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International Court
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YEAR 2000

Public sitting

held on Tuesday 27 June 2000, at 10 a.m., at the Peace Palace,

President Guillaume presiding

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

VERBATIM RECORD

ANNÉE 2000

Audience publique

tenue le mardi 27 juin 2000, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président

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

COMPTE RENDU

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

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

M. Couvreur, greffier

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Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte et je donne la parole pour l'Etat de Bahreïn à M[e] Jan Paulsson.

Mr. PAULSSON: Thank you Mr. President.

A SUMMARY OF BAHRAIN'S POSITION ON ISSUES OF SOVEREIGNTY

1. Bahrain believes that it is convenient, at the outset of its final rounds of pleadings, to present to the Court a summary of its contentions with regard to issues of sovereignty.

2. At the most general level, these issues fall into three categories: first, the Hawar Islands. Second, the Zubarah region. And third, the remaining islands and features which both sides agree may attract territorial sovereignty.

3. The reason the Hawar Islands are in a special category is of course that they were the subject of an unambiguous decision rendered by Britain in 1939.

4. Bahrain's position with respect to the Hawars is founded on four fully established propositions, all consistent with each other, and *each sufficient in and of itself* to prove Bahrain's sovereign title over the islands. These simple four propositions are the following. I know from experience that while some judges and arbitrators find this kind of visual outline to be useful, others find them to be an irritating distraction which should remain in the world of television advertising, where it belongs. I am a pragmatist, Mr. President, so may I say that this visual depiction of Bahrain's architecture of its thesis is there *pour ceux qui voient*, others are very welcome to disregard the visual aids and to concentrate on the spoken word. The four propositions are:

(1) *Uti possidetis juris*;

(2) *Res judicata;*

(3) Original title;

(4) Effective and continuous manifestations of sovereign authority.

5. It is Bahrain's respectful submission that once the Court gives effect to the principle of *uti possidetis juris*, as it should, Bahrain's right to the Hawar Islands will be maintained, and it becomes unnecessary to examine whether the 1939 decision is *res judicata.*

6. Similarly, if for purposes of argument one sets aside *uti possidetis*, then the effect of *res judicata* favours Bahrain and makes it unnecessary to go on to examine the issue of prior title. Finally, it is only if in some extraordinary way Bahrain is considered to have lost its original title that the Court needs to consider the *effectivités*, effective and continuous display of authority.

7. These arguments are not necessarily presented in the order of their importance, but as a matter of their logical sequence. The Court does not need to look back further than 1971, so we begin there. If not 1971, then the Court need look no further back than to 1939. But as Bahrain has said many times, even if there had been no British determination of Bahraini sovereignty over the Hawars the situation would be the same in view of the overwhelming evidence of the social and administrative integration of the Hawar Islands into the history, and therefore into the identity, of the nation of Bahrain.

1. *Uti possidetis*

8. Still, in principle and in logic, *uti possidetis juris* should be the alpha and the omega. It therefore appears worthwhile to consider the basic nature and effect of this principle. My colleague Fathi Kemicha will deal with it in somewhat greater detail, but for the purposes of this overview it is important to distinguish it from the separate principle of *res judicata*.

9. The following formulation seems uncontroversial:

> "the line that is protected is that in existence at the moment of independence and not that existing at some unclear point in the past. Any other approach would import considerable instability into an already sensitive political situation."[1]

10. So what was the line "in existence at the moment of independence" in the present case? There can be no doubt the line lay between the Hawar Islands and the Qatar peninsula, this is where Britain, as the dominate power drew the line, and this is the line that must be respected, whether by application of the principle of *uti possidetis*, or as a matter of *res judicata*, or one of title established on a clean slate by reference to an over-abundance of display of authority.

11. For the purposes of *uti possidetis juris,* the line in existence at the time of Bahrain's full independence in 1971 *does not have to be justified.* As has often been pointed out, many colonial borders are open to moral criticisms; the rule of *uti possidetis* upholds such boundaries simply

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[1]Malcolm Shaw, "The Heritage of States: the Principle of *Uti Possidetis Juris* Today", *BYBIL 1996*, pp. 75, 113.

because they existed; their perpetuation serves the higher purpose of maintaining peace. The Chamber of this Court put it this way in the *El Salvador/Honduras* case: "when the principle of *uti possidetis juris* is involved, the *jus* referred to is not international law but the constitutional or administrative law of the pre-independence sovereign"[2]. So in the case of the Hawar Islands, as long as the situation was clearly disposed of by the British administration, for whatever reason, good or bad, the issue of title begins and ends right there. There is no need to consider *effectivités,* because there is no doubt as to the scope of the territory Britain attributed to Bahrain.

12. The only possible issue relating to the Hawars concerns Janan, and on that issue the Chamber in *El Salvador/Honduras* held, in conformity with a *jurisprudence constante*, that in the case of small uninhabited islands sovereignty should be resolved consistently with that of immediately adjacent larger islands[3]. As Judge Huber puts it in *Island of Palmas*[4]: "it is possible that a group may under certain conditions be regarded in law as a unit, and that the fate of the principal part may involve the rest". In our case, Qatar's own Memorial relies on a passage from Lorimer, whose geography is not controversial, which declares that the main island of Hawar is "adjoined" by Janan[5].

13. Britain determined in 1939 that the Hawars belonged to Bahrain. Britain rebuffed objections by the Sheikh of Qatar by responding that the matter was settled[6]. That outcome stood undisturbed when the two States were allowed to resume full international responsibility as sovereign and independent States. It does not matter whether the 1939 decision was an arbitral award or something else. It does not matter whether the 1939 decision contradicted prior opinions of British officials (which Bahrain does not believe to have been the case). What matters is that this was unquestionably the delimitation which the two States, Bahrain and Qatar, inherited when they resumed their full independence in 1971.

14. Nor does conduct matter, nor indeed *effectivités*. As was stated in *Burkina Faso/Mali*: "Where the act corresponds exactly to the law, where effective administration is additional to the

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[2] *I.C.J. Reports 1992*, p. 559.

[3] *I.C.J .Reports 1992*, pp. 270 and 579.

[4] 2 *UNRIAA*, 831 at 855.

[5] Memorial of Qatar, p. 68, para. 5.38.

[6] Counter-Memorial of Bahrain, p. 118, para. 118.

uti possidetis juris, the only role of the *effectivités* is to confirm the exercise of the right derived from a legal title."[7] What is that legal title in our case? Quite obviously: the title derived from the application of *uti possidetis juris*. All the *effectivités* are Bahraini *effectivités*. "The act corresponds exactly to the law." We therefore do not get into the second hypothesis envisaged by the *Burkina Faso/Mali* case, namely administration by the non-title-holding State. In the present case, such a situation would have arisen if we imagine that Qatar had occupied the Hawars sometime after 1971 — i.e., after the restoration of full independence of the two States — and in that case, according to the *Burkina Faso/Mali* decision, "preference should be given to the holder of the title" and this, no matter how much Qatar would like to believe the contrary, must be Bahrain: the preference is given to the State which receives title (i) at the date of full independence and (ii) by virtue of *uti possidetis juris*.

15. As Professor Shaw concludes in his comprehensive recent study on "The Heritage of States: The Principle of *Uti Possidetis Juris* Today"[8], the *uti posseditis* line is the one established by the previously dominant power "by virtue of a positive act of legislative or administrative authority or as a consequence of a series of relevant and authoritative acts".

Who can doubt that Britain as the dominant authority, until the restoration of full independence in 1971, had determined that the Hawars belonged to Bahrain?

16. What you see now on the screen and at tab 117 of your judges' folder, is a map which Bahrain included in the body of its first Memorial, in 1996[9]. This is Map H-6C published by the Director of Military Survey of the United Kingdom. It was published in 1972, that is to say just after the dates which are celebrated as the national holidays of independence in Bahrain and Qatar. The international boundary is unmistakable. The respective "heritage" of independent Bahrain and independent Qatar is clear.

17. Incidentally, you will note that the legend on this map indicates four types of roads, from divided highways to simple tracks or trails. I do not need to tell the Court that military maps tend to be very careful about the existence of roads. On the peninsula just across from the Hawars there

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[7] *I.C.J. Reports 1986*, p. 586.

[8] 1996 *BYBIL* 75, at 152.

[9] Memorial of Bahrain, p. 164.

is no indication of any road: whether primary, secondary, or indeed "tracks or trails". As Bahrain has always maintained, this was an empty space — even in 1972, and indeed it is hardly more than that even today.

18. I would in this connection remind the Court that this map confirms the pages from the edition of *Al Munjid* published in 1975 which you saw in the course of the first round. The Hawar Islands are defined as belonging to Bahrain; the international border is clearly indicated to lie between the Hawars and the Qatari coast; and indeed we find no roads within Qatar anywhere in the proximity of the Hawars.

19. That is all there is to it. In the second round of its pleadings, Qatar has, in Bahrain's view, sought to confuse both the principle of *uti possidetis* and its application. With your permission, my colleague Fathi Kemicha will, in a few moments, set matters straight in rebuttal. The result of his rebuttal will, in Bahrain's respectful submission, be that the Court will readily acknowledge Bahrain's title to the Hawar Islands on the first principle that I have stated in these simple terms.

2. *Res judicata*

20. It is only if the Court, *par impossible*, should disregard *uti possidetis juris* with respect to the Hawar Islands that the issue of the status of the 1939 Award needs to be addressed.

21. In its second round of pleadings, Qatar has made a number of both factual and legal submissions which Bahrain wishes to rebut.

22. Almost all of Professor Salmon's argument in the second round, on 20 June, focused on negotiations in the mid-1960s relating to an arbitration which Qatar wished to initiate. The issues Qatar wished to debate in such an arbitration included title to the Hawar Islands. Britain agreed that there *could* be such an arbitration, provided that Bahrain also consented. Qatar argues that this shows that Britain implicitly accepted that the 1939 decision was not a *res judicata*. This is a *non sequitur*. Britain was merely acknowledging an elementary principle: Bahrain's consent was required for the *res judicata* to be reopened.

23. Indeed, this argument takes much less time *to refute* than it took to be constructed. What was being discussed in the mid-1960s was not the dispute that had been resolved already in 1939.

It was a far broader dispute, involving principally Bahrain's claim to Zubarah as well as controversy over various pearling banks. These were issues about which *Bahrain* had for many years sought to be heard, because Bahrain never accepted that title to Zubarah could follow from the armed aggression in 1937. A debate on this subject was not an attractive proposition for Qatar. So, as a counterweight, Qatar raised the matter of the Hawar Islands. Britain's reaction was entirely unremarkable. This would have been an issue, as part of the wider dispute, as to whether the 1939 decision had, or had not, disposed of the issue of sovereignty over the Hawars. It would have been in the nature of a *"specific, express, additional"* submission agreement of the type Professor Reisman discussed on 9 June[10]. If this is what Qatar wanted to debate, *and if Bahrain had agreed to that debate*, there was no reason whatever for *Britain* not to accept it.

24. But Bahrain did not agree to relitigate the Hawar decision.

25. And so the Hawar decision remained. As we have seen, that decision certainly remained as part of the British conception of the fully independent Bahrain which Britain restored in 1971. And so it remains today.

26. There are some *factual* submissions by Qatar regarding the 1939 decision, which I have been asked to deal with in a separate presentation later this morning; Professor Reisman will then answer Qatar's legal contentions concerning *res judicata*.

3. Original title

27. "Original title" is not a term of art, but merely a way of saying that if the Hawars do not appertain to Bahrain as a result of independence in 1971, nor as a result of the British Award of 1939, Bahrain nevertheless had prior title — and not Qatar.

28. This debate is not one which the Court will find in the Memorials and Counter-Memorials. It is one which emerged tentatively in Qatar's Reply, and then appeared full-blown as a fundamental part of Qatar's case when these oral proceedings commenced.

