that the Dowasir have two winter villages there²²⁰.

²¹⁵ *Ibid.*

²¹⁶ Annex III.195, Vol. 7, p. 497.

²¹⁷ See, for example, Annex III.15, Vol. 6, p. 75.

²¹⁸ Annex II.4, Vol. 3, p. 120.

²¹⁹ Annex III.308, Vol. 8, p. 551.

²²⁰ Annex III.53, Vol. 6, p. 245.

- (5) In 1916, the *Handbook of Arabia* reproduces more or less the description given by Lorimer, but adds that the island of Hawar "has no permanent population"²²¹.

6.177 Thus, it will be seen that only Bahrain asserts that Hawar island has always been occupied permanently. All other neutral observers deny this, though admitting that it was frequented by fishermen and may have been visited on a fairly regular basis during the winter months.

6.178 Much is made in the Bahrain "counter-claim" of the consideration that "no member of the Al Thani family has ever set foot on [the Hawar islands]" and that "no ruler of Qatar ... has exercised authority over the Hawar Islands or the inhabitants". These assertions are false. The second of these allegations will be examined first. Qatar has evidence dating from the turn of the twentieth century of the payment of taxes by persons temporarily living in Hawar, such as itinerant fishermen who used small huts on Hawar during the winter fishing season. There is for example a letter dating from 1891 from three tax-collectors working for the Ruler of Qatar to the Ruler himself. The letter informs the Ruler that "we brought with us the money which we collected from them in the season and it is 30 Ardi [a kind of currency used at the time]"²²². Two other documents provide further evidence as to the collection of taxes on behalf of the Ruler of Qatar in the 1880s and 1890s from itinerant fishermen temporarily living on Hawar island. The first is a letter of 29 March 1887 to the Ruler of Qatar from Saeed Al-Mutawwa Al-Binhajer, Sheikh of the western ports of Qatar, in which the writer reports:

"We did not collect any levies in Hawar this time because the people of Bahrain did not come there [this season]. We met the people of Al-Hassa and of Oman. I agreed with them on terms for the next season"²²³.

The writer also states:

"I have raised your banner, may Allah honour you, on the mid-western part of Hawar."

²²¹ Annex III.296, Vol. 8, p. 483.

²²² Annex III.39, Vol. 6, p. 181.

²²³ Annex III.36, Vol. 6, p. 169.

6.179 The second is another letter of 2 June 1891 to the Ruler of Qatar from the same source in which the writer reports much greater success in the collection of levies for the Ruler from fishermen on Hawar island:

"... I went with my men to Hawar yesterday to collect a lump sum and levy from the Shiites and the people of Bahrain. The good news is that we found them there and collected three hundred Ardi [kind of money] from them as the levy for the last season. I made them vow and set their fingerprints to this effect: that they should hand in the money to us regularly at the turn of each season²²⁴."

6.180 There is also evidence that, in the early years of the century, Bahraini nationals and residents were accustomed to seek specific permission from the Qatari authorities to anchor at Hawar island. Thus, a letter of 15 February 1907 from Muhanna Bin Hazeem Al-Dosari, a resident of Al-Zallaq in Bahrain, to Sheikh Saeed Al-Mutawwa Al-Binhajer states:

"O Sheikh, we ask your permission for our ship to anchor at your island, Hawar; to repair our ships, because your men have not allowed us to anchor [on the island] without a letter from you²²⁵."

6.181 Much more significant in this context is the letter of 7 July 1907 from Sheikh Issa bin Ali Al-Khalifah (Ruler of Bahrain from 1869 until relieved of control by the British authorities in 1923) to Saeed Al-Mutawwa Al-Binhajer requesting permission for Bahrainis to anchor at Hawar and acknowledging his responsibility for any misbehaviour by Bahrainis "on your island and in your country²²⁶."

Here then we have a clear and unqualified recognition by the Ruler of Bahrain in the year 1907 - long before any Bahraini claim was ventilated - that Hawar island belonged to Qatar.

6.182 Finally, but of lesser significance, there is a letter of 12 June 1908 from Mohammed bin Khalifah Al-Khalifah of Muharraq (a member of the ruling family in Bahrain) to the

²²⁴ Annex III.40, Vol. 6, p. 185. *See*, also, para. 5.41, above.

²²⁵ Annex III.48, Vol. 6, p. 221.

²²⁶ Annex III.49, Vol. 6, p. 225. *See*, also, para. 5.49, above.

Sheikh of the western ports of Qatar requesting permission for Irhamah bin Rashid Al-Dosari to anchor at Hawar. The letter concludes: "We are obliged to do whatever you write"²²⁷.

6.183 These letters offer compelling evidence that, in the years 1907 and 1908, Bahrain unquestioningly acknowledged that Hawar island belonged to Qatar. They are reinforced by evidence in a letter dated 16 February 1891 that, from time to time, Qatari officials pursued and, where necessary, made arrangements for the arrest of criminals who had fled from the mainland and taken refuge on Hawar²²⁸.

6.184 The first of the two allegations is also easily refuted. There is indirect evidence that, before 1927, Sheikh Jassim bin Thani of Qatar paid a visit to Hawar. Thus, in a letter from Sultan bin Zayed to the then Ruler of Bahrain (Issa bin Ali), written in January 1927, it is stated of Hawar that "according to what Rashid bin Obaid bin Sharara Al-Buflasah says, Jassim bin Thani went there in former days"²²⁹. This is admittedly hearsay evidence, but other elements in this letter, such as the statement that Hawar "... has no known inhabitants except for some Shiite fishermen from Al-Hassa" confirm the other evidence which Qatar has submitted in this Memorial and its annexes to demonstrate that Hawar was, at the relevant times, without any settled population.

6.185 There is also direct evidence that Sheikh Hamad of Qatar paid a visit to Hawar in February 1938. This was at a time when the Ruler of Qatar (Sheikh Abdullah) was already frail and infirm. Indeed, this is vouched for by Belgrave himself. In his letter to Abdul Razag Rizoogi of 26 March 1938, Belgrave specifically admits that "... the Sheikh of Qatar's son visited them a month ago" and that "he promised them plenty of presents if they did what was required"²³⁰.

6.186 There is further direct evidence that Sheikh Hamad of Qatar paid other visits to Hawar in early February 1939. For example, we find Belgrave writing again to Abdul Razag Sayed

²²⁷ Annex III.50, Vol. 6, p. 229.

²²⁸ Annex III.39, Vol. 6, p. 181.

²²⁹ Annex III.71, Vol. 6, p. 375.

²³⁰ Annex III.145, Vol. 7, p. 229.

Rizoogi on 10 February 1939, stating that the people of Qatar have "no topic except the topic of Hawar since the visit of the Sheikh's son there with his servants"²³¹.

6.187 There is evidence of yet another visit to Hawar by Sheikh Hamad of Qatar which appears to have taken place in the year 1940. A letter from Sheikh Hamad to Abdul Razag bin Rizoogi, written on 19 March 1940, indicates that Sheikh Hamad is going to Hawar; that he has "found witnesses to our case"; that Hawar is "ours from our fathers and grandfathers"; and that "we will not keep silent about the seizure of Hawar"²³². Qatar would like to draw the attention of the Court to the notation on the original Arabic version "Teleg to Bahrain Go. BX3 QT 20-8-1940". It may be inferred from this that the recipient of this letter, who was at the time the Residency Agent in the Trucial States, was transmitting a copy of this letter to Belgrave.

6.188 As a final commentary on the Bahrain "counter-claim", it may be noted that Prior, in his letter to Peel of 26 October 1941, was wholly dismissive of much of the so-called "evidence" put forward by Bahrain²³³. But Qatar does not rely entirely, or even mainly, on the reaction of Prior in 1940/41 when confronted with what he believed to be a wholly unjust decision which had been recommended by his predecessor. It is rather the evidence of Belgrave's ruthless and unconscionable activities to procure Hawar for Bahrain which explains Qatar's unremitting efforts to obtain justice in this matter. What is now before the Court is evidence of what appears to have been a deep-seated and well-prepared plot by Belgrave and others, to obtain recognition of Bahrain's sovereignty over the Hawar islands.

d) Belgrave's letter to Weightman of 20 April 1939

6.189 This is the letter which Belgrave submitted to Weightman on 20 April 1939, several weeks after the formal procedure had been brought to a close by the submission of the Ruler of Qatar's observations on the Bahrain "counter-claim" on 30 March 1939²³⁴. As already

²³¹ Annex III.179, Vol. 7, p. 401.

²³² Annex III.218, Vol. 8, p. 81.

²³³ Annex III.229, Vol. 8, p. 127.

²³⁴ Annex III.192, Vol. 7, p. 453.

noted, it was never transmitted to the Ruler of Qatar²³⁵. Given the peremptory refusal by Weightman to grant the Ruler of Qatar more time in which to prepare his observations on the Bahrain "counter-claim", and given the evidence of Weightman's bias in favour of Bahrain in 1939, it should perhaps not occasion too much surprise that Weightman should so readily have accepted Belgrave's letter of 20 April 1939²³⁶, as a key document, notwithstanding that it had been submitted irregularly and out of time.

6.190 The letter itself retracts an assertion made in Bahrain's "preliminary statement" that fish traps on Hawar were registered in the land registry of Bahrain, admitting that there was still a dispute over the ownership of the traps which had not yet been decided by the Bahrain courts.

6.191 The only other new element in Belgrave's letter to Weightman of 20 April 1939²³⁷ is the transmission of a copy of the judgment in Case No. 264 (of 1936) between an inhabitant of Muharraq and Mohamed bin Ahmed bin Shahin, stated to be "of Hawar". It will immediately be noted that the latter is one of those whose thumb-print is affixed to the totally discredited petition enclosed with the Bahrain "counter-claim". The Court will also note that Belgrave admits in this letter of 20 April 1939, that the Bahrain court in 1936 consisted of Sheikh Sulman bin Hamad and himself. This so-called evidence is therefore worthless; in particular, the statement that Mohamed bin Ahmed bin Shahin is "of Hawar" lacks credibility in view of the confessions made by three of the signatories of the petition²³⁸.

2. By Qatar

a) The Ruler of Qatar's formal letter to Weightman of 27 May 1938

6.192 It will be recalled that, by virtue of Weightman's letter to him of 20 May 1938²³⁹, the Ruler of Qatar had been invited to produce his formal claim on Hawar "at the earliest possible

²³⁵ See, paras. 6.92-6.93 and 6.130, above.

²³⁶ Annex III.193, Vol. 7, p. 489.

²³⁷ *Ibid.*

²³⁸ See, paras. 6.51 *et seq.*, above and Annexes III.77 and III.78, Vol. 6, pp. 401 and 405.

²³⁹ Annex III.156, Vol. 7, p. 279.

moment"; and that the Ruler had taken this invitation literally, since he replied within one week - on 27 May 1938²⁴⁰.

6.193 It is clear from the terms of his letter to Weightman of 27 May 1938 that the Ruler of Qatar, in the absence of any knowledgeable adviser, had simply not understood that he was being called upon to submit positive evidence of the grounds upon which he claimed sovereignty over the Hawar islands. The terms of his letter of 27 May 1938 show that the Ruler of Qatar drafted it as a follow-up to his letter to Weightman of 10 May 1938, complaining about Bahraini activities in Hawar²⁴¹. In other words, his letter of 27 May 1938 protested bitterly about the actions which Bahrain had taken and was still taking in Hawar. He clearly regarded it as self-evident that the Hawar group was an integral part of Qatar:

"Since the date of declaring the independence of Qatar and recognition of my rulership over it, this island, as other islands, has been belonging to Qatar²⁴²."

No doubt fortified by his knowledge that the rulers of neighbouring sheikhdoms (with the glaring exception of the Ruler of Bahrain) were unanimous in acknowledging his sovereignty over Hawar, the Ruler of Qatar concentrated more on denouncing Bahraini activities on Hawar than on setting out in detail the grounds upon which his own claim to sovereignty was based. It must be remembered, however, that the Ruler of Qatar at the time not only lacked any foreign adviser, he also had no clear idea of the evidence he might need to support his own case. Unsurprisingly, therefore, he confined himself largely to an attempt to discover the grounds upon which Bahrain relied to support its claim to Hawar:

"As it is clear that Hawar is considered as an island of Qatar and within its territory and has not been subject to any change which would alter its political position as required by customary rules, what authority the Bahrain Government have to claim it and on what ground they are justified to take such acts²⁴³."

This attempt was unavailing, at least at the time.

²⁴⁰ Annex III.157, Vol. 7, p. 285.

²⁴¹ Annex III.150, Vol. 7, p. 253.

²⁴² Annex III.157, Vol. 7, p. 285.

²⁴³ *Ibid.*

6.194 It is unfortunate that, in writing to Weightman on 27 May 1938, the Ruler of Qatar made no mention of the visit of his son (Sheikh Hamad) to Hawar in February 1938. Nevertheless, it is indicative of Belgrave's attitude that he should, when presenting the Bahrain "counter-claim" on 3 January 1939, blatantly and falsely maintain that "... no member of the Al Thani family has ever set foot on these islands" when he well knew that Sheikh Hamad had visited Hawar in February 1938. It will in any event be recalled that this allegation was firmly refuted in the Ruler of Qatar's comments of 30 March 1939, where it is stated that the late Sheikh Qasim (Jassim bin Mohamed bin Thani) visited Hawar many times.

b) The Ruler of Qatar's comments on the Bahrain "counter-claim"

6.195 The Ruler of Qatar presented his comments on the Bahrain "counter-claim" to Weightman in his letter of 30 March 1939²⁴⁴, after having protested bitterly at the shortness of time made available to him to comment on the evidence presented by Bahrain²⁴⁵. This bitter protest becomes explicable in the light of the content of the following two documents from Qatar's archives.

6.196 The first is a letter from Sheikh Hamad of Qatar to Abdul Razag bin Rizoogi dated 11 December 1939. In this letter, Sheikh Hamad states that he has visited Hawar with his servants and that he has:

"... a document which shows that no-one has visited them [the islanders], ... except since the British adopted a definitive policy towards the island [Hawar]²⁴⁶."

6.197 The precise meaning of this passage in the letter is somewhat obscure, but Sheikh Hamad then reveals that this document "has been stolen from under the mattress" of his father and that he has been informed "that it is in Bahrain", which breaks his heart. This letter, if it stood alone, might be somewhat suspect in that it might be thought (depending on when the theft took place) to provide an excuse for the non-submission by the Ruler of Qatar of much in

²⁴⁴ Annex III.192, Vol. 7, p. 453.

²⁴⁵ Annex III.191, Vol. 7, p. 449.

²⁴⁶ Annex III.217, Vol. 8, p. 77.

the way of positive evidence to support his case. But Sheikh Hamad's letter of 11 December 1939 does not stand alone.

6.198 It is in fact confirmed in all its essential details by an undated letter from Salim bin Nasser Al-Muzaire to the Ruler of Bahrain²⁴⁷. The content of this letter shows that the writer is describing, with some embellishment, the same incident as is described in Sheikh Hamad of Qatar's letter²⁴⁸. In this undated letter, Salim bin Nasser Al-Muzaire describes the visit which Sheikh Hamad, accompanied by three of his servants, made to Hawar. According to the writer, Sheikh Hamad went into Hawar "from the side of Zekrit and waded through the low tide"; he paid people from Al-Qateef to be on his side; and he met "with a group of Al-Dowasir and a group from Oman" with whom he wrote an agreement and took finger-prints. The writer states that "the document was taken by Bin Darwish from under the Sheikh's cushion" and "sent ... to you yesterday with Bin Nisif and Bin Hitmi". The writer then proceeds to give a detailed description of the physical characteristics of the document. The reference to Bin Darwish having taken the document is somewhat surprisingly confirmed from British sources. In a letter from Moberly (Political Agent, Doha) to Ford of 10 April 1961 (over twenty years later), the writer reports having been informed, in the context of the discussions about the seabed boundary between Qatar and Bahrain, that "the Qatar Government archives are very incomplete and that Abdullah Darwish is suspected of having made off with many official Government papers which he cannot now be persuaded to hand back²⁴⁹".

6.199 The theft of the evidence about Hawar which the Ruler of Qatar had been collating in the early months of 1939 clearly embittered the Ruler and Sheikh Hamad and led them to suspect the existence of a conspiracy to deprive Qatar of the Hawar islands. It is now apparent that the theft was organised by the small band of agents in Qatar acting in the interest of Bahrain.

²⁴⁷ Annex III.175, Vol. 7, p. 385.

²⁴⁸ Annex III.217, Vol. 8, p. 77.

²⁴⁹ Annex III.286, Vol. 8, p. 421.

6.200 Qatar has gone into these details of the theft of a major part of the evidence collected on Hawar by Sheikh Hamad of Qatar in early 1939 because the theft explains (a) why the Ruler of Qatar was so anxious to secure a postponement of the time-limit within which he was required to provide his comments on the Bahrain "counter-claim" and (b) why the evidence which the Ruler of Qatar did eventually submit under cover of his letter to Weightman of 30 March 1939 was not as compelling as it might otherwise have been. In this context, it will be recalled that, in his report to Fowle of 22 April 1939, Weightman somewhat contemptuously dismissed the value of the statements put in on 30 March 1939 by the Ruler of Qatar on the following grounds:

"The value however of these latter documents is greatly diminished by the fact that the signatures on all of them are in one handwriting, unsupported by thumb impressions or seals of the alleged signatories. Nor is any description of the alleged signatories given, their place of residence or reason for having special knowledge of the Hawar Islands²⁵⁰."

6.201 The criticism is wholly undermined if it is accepted that the evidence on Hawar which had been at the disposal of the Ruler of Qatar in the early months of 1939 had in fact been stolen from the Ruler by agents acting on behalf of the Ruler of Bahrain.

B. Evidence not made Available to the British Authorities

6.202 Throughout this Chapter of the Qatar Memorial, and also throughout Chapter V, Qatar has invoked evidence relating to the Hawar islands which was not available, or not made available, to the British authorities in the Gulf or in London in 1938 or 1939. This evidence, which is scattered over the two Chapters to which reference has been made, discloses a distasteful picture of activities by Belgrave and others in the manufacture of documentary and other evidence to sustain the claim by Bahrain to the Hawar islands. The incentive for Belgrave and the Ruler of Bahrain was, of course, that the Hawar islands were thought by the oil companies at the time to have considerable oil-bearing potential; had this been so, the Ruler of Bahrain would have benefited from a substantial increase in his oil revenues. Cupidity was no doubt the principal reason motivating the then Ruler of Bahrain. Whether

²⁵⁰ Annex III.195, Vol. 7, p. 497.

other reasons motivated Belgrave has yet to be revealed; but the evidence of his misdeeds, to the clear detriment of Qatar, is overwhelming.

C. Erroneous Assumptions and Significant Omissions

6.203 Qatar has identified four erroneous assumptions on which the 1939 British decision was or at any rate may have been based, together with one significant omission among the considerations which should have been taken into account. The four erroneous assumptions were:

1. That the Hawar islands were open to occupation by Bahrain in the mid-1930s;
2. That the Hawar islands were located further off the mainland coast of Qatar than was the case, and that the composition of the Hawar group was known and generally accepted;
3. That, even if the Hawar islands were open to occupation by Bahrain in the mid-1930s, the alleged acts of sovereignty in or in relation to the Hawar islands engaged in by Bahrain in the mid-1930s or earlier were sufficient to confer title; and
4. That title to the smaller islands of the Hawar group necessarily depended upon the question of which State had title to the main Hawar island (this was not so much an erroneous as an exaggerated assumption).

In addition, Qatar would draw attention to one significant omission in the arguments relied on by Bahrain in support of its claim and by the British as an element in the decision-making process, namely, the territorial scope of the concession granted by Bahrain to EGS (and later to BAPCO) in 1925. Qatar will now review these erroneous assumptions and significant omissions *seriatim*.

1. Were the Hawar islands open to occupation by Bahrain in the mid-1930s?

6.204 The British decision of 1939 seems to have been based on the erroneous assumption that the Hawar group of islands was open to occupation by or on behalf of Bahrain in the mid-1930s. Occupation has been defined as:

"... the act of appropriation by a state by which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another state²⁵¹."

It is further explained:

"The only territory which can be the object of occupation is that which does not already belong to any state whether it is uninhabited, or inhabited by persons whose community is not considered to be a state; for individuals may live on a territory without forming themselves into a state proper exercising sovereignty over such territory. The territory of any state however is obviously not a possible object of occupation; and it can only be acquired through cession or, formerly, by subjugation. On the other hand, a territory which once belonged to a state, but has been afterwards abandoned, is a possible object of occupation by another state²⁵²."

A footnote to the last sentence reads:

"It should be emphasised that territory the sovereignty over which is merely unclear, or disputed, cannot be regarded as *terra nullius*."

6.205 The assumption that in the mid-1930s the Hawar group of islands were open to occupation by Bahrain, or indeed by any State other than Qatar, was an unstated assumption. A careful study of the British archives reveals little trace of any detailed research having been done by the British authorities in the Gulf or in London in the 1930s to determine whether Qatar might have a prior original title to the Hawar islands so as to disable Bahrain from acquiring sovereignty over them by occupation. In any event, it will be recalled that up until 1933 the British Government had fully accepted that the Hawar islands belonged to Qatar. It is possible that the transfer of responsibility for Persian Gulf affairs from the Colonial Office

²⁵¹ Annex III.307, Vol. 8, p. 547.

²⁵² *Ibid.*, pp. 548-549.

to the India Office in the early 1930s may have contributed to the lack of knowledge among India Office officials in London of the history and geography of Qatar, including the Hawar islands²⁵³.

6.206 There is evidence that, during the late 1860s and the 1870s, the British Ambassador in Constantinople (then the capital city of the Ottoman Empire) was fully aware that the Turkish authorities regarded the Hawar islands as appertaining to Qatar. Turkish military and naval forces were present in Qatar from 1871 to 1915 and Turkish naval personnel prepared several maps during the period from 1867 onwards showing the Hawar islands to be an integral part of Qatar. There is also documentary evidence from this period and indeed from earlier times, showing that the Hawar islands were acknowledged to belong to Qatar²⁵⁴.

6.207 Furthermore, there is equally evidence from the period between 1886 and 1891, of the collection of levies from itinerant fishermen on Hawar on behalf of the Ruler of Qatar; and there is also evidence dating from 1907/08 of a clear recognition by the then Ruler of Bahrain and by other Bahraini nationals that Qatar exercised sovereignty over the Hawar islands²⁵⁵.

6.208 Quite apart from this, there is ample evidence, which Qatar has laid before the Court, to demonstrate that most of the Rulers of neighbouring sheikhdoms in the Gulf had been unequivocally of the view for many years that the Hawar islands belonged to Qatar²⁵⁶.

6.209 Prior, in his letter of 26 October 1941, to Peel (India Office) unhesitatingly confirms that this was the position:

"The view of independent Arabs is that Hawar belongs to Qatar and I am convinced the decision is inequitable...²⁵⁷."

²⁵³ See, para. 6.148, above.

²⁵⁴ See paras. 5.15 *et seq.*, above.

²⁵⁵ See, paras. 5.49 and 6.178 *et seq.*, above.

²⁵⁶ See, paras. 5.21 *et seq.*, above.

²⁵⁷ Annex III.229, Vol. 8, p. 127.

6.210 This view was shared by Alban, the successor to Weightman as Political Agent in Bahrain. Alban expresses the following view in his note on the "Ownership of Hawar" prepared in October 1941:

"The feeling amongst impartial Arabs regarding the ownership of Hawar Islands is that they are a part of Qatar...²⁵⁸."

6.211 So, despite all the pressure which the Ruler of Bahrain and Belgrave put on the Rulers of neighbouring sheikhdoms to support Bahrain in its clash with Qatar over the ownership of the Hawar islands, none did so overtly and some, such as the successive Rulers of Abu Dhabi, expressed active disapproval of Bahrain's takeover.

2. Composition and location of the Hawar islands

6.212 As we have already seen, Belgrave himself was thoroughly confused as to the composition and location of the Hawar islands²⁵⁹.

6.213 Throughout the period in the 1930s when the respective claims of Bahrain and Qatar to the Hawar islands were under consideration by the British authorities in the Gulf, there was no agreed conclusion as to the composition of the group. Even in its formal "counter-claim" of 22 December 1938/3 January 1939, Bahrain is vague and uncertain as to the composition of the group, describing the Hawar islands as "... consisting of one large island, two or three small islands and a number of rocky islets", all forming, according to Bahrain, "... a part of the Bahrain archipelago²⁶⁰".

6.214 The Court will of course recall that the final decision of the British Government, which was conveyed to the Rulers of Bahrain and Qatar by identical letters from the Political Resident of 11 July 1939, refers simply to previous correspondence "on the subject of the ownership of the Hawar Islands" and then goes on to say that:

²⁵⁸ Annex III.228, Vol. 8, p. 123.

²⁵⁹ See, paras. 6.146 *et seq.*, above. See, also, *Map No. 9* facing p. 145.

²⁶⁰ Annex III.174, Vol. 7, p. 371.

"... after careful consideration of the evidence adduced by [the two Rulers], they [the British Government] have decided that these Islands belong to the State of Bahrain and not to the State of Qatar²⁶¹."

6.215 The Court will note that there is no definition in this decision of what are the islands and islets which constitute "the Hawar Islands". This is perhaps not all that remarkable, given that the British authorities in the Gulf in 1939 were remarkably ignorant of the geography of the group. Thus, on 4 July 1939, only one week before the British decision on the Hawar islands was conveyed to the Rulers of Bahrain and Qatar, the Secretary of State for India requested the Political Resident (Fowle) to make proposals "... (accompanied by a detailed sketch map) as to the line of division which should be drawn between the territories and territorial waters of Bahrain and of Qatar in the area affected²⁶²". This obviously occasioned a certain amount of panic among British officials in the Gulf. Weightman reported to Fowle on 22 July 1939:

"No maps or charts exist showing the location of the Hawar Islands with any degree of accuracy²⁶³."

6.216 Weightman then indicated to Fowle that he had made an unofficial enquiry of the RAF unit at Habbaniya (in Iraq) as to whether they could make a photographic map of the Hawar islands and the adjacent coast, and had been informed that photographs could be taken within six weeks²⁶⁴. In fact, photographs were not taken until early in 1940 because of the outbreak of war in Europe; and, because of the small scale of the photographs, no map based on them was ever constructed.

6.217 There was also some uncertainty in the 1930s as to the precise *location* of the Hawar islands, and more particularly as to the distance between the nearest island of the Hawar group and the mainland of Qatar. The fact that many of the islets in the Hawar group lie within three miles of the main Qatar coast is however implicit in the statement made in paragraph 4 of Weightman's report of 22 April 1939, on the respective claims of Bahrain and Qatar that "... at

²⁶¹ Annexes III.208 and III.209, Vol. 8, pp. 37 and 41.

²⁶² Annex III.207, Vol. 8, p. 33.

²⁶³ Annex III.210, Vol. 8, p. 45.

²⁶⁴ *Ibid.*

low springs it is possible ... to wade from the Qatar mainland to a certain point on the main Hawar Island in about three feet of water²⁶⁵" and was later expressly admitted in paragraph 4 of Weightman's letter to Prior of 3 July 1940²⁶⁶. Yet despite the statement made in paragraph 4 of Weightman's report of 22 April 1939, we find Hemingway (India Office) minuting on 12 May 1939, that "... the islands are separated by ... five miles (more than three) of shallow water from the mainland ...²⁶⁷". It is almost as if Hemingway had not fully absorbed Weightman's report and was relying simply on the description in Lorimer's *Gazetteer of the Persian Gulf* (1907) where Hawar is described as lying:

"Due west of the point of Ras Aburuk and about 5 miles from it²⁶⁸."

6.218 So also, in "A Handbook of Arabia" prepared by the War Staff Intelligence Division of the Admiralty in May 1916, Hawar is referred to as follows:

"An island, Jezirah Hawar, lies 5 miles W. of Ras Aburuk on the W. coast, with which it is roughly parallel; it is about 10 miles long, and has no permanent population, but the Dawasir of Zallaq in Bahrein have houses used as shooting-boxes in winter, and a cistern for rain-water. The islets Rubadh and Janan lie to N. and S. of Hawar, those of Ajirah and Suwad in the channel between it and the mainland²⁶⁹."

6.219 The point is of course that Hawar island does lie due west off the point of Ras Aburuk and about five miles from it, so that the descriptions in Lorimer and "A Handbook of Arabia" are not inaccurate in themselves; they are actively misleading, however, if they are interpreted as meaning that the point of Ras Aburuk is the nearest point to Hawar island on the mainland coast of Qatar. The nearest point lies further south on the mainland from where, as Weightman (to his credit) reported on 22 April 1939, it is possible at low springs to wade out to Hawar in about three feet of water. None of the officials in London, however, appeared to appreciate the significance of the fact that many of the islands and islets in the Hawar group, including about half of Hawar island itself, lay within three miles of the mainland coast of Qatar. The misleading descriptions in Lorimer and in the Admiralty publication "A Handbook

²⁶⁵ Annex III.195, Vol. 7, p. 497. *See, also, Map No. 5* facing page 50, and para. 4.5, above.

²⁶⁶ Annex III.222, Vol. 8, p. 99.

²⁶⁷ Annex III.203, Vol. 8, p. 13.

²⁶⁸ Annex II.4, Vol. 3, p. 120.

²⁶⁹ Annex III.296, Vol. 8, p. 483.

of Arabia" could have led the unwary to believe that the Hawar group of islands lay wholly outside what was then the territorial sea of Qatar and indeed much closer to Bahrain than in fact is the case²⁷⁰.

6.220 It was not until 1947, when the British Government notified to the Rulers of Qatar and Bahrain the division of the seabed between their respective territories, that a line was drawn on a map to illustrate the islands and islets belonging to the Hawar group. Janan was excluded because it lay outside the line within which the Hawar group was situated.

6.221 This vagueness as to the composition and location of the Hawar group of islands in the years between 1936 and 1939 would in itself be a factor which could lead to the invalidation of the 1939 decision on the grounds of the uncertainty of the determination made.

3. Were the alleged acts of sovereignty in or in relation to the Hawar islands, engaged in by Bahrain in the mid-1930s or earlier, sufficient to confer title, on the assumption that the islands were open to occupation at the time?

6.222 Weightman and his superiors, both in the Gulf and in London, appear to have proceeded on the assumption that the alleged acts of sovereignty carried out by Bahrain in or in relation to the Hawar islands in the mid-1930s or earlier were sufficient to confer title on Bahrain. This was of course on the unstated, but mistaken, assumption that the Hawar islands were capable of appropriation by Bahrain in the 1930s. Let us assume, however, for the sake of argument, that the Hawar islands were so capable of appropriation. In this hypothetical situation, would the acts performed by Bahrain in or in relation to the Hawar islands in the mid-1930s or earlier have been sufficient to confer title?

a) Beaconsing of the islands and islets of the Hawar group

6.223 It is known that Belgrave made arrangements for the placement of beacons on a number of islands and islets in the Hawar group during the winter of 1937/38. The note on the Hawar islands attached to the Bahrain "preliminary statement" delivered by Belgrave to

²⁷⁰ But note that both Weightman and Fowle were fully aware of the presumption that an island situated within the three-mile limit of territorial waters of a State belonged to that State, in the light of their experience with the Lubainah islands; *see*, para. 5.73, above.

Weightman on 29 May 1938, and carefully concealed from the Ruler of Qatar²⁷¹, gives, in paragraph 1, a description of the beacons. Belgrave's belief in the efficacy of beaconing as a mode of acquiring territory was to prove somewhat short-lived. It was forcefully denied by Prior, who stated, in his letter to Peel of 26 October 1941:

"The method of claiming reefs by erecting cairns and marks is totally foreign to Arab sentiment and practice and little weight should be attached to it²⁷²."

6.224 More importantly, however, this Court, in the *Minquiers and Ecrehos* case, attached no legal significance to the placing of beacons as evidence of the exercise of sovereignty. How this issue arose is explained in the following passage from the Judgment:

"The French Government further contends that since 1861 it has assumed the sole charge of the lighting and buoing of the Minquiers for more than 75 years, without having encountered any objection from the United Kingdom Government. The buoys were placed outside the reefs of the group and purported to aid navigation to and from French ports and protect shipping against the dangerous reefs of the Minquiers. In 1888 a French mission, appointed to make a hydrographic survey of the islets, erected provisional beacons on several of them to facilitate the survey²⁷³."

The Court thereupon proceeds to disregard these acts as evidence of French sovereignty over the Minquiers:

"The Court does not find that the facts, invoked by the French Government, are sufficient to show that France has a valid title to the Minquiers. As to the above-mentioned acts from the nineteenth and twentieth centuries in particular, including the buoing outside the reefs of the group, such acts can hardly be considered as sufficient evidence of the intention of that Government to act as sovereign over the islets; *nor are those acts of such a character that they can be considered as involving a manifestation of State authority in respect of the islets*²⁷⁴."

6.225 It would seem therefore that the beaconing of the islets of the Hawar group on Belgrave's instructions in 1937/38 can be disregarded as a manifestation of Bahraini authority in respect of the Hawar group.

²⁷¹ Annex III.158, Vol. 7, p. 291.

²⁷² Annex III.229, Vol. 8, p. 127.

²⁷³ *I.C.J. Reports 1953*, p. 70.

²⁷⁴ *Ibid.*, p. 71; emphasis added.

b) The occupation of the Hawar islands by subjects of Bahrain

6.226 The claim by Bahrain that the Hawar islands, and particularly the main Hawar island, were "permanently occupied" in the 1930s by subjects of Bahrain has now been shown to be a complete fabrication. The evidence of the alleged "permanent occupation" of Hawar by members of the Dowasir tribe has been so undermined by the revelations²⁷⁵ that it can safely be ignored. It is simply no longer to be believed that the Dowasir had been in permanent occupation of Hawar for many years.

c) The alleged exercise of jurisdiction by the courts of Bahrain

6.227 Much weight is put by Bahrain on the two judgments rendered by the Sharia court in Bahrain in the years 1909 and 1910 to settle disputes concerning immovable property in Hawar. Reference is made to them in paragraph 11 of the Bahrain "counter-claim", and translations of the two judgments are attached to the "counter-claim"²⁷⁶. As already indicated²⁷⁷, Qatar has serious doubts about the authenticity of both judgments when account is taken of the extraordinary letter of 1 December 1939 from Sharq bin Ahmed (the Qadi who wrote both judgments of 1909 and 1910) to the former Residency Agent in the Trucial States²⁷⁸. Whether or not these doubts are justified, the judgments themselves provide no evidence that any of the litigants were permanently, or even principally, resident in Hawar; and it will be recalled that Prior, in his letter to Peel of 26 October 1941, was not prepared to attach any real weight to these supposed exercises of jurisdiction by the Bahrain courts.

6.228 The other cases cited by Bahrain as evidence of the exercise of jurisdiction by the Bahrain courts in relation to matters on Hawar are equally inconclusive. There is, for example, Case No. 264/1351 of 1932, which appears to have been a claim by one Bahraini subject against another Bahraini subject for a debt secured against a mortgage. The only connection with Hawar is that the defendant was supposedly living in Hawar and did not appear in

²⁷⁵ Annexes III.77-III.79, Vol. 6, pp. 401-412; Annex III.140, Vol. 7, p. 199; and Annex III.223, Vol. 8, p. 103.

²⁷⁶ Annex III.174, Vol. 7, p. 371.

²⁷⁷ See, para. 6.173, above.

²⁷⁸ Annex III.215, Vol. 8, p. 69.

response to letters addressed to him²⁷⁹. Belgrave himself admits, in his letter to Weightman of 20 April 1939, that the case concerned property in Bahrain²⁸⁰. Belgrave appears to have thought that the service of process by a Bahrain court on a defendant supposedly resident in Hawar constituted an act evidencing Bahraini sovereignty over Hawar. But this is self-evidently not so. Summonses to appear before a foreign court are regularly served in practically all jurisdictions, without it being thought that such a summons constitutes evidence that the territory in which it is served forms part of the territory of the State whose court has issued the summons.

6.229 Even if these two cases rested on the facts as described by Belgrave and Weightman, they provide no support to the Bahrain claim to sovereignty over Hawar. Moreover, Belgrave admits that the Bahrain court which decided Case No. 264/1351 of 1932 consisted of the Ruler of Bahrain and himself²⁸¹, so that the evidence, such as it is, does not even come from an independent source.

4. Title to the smaller islands of the Hawar group

6.230 Under sub-section 2 above²⁸², Qatar has already reviewed the evidence demonstrating that the British authorities in the Gulf and in London had no clear idea in 1938/39 either of the composition or of the exact location of the Hawar islands. Their ignorance was equalled only by their predisposition to give them to Bahrain in view of the supposed advantages which would accrue to Britain from such a decision.

6.231 It is interesting, if not altogether surprising, that none of the evidence submitted to Weightman in 1938/39 by the Ruler of Qatar, on the one hand, and by Belgrave, on the other hand, related to islands or islets in the Hawar group other than Hawar island itself, at least if one ignores the evidence of beaconing by Bahrain; and this evidence should be ignored in any

²⁷⁹ See, note attached to Bahrain "counter-claim" at Annex III.174, Vol. 7, p. 371.

²⁸⁰ Annex III.193, Vol. 7, p. 489.

²⁸¹ *Ibid.*

²⁸² See, paras. 6.212 *et seq.*, above.

event because Bahrain's "preliminary statement" in which this evidence is embodied was never conveyed to Qatar²⁸³.

6.232 Weightman, in his report to Fowle summing up the strengths and weaknesses of the respective claims to the Hawar islands by Qatar and Bahrain, offers, as a throw-away suggestion (it is the final sentence in his report), the following proposal:

"The small barren and uninhabited islands and rocky islets which form the complete Hawar group presumably fall to the authority of the Ruler establishing himself in the Hawar main island, particularly since marks have been erected on all of them by the Bahrain Government²⁸⁴."

6.233 This is *prima facie* an attractive proposition for which there might appear to be some support in international law. Thus, in the *Island of Palmas* case, the sole arbitrator, Judge Huber, in his award states:

"As regards groups of islands, it is possible that a group may under certain circumstances be regarded as in law a unit, and that the fate of the principal part may involve the rest²⁸⁵."