29. This development is directly traceable to the disappearance of the 82 documents. As long as Qatar thought it could rely on those documents, Qatar was prepared to debate with Bahrain on the terrain of *effectivités*. Qatar's original argument was that it could establish its title to the

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[10]CR 2000/12, pp. 46-48, paras. 9-14.

Hawars on the basis of evidence similar to that which Bahrain has brought before this Court. The only problem, of course, was that the documents were forged, and Qatar had to abandon them. At that point, quite suddenly, Qatar began to argue that this kind of proof is of no value anyway — it is insufficient to establish title. Like the fox in Aesop's fable, once it found that the grapes were beyond its grasp, Qatar began to say that they are sour. Sir Elihu Lauterpacht addressed you on this subject in the first round[11]. He pointed out that Qatar should be held to the criteria of probative value which it implicitly but unmistakably had supported at the time it was putting forth alleged evidence of its own alleged *effectivités*. Bahrain has heard no answer from Qatar to Sir Elihu's argument.

30. Instead, Qatar has conceived a new theory of original title, a purely abstract notion which Qatar seems to hope will miraculously cover up the fact that it has no evidence whatever of ever having extended its authority to the Hawar Islands.

31. But once one examines this thesis of original title, it reveals itself to be favourable to Bahrain.

32. Qatar has conceded on many occasions — and most prominently in paragraph 5 of its Application to this Court in July 1991 — that at least up to 1868 all of the Qatar peninsula was under Bahraini authority. Bahrain fully accepts that Qatar subsequently established itself as a political entity, first in Doha and subsequently elsewhere on the peninsula, and that as a result Bahrain relinquished sovereignty over an ever larger area.

33. But as was the case with respect to Zubarah, Bahrain never relinquished title to the Hawar Islands.

34. Qatar now says that the British somehow ceded the Hawars to Qatar. Bahrain has two answers:

(1) The record, as Sir Elihu Lauterpacht will demonstrate tomorrow morning, does not support the conclusion that Britain purported to assign the Hawars or for that matter Zubarah, or for that matter any other places in the Gulf of Bahrain to a new Qatari political entity.

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[11]CR 2000/11, p. 11, para. 7; see also pp. 13-14, paras. 11-13.

(2) Moreover, Britain was not the title-holder; and one can only alienate what one has. *Nemo dat que non habet.*

35. Bahrain need not prove that it had original title to the Hawars, because Qatar has conceded that Bahrain had original title. It was for Qatar to have proved that it wrested title away from Bahrain in 1868 or afterwards, and this, as Sir Elihu will explain in greater detail, Qatar has failed to do.

4. Effective and continuous manifestations of sovereign authority

36. In the written phase of these proceedings, Qatar produced nearly 8,900 pages of memorials and exhibits. Bahrain produced just over 2,300 pages. Yet despite having submitted four times more paper than Bahrain did, Qatar still has come up with not a single item of evidence of the "effective display of authority" — *at any time whatsoever.*

37. So history repeats itself. The reasons given when Britain acknowledged Bahrain's title to the Hawars in 1939 included, predominantly, the following:

> "To sum up. The Shaikh of Qatar has produced no evidence whatsoever. He relies solely on an uncorroborated assertion of sovereignty, on geographical propinquity and on the alleged statements of certain unidentified persons."[12]

38. Sixty years later, with all the resources imaginable at its disposal including a legal team of the highest ability and inventiveness, Qatar has not been able to come up with anything more than Sheikh Abdullah (or for that matter Mr. John Skliros of PCL) was able to present back then.

39. One could hardly imagine a better illustration of the wisdom of the principle that settled matters should not be relitigated. Qatar has offered nothing new. It just wants another roll of the dice.

40. Qatar's reliance on "natural borders" is but a new way of repeating the proximity argument. To say that Qatar should encompass the territory it now desires because Qatar should be coextensive with the physical peninsula — and everything within its territorial waters — is nothing more than a restatement of this proximity argument.

41. There are, of course, numerous examples of neighbouring political systems which have emerged as independent one from the other although there is no natural border between them.

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[12]Report of Sir Hugh Weightman, 22 April 1939, Ann. 281, Memorial of Bahrain, Vol. 5, p. 171, para. 13.

Conversely there are numerous examples of important natural features such as rivers or mountain ranges which have not hindered people on both sides from forging a common national destiny.

42. Thus, one of the consultants which Qatar itself has relied on this case[13], Professor Prescott, wrote almost a quarter of a century ago:

> "The idea of 'natural borders' has been discredited for decades . . . all political borders are artificial because they require the selection of a specific line within a zone where change in the physical characteristics of the landscape may be more or less rigid."[14]

43. Indeed, the Arbitral Tribunal in the *Guinea-Bissau* v. *Senegal* case defined the notion of an "international frontier" by reference to "the area of validity in space of the norms of the legal order of a particular State"[15].

44. To put it simply: Qatar has not shown that its "legal order" ever extended to the Hawars.

45. At the end of his address tomorrow, Sir Elihu Lauterpacht will demonstrate the futility of Qatar's continuing attempts to overcome the formidable legal hurdle to any claim based solely on proximity — even when the claiming party tries, as Qatar bravely does, to suggest that there is a special right to drive out one's neighbour from the islands in the territorial sea.

46. Mr. Robert Volterra will then deal with Qatar's attempts to discredit Bahrain's overwhelming *effectivités*, including the preposterous fiction that Bahrain illegally invaded and "occupied" the Hawars in 1937.

47. I should perhaps justify my use of the word "preposterous", which I can assure the Court was quite deliberate. The Court has heard the Agent for Qatar express himself with emotion on 22 June, about the way Bahrain allegedly violated Qatar's territory by occupying the Hawar Islands in 1937. What is the basis of this emotion? Was there a single Qatari citizen driven from his home on the Hawar Islands? Was the life of a single Qatari family disrupted? Was a single Qatari village community taken away from its place of worship, from its fishing traps, from the burial grounds of its ancestors?

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[13]Murphy/Prescott Report, Supplemental Documents of Qatar.

[14]*Boundaries and Frontiers* (1978), at p. 106.

[15]83 *ILR* 36.

48. Of course not. There is a fact which is so basic in this case that there may be some danger of its being overlooked. The basic fact is as follows. In the thousands of pages of documents that have been provided to this Court, and excepting the 82 forgeries, there is no evidence whatsoever that any single Qatari person ever lived on the Hawar Islands — or even visited people there. Certainly no Qatari Sheikh ever set his foot on these Islands. The only evidence of any Qatari person ever spending even a few moments on the Islands involved the case of trespassers in 1938 who said they were Qatari fishermen. In 1938, there was of course a dispute about the Islands, and one might well surmise that Sheikh Abdullah sent out some men to have a look at these Islands about which his ignorance was so complete. The trespassers were immediately apprehended, taken to the main island of Bahrain, and then returned to Qatar.

49. I had the occasion to address the Court at length on this curious subject of Sheikh Abdullah's complete lack of knowledge of what the Hawars were like — indeed even where they might be located. He thought they were in the north. He said they had never been inhabited. He said there had never been livestock there. He said they were five times as small as they in fact are. I expressed myself in firm language:

> "How can one explain that someone is so confident, and so wrong? The simplest answer is that Sheikh Abdullah who, as the Political Agent determined, had never been to the Hawar Islands, simply assumed that he was claiming the little islands near the point of Ras Rakkan, not so far from Zubarah."[16]

50. There was no answer from Qatar in the second round. Qatar contented itself with complaining that Bahrain "occupied" the Hawars in violation of Qatar's new mysterious theory of "original title". Perhaps in a new world of virtual reality, Qatar is seeking to describe the first instance in history of a virtual invasion which took place in the abstract, or on paper.

51. Sadly, in our turbulent world, there are, as we know, real occupations. Sadly, recent history includes the tragic destinies of multitudes of families uprooted, of people driven away from their ancestral homes, from their places of worship, their schools, their roots. Of people whose friends and families were slaughtered by the thousands. Some of us have families and friends who have suffered such tragedy. These are people who are entitled to speak with true emotion of the injustice done to them, and how can the rest of us fail to share their emotion?

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[16]CR 2000/12, p. 27, paras. 121-122.

52. But for Qatar to equate itself with the victims of such tragic destinies is a travesty of history. It is unworthy. It is profoundly unacceptable.

53. And need I say that in the course of these many generations of dispute between Bahrain and the Sheikhs of Qatar, the only *killing* occurred in 1937 — not in the Hawars, not by the hands of Bahrain.

54. After Mr. Volterra's rebuttal of Qatar's contentions about *effectivités*, Bahrain will have said what it believes needs to be said with respect to sovereignty over the Hawar Islands.

55. We then turn to the other elements of the territorial dispute.

1. Original title

56. Unlike the situation with respect to the Hawar Islands, Bahrain cannot point to a specific frontier traced by Britain and in force at the date of independence, which unambiguously delineates a Bahraini Zubarah region.

57. However, the record establishes that Britain had acknowledged that Bahrain had rights in these areas, and that it had not rescinded that acknowledgment at the time of full independence. Here, the arguments to be developed by Sir Elihu with respect to the Hawars will retain their full relevance.

58. This is where the questions put by Judge Vereshchetin on Thursday 15 June 2000 are wholly relevant: what was the legacy which Bahrain inherited at independence with respect to Zubarah and the other contested areas, which Bahrain contends were its dependencies?

59. Since our opponents, Mr. President, have chosen to do so, we shall also answer this question in a written submission to be handed in at the end of these hearings, the day after tomorrow.

2. Comparison of effective and continuous display of authority

60. The word *effectivités* has often been pronounced in this Great Hall of Justice over these past four weeks. Yet Qatar has produced no *effectivités* of its own, whether with respect to Zubarah, the Hawars, including Janan, and the islands and other maritime features in the contested area. Not a single *effectivité*! Nor, aside from unsubstantiated suggestions that some of Bahrain's evidence, particularly the testimony of witnesses, is "doubtful", has Qatar undertaken to disprove a

single *effectivité* that Bahrain has produced. Not a single one! As Bahrain concludes the presentation of its case, this striking asymmetry between the Parties should be noted and a number of observations are in order. First, despite Qatar's efforts to evade the issue, title in international law is established by demonstrations of manifestations of sovereignty or *effectivités*. Second, Qatar itself, in claiming title to various islands and low-tide elevations in the contested areas, acknowledges that they are susceptible to national appropriation and that the mode of accomplishing that is by the demonstration of *effectivités*. Third, Bahrain, over a period of some five years, during the progress of this case, has invested a great deal of time in confirming the relevant *effectivités* in this case — for Zubarah, the Hawars, and the islands and other maritime features in dispute. They are set out in great detail, in our written submissions and consist of documentary evidence from British, Bahraini and Ottoman archives[17], photographic evidence[18], petroleum activity[19] under concession and licence, fishing[20], coastguard activity[21] and parole evidence, in the form of affidavits of Bahraini[22] and third-State nationals[23]. We looked forward to the opportunity of defending this massive evidence in oral arguments, but our adversaries have elected to ignore it, as if it did not exist. But it does exist and this, in our respectful submission, is of decisive importance for resolution of the territorial issues here. We are confident that the Court will not ignore it.

61. Finally, it would be unfair to the State of Bahrain and to my colleagues if I failed to comment on the tendency of counsel for Qatar to refer to parts of our documentary evidence that

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[17]Hawar Islands: Memorial of Bahrain, Sects. 3.5-3.7, pp. 185-218; Counter-Memorial of Bahrain, Sect. 2.3, pp. 69-188; Reply of Bahrain, Sects. 2.1-2.4, pp. 11-36; and Reply of Bahrain, Sect. 10, pp. 81-88.

Zubarah: Memorial of Bahrain, Sects. 2.1-2.12, pp. 27-101; Counter-Memorial of Bahrain, Sect. 2.2, pp. 12-68; and Reply of Bahrain, Sect. 4.1, pp. 123-143.

Islands and Maritime Features: Memorial of Bahrain, Sects. 6.1 and 6.2, pp. 247-281; Counter-Memorial of Bahrain, Sect. 6.2, pp. 220-234; and Reply of Bahrain, Sect. 5.3, pp. 160-192.

[18]Memorial of Bahrain, Ann. 310, Vol. 6, p. 1329; Reply of Bahrain, Ann. 25, Vol. 2, pp. 163-175; Reply of Bahrain, photographs after pp. 172 and 180; and Supplemental Documents of Bahrain, Ann. 12, pp. 100-139.

[19]Memorial of Bahrain, Sect. 2.12, pp. 101-108 and Counter-Memorial of Bahrain, Sect. 2.3 (G), pp. 89-112.

[20]Memorial of Bahrain, pp. 181-182, para. 405; Memorial of Bahrain, p. 186, para. 415; Memorial of Bahrain, pp. 193-194., paras. 433-436; Memorial of Bahrain, pp. 195-200, paras. 439-447; Memorial of Bahrain, pp. 216-217, paras. 480-482; Memorial of Bahrain, p. 259, paras. 594-597; Memorial of Bahrain, pp. 274-281, paras. 639-648; Counter-Memorial of Bahrain, pp. 150-151, para. 361; and Counter-Memorial of Bahrain, pp. 215-217, paras. 497-501.

[21]Memorial of Bahrain, p. 260, para. 599 and Reply of Bahrain, Ann. 24, Vol. 2, p. 148.

[22]Memorial of Bahrain, Anns. 313-316, Vol. 6, pp.1363-1413; Memorial of Bahrain, Anns. 348-349, pp. 1499-1506; Reply of Bahrain, Anns. 15-23, Vol. 2, pp. 125-147; and Reply of Bahrain, Ann. 31, pp. 188-189.

[23]Reply of Bahrain, Anns. 26-30, pp. 176-187.

they find inconvenient as "doubtful". The Court will have observed that counsel for Bahrain have never used that term. If we had doubts about the authenticity of a document, we investigated it in a timely fashion and in an appropriate professional and forensic fashion. If it was fraudulent, we exposed it as such. If it was authentic, we may have questioned its materiality or relevance, but we did not try to slide it into a juridical twilight of "doubtfulness", thereby implying that our adversaries were seeking to foist an inauthentic document on the Court. My colleagues and I consider this Qatari usage with respect to our submissions to be regrettable as a matter of professional behaviour. It is particularly irritating when it emanates from a litigant that has had the unenviably unique distinction of having been exposed for introducing 82 forged documents before the International Court of Justice.

62. At any rate, under the circumstances of this case, the *effectivités* play two distinct roles: first, to confirm title and, secondly, to assess the balance of the competing sovereignty claims to the extent necessary to determine the *scope* of title. I shall return, perhaps just before the Court rises tomorrow, to address the *effectivités* relating to Zubarah, and to show that although Bahrain's *effectivités* here are not as overwhelming as with respect to the Hawars, they are first, sufficient given the cultural and ecological context and second, at any rate far superior to what Qatar has shown — which is nothing.

63. At that point, before concluding, I shall briefly demonstrate two propositions with respect to Britain's 1939 decision on the Hawar Islands. First, this decision in time became a settled matter, later resuscitated by Qatar as a matter of pure tactics. Secondly, apart from its legal irrelevance, Qatar's attack on the morality of the British decision is factually unsustainable.

64. My colleagues Professors Reisman and Weil will then comment on some of the assertions made by Qatar in this second round relating to the maritime delimitation. I would invite the Court to note that in order to be consistent in organizing the presentation of our evidence and arguments, the issue of sovereignty over Fasht ad Dibal, Qit'at Jaradah and various other features also fall within the scope of their presentations.

65. In the hope that this overview will be of assistance to the Court in understanding Bahrain's position, I would ask you now, Mr. President, to call on M[e] Fathi Kemicha to discuss the first basis on which Bahrain's sovereignty over the Hawar Islands is justified. Thank you.

Le PRESIDENT : Je vous remercie, Maître Paulsson, et je donne maintenant la parole à M[e] Fathi Kemicha.

M. KEMICHA :

UTI POSSIDETIS

1. Monsieur le président, Madame et Messieurs de la Cour, ma tâche consiste aujourd'hui à répondre aux arguments développés à cette barre par mon éminent contradicteur, le professeur Salmon, lors de sa dernière plaidoirie le 20 juin dernier. Ce sera également pour moi l'occasion de vous soumettre une vision aussi claire que possible de la position de l'Etat de Bahreïn par rapport à l'applicabilité de l'*uti possidetis* au différend qui l'oppose à l'Etat de Qatar au sujet des îles Hawar.

2. Je dois auparavant vous avouer que je ne pensais pas que les arguments présentés par Bahreïn en faveur de l'application de l'*uti possidetis* allaient susciter controverse et passion, y compris en dehors de cette enceinte. Certes, nous pouvions envisager que Qatar puisse ne pas être séduit par l'*uti possidetis* mais de là à «en faire une montagne» !

3. C'était donc non sans appréhension que je m'apprêtais mardi dernier à venir entendre les arguments de nos contradicteurs au second tour.

4. Ayant entendu le professeur Salmon en sa plaidoirie du 20 juin dernier, je dois dire, et sans avoir à faire appel à La Fontaine qu'affectionne apparemment mon éminent contradicteur (CR 2000/17, p. 15, par. 13), que la montagne a tout simplement accouché d'une souris !

5. Au surplus, notre argumentation sur l'applicabilité de l'*uti possidetis* est loin d'avoir été ébranlée malgré les assauts répétés de nos adversaires. Tout au contraire, elle se trouve même renforcée par de nouveaux éléments fournis par les conseils du Qatar.

6. Constatant que les considérations que j'avais exprimées, au nom de l'Etat de Bahreïn, sur l'*uti possidetis*, ne pouvaient être partagées par lui «ni en fait ni en droit», le professeur Salmon a de prime abord prévenu la Cour qu'il ne prendrait pas de son temps pour «réfuter des considérations générales puisqu'elles [étaient] ... hors sujet» (CR 2000/17, p. 9, par. 2); voire même, devait-il ajouter plus tard, «doublement hors sujet» (CR 2000/17, p. 20, par. 17).

7. La Cour aura certainement constaté que le professeur Salmon avait pris ... pas moins de quarante-cinq minutes pour essayer, sans succès, de réfuter ce qu'il avait considéré comme étant hors sujet.

8. Il y a tout de même un point sur lequel Bahreïn et Qatar se rejoignent. Le conseil de Qatar considère, en effet, que :

> «la règle de l'*uti possidetis juris* est aujourd'hui une règle de droit international de portée générale, en ce sens qu'elle est liée au phénomène de l'accession à l'indépendance où qu'il se manifeste, et en vertu de laquelle les Etats nés de la décolonisation succèdent aux limites qui étaient les leurs quand ils étaient sous l'administration de l'Etat colonial» (CR 2000/17, p. 9, par. 3).

9. Le professeur Salmon cite à son tour un passage de l'arrêt du 22 décembre 1986 dans l'affaire du *Différend frontalier (Burkina Faso/République du Mali),* dans lequel il est dit :

> «En tant que principe érigeant en frontières internationales d'anciennes délimitations administratives établies pendant l'époque coloniale, l'*uti possidetis* est donc un principe d'ordre général nécessairement lié à la décolonisation où qu'elle se produise.» *(C.I.J. Recueil 1986,* p. 566, par. 23.)

10. Le professeur Salmon considère ensuite que :

> «L'*uti possidetis* — principe de succession d'Etats — implique donc une *accession à l'indépendance* c'est-à-dire l'émergence d'un nouveau sujet de droit, *à l'issue de la décolonisation.*»

avant de décréter qu'«[a]ucune de ces deux conditions n'est présente dans le cas d'espèce, ni en général dans les Emirats du Golfe» (CR 2000/17, p. 9, par. 4; les italiques sont dans l'original).

11. Avant d'examiner cette proposition, je souhaite, avec votre permission Monsieur le président, m'arrêter quelques minutes pour déterminer au préalable quels sont les sujets destinataires de l'*uti possidetis.*

12. On a déjà établi que l'*uti possidetis* s'applique, par sa logique même, partout où il y a un processus de décolonisation ou d'accession à l'indépendance.

13. Le paragraphe 23 de l'arrêt de 1986 cité par le conseil de Qatar se lit, en effet, avec le précédent paragraphe 20 du même arrêt, lequel considère que :

> «l'*uti possidetis* constitue un principe général, *logiquement lié au phénomène de l'accession à l'indépendance, où qu'il se manifeste.* Son but évident est d'éviter que l'indépendance et la stabilité des nouveaux Etats ne soient mises en danger par des luttes fratricides nées de la contestation des frontières à la suite du retrait de la puissance administrante.» (*C.I.J. Recueil 1986,* p. 565, par. 20; les italiques sont de nous.)

14. L'*uti possidetis* s'appliquera donc, en premier lieu, aux Etats issus d'un processus de décolonisation quelle qu'en soit la forme et les modalités. Les anciens protectorats devront tout naturellement trouver leur place dans cette catégorie.

15. Le même principe s'appliquera, en second lieu, aux Etats ayant accédé à l'indépendance en dehors du contexte de la décolonisation. Cela voudra dire que *même en l'absence d'une situation coloniale*, de tels Etats se verront appliquer l'*uti possidetis;* tel a été le cas des Etats issus de l'ancienne Yougoslavie, phénomène dont on a rendu compte le 13 juin dernier.

16. En d'autres termes, la décolonisation n'est pas un préalable à l'application de l'*uti possidetis*. C'est alternativement et non simultanément que l'accession à l'indépendance et la décolonisation ouvrent la voie à l'*uti possidetis.*

17. Combien même, Bahreïn et Qatar ne seraient pas issus d'un processus de décolonisation, ce qui est loin d'être le cas comme nous allons à nouveau le démontrer; le fait même qu'ils aient accédé à l'indépendance leur ouvre la voie de l'*uti possidetis* et à la préservation des frontières existantes à la date de cette accession à l'indépendance.

18. Mon propos, ce matin, sera de démontrer que les proclamations de l'indépendance de Bahreïn et Qatar établissent, sans aucun doute possible, que les deux Etats ont recouvré en 1971, et pour le moins, le plein exercice de leur souveraineté sur le plan international.

19. Cette accession à l'indépendance totale et l'*émergence sur la scène internationale* de deux nouveaux acteurs a engendré par là même un processus de succession d'Etats.

20. Je vais tout d'abord m'employer à réfuter les arguments développés à cette barre par le professeur Salmon et démontrer à nouveau que Bahreïn et Qatar sont d'anciens protectorats britanniques, et qu'à ce titre, l'*uti possidetis* leur est applicable à la date de leur indépendance. Je m'efforcerai toutefois de ne pas répéter ce que j'ai dit le 13 juin dernier.

I. BAHREÏN ET QATAR SONT D'ANCIENS PROTECTORATS BRITANNIQUES, ET À CE TITRE, L'*UTI POSSIDETIS* LEUR EST APPLICABLE À LA DATE DE LEUR INDÉPENDANCE

21. Le professeur Salmon persiste toujours à considérer que «Les deux Emirats n'étaient ni dans une situation coloniale, ni sous protectorat du Royaume-Uni.» (CR 2000/5, p. 29, par. 6.) Mais cette fois, il utilise une nouvelle formule :

> «Jamais Bahreïn et Qatar *n'ont été considérés par le Royaume-Uni* [les italiques sont de nous] comme des *«colonies» ou «des protectorats» de type colonial.* C'étaient des «Etats protégés», *"protected states"*, ce qui est tout autre chose.» (CR 2000/17, p. 10, par. 5; les italiques sont dans l'original.)