6.234 Of course, for reasons given earlier, one would have to ignore the reference to beaconing in Weightman's formulation, and it is significant that Judge Huber's *dictum* is less absolute than Weightman's (note the use of the phrases "it is possible" and "under certain circumstances"). The fact is that there is no evidence of human activities on islands of the group other than Hawar island.

6.235 Even if, at the abstract level, there is some force in Weightman's formulation (subject to the qualifications just made), the Court will not need to be reminded that if, as Qatar submits, Qatar had an original title to the Hawar group of islands dating from the nineteenth century, and that title had not been displaced by the 1930s, the Hawar group were not capable of being appropriated by Bahrain in the mid-1930s on the basis of what was in any event

²⁸³ See, paras. 6.77 *et seq.*, above.

²⁸⁴ Annex III.195, Vol. 7, p. 497.

²⁸⁵ Annex III.292, Vol. 8, p. 459.

spurious and manufactured evidence of activities by alleged subjects of Bahrain on the main Hawar island.

6.236 It would be wrong to conclude this section dealing with "Erroneous assumptions and significant omissions" without making reference to the most glaring omission in the case which Bahrain was seeking to develop in the mid-1930s for recognition of its sovereignty over Hawar. That omission is of course the inference which necessarily has to be drawn from the failure of Bahrain to place reliance on the oil concession awarded by the Ruler of Bahrain to the Eastern and General Syndicate Ltd. ("EGS") on 2 December 1925. The concession was to explore throughout the Ruler of Bahrain's territories and to prospect for oil in selected areas thereof. It would be thought that if, as Bahrain was subsequently to claim, successive Rulers of Bahrain had exercised sovereign authority in and over the Hawar islands since shortly after 1783 (as is asserted in Bahrain's preliminary statement of 29 May 1938), there would have been no doubt that the concession to explore "throughout the Ruler's territory" (but not of course the concession to prospect) would have been taken as applying to the Hawar islands. But this is not so. There was no suggestion in 1925 that any part of the 1925 concession applied to the Hawar islands. The concession to EGS was assigned to the Bahrain Petroleum Company (BAPCO), with the agreement of the British authorities, in the late 1920s.

6.237 Section 1.B.1 of this Chapter²⁸⁶ gives details of the negotiations over the so-called "Bahrain unallotted area" and provides convincing evidence that, neither in 1928 (when the negotiations began) nor in 1933 (when they were suspended at the request of BAPCO), did the British authorities in London accept that the Hawar islands formed part of the territories controlled by the Ruler of Bahrain²⁸⁷.

6.238 One can well understand why Bahrain should have neglected to base any argument on its 1925 oil concession and the subsequent negotiations over the so-called "Bahrain unallotted area". For Bahrain to concede that the Hawar islands did not in principle fall within the Ruler of Bahrain's territories available for exploration under the 1925 concession would be wholly inconsistent with the argument that the Ruler of Bahrain had exercised sovereignty over them

²⁸⁶ See, paras. 6.12, *et seq.*, above.

²⁸⁷ See, also, para. 6.148, above

since 1783; and yet to argue in the opposite sense might be to deny the opportunity to Bahrain of profiting from a new concession if the British authorities were to award the Hawar islands to Bahrain.

Section 4. The Non-Opposability to Qatar of the 1939 Decision

A. Protests by Qatar

6.239 Attention has already been drawn to the energetic protest lodged by the Ruler of Qatar on 4 August 1939 against the British Government's decision of 11 July 1939 upholding the claim of Bahrain to the Hawar islands²⁸⁸. Its terms are moderate, but firm. The Ruler asks for the question to be reconsidered. Although the new Political Resident was convinced that an injustice had been done to Qatar, he felt reluctantly obliged to accept that it was not practical politics to reverse the 1939 decision²⁸⁹. Accordingly, the Ruler of Qatar was informed, in reply to his protest of 4 August 1939, that the matter could not be reopened. This provoked another letter, of 18 November 1939, from the Ruler of Qatar to the Political Resident reiterating his protest and affirming his position in the following terms:

"I therefore beg to inform Your Honour that I neither recognize nor submit that the Bahrain Government have the least lawful connection with the Hawar Islands, and that I view whatever measure which have been lately taken by the Bahrain Government as a challenge and an encroachment upon my rights against which I most strongly protest, and therefore, as I have informed you before, I reserve my rights to the Hawar islands while not recognising any measure which may be taken in them...²⁹⁰."

6.240 The Ruler of Qatar repeated his protest against the British Government's 1939 decision on the Hawar islands in a further letter addressed to the Political Agent in Bahrain on 7 June 1940, which complained also of a recent raid on the mainland of Qatar launched from Hawar²⁹¹. It should be noted that the protests of the Ruler of Qatar were not confined to Bahrain's *de facto* occupation of, and presence on, the main Hawar island. As early as 27 May

²⁸⁸ Annex III.211, Vol. 8, p. 49.

²⁸⁹ See, para. 6.108, above.

²⁹⁰ Annex III.213, Vol. 8, p. 59.

²⁹¹ Annex III.219, Vol. 8, p. 85.

1938, the Ruler of Qatar, in a letter of protest to Weightman against Bahrain activities in and in relation to the Hawar group of islands stated *inter alia*:

"It is a clear fact that the islands of Hawar are still a dependency of Qatar as other similar islands. The Bahrain Government have only recently occupied *them* which fact made me move in the matter and submit protests against it²⁹²."

6.241 In paragraph 5 of the same letter, the Ruler of Qatar specifically requests the British Government "... to note this complaint and restrict the Bahrain Government from unlawful interference in the rights of others as far as there is no legal ground on which they can base such acts". The Court will note the dignity and moderation of this request.

6.242 The Ruler of Qatar's protests against the 1939 decision of the British Government on Hawar did not abruptly terminate in 1940. His continuing sense of grievance against the injustice of this decision manifested itself again in 1946 when, in a letter to the then Political Agent in Bahrain (Lt.-Col. Galloway) of 13 July 1946, in response to an enquiry whether he claimed Fasht Dibal or Qit'at Jaradah, he renewed his claim to sovereignty over the Hawar islands and his protest against the 1939 British decision²⁹³. He did so yet again in a letter of 21 February 1948, to the Political Agent. In this letter, the Ruler of Qatar did not question the right of the British Government to make the decision on delimitation of the seabed between Bahrain and Qatar which it had conveyed to the two parties on 23 December 1947. But he went on to say that "H.M.'s Government acted as they wished, and I had nothing but to submit, reserving in the meantime to myself my own rights²⁹⁴". The Ruler was however particularly incensed that the Hawar islands and Fasht Dibal and Qit'at Jaradah which he considered to be an integral part of the territories of Qatar had been awarded to Bahrain. Although the use by the Ruler of Qatar of the word "submit" might, if that word is taken alone, suggest that he had come to accept the 1939 decision, this is clearly not its meaning when read in the context of the rest of the letter. The word conveys not the sense of voluntary acceptance but of incapacity to procure a reversal of what had been decided.

²⁹² Annex III.157, Vol. 7, p. 285; emphasis added.

²⁹³ Annex III.245, Vol. 8, p. 203.

²⁹⁴ Annex III.259, Vol. 8, p. 277.

6.243 It is amply clear from these continuous protests by the Ruler of Qatar against the 1939 decision of the British Government on the Hawar islands that at no time did he acquiesce in the award of the islands to Bahrain. He was absolutely and resolutely consistent in asserting that the decision was unjust, and he repeatedly asked for its reconsideration. This was no synthetic outrage: it was a deeply felt sense of betrayal.

B. Recognition by the British Government that the Hawar islands were disputed

6.244 The 1947 decision of the British Government on the delimitation of the seabed between Bahrain and Qatar was protested by both Rulers. The Ruler of Qatar was prepared in principle to accept the line drawn by the British but, as we have seen, could not accept the exceptions made for the Hawar islands and the two shoals of Fasht Dibal and Qit'at Jaradah. By way of contrast, the Ruler of Bahrain contended that the line should run further to the east of the line proposed by the British, and generally asserted alleged rights to all the seas, shoals and reefs between Bahrain and Qatar. In particular, he protested against the fact that the two shoals had been treated as enclaves on the Qatar side of the line. He also protested against the fact that Janan island, which lies just to the south of the main Hawar island, had been awarded to Qatar, although he regarded it as part of the Hawar group and accordingly as appertaining to Bahrain.

6.245 There were further protests from the two Rulers in the early 1950s and also from the oil companies themselves. There is some evidence in the British archives that British officials were prepared to look again at the real geographical nature and legal status of the two shoals and at the precise identity of the "Hawar islands"; but no modification was made to either of the two decisions of 1939 and 1947, and the British repeatedly confirmed that these decisions were final.

6.246 The dispute between Qatar and Bahrain over the Hawar islands and the two shoals of Fasht Dibal and Qit'at Jaradah became rather more quiescent in the 1950s as a result of the preoccupation of both Rulers with other maritime boundary disputes (in the case of Bahrain, with Saudi Arabia; and, in the case of Qatar, with Abu Dhabi). So it was not until the 1960s that any further progress was made on the principal disputes over the Hawar islands, Fasht Dibal and Qit'at Jaradah, and the course of the 1947 line. In 1964, the Political Agent in Qatar

transmitted to the Qatari authorities Bahrain's request to the British Government to make a modification to the 1947 line, based upon the consideration that the two shoals were islands with territorial waters and belonged to Bahrain, and that Bahrain's historical rights to pearl fisheries in the area to the east of the 1947 line were a "special circumstance" justifying, in the terms of Article 6 of the 1958 Geneva Convention on the Continental Shelf, a departure from that line²⁹⁵.

6.247 On being informed of the Bahrain request, Qatar, in a Note to the British Government of 21 April 1965, refuted the Bahraini allegations and recommended arbitration as a solution to the disputes between the two States. Qatar also insisted that the dispute over the Hawar islands, which had not been mentioned by Bahrain, should be included among the disputes to be referred to arbitration.

6.248 The Court will be aware of subsequent developments from the written pleadings which Qatar submitted in the earlier phase of the present case devoted to jurisdiction and admissibility²⁹⁶. Qatar simply wishes to stress at this stage that the ready acceptance by the British Government in 1965/66 that the differences between Bahrain and Qatar over the Hawar islands, the two shoals of Fasht Dibal and Qit'at Jaradah, and the course of the 1947 line, were suitable for reference to arbitration constitutes an acknowledgement that there was at least a genuine issue as to the validity and correctness of the 1939 British decision on the Hawar islands. In other words, the British Government were at last prepared to allow that decision to be reviewed by an impartial international tribunal.

Section 5. Conclusion

6.249 On 11 July 1939, the Rulers of Qatar and Bahrain were informed of the British decision that the Hawar islands belonged to Bahrain. As has been shown above, however, that decision was defective both procedurally and on the merits, and is not opposable to Qatar.

²⁹⁵ See, paras. 10.37 *et seq.*, below.

²⁹⁶ For further details, see, Q.M.J.A., Vol. I, paras. 3.03 *et seq.*

6.250 First, the British Government had no authority to make a binding decision of this kind. As in the *Dubai/Sharjah Border* case, no treaty authorised the British to make the decision, and Qatar did not give its consent to the determination by the British authorities of whether title to the Hawar islands belonged to itself or Bahrain. Indeed, Qatar's communications with the British on the subject at the time were directed towards ending the illegal occupation of Hawar by Bahrain.

6.251 Furthermore, the procedure followed by the British was so defective that the resulting decision can only be considered a nullity. Qatar was not given a proper and equal opportunity to present its case; there were clear instances of bias, both by Britain generally and by Weightman in particular, in favour of Bahrain; and no reasons were given for the decision.

6.252 The substance of the British decision is equally flawed. The decision was clearly based on the report prepared by Weightman, which in turn was based on various assertions made by Belgrave which were either unsupported by evidence at the time or were supported by evidence which has now been proven to be highly suspect or demonstrably false. In addition, evidence which could have been put forward by Qatar in support of its case, and which Qatar intended to put forward, was stolen by agents of Bahrain.

6.253 Furthermore, the British seem to have based their decision on several erroneous assumptions. First, disregarding all evidence of recognition of Qatar's title to the islands since the 1860s, and the fact that until at least 1933 the British authorities had consistently taken the position that the Hawar islands belonged to Qatar, they seem to have assumed that in the mid-1930s the islands were open to occupation. Second, even if, *arguendo*, the islands had been open to occupation, the alleged acts of sovereignty upon which Bahrain relied were insufficient to establish title, were unsupported by evidence, or were supported by fabricated evidence. Third, the British appeared to believe, erroneously, that the islands lay beyond the 3-mile limit of Qatar's territorial sea. Fourth, they assumed that title to the smaller islands of the group - the composition of which was not defined, and of which Belgrave himself was unsure - should automatically follow title to the main Hawar island. Finally, the British were guilty of a significant omission in failing to take into consideration the fact that Bahrain's 1925 oil concession clearly did not include the Hawar islands.

6.254 The reactions of Prior and Alban, respectively the new Political Resident and Political Agent in Bahrain who took up their posts shortly after the 1939 decision was issued, are telling. Both officials expressed grave doubts over the justice of the decision, Prior expressing the opinion that a grave miscarriage of justice had taken place, and both voicing serious doubts as to the validity of Bahrain's case. However, although they clearly felt that the decision should be reopened, it was finally allowed to stand for reasons of political expediency.

6.255 Finally, the 1939 decision is unopposable to Qatar. It was immediately protested and has never been accepted by Qatar, and the British recognised, before they left the Gulf, that the question of the Hawar islands was disputed and could be reopened. It is Qatar's position, therefore, that the 1939 decision cannot be regarded as adversely affecting in any way Qatar's long-established and well-recognised sovereignty over the Hawar islands.

CHAPTER VII

JANAN ISLAND

Section 1. The Geography

7.1 Janan is an island approximately 700 metres long and 175 metres wide situated off the southwestern tip of the main Hawar island¹. The island is located 2.9 nautical miles or 5,360 metres from the nearest point on Qatar's low water line and 17 nautical miles from the nearest point of Bahrain (Ras al Barr). Its coordinates are as follows: 25°33'20" and 50°44'E. It is separated from Bahrain's main island and the coast of Saudi Arabia by the relatively deep water of the Gulf of Salwah which is over 20 metres deep in places, much deeper than the waters separating Janan and mainland Qatar at Ras Dukhan which do not exceed 1.5 metres at the lowest astronomical tide. It is located 1.6 nautical miles or 2,890 metres from the main Hawar island. The coralline area of the island as a whole is aligned (approximately NNE/SSW) with the general trend of Hawar island and is separated from the latter by a very shallow sea of no more than approximately 2.0 metres at the lowest astronomical tide.

7.2 At high tide Janan island appears as a long low reef rising above the sea, comprised of sand and coral. It is "dry at all tides at its western end, and dries out a long way towards the mainland²". It has no water supply nor any human settlements. A beacon has been constructed on the island, surmounted by a Qatari flag.

7.3 Janan has no geomorphological connections at all with Bahrain. On the other hand, in a slightly broader context, Janan can be seen as a component of the offshore topography and the nearshore dynamic system associated with the Qatar coast.

Section 2. Janan and Qatar's Territorial Integrity

7.4 It is the submission of the State of Qatar that the evidence described in Chapter V, in particular the Turkish survey maps (covering the territories of Qatar) and their acceptance by

¹ See, *Map No. 5* facing page 50.

² Annex III.249, Vol. 8, p. 219. There is little available data on Janan island other than that provided by satellite images and the Admiralty Chart (No. 2886).

the British, as also references to Janan in the letters of the Rulers of Abu Dhabi and the various maps, clearly establishes that Janan, as much as the whole group of the Hawar islands, is a part of Qatar territory. Consistent with all this evidence, Lorimer, in his geographical dictionary of the Gulf, also described Janan (as he does the Hawar islands) under the heading "West side of Qatar"³.

Section 3. Bahrain's Claim is Unfounded

7.5 Most of the reasons given in this Memorial to show that the Hawar islands belong to Qatar also apply to Janan. However, in this Section, it will be shown, by considering the reasons why Janan has become an issue of dispute in the present proceedings, how some of the important reasons for which the British decided in 1947 that Janan belonged to Qatar also apply to the other islands in the Hawar group.

7.6 At the time when the British Government began its consideration of proposals to delimit the maritime boundary (eventually notified in its decision of 23 December 1947), it was realised that the composition of the group referred to as the Hawar islands had never been addressed when the decision was made on 11 July 1939 to the effect that these islands belonged to Bahrain. The letter containing this decision simply declares that "on the subject of the ownership of the Hawar Islands ... His Majesty's Government ... have decided that these islands belong to the State of Bahrain and not to the State of Qatar". It is significant to note therefore that the British authorities at the time were ignorant of the area whose fate they were deciding. In fact, the decision appears to have been made only on the basis of whatever evidence Bahrain tendered to prove its "occupation" of the main Hawar island without any reference to the other islands or islets⁴.

7.7 While analysing details of the area for the purpose of considering the maritime boundary, in his letter of 31 December 1946, the Political Agent stated that each of the islands had not been individually considered at the time Hawar was allotted to Bahrain⁵. Unspecified islands had been allotted to Bahrain simply because they were "assumed" to form a group and so

³ Lorimer, *op. cit.*, Annex II.4, Vol. 3, p. 121.

⁴ Except Bahrain's claim of having placed beacons on some of these. *See*, paras. 6.41 *et seq.*, above.

⁵ *See*, Annex III.249, Vol. 8, p. 219.

awarded to Bahrain together with the main Hawar island. He further pointed out that the Bahrain Government had submitted:

"... at least three conflicting statements of the composition of the 'group'. In August, 1937, it was stated that there were nine islands in the Hawar archipelago, in 1938 their list included Hawar and 16 islands or groups of islets, and in 1946 the list comprised Hawar and 17⁶."

7.8 Even as late as 1946, officials in the British Government were still unclear about the composition and extent of the Hawar group. Thus, the Secretary of State for India noticed the situation in his letter of 3 August 1946 to the Political Resident when he said:

"... the exact extent of the Hawar Islands (i.e. the off-lying Islets and their territorial waters) never seems to have been accurately defined⁷."

Even Lorimer, according to the Political Agent:

"... did not know of a 'group', and only mentions four in the area individually⁸."

He further notes:

"It will be seen how vague the conception of the group is, and also how it has increased in size with the growing importance of the area⁹."

7.9 At the time of the consideration of delimitation of the maritime boundary, it was the 1938 list, sent with Belgrave's "preliminary statement" of 29 May 1938¹⁰, which came to be regarded as the specific list on the basis of which the decision of 11 July 1939 was made. In his letter of 31 December 1946, the Political Agent noted (in paragraph 9) that:

⁶ *Ibid.* See, also, Belgrave's letter of 28 April 1936 whereby Bahrain claimed "the Hawar group of islands" and named 7 specific islands (including "Ginan") "as well as a number of small islets" (Annex III.103, Vol. 7, p. 15).

⁷ See Annex III.246, Vol. 8, p. 207.

⁸ See Annex III.249, Vol. 8, p. 219.

⁹ *Ibid.*

¹⁰ See, paras. 6.149 *et seq.*

"The 1938 list was submitted in connection with the Hawar arbitration, and I propose to take that as their considered claim, particularly as no explanations have ever been given for changes."

He went on to state (in paragraph 14):

"Janan is shown on charts and plans as a pimple of an island, but, in fact, at low tide it shows a long low reef rising above the sea. It is dry at all tides at its western end, and dries out a long way towards the mainland. It has not been surveyed, but to the layman it appears to be part of the Ras Awainat Ali feature, and completely separate from Hawar. The island is barren, but is used by Bahrain fishermen, and I dare say by Qataris on occasions. It has neither water nor habitation, and beyond the erection of a cairn by the Bahrain Government I know of no justification for their claim to ownership. The erection of a cairn should, in my opinion, be given but little consideration since it was not included in the Bahrain Government's 1938 list. Further the eastern half of the island lies within Qatar territorial waters and south of the deep water channel which runs close to Janan and not Hawar. For these reasons, I am of the opinion that it is not and should not be considered to be a member of the 'group' and should be awarded to Qatar and included in [*sic*] their side of the dividing line¹¹."

7.10 The Political Resident endorsed the above views in a letter of 18 January 1947 to the Secretary of State for India¹². These views were eventually accepted, and hence in the letters of 23 December 1947 it was specifically stated:

"It should be noted that Janan Island is not regarded as being included in the islands of the Hawar group¹³."

Bahrain disputes this conclusion.

7.11 It is reiterated that Janan was in any event one of the islands clearly forming part of the territories of Qatar, and some of the grounds on the basis of which the British made their decision regarding Janan applied equally to the Hawar islands as a whole, in particular, that it was part of the Ras Awainat Ali feature and that a large part of it is located within three

¹¹ *Ibid.*

¹² Annex III.250, Vol. 8, p. 233.

¹³ Annexes III.256 and III.257, Vol. 8, pp. 265 and 269.

nautical miles of the coast of Qatar (as is the main Hawar island) while some of the other islands/islets are wholly within three miles of Qatar's mainland coast. Bahrain's claim to Janan (as also to the Hawar islands) is therefore unfounded. Qatar accordingly submits that Bahrain has no sovereignty or other territorial right over the island of Janan.

CHAPTER VIII

THE QUESTION OF ZUBARAH

8.1 Zubarah is one of the subject matters of the dispute which fall within the jurisdiction of the Court in the present proceedings. In the absence of any knowledge of the Bahraini case on Zubarah, Qatar has prepared this Chapter of its Memorial on the basis of its understanding that Bahrain defines its claim concerning Zubarah as a claim of sovereignty¹.

Section 1. Presentation of Zubarah

8.2 Zubarah is located on the northwestern coast of Qatar at the co-ordinates of latitude 26° North and longitude 51°1' East. As may be seen from *Map No. 10* facing this page, Zubarah was a fortified town. The most ancient part of the town was on the coast itself with a surrounding wall and towers along this wall. Another ancient part, built outside this first wall, was also surrounded by a wall along which were guard towers at intervals. The town covered an area of approximately 60 hectares. It was about 1500 metres long and about 400 metres wide. On the northeastern side of the town, houses were also built outside the second wall.

8.3 In the 18th century, sections of the Al-Utub tribe settled outside the town of Zubarah and erected a fort called Murair about 1500 metres from the outside wall. Later, two walls were built apparently with a view to connecting the fort to the town. However, there is no evidence that they did actually reach the outside wall of the town or of the fort. The sabkha between those two walls was uninhabited. A channel 1250 metres long also led from the sea to the vicinity of the fort, and was used for the transit of small boats. During the period from the early 17th century to the 18th century, Zubarah became one of the main merchant towns in the Gulf. Its prosperity came mostly from the trade in natural pearls fished in the Gulf, which was then the main economic activity in the area, and from general trade between Europe and India². However, the town ceased to exist as a populated place in the 19th century.

¹ See, Qatar's "Act to comply with paragraphs 3) and 4) of operative paragraph 41 of the Judgment of the Court dated 1 July 1994".

² See, for general accounts on this subject, Abu Hakima, *History of Eastern Arabia*, Amman, 1965; Esmail Ra'in, *History of Iranian Navigation*, Tehran, 1971, Vol. 11.

8.4 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 Antiquities³.

Section 2. Bahrain has no Sovereignty over Zubarah

A. Introduction

8.5 From Bahrain's Counter-Memorial in the jurisdiction and admissibility phase of this Case, it appears that Bahrain's claim over Zubarah rests on the fact that certain members of the Al-Khalifah family allegedly resided at Zubarah in the 18th century and helped develop the place into a well-known trading centre⁴. Bahrain also asserts that the Al-Khalifah retained certain ties with Zubarah subsequent to their departure from Zubarah in 1783, in particular retaining the allegiance of the Naim tribesmen in the area, maintaining homes, preserving the mosques, grazing cattle, and regularly visiting for these purposes and for hunting. Bahrain recognises that the intensity of these alleged activities "waned with time", but argues that "there was never any formal abandonment of rights in this area by the Al-Khalifa family⁵". According to Bahrain, as late as 1937, one Rashid bin Mohamed al Jabor, who Bahrain alleges was the Chief of the section of the Naim tribe resident in the area, confirmed to the Ruler of Bahrain that the Naim were Bahraini subjects and that Zubarah was under the control of Bahrain. Finally, Bahrain alleges that Qatar forcibly took control of Zubarah in 1937 and that thereafter Zubarah became an issue in dispute between the Parties.

8.6 Assuming that these allegations represent the legal and factual basis for Bahrain's claim, Qatar will show in this Section that Bahrain's factual allegations are inaccurate on every point and that, in any event, Bahrain does not have any basis, factual or legal, for a claim to sovereignty over Zubarah.

³ See, Annex III.288, Vol. 8, p. 431.

⁴ See, B.C.J.A., paras. 2.7-2.11.

⁵ *Ibid.*, para. 2.8.

B. The Factual Background

1. The Early History of Zubarah

8.7 There is evidence to show that a town existed at Zubarah on the northwestern coast of the Qatar peninsula from early Islamic times⁶, and that at least by the beginning of the 17th century it was already a fortified town, with its own Sheikh and administration. Thus, when in April 1612 members of the Al-Utub tribe from the centre of the Arabian peninsula attempted to enter Zubarah, Sheikh Sultan bin Ali Al-Muraikhi Al-Zubari Al-Qatari issued an order to the guard of the gate, according to which he was to prohibit the entry of strangers, in particular Al-Utub⁷. If such strangers entered Zubarah, they had to be removed and put outside the walls, together with the persons who had received them. Further information may be derived from an account written by Hamad bin Nayem bin Sultan Al-Muraikhi Al-Zubari Al-Qatari in April 1638 according to which Zubarah was at the time a prosperous settlement of 150 houses with 700 inhabitants, owning boats and livestock⁸. The same account also records that a levy was imposed, and that the inhabitants were the "Naim, Musallem, Twar, Hawajer, the Beduins, Lisaud, freemen and slaves".

8.8 These two documents are of great interest in that they show that by the beginning of the 17th century, Zubarah was a settled and prosperous walled town, and thus that, contrary to what has been written by western and Bahraini authors, it was not settled and developed only after 1766 by the Al-Utub tribe, but that the Al-Utub were regarded as strangers by the original Qatari tribes who had settled it.

8.9 In 1766 two sections of the Al-Utub tribe - the Bin Khalifah and Al-Jalahma - left Kuwait for Bahrain then under Persian occupation, and thence made their way to Zubarah⁹. The local sheikhs laid down a condition for their settlement: if they were to trade in Zubarah, they

⁶ Annex III.298, Vol. 8, p. 493.

⁷ Annex III.1, Vol. 6, p. 1.

⁸ Annex III.2, Vol. 6, p. 5.

⁹ See, para. 3.17, above.

would have to pay the usual taxes. The Al-Utub refused this condition and in 1768 built the fort known as Murair at some distance outside the outer wall of Zubarah¹⁰.

8.10 It is from this period of their presence in the fort of Murair outside Zubarah that the Bahraini claim to Zubarah apparently stems. However, this presence only lasted until 1783, when sections of the Al-Utub, together with Qatari tribes, retaliated against Persian attacks on Zubarah from Bahrain and finally took control of that island. Following these events, the Al-Utub moved from Murair to Bahrain¹¹.

8.11 Zubarah was burnt by the Imam of Muscat in 1811¹².

2. 1867 - 1937

8.12 As described in Chapter III above, following the violent skirmishes between Bahraini and Qatari tribes in 1867-1868 the British took action through the Agreements of 1868 to bind the Chiefs of Bahrain and Qatar to preserve the maritime peace, with the sea acting as a buffer between them. From the time of these agreements, the British were repeatedly prepared to recognise that Qatar was effectively separated from Bahrain, and that Zubarah was a part of Qatar.

8.13 The same recognition of the separation of Qatar and Bahrain was confirmed in the same period both by Turkish authorities in the region and by other regional powers. The numerous Turkish surveys, maps and documents prepared from 1867 on, and referred to in Chapter V, confirm that Zubarah was regarded as part of Qatar. In addition, Sheikh Zayed bin Khalifah of Abu Dhabi repeatedly confirmed to the Turkish authorities, in response to their enquiries about the extent of the territory of Qatar, that Zubarah was part of Qatar. In fact, as early as June 1870, *i.e.*, even before the Turkish arrival in Qatar, Sheikh Zayed wrote and confirmed to the Turkish Vali of Hasa as follows:

¹⁰ Annex II.69, Vol. 5, p. 337.

¹¹ Lorimer, *op. cit.*, Annex II.5, Vol. 3, pp. 194-195 and 246-247.

¹² *See*, para. 3.19, above.

"... Zubarah is one of the meadows of Qatar. We have those who would vow to you that Bin Khalifah's people came there when it was already thickly populated. The Khalifah people did not urbanise it and did not set up any buildings there. Pay no heed to what opportunists say, it is useless. On the other hand if Qatar owns it, we cannot deny that. The enmity between us and Bin Thani does not entitle us to deny his rights in the seas of his country and its islands¹³."

8.14 Subsequently, the Turkish Vali of Hasa, in a communication addressed to the Ruler of Bahrain, Sheikh Issa, in October 1871, warned Bahrain against any interference in Zubarah, stating:

"As you know, you have no rights whatsoever to Zubarah, otherwise we shall do whatever is necessary. Therefore, take your hands off and stop your people from making claims, deceit and looting. According to what has been proved to us, Zubarah and its surrounding area and the islands of Qatar opposite your country are all clearly and absolutely the property of Qatar¹⁴."

8.15 The British did not seek to interfere with or prevent the establishment of a Turkish presence in Qatar from 1871 onwards, nor did they seek to interfere when Turkish or Qatari authorities sought to exercise control over Zubarah. On the other hand, they were repeatedly concerned to ensure that Bahrain did not seek to interfere in the mainland and to ensure the respect of the maritime peace between Qatar and Bahrain.

8.16 It was in this period - following the arrival of the Turks in Qatar - that a Bahraini claim concerning Zubarah was first advanced. Thus, in August 1873, it came to be reported that a Turkish detachment of some 100 men had embarked at Katif for "Zobarah on the mainland¹⁵". The Chief of Bahrain stated to the British at this time that he claimed the Naim tribe living at Zubarah were his subjects¹⁶. The British rejected Bahrain's allegations and pointed out:

"... that though the matter of sovereignty over Katar had apparently never been formally decided, still the Turkish authorities in Nejd had established an influence over the Katar Coast as far as the Odeid boundary¹⁷."

¹³ Annex III.13, Vol. 6, p. 65.

¹⁴ Annex III.17, Vol. 6, p. 85.

¹⁵ Saldanha, *op. cit.*, Annex II.7, Vol. 4, p. 53.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

8.17 The Political Resident also expressed the view that the "Bahrein Chief had not the power, if he wished, to protect tribes residing in Katar, and that he could not expect Government to interfere where the rights were involved in uncertainty¹⁸". The Bahrain Chief was therefore advised to continue to remain strictly neutral and to "keep aloof from all complications on the mainland with the Turks, Wahabis, etc.¹⁹".

8.18 In 1874, Nasir bin Mubarak, the head of a rival branch of the family of the Ruler of Bahrain, went into exile in Qatar, with members of his tribe, the Beni Hajir, and appeared to be planning to attack Bahrain from the west coast of Qatar. The Ruler of Bahrain feared that Nasir might decide first to attack Zubarah and the members of the Naim tribe living there. Reporting to the British Government, the Political Resident in the Persian Gulf wrote on this subject:

"The Chief of Bahrein being apprehensive of an attack on his allies, and as he considers, subjects, who hold the fort of Zobarah, asked whether he would be allowed to reinforce the garrison of that place, which he considered a dependency of Bahrein. Sheikh Esau necessarily relies much on the Naim tribe of Zobarah, who came to his aid in his late dangers, and if he were to be deprived of their support, his means of defence would be greatly weakened. A refusal on his part to aid the Naim garrison of Zobarah if attacked by other Arab tribes of Katar would undoubtedly lose the friendship of that tribe for Sheikh Esau²⁰."

8.19 The Political Resident was informed by Government that:

"The Governor-General in Council observes that by the correspondence marginally noted, *it was shown that the Chief of Bahrein had no possessions on the mainland of Katar, and that his rights there were of a very uncertain character...*

His Excellency in Council, therefore, considers that the Chief of Bahrein ... should be advised to rely for support on the assistance of the British Government, which will, if necessary, be given him either to repel attacks by sea or to frustrate a threatening movement from the mainland.

It should be clearly pointed out to the Chief that so long as he adheres to his treaty obligations, the British Government will protect him; but if such protection is to be accorded to him, he must not be the aggressor or undertake measures, which will

¹⁸ *Ibid.*

¹⁹ *Ibid. See, also, ibid., p. 54.*

²⁰ *Ibid., p. 61.*

involve him in complications and which are considered inadvisable by the British Government²¹."

8.20 The Political Resident subsequently wrote to the Ruler of Bahrain informing him of this view²². The British thus refused to recognise that Bahrain had any rights in Zubarah. Clearly, this approach was consistent with the 1868 Agreements which recognised the separation of Bahrain from the Qatar mainland by a maritime buffer zone. In April 1875, the Government of India rebuked the Chief of Bahrain once again and noted with:

"... regret the continued disposition of the Shaikh to entangle himself in the affairs of the continent and ordered that he should be made to understand that, if he persisted in a course opposed to their advice and thereby became involved in complications upon the mainland, the consequences would be upon himself, and they would hold themselves free to take such measures with respect to him as they might think necessary²³."

Again, such British statements were consistent with the terms of the 1868 Agreements which had precisely sought to ensure that there was no resumption of hostilities across the seas between Qatar and Bahrain.

8.21 The British confirmed their attitude to Zubarah in 1878, following piracies and attacks on other tribes by the inhabitants of Zubarah in which several people were killed. The Political Resident was directed by the Government of India to demand of the Turkish authorities that the inhabitants of Zubarah be punished. While this was a clear recognition by the British of Turkish authority over the mainland (including Zubarah), it was in fact Sheikh Jassim bin Thani - who continued to be the most influential figure in the peninsula - who took steps to control Zubarah. During the ensuing conflict, there was further destruction of Zubarah and the Naim (some 500 tribesmen) were besieged in the fort of Murair. They eventually surrendered and were removed to Doha, "and Zubarah as a populated place ceased to exist²⁴".

²¹ *Ibid.* (emphasis in original).

²² Annex III.30, Vol. 6, p. 145.

²³ Lorimer, *op. cit.*, Annex II.5, Vol. 3, p. 223.

²⁴ *Ibid.*, pp. 224-225.

8.22 During this conflict, Sheikh Issa, Ruler of Bahrain, had requested that some action be taken by the British in favour of the Naim, but the British refused. Bahrain's concern appears to have been that Zubarah might be used by Sheikh Jassim as a staging-post for attacks on Bahrain and thus represented a threat to Bahrain's security. Apparently both the British and the Sheikh of Bahrain took the view that the best solution to this problem would be the permanent occupation of the place by the Turks.²⁵ This proposal was not put into effect and Zubarah remained in ruins. However, Bahrain's support for such a proposal was clearly inconsistent with any claim of sovereignty.

8.23 While the British entered into forms of exclusive agreements with Bahrain in 1880 and 1892, given the events of 1873-1875 and 1878, these agreements clearly only applied to Bahrain, and did not include any part of the peninsula of Qatar. Indeed, part of the purpose of these agreements was to protect Bahrain from other influences in the region, such as Persia, the Turks and the Wahhabis²⁶.

8.24 The British position was again made clear in 1895 when it was feared that Sheikh Jassim bin Thani intended to invade Bahrain from Zubarah with Turkish support and the support of the Al bin Ali tribe, a tribe hostile to the Ruler of Bahrain. The British intervened to destroy the alleged invasion fleet that had been gathered, and thus to ensure the maritime peace between and separation of Qatar and Bahrain²⁷. As the British later noted, this action "shows clearly that at that date the Bahrain Government, far from having any control over Zubarah, were actually threatened by invasion from that place²⁸".

8.25 Throughout this same period, the Turks also took the view that Zubarah formed part of Qatar and that Qatar - under the control of Sheikh Jassim bin Thani - came within the Ottoman area of influence. This is made clear in an Annex relating to Qatar to an Aide Mémoire dated 15 April 1912 sent by Tewfik Pasha to the British in the context of the

²⁵ *Ibid.* See, also, Saldanha, *op. cit.*, Annex II.8, Vol. 4, p. 199.

²⁶ See, paras. 3.50-3.52, above.

²⁷ See, para. 3.54, above. See, also, Annex II.135, Vol. 7, p. 177, and the observation of the Political Resident in his telegram of 4 July 1937 to the Secretary of State for India clarifying that "... it should be noted the action taken in 1895 by His Majesty's sloops in destroying hostile dhows at Zubarah was to prevent the invasion of Bahrain from Qatar and in no way supported the claim of Bahrain to Zubarah."

²⁸ Annex III.126, Vol. 7, p. 125.

negotiation of the Anglo-Turkish treaty concerning the Persian Gulf area, a treaty eventually signed on 29 July 1913.²⁹ It is noted in the Annex to the Aide Mémoire for example that the Turks had informed the British in 1891 that Zubarah came within the Vilayat of Basrah and had for many years been governed by Turkish appointed kaimakams and mudirs. It is also noted that the British had not protested when informed of these facts³⁰.

8.26 The same Aide-Mémoire also notes that the Political Agent in Bahrain had requested in 1911 to be allowed to settle some Bahrainis at the site of Zubarah in exchange for payment of an annual sum of 10,000 rupees, but that this request had been turned down by Sheikh Jassim³¹. Again, such a request could only have been made on the assumption that Qatar had full and effective control over Zubarah.

8.27 The Anglo-Turkish Treaties of 29 July 1913 and of 9 March 1914 discussed in Chapter III above did not explicitly mention Zubarah. However, Article 11 of the 1913 Treaty provided that "the peninsula [of Qatar] ... will be governed as in the past by the shaykh Jasim-bin-Sami and his successors", and contained a declaration by the British Government that it would "not allow the interference of the shaykh of Bahrayn in the internal affairs of al-Qatar, his endangering the autonomy of that area or his annexing it"³². As explained further in Chapters III and V, it was clear that for both the British and the Turks the reference to the Qatar peninsula meant the whole peninsula - including Zubarah.