22. On joue sur les mots ! Tout le monde sait que le colonialisme «parle» plusieurs langues.

23. Qatar s'appuie sur diverses positions officielles du Gouvernement britannique, telle que celle de lord Curzon, Vice-Roi de l'Inde qui est cité dans la sentence *Doubaï/Charjah*, que le conseil de Qatar a jointe au dossier d'audience du 20 juin dernier, et pour laquelle il a généreusement fourni une traduction en français.

24. Pardonnez-moi, Monsieur le président, d'avouer que je ne suis guère expert en littérature coloniale; je relève cependant que cette déclaration contient une phrase qui éclaire l'observateur sur les intentions britanniques de l'époque, cette phrase dit deci : «le Gouvernement britannique devint votre suzerain et protecteur».

25. S'adressant, je cite M. Salmon à «ceux qui ont vécu ce qu'était une administration coloniale», il considère qu'«assimiler cet état de fait et de droit à une situation coloniale est un non-sens» ! (CR 2000/17, p. 13, par. 8.)

26. J'ignore quelle idée se fait le professeur Salmon de la souveraineté, lui qui nous reproche «de confondre funestement limitation de souveraineté et absence de souveraineté» (CR 2000/17, p. 15, par. 12).

27. Permettez-moi, Monsieur le président, de trouver dans ce contexte, et précisément dans cette enceinte, tout à fait déplacé le parallèle — je regrette de le dire — maladroit qu'établit le conseil de Qatar entre la Communauté européenne et le régime, heureusement révolu, du protectorat (CR 2000/17, p. 15, par. 12).

28. Je persiste en ce qui me concerne à considérer, comme je l'ai dit devant cette Cour le 13 juin dernier, que :

> «Quel que soit le qualificatif qu'on donne à la nature de ces *«liens spéciaux»*, nul ne peut prétendre que Bahreïn et Qatar disposaient alors de la plénitude et de l'exclusivité des compétences internes et externes qui sont les attributs de la souveraineté.» (CR 2000/13, p. 58, par. 57.)

29. Il ne fait aucun doute que la Grande-Bretagne avait fait le choix tout à la fois stratégique et psychologique de donner aux relations avec les Etats du Golfe le qualificatif de «relations spéciales de traité». De la même manière, qu'elle avait estimé, comme le rappelle le conseil de

Qatar, ne pas devoir inclure les Etats du Golfe dans la liste communiquée à l'Assemblée générale des Nations Unies au titre de l'article 73 *e)* de la Charte qui répertorie les territoires non autonomes.

30. Je dois, à ce propos, exprimer ma surprise de voir le conseil de Qatar faire référence à la procédure instituée par l'article 73 *e)*, quand on sait, comme le relève un éminent juriste, spécialiste des problèmes de décolonisation, que :

> «les Etats administrants avaient décidé au départ que l'article 73 ne s'appliquerait qu'à celles de leurs colonies *qu'ils voulaient* placer sous le contrôle prévu par cet article ... et que de fait l'Australie, la Belgique, le Danemark, les Etats-Unis, la France, les Pays-Bas, la Nouvelle-Zélande et le Royaume-Uni *se concertèrent en 1946 et établirent une liste* de 74 territoires à l'égard desquels ils déclarèrent reconnaître les obligations de l'article 73» (Mohammed Bedjaoui in Cot (Jean Pierre) et Pellet (Alain) : «La Charte des Nations Unies» *Economica-Bruylant*, 1991 p. 1073).

31. Le moins que l'on puisse dire est que la procédure ainsi instituée reposait sur l'adhésion volontaire de la puissance administrante; et que de ce fait l'inclusion ou non de tel ou tel pays était soumise à la seule appréciation de cette même puissance.

32. Faut-il en conclure que Bahreïn et Qatar étaient, avant leur indépendance, des Etats souverains et indépendants ? Répondre par l'affirmative serait, à notre avis, «un non-sens en fait comme en droit» pour paraphraser mon éminent contradicteur.

33. Tout indique au contraire qu'en vertu des traités conclus avec la Grande-Bretagne et au vu du comportement sur le terrain des différentes parties concernées, Bahreïn et Qatar ne pouvaient jouir avant 1971 du plein exercice de leur souveraineté interne et externe.

34. Les deux Etats étaient placés dans la position de protectorats, institution bien connue en droit international.

35. A la suite de la Cour permanente de Justice internationale et son avis consultatif du 7 février 1923 concernant les *Décrets de nationalité promulgués en Tunisie et au Maroc* (*avis consultatif de 1923, C.P.J.I. série B n° 4,* p. 27) — auquel j'ai déjà fait référence — la Cour internationale de Justice s'est penchée, à son tour, sur le régime du protectorat à l'occasion de l'affaire relative aux *Droits des ressortissants des Etats-Unis d'Amérique au Maroc.*

36. Dans son arrêt du 27 août 1952, la Cour a ainsi relevé ce qui suit :

> «Le troisième groupe de traités concerne l'établissement du protectorat. Il comprend les accords qui précédèrent l'établissement par la France d'un protectorat

sur le Maroc, ainsi que le traité de Fez de 1912. En vertu de ce traité, le *Maroc devenait un Etat souverain, mais il concluait un accord de caractère contractuel par lequel la France s'engageait à exercer certains pouvoirs souverains au nom et pour le compte du Maroc, et à se charger, en principe, de toutes les relations internationales du Maroc.*» (*C.I.J. Recueil 1952*, p. 188; les italiques sont de nous.)

37. Bahreïn invite, à présent, respectueusement la Cour à garder à l'esprit cet extrait de son arrêt de 1952, tout en examinant la description que fait le professeur Salmon du statut de Bahreïn et de Qatar lors de la «présence» britannique. Le conseil du Qatar nous dit :

«seul l'exercice de certaines compétences, essentiellement en matière de relations extérieures, fut conventionnellement transféré par eux au Royaume-Uni, sans que la substance de leurs droits, qu'ils soient territoriaux ou autres, en ait été affectée» (CR 2000/17, p. 9, par. 4).

38. Le professeur Salmon a, par ailleurs, relu, à son tour à la Cour l'échange de lettres intervenu le 15 août et le 3 septembre 1971 entre d'une part le Royaume-Uni et Bahreïn et d'autre part le Royaume-Uni et Qatar. Je vous rassure Monsieur le président, je n'ai pas l'intention de vous les relire à nouveau aujourd'hui !

39. Je souhaite toutefois relever ce que le conseil de Qatar a dit à leur sujet. Ces lettres, nous précise le professeur Salmon, «prennent acte simplement que le *plein exercice* de leur responsabilité souveraine leur était rendu» (CR 2000/17, p. 12, par. 7; les italiques sont dans l'original); avant d'ajouter que :

«Sous réserve de quelques engagements particuliers, l'administration intérieure du territoire était souveraine, seul l'exercice des relations extérieures se voyait limité par l'intermédiaire obligé du Royaume-Uni.» (CR 2000/17, p. 12, par. 8.)

40. Ai-je besoin de rappeler que c'est toujours le professeur Salmon qui parle. La situation qu'il décrit est en tout lieu similaire à celle exposée dans l'arrêt de la Cour de 1952 à propos du protectorat français au Maroc. Je laisse bien évidemment à la Cour le soin de tirer les conclusions appropriées.

41. Ainsi par le fait même de l'abrogation du régime spécial de traité, nous assistons à l'émergence *sur le plan international*, de deux personnalités juridiques nouvelles. C'est ce qui va m'amener à parler de la succession d'Etats, préalable, selon le conseil de Qatar, à l'application de l'*uti possidetis*.

II. BAHREÏN ET QATAR ONT BIEN SUCCÉDÉ AU ROYAUME-UNI PAR LE FAIT MÊME DE LA RÉCUPÉRATION DE LEURS PLEINES RESPONSABILITÉS INTERNATIONALES

42. Je n'apprendrai rien au professeur Salmon en lui disant que les règles de succession d'Etats ne s'appliquent pas exclusivement aux changements de souveraineté territoriale mais s'étendent aussi aux situations où il est question de «substitution d'un Etat à un autre dans la *responsabilité des relations internationales d'un territoire*» (les italiques sont de nous).

43. Le professeur Salmon aura vite reconnu ce passage; il s'agit de l'article 2, paragraphe 1, alinéa *b)*, commun aux conventions de Vienne de 1978 et de 1983, qui est ainsi rédigé :

> «L'expression «succession d'Etats» s'entend de la substitution d'un Etat à un autre dans la *responsabilité des relations internationales d'un territoire*.» (Article 2, paragraphe 1, al. *b)*, commun aux conventions de Vienne sur la succession d'Etats en matière de traités de 1978 et en matière de biens, de dettes et archives de l'Etat de 1983; les italiques sont de nous.)

44. Cette même définition a été retenue par la sentence arbitrale du 31 juillet 1989 relative à la *Détermination de la frontière maritime entre la Guinée-Bissau et le Sénégal* (*RGDIP*, 1990, p. 227) et par l'avis n° 1 de la commission d'arbitrage pour la Yougoslavie du 29 novembre 1991 (*RGDIP*, 1992, p. 265).

45. La fin d'un protectorat est, par excellence, une succession où il n'y a pas changement de souveraineté territoriale.

46. Il y a donc, s'agissant de Bahreïn et de Qatar, un véritable processus de succession d'Etats que met, par ailleurs, en lumière l'échange de lettres intervenu en 1971, auquel il a été déjà fait référence.

47. Voilà à titre de rappel rapide ce qui est dit dans la lettre britannique adressée à l'émir de Bahreïn :

> «Le régime spécial de traité entre le Royaume-Uni et l'Etat de Bahreïn, qui est incompatible avec *l'exercice d'une entière responsabilité, sur le plan international*, en tant qu'Etat souverain et indépendant, prendra fin à la date d'aujourd'hui.» (Les italiques sont de nous.)

48. La lettre adressée par le résident politique britannique à l'émir de Qatar parle à son tour du «désir qu'a manifesté votre gouvernement de voir l'Etat de Qatar reprendre les pleines responsabilités internationales en tant qu'Etat souverain et indépendant».

49. Certes, les Etats de Bahreïn et de Qatar existaient avant 1971, en tant qu'entités étatiques; mais la proclamation de leur indépendance et la récupération de leurs «*pleines*

responsabilités internationales en tant qu'Etat(s) souverain(s) et indépendant(s)», en font de nouveaux sujets de droit international; précisément parce qu'ils succèdent à la puissance protectrice dans l'exercice de fonctions internationales.

50. Y a-t-il meilleure illustration de l'émergence d'un Etat sur la scène internationale, que sa demande d'adhésion à l'Organisation des Nations Unies ?

51. Monsieur le président, Madame et Messieurs de la Cour, vous trouverez dans votre dossier d'audience [document n° 118], et présentement à l'écran devant vous, la lettre adressée par feu cheikh Isa bin Sulman Al Khalifah, émir de l'Etat de Bahreïn au Secrétaire général des Nations Unies. Permettez-moi, Monsieur le président, de vous lire cette lettre :

LETTRE DATÉE DU 15 AOÛT 1971, ADRESSÉE AU SECRÉTAIRE GÉNÉRAL PAR L'ÉMIR DE L'ETAT DE BAHREÏN

«Par suite de *l'accord conclu le 15 août 1971* entre le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et l'Etat de Bahreïn visant à mettre fin aux relations régies par traité spécial qui existaient entre Bahreïn et le Royaume-Uni,

Considérant que *ledit accord a reconnu et confirmé le fait que l'Etat de Bahreïn a la pleine responsabilité internationale de la conduite de ses affaires étrangères, et*

Considérant que *l'Etat indépendant de Bahreïn* est désireux de devenir Membre des Nations Unies conformément à l'article 4 de la Charte des Nations Unies,

Nous avons l'honneur de demander que l'Etat de Bahreïn soit admis comme Membre des Nations Unies.

En sa qualité d'Etat pacifique, le Bahreïn croit que l'Organisation des Nations Unies présente une valeur considérable pour les petites nations et pour les nations en voie de développement, aussi attache-t-il une grande importance à l'acceptation de sa demande d'admission comme Membre des Nations Unies.

Nous vous serions donc obligé d'avoir la bonté de soumettre la présente demande au Conseil de sécurité à la première occasion.

En application de l'article 58 du règlement intérieur du Conseil de sécurité, nous avons le plaisir de joindre à la présente lettre une déclaration distincte rédigée conformément audit article.

L'émir de l'Etat de Bahreïn,
(Signé) Isa bin Sulman Al-Khalifah.» (Les italiques sont de nous.)

52. Faut-il ajouter que la démarche hautement symbolique entreprise par l'émir de l'Etat de Bahreïn le jour même de l'accession de son indépendance le 15 août 1971 est à relever.

53. On notera par ailleurs que l'adhésion de l'Etat de Bahreïn ainsi que celle de l'Etat de Qatar à l'Organisation des Nations Unies furent entérinées par l'Organisation, le même jour; à savoir, le 21 septembre 1971.

54. Les rapports entre succession d'Etats et *uti possidetis*, s'agissant de la continuité des frontières existant au moment de l'indépendance, ont été examinés par la Chambre de la Cour, constituée pour connaître de l'affaire du *Différend frontalier (Burkina Faso/République du Mali)*, qui a considéré, dans son arrêt du 22 décembre 1986, que :

> «l'obligation de respecter les frontières internationales préexistantes en cas de succession d'Etats découle sans aucun doute d'une règle générale de droit international, qu'elle trouve ou non son expression dans la formule *uti possidetis*» (*C.I.J Recueil 1986*, p. 566, par. 24).

55. Les deux conditions posées par Qatar lui-même à l'application de *l'uti possidetis* au différend qui oppose les deux pays étant ainsi réunies, je souhaite à présent, avec votre permission Monsieur le président, rappeler à l'attention de la Cour la position de Bahreïn quant au contenu de l'*uti possidetis* applicable dans cette affaire.

III. LES RAPPORTS ENTRE LE TITRE ET LES EFFECTIVITÉS DANS LE CONTEXTE D'UN *UTI POSSIDETIS* APPLICABLE AUX ÎLES HAWAR

56. Les rapports entre titre et effectivités dans le contexte d'un *uti possidetis* applicable aux îles Hawar ayant été largement développés lors de ma précédente communication du 13 juin, je vais me limiter aujourd'hui à l'essentiel.

57. Bahreïn a démontré que l'application de l'*uti possidetis* dans la présente affaire avait l'avantage de prendre en compte tout à la fois les titres dont on peut se prévaloir mais également *les effectivités* prouvées.

58. Bahreïn a aussi indiqué respectueusement à la Cour qu'il estimait répondre aux critères définis dans la première hypothèse envisagée par la Chambre de la Cour, dans l'affaire du *Différend frontalier,* celle où : «une administration effective s'ajoute à l'*uti possidetis juris*, l'effectivité n'intervient en réalité que pour confirmer l'exercice du droit né d'un titre juridique» (*C.I.J. Recueil 1986,* p. 586, par. 63).

59. Nous avons dit que la souveraineté de Bahreïn sur les îles Hawar, où une administration effective confirme tout naturellement un titre juridique, constituait une situation d'exacte correspondance entre le fait et le droit.

60. Permettez-moi à présent, Monsieur le président, d'ouvrir une parenthèse à propos de Zubarah, qui fera l'objet d'un examen plus approfondi demain par mon confrère Jan Paulsson.

61. Son Excellence Monsieur l'agent de l'Etat de Qatar a déclaré, dans son ultime communication à la Cour, je le cite: *"In fact I am sure that Bahrain would hardly have argued so strongly for application of the principle of* uti possidetis *if it had really been serious in its claim to Zubarah."* (CR 2000/19, p. 39, par. 5.)

62. Indépendamment de ce qu'il a voulu dire par cette phrase, je suis au regret de dire à Monsieur l'agent qu'à Zubarah, comme aux îles Hawar, l'*uti possidetis* ne profite pas à Qatar.

63. Si nous devions, en effet, appliquer à Zubarah «le test», si j'ose m'exprimer ainsi, de la Chambre de la Cour, dans l'affaire du *Différend frontalier*; la situation de Zubarah sera tout simplement la suivante :

> «Dans le cas où le fait ne correspond pas au droit, où le territoire objet du différend est administré effectivement par un Etat autre que celui qui possède le titre juridique, il y a lieu de préférer le titulaire du titre.» .(*C.I.J. Recueil 1986*, p. 587, par. 63.)

64. Du fait même de son occupation illégale par Qatar, à la suite du recours à la force, *le titulaire du titre juridique* relatif à Zubarah demeure l'Etat de Bahreïn. Comme l'a dit le professeur Salmon : «Selon un principe fondamental du droit international, aucun titre valable ne peut naître d'une occupation illégale du territoire d'autrui.» (CR 2000/17, p. 21, par. 21.)

65. Monsieur le président, Madame et Messieurs de la Cour, revenons, si vous le permettez, à l'application de l'*uti possidetis* aux îles Hawar et aux rapports harmonieux qui y existent entre le titre et les *effectivités*.

66. Bahreïn a clairement établi que ses *effectivités* sont, dans une large mesure, antérieures à la décision de 1939 et ont même constitué le fondement sur lequel la souveraineté sur les îles Hawar a été attribuée à Bahreïn, en vertu de la décision britannique de 1939.

67. Il a été aussi démontré que les effectivités dont se prévaut Bahreïn couvrent aussi bien la période coloniale que post-coloniale, la décision britannique de 1939 se trouvant ainsi encadrée dans une séquence ininterrompue d'effectivités.

68. Bahreïn a bien pris soin de démontrer, comme le fera encore aujourd'hui le professeur Michael Reisman, que la décision du 11 juillet 1939 constitue bel et bien un titre sur lequel Bahreïn se fonde pour asseoir sa souveraineté sur les îles Hawar.

69. Dans le contexte de *l'uti possidetis* maintenant, il importe peu que cette décision ait le caractère d'une sentence arbitrale ou d'une décision politique ou même administrative ! Nous sommes en présence d'un titre juridique; avais-je dit le 13 juin dernier.

70. Le professeur Salmon a traité cette affirmation avec ironie et a même appelé à son secours cette fois «la chauve-souris» de La Fontaine (CR 2000/17, p. 16, par. 14).

71. Pourtant, son collègue, sir Ian Sinclair, nous a donné quelque part raison en admettant que cette décision constituait, à ses yeux, *un fait* : *"The 1939 decision is no more than a fact in the present case. It is part of the record, but not binding as an arbitral award or as an administrative decision."* (CR 2000/19, p. 26, par. 29.)

72. On notera qu'en exposant ses griefs à l'encontre de cette décision et de ses anciens collègues du Foreign Office, sir Ian Sinclair relève :

> *"a very limited number of British officials in the Gulf and in London acted with less than full impartiality and objectivity in setting up and participating in the procedures applied between 1936 and 1939 to determine, as between Qatar and Bahrain, the issue of which of these two sheikhdoms had sovereignty over the Hawar Islands"* (CR 2000/19, p. 17, par. 9).

73. Ces allégations, dont mes collègues auront à juger le bien-fondé en l'espèce, ne peuvent que donner crédit à l'idée selon laquelle on était dans une situation quasi coloniale où la puissance protectrice, par l'intermédiaire de ses agents, pouvait avoir pris, selon la thèse développée par sir Ian, une décision motivée par la vision qu'elle avait alors de ses intérêts stratégiques ou économiques.

74. Sir Ian Sinclair invite la Cour à considérer cette décision non pas comme une sentence arbitrale mais comme un fait. *Cette décision, quelle que soit sa qualification, a créé effectivement un état de fait qui s'impose aujourd'hui à deux Etats issus de la colonisation britannique comme s'étaient imposées, partout ailleurs, des frontières délimitées par les puissances coloniales.*

75. Quelle que soit sa nature juridique je le répète *la décision britannique de 1939 fait incontestablement partie intégrante du legs colonial.* Cela ne plaît pas au professeur Salmon (CR 2000/17, p. 20, par. 19) et encore moins à Qatar. Mais *les faits* ont la vie dure !

76. L'indépendance, acquise en 1971, a intégré cette décision dans un ensemble plus global qui est précisément *l'uti possidetis.*

77. L'ancienne Puissance protectrice a rendu compte de la situation qu'elle a léguée à Bahreïn et à Qatar en établissant en 1972, quelques mois à peine après l'accession des deux pays à l'indépendance, une carte que M[e] Paulsson vous a présentée. C'est en quelque sorte «un état des lieux».

78. Monsieur le président, Madame et Messieurs de la Cour, la situation dans notre affaire est la suivante. Je l'ai dit le 13 juin dernier et je le répète, avec votre permission, aujourd'hui :

79. Un Etat, Bahreïn, hérite au moment de la proclamation de son indépendance, d'un *uti possidetis*, dont fait partie intégrante une décision rendue par l'autorité coloniale, et reconnaissant explicitement la souveraineté de Bahreïn sur les îles Hawar sur la base d'effectivités prouvées et établies.

80. La Cour, Bahreïn en est convaincu, a toute autorité pour appliquer dans cette affaire le principe de *l'uti possidetis*, et permettre à Bahreïn de vivre en paix, à l'abri de toute menace, à l'intérieur de frontières fondées sur le droit international.

81. J'en arrive ainsi au terme de ma présentation. Il me reste à vous exprimer, Monsieur le président, Madame et Messieurs de la Cour, ma vive et réelle reconnaissance pour votre patience et votre indulgence.

82. Je prie à présent la Cour de bien vouloir appeler à nouveau à la barre mon confrère Jan Paulsson.

Le PRESIDENT : Je vous remercie Maître Kemicha. Je crois que le moment serait opportun pour la Cour de suspendre pour un quart d'heure.

L'audience est suspendue de 11 h 20 à 11 h 35.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise et je donne la parole à M[e] Jan Paulsson.

Mr. PAULSSON: Thank you, Mr. President.

FIVE FACTUAL TOPICS RELATING TO THE 1939 AWARD

1. I have five factual topics relating to the 1939 Award. I cannot promise that there is some overwhelming logic at work in these five topics, but that is the nature of rebuttal.

The demographic context

2. The 1939 decision must be understood in context. A fundamental factor is the plain truth that Qatar's population has always been located on the east coast of the peninsula, further away from the Hawars than the distance between the Hawars and the main island of Bahrain.

3. This concentration of Qatar's populace around Doha is constant throughout its history.

4. Ninety-seven per cent of Qatar's population today lives in Doha or elsewhere on the east coast. Given the fact that the initial settlement at Doha was to exploit the pearling banks to the east, Qatar has diligently and successfully pursued a wide maritime domain to the east.

5. If we go back in time, the population was of course even smaller, but its distribution was the same.

6. I am holding a book entitled *The Creation of Qatar* — an intriguing title — authored by a member of the Qatar Historical Commission. This book, which has been cited by Qatar as authoritative, gives the estimated population of Qatar as 27,000 in 1908[1]. Given the decline in the pearling industry and the emigration problems, 30 years later this number was practically the same, 28,000 in 1939[2].

7. As you may recall, the author of this book also records that in 1908 there were only three populated towns on the north-west coast of Qatar — Zubarah is in ruins — so the populated towns are Abu Dhaluf, Hadiyah, and Khawr Hassan or Khuwayr, as it is more often known today.

8. The population of these three villages did not exceed 800 people — 800 — this left no one on the entire west coast anywhere near the Hawar Islands. The author explains that "the location of

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[1] R. S. Zahlan, *The Creation of Qatar*, pp. 15 and 119.