8.28 This position was further confirmed when following the departure of the Turks, the British concluded the 1916 Treaty with the Ruler of Qatar³³. Although the extent of Qatari territory was not explicitly defined in the Treaty, the British had obviously for many years prior to 1916 clearly recognised that Zubarah was part of Qatar.

²⁹ Annex III.56, Vol. 6, p. 259.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *See, paras. 3.55 et seq., above.*

³³ *See, para. 3.61, above.*

8.29 This understanding of the Treaty is confirmed by subsequent events. Thus, when in 1919 the Ruler of Bahrain made a request to the British to be allowed to occupy Zubarah and develop a port there, this was rejected by the British.³⁴ Further more specific confirmation of the application of the 1916 Treaty to Zubarah occurred as a result of the negotiations for a grant of an oil concession over his territory by the Ruler of Qatar. The 1916 Treaty provided that the Ruler of Qatar would not grant oil concessions over his territory without British consent. A concession was finally signed in 1935 which clearly included the whole of the peninsula, including Zubarah, as also confirmed by the map attached to the concession³⁵.

8.30 It may also be noted here that the discussions relating to the granting and then to the extension of Bahrain's petroleum concession in the 1920s and 1930s also show that Bahrain did not consider Zubarah as being part of its territory to be covered by the concession³⁶.

3. The Events of 1937

8.31 Despite Bahrain's recognition during the discussions relating to the granting of its oil concession in the 1920s and 1930s that it had no claim of sovereignty over Zubarah, there is evidence that at least by 1936 Bahrain was seeking to manufacture a basis for such a claim.

8.32 In the 1930s, Qatar was increasingly concerned to protect the security of its borders and control imports through the imposition of customs duties. To this end, in 1937 the Ruler of Qatar took steps to impose such controls against certain dissenting members of the Naim tribe who were obstructing such efforts³⁷.

8.33 This obstruction of the Ruler of Qatar's efforts was being led by one Rashid bin Jabor, who had influence over one section of the Al-Naim tribe.³⁸ It is apparent, however, that Rashid bin Jabor's actions were being controlled at least in part by Bahrain, and that Belgrave,

³⁴ Annex III.64, Vol. 6, p. 307.

³⁵ Annex III.99, Vol. 6, p. 507. *See, also, para. 6.26, above.*

³⁶ *See, paras. 6.12 et seq., above.* Indeed, Bahrain was later to acknowledge explicitly in 1944 that Zubarah was covered by Qatar's oil concession. *See, paras. 8.45-8.46, below.*

³⁷ Annex III.120, Vol. 7, p. 89.

³⁸ Annex III.121, Vol. 7, p. 97.

in particular, was using him to seek to obtain (or even manufacture) evidence of alleged Bahraini rights over Zubarah. The similarity between the activities of Belgrave in advancing on behalf of Bahrain a claim over Zubarah at this time with his earlier actions with regard to Hawar will be apparent.

8.34 From a letter of 5 May 1936 from Rashid bin Jabor to Belgrave, it seems that the former was thoroughly unhappy with the task he had been assigned and the way he was treated, for he wrote to Belgrave:

"O Adviser, things have gone too far. I am not so mean as to be sworn at by you all the time. I have already sent a messenger to the Sheikh about Bin Kanoo's issue with me. I have dissociated myself from my people and abandoned my acquaintances. My closest friend has become my enemy because of my love for you and my affection for the Sheikhs to the extent that they resent mentioning my name in Abdullah Bin Jassim's Majlis ... I have nothing to do with your affairs and I do not want letters from you³⁹."

8.35 However, Belgrave appears to have overcome Rashid bin Jabor's reluctance with promises on behalf of Bahrain's Ruler of benefits to come and wrote to him on 12 February 1937 to say:

"We have come to an agreement with Sheikh Hamad Bin Issa regarding your stay in Zubarah. This is for your own good and to show your allegiance to your sheikh, the Sheikh of Bahrain. Zubarah, as Sheikh Hamad has said, is yours. You have authority over Bin Khalifah's properties. I know better what is good for you and for your people and prior to that comes the interest of Sheikh Hamad Bin Issa. You represent us in Zubarah and its surroundings.

This deed is yours and you rule according to the decree of Sheikh Hamad Bin Issa, the Sheikh of Bahrain⁴⁰."

8.36 Pursuant to Belgrave's plan, Yousuf Al-Shirawi of Belgrave's office sent a circular (undated) through Rashid bin Jabor as follows:

"This is what the Adviser emphasises according to the news he has received: whoever inhabits the lands of Al-Zubarah, Fraiha, Ar-rubayqah, Ain Mohammed, Musaykah and Al-Mhaimat ... is a citizen of Bin Khalifah, Sheikh of Bahrain. He [each citizen]

³⁹ See, Annex III.105, Vol. 7, p. 23.

⁴⁰ See, Annex III.116, Vol. 7, p. 73.

has to fingerprint the paper which is with Sheikh Bin Jabor. Whoever disobeys the order shall leave [the lands], together with his children and his property; and whoever puts his fingerprint will be given a present and a monthly payment from the Sheikhs of Bahrain.

This is to be made public and to be implemented urgently⁴¹."

8.37 But Rashid bin Jabor obviously found the assignment very difficult and wrote to Belgrave on 14 April 1937 stating:

"You see, Adviser, I do not think we will fingerprint the people whom you have asked for, for to speak is simple and to act is impossible. How can I get you six hundred men to fingerprint unless you send some more people from there [Bahrain] to add to those we have? I am, by God, baffled by these orders and I do not know what to do. We are urgently awaiting a reply from you⁴²."

8.38 However, Belgrave apparently persisted with the effort and wrote again to Rashid bin Jabor prescribing the form in which the affidavit was to be procured, as follows:

"We, the undersigned, the inhabitants within the borders of Al-Zubarah for more than one hundred years, state that we follow the rulers of Bahrain, the Al-Khalifah.

We have never been under the authority of any other ruler. As for the borders of Al-Zubarah, they are from Ras Ushayriq, Ar-rubayqah, Umm-Alma, An-na'man, Hulwan, Lisha, Musaykah, Al-Thaqab, Ras Al-Hiddiyya, and Al-Faraihat to Zubarah. [The lands within] the aforementioned boundaries have been the property of the rulers of Bahrain, the Al-Khalifah, from time immemorial⁴³."

And at the bottom of the form, Belgrave noted:

"P.S. Nothing else is required.

Have the people fingerprinted without their names. Everyone is to fingerprint above and below. We need a lot of fingerprints, even those of your slaves.

This and greetings⁴⁴."

⁴¹ See, Annex III.117, Vol. 7, p. 77.

⁴² See, Annex III.119, Vol. 7, p. 85.

⁴³ Annex III.127, Vol. 7, p. 135.

⁴⁴ *Ibid.*

8.39 By early 1937, however, the Ruler of Qatar was aware that a part of the Naim tribe under Rashid bin Jabor - who by this time was in the official pay of the Ruler of Bahrain - were established in towns north of Zubarah and appeared to be engaged in smuggling from Bahrain into Qatar. Accordingly, in March 1937 the Ruler of Qatar went to Zubarah and affirmed his intention to impose customs duties on all the Naim and to stop the smuggling. A party of the Ruler's men were obstructed in their efforts to achieve this by Rashid bin Jabor⁴⁵. Following inquiries about these disturbances from the British - who were informed of them by the Ruler of Bahrain - the Ruler of Qatar replied on 23 April 1937 pointing out that these were purely internal matters, that Rashid bin Jabor was a Qatari subject, and that the Ruler of Qatar intended to bring an end to these disturbances⁴⁶. However, on 28 April 1937, the British requested the two Rulers not to aggravate the situation further while they examined the question of Zubarah⁴⁷.

8.40 In a comprehensive review of Bahrain's claims in relation to Zubarah submitted on 5 May 1937 to the Secretary of State for India, the Political Resident (Fowle) recognised that juridically a Bahraini claim to Zubarah must fail, noting also that the British Government's endorsement of the Qatar Oil Concession seemed to commit the Government "to the recognition of the ownership of Zubarah by the Shaikh of Qatar⁴⁸". Nevertheless, the British took the provisional view that - for political reasons - it would be better if an amicable solution could be reached between the Rulers⁴⁹.

8.41 In this regard, proposals were put forward by Bahrain and Qatar in an effort to solve the problem. The Ruler of Bahrain was prepared to agree not to press his claim to Zubarah or to the Naim tribe, provided *inter alia* Zubarah was not developed in any way by Qatar. It was confirmed, however, that this would not affect any work carried out by the oil company under

⁴⁵ See, Annex III.125, Vol. 7, p. 113.

⁴⁶ See, Annex III.120, Vol. 7, p. 89.

⁴⁷ See, Annexes III.123 and III.124, Vol. 7, pp. 105 and 109.

⁴⁸ See, Annex III.126, Vol. 7, p. 125.

⁴⁹ *Ibid.*

Qatar's oil concession⁵⁰. Further proposals were exchanged, and meetings took place, but no solution was reached⁵¹. It is interesting to note that in May 1937, Belgrave suggested to the Political Agent in Bahrain that the "Na'im should be given the right to decide by plebiscite as to which ruler they desire to serve⁵²". This proposal was clearly consistent with Belgrave's scheme to obtain fingerprinted affidavits of allegiance to the Ruler of Bahrain from members of the Naim tribe through Rashid bin Jabor. Indeed, in June 1937 Belgrave forwarded to the Political Agent in Bahrain copies of certain fingerprinted affidavits which used the wording earlier provided by Belgrave to Rashid bin Jabor⁵³.

8.42 In June 1937, negotiations were broken off. The Ruler of Qatar thereafter decided in July 1937 to impose his authority over the dissenting Naim under Rashid bin Jabor by force and put an end himself to the smuggling and other activities occurring. When the Ruler of Bahrain requested the British to intervene to stop the Ruler of Qatar, the British refused⁵⁴. Writing on 4 July to the Secretary of State for India, the Political Resident noted that the Ruler of Qatar's claim to Zubarah was good and in fact went back to 1875, and that the British therefore could not intervene on behalf of the Naim at Zubarah⁵⁵. On 15 July, the Secretary of State for India concurred in this view, even pointing out that the Ruler of Bahrain should not be given the impression that the British recognised that he had even "a *prima facie* claim" to Zubarah⁵⁶.

8.43 In fact by 5 July the dissenting Naim had surrendered⁵⁷. Moreover, in a meeting on 13 July between the Political Agent in Bahrain, the Ruler of Bahrain and Rashid bin Jabor, the latter announced that he had:

"... entered into an agreement with the Ruler of Qatar and that he had agreed to obey the laws of Qatar while he resided in Qatar⁵⁸."

⁵⁰ See, Annex III.129, Vol. 7, p. 147.

⁵¹ See, Annexes III.130-III.133, Vol. 7, pp. 151-171.

⁵² See, Annex III.131, Vol. 7, p. 157.

⁵³ See, B.C.J.A., Annex III.16. See, also, para. 8.38, above.

⁵⁴ See, Annex III.134, Vol. 7, p. 173.

⁵⁵ See, Annex III.135, Vol. 7, p. 177.

⁵⁶ See, Annex III.139, Vol. 7, p. 195.

⁵⁷ See, Annex III.136, Vol. 7, p. 181.

⁵⁸ See, Annex III.138, Vol. 7, p. 189.

When Rashid bin Jabor nevertheless went on in the same meeting to protest against the Ruler of Qatar's actions, he was informed by the Political Agent that it was not British Government policy to interfere in the internal affairs of the Sheikhdoms and that if he had any complaints to make, he should make them to the Ruler of Qatar, but that if he did not want to obey he could always leave Qatar⁵⁹.

4. 1937 to the Present

8.44 Following the events of 1937, relationships between Qatar and Bahrain soured. The Ruler of Bahrain imposed restrictions on the circulation of persons and goods between Qatar and Bahrain, with Qatar taking similar actions⁶⁰. Because of Qatar's concerns about the continuing infiltration of persons from Bahrain into Qatar, in particular in the area of Zubarah, Qatar built a small guard post there⁶¹. When the Ruler of Bahrain protested to the British at this action, the British decided not even to reply⁶².

8.45 Nevertheless, the British were prepared to intervene in the ensuing years in order to attempt to reach some arrangement concerning Zubarah which would bring about a restoration of friendly relations between Qatar and Bahrain. Throughout 1943 and 1944, the British engaged in extensive efforts to this end⁶³. While the precise nature of what Bahrain wanted remained unclear and varied in almost every discussion the British held with Bahrain's representatives, it is significant that neither the British nor Qatar ever envisaged any kind of arrangement that would call into question Qatar's sovereignty over Zubarah⁶⁴. The most that was envisaged was some kind of *status quo* agreement whereby Zubarah would not be developed by Qatar (however, without prejudice to any oil company activities). The Ruler of Qatar made it crystal clear that he refused to concede that the Ruler of Bahrain possessed any property in his country⁶⁵.

⁵⁹ *Ibid.*

⁶⁰ *See*, Annexes III.137, III.144 and III.160, Vol. 7, pp. 185, 225 and 305.

⁶¹ *See*, for Qatar's protests about such activities, Annexes III.160, III.169 and III.181, Vol. 7, pp. 305, 347 and 409.

⁶² *See*, Annexes III.197 and III.198, Vol. 7, pp. 511 and 515 and Annex III.200, Vol. 8, p. 1.

⁶³ *See*, in general, Annexes III.231-III.239, Vol. 8, pp. 137-182.

⁶⁴ *See*, for example, Annex III.234, Vol. 8, p. 153. The Political Agent notes in this letter that it was never the British "intention to acknowledge his [the Ruler of Bahrain's] sovereignty over the Zubara area".

⁶⁵ *See*, Annex III.235, Vol. 8, p. 157.

8.46 When the British succeeded in their efforts to bring about a limited arrangement between the Rulers of Qatar and Bahrain in June 1944, the agreement only provided that:

"The Ruler of Bahrain and Ruler of Qatar agree to the restoration of friendly relations between them as they were in the past. The Ruler of Qatar undertakes that Zubara will remain without anything being done in it which did not exist in the past. This is from consideration and reverence to Al Khalifah. The Ruler of Bahrain, also, on his part undertakes not to do anything that might harm the interest of the Ruler of Qatar. This agreement does not affect the agreement with the Oil Company operating in Qatar whose rights are protected⁶⁶."

It will be seen that none of the provisions of this agreement amounted to the grant of any rights by the Ruler of Qatar to the Ruler of Bahrain. All that the Ruler of Qatar agreed to was "that Zubarah will remain without anything being done in it which did not exist in the past". In other words, he was content to leave Zubarah as the archaeological site that it has continued to be until today. It will be seen that the provision in the agreement according full protection to the rights of Qatar's oil concessionaire at Zubarah constitutes a clear acknowledgment by Bahrain of Qatar's sovereignty over Zubarah.

8.47 In the following years, Bahrain nevertheless continued to make further complaints about Zubarah. In general, these complaints concerned claims of a private nature at Zubarah - property rights to certain graves, rights of visit, etc.. Bahrain from time to time disclaimed sovereignty over Zubarah and in any event the British remained firm in their opposition to any such claim.

8.48 Thus, in a letter of 11 July 1946 from the Political Agent in Bahrain to the Political Resident, Colonel Hay, it was recorded that Qatar's sovereignty over Zubarah was officially recognised by the British in 1937⁶⁷.

⁶⁶ See, Annex III.240, Vol. 8, p. 183.

⁶⁷ Annex III.244, Vol. 8, p. 199. It is of interest to note another passage in the same letter as follows: "The Shaikh of Bahrain talks large about the graves of his ancestors, but Shaikh Hamad bin Abdullah was most scornful and said that he knew of no more than two, or at the most three, Al Khalifah graves in Zubarah. He said that they belonged to the dead and would continue to do so and that no one would interfere with them. There are Al Thani buried under the Petroleum Concessions Limited tennis court at Jufair, but that does not give the living Al Thani any right to play tennis on the P.C.L. court!"

8.49 In the same year, the Ruler of Bahrain appeared to recognise that his claim to Zubarah was more a matter of prestige than of anything else. In a note of 4 September 1946, which the Political Resident sent to the Political Agent in Bahrain, he referred to a conversation with the Ruler of Bahrain and recorded:

"If I understood him rightly *he stated that he did not claim sovereignty over Zubarah but only wanted his grass and water. When I remarked that there was no profit for him in Zubarah he replied that it was not a matter of profit as he knew that there was nothing of value in Zubarah but one of prestige*⁶⁸."

In another note dated 1 October 1946 by the Political Resident, Colonel Hay, it was recorded that the Ruler of Bahrain had been even more explicit, declaring that he did not claim sovereignty over Zubarah⁶⁹.

8.50 On 25 January 1950, the Political Agent in Bahrain confirmed in a letter to the Ruler of Qatar that:

"His Highness the Shaikh of Bahrain *does not claim sovereignty over Zubarah or any other part of Qatar territory, nor does he claim rights to oil or any other material therein*⁷⁰."

8.51 In 1950 and 1954, following extensive discussions, the British sought to bring about new arrangements between the two Rulers with regard to Zubarah whereby, while Qatar's sovereignty was preserved, Qatar would agree to allow the Ruler of Bahrain to exercise certain limited rights at Zubarah (such as rights of visit) while his private property claim would be submitted to a Qatari court for decision. However, none of these arrangements proved workable and aspects of them were objected to by both Rulers⁷¹.

⁶⁸ Annex III.247, Vol. 8, p. 211; emphases added.

⁶⁹ Annex III.248, Vol. 8, p. 215. *See, also, Annexes III.258 and III.260, Vol. 8, pp. 273 and 283, where the Ruler of Bahrain insists that he only claims private rights at Zubarah.*

⁷⁰ Annex III.266, Vol. 8, p. 317; emphasis added.

⁷¹ *See, Annexes III.266-III.282, Vol. 8, pp. 317-400.*

8.52 The Ruler of Bahrain thereupon unilaterally requested the British for a final decision as to their attitude to Zubarah. In a letter dated 13 June 1957 from the Political Resident to the British Foreign Secretary, Mr. Selwyn Lloyd, on this subject, it was recorded:

"Successive Political Residents and Political Agents have attempted to compose this dispute, but without success, faced as they were by the growing intransigence of the Qataris on the one hand and by the obstinacy, based on a feeling of personal humiliation, on the part of Shaikh Salman. I should note here that Shaikh Salman's feelings about Zubarah do not appear to be shared by anyone else in Bahrain.

...

It is clear that at no time have the Government of India or I.L.M.G. in the United Kingdom given the Rulers of Bahrain any encouragement or support in their claim to exercise sovereignty over Zubarah, and the present Ruler of Bahrain has admitted that he has no such right though he claims private ownership of the ruins there⁷²."

8.53 Upon instructions from London, the Political Resident then wrote to the Ruler of Bahrain on 10 August 1957⁷³ and reminded him that "Her Majesty's Government have never supported any claim by Bahrain to sovereignty in Zubarah" and informed him that the arrangement for special facilities (for example, for rights of visit) negotiated in the past with the Ruler of Qatar could not be continued and that, furthermore, considerations of Qatar's security required stricter entry arrangements. He concluded:

"It is therefore necessary that for the future Bahrainis wishing to enter Qatar should do so through the normal ports of entry and be in possession of the normal passports or travel documents.

...

It follows from what I have said above that the Ruler of Qatar must be free to do what is necessary to control the entry of all people into Qatar, and that no special rights can be claimed on behalf of any particular group of people there⁷⁴."

8.54 When the Ruler of Bahrain sought to revive his complaints concerning Zubarah in 1961⁷⁵, the Political Agent in Bahrain responded simply by reiterating the views expressed in the Political Resident's letter of 10 August 1957 - that Bahrain had no sovereignty or other

⁷² Annex III.283, Vol. 8, p. 401; emphasis added.

⁷³ Annex III.284, Vol. 8, p. 409.

⁷⁴ *Ibid.*

⁷⁵ Annex III.285, Vol. 8, p. 413.

rights at Zubarah. In particular, he noted that Her Majesty's Government "... do not recognise that any such claim to sovereignty, either immediately prior to the Agreement of June 17, 1944, or at the present time, has been established⁷⁶ⁿ."

8.55 No further claim concerning Zubarah was alleged by Bahrain until the meetings of the Tripartite Committee in 1988.

Section 3. Conclusion

8.56 In the preceding sections, Qatar has dealt with the question of Zubarah only in terms of sovereignty, since it understands that once Bahrain states its claim, it will define it as one of sovereignty.

8.57 Qatar has shown that there is however no factual basis for a claim of sovereignty by Bahrain. As far as Qatar can ascertain at present, it appears that any such claim would be based on the alleged residence in and development of Zubarah by the Bin Khalifah section of the Al-Utub tribe in the 18th century, their retention of ties with Zubarah after their departure in 1783 from Bahrain, and the allegation that Qatar forcibly took control of the town in 1937. But as Qatar has demonstrated, Zubarah was already a flourishing town by the beginning of the 17th century, long before the Bin Khalifah arrived, and the Bin Khalifah were only resident in an area outside Zubarah - Murair - for a brief period of about 20 years.

8.58 By the time of the 1868 agreements which formally recognised the separation between Qatar and Bahrain and which established the sea as a buffer between the two countries, the Bin Khalifah had been out of Zubarah and settled in Bahrain for over 80 years. Since that time Qatar has had full control over Zubarah, and has exercised that control and sovereignty in many different ways.

⁷⁶ Annex III.287, Vol. 8, p. 425.

8.59 The fact that Zubarah forms a part of Qatar was moreover repeatedly and explicitly confirmed by the Turks and the British from the 1870s. Even more significantly, Bahrain itself has on many occasions recognised Qatar's sovereignty over Zubarah, and from at least 1961 until 1988 made no mention of any claim that it might have had to Zubarah. In conclusion, therefore, Qatar submits that Bahrain has no sovereignty over Zubarah.

PART IV

MARITIME DELIMITATION

CHAPTER IX

GENERAL PRESENTATION OF THE RELEVANT MARITIME AREA

Introduction

9.1 The Court is requested to draw a single maritime boundary between the respective maritime areas of seabed, subsoil and superjacent waters appertaining respectively to Qatar and Bahrain¹. Thus, the Court will have to draw a single maritime boundary which will divide the respective maritime jurisdictional zones of the Parties recognized by international law, *i.e.*, (a) their 12-nautical mile territorial seas², (b) their 24-nautical mile contiguous zones³, (c) their continental shelf, comprising the seabed and subsoil of the submarine areas that extend beyond the territorial sea⁴ and (d) their superjacent waters adjacent to the territorial sea⁵. Such boundary is to be drawn with due regard to the line dividing the seabed of the two States as described in the British decision of 23 December 1947⁶.

Section 1. The Relevant Maritime Area for Delimitation

9.2 The maritime area within which the Court is requested to draw a single maritime boundary, in other words, the geographical area directly concerned in this delimitation, is depicted on *Map No. 11* facing this page. As can be seen, the area is located between the east

¹ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 125, para. 38. See, also, Qatar's Application filed with the Registry on 8 July 1991 and Qatar's "Act to comply with paragraphs 3) and 4) of operative paragraph 41 of the Judgment of the Court dated 1 July 1994".

² See, Annex IV.278, Vol. 12, p. 241 and Annex IV.281, Vol. 12, p. 261. It should be noted that neither of the States has issued a map of the baselines or the coordinates of the basepoints. See, also, Chapter XI, below.

³ *Ibid.*

⁴ See, Annexes IV.138 and IV.139, Vol. 10, pp. 203 and 207.

⁵ Annex IV.269, Vol. 12, p. 169 and Annex IV.276, Vol. 12, p. 223. For Qatar both extend to the median line "on which each point is situated at equidistance from the base line from which the breadth of the territorial waters of Qatar and any other state concerned is measured". This zone of superjacent waters could also be considered as covering the exclusive economic zone under the 1982 Convention on the Law of the Sea, when one or more Gulf States have declared it.

⁶ See, paras. 3.76 *et seq.* and para. 3.80, footnote 107, and Annexes IV.115 and IV.116, Vol. 10, pp. 71 and 75.

coast of Bahrain and the west coast of Qatar. Its southern part is constituted by the mouth of the Dawhat Salwah and the northern part extends up to the existing delimitations with Iran.

9.3 The relevant coast of Bahrain⁷ has a general northerly direction without any major indentation or change in direction. From Ras al Barr, at the southernmost point of the island of Bahrain, which is a low sandy spit, to Ras al Jamal, 4 ½ miles NNE, the coast is featureless and steep-to, then it runs in a northerly direction to Ras Hayyan, thence to the Sitrah jetty⁸, to the southeastern corner of the A.I.S.C. jetty and finally to the northeastern tip of the island of Muharraq⁹. The general direction of the coastal front from Ras al Barr to the northern tip of Muharraq is 7° northeast.

9.4 The relevant coast of Qatar extends from Ras Uwaynat in the south to the northernmost point of the coast of Qatar¹⁰ located east of the light of Ras Rakan, in a general direction of 30° NNE without any major indentation or change in direction. The coast is low¹¹. From Ras Uwaynat to Ras Rakan a coastal front can be constructed, passing through Janan, Almatraz island (one of the Hawar islands), Hawar island, and Ras Ushayriq, close to Zubarah¹².

9.5 The relevant coasts of the two States are opposite each other. The coast of Bahrain from Ras Al Barr to Muharraq is around 26 nautical miles or 48 kilometres long and the coast of Qatar between Ras Uwaynat and Ras Rakan is 48 nautical miles or 89 kilometres long. The ratio between the coastal fronts of Bahrain and Qatar is 0.63/1 or 1/1.59.

9.6 The mouth of Dawhat Salwah constitutes the southern part of the geographical area concerned in this delimitation. Dawhat Salwah is a bay, the east coast of which is Qatari and

⁷ The description is taken from the *Persian Gulf Pilot* 1982-94, pp. 180 *et seq.* (Annex II.1, Vol. 3, pp. 37 *et seq.*).

⁸ Sitrah, an island 4 miles long from north to south, lies close to the northeast side of Bahrain; it is connected to Bahrain by a causeway at its north end, and by a short neck of reclaimed land, carrying road links, on its west side.

⁹ See, Bahraini Chart I501 "Approaches to Mina Sulman" which shows the A.I.S.C. jetty. Muharraq lies close off the northeastern extremity of Bahrain to which it is connected by a stone causeway and a road bridge. Reefs, which are extensive, fringe Muharraq on all sides. The reef extending about 3 miles south from Muharraq terminates in an area of reclaimed land, which is connected to the island by a causeway. The coordinates of Muharraq are as follows: 50°37'54"E and 26°17'15"N.

¹⁰ At coordinates 51°15'02"E and 26°09'25"N.

¹¹ The description is taken from the *Persian Gulf Pilot* 1982-1994, pp. 178 *et seq.* (Annex II.1, Vol. 3, pp. 35 *et seq.*).

¹² See, Appendix 6, Vol. 15, p. 143.

the west coast Saudi¹³. The tripoint between Qatar, Saudi Arabia and Bahrain is not yet fixed between the three States.

9.7 The northern part of the geographical area concerned in this delimitation is bordered by the seabed delimitation agreement between Bahrain and Iran of 17 June 1971 which ends at the following coordinates: latitude 27°02'46"N and longitude 51°05'54"E ("Point 2")¹⁴ and the seabed delimitation agreement between Qatar and Iran of 20 September 1969 which ends at the following coordinates: latitude 27°0'35"E and longitude 51°23'00"N ("Point 2")¹⁵. The tripoint between Bahrain and Iran and Qatar has not been agreed between the three States.

Section 2. The Main Geographical Features in the Relevant Maritime Area

9.8 The maritime area between the coasts of Qatar and Bahrain is characterized by the existence of shallow waters. As to the maritime area situated to the north of the area where Qatar's and Bahrain's coasts are opposite, there is geological and geomorphological unity of the seabed. There is no fundamental discontinuity. The depth of the waters, subject to certain variations, reaches an isobath of an average of 50 to 60 metres.

9.9 Three and a half miles south of Ras al Barr lies Al Hool, a small uninhabited islet¹⁶. Meshtan and Mattera are two uninhabited islets lying about 4 ½ miles ENE and 5 ½ miles E, respectively, of Sabkha Noon¹⁷. Sabkha Noon and Halat Noon are low uninhabited islets lying, respectively, about 2 miles E and SE of Ras al Barr¹⁸. Thalib is a reef, 3 miles NE of

¹³ There is a delimitation agreement between Qatar and Saudi Arabia dated 4 December 1965, under which the start of the delimitation in the Dawhat Salwah is not described with coordinates. Article (1) only states that "Dohat Salwa shall be divided equally between the two countries by the method of equidistance points from both shores". There is also a continental shelf agreement between Bahrain and Saudi Arabia dated 22 February 1958. According to its Article I, "The boundary line ... on the basis of the median line, begins at Point 1 located at the midpoint of the line connecting the tip of Ras al-Barr at the southernmost extremity of Bahrain, and Ras Abu Maharah (B) on the coast of the Kingdom of Saudi Arabia" (Annex IV.262, Vol. 12, p. 95). In the vicinity of the two starting points mentioned above is to be found the end of the line of the British decision of 23 December 1947. This is point "M". It is located at the following coordinates: latitude 25°30'00"N, longitude 50°33'54"E (Annexes IV.115 and IV.116, Vol. 10, pp. 71 and 75).

¹⁴ Annex IV.264, Vol. 12, p. 111.

¹⁵ Annex IV.260, Vol. 12, p. 81.

¹⁶ Annex II.1, Vol. 3, p. 44.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, p. 43.

Yabberi rock¹⁹. Yabberi rock is situated 3 miles NE of Ras Al Jamal near the centre of an extensive reef²⁰. Fasht Adham is a reef which dries²¹. Fasht al Azm is a shoal outside the Sitrah island which extends up to the East side of the line of the British decision of 1947. Qit'at ash Shajarah is a reef, lying about 5 miles WNW of Ras Ushayriq which is covered in its entirety at high tide²². A navigational channel exists from Bahrain Light Float²³ to the port of Mina Salman (including the port of Sitrah), passing North Sitrah Light Buoy ("NSLB").

9.10 From Ras Rakan to Zubarah the coral reef extends from 2 to 3 miles offshore; it is covered in its entirety at high tide. The two shoals of Dibal and Qit'at Jaradah are situated between Qatar and Bahrain, off the west coast of Qatar and the east coast of Bahrain. They are nearer to the Qatar coast than to the coast of Bahrain.

9.11 Dibal is a shoal located 9.3 nautical miles from the nearest point on the low water line (and about 11.5 nautical miles from the high water line) of Qatar and 13.7 nautical miles from the nearest point on the low water line (the A.I.S.C. jetty, which is also the nearest point on the high water line) of Bahrain²⁴. It is bordered to the northwest and east by water which is 7 to 8 metres in depth. The sea between Dibal and Qatar is shallower than that between Dibal and Bahrain.

9.12 Seven miles south is Qit'at Jaradah. It is a shoal located 9.4 nautical miles from the nearest point on the low water line (and 10.6 nautical miles from the high water line) of Qatar's coast and 10.8 nautical miles from the nearest point on the low water line (the A.I.S.C. jetty, which is also the nearest point on the high water line) of Bahrain²⁵.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*, p. 55. "Fasht" is the Arabic term used to describe a shoal. *See*, Annex II.1, Vol. 3, p. 7.

²² *Ibid.*, p. 37.

²³ *See*, para. 3.80, footnote 107, above.

²⁴ *See*, Appendix 5, Vol. 15, p. 125.

²⁵ *See, ibid.*

Section 3. Factors Irrelevant to the Delimitation to be Effected

9.13 In its Act of 30 November 1994, Qatar requested the Court to adjudge and declare, *inter alia*, that any claim by Bahrain concerning archipelagic baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case.

9.14 Qatar would simply note here that Bahrain has not to date made a claim to archipelagic baselines in accordance with the rules laid down in the 1982 United Nations Convention on the Law of the Sea. For this and other reasons, discussed more fully at paragraphs 11.43 *et seq.*, below, Qatar submits that any archipelagic baselines claim by Bahrain would be totally irrelevant in the present case.

9.15 Qatar has also dealt more fully below with the irrelevance of pearl fishing for the purpose of maritime delimitation in the present case. As will be shown in paragraphs 10.37 *et seq.* and in Appendix 4, Bahrain's assertion that it exercised exclusive rights over the pearl fisheries off the western coast of Qatar is contradicted by a wealth of evidence according to which rights in pearl fisheries in the Gulf were the collective property of all tribes living in the Gulf, and that Qatar too had a role in pearl fisheries. Furthermore, it will be shown that even if Bahrain had had such exclusive rights, this would not in law be a special circumstance to be taken into account in delimiting the maritime areas between Qatar and Bahrain.

9.16 Finally, fishing for swimming fish was, until the development of the oil industry, an important activity for the overall economy of the coastal countries of the Gulf, and was traditionally exercised by all communities in the Gulf, with no exclusive rights. Unlike pearling, the fishing industry has not died out in the Gulf, but has been encouraged as part of the Gulf States' national diversification plans for the post-oil era. At present, the respective catches of Qatar and Bahrain are roughly equivalent. Fishing is thus of equal importance to the economies of both States, and there do not appear to be any reasons based on fishing activities for modifying the course of the single maritime boundary line which might otherwise be determined by the Court to produce an equitable result.

CHAPTER X

THE 1947 BRITISH DECISION CONCERNING THE DELIMITATION

Section 1. The General Legal Context: the State of International Law on the Continental Shelf and its Delimitation at the Time of the British Decision

10.1 The British decision of 23 December 1947 (*see, Map No. 12*, facing this page), so far as it delimited the sea-bed lying between the territory of Qatar and that of Bahrain was adopted within the context of the emerging new legal continental shelf doctrine, and sought to apply the principles enunciated in the Truman Proclamation of 28 September 1945.

10.2 It is customary to regard the Truman Proclamation as the first clear assertion that the continental shelf belongs to the coastal State¹. Underlining the "special status" of this instrument, the International Court of Justice stated in the *North Sea Continental Shelf Judgment*:

"The Truman Proclamation ... soon came to be regarded as the starting point of the positive law on the subject, and the chief doctrine it enunciated ... came to prevail over all others²."

The Truman Proclamation acted as a catalyst in the formation of the legal notion of the continental shelf as a part of international law, and provided the impetus for a spate of other similar declarations concerning claims to offshore zones. In particular, it was closely followed by several Latin American claims made successively by Argentina, Mexico, Panama, Nicaragua, Chile and Peru, to mention only those which arose before the drawing of the 1947 line between Qatar and Bahrain by the British authorities³. As the Court said in its 1969 Judgment, the legal regime of the continental shelf "furnishes an example of a legal theory derived from a particular source that has secured a general following" and "it was the Truman Proclamation of 28 September 1945 which was at the origin of the theory⁴".

¹ Annex IV.75, Vol. 9, p. 363.

² *I.C.J. Reports 1969*, pp. 32-33, para. 47.

³ *See*, R. Young, "Recent developments with respect to continental shelf", *A.J.I.L.*, 1948, p. 849. The United Kingdom for its part made similar claims in respect of Jamaica on 26 November 1948 (Annex IV.126, Vol. 10, p. 119), the Bahamas (Annex IV.125, Vol. 10, p. 115) on 27 November 1949 and the Falkland Islands on 21 December 1950 (*see, I.C.J. Pleadings, Fisheries, United Kingdom v. Norway*, Vol. IV, p. 598).

⁴ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 53, para. 100.

10.3 One particular but important point, which is of the greatest relevance in the present case, lies in the circumstance that, concerning the question of delimiting the U.S. continental shelf with neighbouring States, the Truman Proclamation stated:

"In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles⁵."

With regard to the way in which the Truman Proclamation dealt with the question of delimitation of the continental shelf, the International Court of Justice inevitably recognized that:

"These two concepts, of delimitation by mutual agreement and delimitation in accordance with equitable principles, have underlain all the subsequent history of the subject. They were reflected in various other State proclamations of the period, and after, and in the later work on the subject⁶."

10.4 The idea of delimitation in accordance with equitable principles was thus from the outset inherent in the continental shelf doctrine as expressed in the Truman Proclamation. This was so, not only because the early delimitations of the continental shelf evidenced the application of no clear rule and no strict method, but mainly because of the idea of the uniqueness of each boundary delimitation. According to the observations presented by M.O. Hudson in the 69th and 79th meetings of the International Law Commission, "Geographical differences prevented the formulation of a general principle⁷". It was stated also at that time that:

"Each situation is unique, and can be solved satisfactorily only in the light of its own facts and the particular interests there involved⁸."

⁵ Annex IV.75, Vol. 9, p. 363.

⁶ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 33, para. 47.

⁷ Annex IV.322, Vol. 13, p. 265.

⁸ R. Young, "The International Law Commission and the Continental Shelf", *A.J.I.L.*, Vol. 46, 1952, Annex IV.325, Vol. 13, p. 279.

This explanation has been summarized as follows:

"From the very inception of the doctrine of the continental shelf, the argument has been put forward that geographical features varied so greatly that it was difficult, if not impossible, to posit fixed rules governing the establishment of maritime boundaries between states⁹."

10.5 The major forerunner of the Truman Proclamation was the United Kingdom-Venezuela Treaty relating to the submarine areas of the Gulf of Paria, of 26 February 1942¹⁰. This agreed delimitation in the Gulf of Paria was said to have secured an equitable division between the two States concerning the submarine areas lying between the then British colony of Trinidad and the Venezuelan facing coast. Taking into account the fact that the respective coasts involved were opposite to each other, the 1942 Treaty established a quasi-median line. Nevertheless, the median line method was not scrupulously followed in drawing the boundary under that instrument¹¹.

10.6 The practice of Arabian Gulf States laid particular emphasis on equitable principles. For example, the Saudi Arabian Royal Pronouncement of 28 May 1949 on the continental shelf stated that:

"The boundaries of such areas will be determined in accordance with equitable principles by Our Government in agreements with other States having jurisdiction and control over the subsoil and sea-bed of adjoining areas¹²."