[2] *Ibid*, p. 119.

the villages was determined by the existence of water". So, when PCL began its oil operations at Dukhan and brought in 300 workers in the early 1940s, water had to be supplied by boat from Bahrain[3]. Qatar has contested none of these facts.

9. The evidence is clear; the people of Doha did not approach the Hawars. Indeed, the Court may recall that the much-discussed map attached to the 1935 Qatar concession with PCL showed this road network, which speaks for itself and is included as item 119 of the judges' folders.

10. How could it possibly be said, to use the words of the *Guinea-Bissau* v. *Senegal* decision, that Qatar had, as of the date of the British Award in 1939, expanded "the area of validity in space of the legal norms of the State"[4] of Qatar to establish dominion over the Hawar Islands?

11. Now, may I say that I hope that my distinguished opponent, Mr. Bundy, lives to be 100, and I, too, hope that I will live as long; I also hope that we will remain good friends, but I must admit that I am somewhat worried that people who might see us together then will avoid us, saying — there's old Bundy, there's old Paulsson, let us escape before they start quarrelling again about that dreadful map from Istanbul!

12. I do hesitate before showing the Court something which it has already seen three times, but I count on your indulgence to let me exercise a right of reply for 30 seconds. Let me ask: why exactly was Mr. Bundy so anxious about the Izzet map? It is because he insists that *all* of what he called the "map evidence" shows that Qatar — the word Qatar — meant the entire peninsula. The Izzet map is therefore inconvenient for Qatar. And of course this map was prepared by somebody who actually went there in 1878 — immediately following the time when Qatar would like you to believe that it achieved coast-to-coast territorial integrity. The image presented by Captain Izzet is very different.

13. On our side, we are saying something very simple. Captain Izzet noted that there was something here in the Gulf of Bahrain — settlements, people, a social concentration. The Hawar Islands were part of that concentration.

14. Over here, there is another, smaller, concentration of people — and this is what he called Qatar.

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[3]CR 2000/8, p. 29, paras. 134-137.

[4]83 *ILR* 36.

15. In between: nothing, an empty space.

16. Now Mr. Bundy made the point that it is not necessarily hard to travel over this gravelly desert terrain. He is right: you do not have to cut your way through the jungle, or cross fearsome rivers. But his comment misses the point: back then this was a wild and dangerous place. When he crossed it in 1941, you may recall, the Political Resident, Sir Rupert Hay, remarked "it was strange to travel about these wild parts . . . without any kind of armed escort"[5]. One of the recurrent problems of travelling from Doha was that as soon as travellers left the town they were exposed to plunder, piracy, robbery, kidnapping. For example, if one reads one of the early annual reports by the British Political Agent for "Katr", as submitted by Bahrain in its Memorial[6], one finds that this part of his annual report devoted to Qatar almost entirely deals with security problems: raids, attacks, looting, ambushes. As a result, the Political Agent wrote "the caravan escorts have been strengthened to 250 horsemen". Two hundred and fifty horsemen means a significant expedition. It means significant costs. There was no reason to mount such expeditions to cross the Qatari desert to go to the Hawar Islands. The Hawar islanders sold their modest output of fish and pearls and gypsum in the markets of Manama and Muharraq, a short and pleasant boat ride to the north.

The Laithwaite report

17. The only evidence referred to by Qatar to support its assertion that Britain *always* recognized Qatar's sovereignty over the Hawar Islands until an allegedly sudden reversal of policy in 1936 relates to the views expressed by British officials in London when they began to examine the question of sovereignty over the Hawar Islands in 1933.

18. The first thing to observe is that if Qatar were right in saying that these British officials had determined in 1933 that the Hawars did not belong to Bahrain, that would have been an extraordinary departure from at least a century of preceding history, from Captain Brucks's report in 1829 that the Hawars belonged to Bahrain[7], to Britain's clear position in connection with the

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[5]CR 2000/12, p. 27, para. 127.

[6]Vol. 5, Ann. 237, p. 1047.

[7]Memorial of Bahrain, Ann. 7, Vol. 2, p. 92.

Zakhnuniya episode, in the early 1900s[8], to the recognition that the Hawars were regularly inhabited by Bahrain Dowasir[9], to Admiralty Reports in 1915 and 1916[10].

19. In other words, such a *volte-face* in 1933 would have been an aberration.

20. But, as a more careful examination of the record will show, there was no such reversal of the constant previous conclusion that the Hawars belong to Bahrain.

21. Qatar cites a letter dated 3 May 1933 sent from Mr. Laithwaite to Mr. Starling. These were two British officials who worked in London[11]. In the letter Mr. Laithwaite lists certain of the islands of the Bahrain archipelago. He did not include the Hawar Islands among them. Qatar deduces that the official policy of the British Government was that the Hawar Islands did not belong to Bahrain and instead belonged to Qatar. But this stretches the words used by Laithwaite beyond recognition. Laithwaite said no such thing in the letter, indeed he went on to observe, and this part of the document was not cited by Qatar:

> "The information above, which is I fear rather scrappy, is taken from Lorimer's *Gazetteer*. The *Persian Gulf Pilot* suggests that the archipelago is surrounded by reefs running out to a considerable distance and banks to which the Sheikh would no doubt lay claim if any question arose; and *in considering any grant of a concession in respect of his 'dominions' or 'Bahrein' it would seem necessary to have a clear understanding as to precisely what is covered.*" *(Emphasis added.)*

Laithwaite concludes the letter by referring to an interdepartmental meeting organized for later the same day to discuss the issue of the extent of Bahrain's territories, and he writes:

> "I am also suggesting to Moore that the Admiralty representative might bring a chart of Bahrain, which would give a clearer idea of the position than the rather scattered information above, to this afternoon's meeting."

22. But Laithwaite appears to have advanced no further by August 1933 when he continues to speculate that the territory of Bahrain: "presumably . . . 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"[12].

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[8]Letter from Capt. Prideaux, British Political Agent to Major Cox, British Political Resident, 20 March 1909, Memorial of Bahrain, Ann. 235, Vol. 4, p. 1034.

[9]*Ibid.*, and CR 2000/13, p. 18, para. 92.

[10]Memorial of Bahrain, paras. 171-172.

[11]Memorial of Qatar, Ann. III.84, Vol. 6, pp. 431-435.

[12]Memorial of Qatar, Ann. III. 91, Vol. 6, pp. 461-467.

23. Counsel for Qatar concluded from these two letters: "So Laithwaite, who was the most knowledgeable official in the India Office at that time of the geography" — the geography, Mr. President — "of this part of the Gulf, was unhesitatingly of the view in 1933 that the Ruler of Bahrain did *not* exercise any control whatsoever over the Hawar Islands."[13]

24. "Unhesitatingly of the view that Bahrain did not exercise any control whatsoever over the Hawar Islands." The Court will undoubtedly recall that the remarks of Mr. Laithwaite, the geographical experts, are directed to geography, not sovereignty. And to describe his words as *unhesitatingly* expressing a view as to political *control* — not to speak of legal entitlement — is surprising to say the least.

25. The letters express clearly a tentative view, expressly qualified by the warning that real information was required before reaching a conclusion. One simply cannot say that they constituted a definitive opinion of the British Government that the Hawar Islands were not Bahrani. Laithwaite warned that his information was "scrappy" and "scattered" and that he had asked for better information to be obtained in order "to have a clear understanding as to precisely" what was the extent of the territories of Bahrain. Laithwaite obviously did not intend his comments to be relied upon in any way. He qualifies his geographic observations about the Hawars with the word "presumably".

26. When the short extract of the letter cited by Qatar is put in context, it becomes evident that the letter gives no support to Qatar's assertion that Laithwaite — let alone the British Government — has decided that the Hawar Islands did not belong to Bahrain. Perhaps even more significantly, there is no reference in the letter, whether explicit or implicit, to the State of Qatar, its Ruler or the Al-Thani.

27. Yet Qatar's entire thesis that Britain recognized Qatar as sovereign over the Hawar Islands is based entirely on these two letters[14].

28. The subsequent investigations of the British officials charged with the matter confirmed that the Islands belonged to Bahrain. The conclusion that Britain's view from 1820 until 1939 and beyond that the Hawar Islands belonged to Bahrain therefore remains unchallenged.

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[13]CR 2000/6, p. 25, para. 37 (4).

[14]CR 2000/6, pp. 24-25, paras. 37 (1) and 38 (4).

29. This background now puts us in a position to evaluate Professor's Salmon's argument that *«les plus hautes autorités britanniques»*[15] had reached the conclusion that the borders of Qatar should be accepted simply as extending to the sea along its entire shore. He cited a Laithwaite memorandum[16] in which it is true that Laithwaite made this recommendation, but it is also true that the entirety of this lengthy memorandum concerns the threat of Ibn Saud, and how to establish and maintain a *southern* Qatari border to allow the British Petroleum interest to operate in safety.

30. Anyone who thinks that this had to do with an issue of legal principle of delimitation would do well to look at the detailed British Military Report from 1939 entitled "Appreciation of the Situation Regarding the Defence of Qatar Peninsular"[17] where the premise is stated bluntly as follows:

> "5. It is necessary to consider the defence of QATAR for the following reasons:
>
> *(a)* The promise of protection given by His Majesty's Government.
>
> *(b)* The possibility of oil being found and the Oil Company developing, which might make QATAR of considerable importance in connection with Empire oil fuel supplies.
>
> *(c)* The desirability of maintaining the R.A.F. landing ground at DOHA."

31. Laithwaite's memorandum was thus all about the threat of Ibn Saud. Bahrain's position was not even considered. There was no intent to dispossess Bahrain. The British authorities were aware of the Bahraini possessions[18]. And any notion that there was an implicit intention to dispossess Bahrain of the Hawar Islands is of course decisively contradicted by the unambiguous decision of 1939.

32. In closing the discussion of Laithwaite's two letters, it is interesting to compare Qatar's treatment of them with Qatar's treatment of Mr. H. G. Darwin of the British Foreign Office who concluded in 1964 that the Hawar Islands properly belonged to Bahrain. As we have just seen, Laithwaite was making geographical observations and noted that his information was "scrappy"

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[15]CR 2000/5, p. 35, para. 15 *(a)*.

[16]Counter-Memorial of Qatar, Ann. III.40, Vol. 3, p. 213.

[17]Memorial of Bahrain, Ann. 275, Vol. 5, p. 1136.

[18]Counter-Memorial of Bahrain, paras. 215-218; Letter from the British Political Agent to the British Political Resident, 29 May 1933, Counter-Memorial of Bahrain, Ann. 59, Vol. 2, pp. 203-206; Telegram from Political Resident to the Secretary of State for the Colonies, 23 July 1933, Memorial of Qatar, Ann. III.85, Vol. 6, p. 437; and Telegram from the British Political Resident to the Government of India, 31 July 1933, Memorial of Qatar, Ann. III.8, Vol. 6, p. 449.

and "scattered". He cautioned that his views were preliminary. Even as he made them, he asked for evidence about sovereignty over the Hawar Islands. Neither Party has been able to locate Mr. Laithwaite's final, reasoned conclusions.

33. Yet Qatar tries to tell the Court that Laithwaite's letters contain a reasoned and definitive determination by the British Government.

34. Now let us consider Mr. Darwin. With respect to his view that the Hawar Islands were legally Bahrain's, Sir Ian Sinclair argued that Mr. Darwin was "uninformed" and based his view on "incomplete information"[19]. Now, Darwin was a lawyer — an Assistant Legal Adviser to the British Foreign Office. In 1964, he asked the Foreign Office to investigate the issue of sovereignty over the Hawar Islands. A Mr. C. W. Long of the Foreign Office carried out the assignment. In conducting his analysis, Mr. Long had access to the Foreign Office archives, as evidenced by the citations in his memorandum.

35. Mr. Long prepared a memorandum that took into account the evidence of activities on the Hawar Islands. It includes citations to no less than 15 documents from the British archives, including Sir Hugh Weightman's 1939 memorandum of fact and law, with attached evidence. Sir Ian called Mr. Long's memorandum a "potted and incomplete" account of the events of 1936 and 1939. However, Sir Ian failed to identify which of the 15 documents or their attachments was allegedly potted. Nor did Sir Ian identify which documents were missing. True enough, the fanciful theories proposed by Qatar do not find a place in Mr. Long's memorandum. May I suggest that Mr. Long did not have the same imagination as Qatar's lawyers and so he limited his consideration to the facts before him.

36. Mr. Long sent his memorandum, as well as the documents upon which he relied, to Mr. Darwin. Darwin read the memorandum and the attached documents. And Mr. Darwin, the international lawyer, came to the only conclusion possible on the facts: Bahrain had evidence of its authority and Qatar had nothing but geographical proximity, so "Bahrain wins easily"[20]. A definitive conclusion, based on facts.

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[19]CR 2000/19, p. 14, para. 3.

[20]Reply of Bahrain, Ann. 2, p. 2; Reply of Bahrain, para. 120.

37. Nevertheless, Sir Ian speculated that: "indeed, it could well be . . . that . . . Mr. Henry Darwin . . . did not have access at the time to the very wide range of documentary and cartographic materials" available now to the Court, and it was therefore, he concluded, in favour of Bahrain[21].

38. We know that while the *number* of documents before this Court are greater than what might have been available to Mr. Darwin, the *substance* is the same.

39. Sir Ian then asserted that Darwin's conclusion was based on assumptions that Qatar challenges today[22]. What Sir Ian calls assumptions was in fact historical evidence drawn from documents in the British Archives. It seems that Mr. Darwin, like Mr. Long, was guilty only of being less willing to speculate in favour of Qatar than Qatar's legal team is willing to do.

40. To sum up, Sir Ian asserts that Mr. Laithwaite's views, described by Laithwaite himself as preliminary, based on "scrappy" and "scattered" information, was a definitive and informed conclusion, while Mr. Darwin's unequivocal legal evaluation of the evidence presented to him after a Foreign Office investigation was wrong. Bahrain can only observe that this is an inversion of reality.

Dowasir allegiance to Bahrain

41. Qatar's main argument regarding the Hawar Islands seems to be that the allegiance of the Dowasir to Bahrain was not sufficiently constant, and that therefore their presence on Hawar does not equal Bahraini presence there.

42. First of all, may I point out that although it is clear that some Dowasir were in conflict with the Ruler of Bahrain in the 1920s, this did not include all of them.

43. Second, the Hawar Islands were not exclusively populated by the Dowasir. The Al Ghatam family was prominent in the North Village; the remains of one of their houses there may still be seen today. The Al Ghatam were important people; Bahrain has submitted its Civil Lists for the year 1924, which includes nine members of this family[23] who thus received annual stipends as persons making particular contributions to the nation of Bahrain. Moreover,

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[21]CR 2000/19, p. 13, para. 3.

[22]CR 2000/19, p. 13, para. 3.

[23]Counter-Memorial of Bahrain, Ann. 54, pp. 173-174; see also Ann. 55, pp. 175-182.

intermarriage connected many non-Dowasir Bahraini with the Hawar Islands. As long as a century ago, as noted by Prideaux, a relative of Sheikh Isa bin Ali, the Ruler of Bahrain, was headman on the Hawar Islands[24]. Naturally, this process of intermarriage has intensified over the years.

44. Third, those Dowasir who did leave Bahrain went to the Hasa Coast; they did not try to stay in the Hawar Islands; they knew this was Bahraini territory.

45. Last but not least, one must be careful about drawing too many conclusions from references, here and there, to a tribe as being "fiercely independent". This is often true of people who live in isolated places. My own people, if you will allow me a personal reference, come from a remote part of northern Sweden. They are happy if the King visits them, but they have always preferred to invite him first. They like to think of themselves as self sufficient and "fiercely independent" — although to be perfectly honest others seem more often to describe them as exasperating. As for officials from Stockholm, the less they see them the better. A century ago, before income taxes began to take money away and social security began to give some of it back, to some people, Stockholm was a fairly abstract notion. But that does not mean that these people do not consider themselves Swedish. And I certainly would not recommend for anyone to suggest to them that, as a result of their independent streak, they should be part of Norway!

46. So even if some Dowasir were occasionally unhappy, as many of us occasionally are when we think of those who govern us, the fact remains that for many generations, year after year, season after season, all of their contacts were with Bahrain. No contacts were with Qatar. No contacts with Qatar.

47. The Court will have noticed that Sir Ian Sinclair attempted to achieve the considerable feat of making the Dowasir simply disappear.

48. They left in the 1920s, he argued, and we do not know that they ever came back. He noted references to the fact that some of the Dowasir who had left were only trickling back to Budaiya as late as 1933, and this, he insisted, is no proof that they ever went back to the Hawar Islands.

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[24]Memorial of Bahrain, Vol. 5, Ann. 236, pp. 1041-1042.

49. Bahrain would suggest that Qatar spend a bit more time studying the historical sources. First of all, as I have stated, not all of the Dowasir left. Those who left were mostly from Budaiya. And most of the Hawar islanders were in fact from Zellaq, which makes quite a lot of sense when you consider that Zellaq is almost half as close to the Hawars as is Budaiya.

50. Moreover, there is the testimony of the witnesses who were born on the Hawar Islands, or brought up there, in the 1920s, and who did not leave Bahrain with the Budaiya Dowasir[25]. Qatar has argued — with a seemingly scholarly scepticism which, however, it certainly does not apply to its own historical propositions — that these statements should be treated "with caution". Let me therefore say a few words about the weight to be given to these witness statements.

51. Bahrain is well aware of the fact that procedures before this Court are not conducive to the use of oral evidence. Indeed, not much is achieved if each side brings an equal number of witnesses, and one group makes some emphatic affirmations while the other group says exactly the opposite.

52. But the situation in this case is entirely different, in three quite significant ways.

53. First, Qatar has not produced a single witness statement. The simple reason is that there is no Qatari who could affirm that he has ever been on the Hawar Islands, no Qatari who could affirm that the Al Thani governed Zubarah before 1937, no Qatari who could contradict Bahrain's *effectivités* on the other features in the Gulf of Bahrain. In other words, the witness statements are both *uncontradicted* and *corroborated by the written record.*

54. Second, what the witnesses have to say does not involve any subjective judgments, or controversial opinions. The main point is that these witnesses *exist*; they are real human beings and it is only the most basic facts of their life which are of interest. Where were they born? Where did they grow up? Who were their neighbours? Where are their houses and fish traps and the graves of their friends and families? These are simple facts. They could be tested in very simple ways.

55. Third, precisely, Qatar has never sought to challenge these statements, which were communicated in 1996. This is hardly surprising. What could Qatar have said? That these people

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[25]Memorial of Bahrain, Ann. 314, Statement of Nasr bin Makki bin Ali al Dosari, 16 Sept. 1996 and Memorial of Bahrain, Ann. 315, Statement of Salman bin Isa bin Ahmad bin Saad al Dosari, 15 Sept. 1996.

are impostors? That they are not who they say they are? That they did not live on the Hawar Islands when they did? That their identification of buildings and places and graves are erroneous? But all of these simple things can be checked. These witnesses, surrounded by their friends and family, have without the slightest doubt been following every moment of these proceedings as they are broadcast live and *in extenso* on Bahraini television. Can anyone imagine how utterly preposterous it would be if these patriarchs would be exposed as having fabricated their identities, their parents, their upbringing, the way they have spent their lives?

56. More than anything else, this part of the controversy illustrates, yet again, the unsatisfactory nature of a claim which asks the judges who compose the International Court of Justice in the year 2000 to conduct an investigation into circumstances which could only have been properly and fully understood at the time, which were in fact examined at the time, and which led to a decision on the basis of which life has now continued for several generations.

The critical date

57. This leads me naturally to my very shortest topic: critical date. The Agent of Qatar in his concluding remarks stressed that developments subsequent to 1983 should have no weight in this case. Whether the date should be 1983 or 1991, when Qatar made the Application to this Court could be debated.

58. But this is purely academic, because Bahrain has not invoked any matter taking place in the last 20 years as a foundation for its title. Bahrain's ongoing activities in the Hawar Islands are the *consequence* of its earlier title, and not its *source*.

59. But counsel for Qatar has of course also argued that a critical date should be recognized as far back as 1936, and that the Court should therefore give no weight to anything which has happened in the last 65 years.

60. This cannot fail to throw the most subtle mind into great perplexity. How could one possibly consider, in particular, that the years between 1939 and 1971, when Bahrain achieved full independence, should be off bounds to any enquiry? How could Bahrain be criticized for complying with a decision from the highest level of the British Government? What does Qatar imagine that the Ruler of Bahrain should have said to Britain in 1939? As the dominant Power,

Britain confirmed that the Hawar Islands belonged to Bahrain. This involved rights — and duties. So was the Ruler of Bahrain supposed to rebuke the British, to explain that Britain would one day probably or certainly be exposed as "shameful and sordid", that the British decision was a cynical and "hypocritical" imposition of its own interests, and that the Ruler of Bahrain was going to have nothing to do with it? Should he immediately have told the Dowasir that they should immediately clear out of the Islands because despite what the British had said, the Ruler of Bahrain knew that in truth the British had granted an original title to the Al-Thani long ago — including all of the peninsula, including everything in its territorial sea?

61. This is not, in Bahrain's respectful submission, an argument which merits serious attention. If Qatar's wild ideas about critical date were accepted, half of our planet might well be living right now in the middle of vast epochs of critical date. Former Yugoslavia alone would probably be entirely covered with overlapping critical dates going far back to the early Middle Ages, with the people of every region and every ethnic group wishing to redress grievances handed down from generation to generation.

62. To conclude on this point: the *earliest* possible critical date is the one referred to by Qatar's own Agent, namely 1983.

Qatar's allegations of "shameful and sordid" manipulations by Britain

63. I come now to my fifth and final point of the factual context of the 1939 decision. Britain, Qatar says, perpetrated a fraud of historic proportions on Qatar. This revisionist theory focuses on Sir Hugh Weightman, who is said to have harboured an irrational and indeed "paranoic" loathing for the Al-Thani — although the Court might still be waiting to hear what Weightman, as an alleged paranoid, was afraid of.

64. By blackening the name of Weightman — and indeed the name of anyone who had the temerity to disagree with Qatar — Qatar today seeks a radical solution to the dilemma of its failure in 1938-1939 to present any probative evidence beyond the fact of proximity. Qatar thus suggests that it *would* have proved its case if its evidence had not been suppressed, or if it had been given adequate time, or if the Political Agent had not misconducted himself. Of course, now even with 60 years to prepare itself, Qatar today has still done no better than what Sheikh Abdullah did . . .

65. Like so many conspiracy theories Qatar's story suggests desperation.

66. It is easy to launch such accusations, but difficult to demonstrate that they are justified. Here, it is impossible. What Qatar offers today is the fruit of wishful thinking. Qatar would like the Court to believe that Bahrain's overwhelming evidence of its sovereignty over the Hawar Islands was pervasively contaminated, and that Qatar had good evidence that was suppressed. But what was that evidence? The Court is today in a position to see that there was *nothing to suppress*.

67. To suit its ends, Qatar has invented a history based on inferences and innuendo. The materials and arguments presented by Qatar fall very far short of proving Qatar's thesis. First, the attacks on Weightman and his colleagues fail because they are based on implausible speculation. Second, for the conspiracy theory to succeed, Qatar must show that many senior British officials, and not just Weightman, were part of the scheme. The Qatari allegations are audacious, contumacious, irresponsible, and totally unfounded.