⁹ L.D.M. Nelson, "The roles of equity in the delimitation of maritime boundaries", *A.J.I.L.*, 1990, Annex IV.309, Vol. 13, p. 191.

¹⁰ Annex IV.72, Vol. 9, p. 349.

¹¹ In a sector of the delimited area called the Serpent's Mouth, located at the south-eastern entrance of the Gulf of Paria, Venezuela was limited to a three-mile submarine area, while Trinidad's outer limit of seabed was at a distance of seven miles, under the delimitation line drawn in that sector. Among the explanations given in order to justify such a departure from the strict median line was the following: "... it may be recalled that in 1942 the Island of Patos in the Gulf of Paria was ceded by Britain to Venezuela. Therefore, the unusual course which the 1942 boundary line follows may be explained on the ground that Britain obtained something in return for the cession of Patos" (Anselm Francis, "Treaty between the Republic of Trinidad and Tobago and the Republic of Venezuela on the delimitation of the marine and submarine areas", *International Journal of Estuarine and Coastal Law*, Vol. 6, 1991, pp. 169-187, at p. 175). The island of Patos is located at the northern entrance of the Gulf of Paria, called the Dragon's Mouth.

¹² Annex IV.135, Vol. 10, p. 189.

The proclamation of Saudi Arabia was immediately followed in June 1949 by nine other proclamations issued by the Rulers of the coastal countries of the Arabian Gulf or, for some of them, by the United Kingdom acting as protecting power: Bahrain (5 June), Qatar (8 June), Abu Dhabi (10 June), Kuwait (12 June), Dubai (14 June), Sharjah (16 June), Ras-al-Khaimah (17 June), Ajman and Umm-al-Qaiwain (20 June)¹³. All of these referred to equitable principles for the delimitation of submarine areas with neighbouring States. For example, Qatar's Proclamation referred to "boundaries to be determined more precisely as the occasion arises, on equitable principles"¹⁴.

10.7 Evidence that delimitation in accordance with equitable principles was perceived as part of the emerging continental shelf legal regime may be seen in the fact that not only had the concept of equitable principles for the purpose of delimiting the continental shelf been adopted by almost all national regulations promulgated by various Gulf States, but also that this concept "has always been the unquestionable basis for continental shelf delimitation in all negotiations conducted by the Gulf States"¹⁵.

Section 2. The Circumstances in which the 1947 British Decision was made

10.8 The driving force for a division of the seabed between Qatar and Bahrain stemmed from the desire to exploit oil resources. The role of oil companies will therefore be examined first, before considering the events leading to the decision of 23 December 1947.

A. The Role of the Oil Companies

10.9 An account of the evolution of the Qatar and Bahrain oil concessions up to 1939 has already been given above¹⁶. The Deed of Further Modification, dated 19 June 1940, extended BAPCO's Mining Lease to cover the Bahrain unallotted area (all 'the Shaikh's present and future dominions'¹⁷). The company in fact began its exploratory work in the Additional Area

¹³ See, Annexes IV.138-IV.146, Vol. 10, pp. 203-240.

¹⁴ See, Annex IV.139, Vol. 10, p. 207.

¹⁵ S.H. Amin, "Law of the Continental Shelf delimitation: the Gulf Example", *Netherlands International Law Review*, Vol. XXVII, 1980, Annex IV.292, Vol. 13, p. 66.

¹⁶ See, paras. 6.12 *et seq.*, above.

¹⁷ Annex IV.64, Vol. 9, p. 313.

in 1939, before the terms of the concession were approved and the Deed signed in June 1940. PCL was also anxious to pursue its programme of exploration, and on 26 February 1940, Wheatley of that company wrote to Peel of the India Office to enquire whether any decision had been reached concerning "the line of division between the territories and the territorial waters of Bahrain and Qatar"¹⁸.

10.10 After the Truman Proclamation, the practical significance of claiming rights to the resources of the seabed beyond territorial waters in the relatively shallow waters of the Arabian Gulf rapidly became apparent, and the question soon became perceived as one involving not just the attribution of particular reefs and shoals to one Ruler or another, but the division of the whole seabed between the two States. By this time BAPCO was impatient to resume its exploratory drilling, and for this reason was anxious that the British decision should not be long delayed.

10.11 Qatar's concessionaire since 1936 had in effect been Petroleum Development (Qatar) Ltd., a subsidiary of PCL. Its local representative wrote to the Political Agent, Bahrain on 30 September 1944 inquiring whether the time was thought opportune to raise again the question of the boundary between the two States and the two concession areas. The issues concerned not only the composition of the Hawar group of islands and the extent of their territorial waters, but also reefs and islets beyond territorial waters which might constitute possible drilling locations¹⁹. The Political Agent replied on 1 October 1944 that he would prefer not to have had the question raised, but he noted that in any event it was being considered in London²⁰.

10.12 In 1946, with the resumption of operations by the two companies, PCL again expressed anxiety about the question of the division, and raised the matter with the India Office, insisting that the BAPCO concession over the Bahrain unallotted area could not properly oust Qatar's rights or those of its concessionaire²¹. This together with the roughly

¹⁸ Annex IV.57, Vol. 9, p. 279.

¹⁹ Annex IV.73, Vol. 9, p. 355.

²⁰ Annex IV.74, Vol. 9, p. 359.

²¹ Annex IV.84, Vol. 9, p. 401.

contemporaneous request by BAPCO to resume structural drilling in the Hawar islands²² seems to have set in motion the internal consultations amongst the British authorities which culminated in the decision of 23 December 1947.

B. Events leading to the 23 December 1947 Decision

10.13 On 3 August 1946 the Secretary of State for India instructed the Political Resident in the Gulf to prepare a dividing line drawn according to the following principles:

"Such a line could be regarded either as simply demarcating the areas in which H.M.G. are willing to permit the respective Oil Companies to operate, or as dividing the sea-bed, including the portion outside territorial waters, between Bahrain and Qatar, and allotting to each Ruler virtual sovereignty over his respective portion without prejudice to existing navigation rights. In the latter case the application of the principles of President Truman's Proclamation regarding the Continental Shelf is involved ... Whatever the outcome, the first step must in any case be to obtain the recommendations of the Political Agent as to the most equitable dividing line. The Political Agent should perhaps base his recommendation primarily on the configuration of the main Bahrein Island, the Hawar Islands and the Qatar peninsula, with their respective territorial waters, and should so far as possible discount the recent assertions by the Bahrein Government of claims to reefs and rocks by the erection of cairns. He should, in fact, attempt to arrive at as simple and equitable a division of the sea-bed as possible²³."

10.14 The recommendation of the Political Agent in Bahrain, sent on 31 December 1946²⁴, was commented on by the Political Resident in the Gulf²⁵. The matter was then the subject of intensive discussions between the India Office, the Foreign Office and Admiralty, and the eventual decision was communicated to the two Rulers by letters dated 23 December 1947. The Court is respectfully referred to the full text of the decision which may be found in Annexes IV.115 and IV.116²⁶.

²² Annex IV.77, Vol. 9, p. 373.

²³ Annex IV.88, Vol. 9, p. 419.

²⁴ Annex IV.92, Vol. 9, p. 435.

²⁵ Annex IV.93, Vol. 9, p. 449.

²⁶ Annexes IV.115 and IV.116, Vol. 10, pp. 71 and 75.

C. The Equitable Principles referred to in the Truman Proclamation

10.15 At the time the British decision was taken, there were no helpful precedents or established rules of delimitation, and no specific rule or method of delimitation could yet be regarded as being already part of the emerging legal doctrine of the continental shelf. Existing State practice concerned the delimitation of territorial waters between States with opposite coasts, and that practice consisted of using generally the median line²⁷. This had been done in particular for the establishment of the maritime boundary between Denmark and Sweden under the 1932 Danish-Swedish Declaration concerning the Sound²⁸, and there were a number of similar examples for other straits around the world, constituting a consistent general practice in this field. However, the only precedent dealing with the drawing of a sea-bed boundary as such was the 1942 Treaty relating to the Gulf of Paria, which had just established an equitable division by an adjusted median line, at least for the main portion of the boundary²⁹. Some assistance could therefore be derived from principles or methods applied in connection with territorial sea boundaries, and it was seen as desirable that any new development should be in harmony with what had gone before³⁰.

10.16 When the British Government drew the 1947 line, it had to select a few objective criteria in order to apply equitable principles. Indeed, these principles, as such, did not provide a criterion or a method of delimitation which was capable of being used to produce a line on a map. This is still the case today, since the search for equity in contemporary maritime delimitations does not always lead inevitably to one single practical boundary. In order to

²⁷ See, the detailed study of the subject in G. Gidel, *Le droit international public de la mer*, Paris, 1981, Vol. III, pp. 746-759, where the author summarized the existing legal situation as follows: the boundary is to be established according to the median line, unless the States concerned otherwise agree, or in cases where the geographical configuration is such that the median line would produce an extreme disproportion in the different uses of the sea by both States (Annex IV.300, Vol. 13, p. 113).

²⁸ Annex IV.263, Vol. 12, p. 105.

²⁹ See, para. 10.5, above.

³⁰ See, the anonymous and undated Memorandum on the Persian Gulf sea-bed, entitled "Offshore Areas in the Western Persian Gulf", very likely produced by ARAMCO for the Saudi Government before the meeting of the 1958 Geneva Conference (FO 371/132510), where it was stated that "any systematic legal treatment of this new field must be grounded firmly on the concept of *equity*. Fortunately, all the Gulf States which have made offshore claims have embodied this concept in their assertions, so it is already at hand for use. Yet while equity must be the predominant factor, it must be tempered with practicality" (para. 5) (Annex IV.218, Vol. 11, p. 249; emphasis in original).

achieve an equitable delimitation between Qatar and Bahrain as regards their respective rights over the sea-bed, the British authorities were confronted with the need to define a practical methodology, each element of which had to be subordinated to the broader concept of equitable principles. They did so through the adoption of the three following criteria: they decided to take exclusively into consideration the two main coasts; they selected some fixed turning points; and they drew a simplified line.

1. Exclusive consideration of the two main coasts

10.17 The absence of identification of the low-water mark in an area which was largely unsurveyed, coupled with the presence of several small islets, rocks and sand-banks lying in shallow waters immediately off the coasts of both States, made it difficult to have a precise knowledge of the detailed configuration of the coastlines. These factors were regarded as constituting in themselves sufficient justification for taking into account only the high water line on the main coasts, that is the eastern coast of the main Bahrain island and the western coast of the Qatar peninsula. This option was not an extraordinary one, especially given the specific problems in the Gulf area³¹.

10.18 In addition, the drawing of a line based on the main configuration of the two coastlines found a more theoretical justification in the continental shelf doctrine itself, since the sea-bed to be divided was at the time seen as the logical extension of the mainland :

"2. ... (a) The median line should be based on the main configuration of the coastlines since we are dealing here with the logical extension of the continent and minor reefs and shelves on the sea bed have no bearing on the main principle³²."

³¹ The same problem arose again a few years later, during the negotiation of the 1968 Saudi Arabia-Iran Delimitation Agreement, where the Parties encountered difficulties arising out of the absence of sufficient geographical data to construct the accurate median line upon which they were agreed. As then explained by a lawyer who was indirectly involved in those negotiations "At the outset no single map was found which showed both sides of the Gulf in adequate detail and which was satisfactory to both sides for use in connection with the agreement". And the same commentator added in a footnote: "Nautical charts of the Gulf, though much improved in recent years, were found to lack accurate shoreline detail in areas not important for navigation, and to have other shortcomings for delimitation purposes" (R. Young, "Equitable Solutions for Offshore Boundaries, the 1968 Saudi Arabia-Iran Agreement", *A.J.I.L.*, Vol. 64, No. 1, 1970, Annex IV.326, Vol. 13, p. 288).

³² See, in particular, Annex IV.97, Vol. 9, p. 479.

2. Selection of fixed turning points

10.19 The same reasons which dictated the decision to take exclusively into consideration the main coastlines also governed the selection of certain points on the dividing line itself. Because of unsurveyed coasts and maritime areas, the British authorities selected identified points, either by way of triangulation or by reference to aids to navigation such as buoys and lights. Another consideration which the British Government no doubt took into account was the desirability of protecting maritime access to Bahrain through the Sitrah Channel, and this probably provided sufficient reason for the choice of the North Sitrah Light Buoy and the Bahrain Light Vessel as points of reference for the drawing of the dividing line. In this particular case, the method presented the advantage of eliminating any uncertainty of demarcation. Undoubtedly, the requirement of certainty was regarded as significant³³.

3. A simplified line

10.20 The different portions of the 1947 line were drawn as straight lines joining selected points, a method which has since been used on numerous occasions, both in maritime delimitation agreements and in decisions by international tribunals in this matter. Such a method has the virtue of simplicity, a requirement that was expressly incorporated into the instructions delivered in 1946 by the India Office to the Political Resident in the Gulf and the Political Agent in Bahrain, when they were asked to make suggestions about the line to be drawn. The first continental shelf boundary agreement in the Gulf region, concluded between Bahrain and Saudi Arabia on 22 February 1958 which was significant since it could be regarded as a leading precedent in this area employed the "middle line", to translate the exact wording of the original Arabic text³⁴. But the course of that particular dividing line is just an

³³ In the Memorandum "Offshore Areas in the Western Persian Gulf", referred to in para. 10.15, footnote 30, above, the following suggestion was made: "Boundary lines should be as simple and regular as possible, to facilitate quick ascertainment and prevent disputes. It is useful to have them related to well-defined points on land or at sea" (Annex IV.218, Vol. 11, p. 249).

³⁴ Annex IV.216, Vol. 11, p. 235.

"approximation of the median line³⁵" and has been presented as "a variation of the equidistance principle³⁶".

10.21 The 1947 line is neither an equidistant line, nor the strict or true median line. It was not the strict or true median line, because this was not the intent of the British authorities. It was the aim of the British authorities to decide upon a line of delimitation in accordance with equitable principles. One of the factors taken into account (although this is nowhere explicitly stated) may have been the difference in coastal lengths, the coast of the Qatar peninsula being much longer than that of the main Bahrain island.

Section 3. Reactions of the Parties - The Different Attitudes of Bahrain and Qatar

A. Qatar's Attitude

10.22 Qatar's attitude with regard to the 1947 decision was fairly simple. By a telegram to the Commonwealth Relations Office of 8 January 1948, the Political Resident reported:

"4. Sheikh of Qatar, whom I saw on January 5th, stated that while he could not voluntarily surrender the islands and shoals East of the line which he regarded as Qatar territory, he would accept His Majesty's orders³⁷."

10.23 Pressed by a letter of 4 February from the Political Agent in Bahrain to "confirm this acceptance³⁸", the Ruler of Qatar adopted a much more reserved position. By letter of 21 February 1948 to the Political Agent in Bahrain he stated that :

"... I like to invite Your Excellency's attention to the correspondence exchanged some ten years ago on the subject of Huwar (Island) and the clear representation I made regarding its position in my letter submitted to His Excellency the Political Agent, Bahrain, at the time, in which I expounded my points of view in regard to this Island which is a part of Qatar and in which I expressed my protest against the behaviours of Bahrain Government. But H.M.'s Government acted as they wished, and I had nothing but to submit, reserving in the meantime to myself my own rights.

³⁵ S.H. Amin, "Customary Rules of Delimitation of the Continental Shelf. The Gulf States' Practice", *Journal of Maritime Law and Commerce*, Vol. 11, No. 4, July 1980, Annex IV.291, Vol. 13, p. 57.

³⁶ Annex IV.262, Vol. 12, p. 95.

³⁷ Annex IV.119, Vol. 10, p. 89.

³⁸ Annex IV.120, Vol. 10, p. 93.

The map you were kind enough to send me shows clearly that Deebil shoal and Huwar Islands are within the territory of Qatar. Huwar is directly attached to the coast of Qatar with a piece of shallow water disconnecting, which recedes at ebb tide, thus establishing access for pedestrians... Yet as I have mentioned to Your Excellency I cannot but exercise patience, being content with what your Excellency said that this decision is liable to alteration at any time in case more exact geographical data are forthcoming. This strengthens in me the hope that H.M's Government will reconsider the matter once again and award a more correct decision based on geographical data³⁹."

In a word, the Ruler was content with the line, but not with the exceptions relating to Hawar and the two shoals of Dibal and Qit'at Jaradah. A similar view was taken by the Iraq Petroleum Company in a letter to the Commonwealth Relations Office dated 19 March 1948⁴⁰.

10.24 Assuming or wishing to assume that these replies amounted to acquiescence, the Political Agent in Bahrain thought fit to write to the Ruler of Qatar on 30 April 1949 that His Majesty's Government noted "with pleasure Your Excellency's ready acceptance of their decision", which was a far-fetched interpretation of the Ruler's cautious observations⁴¹. Mr. Morgan Man, of the Political Residency, Bahrain, was more perspicacious when he wrote in a letter of 13 January 1962: "I read it [the Ruler's reply] as a polite rejection of H.M.G's award⁴²".

10.25 Qatar confirmed its position by supporting the proposal of arbitration about the sea-bed, although it made it clear that such proceedings should not be confined to the question of the sea-bed. On 2 July 1962, the Political Agent in Doha warned the Foreign Office that any arbitration proceedings between Bahrain and Qatar could not be confined to the sea-bed, and that according to Qatari views they should include the other issues, such as the Hawar islands, in the terms of reference⁴³.

³⁹ Annex IV.121, Vol. 10, p. 97.

⁴⁰ Annex IV.123, Vol. 10, p. 107.

⁴¹ Annex IV.131, Vol. 10, p. 169.

⁴² Annex IV.235, Vol. 11, p. 361.

⁴³ Annex IV.246, Vol. 11, p. 415.

B. Evolution of Bahrain's Attitudes

10.26 In the maritime field Bahrain's claims and their factual or legal basis have fluctuated. As a matter of fact, Qatar is not aware of Bahrain's present claims, which will be known only when Bahrain files its own Memorial. In the meantime the evolving situation may be summarized as follows.

1. First phase, 1947-1960: Claim to sovereignty over all the sea between Bahrain and the Qatar peninsula

10.27 On the whole, the position taken by Bahrain after the 23 December 1947 decision was similar to that expressed in various letters written in 1946 before the decision was taken⁴⁴. The reaction of Bahrain to the letter of 23 December 1947 was immediate and negative. It was expressed in a letter from the Ruler of Bahrain to the Political Agent in Bahrain dated 31 December 1947⁴⁵ in the following terms:

"2. We wish to point out that since the time that our ancestors conquered Bahrain from their town of Zubara until the present day the seas lying between our Eastern coast and the western coast of the Qatar peninsula have been under our control and we have held domination over the islands, shoals and reefs which exist in these waters. Our people own fishing rights, which have never been disputed, in the waters inside this area.

3. During the lengthy negotiations between our Government and the two oil companies, Bahrain Petroleum Company and Petroleum Concessions Limited who were competing for an oil concession in the seas belonging to Bahrain, in 1938 and 1939, many discussions took place and maps and plans were made showing the sea area which was the subject of the negotiations. These negotiations were carried on through H.B.M.'s Political Agent who was either present during the meetings or who was provided with a detailed note about all matters which were discussed. The sea area which we were then prepared to lease to the companies between the coasts of Bahrain and Qatar was from and including the island of Jinan, the most southern island of the Hawar Group, to a point approximately 10 miles north east of Fasht al Dibal. It was at no time suggested by H.B.M.'s Political Agent that we had no rights over any part of the sea area lying between Bahrain and this line. If our ownership of this area was in doubt why were these negotiations approved by H.B.M.'s Political Agent ?

⁴⁴ See, Annexes IV.82, IV.86 and IV.89, Vol. 9, pp. 393, 411 and 423. In the letters of 10 July 1946 and 22 July 1946 (Annexes IV.82 and IV.86), the claim was directed to the islands and shoals, as will be discussed in Section 4, paras. 10.44 *et seq.*, below.

⁴⁵ Annex IV.118, Vol. 10, p. 83.

4. In para 4 of your letter you state that our sovereign rights in Dibal and Jaradah shoals, which are above spring tide low water level, are recognised. These two shoals are in fact the terminus of one long continuous shoal which begins off Sitra Island and reaches Dibal and Jaradah. There is no deep water channel crossing this shoal and the highest points of this shoal, at Dibal and Jaradah, cannot be separated from the main shoal. We contend that all the sea lying between our coasts up to and including Dibal and Jaradah should be included in the sea over which we have sovereign rights.

...

6. In conclusion we consider that the delimitation described in your letter should be readjusted and the dividing line should run from and including Jinan up to the north east corner of Dibal, including the whole length of the shoal which starts at Sitra and which appears above the surface at Dibal and Jaradah."

10.28 Another letter from the Ruler of Bahrain to the Political Agent in Bahrain on 23 May 1949 asserted a similarly extravagant claim:

"The ownership of the sea between Bahrain and Qatar is claimed by us. We have never heard that the Shaikh of Qatar made any claim to this sea. If he has made a claim to it we ask that we should see his claim and the evidence which he may have to prove it⁴⁶."

10.29 On 6 January 1950 the Ruler of Bahrain referred not to the *sea* but to the *sea-bed*:

"I should say that the sea-bed between Bahrain and Qatar has on no day been under the sovereignty of the Shaikh of Qatar and that I do not accept that. Secondly, what confirms this is that there exist some possessions belonging to Bahrain subjects the right in the disposal of which vested in us and in our subjects, without the Ruler of Qatar or his subjects having any control over them.

Thirdly, when the Company wanted to install buoys between Bahrain and Zikrit it was we who granted the permission which apart from the numerous reasons and conclusive proofs, establish our right in the sea-bed between Bahrain and Qatar⁴⁷."

⁴⁶ Annex IV.134, Vol. 10, p. 185. The same letter queried in very strong terms the right of the British Government to decide boundary disputes between Bahrain and Qatar. In a further letter of 21 November 1949 the Ruler of Bahrain repeated his claim to ownership of all the seas between Bahrain and Qatar (Annex IV.151, Vol. 10, p. 259).

⁴⁷ Annex IV.158, Vol. 10, p. 295.

But in the next two protests Bahrain referred again in general to the *sea*⁴⁸.

10.30 The British authorities consistently and firmly rejected Bahraini claims. Thus, the Political Agent in Bahrain in a letter dated 30 May 1949 to the Political Resident stated:

"A claim to 'ownership' of the high seas outside the farthest limit of the claims made to territorial waters by any country in the world must be something unique⁴⁹."

The Ruler's claim was rejected by letter of the Political Agent dated 2 January 1950:

"I am further to remind your Highness that your claim to sovereignty over all the seas between Bahrain and Qatar has not been admitted by His Majesty's Government⁵⁰."

10.31 Sixteen months later, on 14 May 1951, the Political Agent sent a further reply to the Ruler of Bahrain containing the following paragraphs:

"3. ... Since then [the Ruler of Bahrain's letter of 23 May 1949], however, Your Highness has issued a proclamation asserting jurisdiction and control over the sea-bed and sub-soil beneath the high-seas contiguous to the territorial waters of your State. The Ruler of Qatar has issued a similar proclamation. It is therefore more than ever necessary that all the parties concerned should observe the line laid down in 1947 as the limit of the sea-bed over which you and the Ruler of Qatar have since asserted your control in these proclamations. This line was determined in accordance with equitable principles after careful examination of Your Highness' claims and of those of the Ruler of Qatar and is the only line recognised by His Majesty's Government. ...

5. ... His Majesty's Government are not prepared to recognise a claim by Your Highness *to any area of the seas outside the territorial waters of the State of Bahrain*; nor indeed does the Ruler of Qatar make any claim to the seas outside his territorial waters. As has been pointed out on many occasions this discussion concerns the sea-bed beneath the high seas and its division between Bahrain and Qatar. These two

⁴⁸ See, letter from Belgrave to the Political Agent in Bahrain dated 14 February 1950: "I have the honour to inform you that His Highness has heard that an arbitration court is sitting at Doha to consider the claims of two oil companies to the seas around Qatar. His Highness wishes the court to be informed that he claims the ownership of the sea which lies between Bahrain and the coast of Qatar which is opposite to Bahrain, His Highness fears that the court may come to some decision which will affect the sea which he claims. His Highness desires me to remind you that he has at no time agreed to the boundary of his domain being restricted by the line which was shown on the map which was enclosed in your letter N° C/1226 dated 23rd December 1947" (Annex IV.161, Vol. 10, p. 307). See, also, Annex IV.171, Vol. 10, p. 357.

⁴⁹ Annex IV.136, Vol. 10, p. 193.

⁵⁰ Annex IV.157, Vol. 10, p. 291.

States asserted the right to exercise jurisdiction and control over their respective areas of the sea-bed in the proclamations referred to in paragraph 3 of this letter, which were issued by Your Highness and the Ruler of Qatar at the initiative of His Majesty's Government⁵¹."

10.32 This was to no avail, since on 22 September 1951, the Ruler of Bahrain again wrote to the Political Agent:

"Our waters reach to the Western shore of Qatar - this has been the fact down the ages - and that the bed upon which those waters rest and the sub-soil of that bed are within and form an integral part of Our domain and We make that statement once again with all the conviction of which We are capable⁵²."

This position was still taken by the Ruler of Bahrain in April 1960 with Wiltshire, Political Agent in Bahrain, who reported the Ruler's view as follows:

"Qatar had no sea-bed rights in the west at all ... everything in the sea between Zubara and Bahrain belonged to the Al Khalifas and should be included in his claims⁵³."

10.33 The claim that Qatar's sovereignty was limited to the mainland reveals great ignorance of Qatar's history, and disregards several facts and cases connecting the fashts with Qatar since the middle of the previous century. Many documents show that during the 19th century Qatar's jurisdiction and sovereignty were not at all limited to the mainland⁵⁴. This sovereignty

⁵¹ Annex IV.193, Vol. 10, p. 473; emphasis added.

⁵² Annex IV.197, Vol. 10, p. 497. This claim seemed linked to the Ruler's pretensions over Zubarah (see, for instance, Annex IV.199, Vol. 10, p. 507), even if this was denied by Bahrain (Annex IV.201, Vol. 11, p. 5).

⁵³ Annex IV.227, Vol. 11, p. 325.

⁵⁴ - An Ottoman sketch of June 1867 showing the borders of Qatar includes Dibal and Qit'at Jaradah clearly separated from Bahrain by a dotted line (Annex IV.5, Vol. 9, p. 19);

- An Ottoman sketch of September 1867 showing the borders of Qatar includes Dibal and Qit'at Jaradah (Annex IV.6, Vol. 9, p. 23);

- Conversely, an Ottoman sketch of October 1867 showing the borders of Bahrain does not include Dibal and Qit'at Jaradah (Annex IV.7, Vol. 9, p. 27);

- An Ottoman sketch of November 1867 showing the borders of Qatar indicates that Dibal and Qit'at Jaradah are the property of Qatar. The distance from these two fashts to the mainland are indicated in leagues (Annex IV.8, Vol. 9, p. 33);

- A statement of November 1867 from a Turkish Marine Captain to the Vali in Hasa mentions that Al Mamzoor (Dibal) and Qit'at Jaradah belong to Qatar (Annex IV.9, Vol. 9, p. 39);

- A statement from Barakah Bin Era'ar, Vali of Hasa, dated 26 February 1870 describes the sea borders of Qatar as extending "from the coast of Zubarah up to approximately 20 marine leagues" (Annex IV.11, Vol. 9, p. 49);

- A statement of the Vice Commander of the Sultan's Marine Fleet to Hafidh Basha, Governor of the Province of Basrah, dated 5 October 1870 indicates the sea borders of Qatar: "from Zubarah from the west in the

was at the time recognised officially by the Turkish and British authorities. For Bahrain to displace such a title would have required acquiescence from Qatar which was never obtained. In fact, the image of "Bahrain ruling the waves" was fabricated by Belgrave only in the late 1930s, when he put into practice a systematic policy of maritime imperialism linked to oil discovery⁵⁵.

2. Second phase, since 1960: continental shelf claim based on the Geneva Convention together with special circumstances

10.34 Around 1960, Bahrain gave up its claim to *the sea* by advancing a claim limited to the *sea-bed* and based on the median line together with fishing rights as a special circumstance. A first sign of this evolution was reflected in the Political Resident's letter of 19 December 1960, addressed to the Ruler of Bahrain, where the following is noted:

"Your Highness has on a number of occasions told me that because the pearling and fishing fleets of Bahrain had established her sovereignty over certain areas of the sea bed, Bahrain also had the right to exploit minerals below the surface of those areas. The legal experts in the Foreign Office have carefully considered Your Highness's assertion but they have come to the conclusion that the validity of your claim cannot be recognised⁵⁶."

direction of Bahrain is twenty marine leagues". Considering these distances, the accompanying sketch would include the two *fashts* if they were drawn (Annex IV.13, Vol. 9, p. 57);

- A letter dated 17 November 1871 from Zayed Bin Khalifah, Sheikh of Abu Dhabi and Bin Yass, to Medhat Basha, Vali of Hasa, specifies that Al-Mamzoor (Dibal) and Qit'at Jaradah belong to the sea of Qatar (Annex IV.12, Vol. 9, p. 53);

- Another sketch dated 5 and 10 October 1874 with British and Turkish stamps represents Qatar and includes specifically Qit'at Jaradah and Mamzoor (Dibal) (Annex IV.14, Vol. 9, p. 63);

- A letter from Zayed Bin Khalifah, Sheikh of Abu Dhabi, to Barakar Bin Era'ar, Vali of Hasa, dated 23 December 1874 describes Al-Mamzoor (Dibal) and Qit'at Jaradah as belonging to Qatar (Annex IV.15, Vol. 9, p. 67);

- A sketch of Qatar's borders made during the reign of Saeed Basha Al-Mousily, Vali of Hasa, dated May 1898, and stamped by various Turkish and European seals shows Dibal and Qit'at Jaradah as lying within those borders (Annex IV.17, Vol. 9, p. 75);

- A letter from the Vice Commander of the Sultan's Marine Fleet, Bash Jawish, to Hafidh Basha, Governor of the Province of Basrah (undated) defines the sea borders of Bahrain as ending ten marine leagues before the city of Zubarah. The accompanying sketch shows also the sea borders of Qatar which face those of Bahrain; the two *fashts* would appear on the Qatari side if they were shown (Annex IV.10, Vol. 9, p. 43).

⁵⁵ See, paras. 6.41 *et seq.*, above.

⁵⁶ Annex IV.231, Vol. 11, p. 343. In acknowledging receipt of this letter the Ruler of Bahrain informed the Political Resident that he had put the matter in the hands of his lawyers (Annex IV.232, Vol. 11, p. 349).

10.35 This new position of the Ruler of Bahrain was formally conveyed to the British Government by a letter of 16 August 1961 from the Ruler to Sir William Luce, the Political Resident, to which was attached a Memorandum outlining his case in support of his claim and suggesting that preliminary discussions be held between his legal advisers in London and those of the Foreign Office⁵⁷. One of the maps illustrating Bahrain's claim is reproduced as *Map No. 13* facing the following page. Bahrain's claim was rejected outright by a letter from the Foreign Office of 5 June 1962, while leaving open the possibility of discussions between the Foreign Office and the Ruler's legal advisers⁵⁸, and on 20 June and 2 August 1962 inconclusive meetings were held at the Foreign Office between the legal advisers of the Ruler of Bahrain and Mr. Walmsley and some Foreign Office legal advisers⁵⁹.

10.36 A direct challenge to the legal right of the British Government to promulgate the 1947 decision and to make a binding "award" was advanced in a strong and well-reasoned opinion obtained by Bahrain from Sir Lionel Heald (a former Attorney-General), which was handed over to the Foreign Office by Bahrain's legal advisers on 3 July 1963⁶⁰.

10.37 Bahrain's Memorandum of 1961⁶¹ contained several substantive claims:

1. The sea bed should be divided according to the equidistance method provided for in the 1958 Geneva Convention;

⁵⁷ The letter and Memorandum are reproduced as Annex IV.233, Vol. 11, p. 353 and Annex IV.254, Vol. 12, p. 17, respectively. The Memorandum was accompanied by two annexes (the first, dated 12 October 1950, is an affidavit by Dr. Bhandarker; the second, dated 26 October 1950, is a statement by Jabor Musallam, a pearl merchant of Bahrain). This Memorandum is referred to in a further letter from the Ruler to the Political Resident dated 18 February 1962, reproduced as Annex IV.238, Vol. 11, p. 373. The final maps illustrating the claim were officially sent by the Ruler's lawyers under cover of a letter dated 2 March 1964, corrected by a further letter of 10 March 1964. These letters and the maps are reproduced as Annexes IV.250 and IV.251, Vol. 12, pp. 1 and 5.

⁵⁸ Annex IV.245, Vol. 11, p. 411. The reasons were not given. However, a confidential memorandum dated 17 May 1962 from Walmsley on the Bahrain/Qatar Seabed Boundary gives some clues:

"4. The claim embodied in the memorandum is extremely far-reaching. It is shown in green on the attached chart. The claim as it stands is quite untenable, being based on the assumption that ancient rights over pearl banks confer the right to sovereignty over the seabed" (Annex IV.242, Vol. 11, p. 391).

⁵⁹ Annex IV.247, Vol. 11, p. 419.

⁶⁰ Annex IV.248, Vol. 11, p. 425.

⁶¹ It was only on 31 August 1964 that Dr. Hassan Kamel, Adviser to the Qatari Government, was handed a copy of the Ruler of Bahrain's 1961 Memorandum together with a copy of the two maps (Annex IV.254, Vol. 12, p. 17). This is the reason why, until the British archives were open and perused by the Qatari Government, this document was referred to by Qatar as the "September 1964 memorandum" (*see*, for instance, Qatar's Application dated 5 July 1991, para. 23).

2. The line so obtained should however be modified to take account of a special circumstance: the historical rights of Bahrain to pearl fisheries;
3. Subsidiarily, Dibal and Qit'at Jaradah are not shoals but islands and should therefore carry territorial waters⁶².

10.38 The claims mentioned under points 1 and 3 are dealt with elsewhere in this Memorial⁶³. With respect to the pearl fisheries, Bahrain's position was basically as follows: (a) Bahrain had exercised exclusive rights over the pearl fisheries off the western coast of Qatar; and (b) these pearl fisheries were a special circumstance justifying a departure from the median line according to the Continental Shelf Convention adopted in Geneva in 1958⁶⁴.

10.39 With regard to the facts, the claim that Bahrain exercised exclusive historic rights over the pearl fisheries off the western coast of Qatar is contradicted by a wealth of evidence, including investigations and statements made by the British Government, according to which rights in pearl fisheries in the Gulf were the collective property of all tribes living in the Gulf. Furthermore, there are many documents showing that Qatar also had a role - even if less important than that of Bahrain - in the exploitation of pearl fisheries. Finally, in any event, it is an acknowledged fact that, by 1960, pearling in the Gulf was defunct for practical commercial purposes.

10.40 As a matter of law, by relying on the 1958 Geneva Convention on the Continental Shelf, Bahrain appears to have abandoned the concept of common right to sedentary fisheries. According to the Geneva Convention, sedentary fisheries are an exclusive right of the coastal State stemming from its sovereign rights to exploit the continental shelf. However that may be, it appears that, in its 1961 claim that pearl fishery rights were a special circumstance justifying a departure from the median line, Bahrain was applying the 1958 Convention

⁶² In his Memorandum the Ruler of Bahrain contended that "both Jaradah and Fasht Aldeebale are islands i.e. that Jaradah and a part of Fasht Aldeebale are permanently above water at high tide, and have been for many years universally recognised as belonging to Bahrain. There is permanent evidence of this in the well and watertap established on each of them by the Bahrain authorities for the use of sailors and fishermen in their areas" (Annex IV.254, Vol. 12, p. 17).

⁶³ Dibal and Qit'at Jaradah are discussed in Section 4 of this Chapter; and the method for drawing a single maritime boundary is addressed in Chapters XI and XII, below.

⁶⁴ A detailed report on this subject is to be found in Appendix 4, Vol. 15, p. 111, hereto.

wrongly. The Bahraini argument consisted in claiming that since Bahrain was the historical owner of the oyster beds it should obtain the continental shelf where they lay. But Bahrain misunderstood the system. In the 1958 Convention and, for that matter, also in the 1982 Convention, sedentary fisheries - a category to which pearl fishing undoubtedly belongs - are considered as resources of the continental shelf. Hence the coastal State in whom is vested the continental shelf rights possesses sovereign rights to them with respect to exploration and exploitation, *ipso iure* and to the exclusion of any other State. It is thus not surprising that the weakness of the Bahraini position was repeatedly pointed out to the Ruler of Bahrain and his lawyers by the British authorities.

C. Evolution of the British Government's Position

10.41 In the face of the complaints of both Rulers, but particularly of the Ruler of Bahrain, and confronted with requests to revise the 1947 line, the British Government's position was equivocal for many years, maintaining in some statements that the line was final and admitting in others that it could be revised⁶⁵. However, in spite of the doubts expressed internally, the British Government stuck as long as possible to the position that it could not revise the decision.

10.42 This having been said, the Foreign Office slowly came round to the view that the line could be revised if both Rulers agreed. Among the factors which led to this gradual shift of position were the following:

- (a) the uncertain nature of Dibal and Qit'at Jaradah, in particular the question whether these two features were islands or low-tide elevations⁶⁶;
- (b) the course of the line itself, having regard to the perception that there might be an inconsistency between the 1947 line (which was not in its origin conceived of as a

⁶⁵ For instance, the line was officially confirmed to the Rulers on 30 April 1949 (*see*, Annexes IV.131 and IV.133, Vol. 10, pp. 169 and 179) but a little later in the year (21 November 1949) it was decided not to reconfirm it (*see*, Annex IV.152, Vol. 10, p. 263). *See*, also, Annexes IV.153 and IV.163, Vol. 10, pp. 269 and 317. In mid-1950 there was a decision not to modify the line: *see*, letter from FO to PAB dated 29 August 1950 (Annex IV.173, Vol. 10, p. 365), after which there were many statements showing adherence to the 1947 line.

⁶⁶ This issue will be analysed in the following section.

strict median line) and the solution recommended in the Boggs-Kennedy Report issued at the end of 1948 (which envisaged the application everywhere in the Gulf of the median line principle based on an equidistance line between the mainland coasts of countries facing each other);

- (c) the incompleteness of the line in the north, giving rise to the idea that Bahrain could be compensated in the northern part of the seabed boundary for what it regarded as the unfairness of the more southerly part of the 1947 line;
- (d) the unhappiness of *both* Rulers with the 1947 line, combined with serious legal doubts which had been raised as to the validity and binding character of the 1947 decision⁶⁷.

10.43 This shift of position coincided with a suggestion ventilated at the beginning of 1962 that the dispute between Qatar and Bahrain over the 1947 line might be referred to an international arbitration process. The Ruler of Bahrain consented in principle to arbitration in a letter addressed to Lord Carrington after a formal visit to London on 27 July 1964⁶⁸. It was only on 31 August 1964, that Qatar received a copy of the Ruler of Bahrain's Memorandum of 1961 together with a copy of the two maps⁶⁹. In reply to this Memorandum, Qatar addressed a Memorandum to the British Government on 21 April 1965 refuting Bahrain's allegations and recommending arbitration as a solution to the dispute between the two States⁷⁰. For Qatar, however, the dispute over the Hawar islands, not mentioned in the Memorandum of 1961, must be included among the disputes to be submitted to arbitration; and it was Bahrain's objection to the inclusion of the Hawar islands among the questions to be submitted to arbitration which was to lead to the breakdown of the arbitration proposal in the late 1960s.

⁶⁷ See, Annex IV.152, Vol. 10, p. 263. See, in particular, Annex IV.248, Vol. 11, p. 425. See, also, Annex IV.147, Vol. 10, p. 241.

⁶⁸ Annex IV.252, Vol. 12, p. 9.

⁶⁹ See, para. 10.37, footnote 61, above.

⁷⁰ Annex IV.255, Vol. 12, p. 51.

Section 4. The Dibal and Qit'at Jaradah Shoals

A. Introduction

10.44 Paragraph 4 of the letters of 23 December 1947 ran as follows:

"His Highness the Shaikh of Bahrain is recognized as having sovereign rights in

(i) The areas of the Dibal and Jaradeh shoals which are above the spring tide low-water level. After a full examination of the position under international law, His Majesty's Government are of opinion that these shoals should not be considered to be islands having territorial waters⁷¹."

As noted above, this part of the decision was not accepted by either of the two Rulers⁷².

10.45 It is first of all necessary to describe the circumstances in which the British Government adopted this part of the disputed decision of 23 December 1947. Attempts by Belgrave to assert a claim of Bahraini sovereignty over these two fashts began in the late 1930s, in connection with the extension of the oil concession of BAPCO beyond the main Bahraini islands. The opinion of both Rulers on the subject was officially sought by Galloway, the Political Agent in Bahrain in June 1946. Belgrave replied by letters of 18 June 1946⁷³, 10 July 1946⁷⁴, 22 July 1946⁷⁵ and 20 October 1946⁷⁶, also providing a map⁷⁷. The Ruler of Qatar replied on 13 July 1946⁷⁸, and Galloway reported on his enquiries to the Political Resident on 31 December 1946⁷⁹. In his letter he discussed the conflicting claims over the shoals and gave his own opinion. His proposal was to allocate sovereignty over the two shoals to Bahrain. Hay, the Political Resident, in a letter of 18 January 1947 to the Secretary of State for India "reluctantly agree[d] with the Political Agent" with regard to the

⁷¹ Annexes IV.115 and IV.116, Vol. 10, pp. 71 and 75.

⁷² See, paras. 10.22 *et seq.*, above.

⁷³ Annex IV.79, Vol. 9, p. 381.

⁷⁴ Annex IV.82, Vol. 9, p. 393.

⁷⁵ Annex IV.86, Vol. 9, p. 411.

⁷⁶ Annex IV.89, Vol. 9, p. 423.

⁷⁷ Annex IV.90, Vol. 9, p. 427.

⁷⁸ Annex IV.83, Vol. 9, p. 397.

⁷⁹ Annex IV.92, Vol. 9, p. 435.

ownership of these two features, "if it is possible for anybody to establish a claim over shoals of the kind described⁸⁰".

10.46 The British authorities which dealt with the matter at governmental level did not query the views of the Political Agent and the Political Resident on the problem of ownership of the shoals. However, they did not draw the consequences of these findings for the maritime delimitation, in that they did not consider that either of the shoals carried territorial waters.

10.47 The final internal decision appears in a letter dated 10 November 1947 from the Secretary of State for Commonwealth Relations to the Political Resident. The part relating to the two shoals ran as follows:

"(b) *Dibal and Jaradeh shoals*. Since the Sheikh of Bahrein has taken steps usually regarded as sufficient for an assertion of sovereignty, it is considered that these shoals must be allotted to him. It is not considered, however, that they should have territorial waters and Bahrein sovereignty over them will thus extend only to the areas which are above the spring tide low-water level ... H.M.G. do not consider that there would be justification for deviating the median line to include Dibal and Jaradeh on the Bahrein side⁸¹."

10.48 With respect to the Dibal and Qit'at Jaradah shoals, the decision of 23 December 1947 involved three issues which have each been disputed: the ownership of the shoals; their character as low-tide elevations or islands, and their impact on the seabed dividing line. These points are closely interrelated.

10.49 As will be seen below, the British Government appears to have allocated sovereignty over the shoals to Bahrain by a reasoning based on an analogy between low-tide elevations and land territory. However, unlike islands, whose ownership is acquired by the usual methods of acquisition of land territory, the acquisition of low-tide elevations was in 1947 and still is governed by application of the law of the sea. Consequently the first question to settle

⁸⁰ Annex IV.93, Vol. 9, p. 449.

⁸¹ Annex IV.108, Vol. 10, p. 35.

is the nature of the two shoals: islands or low tide elevations? It is submitted that they are low-tide elevations and that accordingly the law applicable to the attribution of these features is the law of the sea. Therefore the reasoning of the British Government insofar as it was based on the analogy of land territory lacks conviction. The nature of Dibal and Jaradah as islands or shoals as a question of fact and law will first be examined hereafter. This will be followed by a discussion of the rules of attribution of sovereign rights over low-tide elevations.

B. Nature of these Features: Islands or Shoals? A Question of Fact and Law

10.50 During the period 1947-1960 there were differing views among British officials both on the facts and on the applicable legal principles.

10.51 On the facts, the officials concerned could not make up their minds as to the nature of these two shoals: were they islands or low tide elevations? During the period under review, there were conflicting statements about the physical nature of these two shoals, in particular whether or not they were above water at all states of the tide.

10.52 In law, the lawyers were equally divided as to the definition of an island capable of carrying territorial waters; in a nutshell, the official view, for some time, was that a mere rock or shoal, which was above water at all states of the tide, carried territorial waters only if it was capable of permanent habitation. Moreover, there were differences of view as to whether an artificially made island could be deemed to be an island in its own right.

1. Hydrographical characteristics

10.53 The location of Dibal and Qit'at Jaradah has been discussed in Chapter IX above. The hydrographical characteristics of these two features are extremely important to determine whether they are islands or low-tide elevations. In Appendix 5⁸² are listed in chronological order the various sources and authorities which describe these two features, from which the following conclusions may be drawn:

⁸² Appendix 5, Vol. 15, p. 125.

10.54 For Dibal there seem to be no conflicting views on its physical characteristics: from at least 1825 it has been a coral reef covered by water at high tide and drying in patches at low tide. The only features rising permanently above water were or are artificial. There are at present two light beacons consisting of a metal pedestal on a concrete base. The photograph facing this page, taken at the beginning of October 1995, shows the artificial structure at the north-east of the shoal, which is all that appears above the water at high tide⁸³. Dibal is therefore clearly a low-tide elevation in its natural form. It extends approximately 4.7 miles north to south and 2.7 miles east to west.

10.55 For Qit'at Jaradah, in spite of some hesitation from 1940 onwards, it appears that it is partly a coral reef which is not dry at high tide and partly a sand bank which may not be dry at all states of the tide along its southern edge; this latter part varies in shape and elevation with the wind (which is to be expected). The only features which are permanently above water are artificial. At present there is a light beacon, erected on a masonry base structure on the southern end of the reef, and a pole. The photograph facing this page, taken at the end of July 1996, shows those artificial structures, which are all that appear above the water at high tide⁸⁴. Qit'at Jaradah is a low tide elevation in its natural form.

2. Legal controversies about the definition of an island

a) Definitions of "islands" and of "low-tide elevations" in the Geneva and Montego Bay Conventions

10.56 According to Article 10 of the Geneva Convention of 29 April 1958 on the Territorial Sea and the Contiguous Zone:

"1. An island is a naturally-formed area of land, surrounded by water, which is above water at high tide."

Article 11 defines as follows a low-tide elevation :

⁸³ See, "Prediction of High and Low Waters", October 1995 and July 1996, Ministry of Communication and Transport, Annex IV.328, Vol. 13, p. 303.

⁸⁴ See, Annex IV.328, Vol. 13, p. 303.

"1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide."

These definitions have been confirmed by the 1982 United Nations Convention on the Law of the Sea: Article 121, paragraph 1, for islands and Article 13, paragraph 1, for low-tide elevations. However, things have not always been so clear. In particular, at the time of the British decision of 1947 and for some years later, there were differing views among British lawyers and decision-makers as to the exact definition of these concepts.

b) Hesitations of the British Government about the concepts of islands and of low-tide elevations

10.57 During the period under review there were doubts about the legal nature and impact of islands and of low-tide elevations. Among these doubts were the following:

- To be entitled to territorial waters should an island be capable of use and occupation? A negative conclusion was eventually reached.
- Is an artificial island to be assimilated to a natural island? Again, the 1958 Convention on the Territorial Sea and the Contiguous Zone and the 1982 Convention on the Law of the Sea have settled this point beyond doubt: an artificial island cannot be assimilated to a natural one and therefore does not carry territorial waters.
- Can a low-tide elevation be converted artificially into an island? Here also the reply is now settled in the negative.
- Should a feature be permanently above water to qualify as an island? The reply is yes, otherwise it is a low-tide elevation.

10.58 These considerations of fact and of law lead to the conclusion that Dibal and Qit'at Jaradah are low-tide elevations, and that the artificial structures built on them have not altered their character.

C. Rules of Attribution of Sovereign Rights over Low-Tide Elevations

1. The law of the sea is the applicable law

10.59 As already noted, the British Government appears to have attributed sovereign rights over the shoals to Bahrain by a reasoning based on a mistaken analogy between low-tide elevations and land territory. In the following paragraphs it is submitted that the rules of attribution of sovereign rights over low-tide elevations are governed by the law of the sea.

10.60 In his letter of 18 January 1947, Hay, the Political Resident, writing to the Secretary of State for India, although acquiescing in the solution proposed by the Political Agent, expressed his doubts:

"With regard to the ownership of these two places I reluctantly agree with the Political Agent that if it is possible for anybody to establish a claim over shoals of the kind described, they must be regarded as belonging to Bahrain"⁸⁵.

In fact, it would have been more appropriate to attribute sovereign rights over low-tide elevations by reference to criteria deriving from the law of the sea. Some British officials took this approach. Thus, Prior, the Political Resident, in his letter of 7 June 1940 to the Secretary of State for India, wrote concerning Dibal: it "... belongs to neither and is resorted to by all fishermen under stress of weather"⁸⁶.

10.61 Qatar submits that the proper law concerning appropriation of sovereign rights over low-tide elevations entirely relies on the law of the sea, and that the rules governing the status and legal effect of low-tide elevations vary according to their location.

10.62 A low-tide elevation in the territorial sea of a State belongs to that State as part of the bed of its territorial sea. As provided in Article 2 of the 1982 Convention on the Law of the Sea:

⁸⁵ Annex IV.93, Vol. 9, p. 449; emphasis added.

⁸⁶ Annex IV.63, Vol. 9, p. 309.

- "1. The sovereignty of a coastal State extends beyond its land territory and internal waters ... to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil."

When the low-tide elevation is situated in territorial waters, it may affect the breadth of these waters. As provided in Article 13, paragraph 1, of the 1982 Convention:

"Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the base line for measuring the breadth of the territorial sea."

10.63 If the low-tide elevation is in the high seas it is not capable of appropriation. Article 89 of the 1982 Convention, of indisputable customary character, provides:

"No State may validly purport to subject any part of the high seas to its sovereignty."

As stated in *Oppenheim's International Law*:

"Since the high seas are free, no part of it can be the object of acquisition of sovereignty by occupation nor can mere rocks or banks in the open sea, although lighthouses may be built on them⁸⁷."

10.64 Most importantly, as part of the seabed, a low-tide elevation may form an integral part of the continental shelf of the relevant coastal State. In such a case, as declared by Article 77 of the 1982 Convention:

"1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources."

By its status as part of the continental shelf, the low-tide elevation is incapable of appropriation by a third State. Paragraph 2 of the same Article provides:

⁸⁷ Annex IV.310, Vol. 13, p. 195.

"The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State."

2. Practice in the Gulf in this regard

10.65 Various examples of the practice followed in the Gulf are as follows:

- Seal, from Admiralty, Military Branch, in a letter to Clauson, India Office, of 29 April 1937, impliedly suggested that sovereignty over Fasht al Jarim, Fasht Dibal and other fashts of the region (also called rocks or islands) should in general be attributed according to proximity⁸⁸.

- During the negotiations between the British Government and Saudi Arabia concerning the maritime boundary between Bahrain and Saudi Arabia, Fry, of the Foreign Office, dealing with the case of Fasht al Jarim wrote to Sir Rupert Hay on 3 April 1951 as follows:

"We do not trace any claim to Fasht-al-Jarim... ever having been made by Ibn Saud and presume therefore that it is acknowledged to belong to Bahrain; as it will fall on the Bahrain side of the sea-bed boundary which we intend to propose, we have omitted it from our list⁸⁹."

Saudi Arabia proposed that Bainah-as-Saghir island and Fasht-al-Jarim and Rennie shoals should go to Bahrain and Bainah-al-Kabir and Fasht-bu-Sa'afa shoal to Saudi Arabia:

"Their claims to these places were made on similar grounds to the claims of Bahrain and especially on the fact that both the places which they claimed lie nearer to the Saudi Arabian coast than to Bahrain⁹⁰."

⁸⁸ Annex IV.35, Vol. 9, p. 161.

⁸⁹ Annex IV.191, Vol. 10, p. 465.

⁹⁰ Annex IV.195, Vol. 10, p. 483. The same position was conveyed in similar terms by the Political Agent Bahrain to the Ruler of Bahrain on 17 September 1951 (Annex IV.196, Vol. 10, p. 491). Similarly, on 21 January 1952, Prof. C.H.M. Waldock produced in favour of BAPCO an opinion entitled "The North Jarim Area - The Sheikh of Bahrein's Claim to the Sea-bed and Subsoil" in which he mentioned the following: "21. It is understood from the Foreign Office that in the London negotiations Saudi Arabia admitted Bahrein's claim to the Jarim Shoal. I am not clear whether this admission was made on the footing that Bahrein was acknowledged to have previously possessed territorial sovereignty over the Shoal or on the footing that a median line would in any case place the Shoal on the Bahrein side of the boundary" (Annex IV.203, Vol. 11, p. 27).

The Bahrain/Saudi Arabia agreement of 1958 is a good example of the practice followed in the Gulf, where all the islands and shoals taken into account during the negotiations were allocated on the previously mooted basis that shoals or submerged banks should belong to the State on whose side of the median line dividing the Bahrain/Saudi Arabia sea-bed area they lie⁹¹.

10.66 This position was summarized by C.M. Rose of the Foreign Office in a minute dated 26 February 1953 on the London talks:

"It was further agreed that after settlement of the ownership of the islands and shoals under dispute and the subsequent drawing of the dividing line, the remaining islands and shoals should be regarded as belonging to the party on whose side of the line they lay⁹²."

10.67 Under these circumstances it is worth reading again the letter addressed by the Ruler of Qatar to the Political Agent in Bahrain dated 13 July 1946 and the main argument it put forward:

"If we look into the question from the point of view of equality, Qatar is to be entrusted with Deebil and Jaradah Fashts which are situated between Qatar and Bahrain, and they are nearer to Qatar. You see that Qatar has been treated unjustly in her clear right in the question of Hawar islands which I am still tenacious to claim their ownership, then how about the others⁹³."

It will be noted that this opinion of the Ruler of Qatar was shared by several British officials who expressly or by implication saw the reasonableness of the proximity principle with regard to these two shoals⁹⁴.

⁹¹ Annex IV.216, Vol. 11, p. 235. *See*, also, Annex IV.162, Vol. 10, p. 311: "We are glad to see from your letter EA 1276/1 of the 27th January, to Sir R. Hay that you contemplate that, where there is no clear cut title to any island it will go to the State in whose sea-bed it is situated". *See*, also, Annex IV.192, Vol. 10, p. 469. "... the Rennie and Bu Sa'afah shoals, ... are not, to the best of my belief, strictly speaking shoals at all, in that they are never exposed at any state of the tide though they both have lights or some sort of marker on them. Their ownership should, in my opinion, be based on any decision which may be reached regarding the position of the sea-bed boundary. On the other hand, if these two shoals are taken into account in the forthcoming negotiations, we shall also probably have to take into consideration other similar shoals such as Ashira and Bu Athama."

⁹² Annex IV.205, Vol. 11, p. 61.

⁹³ Annex IV.83, Vol. 9, p. 397.

⁹⁴ *See*, PAB to PRPG, 20 August 1937, expecting that Qatar "might lay claim" to Fasht Dibal, Jaradah and the Hawar group (Annex IV.36, Vol. 9, p. 167); Prior, PRPG, to Secretary of State for India, 7 June 1940:

10.68 At the time, Dibal and Qit'at Jaradah, being low-tide elevations, located in the area beyond the outer limit of the territorial sea (and in conformity with the practice in the Gulf), had to be considered as located on the part of the continental shelf which, according to the 1947 decision, had to be attributed to Qatar. Accordingly, Dibal and Qit'at Jaradah also had to be attributed to Qatar, because they were on the Qatari side of the line.

10.69 Now that both States have proclaimed a territorial sea of 12 miles, the matter may be viewed from another perspective. As mentioned above, Dibal is 9.3 nautical miles from the nearest point on Qatar's low water line (and about 11.5 nautical miles from the high water line) and 13.6 nautical miles from the nearest point on the low water line (which is also the nearest point on the high water line) of Bahrain. Qit'at Jaradah is 9.4 nautical miles from the nearest point on Qatar's low water line (and about 10.6 nautical miles from the high water line) and 10.8 nautical miles from the nearest point on the low water line (the A.I.S.C. Jetty, which is also the nearest point on the high water line) of Bahrain⁹⁵. In both cases the two shoals are closer to the territory of Qatar.

Section 5. Conclusion

10.70 The British decision of 1947 delimiting the sea-bed between Qatar and Bahrain was issued in the context of the emerging continental shelf doctrine, which requires that delimitation be made in accordance with equitable principles, rather than in application of fixed rules to be applied in every case. In order to make this delimitation, the British authorities adopted three criteria: exclusive consideration of the two main coasts, selection of fixed turning points, and a simplified line, for reasons of simplicity and certainty. For these reasons the line determined by the British is not the true median line, which was not the intent

"The only equitable boundary for the two companies [*sic*] should lie midway between respective shores" (Annex IV.63, Vol. 9, p. 309) and Prior to Peel, IO, 26 October 1941 (Annex IV.70, Vol. 9, p. 339); Harrison, Under-Secretary of State for India to Stock, Ministry of Fuel and Power, 2 July 1946: "From the map it looks as though the spots where Bapco want to drill in both these areas might more properly fall to Qatar" (Annex IV.80, Vol. 9, p. 385); Stock, in his reply of 17 July 1946 concurs: "... a frontier line should then be drawn due north from the Hawar Islands which would leave Jabal and Jaradeh ... in Qatar territory" (Annex IV.85, Vol. 9, p. 405); and Harrison, India Office, to Gault, FO, 13 February 1947: "It looks as though the Bahrein claims to these shoals will have to be upheld in spite of the fact that they would on grounds of contiguity most naturally fall to Qatar." (Annex IV.94, Vol. 9, p. 459).

⁹⁵ See, paras. 9.11-9.12, above.

of the British authorities; rather, their aim was to decide upon a line in accordance with equitable principles.

10.71 Although the Ruler of Qatar was content with the line itself, he protested at the exceptions which were made for the Hawar islands (for the reasons outlined in Chapters V and VI above), and the shoals of Dibal and Qit'at Jaradah. As far as the latter are concerned, Qatar has demonstrated in fact and in law that they are both low-tide elevations, and that the artificial structures built on them cannot alter their character. Consequently they cannot carry territorial waters. Being, at the time of the 1947 decision when the breadth of the territorial sea of both States was only three miles, low-tide elevations located on the continental shelf which extends in an uninterrupted way from Qatar to Bahrain, Dibal and Qit'at Jaradah were parts of the sea-bed recognised as appertaining to Qatar and should have been attributed accordingly.

10.72 As both States have now proclaimed a territorial sea of 12 miles, the matter may be considered from another perspective. In this context it may be noted that Qit'at Jaradah is wholly situated in the area where the territorial seas of Qatar and Bahrain overlap, and that Dibal is situated partly within the territorial sea of Qatar. In both cases the two shoals are closer to the territory of Qatar.

10.73 In the submissions contained in its Application dated 5 July 1991, Qatar requested the Court to adjudge and declare that the State of Qatar has sovereign rights over Dibal and Qit'at Jaradah shoals. In view of the subsequent extension of the territorial waters of both States, Qatar now requests the Court to adjudge and declare that Dibal and Qit'at Jaradah are low-tide elevations which, by their very location, are under Qatar's sovereignty.

CHAPTER XI

THE SINGLE MARITIME BOUNDARY AND THE 1947 LINE

Introduction

11.1 In its Application filed in the Registry on 8 July 1991, the State of Qatar requested the Court:

"With due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain."

11.2 Accordingly, the task of the Court in this respect is to draw a boundary line which will divide the different maritime zones that the two States are entitled to claim under present international law, and which has to be an all-purpose dividing line. In the drawing of such a line, it cannot be said that the Court is faced with a purely *de novo* maritime delimitation, since in a part of the relevant maritime area a line dividing the seabed between the Parties had already been drawn in 1947 by the British authorities¹. It follows from this consideration that the Court will have to make an evaluation of what weight should be given to this previous line in the drawing of the single maritime boundary. In the view of Qatar, it will be convenient to consider the delimitation in two distinct sectors. The southern sector is the one in which the main part of the line of the British decision of 1947 is located. In this sector the coasts of Qatar and Bahrain are opposite. The northern sector is the sector starting north of a notional line joining Ras Rakan and Muharraq up to the lines of the continental shelf delimitation agreements of the two States with Iran. The BLV point mentioned in the British decision of 1947 is to be found in the southern part of the northern sector.

11.3 It may be noted that the extension of their respective territorial seas by Qatar in 1992 and by Bahrain in 1993, up to twelve nautical miles, has generated a new legal situation with respect to which the weight to be given to the 1947 dividing line has to be evaluated. Within

¹ See, Chapter X, above.

the context of this situation, the 1947 line is now certainly an important factor to be taken into account for the purpose of drawing the single maritime boundary.

11.4 This Chapter will be devoted to these different aspects and, having regard to the new situation referred to above, it will also demonstrate that any claim by Bahrain concerning archipelagic baselines would be irrelevant for the purpose of maritime delimitation in the present case.

Section 1. The Extension of the Territorial Sea by Qatar and Bahrain

11.5 The movement towards the extension of territorial waters began in the Gulf when Saudi Arabia and Iraq in 1958 and Iran in 1959 enacted national legislation establishing a 12-mile limit². Kuwait and Oman took steps to that end in 1967 and 1972, respectively³. Since the decisions taken by Qatar in 1992, and by both Bahrain and the United Arab Emirates in 1993, all the Gulf States now have a 12-mile territorial sea⁴.

A. The 1992 Qatari Decree and Bahrain's Reaction

11.6 When Amiri Decree No. 40 of 1992 was issued on 16 April 1992, defining the breadth of the territorial sea and contiguous zone of the State of Qatar, it was made clear that this decision was fully in accordance with the existing rules of international law⁵.

11.7 In a protest note dated 14 May 1992, the Ministry of Foreign Affairs of the State of Bahrain raised the point that the Qatari Decree did not make any provision for a maritime boundary with Bahrain and, arguing that different islands and features lying within the maritime areas concerned were part of Bahrain's territory, it stressed the impossibility for the Qatari territorial sea to be extended to 12 nautical miles where the coasts of the two States faced each other. The Ministry of Foreign Affairs of the State of Qatar rejected the Bahraini allegations concerning those islands and features by a note dated 26 May 1992, in which

² See, Annexes IV.215, IV.217 and IV.219, Vol. 11, pp. 231, 245 and 269.

³ See, Annexes IV.257 and IV.265, Vol. 12, pp. 65 and 121.

⁴ See, Annex IV.282, Vol. 12, p. 265.

⁵ See, Annex IV.278, Vol. 12, p. 241.

emphasis was put on the fact that Qatar had never recognized the British decisions that had purported to declare that the Hawar islands belong to Bahrain and that it had recently submitted to the International Court of Justice the question of sovereignty over those islands pursuant to the 1987 and 1990 Agreements which had been reached between the two States⁶.

B. The 1993 Bahraini Decree-Law

11.8 One year after the Qatari decision extending to 12 nautical miles the breadth of its territorial waters, the State of Bahrain issued on 20 April 1993 a Law by Decree with respect to its territorial sea and contiguous zone, whose object and purpose were exactly the same as those of Qatari Decree No. 40 of 1992⁷. The only difference between these two national texts lay in the fact that the Bahraini decree-law contained no explicit provision dealing with the right of innocent passage through territorial waters, the navigational rights of foreign vessels in those waters being simply identified through the broad reference made to the 1982 United Nations Convention on the Law of the Sea in the preamble but not in the operative part of the text.

11.9 The 1993 Bahraini decree-law was undoubtedly issued as a reaction to the 1992 Qatari decree. In this respect, it is noteworthy that, in its above-mentioned protest of 14 May 1992, Bahrain had made it perfectly clear that it would extend in due time its own territorial sea to 12 nautical miles and would claim also a contiguous zone up to a further 12 nautical miles, as had been done by Qatar⁸.

C. The Consequence of the Extension of the Territorial Sea in the Present Case

11.10 It is apparent that as a consequence of the extension of their respective territorial seas by both States, there has been a change in the status of some parts of the maritime areas in which the Court is asked to draw a maritime boundary. At the time of the filing by Qatar of its Application in the Registry of the Court, on 8 July 1991, each of the two territorial seas had a

⁶ For the text of the Bahraini and Qatari notes of 14 and 26 May 1992, *see*, Annexes IV.279 and IV.280, Vol. 12, pp. 247 and 253.

⁷ Annex IV.281, Vol. 12, p. 261.

⁸ *See*, Annex IV.279, Vol. 12, p. 247.

breadth of 3 nautical miles and they did not overlap, thus leaving an area of continental shelf and superjacent high seas between the two facing coasts of Qatar and Bahrain. But by the time of the Court's Judgment of 15 February 1995, that part of the maritime area lying between the coasts of Qatar and Bahrain was formed by the overlapping territorial seas of the two States.

11.11 In the present situation, the two areas of territorial waters overlap in the southern sector (*i.e.*, south of the line drawn between Ras Rakan and Al-Muharraq), as a result of the short distance between the two opposite coasts which virtually nowhere exceeds 24 nautical miles. Consequently, in that part of the delimitation area, the request presented to the Court, in conformity with the Bahraini formula, "to draw a single maritime boundary between [the] respective maritime areas of sea-bed, subsoil and superjacent waters" of the Parties effectively concerns the delimitation of their respective areas of territorial sea, *i.e.* maritime zones where by that very fact, sovereignty extends to the waters as well as to the bed and subsoil of the sea and also to the superjacent air space⁹. Moreover, it may be seen from *Map No. 14*, facing this page, that the shoal of Qit'at Jaradah is wholly included in the area where the territorial seas of Qatar and Bahrain overlap, and the shoal of Dibal is situated partly within the territorial sea of Qatar¹⁰. In these circumstances, the question arises of what weight should now be given to the 1947 line.

Section 2. The 1947 Line in the New Situation created by the Extension of the Territorial Seas

11.12 Not only do the new 12-mile territorial seas overlap in the maritime area located between the two opposite coasts of Qatar and Bahrain, but there is also an overlap between some portion of the sea-bed as delimited in 1947 and the extended territorial waters. The latter is all the more important in that it could involve some conflict between sovereign rights pertaining to one State and the sovereignty of the other State. Thus, the request presented to the Court for the drawing of a single maritime boundary has to be examined in the light of that situation.

⁹ Article 2 of the 1982 Convention on the Law of the Sea.

¹⁰ *See*, para. 10.72, above.

A. Sovereign Rights over the Sea-Bed as delimited in 1947 and their Overlap with the Extension of Sovereignty

11.13 The British decision of 23 December 1947 delimiting the sea-bed areas lying between the territory of Qatar and that of Bahrain was taken within the context of the then emerging continental shelf legal doctrine and the fact that in the Gulf three miles was the generally recognized breadth of the territorial sea¹¹. The purpose of the dividing line so established was to delimit the respective areas in which the two Sheikhdoms possessed sovereign rights over the natural resources of the sea-bed and the subsoil thereof. By adopting recently the 12-mile rule for their territorial seas, the State of Qatar and the State of Bahrain are now entitled to claim and to exercise full sovereignty over those areas, at least up to whatever delimitation line between their respective coasts may be determined.

11.14 Such a change in the nature and extent of the rights of the two coastal States would have no legal or practical consequences if the 1947 dividing line were a strict median line. However, it was not the strict median line between the two main coasts, as has been previously demonstrated¹². This was not the intent of the British authorities. The line resulting from the 1947 British decision was an adjusted line which was drawn closer to the coast of Bahrain, the adjustment being made, especially in the area lying directly between the two coasts, apparently in view of the difference between coastal lengths¹³. Consequently, there is a portion of the sea-bed area concerned where the State of Qatar would be entitled to exercise its sovereign rights pursuant to the 1947 decision, while that portion would fall under the sovereignty of the State of Bahrain as part of its new territorial sea, on the supposition that the boundary between the two new territorial seas would be a median line.

11.15 Sovereign rights over the sea-bed as delimited in 1947 now overlap with the extended sovereignty of both States over the same area as a result of their respective 12-mile territorial seas. According to the legal regime of the continental shelf, the sovereign rights inhering in the coastal State are exclusive and do not depend on effective or notional occupation or on

¹¹ See, paras. 10.2 *et seq.*, above.

¹² See, paras. 10.13 *et seq.*, above.

¹³ See, para. 10.21, above.

any express proclamation¹⁴; they exist "*ipso facto* and *ab initio*" and are regarded as the expression of "an inherent right"¹⁵. On the other hand, it is indisputable that every coastal State has the right to establish the breadth of its territorial sea, to which its sovereignty automatically applies, up to a limit not exceeding 12 nautical miles¹⁶ (in the absence of an opposite State within 24 miles of the relevant baseline) and that it has the exclusive power to act with respect to the delimitation of the outer limit of its territorial waters: "the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it..."¹⁷. The problem thus created may have practical consequences in view of the task of the Court in the present case.

B. What is the Effect of the Request for the Drawing of a Single Maritime Boundary in these Circumstances?

11.16 In the southern sector, the maritime boundary will in any case be a single line in the sense that it will divide the respective areas of seabed, subsoil and superjacent waters, and will be an all-purpose dividing line. In fact, as already noted, it will be the boundary between two territorial seas. It is quite obvious that different questions arise immediately as far as the pre-existing dividing line drawn in 1947 for the continental shelf is concerned.

11.17 If the boundary line were to be drawn by the Court with due regard to the 1947 line, as Qatar submits it should be, what would be the impact of the general trend in State practice, and in particular in the practice of Gulf States, according to which boundaries drawn for the sea-bed quite automatically become maritime boundaries for any purpose, especially when exclusive economic zones or fishing zones are established¹⁸? Could the solution of transforming a continental shelf delimitation line into a single maritime boundary applying also to EEZ delimitation be transposed in the present case? In other words, would it be possible for the 1947 dividing line to be used partly as the boundary between the two areas of territorial sea, as has sometimes been the case when part of a preexisting continental shelf

¹⁴ See, Article 2 of the 1958 Geneva Convention on the Continental Shelf and Article 77 of the 1982 United Nations Convention on the Law of the Sea.

¹⁵ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 19.

¹⁶ See, Article 3 of the 1982 Convention on the Law of the Sea.

¹⁷ *Fisheries, Judgment, I.C.J. Reports 1951*, p. 132.

¹⁸ See, para. 12.8, below.

delimitation line was transformed into a territorial sea boundary in consequence of the extension of the breadth of their territorial waters by the States concerned¹⁹?

11.18 In the submission of Qatar, the role and effect of the 1947 dividing line have to be appraised in the light of the present rules applicable to maritime delimitation between States as reflected in the now substantial body of case law. Qatar also submits that, subject to the situation explained hereunder concerning the southern part of the 1947 dividing line, that line constitutes an important factor to be taken into consideration.

Section 3. The 1947 Line as an Important Factor for the Delimitation of the Maritime Boundary

11.19 Qatar does *not* contend that the 1947 line is to be automatically regarded as *the* boundary line to be delimited between the maritime areas pertaining to Qatar and those pertaining to Bahrain. However, the Court, when drawing the single maritime boundary, cannot act as if that line had never existed. As was stated in the submissions contained in Qatar's Application instituting the present proceedings, the single maritime boundary that the Court is requested to draw should be delimited "with due regard to the line dividing the seabed of the two States as described in the British decision of 23 December 1947²⁰". In other words, the 1947 line, by the very fact that it was drawn as a continental shelf boundary between the two Parties, is a factor or a circumstance highly relevant for the purpose of the drawing of a single maritime boundary.

11.20 The reason why Qatar is asking the Court to draw the single maritime boundary "with due regard to" the 1947 line and is not claiming a single maritime boundary drawn "along" that line lies in the fact that the southern part of the 1947 line (south of point L) now has to be disregarded because of two basic legal considerations, namely: Qatar's sovereignty over the Hawar islands, and a third State's rights at the entrance of the Dawhat Salwah. In the view of

¹⁹ See, for example, the Agreement between France and the United Kingdom on the Territorial Sea Boundary in the Straits of Dover, signed on 2 November 1988, transforming the status of the boundary in that Straits from a continental shelf boundary to a territorial sea boundary, as a result of the extension of the United Kingdom's territorial sea up to 12 nautical miles. J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries*, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993, Vol. II, pp. 1752-1754.

²⁰ Application filed in the Registry on 8 July 1991, p. 18, para. 41.

Qatar, it is necessary first to deal with those considerations which require the southern part of the 1947 line to be disregarded, and then to show how the remaining part of that line is to be viewed both as a special circumstance for the delimitation of the territorial seas, and as a relevant circumstance for the single maritime boundary beyond the outer limit of the territorial seas.

A. Qatar's Sovereignty over the Hawar Islands and its Effect on the Portion of the 1947 Line Enclaving those Islands

11.21 The British decision of 23 December 1947 delimited the sea-bed lying between Qatar and Bahrain by a main dividing line starting from a point in the south defined as point M, running northward through a point identified as point K, thence to the North Sitrah Light Buoy (NSLB), and from there to the Bahrain Light Vessel (BLV). However, because of the previous 1939 decision that the Hawar islands belonged to Bahrain, the 1947 British decision provided for an exception concerning the islands of the Hawar group and the territorial waters pertaining thereto. Thus it drew a line comprising initially twelve segments and enclaving the Hawar islands. According to the letter dated 23 December 1947 from the British Political Agent to the Ruler of Qatar, the dividing line in the region of the Hawar islands was shown on a map by a line joining successively points A, B, C, D, E, F, G, H, I, J, I and L. Furthermore, the said letter added the following indication:

"As this delimitation will, however, leave a narrow tongue of water (formed by the points M, J, and I) pertaining to Qatar it has been decided to alter the line H, I, J, to H, P, Q, thus exchanging an equal area PIO for OJQ²¹."

The enclave finally drawn around the Hawar islands was therefore a line starting from point L and joining points A, B, C, D, E, F, G, H, P and Q, as shown on *Map No. 15*, facing this page.

11.22 It suffices to recall here that the Ruler of Qatar protested against the British Government's decision of 1939 upholding the claim of Bahrain to the Hawar islands²². Later on, while declaring he had no alternative but to accept the line defined in the 1947 British

²¹ See, Annex IV.115, Vol. 10, p. 71, and *Map No. 15*, facing this page.

²² See, paras. 6.239 *et seq.*, above.

decision, he made a reservation concerning in particular the exception relating to the Hawar islands²³. Thus the part of the 1947 line enclaving the Hawar islands was not accepted by Qatar.

11.23 In the present proceedings, Qatar has requested the Court to adjudge and declare that it has sovereignty over the Hawar islands, and it has fully demonstrated above that its claim is well-founded both in fact and in law²⁴. Therefore, it follows that the part of the 1947 line enclaving those islands, on the false assumption that they belonged to Bahrain, cannot be taken into consideration for the purpose of the delimitation of the single maritime boundary that the Court is requested to draw. That part of the line has to be disregarded on the assumption that the Hawar islands are recognized by the Court as pertaining to Qatar²⁵.

11.24 The part of the 1947 line which must be disregarded is that portion starting from point L and running around the Hawar islands up to point Q²⁶. It is noteworthy that point K, which was defined in the 1947 British letter as one of the "points on the main dividing line"²⁷, disappeared as a result of the construction of the line enclaving the Hawar islands. As a matter of fact, instead of starting from that point to draw the enclave around the Hawar islands, the British Government decided to create a new point located north of point K and identified as point L, the latter being considered at that time as an integral part of the enclaving line. The justification for so doing was to be found in the express intent of the British Government to include within the enclave the territorial waters pertaining to the Hawar islands and to delimit them "in accordance with the usual principles of international law"²⁸. Thus, point L was the point from which the Hawar islands produced an effect on the drawing of the main dividing line. As such it had, and still has, an important legal significance.

²³ See, para. 10.23, above.

²⁴ See, Part III, above.

²⁵ Moreover, the part of the 1947 line enclaving the Hawar islands is open to criticism on technical grounds.

²⁶ See, *Map No. 15*, facing page 254, and para. 11.21, above.

²⁷ Para. 6(b) of the letter dated 23 December 1947 from the British Political Agent in Bahrain to the Ruler of Qatar, see, Annex IV.115, Vol. 10, p. 74.

²⁸ Para. 4(ii) of the letter dated 23 December 1947, see, Annex IV.115, Vol. 10, p. 73.

11.25 Contrary to the starting point of the enclaving line (point L), the ending point of that line (point Q) was not defined in the 1947 British letter, which did not give its position in terms of bearing and distance from an identified base-point. Point Q was a purely artificial point generated by the particular exchange of two small triangular areas between Qatar and Bahrain settled by the British Government, when they decided to alter the last segment of the enclaving line, as previously indicated²⁹. Point Q had no actual justification of its own.

11.26 As the southernmost segment of the 1947 line was a straight line joining point Q to point M, that segment must also be disregarded, especially when it is understood that, due to the location of point M, the said segment of the line would interfere with the rights of a third State in that area.

B. Rights of a Third State at the Entrance of the Dawhat Salwah and their Impact on the Southern Segment of the 1947 Line

11.27 According to the 1947 British letter, point M, which was the starting point of the dividing line drawn by the British Government, was defined as "180° true 18.03 Nautical Miles from the Triangulation No. 102 at Ras al Barr"³⁰. Point M was shown on the map appended to that letter as being plotted at: latitude 25°30'00"N, longitude 50°33'55"E. It was located at the entrance of the Dawhat Salwah, a tongue of sea lying between the peninsula of Qatar and the coast of Saudi Arabia.

11.28 It appears from more precise data available today that point M is clearly situated within the maritime zone pertaining to Saudi Arabia and cannot therefore be regarded as a dividing point between Qatar and Bahrain. This is self-evident when one takes into consideration the delimitation agreements that have been concluded since the drawing of the 1947 line, both between Qatar and Saudi Arabia and between Bahrain and Saudi Arabia, the lines of which also begin in or near the entrance of the Dawhat Salwah.

²⁹ See, para. 11.21, above.

³⁰ Para. 6(b) of the letter dated 23 December 1947, see, Annex IV.115, Vol. 10, p. 74.

11.29 The Qatar-Saudi Arabia Agreement signed on 4 December 1965 does not describe with coordinates the starting point of the maritime delimitation within the Dawhat Salwah. Article 1 of that agreement only states that "Dohat Salwa shall be divided equally between the two countries by the method of equidistance points from both shores". It seems quite obvious that the first equidistant point between Qatar and Saudi Arabia in that area would not coincide with point M of the 1947 line, whatever may be the manner of practical application of the equidistance method, but would certainly be located to the north of point M.

11.30 By way of consequence, the starting point of the 1947 dividing line (Point M) must be disregarded in order not to encroach on the rights of a third State. When it is a question of making a maritime delimitation, all judicial or arbitral organs are extremely careful to ensure that they do not prejudice the rights and interests of third States. Thus, in 1977, the Anglo-French Arbitral Tribunal preserved the rights of Ireland in accordance with the relative authority of the *res judicata* principle, because the decision that it took was not to be binding on Ireland and was not to prejudice any future Anglo-Irish delimitation³¹. Similarly, in 1982, the Court left in existence some uncertainty as to the terminal point of the maritime border between Libya and Tunisia, in order to take into account any future delimitations in the area, likely to involve the rights of third States such as Italy or Malta³². More clearly still, in the Libya/Malta case, taking into account the Judgment of 21 March 1984 in relation to Italy's application for permission to intervene³³, the Court decided in 1985 to limit its geographical scope, so as not to affect Italy's claims³⁴.

11.31 As for the Agreement signed on 22 February 1958 by Bahrain and Saudi Arabia, it provides for a starting point at "Point 1 located at the midpoint of the line connecting the tip of Ras al Barr at the southernmost extremity of Bahrain, and Ras Abu Maharah ... on the coast

³¹ Annex IV.287, Vol. 13, p. 15. *See*, also, the Delimitation Agreement of 7 November 1988 concerning the continental shelf between Ireland and the United Kingdom, in J.I. Charney and J.M. Alexander, (eds.), *op. cit.*, together with the commentary by D.H. Anderson. *See*, also, the commentary by C.R. Symmons, "The U.K./Ireland Continental Shelf Agreement: A Model for Compromise in Maritime Delimitation" in *International Boundaries and Boundary Conflict Resolution*, C. Grundy-Warr (ed.), Durham, 1990, pp. 387-412.

³² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, *I.C.J. Reports 1982*, p. 90, Map No. 3.

³³ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Application for Permission to Intervene, Judgment, *I.C.J. Reports 1984*, p. 27, para. 43.

³⁴ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, *I.C.J. Reports 1985*, p. 26, para. 21.

of the Kingdom of Saudi Arabia³⁵". The coordinates of the point so defined are: 25°35'38"N-50°31'45"E. Thus, one can see that point 1 of the Bahraini-Saudi delimitation does not coincide with point M of the 1947 line, but is located to the north of it. For reasons of convenience and clarity, point 1 of the delimitation agreement between Bahrain and Saudi Arabia will hereafter be referred to as "point S1"³⁶.

11.32 In Qatar's view, in the area of the entrance of the Dawhat Salwah, the maritime zone pertaining to Saudi Arabia certainly does not extend to the north beyond point S1. Moreover, under the agreement between Bahrain and Saudi Arabia, it seems also quite obvious that Bahrain is not entitled to claim rights over the maritime area extending to the east of point S1. Such a situation leaves it open to the Court to decide on a maritime boundary between Qatar and Bahrain starting from point S1³⁷.

11.33 It follows from the above considerations that the segment of the 1947 line between points M and Q as a whole has to be disregarded. Consequently, taking into account what has previously been said concerning the Hawar islands enclave, Qatar submits that, south of point L as defined in 1947 by the British Government, the single maritime boundary between Qatar and Bahrain could be a straight line joining point S1 and point L.

11.34 Therefore the part of the 1947 line which constitutes a relevant factor for the delimitation of the single maritime boundary with Bahrain is the part of the line extending north of point L, in other words the line starting from point L and running northwards to North Sitrah Light Buoy (NSLB) and to Bahrain Light Vessel (BLV) (*See, Map No. 16*, facing this page). Accordingly, attention will now be directed to that aspect.

C. The 1947 Line as a Special Circumstance for the Delimitation of the Territorial Seas

11.35 The maritime boundary is to be drawn in accordance with international law. As far as the delimitation of the territorial seas between Qatar and Bahrain is concerned, the applicable

³⁵ Annex IV.216, Vol. 11, p. 235.

³⁶ *See, Map No. 12*, facing page 215.

³⁷ It should also be noted that point S1 is nearly equidistant from the coasts of the three countries concerned according to the headland-to-headland method.

rule of international law is embodied in Article 15 of the 1982 United Nations Convention on the Law of the Sea, which reads as follows:

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

11.36 Qatar signed the Convention on 27 November 1984 but has not yet ratified it. Bahrain, which signed the Convention on 10 December 1982, ratified it on 30 May 1985. The Convention is now in force, since 16 November 1994, between States which have ratified or acceded or succeeded to it, but it does not constitute a convention in force between Qatar and Bahrain. Nevertheless, if the rule enunciated in Article 15 is not binding on Qatar and Bahrain as a conventional rule, there can be no doubt that the delimitation rule incorporated in that article is part of customary international law and, as such, is applicable to the present case. As a matter of fact, the terms of Article 15 of the 1982 Convention are, with the exception of two minor stylistic changes, exactly the same as those of Article 12 of the 1958 Convention on the Territorial Sea and Contiguous Zone, which has long been considered as forming part of customary international law³⁸.

11.37 Accordingly, in the relatively restricted maritime area lying between the opposite coasts of Qatar and Bahrain, the boundary of the two territorial seas is to be established by application of the equidistance method, at least as a first step in the delimitation process. Such a provisional median line has to be drawn by taking exclusively into consideration the two main opposite coasts, without regard to the numerous particular features existing in the area, because most of those features do not qualify as islands generating their own maritime zone. Those features can be regarded as "unusual features" which are to be neglected or disregarded for delimitation purposes. Such a solution is in accordance with the general practice as

³⁸ The second sentence of Article 12 of the 1958 Convention was as follows: "The provisions *of this paragraph shall not apply*, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance *with this provision*" (emphasis added to indicate which words were altered).

followed by Gulf States in their delimitation agreements already concluded. Thus, in the 22 February 1958 agreement between Saudi Arabia and Bahrain and the 20 September 1969 agreement between Iran and Qatar, islets and low-tide elevations were not taken into consideration for the drawing of the median line and more particularly for the calculation of the boundary turning points³⁹. And one has also to keep in mind that with the so-called "Boggs-Kennedy line" drawn in 1948, the authors did not take account of any shoal, rock or islet, and suggested that the lateral line between Qatar and Bahrain be the median line equidistant from the mainland of Qatar and the Bahrain islands⁴⁰.

11.38 Among the "special circumstances" referred to in the general rule governing the delimitation of territorial seas, it may be wondered whether the difference between the length of the respective coasts of Qatar and Bahrain facing the maritime area in this sector might not be a circumstance rendering it "necessary" to delimit the territorial seas in a way at variance with strict equidistance. From this point of view, there is no strict equality between the two States in terms of coastal geography. There is no doubt that such a consideration, which has played a role in cases relating to the delimitation of continental shelves, may also be taken into account for the purpose of delimiting two territorial seas, because the reference to special circumstances here is also a clear indication that the final aim of the delimitation process must be a balanced representation of the geographical circumstances. Summarising the main trend of the international jurisprudence concerning the delimitation of the continental shelf, in a study devoted to the single maritime boundary, Professor Paul Reuter stated as follows:

"... cette jurisprudence s'efforce de ne pas aggraver par le recours à la géométrie, qui est l'instrument inévitable des délimitations maritimes, les fantaisies et les inéquités de la nature, mais de leur donner une traduction équilibrée; on ne voit pas a priori cette tendance nécessairement limitée aux délimitations du plateau continental; les

³⁹ See, the commentary relating to those agreements by the State Department Geographer in *Limits in the Seas*, No. 94, p. 7 (Annex IV.216, Vol. 11, p. 235 and Annex IV.260, Vol. 12, p. 81).

⁴⁰ Commander R.H. Kennedy, of the Hydrographic Department of the British Admiralty, and S.W. Boggs, Special Adviser on Geography of the U.S. Department of State, recommended on 16 December 1948 to their respective governments the basis of a geographical division of the Persian Gulf. In their proposal, they limited themselves to the technical aspects of the problems of determining what they believed to be a fair and equitable division of the seabed and subsoil areas of the Gulf on scientific principles, and they tried to indicate what they understood to be the geographical factors that should be taken into consideration. See, Annex IV.127, Vol. 10, p. 123.

*préoccupations auxquelles elle répond doivent être présentes lorsqu'il s'agit de la délimitation de n'importe quel espace maritime*⁴¹."

Therefore, in the drawing of the maritime boundary of the territorial seas of the Parties, there is no reason not to reflect, to some extent, the geographical situation by means of an adjustment of the median line. And it must be remembered that the 1947 line was indeed a sort of adjusted median line.

11.39 Even if the coastal geography, as such, were not regarded as a special circumstance authorising the Court, in the present case, to depart from a strict or true median line, the Court nevertheless could not totally ignore the fact that a previous dividing line had been drawn concerning the sea-bed areas, and that that line was based on geographical considerations⁴². In fact, the 1947 line in itself constitutes a special circumstance insofar as it was drawn in order to permit each of the two interested States actually to exercise its inherent right over the sea-bed. While it cannot be said that any historic title has derived from that decision, the situation thus created however does not fall far short of it. This consideration alone sufficiently demonstrates the importance of the 1947 line as a circumstance covered by the "historic title or other special circumstances" reference contained in Article 15 of the 1982 Convention.

D. The 1947 Line as a Relevant Circumstance for the Single Maritime Boundary beyond the Outer Limit of the Territorial Seas up to BLV

11.40 The 1947 dividing line was drawn up to the Bahrain Light Vessel (BLV) through the North Sitrah Light Buoy, two points located 28.05 and 15.20 nautical miles respectively from the Political Agent's flagstaff in Bahrain⁴³. BLV lies outside the extended territorial seas of the Parties. When the British authorities selected those points, they had in mind the requirements of maritime access to Bahrain through the Sitrah Channel, and this was probably sufficient motivation for the choice of these aids to navigation as points of reference for the drawing of the dividing line, coupled with the advantage of eliminating any uncertainty in the

⁴¹ Annex IV.315, Vol. 13, p. 223.

⁴² The letter of 23 December 1947 from the British Political Agent in Bahrain to the Ruler of Qatar explicitly stated: "This is a median line based generally on the configuration of the coast-line of the Bahrain main island and the peninsula of Qatar" (Annex IV.115, Vol. 10, p. 71).

⁴³ See, para. 3.80, footnote 107, below.

demarcation. Although the expression was not used at the time for obvious reasons, the concept of relevant circumstances was unquestionably at the root of the choice made by the British authorities.

11.41 Beyond the outer line of the territorial seas of the two States, the single maritime boundary that the Court has been asked to draw will be determined by application of the well-established international law rule according to which the aim of any maritime delimitation process is to reach an equitable solution. And, as underlined by the International Court in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen*, in a case involving opposite coasts, the application of "an equidistance-special circumstances rule produces much the same result as an equitable principles-relevant circumstances rule ..., whether in the case of a delimitation of continental shelf, of fishery zone, or of an all-purpose single boundary"⁴⁴.

11.42 For purposes of the present delimitation, the 1947 line, and particularly its identified terminal point at BLV, is a circumstance that is all the more relevant in that there is no other objective factor in this part of the delimitation area which could be taken into consideration. In one way or another, the location of BLV and the fact that it played an important role in the definition of the 1947 line seem to be highly relevant circumstances for the drawing of the maritime boundary beyond the external limits of the two territorial seas, not only up to BLV but also beyond that point⁴⁵.

Section 4. Irrelevance of an Archipelagic Claim by Bahrain

11.43 The 1982 United Nations Convention on the Law of the Sea has recognised for the first time the concept of "archipelagic States", to which Part IV of the Convention (Articles 46-54) is devoted. It is noteworthy that this new conventional regime was devised in order to permit States constituted by one or more *mid-ocean archipelagoes* to draw, under certain conditions, straight baselines joining the outermost islands and drying reefs of the archipelago, and to use those lines, known as "archipelagic baselines", to measure the breadth of their territorial sea,

⁴⁴ *Judgment, I.C.J. Reports 1993*, p. 62, para. 56.

⁴⁵ *See*, para. 3.80, footnote 107, above.

contiguous zone, exclusive economic zone and continental shelf. It is also noteworthy that, according to information available in the Office of Legal Affairs of the United Nations (Division for Ocean Affairs and the Law of the Sea), Bahrain is *not* listed among the 15 States which have claimed archipelagic status⁴⁶.

11.44 The item "archipelagic baselines", which was raised at the instance of Bahrain⁴⁷, has been placed on the list of subjects falling within the jurisdiction of the Court by virtue of the 1987 and 1990 agreements concluded by Qatar and Bahrain. It was submitted to the Court through the Act filed in the Registry by Qatar on 30 November 1994⁴⁸.

11.45 However, Bahrain has never actually produced a claim of archipelagic status, either as regards its relations with Qatar or with respect to other States. The basic reason for Bahrain's refraining from any archipelagic claim may well be found in the circumstance that it could hardly legally qualify as an archipelagic State as defined by the 1982 Convention, since it would have difficulty in proving that it meets the requirements of that Convention, in particular the ratio of the area of water to the area of land provided for in Article 47, paragraph 1⁴⁹.

11.46 Moreover, in the absence of any formal Bahraini claim of archipelagic status, there is not, properly speaking and in the legal sense, any dispute between Qatar and Bahrain concerning an archipelagic claim. Even if there were a dispute, in the circumstances a decision of the Court would be moot and therefore would be incompatible with the judicial function of the Court. As the Court said in its Judgment of 18 November 1953 on the Preliminary

⁴⁶ The 15 States claiming archipelagic status are the following: Antigua and Barbuda, Cape Verde, Comoros, Fiji, Indonesia, Kiribati, Marshall Islands, Papua New Guinea, Philippines, Saint Vincent and the Grenadines, Sao Tome and Principe, Solomon Islands, Trinidad and Tobago, Tuvalu, Vanuatu. See, United Nations, *The Law of the Sea, Practice of States at the time of entry into force of the United Nations Convention on the Law of the Sea*, New York, 1994, p. 9. The relevant legislation of those archipelagic States, with the exception of the Marshall Islands, has been published in United Nations, *The Law of the Sea: Practice of Archipelagic States*, New York, 1992.

⁴⁷ Bahrain has on several occasions spoken about archipelagic baselines, namely during the Tripartite Committee meetings, and in its oral pleadings before the Court. However, Bahrain has never actually produced a claim in this respect.

⁴⁸ See, para. 18 of the Judgment of 1 July 1994, *I.C.J. Reports 1994*, at p. 118.

⁴⁹ Art. 47, para. 1: "An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1".

Objection in the *Nottebohm* case, "the seising of the Court is one thing, the administration of justice is another"⁴⁹. In the *Northern Cameroons* case, the Court was thus obliged to recall:

"There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore"⁵⁰.

In that case, the Court decided that the circumstances rendered any adjudication devoid of purpose and, considering itself as being the guardian of the Court's judicial integrity, it stated that:

"The Court must discharge the duty ... to safeguard the judicial function"⁵¹.

Accordingly, Qatar submits that an archipelagic claim by Bahrain is totally irrelevant in the present case.

Section 5. Conclusion

11.47 The single maritime boundary that the Court is requested to draw with due regard to the 1947 line could be a line starting from point S1, the first segment of which being a straight line between point S1 and point L of the 1947 line, the second and third segments following the 1947 line (from point L to BLV through NSLB) (*see, Map No. 16, facing page 258*). Qatar's submission that the single maritime boundary is to be drawn with due regard to the 1947 line applies not only to the southern sector in which the main part of that line is located, but also concerns directly the part of the northern sector where the 1947 line extends up to the point referred to as BLV, as has been demonstrated in the present Chapter. Therefore, in considering the starting point of the last segment of the single maritime boundary, which will be discussed in the following Chapter, the Court will necessarily have to pay due regard to the 1947 line.

⁴⁹ *I.C.J. Reports 1953*, p. 122.

⁵⁰ *Judgment, I.C.J. Reports 1963*, p. 29.

⁵¹ *Ibid.*, p. 38.

CHAPTER XII

THE SINGLE MARITIME BOUNDARY IN THE NORTHERN SECTOR

Introduction

12.1 In its Application Qatar requested the Court:

"With due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain¹".

In the Memorial which it submitted to the Court on 10 February 1992 on questions of jurisdiction and admissibility, Qatar indicated with respect to "the dispute relating to maritime delimitation" that "The area involved in this dispute ... runs from the mouth of the Dawhat Salwah in the south ... up to the Gulf median line between the Islamic Republic of Iran on the one side and Qatar and Bahrain on the other²".

12.2 Consequently, the dispute relating to maritime delimitation between Qatar and Bahrain is not limited to the sector covered by the British decision of 23 December 1947, *i.e.*, from the mouth of the Dawhat al Salwah up to the point identified as BLV. It also concerns the maritime areas lying beyond BLV, *i.e.*, essentially in the northern sector, up to the Gulf median line laid down by the delimitation agreements previously concluded by Qatar and Bahrain with Iran on 20 September 1969 and 17 June 1971.

12.3 In the following discussion, Qatar will endeavour to demonstrate the specific nature of this northern sector; to determine the law applicable to this aspect of the dispute; and, in the light of the relevant circumstances, to identify the appropriate method of delimitation which will allow an equitable solution to be achieved.

¹ Para. 41, II.

² Q.M.J.A., Vol. I, p. 26, para. 2.54. *See, also, Map No. 1, facing p. 13, and Chapter IX, above.*

Section 1. The Specific Nature of the Northern Sector

12.4 The circumstances for the delimitation of the single maritime boundary in the maritime areas situated to the north of BLV are quite different from those for the maritime delimitation in the sector to the south of BLV, which has been discussed above³. The delimitation in the northern sector has three main characteristics which clearly highlight its specific nature: first, it is a *de novo* delimitation; second, it has to be performed in an area lying beyond the outer limits of the Parties' territorial waters; and third, it is a delimitation which does not require any categorization.

A. A *de novo* delimitation

12.5 The seabed delimitation effected by the British decision of 23 December 1947 does not go beyond BLV. Indeed, the British decision states that the course of the dividing line shown on *Map No. 17* facing this page runs "from point 'M' to the 'Bahrain Light Vessel'". The decision also indicates that "the assigned position" of BLV is "046¼° true 28.05 Nautical Miles from the Political Agent's flagstaff Latitude 26°14'1" N, Longitude 50°35'2" E (approximately), as the positions of floating marks are subject to frequent alteration⁴". Beyond BLV - which thus appears as a turning point in the maritime delimitation between Qatar and Bahrain and as a true reference point or anchor point - no boundary has ever been established, either by agreement or otherwise. It is thus clearly a *de novo* delimitation that has to be performed in the northern sector⁵.

B. A Delimitation concerning Maritime Areas lying beyond the Outer Limit of the Parties' Territorial Waters

12.6 The specific nature of the delimitation of a single maritime boundary in the northern sector is apparent also from a second point of view, insofar as, unlike the delimitation already

³ See, Chap. XI, above.

⁴ Annexes IV.115 and IV.116, Vol. 10, pp. 71 and 75. See, para. 3.80, footnote 107 and *Map No. 12*, facing page 214, above. BLV should not be confused with the "Bahrain Light Float" which is at 26°33'N, 51°03'E. The present geographical coordinates of the point referred to in the 1947 decision are 50°57'30"E and 26°33'35"N.

⁵ See, para. 10.42, above.

made as far as BLV, it concerns in its entirety maritime areas lying beyond the outer limit of the Parties' territorial waters.

12.7 The starting point of this delimitation in the northern sector coincides, as has just been mentioned, with the end point of the dividing line laid down by the 1947 British decision. This point, BLV, is situated 53.31 km, *i.e.*, approximately 28.8 nautical miles, from RK, which is the northernmost point on the Qatar peninsula, and 44.40 km, *i.e.*, approximately 24.0 nautical miles, from point MQ on the island of Al Muharraq, the relevant point in Bahrain as shown on *Map No. 17* facing the previous page⁶. However summary this geographical localisation may be, it allows the definition, without the slightest hesitation, of the legal nature of the maritime areas lying to the north of BLV. In 1992 and 1993 Qatar and Bahrain, respectively, extended the breadth of their territorial seas to 12 nautical miles, to be measured from baselines determined in accordance with the rules of international law⁷. In addition, beyond the outer limits of their territorial waters as shown on *Map No. 14*, facing page 250, the two States have and exercise exclusive sovereign rights over their respective continental shelves and fishing zones. It may be noted in this regard that in a Proclamation by the Ministry of Foreign Affairs dated 2 June 1974, Qatar proclaimed its exclusive and absolute sovereign rights over the natural and marine resources and over the fisheries in the zones contiguous to the territorial sea off the coasts of the State and its islands and that it has exclusive rights with respect to exploration, prospection, exploitation, enhancement, fishing and the installation of facilities and of safety, control and protection zones for all the marine and natural resources situated on the sea-bed, in the subsoil or in the superjacent waters⁸.

12.8 Since BLV is outside the territorial waters of the Parties, the same will be true, *a fortiori*, of the end point of the dividing line in the northern sector, since the delimitation has to be made up to a point located at the intersection of the line that the Court will determine and the median line in the central part of the Gulf, as established by the agreements delimiting the continental shelf concluded in 1969 and 1971 by Iran with Qatar and Bahrain,

⁶ Points RK and MQ are located on the high water line of the coasts concerned (*see*, paras. 12.10, 12.63, 12.66 and 12.70, below).

⁷ *See*, paras. 11.5 *et seq.*, above, and Annexes IV.278 and IV.281, Vol. 12, pp. 241 and 261.

⁸ *See*, para. 9.1, footnote 5, above, and Annex IV.269, Vol. 12, p. 169.

respectively⁹. This conventional continental shelf boundary has been applied by Iran to the column of superjacent waters and, from Iran's point of view, has become the boundary of its exclusive economic zone with the facing Arab States. Thus, according to Article 19 of the "Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea" of 1993, "The limits of the Exclusive Economic Zone and the Continental Shelf of the Islamic Republic of Iran, unless otherwise determined in accordance with bilateral agreements, shall be a line every point of which is equidistant from the nearest point on the baselines of two States¹⁰". These new Iranian regulations cannot unilaterally modify the object and purpose of the continental shelf delimitation agreements concluded with Qatar and Bahrain. From a formal point of view, the application ("exhaussement") of the continental shelf boundary to the fishing zones, and perhaps to the exclusive economic zones, once these countries have proclaimed their creation in their national legislation, requires their consent. Such an application may nevertheless be inferred with respect to the fishing zones, given the proclamations made by both Iran and Qatar¹¹.

⁹ Annexes IV.260 and IV.264, Vol. 12, pp. 81 and 111.

¹⁰ Annex IV.283, Vol. 12, p. 271.

¹¹ Indeed, the Iranian Proclamation of 30 October 1973 and the Qatari Proclamation of 2 June 1974 are in harmony. First, in its Proclamation of 30 October 1973 "concerning the outer limit of the exclusive fishing zone of Iran in the Persian Gulf and the Sea of Oman", the Iranian Government, "in order to safeguard the fishing rights and interests of Iran in the seas adjacent to its coast and the coasts of its Islands", declared:

"The outer limits of the exclusive fishing zone of Iran in the Persian Gulf shall be the outer limits of the superjacent waters of the continental shelf of Iran.

(a) In areas where the continental shelf of Iran has been delimited under bilateral agreements with other States, the outer limits of the exclusive fishing zone of Iran shall correspond to the outer limits of the continental shelf of Iran as specified in those agreements" (Annex IV.267, Vol. 12, p. 145).

This Iranian proclamation of 1973 is consistent with the 1969 Agreement between Qatar and Iran, and constitutes express recognition by Iran of the application of the seabed line to the exclusive fishing zones. Moreover, it was confirmed during the Third United Nations Conference on the Law of the Sea. Indeed, during the Caracas Session, the Iranian delegation insisted several times upon the specific problems of semi-enclosed seas (*see*, Annexes IV.270 and IV.272, Vol. 12, pp. 177 and 193) and expressly admitted the existence of a link between the 1973 Proclamation and the 1969 Delimitation Agreement. On 13 August 1974, Mr. Kazemi stated, at the 38th meeting of the Second Committee:

"As to the management of resources, the fact that the total area of the semi-enclosed seas lay above the continental shelf of the coastal States justified the working out of a special régime. In that connexion, the delimitation of the various areas of jurisdiction would present problems which were peculiar to semi-enclosed seas and which would have to be solved on the basis of the principles of justice, equity and equidistance. Iran had already established the limits of its continental shelf in agreement with Saudi Arabia, Qatar and Bahrain on the basis of those principles. His Government's Proclamation of 30 October 1973 relative to the establishment of an exclusive fishery zone had also been based on those principles" (*see*, Annex IV.271, Vol. 12, p. 183).

Second, this boundary for the fishing zones, corresponding to the "raised" continental shelf boundary, has moreover been confirmed by the subsequent conduct of both States. In this regard, it should be recalled that Qatar has also declared, in its Proclamation made in Doha on 2 June 1974, that:

"Without prejudice to freedom of movement of maritime and air international navigation, in accordance with the established principles of international law, the State of Qatar to the exclusion of all others possesses

12.9 In these circumstances Qatar submits that the line delimiting the continental shelf, as established in the agreements concluded by Qatar and Bahrain with Iran in 1969 and 1971, may be "raised" to the superjacent column of water to constitute as from now the line delimiting the exclusive fishing zones of the two States¹². Furthermore, the object of the maritime delimitation between Qatar and Bahrain in the northern sector will be to draw a single maritime boundary from BLV to the Gulf median line established by treaty.

C. Irrelevance of the Usual Distinction between Frontal and Lateral Delimitation

12.10 The part of the boundary to be drawn between the maritime jurisdictions of Qatar and Bahrain to the north of BLV is situated throughout its length in the open sea. From the strictly geographical point of view, which may be verified by glancing at a map, it is a part of the delimitation area lying completely outside the area where Qatar and Bahrain have directly facing coasts, *i.e.*, beyond the imaginary line from RK to MQ¹³, without however corresponding to the situation of two adjacent States.

12.11 Therefore, Qatar considers that in the present case it is unnecessary to make a legal characterisation of the geographical situation in the northern sector, for two main reasons. First, although the delimitation in this area cannot be categorized as a delimitation relating to a situation of "adjacent States", one might be reluctant to put it in the category of a frontal delimitation relating to a situation of "opposite States", to use a distinction that is frequently found in the law of maritime delimitations - even if it is closer to the latter category. Insofar as the northern sector may be reminiscent of the Atlantic sector in the Anglo-French case, beyond the area where France and the United Kingdom were directly opposite each other in the English Channel, it is important not to forget the hesitations in the arbitral award of

rights of total authority over natural resources, marine wealth and fishing in the areas adjacent to the territorial waters of the coasts of the State and its islands.

The external boundaries of these areas shall be demarcated in accordance with bilateral agreements already in force and those concluded in the future". *See*, Annex IV.269, Vol. 12, p. 169.

¹² With respect to the coincidence between the continental shelf boundary, as established by agreement, and the boundary of the fishing zones in Iranian practice, *see*, Annex IV.284, Vol. 13, p. 1 and J.I. Charney & L.M. Alexander (eds.), *op. cit.*, pp. 1506, 1514 and 1523.

¹³ *Map No. 17*, facing page 266.

30 June 1977 as to the characterisation of the Atlantic region¹⁴. Moreover, and above all - and this is the second reason why Qatar believes that it is unnecessary to become hidebound by the alternative between "opposite States" and "adjacent States" in characterising the northern sector - the distinction which is frequently made has no direct legal effect. Not only does the law of 1958 and 1982 lay down rules which are essentially identical for both situations, but also the jurisprudence does not attach any real importance to this distinction¹⁵.

12.12 In these circumstances, it is not necessary to characterise the northern sector in terms of the distinction between frontal and lateral delimitation. As Professor Weil has rightly stressed, "la distinction entre côtes adjacentes et côtes opposées ne saurait être tenue pour une circonstance pertinente bénéficiant d'un poids réel¹⁶". On the other hand, what matters, in an operation of maritime delimitation, is to take into account the geographical circumstances which are peculiar to each case or, to use the words of the Anglo-French award, it is necessary to identify the "real facts", the "natural facts" or the "actual geographical conditions¹⁷", so true is it that it is the geographical situation which indicates the applicable method of delimitation¹⁸. According to the much cited dictum of the Chamber in the *Gulf of Maine* case, "the choice of method to be used is essentially dependent upon geography¹⁹".

¹⁴ Annex IV.287, Vol. 13, pp. 25-28.

¹⁵ Thus, in the award of 30 June 1977, it is stated that "... to fix the precise legal classification of the Atlantic region appears to this Court to be of little importance. The rules of delimitation prescribed in paragraph 1 and paragraph 2 [of Article 6 of the 1958 Convention on the Continental Shelf] are the same, and it is the actual geographical relation of the coasts of the two States which determine their application" (*ibid.*, p. 28). Moreover, when it examined the role of special circumstances in the implementation of the rules contained in Article 6 of the Convention, the Court was careful to stress that the equitable nature of a delimitation "cannot depend on whether the case is *legally* to be considered a delimitation between 'opposite' or between 'adjacent' States" (*ibid.*, p. 27; emphasis in original). Similarly, in the case between Guinea and Guinea-Bissau, where one of the parties considered the States were opposite, while the other considered they were adjacent, the arbitral tribunal held that "il n'est pas nécessaire de s'attarder ici sur cette circonstance" (Annex IV.288, Vol. 13, p. 37).

¹⁶ Annex IV.321, Vol. 13, p. 259.

¹⁷ Annex IV.287, Vol. 13, p. 27.

¹⁸ *Ibid.*

¹⁹ *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 333, para. 216.

Section 2. The Law Applicable to the Maritime Delimitation in the Northern Sector

12.13 The maritime delimitation to be effected by the Court to the north of BLV, will naturally be based on the sources of international law as set forth in Article 38 of the Statute. But given that neither the 1958 Convention on the Continental Shelf²⁰ nor the 1982 Convention on the Law of the Sea is formally applicable in the present case, the principles of customary international law relating to maritime delimitation, as identified *inter alia* by the jurisprudence, will thus be applicable to the delimitation of the continental shelf and fishing zones in the northern sector. In Qatar's view, three of these principles especially must be applied to these maritime areas. First, the delimitation must be made in conformity with the "fundamental norm" according to which the course of the dividing line must be drawn by applying equitable principles and taking into account all relevant circumstances in order to achieve an equitable result; second, the applicable law is common to the delimitation of maritime areas lying outside territorial waters, whatever the legal regime of such areas may be; and third and finally, equity does not necessarily imply equality.

A. The Delimitation must be made in Conformity with the "Fundamental Norm" according to which the Course of the Dividing Line must be drawn by applying Equitable Principles and taking into account all Relevant Circumstances in order to achieve an Equitable Result

12.14 Qatar considers, first, that the delimitation in the northern sector must be effected on the basis of equitable principles, taking into account all the relevant circumstances, in order to achieve an equitable solution. In its Judgment of 1969 in the *North Sea Continental Shelf* case, the Court held that the "delimitation is to be effected ... in accordance with equitable principles, and taking account of all the relevant circumstances²¹". Similarly, in the most recent Judgment that it has issued on the subject, in 1993, in the *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen*, the Court stated again that "That statement of an 'equitable solution' as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of continental shelf and of

²⁰ It may be noted that neither Qatar nor Bahrain is a party to the 1958 Convention.

²¹ *I.C.J. Reports 1969*, p. 53, para. 101, C.1.

exclusive economic zones"²². Between these two decisions, the chain of jurisprudence has used similar language, and the Court has clearly taken care to show that the application of equitable principles "should display consistency and a degree of predictability"²³.

12.15 Thus, in the Judgment of 1982 in the *Libya/Tunisia Continental Shelf* case, the Court again stated that: "the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances"²⁴, and that "The result of the application of equitable principles must be equitable"²⁵. Similarly, in the *Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area - i.e.*, in a case which, like the present case, concerned the drawing of a single maritime boundary - the Judgment of the Chamber of 1984 defined "what general international law prescribes in every maritime delimitation between neighbouring States" as follows: "delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result"²⁶. Finally, in its Judgment of 1985 in the *Case concerning the Continental Shelf between Libya and Malta*, the Court confirmed that "judicial decisions are at one ... in holding that the delimitation of a continental shelf boundary must be effected by the application of equitable principles in all the relevant circumstances in order to achieve an equitable result"²⁷ and that this is "the 'fundamental norm' of the law of delimitation"²⁸.

B. The Existence of Common Principles Applicable to the Delimitation of Maritime Areas lying outside the Territorial Waters of the Parties, whatever the Legal Regime of such Areas may be

12.16 Qatar submits that Articles 74, paragraph 1, and 83, paragraph 1, of the 1982 Convention on the Law of the Sea are the expression of customary international law with

²² *I.C.J. Reports 1993*, p. 59, para. 48; *see, also*, p. 69, para. 70.

²³ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 39, para. 45; *see, also, I.C.J. Reports 1993*, p. 64, para. 58.

²⁴ *I.C.J. Reports 1982*, p. 92, para. 133, A.1.

²⁵ *Ibid.*, p. 59, para. 70.

²⁶ *I.C.J. Reports 1984*, pp. 299-300, para. 112.

²⁷ *I.C.J. Reports 1985*, p. 38, para. 45; *see, also*, p. 57, para. 79, A.1.

²⁸ *Ibid.*, p. 47, para. 62. The arbitral jurisprudence follows the same line. Mention may be made, in particular, of the 1977 Anglo-French award (*see, Annex IV.287, Vol. 13, pp. 19-20 and 22*) and of the 1985 Guinea/Guinea-Bissau award (*Annex IV.288, Vol. 13, p. 37*).

respect to the delimitation of the continental shelf and exclusive economic zones²⁹, and that they also apply to the delimitation of fishing zones. The fact that there is an equivalence between the conventional law of 1958, customary international law and the new conventional law was stated as early as the 1977 Anglo-French arbitral award³⁰. A similar idea is to be found in the Court's Judgment of 1993 in the case between Denmark and Norway, which made a striking short-cut in order to ensure the consistency of the jurisprudence on the subject of maritime delimitations, be it concerning the continental shelf, fishing zones or exclusive economic zones, and on the basis of the 1958 Convention, customary international law or the 1982 Convention³¹. The Court concluded its reasoning as follows: "That statement of an 'equitable solution' as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of continental shelf and of exclusive economic zones³²". There is thus an equivalence between the regime for delimiting the continental shelf as laid down in the 1958 Convention and customary international law concerning delimitation of the continental shelf and of the exclusive economic zone, just as there is an equivalence between the regimes for delimiting fishing zones and for delimiting exclusive economic zones. In fact the application of a "general norm based on equitable principles" and the search for an "equitable solution" are the common denominator of the law applicable to the delimitation of the maritime areas lying outside the territorial waters of the States concerned, as is the case here in the northern sector. Moreover it may be noted that in view of the specific nature of the Arabian/Persian Gulf and the absence of any exclusive economic zone, the practice of the Gulf States is to have a single maritime boundary for the seabed and fishing zones.

²⁹ See, *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 294, para. 94.

³⁰ See, Annex IV.287, Vol. 13, pp. 21-22, referring to Articles of the Revised Single Negotiating Text (Annex IV.273, Vol. 12, p. 199). Subsequently, the contents of the provisions of the Revised Single Negotiating Text were changed so that agreement could be reached at the Conference as to the wording of Articles 74 and 83 of the 1982 Convention, which entered into force on 16 November 1994.

³¹ *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993*, p. 59, paras. 46-47, where the Court noted that the parties took the same position, neither of them seeing any objection to "the boundary of the fishery zones being determined by the law governing the boundary of the exclusive economic zone, which is customary law" (*ibid.*, para. 47).

³² *Ibid.*, p. 59, para. 48.

C. Equity does not necessarily imply Equality

12.17 Finally, Qatar would like to recall a well-known principle of customary international law, which is particularly applicable in the present case. This is the principle that equity does not necessarily imply equality. Although the principle of equality of States plays a certain role in the law of maritime delimitation, a dividing line giving unequal areas to the Parties cannot *per se* be considered as inequitable. As Judge Mosler remarked: "The rule of equity requires equal treatment of the Parties. In disputes concerning territorial boundaries, including submarine areas, equal treatment does not necessarily mean the attribution of equal shares. A delimitation according to equal areas on either side is in conformity with the rule of equity only in so far as the relevant criteria and circumstances in their totality in fact indicate this result"³³. The series of judgments rendered on the subject of maritime delimitation has never put this principle into question. As Professor Weil has stressed, "la jurisprudence est d'une constance qui ne connaît pas d'exception"³⁴.

12.18 As early as 1969, the Court made a strong statement in a dictum which is often cited: "Equity does not necessarily imply equality"³⁵. The Court explained immediately afterwards that "There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline ... It is therefore not a question of totally refashioning geography whatever the facts of the situation ..."³⁶.

12.19 Similarly, in 1977 the Anglo-French Court of Arbitration repeated the same principle: "The function of equity ... is not to produce absolute equality of treatment..."³⁷. Mention may also be made once more of the *Libya/Malta Continental Shelf* case, where in 1985 the Court rejected the Maltese argument relying on the principle of the sovereign equality of States:

³³ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Dissenting Opinion of Judge Mosler, *I.C.J. Reports 1985*, p. 119.

³⁴ Annex IV.321, Vol. 13, p. 262.

³⁵ *North Sea Continental Shelf, Judgment*, *I.C.J. Reports 1969*, p. 49, para. 91.

³⁶ *Ibid.*, pp. 49-50, para. 91.

³⁷ Annex IV.287, Vol. 13, p. 32.

"... it is evident that the existence of equal entitlement, *ipso jure* and *ab initio*, of coastal States, does not imply an equality of extent of shelf, whatever the circumstances of the area; thus reference to the length of coasts as a relevant circumstance cannot be excluded *a priori*. The principle of equality of States has therefore no particular role to play in the applicable law³⁸".

In the same case, the Court mentioned, among the equitable principles which are applicable to all maritime delimitations:

"... the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature; ... the principle that although all States are equal before the law and are entitled to equal treatment, 'equity does not necessarily imply equality' (*I.C.J. Reports 1969*, p. 49, para. 91), nor does it seek to make equal what nature has made unequal³⁹".

There can be no better systematisation of the equitable principles of "normative character"⁴⁰ which are directly applicable to the delimitation of a single maritime boundary between Qatar and Bahrain in the northern sector.

Section 3. The Relevant Circumstances in the Northern Sector

12.20 Having outlined the specific nature of the delimitation in the northern sector and determined the law which is applicable in the present case, Qatar will now identify the relevant circumstances which should be used in order to effect the delimitation of a single maritime boundary between Qatar and Bahrain to the north of BLV, so that an equitable result is attained. This means taking into consideration the particular facts, or the factors which are peculiar to the area under consideration, permitting the determination of what is equitable.

12.21 The legally relevant circumstances that Qatar wishes to identify in order to make the delimitation in this sector, in accordance with equitable principles, depend upon the Parties' title to the maritime areas to be delimited, since they are linked both to the continental shelf and to fishing zones. It should be recalled that in its Application of 5 July 1991, Qatar

³⁸ *I.C.J. Reports 1985*, p. 43, para. 54.

³⁹ *Ibid.*, pp. 39-40, para. 46.

⁴⁰ *Ibid.*

requested the Court to draw "a single maritime boundary between the maritime areas of seabed, subsoil and superjacent waters" appertaining to each Party respectively⁴¹. This means that, like the Chamber in the *Gulf of Maine* case, the Court must in the present case carry out "a delimitation of two distinct elements" - the continental shelf and the fishing zones - "by means of a single line"⁴². The Court therefore has to make a "dual purpose" delimitation, a delimitation with a "twofold object"⁴³, in a word, a "multi-purpose delimitation"⁴⁴. And in this fact there is already in the present case, as in the *Gulf of Maine* case, "a special aspect of the case which must be taken into consideration even before proceeding to examine the possible influence of other circumstances on the choice of applicable criteria"⁴⁵.

12.22 Having recalled this point, a consequence of which will be the choice of criteria that, "because of their more neutral character, are best suited for use in a multi-purpose delimitation"⁴⁶, Qatar will identify two types of legally relevant circumstances which will allow an equitable delimitation to be achieved in the northern sector. These relevant circumstances are of two kinds: the first are geographical; the second are linked to the existing delimitations in the area.

A. The Relevant Geographical Circumstances

1. The geological and geomorphological unity of the area of seabed to be delimited

12.23 The first relevant geographical circumstance which must be identified in the northern sector for the application of equitable principles concerns the geological and geomorphological unity of the sea-bed area. It is true that the concept of natural prolongation, like reference to geophysical considerations, no longer seems to have the particular place in recent jurisprudence that it occupied in the first rulings issued on the subject of continental

⁴¹ See, para. 12.1, above.

⁴² *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 326, para. 192. The Court will however be aware that in the present case, in sharp contrast with the situation in the *Gulf of Maine* case, the fisheries element is essentially irrelevant.

⁴³ *Ibid.*, p. 326, para. 193.

⁴⁴ *Ibid.*, p. 327, para. 194.

⁴⁵ *Ibid.*, p. 326, para. 193.

⁴⁶ *Ibid.*, p. 327, para. 194.

shelf delimitation⁴⁷. That jurisprudence was justified at the time "in a regime of the title itself which used to allot those factors a place which now belongs to the past, in so far as sea-bed areas less than 200 miles from the coast are concerned⁴⁸".

12.24 However, it is not without interest, in effecting the maritime delimitation in the northern sector, that the sea-bed in that area is characterised by its geological and geomorphological unity. There is no fundamental discontinuity forming a sort of natural boundary to interrupt the extension of Qatar's continental shelf towards the north and north-west, or that of Bahrain's continental shelf towards the east and north-east. From the bathymetric point of view, it is sufficient to glance at the marine charts of the area, such as British charts No. 2837 or, even better, No. 2838, to see that the sea-bed in the northern sector, subject to certain variations, reaches an isobath of an average of 50 to 60 metres. On the other hand, to the south, it hardly goes beyond the 10-metre isobath. These observations fit in very well with the general description of the Arabian-Persian Gulf by R. Young: "Generally shallow, its greatest depth is about 100 metres and its average no more than 40. The deeper waters are found mostly in the lower part of the Gulf and along the mountainous Iranian coast, which contrasts markedly with the generally low-lying shore on the Arabian side⁴⁹".

12.25 This brief and summary mention of the first relevant circumstance, relating to physical geography, is sufficient to show that the northern sector is an area without any major irregularities or significant natural anomalies. Geologically and geomorphologically, the area to be delimited is simple. This idea is confirmed by the second legally relevant circumstance that has to be taken into consideration, which is the regularity of the coastal geography.

⁴⁷ See, in particular, *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 51, para. 95 and *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 47, para. 44 and p. 57, para. 66.

⁴⁸ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 36, para. 40.

⁴⁹ See, Annex IV.327, Vol. 13, p. 293. Even supposing that there are a few structural irregularities in the sea-bed in the northern sector, these are not very significant and can only be considered as "minor structures". The traditional analyses by Graham Evans of the geology, geomorphology and sedimentology of the Gulf (G. Evans, in R. Fairbridge (ed.), *Persian Gulf in the Encyclopedia of Oceanography*, Reinhold Publishing Corporation, New York, 1966, pp. 689-695) do not belie this presumption of unity and uniformity of the sea-bed throughout the sector to the north of BLV, and this analysis is confirmed by the more recent study by P. Kassler (*The Structural and Geomorphic Evolution of the Persian Gulf: Holocene Carbonate Sedimentation and Diagenesis in a Shallow Epicontinental Sea*, New York, Springer Verlag, 1973).

2. The regularity of the geographical configuration of the coasts of the Parties

12.26 As was emphasised by the Court as early as 1969, it is necessary "to examine closely the geographical configuration of the coastlines of the countries whose continental shelves are to be delimited⁵⁰". Similarly, in 1977 the Anglo-French Arbitral Tribunal held that "the method of delimitation which it adopts ... must be one that has relation to the coasts of the Parties actually abutting on the continental shelf⁵¹". Indeed, is it not true that, as the Court held in 1982, "The coast of each of the Parties... constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction⁵²"? In other words, the basis for a State's legal title to submarine areas and the superjacent column of water off its territory is determined "through" its coasts and founded on the geographical relation between that State's coastline and the maritime areas concerned. This primacy of the general configuration of the coasts of the States which are parties to a delimitation process is quite naturally explained by the direct impact of the Parties' coastlines and of their configuration on the course of the dividing line. As the Chamber noted in its judgment of 1984 in the *Gulf of Maine* case, "The delimitation line to be drawn in a given area will depend upon the coastal configuration⁵³".

12.27 In the present case, a quick glance at the geographical configuration of the coastlines of Qatar and Bahrain is sufficient to show that they have two main characteristics. First, they are notable for having no deep indentations or irregularities, pronounced deviations or distortions, or major anomalies or, in a word, for having no "markedly pronounced configurations", to use the words of the Court in 1969⁵⁴. Second, the coastlines of Qatar and Bahrain are also notable for having no pronounced concave or convex features or, in other words, for having no sharply defined receding coasts or coastal projections.

⁵⁰ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 51, para. 96; see, also, p. 54, para. 101.D.I.

⁵¹ Annex IV.287, Vol. 13, p. 30.

⁵² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 74.

⁵³ *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 330, para. 205.

⁵⁴ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 51, para. 96.

12.28 These coastal characteristics of the States which are parties to the present dispute thus highlight their regularity, in a manner of speaking their "ordinariness", or in fact their "normality". In these circumstances, it is all the easier to determine their general direction, which is an objective reflection of the coastal configuration of the Parties. Any cartographer or geographer who might undertake this exercise would not encounter the difficulties which arose in the *Libya/Tunisia Continental Shelf* case as to the question of whether it had to be considered that the Tunisian coast changed direction, or of exactly what point marked the change in direction of the coast⁵⁵. Nor would they encounter the difficulties that they might have met in the *Gulf of Maine* case⁵⁶.

12.29 In these circumstances, there is no need to take into account any irregularity in the general direction of the coastlines of Qatar and Bahrain. It is therefore possible to apply to them the words of the Court in its Judgment of 18 December 1951 in the *Norwegian Fisheries* case, concerning the so called "tracé parallèle" method of determining the outer limit of territorial waters, which "may be applied without difficulty to an ordinary coast, which is not too broken⁵⁷". Indeed, Qatar's and Bahrain's coastlines are "simple"; they are "not too broken" in any significant way. In other words, for purposes of the maritime delimitation in the northern sector, there are no relevant circumstances linked to the coastal geography of the States parties which might lead to an inequitable result.

3. The disparity or disproportion between the lengths of the relevant coasts of the Parties

12.30 The jurisprudence has consistently stressed that the respective coastal fronts of the States parties to a maritime delimitation operation must be taken directly into account, since they are the very basis of the coastal State's title to the adjacent maritime areas⁵⁸. As the Court declared in 1982, "the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it⁵⁹". And again, in 1985, in the *Libya/Malta Continental Shelf* case, it stated:

⁵⁵ See, *I.C.J. Reports 1982*, pp. 86-87, para. 123.

⁵⁶ *I.C.J. Reports 1984*, p. 320, para. 176.

⁵⁷ *Fisheries, Judgment, I.C.J. Reports 1951*, p. 128.

⁵⁸ See, para. 12.31, below.

⁵⁹ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.

"It is by means of the maritime front of this landmass, in other words by its coastal opening, that ... territorial sovereignty brings its continental shelf rights into effect... The juridical link between the State's territorial sovereignty and its rights to certain adjacent maritime expanses is established by means of its coast. The concept of adjacency measured by distance is based entirely on that of the coastline⁶⁰."

Consequently, the rights which States may claim with respect to the sea, whether concerning the continental shelf or fishing zones, are directly related to their coasts and, more precisely, depend upon their coasts and the way in which they edge their territory. "Tout dépend de leurs façades maritimes respectives et de la façon dont elles se présentent⁶¹".

12.31 In the present case, one of the most significant characteristics of the geographical relationship between Qatar and Bahrain is precisely the disparity or disproportion between the respective lengths of their coasts. This self-evident observation, which may be made simply by examining a map, is confirmed when they are measured. In order to do so, no account will be taken either of islands and islets or of low-tide elevations, both for purposes of simplification and in order to conform with the practice that is generally followed in the Arabian-Persian Gulf in respect of maritime delimitation. Moreover, use will be made of the method which allows the coastal fronts of the Parties to be schematised as accurately as possible, and two straight coastal fronts to be determined, to which the coasts under consideration may reasonably be assimilated. This method of measurement is therefore based on the concept of general direction of the coasts, to which the international jurisprudence has often referred⁶².

⁶⁰ *I.C.J. Reports 1985*, p. 41, para. 49. In the same case, three of the Court's judges declared, in their joint separate opinion, that "The extent and limits of [the] shelf are given concrete form by the coastal front, and as a function of its geography, which comprises all its physical characteristics, length included. The sea-board is a parameter which enables use to be made of the sea; it is a more or less important, more or less extensive, means of access to the sea. For that purpose it is expressed in units of measurement. Territorial sovereignty generates continental shelf rights by way of the coastal front (as is proved by the fact that it cannot engender them in the case of landlocked States). This coastal front generates a certain area of continental shelf, because of its length, among other things; this seems a statement of the obvious". *I.C.J. Reports 1985*, pp. 83-84, para. 21.

⁶¹ See, Annex IV.288, Vol. 13, p. 41.

⁶² *I.C.J. Reports 1969*, p. 52, para. 98; *I.C.J. Reports 1982*, p. 86, para. 122; *I.C.J. Reports 1984*, p. 268, para. 29; pp. 318-319, paras. 170-171 and p. 320, para. 176; see, also, Annex IV.288, Vol. 13, pp. 39 and 40.

12.32 On the basis of this method⁶³ the eastern coast of Bahrain, measured in its general direction and without taking into account the islands and islets or low-tide elevations, is approximately a straight coastal front from Al Muharraq to Ras al Barr⁶⁴. Its length is approximately 55.5 kilometres or 29.99 nautical miles. Measured in accordance with the same parameters, Qatar's western coast is also a straight coastal front, running approximately from the northernmost point of the Qatar peninsula to Ras al Uwaynat⁶⁵. Its length is approximately 88.2 kilometres or 47.6 nautical miles. Thus, it is possible to quantify the marked disparity between the relevant lengths of the respective coastal fronts of the Parties to the present dispute. It results, as precisely as these constructions allow, in a proportionality ratio of 1.59 to 1 in favour of Qatar.

12.33 This disparity or disproportion between the respective lengths of the coasts of Qatar and Bahrain cannot be disregarded in the delimitation between the two countries in the northern sector, because there is indeed a certain relationship between the length of the coasts and the maritime areas engendered by those coasts, which must be taken into consideration in order to arrive at an equitable solution. As the Court recalled in 1993 in the Denmark/Norway case:

"The frequent references in the case-law to the idea of proportionality - or disproportion - confirm the importance of the proposition that an equitable delimitation must, in such circumstances, take into account the disparity between the respective coastal lengths of the relevant area⁶⁶."

There are well-known *dicta* in the jurisprudence, which is equally applicable in continental shelf delimitations and in continental shelf and fishing zone delimitations⁶⁷.

12.34 This jurisprudence has been reaffirmed in the cases concerning delimitation of a single maritime boundary. Thus, in 1984 the Chamber in the *Gulf of Maine* case held that "a

⁶³ See, Appendix 6, Vol. 15, p. 143.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *I.C.J. Reports 1993*, p. 67, para. 65.

⁶⁷ See, paras. 12.6-12.9, above. See, also, *I.C.J. Reports 1969*, p. 54, para. 101, D.3; *ibid.*, p. 52, para. 98; *I.C.J. Reports 1982*, pp. 43-44, para. 37; *I.C.J. Reports 1985*, pp. 43-45, paras. 55-57. See, also, para. 12.19, above.

substantial disproportion" in relation to the respective lengths of the coasts of the parties in the relevant area "that resulted from a delimitation effected on a different basis would constitute a circumstance calling for an appropriate correction"⁶⁸. Indeed, in the Chamber's view, the ratio between the coastal fronts of the United States (284 nautical miles) and Canada (206 nautical miles), which was 1.38 to 1 in favour of the United States in the Gulf of Maine, had to be "reflected in the location of the second segment of the delimitation line"⁶⁹. The Chamber considered that this geographical characteristic justified the correction that it made to a delimitation based on the equidistance method, and was a "valid ground for correction", which was "more pressing" than others⁷⁰. In short, therefore, the course of the central segment of the dividing line was to correspond "over its entire length" to the corrected median line as so established⁷¹.

12.35 In 1993, in the *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen*, the Court noted that the lengths of the coastal fronts were, respectively, according to the methods of calculation that were used, 54.8 or 57.8 km for Jan Mayen and 504.3 or 524 km for Greenland, and that thus, "the ratio between the coast of Jan Mayen and that of Greenland is 1 to 9.2 on the basis of the first calculation, and 1 to 9.1 on the basis of the second"⁷². Therefore, in the view of the Court:

"The disparity between the lengths of coasts ... constitutes a special circumstance within the meaning of Article 6, paragraph 1, of the 1958 Convention. Similarly, as regards the fishery zones, the Court is of the opinion, in view of the great disparity of the lengths of the coasts, that the application of the median line leads to manifestly inequitable results"⁷³.

⁶⁸ *I.C.J. Reports 1984*, p. 323, para. 185.

⁶⁹ *Ibid.*, p. 336, para. 222. The disproportion there was therefore not as great as that in the present case. The ratio between the lengths of the coastal fronts of Qatar and Bahrain is, it should be recalled, 1.59 to 1 in favour of Qatar. *See*, para. 12.32, above.

⁷⁰ *Ibid.*, p. 323, para. 185.

⁷¹ *Ibid.*, p. 337, para. 223. It will also be recalled that, in a situation of lateral delimitation relating both to the continental shelf and to the exclusive economic zone, the arbitral award of 1985 in the case concerning delimitation of the Guinea/Guinea-Bissau boundary also used proportionality as a test to be applied *a posteriori*, thus allowing it to be verified whether each Party had obtained a maritime area in proportion to the length of its coastline; *see*, Annex IV.288, Vol. 13, p. 41.

⁷² *I.C.J. Reports 1993*, p. 65, para. 61.

⁷³ *Ibid.*, pp. 68-69, para. 68.

And the Court concluded that "in the light of the disparity of coastal lengths, the median line should be adjusted or shifted in such a way as to effect a delimitation closer to the coast of Jan Mayen⁷⁴".

12.36 Qatar has certainly not forgotten that every delimitation operation is specific and is "monotypic", to use the expression of the Chamber in the *Gulf of Maine* case⁷⁵. But it believes that in order to arrive at an equitable result in the delimitation of the northern sector, it is necessary, in view of the jurisprudence analysed above, to take into account the disparity in the respective coastal fronts of Qatar and Bahrain, where the ratio determined on the basis of the simplifying method that has been used⁷⁶ is 1.59 to 1. This must be so, whatever may have been the terminology used by the Court or arbitral tribunals in the above-mentioned cases, and whether proportionality is considered as "a factor to be taken account of⁷⁷"; a "factor⁷⁸"; a "criterion⁷⁹"; a "test⁸⁰"; an "aspect of equity⁸¹"; a "touchstone of equitableness⁸²" or even, in the most recent of the Court's judgments, a "principle⁸³".

B. Taking into Consideration the Existing Delimitation Agreements

12.37 A relevant circumstance that the jurisprudence has also always taken into account in delimitation processes is the existence of agreements of this type which have already been made in the area in question. In 1969, in the *North Sea Continental Shelf* cases, the Court had already recommended that the States parties take into account, in the course of negotiations, "the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region⁸⁴". Again, in 1982, in the *Libya/Tunisia Continental Shelf* case, the Court expressly listed, amongst "the relevant circumstances which characterize the area", "the existence and interests of other States in the area, and the existing or potential

⁷⁴ *Ibid.*, p. 69, para. 69.

⁷⁵ *I.C.J. Reports 1984*, p. 290, para. 81.

⁷⁶ *See*, para. 12.32, above.

⁷⁷ *I.C.J. Reports 1969*, p. 52, para. 98.

⁷⁸ *Ibid.*, pp. 53-54, para. 101, D; Annex IV.287, Vol. 13, pp. 22 and 23; *I.C.J. Reports 1985*, p. 44, para. 57; *I.C.J. Reports 1993*, p. 67, para. 66.

⁷⁹ Annex IV.287, Vol. 13, pp. 23 and 30; *I.C.J. Reports 1982*, p. 91, paras. 130-131.

⁸⁰ *I.C.J. Reports 1985*, p. 53, para. 74.

⁸¹ *I.C.J. Reports 1982*, p. 91, para. 131; *I.C.J. Reports 1985*, p. 55, para. 75.

⁸² *I.C.J. Reports 1982*, p. 78, para. 108.

⁸³ *I.C.J. Reports 1993*, p. 68, para. 67.

⁸⁴ *I.C.J. Reports 1969*, p. 54, para. 101, D.3.

delimitations between each of the Parties and such States⁸⁵". Equally clearly, the arbitral tribunal, in its Decision of 14 February 1985 in the case concerning *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, declared that:

"Une délimitation visant à obtenir un résultat équitable ne peut ignorer les autres délimitations déjà effectuées ou à effectuer dans la région⁸⁶."

Such jurisprudence is readily justifiable since, as Professor Weil has rightly remarked:

"Opération essentiellement *inter partes*, la délimitation judiciaire ou arbitrale ne peut s'effectuer en vase clos, coupée du monde alentour et isolée des autres délimitations déjà réalisées, ou encore à faire, dans la région⁸⁷."

12.38 In the present dispute, at least as far as the northern sector is concerned, the Court will not have to take into consideration possible future delimitations to be carried out in the region, since the delimitation it must now make is the last for the central-western part of the Arabian-Persian Gulf. On the other hand, in order to reach an equitable result, the Court will inevitably have to take into account the various delimitations already made by conventional means, and in particular their effect on the solution to be applied to the problem of the Qatar/Iran/Bahrain tripoint.

1. The conventional delimitations already effected and to be taken into consideration

12.39 The Court will necessarily attach primary importance to the agreements concluded by Iran with Qatar on 20 September 1969⁸⁸ and with Bahrain on 17 June 1971⁸⁹, respectively, since these two agreements define the northern boundary of the area that the Court will have to delimit in the present dispute. However, it must be noted that they raise a problem of interpretation, notably in determining the segment where the Qatar/Iran boundary and the Bahrain/Iran boundary meet each other. This is because point 1 on the Qatar/Iran boundary and point 1 on the Bahrain/Iran boundary were not determined in the agreements of 29

⁸⁵ *I.C.J. Reports 1982*, p. 64, para. 81; *see also*, p. 93, para. 133, B.5.

⁸⁶ Annex IV.288, Vol. 13, p. 38.

⁸⁷ Annex IV.321, Vol. 13, p. 261.

⁸⁸ *See*, Annex IV.260, Vol. 12, p. 83 and *Map No. 11*, facing page 209.

⁸⁹ *See*, Annex IV.264, Vol. 12, p. 113 and *Map No. 11*, facing page 209.

September 1969 and 17 June 1971. Nevertheless an analysis of Article 1 of the Qatar/Iran agreement of 1969 and of Article 1 of the Bahrain/Iran agreement of 1971 allows the conclusion that point 1 in the 1971 Bahrain/Iran agreement, situated at the "latitude of 27 degrees, 00 minutes, 35 seconds North and longitude 51 degrees, 23 minutes, 00 seconds East, and having a geodetic azimuth of 278 degrees, 14 minutes, 27 seconds" coincides exactly with point 2 on the delimitation line drawn in the Qatar/Iran agreement of 1969. There is strict continuity⁹⁰, as a result of the coincidence of these two points, of the dividing line of the Iranian continental shelf opposite the Qatar continental shelf and the Bahrain continental shelf, respectively, and consequently the whole of the continental shelf and, as has already been shown⁹¹, the superjacent fishing zone, are delimited with regard to Qatar as well as with regard to Bahrain.

12.40 The Court will have to take into consideration the existing continental shelf delimitation agreement concluded on 22 February 1958 between Saudi Arabia and Bahrain⁹². It is true that there is no question of taking into account the whole of the dividing line established by the 1958 agreement, in order to delimit the northern sector between Qatar and Bahrain, but only of a relevant segment of the boundary, *i.e.* a segment comprised approximately between a point to the north of point 14 on that boundary, determined by the 1958 agreement, and the western end point (point 4) of the 1971 Bahrain/Iran agreement, which also coincides with the starting point (point 1), in the agreement of 24 October 1968 between Saudi Arabia and Iran, for which the geographical coordinates are latitude 27°10'00" North and longitude 50°54'00" East⁹³. This is therefore the Bahrain/Iran/Saudi Arabia tripoint⁹⁴.

⁹⁰ Subject to a discrepancy of one second, which might be explained by a simple error in calculation. In fact point 2 in the Bahrain/Iran agreement of 1971 is not situated exactly on the line defined both by that agreement and by the Qatar/Iran agreement of 1969. In order to be strictly accurate to a second of latitude and longitude, 27°02'47" North should have been taken for the latitude of point 2 and not 27°02'46", it being understood that the longitude figure of 51°05'54" East must remain the same. In any event, this error has no practical effect on the maritime delimitation between Qatar and Bahrain in the northern sector.

⁹¹ See, paras. 12.8-12.9, above.

⁹² See, Annex IV.262, Vol. 12, p. 95 and *Map No. 11*, facing page 209.

⁹³ See, Annex IV.258, Vol. 12, p. 71.

⁹⁴ See, para. 12.68, below.

2. The Qatar/Iran/Bahrain tripoint

12.41 The problem of the tripoint has already been dealt with in this Memorial with respect to the relationship between Qatar, Saudi Arabia and Bahrain at the southern end of the delimitation area⁹⁵. It was recalled in that context that judicial and arbitral bodies are always extremely careful to ensure that they do not prejudice the rights and interests of third States, both in maritime delimitations⁹⁶ and in land delimitations⁹⁷. In the northern sector, since the Qatar/Bahrain delimitation is the last to be made, no rights and interests of any third State, *i.e.*, in fact, Iran, can be affected by the future decision of the Court in the present case. They will be adequately protected by Article 59 of the Statute of the Court in Iran's relations with each Party, as the Chamber noted in the Burkina Faso/Mali case, in its Judgment of 22 December 1986⁹⁸.

12.42 The only effect of the delimitation agreements between Qatar and Iran of 1969 and Bahrain and Iran of 1971 is to clarify that Iran has no rights over the continental shelf situated to the south of the dividing lines established by these agreements, and also that neither Qatar nor Bahrain has rights over the continental shelf situated to the north of the same lines. Thus, if the principles applied to a land delimitation in the Burkina Faso/Mali Judgment are extended to maritime delimitations⁹⁹, it appears that the Court could, at least, in the present dispute, "determine" how far the maritime zones of both Qatar and Bahrain extend. The Court would therefore restrict itself in this way to indicating the location of the *ad quem* point, the end point of this dividing line, *i.e.* the point where the single maritime boundary no longer separates the respective maritime zones of Qatar and Bahrain. It would indicate nothing less, but it might also indicate nothing more, in other words nothing which might bring Iran's rights

⁹⁵ See, paras. 11.27 *et seq.*, above.

⁹⁶ Annex IV.287, Vol. 13, p. 18; *I.C.J. Reports 1982*, p. 90, Map No. 3; *I.C.J. Reports 1985*, p. 26, para. 21, following the Judgment of 1984 concerning Italy's application for permission to intervene, *I.C.J. Reports 1984*, p. 27, para. 43.

⁹⁷ *Frontier Dispute, Judgment, I.C.J. Reports 1986*, pp. 577-578, paras. 46-47; *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, pp. 33-34, para. 63.

⁹⁸ *I.C.J. Reports 1986*, pp. 577-578, paras. 46-47.

⁹⁹ On this point, the Chamber concluded that it had "a duty to decide the whole of the *petitum* entrusted to it; that is, to indicate the line of the frontier between the Parties over the entire length of the disputed area. In so doing, it will define the location of the end-point of the frontier in the east, the point where this frontier ceases to divide the territories of Burkina Faso and Mali; but ... this will not amount to a decision by the Chamber that this is a tripoint which affects Niger" (*I.C.J. Reports 1986*, pp. 579-580, para. 50).

and interests into issue. In the present dispute, the Court has no jurisdiction to determine the Qatar/Iran/Bahrain tripoint without the express consent of Iran.

Section 4. The Appropriate Delimitation Method in the Northern Sector

12.43 Qatar submits that, in the circumstances of the present case, the most appropriate method of delimitation in the northern sector is the perpendicularity method. This geometrical method is very well suited to the geography of the area, since it is based on the coasts of the Parties themselves, and on the northernmost points of their respective territories, which are the only elements that may be used as a basis for the delimitation operation which the Court has been requested to perform. It is moreover the only method that allows an equitable solution to be achieved in the sector concerned, by application of equitable principles¹⁰⁰ and by taking into account the relevant circumstances which are peculiar to the case¹⁰¹. This is why Qatar, after recalling the rationale underlying this method of delimitation and the circumstances in which it has been used in State practice and in international jurisprudence, will demonstrate the application of the perpendicularity method in the northern sector and then will proceed to an *a posteriori* verification of the equitable nature of the line thus obtained, by means of proportionality calculations.

A. The Rationale underlying the Perpendicularity Method

12.44 The perpendicularity method applied to a maritime delimitation is derived from the same rationale as the equidistance method. In fact it is only a variant of that method, as has always been stressed by the doctrinal authorities. As early as the period between the two world wars, Gidel, referring to Münch¹⁰², noted that in cases where two sovereign States are, in his words, "au contact latéral", the solution consisting of perpendicularity in relation to the general direction of the coast was no more than "une modalité spéciale de la ligne médiane entendue au sens large¹⁰³".

¹⁰⁰ See, paras. 12.14 *et seq.*, above.

¹⁰¹ See, paras. 12.20 *et seq.*, above.

¹⁰² *Die technischen Fragen des Küstenmeers*, Kiel, 1934, p. 156.

¹⁰³ *Le droit international public de la mer*, T. III, La mer territoriale et la zone contiguë, Paris, Sirey, 1981 (Annex IV.300, Vol. 13, pp. 129-130).

12.45 Current doctrine shares the same point of view. Thus, in the opinion of Professor Weil, this method of delimitation, whether it be by a line perpendicular to the coast or a line perpendicular to the imaginary closing line of a gulf, is only one of the "variantes de l'équidistance"¹⁰⁴. The same learned author states moreover that:

"... une ligne d'équidistance entre deux points est par définition la perpendiculaire à la droite unissant ces deux points qui coupe cette droite en son point médian, tant et si bien qu'une ligne d'équidistance n'est rien d'autre qu'une succession de perpendiculaires ... Dans le cas d'une côte à peu près rectiligne ou lorsqu'on est en présence d'une ligne imaginaire de fermeture d'un golfe, on peut parler presqu'indifféremment d'une ligne perpendiculaire coupant la ligne de fermeture en son milieu ou d'une ligne d'équidistance"¹⁰⁵."

Similarly, L. Legault and B. Hankey have observed:

"Another method of delimitation is the perpendicular, generally a perpendicular to the general direction of the coast, although perpendiculars to the closing lines of coastal indentations have also been used.

The rationale for this method is that it constitutes a simplified form of equidistance"¹⁰⁶."

12.46 The jurists' point of view is shared by technical experts in hydrography, marine cartography or the drawing of maritime boundaries. To give just one example, of the highest scientific authority, the International Hydrographic Office in Monaco has expressed the view that:

"In plane geometry a perpendicular to a straight line is also a line of equidistance relative to that line. This method of delimitation may therefore be seen as a special case of equidistance but it will be essential to compute the results in geodetic terms"¹⁰⁷."

¹⁰⁴ Annex IV.321, Vol. 13, p. 257. In Professor Weil's view, "Il serait à peine exagéré de dire que la méthode de l'équidistance constitue le développement scientifique de celle de la perpendiculaire, plus fruste car 'vraisemblablement la plus ancienne qui soit venue à l'esprit' pour délimiter la mer territoriale entre Etats limitrophes" (*ibid.*, p. 259). Prof. Weil refers in this respect to the observations of the Chamber in the *Gulf of Maine case* (*I.C.J. Reports 1984*, pp. 319-320, para. 175).

¹⁰⁵ Annex IV.321, Vol. 13, p. 263.

¹⁰⁶ Method, Oppositeness and Adjacency, and Proportionality in Maritime Delimitation in J.I. Charney & L.M. Alexander (eds.), *op. cit.*, International Maritime Boundaries, Vol. I, p. 213.

¹⁰⁷ Annex IV.302, Vol. 13, p. 147.

12.47 This convergence in analysis by jurists and technical experts explains why the jurisprudence has echoed the links existing between the perpendicularity method and the equidistance method. Thus, in the *Gulf of Maine* case, the Judgment rendered on 12 October 1984 by the Chamber of the Court stressed that there are methods of delimitation other than the equidistance method -

"... differing from it in varying degree even while prompted by similar considerations, which may prove equally appropriate or even distinctly preferable, given that the task is to delimit not only a continental shelf, as provided for in the 1958 Convention, but also the volume of superjacent waters¹⁰⁸."

Here, the Chamber was referring to the perpendicularity method and also to the method of the bisector of the angle formed by the coastlines and, as we know, it applied these methods, together with the corrected equidistance method, to the various segments of the maritime boundary between Canada and the United States¹⁰⁹. Indeed, as the Chamber remarked:

"Nor should one overlook the possibility that, over the whole course of a long delimitation line, various, though related, methods may successively appear more appropriate to the different segments¹¹⁰."

B. Use of the Perpendicularity Method in State Practice and in the Jurisprudence

1. The line perpendicular to the general direction of the coast

12.48 As may be seen from the foregoing remarks, the perpendicularity method may be used in maritime delimitation in two geographical contexts. State practice and international jurisprudence first used it in cases of lateral delimitation between two States with adjacent coasts, as a line perpendicular to the general direction of the coast¹¹¹. Mention may be made here of the agreement of 18 March 1958 for delimitation of the territorial sea between Poland

¹⁰⁸ *I.C.J. Reports 1984*, p. 329, para. 200.

¹⁰⁹ See, paras. 12.54 *et seq.*, below.

¹¹⁰ *I.C.J. Reports 1984*, p. 329, para. 200.

¹¹¹ It may be recalled that this was one of the four methods submitted to the Committee of Expert Hydrographers by the International Law Commission in 1953, in the hypothesis of a lateral delimitation of the territorial waters of two adjacent States, the others being, respectively, equidistance, the extension seawards of the land boundary, and the drawing of a line perpendicular to the coast at the point where the land boundary reaches the sea (see, also, *I.C.J. Reports 1969*, p. 34, para. 51 and *I.C.J. Reports 1984*, pp. 319-320, para. 175).

and the Soviet Union¹¹², the maritime delimitation agreement of 21 July 1972 between Brazil and Uruguay¹¹³, and the delimitation agreement of 2 February 1980 between Costa Rica and Panama¹¹⁴, all of which used this method at least partially. International jurisprudence has also used this method of a line perpendicular to the general direction of the coast, in one way or another and for a more or less extensive segment of the maritime boundary in question. Mention may be made here of the *Grisbadarna* case¹¹⁵, the *Libya/Tunisia Continental Shelf* case for the segment of the dividing line closest to the coast¹¹⁶, and, from a more macro-geographical point of view, the *Guinea/Guinea Bissau* case¹¹⁷.

2. The line perpendicular to the closing line of a coastal concavity

12.49 State practice and international jurisprudence have also used the perpendicularity method in another hypothesis, as a line perpendicular to an imaginary line closing a more or less pronounced coastal concavity, whether it be a gulf or an estuary. Here the geographical situation is different from the previous one. It is no longer a question of effecting a strict lateral delimitation, but a delimitation of the maritime areas located in the prolongation, in the open sea, of a situation where the coastlines of the two States concerned are at least partially opposite. Since the maritime delimitation in the northern sector between Qatar and Bahrain is related to such a situation¹¹⁸, attention should be paid to two particularly significant precedents, the Rio de la Plata treaty of 19 November 1973 and the Judgment of the Chamber of 12 October 1984 in the *Gulf of Maine* case. This is particularly important in view of the fact that use of the perpendicularity method is much more appropriate in the case of a line perpendicular to the closing line of a deep coastal concavity or of a relatively narrow maritime passage, than in the case of a line perpendicular to the general direction of the coast in the

¹¹² Limits in the Seas, No. 55; J.I. Charney & L.M. Alexander (eds.), *op. cit.*, Vol. II, pp. 2039-2056.

¹¹³ Annex IV.274, Vol. 12, p. 201. See, also, J.I. Charney & L.M. Alexander (eds.), *op. cit.*, Vol. I, pp. 785-792 and the observations of L. Legault & B. Hankey, *ibid.*, Vol. I, p. 214.

¹¹⁴ Limits in the Seas, No. 97; J.I. Charney & L.M. Alexander (eds.), *op. cit.*, Vol. I, pp. 537-549.

¹¹⁵ Annex IV.285, Vol. 13, p. 7, and the observations of G. Gidel, *op. cit.* (Annex IV.300, Vol. 13, pp. 129 *et seq.*).

¹¹⁶ *I.C.J. Reports 1982*, p. 85, para. 120, and the observations of E. Decaux (Annex IV.296, Vol. 13, p. 93).

¹¹⁷ Annex IV.288, Vol. 13, p. 33, and the commentaries by E. David in the *Annuaire français de droit international*, 1985 (Annex IV.295, Vol. 13, p. 83) and in J.I. Charney & L.M. Alexander (eds.), *op. cit.*, Vol. I, p. 861.

¹¹⁸ See, paras. 12.59-12.61, below.

case of a lateral delimitation, unless the adjacent coasts are practically straight. As Professor Weil has remarked:

"La méthode de la perpendiculaire est d'une application infiniment plus discutable dans le cas d'une côte qui n'est pas tout à fait rectiligne, car elle suppose alors que soit déterminée d'abord une direction générale de la côte entre des points qu'il faut choisir. Or c'est là, on le sait, une opération éminemment aléatoire¹¹⁹."

One might add to Professor Weil's remarks that this operation is unnecessary when the same method is applied in the other hypothesis, *i.e.* that of a line perpendicular to the closing line of a coastal indentation or of a maritime passage.

a) The Rio de la Plata Treaty signed on 19 November 1973 between Argentina and Uruguay

12.50 The Rio de la Plata Treaty is of particular interest with respect to its provisions concerning delimitation of the lateral maritime boundary¹²⁰. First, the construction is based on closure of the Rio de la Plata by an imaginary straight line joining its furthest entry points, *i.e.* Punta del Este on the Uruguayan side and Punta Rasa del Cabo San Antonio on the Argentinian side¹²¹. Second, the maritime boundary, which is therefore beyond the closing line of the Rio de la Plata, towards the open sea, may be characterised more or less interchangeably, at least along a large part of its course, as an equidistance line or as a line perpendicular to the closing line of the Rio.

12.51 It is true that Article 70 of the Treaty of 19 November 1973 provides that:

"The lateral maritime boundary and that of the continental shelf between the Oriental Republic of Uruguay and the Argentine Republic are defined by an equidistant line, determined by the adjacent coasts methods, which begins at the midpoint of the baseline consisting of an imaginary straight line that joins Punta del Este (Uruguay) and Punta Rasa del Cabo San Antonio (Argentina)¹²²."

¹¹⁹ Annex IV.231, Vol. 13, p. 263.

¹²⁰ Annex IV.268, Vol. 12, p. 149. J.I. Charney & L.M. Alexander (eds.), *op. cit.*, Vol. I, pp. 757-776.

¹²¹ This is independent of the question - which was subject to controversy for a long time in the past but which is of hardly any interest today - of whether the Rio de la Plata should be assimilated to a bay or to an estuary.

¹²² Annex IV.268, Vol. 12, p. 149.

However, although it is called an "equidistance line" in the parties' agreement, the line separating the maritime areas lying seawards of the closing line of the Rio de la Plata, which concerns both delimitation of the continental shelf and delimitation of the superjacent waters, may also be characterised as a line perpendicular to the closing line of the Rio de la Plata. This is the case at least with respect to the first section of the line, between point 23 which, according to Article 70, is equidistant from Punta del Este and Punta Rasa del Cabo San Antonio on the closing line, and point A, *i.e.* for a distance of approximately 112.7 nautical miles¹²³.

12.52 The State Department's Geographer, in his commentary upon the Rio de la Plata Treaty, taking into consideration the lack of precision in the text of the agreement concerning determination of the course of the dividing line, and in particular the fact that point 23 is not exactly the median point of the closing line of the Rio de la Plata, drew the following conclusions:

"Beyond point 23 the shelf boundary is defined in Article 70 as 'an equidistant line, determined by the adjacent coasts methods'. Since specific coordinates of this segment of the boundary are not cited in the Treaty, the continental shelf boundary on the attached chart beyond point 23 consists of provisional lines developed by the Department of State's Geographer on a U.S. chart.

From point 23 the line continues seaward as the perpendicular bisector of the Argentina-Uruguay closing line of the Rio de la Plata. Point 23 is supposed to be equidistant from the two States; a .09 nautical mile calculated discrepancy from equidistance can probably be attributed to the different charts used. While point 23 is the intended mid-point of the river closing line, it is not an equidistant point between the two States. Pta. Brava, south of Montevideo, is closer to point 23 than any other Uruguayan or Argentine territory.

The perpendicular bisecting line is the boundary until it reaches point A, approximately 112.70 nautical miles seaward of point 23. At this point the configuration of Argentina's coast would cause the true equidistant boundary to be diverted toward Uruguay. Assuming, that the phrase in the Treaty 'determined by the adjacent coasts methods...' (Article 70) means that all possible points on both coasts are to be considered in drawing the equidistant boundary, then the shelf boundary continues as the line connecting point 23 to points A, B, C, D, E, and F. If, however, the intention of the Treaty is to continue the shelf boundary seaward from point 23 as

¹²³ See, *Map No. 18*, facing this page, taken from B. Conforti, G. Francalanci, *Atlante dei confini sottomarini*, Milano, Giuffrè, 1979, p. 187.

the perpendicular bisector of the river closing line, then this is depicted on the attached chart as a dashed line to points where it is 200 nautical miles from Uruguay (UR) and from Argentina (AR)¹²⁴."

12.53 In sum, to repeat the well chosen words used by Professor Weil in his summary of the provisions of the Rio de la Plata treaty concerning delimitation of the maritime front:

"L'accord Argentine/Uruguay ... définit la ligne de délimitation au large du Rio comme une ligne d'équidistance; cette ligne aurait aussi bien pu être définie comme une perpendiculaire à la ligne imaginaire de fermeture du Rio¹²⁵."

b) The Judgment of 12 October 1984 in the *Gulf of Maine* case

12.54 In the *Gulf of Maine* case, the Chamber held that:

"The course of the single maritime boundary that divides the continental shelf and the exclusive fisheries zones of Canada and the United States of America in the area referred to in the Special Agreement concluded by those two States on 29 March 1979 shall be defined by geodetic lines connecting the points [A, B, C and D]"

of which it indicated the geographical coordinates¹²⁶. This meant that the dividing line between Canada and the United States consisted of three segments, of which the first two - segments A-B and B-C - were situated inside the Gulf of Maine and the third - segment C-D - corresponded to the delimitation outside the Gulf¹²⁷. Thus the line of delimitation drawn by the Chamber between points A and B was the bisector of a reflex angle of about 278° formed by two lines perpendicular to the two coastlines, joining the end point of the international boundary to Cape Elizabeth (United States) and to Cape Sable (Canada), respectively¹²⁸. As for the second segment of the maritime boundary, linking points B and C, it is a "corrected median line¹²⁹", the Chamber having taken into account various special circumstances (difference in length between the coasts of the two States adjoining the delimitation area, and existence of the Canadian Seal Island, which was given half effect by the Chamber) in order to modify the strict application of the equidistance method in this sector.

¹²⁴ Annex IV.268, Vol. 12, p. 149.

¹²⁵ Annex IV.321, Vol. 13, p. 263.

¹²⁶ *I.C.J. Reports 1984*, p. 345, para. 243.

¹²⁷ *See, Map No. 19*, facing this page (*I.C.J. Reports 1984*, p. 346).

¹²⁸ *I.C.J. Reports 1984*, p. 333, para. 213.

¹²⁹ *Ibid.*, p. 337, para. 223.

12.55 Finally, with respect to the third segment of the maritime boundary between points C and D, which is therefore beyond the imaginary closing line of the Gulf of Maine, the Chamber used the perpendicularity method. It considered that for this sector lying outside the Gulf:

"The portion of the line now to be determined will inevitably, throughout its length, be situated in the open ocean. From the geographical point of view, there is no point of reference, outside the actual shores of the Gulf, that can serve as a basis for carrying out the final operation required. That being so, it appears obvious that the only kind of practical method which can be considered for this purpose is, once again, a geometrical method. Within the range of such methods, the most appropriate is that recommended above all by its simplicity, namely in this instance the drawing of a perpendicular to the closing line of the Gulf¹³⁰."

12.56 Thus, the dividing line in this third sector, lying outside the Gulf proper, and linking points C and D, forms a 90° angle with the closing line of the Gulf which joins Cape Sable to the island of Nantucket. But it must be noted that, unlike at least the literal wording of the Rio de la Plata Treaty as analysed above, this C-D perpendicular does not cut the imaginary closing line of the Gulf of Maine at its mid-point. It cuts it at a point lying to the east of the mid-point, since it must not be forgotten that the second segment of the dividing line is not a strict median line, but a median line corrected in favour of the United States, since the Chamber took into account various special circumstances, as noted above¹³¹. The proportion between the lengths of the coastal fronts of the United States and Canada in the Gulf of Maine is 1.38 to 1 in favour of the United States¹³². But taking into account the half effect attributed by the Chamber to the Canadian Seal Island, the proportion to be applied in order to determine the position of the corrected median line in the second sector was "approximately 1.32 to 1 in place of 1.38 to 1¹³³". As Professor Weil has rightly pointed out, this C-D

¹³⁰ *Ibid.*, pp. 337-338, para. 224; *see*, also, the commentaries by E. Decaux (Annex IV.297, Vol. 13, p. 97); L.H. Legault & D.M. McRae (Annex IV.306, Vol. 13, p. 165); J. Schneider (Annex IV.318, Vol. 13, p. 243); *see*, also, Annex IV.290, Vol. 13, p. 53.

¹³¹ *See*, para. 12.54 above.

¹³² *I.C.J. Reports 1984*, pp. 335-336, paras. 221-222.

¹³³ *Ibid.*, p. 337, para. 222; *see*, also, the Technical Report of P.B. Beazley, *ibid.*, pp. 350-351, paras. 14-15. *See*, also, the observations of L. M. Alexander (Annex IV.290, Vol. 13, p. 53).

perpendicular "équivalent à une ligne d'équidistance contrôlée par les deux points extrêmes de la ligne de fermeture et qui aurait fait l'objet d'une translation vers l'est"¹³⁴.

C. Application of the Perpendicularity Method in the Present Case

1. Justification for use of this method of maritime delimitation

12.57 State practice and international jurisprudence thus show that when certain geographical conditions are fulfilled, the perpendicularity method allows a reasonable and equitable delimitation of maritime areas lying off a coastal concavity, be it deep or shallow, an estuary or a gulf. They also show that this method is particularly appropriate when a single maritime boundary has to be drawn, as is the case here. The technique is simple. It is sufficient to draw the line perpendicular to the imaginary closing line of the indentation concerned. As for the starting point of the seaward segment of the boundary, it corresponds to a point situated on the closing line of the concavity, which point may coincide, but does not necessarily do so, with the mid-point of the closing line¹³⁵. In fact, this starting point or, if one prefers, the base of the boundary of the seaward maritime areas, must be the same as the end point of the previous segment of the dividing line in the maritime areas where the two neighbouring States have opposite coasts, and therefore before that boundary meets the closing line. In these circumstances, as was stressed by the Chamber in the *Gulf of Maine* case, "the essential question ... to be resolved" is to determine "the precise point on the closing line of the Gulf from which the perpendicular to that line should be drawn seawards"¹³⁶. The Chamber explained its method of work in the following terms:

"However, if it is considered necessary to remain guided by geography, all the considerations already set forth in regard to the determination of the final segment of the line militate in favour of having this new choice coincide with the very point where

¹³⁴ Annex IV.321, Vol. 13, p. 264.

¹³⁵ Two commentators upon the Judgment of 12 October 1984 have remarked in this respect: "In the *Gulf of Maine* case ..., in establishing the third segment of the boundary, which divides the Atlantic area seaward of the Gulf of Maine, the Chamber drew a line perpendicular to the closing line of the Gulf. This method was used instead of equidistance because the Chamber did not wish the line in this area to commence from the midpoint of the closing line, which would have been the approximate result if the equidistance method had been employed. By using the perpendicular, in conjunction with other methods for the segments inside the Gulf, the Chamber had more freedom to adjust the starting point of the outer segment of the boundary", in J.I. Charney & L.M. Alexander (eds.), *op. cit.*, Vol. 1, p. 213.

¹³⁶ *I.C.J. Reports 1984*, p. 338, para. 226.

the corrected median line encounters the closing line of the Gulf. Indeed the Chamber has borne constantly in mind the problem of determining the final segment of the delimitation line when applying itself so meticulously to the task of establishing the previous segments. It would be unthinkable that, in that part of the delimitation area which lies outside and over against the Gulf, the dividing line should not follow or continue the line drawn within the Gulf by reference to the particular characteristics of its coasts. If one were to seek for a typical illustration of what is meant by the adage 'the land dominates the sea', it is here that it would be found¹³⁷."

12.58 The perpendicularity method used in this way to delimit the maritime areas lying beyond the closing line of a coastal concavity may be applied to similar geographical situations and also to achieve an equitable result in such situations. Indeed, it is possible to relate to the hypothesis adopted in the *Gulf of Maine* Judgment or in the Rio de la Plata treaty a geographical configuration which, while not in the strict sense of the word a gulf or an estuary, is certainly reminiscent of such a configuration. This could for example be the case for the delimitation of areas lying outside a relatively narrow maritime passage between two States with at least partially facing coasts, in which case the perpendicular is drawn from the imaginary line joining the furthest points of the land territory of the two States.

12.59 The present case, where two sectors must be geographically distinguished from each other, falls within this hypothesis¹³⁸. On the one hand there is the internal sector where the coasts of Qatar and Bahrain are directly facing each other, and on the other hand there is the sector beyond the facing coasts of the two States, in the open sea. It is quite clear that the territories of Qatar and Bahrain do not meet in the south, for example in the area of the Dawhat Salwah or at the level of the Hawar islands. In this respect they are different from the territories of Argentina and Uruguay which meet at the end of the Rio de la Plata; they are also different from the territories of Canada and the United States which are contiguous at the end of the Gulf of Maine. Nevertheless, the facing situation of Qatar and Bahrain is strangely reminiscent of the relationship between Argentina and Uruguay, at least in the widest part of the Rio de la Plata, which is delimited by the segment linking points 22 and 23 of the maritime boundary by the Treaty of 19 November 1973¹³⁹. The facing situation of Qatar and Bahrain is even more reminiscent of the relationship between Canada and the United States in

¹³⁷ *Ibid.*, p. 338, para. 226.

¹³⁸ See, paras. 12.10-12.12, above.

¹³⁹ See, *Map No. 18*, facing page 292.

the sector between Nova Scotia and Massachusetts, which is delimited by segment B-C of the maritime boundary laid down by the Judgment of 12 October 1984¹⁴⁰. Similarly, the furthest and northernmost points of Qatar and Bahrain on the land, the furthest point of the Qatar peninsula on the one side and Al Muharraq on the other, are even more significantly reminiscent of the natural points of entry of a deep coastal indentation appertaining to two different States, such points being, on either side of the Rio de la Plata, Punta del Este and Punta Rasa del Cabo San Antonio or, on either side of the Gulf of Maine, Cape Sable and the island of Nantucket, just as the imaginary line joining the northernmost point of the Qatar peninsula to Al Muharraq is reminiscent of the straight lines joining respectively Punta del Este and Punta Rasa del Cabo San Antonio and Cape Sable and the island of Nantucket.

12.60 Use of the perpendicularity method in a geographical situation such as the one between Qatar and Bahrain in the northern sector is easily justified, in view of these precedents. Indeed, to determine the course of the outer dividing line, beyond the facing situation of the two States which are Parties to the present case, "there is no point of reference" - to use the words of the Chamber in the *Gulf of Maine* case¹⁴¹ - beyond the respective coasts of Qatar and Bahrain where they are opposite each other and, in particular, beyond the end points of the closing line linking the northernmost point of the Qatar peninsula to Al Muharraq. These coasts and furthest points on the land of Qatar and Bahrain are necessarily points which must be relied upon for drawing the course of the maritime boundary between these two States in the northern sector. There can be no other points which might serve as a basis for the delimitation.

12.61 In these circumstances, to quote once again from the Judgment of 12 October 1984¹⁴², "it appears obvious that the only kind of practical method which can be considered for this purpose is ... a geometrical method" and, within the range of methods of this type, "the most appropriate is ... the drawing of a perpendicular to the closing line" of the area where Qatar and Bahrain are opposite, which would be the imaginary line linking the northernmost point of the Qatar peninsula to Al Muharraq. This perpendicularity method is recommended, as was

¹⁴⁰ See, *Map No. 19*, facing page 293.

¹⁴¹ *I.C.J. Reports 1984*, p. 337, para. 224.

¹⁴² *Ibid.*, pp. 337-338, para. 224.

stressed by the Chamber, "above all by its simplicity"¹⁴³. It is also recommended insofar as it ensures an objective basis for the course of the maritime boundary between Qatar and Bahrain in the northern sector. In their commentary on the *Gulf of Maine* case and the delimitation adopted by the Chamber in the third sector beyond the line from Cape Sable to the island of Nantucket, two authors remarked that:

"... the open sea beyond [the concavity] should be delimited by a line perpendicular to the closing line of the concavity. Such a formula provides an objective means of delimitation and can be applied to any deep coastal concavity, no matter where the land boundary terminus is located within the concavity"¹⁴⁴.

The same authors concluded their analysis by stating that "The specific contribution of this case may well be the guidance that it provides for the delimitation of a deep coastal concavity"¹⁴⁵. This conclusion covers equally well the delimitation of maritime areas which extend seawards a relatively narrow maritime passage between two States with facing coasts, as is precisely the case in the northern sector of the delimitation area between Qatar and Bahrain.

2. Technical implementation of the perpendicularity method in the present case

12.62 The single maritime boundary between Qatar and Bahrain in the northern sector must necessarily pass through point BLV. Indeed, this point, which is the end point of the 1947 line, is, as has been shown above, a circumstance of the greatest relevance in the maritime delimitation between the two States¹⁴⁶. Up to the turning point of BLV, the boundary corresponds to the line laid down by the 1947 decision. Therefore, beyond the area where Qatar and Bahrain are directly opposite each other, it is the course of the British line that links points N, NSLB and BLV, as shown on *Map No. 20*, facing this page, the geographical coordinates of which are respectively, for N, longitude 50°48'31"E and latitude 26°15'02"N; for NSLB, longitude 50°49'48"E and latitude 26°21'24"N; and for BLV, longitude 50°57'30"E and latitude 26°33'35"N. Beyond this turning point, in order to link BLV to the median line

¹⁴³ *Ibid.*, p. 338, para. 224.

¹⁴⁴ Annex IV.306, Vol. 13, p. 165.

¹⁴⁵ *Ibid.*

¹⁴⁶ *See*, para. 12.5, above.

established in the central part of the Gulf by the above-mentioned delimitation agreements concluded between Qatar and Bahrain on the one hand and Iran on the other hand, the boundary must be drawn in accordance with the perpendicularity method¹⁴⁷. This construction is based on the following two elements.

12.63 The construction of the perpendicularity method in the northern sector is based first of all on the closing line of the area where Qatar and Bahrain have facing coasts, which, as has been seen above, links on Qatar's side the northernmost point of the Qatar peninsula and, on Bahrain's side, the northernmost point of Al Muharraq¹⁴⁸. This is the line linking points RK and MQ, shown on *Map No. 20* facing the previous page, the geographical coordinates of which are longitude 51°12'02"E and latitude 26°09'25"N for RK and longitude 50°37'54"E and latitude 26°17'15"N for MQ. The choice of point RK as a basis for the closing line on the Qatari side has been made out of a desire to be strictly consistent with the position that is always taken in the present Memorial, that no account should be taken of islands, islets, rocks and low-tide elevations in drawing the dividing line¹⁴⁹. Qatar could have put forward serious arguments in favour of the island of Ras Rakan, which would have been more favourable to it insofar as this point would have moved the closing line of the area where the coasts of Qatar and Bahrain are opposite by approximately 2° northwards, and consequently would have moved westwards the perpendicular to that line. As for the choice, on the Bahraini side, of point MQ on the island of Al Muharraq, it is justified by the same desire for consistency, insofar as Al Muharraq, unlike Ras Rakan in relation to Qatar, may be considered as part of the main Bahrain island and as forming with it one and the same territory¹⁵⁰, since it "lies close off the NE extremity of Al Bahrayn to which it is connected by a stone causeway and a road bridge¹⁵¹".

12.64 The second element upon which the construction is based is the drawing of a perpendicular to the line previously established, linking the north of the Qatar peninsula to Al

¹⁴⁷ See, para. 12.39, above.

¹⁴⁸ See, paras. 12.10 and 12.59, above.

¹⁴⁹ See, paras. 12.31-12.32, above.

¹⁵⁰ As noted by the *Persian Gulf Pilot*, "Ra's Rakan (26°11'N, 51°13'E) is the NW extremity of a low sandy islet which lies about 1 1/4 miles off the N extremity of Al Qatar; the reef between the islet and the mainland dries" (Annex II.1, Vol. 3, p. 35).

¹⁵¹ *Ibid.*, p. 38.

Muharraq. This is simply a question of drawing a line at right angles to the line from RK to MQ, passing through BLV and finally reaching the Gulf median line established by treaty in the central part of the Gulf. The starting point of this perpendicular on the closing line RK-MQ of the area where Qatar and Bahrain are opposite corresponds to point R, which is shown on *Map No. 20*, facing page 298, and whose geographical coordinates are longitude 50°52'28"E and latitude 26°14'12"N. As for the end point of this perpendicular, at its intersection with the Gulf median line, it corresponds to point S on *Map No. 20*, the geographical coordinates of which are longitude 51°05'12"E and latitude 27°03'04"N. Point S is located approximately 1270 metres (to be precise, 1271.97 m) to the west of point 2B on *Map No. 21*, facing this page, which corresponds to point 2¹⁵² laid down by the agreement for delimitation of the continental shelf signed on 17 June 1971 between Bahrain and Iran, the geographical coordinates of which are longitude 51°05'54"E and latitude 27°02'46"N¹⁵³. The proximity between point S, which is the end point of the perpendicular, and point 2B of the 1971 agreement is striking, the distance of 1270 metres being quite insignificant, given the degree of accuracy of the construction. Thus, for the sake of simplicity, point S can be moved to point 2B, and consequently the last segment of the dividing line, BLV-S, can be moved to the BLV-2B segment¹⁵⁴. In a manner of speaking, this operation performs itself, by a simple rounding-up, and the line from BLV to 2B remains perfectly in harmony with the spirit of the method of perpendicularity, especially since the extension of segment 2B-BLV of the dividing line is practically perpendicular (to the accuracy of 1°) to the closing line, from point RK to

¹⁵² See, *Map No. 20*, facing page 298.

¹⁵³ Annex IV.264, Vol. 12, p. 111. The latter coordinate is subject, naturally, to the correction by one second which must be made to the determination of the latitude of this point (para. 12.39, note 90, above). The exact coordinates of point 2 are therefore longitude 51°05'54"E and latitude 27°02'47"N, and not 27°02'46", as indicated by the 1971 agreement. It will also be noted that point 2 is particularly remarkable, since it may be considered as being, at least approximately, equidistant from each of Bahrain, Iran and Qatar. First, this point is located, as the Department of State's Geographer has noted, "nearly the same distance from Bahrain and Qatar" and is "in fact" an equidistant point, since it is located 51.2 nautical miles from an islet to the north of Al Muharraq and 50.7 nautical miles from the Iranian island of Nakhilu. If the same calculation is made following the method which is consistently used in the present Memorial, *i.e.*, without taking into account islands, islets, rocks or low-tide elevations, and starting from the high water level, it will be seen that point 2 is located 51.85 nautical miles or 96,032 metres from Al Muharraq and 101,838 metres or 55.0 nautical miles from the Iranian coast (Ras Jabrin). Second, point 2 is similarly roughly equidistant from Bahrain and Qatar, since it is located 53.81 nautical miles or 99,671 metres from the northernmost point of the Qatar peninsula, this calculation being made on the basis of the same principles as before. It may therefore be considered that point 2 is a tripoint at practically the same distance from Qatar, Iran and Bahrain or, at the very least, that it is more significant than any other point on the Gulf median line established by the agreements between Qatar and Iran and Bahrain and Iran in 1969 and 1971, respectively.

¹⁵⁴ Point 2B could become, with Iran's agreement, the Qatar/Iran/Bahrain tripoint (*see*, para. 12.42 above and para. 12.72, below).

point MQ, of the area where Qatar and Bahrain have opposite coasts. The base of the BLV-2B line on RK-MQ corresponds in fact to point T on *Map No. 21*, facing the previous page, the geographical coordinates of which are longitude 50°51'59"E and latitude 26°14'18"N. And point T is approximately 800 metres (to be precise, 822.24 metres) to the west of point R, which corresponds, as has already been mentioned, to the base of the BLV-S perpendicular on RK-MQ. The shifting effect - 800 metres at the starting point of the construction (R-T) and 1300 metres at its end point (S-2B) - is practically negligible at the scale of the construction. Qatar concludes in these circumstances that the extension of the 1947 line for the segment BLV-2B is a technically simple line which results in a reasonable delimitation, the equity of which is confirmed *a posteriori* by proportionality calculations.

D. The *a posteriori* Verification of the Equity of the Result thus obtained in the Northern Sector

12.65 In the earlier discussion in this Chapter, Qatar has stressed the disparity and disproportion between the respective lengths of the coastal fronts of the Parties to the present dispute¹⁵⁵. It has also recalled the use of the principle of proportionality by the jurisprudence to evaluate the equity of the result of a maritime delimitation after implementation of the method resulting from equitable principles, taking the relevant circumstances into account¹⁵⁶. In the submission of Qatar, it is therefore not a question of making a direct division of the delimitation area in the northern sector in proportion to the length of the Parties' coasts, but only of using the idea of proportionality as a test of the equity of the delimitation once it has been made. Consequently, for Qatar, proportionality is, as the Chamber stated in the *Gulf of Maine* case:

"... a means of checking whether a provisional delimitation established initially on the basis of other criteria, and by the use of a method which has nothing to do with that concept, can or cannot be considered satisfactory in relation to certain geographical features of the specific case¹⁵⁷."

¹⁵⁵ See, paras. 12.30-12.32, above.

¹⁵⁶ See, paras. 12.33-12.36, above.

¹⁵⁷ *I.C.J. Reports 1984*, p. 323, para. 185.

In the present case, proportionality allows the checking of the equity of the result of the delimitation performed in the northern sector on the basis of the perpendicularity method or, more precisely, the equity of the single maritime boundary to the north of the area where the Parties have directly opposite coasts, linking points N, NSLB, BLV and 2B (*Map No. 20*, facing page 298). It allows this verification taking into account the ratio between the lengths of the relevant coastal fronts of the Parties and the size of the maritime areas appertaining to them. But this verification presupposes that before comparing the ratios, the delimitation area in the northern sector must be accurately defined.

1. The delimitation area in the northern sector

12.66 In the *Gulf of Maine* case, the Chamber stated that "the concept of the delimitation area ... is a legal concept, albeit one developed against the background of physical and political geography¹⁵⁸". On this basis, how is the delimitation area in the northern sector to be defined in the present case? Its southern limit clearly corresponds to the closing line of the area where Qatar and Bahrain are directly opposite each other, which has been referred to several times¹⁵⁹, and which links points RK and MQ, *i.e.*, the northernmost point of the Qatar peninsula and of the island of Al Muharraq (*Map No. 22* facing this page). The northern limit of the delimitation area is just as obvious: it is the continental shelf boundaries which were established by the agreements between Qatar and Iran of 1969 and between Bahrain and Iran of 1971¹⁶⁰. As for its eastern and western limits, they correspond to the lines drawn at a right angle from the furthest points of the closing line of the area where Qatar and Bahrain are opposite, *i.e.*, from point RK, at the northernmost point of the Qatar peninsula and from point MQ on Al Muharraq.

12.67 More precisely, the eastern limit of the area in dispute links point RK and point WQ (*Map No. 20*, facing page 298) at the point of intersection of the continental shelf boundary established by the agreement between Qatar and Iran of 1969. Point WQ, the geographical coordinates of which are longitude 51°28'15"E and latitude 26°59'32"N, is located approximately 8900 metres (to be precise, 8910.96 metres) to the east of point 2 of the

¹⁵⁸ *I.C.J. Reports 1984*, p. 272, para. 41.

¹⁵⁹ *See*, paras. 12.10 and 12.63, above.

¹⁶⁰ Annexes IV.260 and IV.264, Vol. 12, pp. 81 and 111.

dividing line fixed by the Qatar/Iran agreement (*Map No. 22*, facing the previous page)¹⁶¹, the geographical coordinates of which are longitude 51°23'00"E and latitude 27°00'35"N¹⁶².

12.68 The western limit of the disputed area in the northern sector has two segments. The first segment links point MQ and point WB on *Map No. 22*, facing the previous page, at the intersection of the continental shelf boundary established by the Bahrain/Saudi Arabia agreement of 22 February 1958¹⁶³, the geographical coordinates of point WB being longitude 50°50'10"E and latitude 27°04'42"N¹⁶⁴. The second segment of the western limit corresponds to the line WB-4B on *Map No. 20*, facing page 298, and is the northernmost part of the boundary under the Bahrain/Saudi Arabia agreement of 24 October 1958, point 4B being point 4 of the Bahrain/Iran agreement of 1971¹⁶⁵ and point 1 of the Iran/Saudi Arabia agreement of 24 October 1968¹⁶⁶, *i.e.*, the Bahrain/Iran/Saudi Arabia tripoint, the geographical coordinates of which are longitude 50°54'00"E and latitude 27°10'00"N¹⁶⁷.

12.69 This definition of the delimitation area in the northern sector is readily justifiable. Its southern and northern limits are self-evident. As for its eastern and western limits, they have the merit of being logical, given their strict symmetry over the greater part of their course, but also insofar as the chosen method of delimitation, based on perpendicularity, is also a geometrical method. The delimitation area is perfectly suited to the geographical conditions of the region. In particular, it takes into consideration the dissymmetry in the respective positions of Qatar and Bahrain and in the greater thrust forward or, if one prefers, in the overtaking, in their projection northwards, of Bahrain and Al Muharraq in relation to the northernmost point of Qatar¹⁶⁸.

¹⁶¹ Annex IV.260, Vol. 12, p. 81.

¹⁶² In the delimitation agreements between Iran and Bahrain and Iran and Qatar, several numbered points are identified along the line of delimitation. These are indicated on *Map No. 22*, facing the previous page, as points 2, 3 and 4 on the Iran/Bahrain line and 2 and 3 on the Iran/Qatar line. For ease of reference in the text of this Memorial, these points are from time to time referred to, for example, as 4B on the Iran/Bahrain line and 2Q on the Iran/Qatar line.

¹⁶³ Annex IV.262, Vol. 12, p. 95; *Map No. 22*, facing the previous page.

¹⁶⁴ Point WB is located on the last segment of the boundary under the Bahrain/Saudi Arabia agreement of 1958, 11,455 metres to the north-east of point S14, the geographical coordinates of which are longitude 50°46'24"E and latitude 26°59'30"N.

¹⁶⁵ Annex IV.264, Vol. 12, p. 111.

¹⁶⁶ Annex IV.258, Vol. 12, p. 71.

¹⁶⁷ *See*, para. 12.40, above.

¹⁶⁸ The general orientation of the delimitation area towards the north-north-east is not favourable to Qatar. However, Qatar does not want, under cover of equity, to make an adjustment to the dividing line N,

2. Proportionality between the lengths of the coastal fronts and the size of the maritime areas

12.70 On the basis of the above definition of the delimitation area in the northern sector, which links - as shown on *Map No. 23*, facing this page - points RK, N, MQ, WB, 4B, 3B, S, 2B, 2Q, WQ and RK, the overall surface area is approximately 5215.11 km². The surface area of the maritime areas lying to the east of the dividing line linking points N, NSLB, BLV and 2B, corresponding to the polygon RK, N, NSLB, BLV, 2B, 2Q, WQ, RK attributed to Qatar, is approximately 2,978.6 km². As for the surface area of the maritime areas lying to the west of the same dividing line and corresponding to the polygon MQ, N, NSLB, BLV, 2B, 3B, 4B, WB, MQ attributed to Bahrain, it is approximately 2,336.51 km². Thus, the ratio between the sizes of the maritime areas on either side of the boundary proposed by Qatar in the northern sector is 1.68 to 1 in favour of Qatar.

12.71 It is true that these figures do not coincide exactly with the ratio between the respective lengths of the coastal fronts of the Parties which, as has been established above, is 1.59 to 1 in favour of Qatar¹⁶⁹. However, the fact remains that the equity test of the dividing line N, NSLB, BLV, 2B is quite conclusive for the following reasons. First, it should be noted that the ratio of coastal lengths (1.59) is not very far distant from the ratio of surface areas corresponding to the dividing line established by Qatar (1.68). The difference is only in the region of 6%, which in itself is very little in the light of the constructions and, in any event, does not allow the conclusion that the boundary is inequitable; there is no real disproportion between the respective values of 1.59 and 1.68. Moreover, if one defines the dividing line on the basis of the ideal ratio between coasts and surface areas (1.59) and if one draws it on the same map to compare it with the dividing line proposed by Qatar, one cannot fail to see that

NSLB, BLV, 2B that it is proposing in application of the perpendicularity method, since this would be "refashioning geography" (para. 12.28, above). It may be recalled in this connection that in the Anglo-French case, the Arbitral Tribunal held that in the Atlantic region, the presence of the Scilly Isles to the west-south-west of Cornwall would cause quite a marked deviation of the equidistance line, and that it should therefore be a "special circumstance" within the meaning of Article 6 of the 1958 Convention on the Continental Shelf, "justifying a boundary other than the strict median line" (Annex IV.287, Vol. 13, p. 29).

¹⁶⁹ See, para. 12.32, above, and Appendix 6, Vol. 15, p. 143.

the balancing point thus obtained, at the intersection of the boundary established by the agreements concluded by the Parties with Iran in the central part of the Gulf, corresponds to point EQ on *Map No. 23*, facing the previous page, the geographical coordinates of which are longitude 51°07'44"E and latitude 27°02'32"N¹⁷⁰. And point EQ - which, it bears repeating, would be the end point of the dividing line established on the basis of the exact ratio between the respective coastal lengths of the Parties (1.59) - is only about 3000 metres (to be precise, 3054 metres) to the east of point 2B, which, again, is about 1270 metres from point S¹⁷¹. This means that the final segment, beyond BLV, of the single maritime boundary in the northern sector, as proposed by Qatar - *i.e.*, segment BLV-2B - is in a manner of speaking framed on the one hand by the BLV-S segment, which corresponds to a strict application of the perpendicularity method, and on the other hand by the BLV-EQ segment, which corresponds to a strict application of the proportionality method. This means that the proportionality test performed in this way is sufficient to permit the conclusion that the N, NSLB, BLV, 2B line is equitable.

3. Conclusion

12.72 The *a posteriori* verification made on the basis of proportionality calculations allow Qatar to conclude that the only means of reaching an equitable solution for the delimitation of the maritime areas lying beyond the area where the Parties' coasts are opposite is to draw a single line for the continental shelf and fishing zones, linking points N, NSLB, BLV and 2B, and thus comprising two segments. The first segment, N, NSLB, BLV, is the part of the boundary defined by the 1947 British decision, lying beyond the area where Qatar and Bahrain are opposite. As for the second segment, BLV-2B, it corresponds to the perpendicular from BLV on the line RK-MQ, it being understood that this perpendicular has been slightly modified so that the end point of the boundary in the northern sector can coincide with point

¹⁷⁰ The ideal dividing line with regard to the proportionality calculations should in this case correspond to the line N, NSLB, BLV, EQ.

¹⁷¹ See, para. 12.64, above.

2B. Point 2B, the geographical coordinates of which are longitude 50°05'54"E and latitude 27°02'47"N¹⁷², is indeed a very significant reference point in the maritime delimitations in the area, not only because it is a turning point on the continental shelf boundary established by the Bahrain/Iran agreement of 1971, but also because it is the Qatar/Iran/Bahrain tripoint, being "in fact" equidistant from the coasts of those three countries¹⁷³.

¹⁷² See, para. 12.39, footnote 90, above.

¹⁷³ See, para. 12.42 and para. 12.64, above.

PART V

SUBMISSIONS

In view of the above, the State of Qatar respectfully requests the Court, rejecting all contrary claims and submissions:

- I. To adjudge and declare in accordance with international law:
 - A.(1) That the State of Qatar has sovereignty over the Hawar islands;
 - (2) That Dibal and Qit'at Jaradah shoals are low-tide elevations which are under Qatar's sovereignty;
 - B.(1) That the State of Bahrain has no sovereignty over the island of Janan;
 - (2) That the State of Bahrain has no sovereignty over Zubarah;
 - (3) That any claim by Bahrain concerning archipelagic baselines and areas for fishing for pearls and swimming fish would be irrelevant for the purpose of maritime delimitation in the present case;
- II. To draw a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain on the basis that the Hawar islands and the island of Janan appertain to the State of Qatar and not to the State of Bahrain, that boundary starting from point 2 of the delimitation agreement concluded between Bahrain and Iran in 1969 (51°05'54"E and 27°02'47"N), thence proceeding in a southerly direction up to BLV (50°57'30"E and 26°33'35"N), then following the line of the British decision of 23 December 1947 up to NSLB (50°49'48"E and 26°21'24"N) and up to point L (50°43'00"E and 25°47'27"N), thence proceeding to point S1 of the delimitation agreement concluded by Bahrain and Saudi Arabia in 1958 (50°31'45" and 25°35'38"N). The line claimed by Qatar is illustrated on *Map No. 24*, facing this page.

(Signed)

Dr. Najeed ibn Mohammed Al-Nauimi
Minister of Justice
Agent and Counsel of the State of Qatar

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