68. In its Memorials, Qatar sought to convey the impression that Bahrain was hardly even aware of the Hawar Islands until the 1930s, when Sheikh Hamad of Bahrain encouraged Belgrave to fabricate a baseless claim.

69. Fortunately, Bahrain was able to locate the book by Mr. Thomas Ward. The map in that book which was submitted to the Court on 1 March 2000[26] shows conclusively the futility of Qatar's speculations. Contrary to Mr. Bundy's assertions that Bahrain has no maps that contradict Qatar's position, again — like the Izzet map — here is one drawn up by people who were actually living and working in the region. It shows that the Hawar Islands were considered to be part of Bahrain long before Belgrave ever put his foot in Bahrain.

70. In the first round, Qatar showed the Court maps which had been drawn up unilaterally by Major Holmes, but Qatar avoided any mention of the "Ward map" — the one which was actually used in negotiating the 1925 Bahrain concession.

71. Naturally Bahrain pointed out this remarkable oversight[27], which completely discredited Qatar's argument.

72. Last week, in the second round, Qatar attempted to rescue the situation in two ways.

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[26]Supplemental Documents of Bahrain, No. 18, p. 170.

[27]CR 2000/14, p. 24, para. 33.

73. First, counsel to Qatar engaged in some speculation. There was no reason for Holmes to exclude the Hawar Islands from his draft of the concession agreement, he argued, if anyone had thought that they belonged to Bahrain[28]. Holmes would surely have liked Bahrain to be as extensive as possible.

74. But what counsel seemed to forget is his own earlier account of the facts — which are undeniable — that Holmes had also been trying to get a concession from Ibn Saud to cover the entirety of the Qatar peninsula. This was until the British reached an understanding with Ibn Saud in the course of a famous meeting with Sir Percy Cox, High Commissioner for Iraq, that Ibn Saud did not have dominion over Qatar. But until then, it was, *a priori*, indifferent to Holmes who controlled the Hawars — to use a familiar expression, Holmes was "playing both sides of the street".

75. Now we come to the second and far more interesting way in which counsel to Qatar sought, in the second round, to rescue its compromised argument.

76. Counsel stated that the Holmes map was published in 1965 and that it shows the extent of the Bahrain concession *after the British decision of 1939*, which, as Qatar puts it, "wrongly decided that Hawar was part of Bahrain"[29].

77. This argument, I regret to say, but I must say it, goes beyond the limits of responsible advocacy before this Court.

78. Counsel said that this map was post-1939 — "it says so," he said[30]. The truth is that it says quite the contrary. You have this map under tab 120 of the judges' folders. Ward indicates that: "The reference on the map is to the original concession for the Neutral Zone of May 17, 1924."

79. And when one looks at that reference on the original map, one sees that it explicitly defines: "the Area to which the — NEUTRAL ZONE CONCESSION — attached hereto refers". In other words, this map existed in 1924.

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[28]CR 2000/18, p. 19, para. 11.

[29]CR 2000/18, p. 19, para. 12.

[30]CR 2000/18, p. 19, para. 12, line 13.

80. Holmes therefore understood *sometime before May 1924* that the Hawar Islands belonged to Bahrain, and would be included in the exploration licence — exploration licence — covering all the dominions of Bahrain.

81. May I remind the Court that this map is not an incidental feature buried in the depths of Ward's 296-page book. It is the first thing that appears in the book — the frontispiece — and it indicates the scene of all of the negotiations *in the 1920s*. And in a postscript, at page 255 of the book, Ward specifically identified the map as the one used by Holmes "in connection with his original negotiations".

82. Is Qatar now reduced to suggesting that Mr. Ward, a distinguished and successful American oil executive, was a part of Britain's "sordid and shameful" schemes? That he, a quarter of a century after the decision in 1939, as an old man reminiscing among his papers back in New York, altered the map before he put together his book in 1965? For what possible motive? Was he in some kind of collusion with Bahrain? If so, why did he not somehow get the book to Bahrain, instead of leaving it to us to find it by accident in the late stages of this case, some mere months ago?

83. Finally, one notices the stamp on this map: "For and on behalf of The Eastern & General Syndicate, Limited." This was, of course, Major Holmes's company. It was, of course, out of the oil business as of the late 1920s, when it transferred its interests to Standard Oil of California.

84. Bahrain needs to say nothing more, except to note with regret that whenever one of Qatar's misrepresentations of history is exposed, Qatar's reaction is not to acknowledge its error, but to present another misrepresentation, or offer other irresponsible allegations.

85. Qatar has made much of the fact that two British officials, Prior and Alban, expressed opinions contrary to the 1939 decision. None of these opinions is the least convincing. They were expressed by persons who had not examined the parties' submissions, and merely reflected superficial impressions. Their disagreement with the 1939 decision was not based on any evidence which might have been overlooked by Sheikh Abdullah. Neither Prior nor Alban had ever been to the Hawar Islands. Of course dissenting views are a healthy thing, but they do not invalidate formal decisions. What would happen, Mr. President, if someone were to say that the only judgments of this Court entitled to recognition are those issued without dissent? Moreover, the

dissenters here were not even part of the relevant decision-making body. The more apposite consideration is, therefore, the following passage from the *Eritrea-Yemen* Award:

> "internal memoranda do not necessarily represent the view or policy of any government, and may be no more than the personal view that one civil servant felt moved to express to another particular civil servant at that moment: it is not always easy to disentangle the personality elements from what were, after all, internal, private and confidential memoranda at the time they were made."[31]

86. It is rather surprising to find Qatar still, at this eleventh hour, thinking that it can find some comfort in the views expressed by Prior to the effect that the 1939 award was "a grave miscarriage of justice"[32]. There is considerable correspondence which examined at the time his contention. That subsequent correspondence was reviewed in no less than 20 paragraphs of Bahrain's Counter-Memorial. The Court will recall that Prior's superiors discredited or dismissed Prior's views[33]. I shall not go over this old ground, except to recall that Prior particularly criticized Weightman's methodology — which Weightman, in this correspondence, was able to refute — and that the Indian Government's External Affairs Department felt that Prior had allowed himself to be influenced by personal animosity[34].

87. But since Qatar continues to rely on this internal note by Prior, it may be worthwhile to pursue the case of Mr. Prior just a little bit further.

88. When his superiors challenged him on his views about the 1939 decision, Prior asked for the assistance of Major Alban, the recently appointed Acting Political Agent in Bahrain who obviously had never been to the Hawars either, and was under the impression that a person could wade to the Hawars from Qatar.

89. In the letter which Sir Ian Sinclair showed the Court (prepared on the basis of a note by Alban), Prior gave as the reason for his criticism that:

> "The Hawar Islands case has been decided according to western ideas, and no allowance has been made for local custom and sentiment. During 3½ years in Bahrain I never heard anything to suggest that these islands belonged to Bahrain."[35]

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[31]Award in the First Stage, 9 Oct. 1998, para. 94.

[32]Memorial of Qatar, Ann. III.212, Vol. 8, p. 53.

[33]Counter-Memorial of Bahrain, paras. 288-308.

[34]Counter-Memorial of Bahrain, para. 306.

[35]Letter of 26 Oct. 1941, Memorial of Qatar, Ann. III.229, Vol. 8, p. 127.

90. Was Lt.- Col. Prior an expert on "local custom and sentiment"? We have no reason to believe so. We do find in Belgrave's diary an entry where Belgrave describes a meeting at the residence of the Ruler of Bahrain where Prior was present. "There were long pauses," writes Belgrave, "and an occasional remark by Prior *through his interpreter*"[36] *(emphasis added).*

91. Some indication of the level of Prior's cultural sensitivity is given by Belgrave's account of a meeting between Prior and an old Sheikh who asked Prior whether it was true that King Ibn Saud had given Prior, then a 36-year old Political Agent, a fine horse. Writes Belgrave: "Prior replied 'yes, a horse'. Ibrahim again repeated 'a fine horse' and looked profoundly shocked when Prior said he would prefer a present that didn't eat."[37]

92. Prior also had a habit of writing ill-considered letters. Given Qatar's reliance on his correspondence regarding the Hawars, let me mention two instances in Belgrave's diaries. (I feel free to read out these private reflections, because two of Qatar's counsel have already used these diaries.)

93. Very early during Prior's term as Political Agent in Bahrain (1929-1932), a generator was installed in Manama. This generator bothered Prior. We see in Belgrave's diary[38]:

> "Prior wrote another tiresome letter about the smell and the noise of the electric machine. The Shaikh sent in to me about it and he evidently was very annoyed by the letter . . . Myself I really don't think there is much to complain of [concerning this generator]."

94. And a year later there is this (30 March 1932): "Abdulla bin Jabr came in from the Shaikh." Now, allow me to remind you that the Shaikh is the Ruler of Bahrain, Sheikh Hamed, and that Abdullah bin Jabr was and remained for many years the influential secretary of the Emir. His full name, allow me to remind you, was Abdullah bin Jabr al Dosari. He spent much of his childhood on the Hawar Islands[39]. And it is his grandson who has been the Minister for Foreign Affairs of Bahrain for nearly 30 years, and who has been with us twice during these hearings. Now, back to Belgrave's diary:

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[36]Entry for 3 March 1930.

[37]8 Feb. 1932.

[38]8 Jan. 1931.

[39]Memorial of Bahrain, Anns. 313 and 314.

> "Abdullah bin Jabr came in from the Shaikh and we talked about the letter which Prior has written to him about a recent case in which the Shaikh interfered unsuitably. [The inference is that this was Prior's opinion of what was 'unsuitable'.] The Shaikh dislikes Prior very much and is very angry about the letter."[40]

95. There is much more in this vein, but suffice it to say that by 1946, when the Emir discovers that Prior is finally leaving the Gulf, Belgrave writes: "His Highness intensely pleased & relieved at his departure."[41]

96. Before he left, Belgrave records that Prior's

> "one & only object now seems to be to prevent Hugh Weightman or Hay getting the job after him — he never thinks of what will be the best for the Gulf if any personal reasons come into it."[42]

97. Apart from the possible factor that Weightman was a graduate of Cambridge University whereas Prior was a pure military man, a product of Sandhurst, Weightman's cardinal sin appears to have been that he temporarily occupied the position of Acting Political Resident in 1938 just before Prior took over.

98. Prior's own career, however, was cut short. If one wonders why, it suffices to look up his record, where one finds that his problems were not limited to the Emir of Bahrain, or Belgrave, or Weightman. Two years before he left the Civil Service, Prior was censured by his ultimate superior, Sir Olof Caroe, for:

> "overgenerous use of explosives on paper. These defects give the impression of a certain immaturity . . . They are important in that his position as Resident in the Gulf necessarily brings his work to the direct notice of the Secretary of State and of various high authorities in the Middle East."[43]

99. Prior was warned: "His Excellency has observed that you are inclined to be too lavish with explosives in your telegrams, which often spoils a good case."

100. Prior was noted to be a "master of the *pasquinade*", which seems to be one of those French words used exclusively by certain Englishmen. I am not familiar with it, but the dictionary tells us a *pasquinade* is a way of ridiculing people in writing. Synonyms are: burlesque, travesty, charade.

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[40] 30 March 1932.

[41] 13 April 1946.

[42] 18 Feb. 1945.

[43] Paul Rich, *The Invasions of the Gulf*, IX, Biographical Annexes.

101. So here is a man taken to task for immaturity, hastiness in his written opinions, and unsuitability to be dealing with senior officials. Prior resigned, as I said, within two years, at age 50, and went to work as a local representative of a bank. Belgrave notes his own unease as the suddenly friendly Prior pays him a visit, gives him a "silver cigarette box from the Directors of the Bank", and asks Belgrave to open a Bahrain Government account with them[44].

102. What is relevant about this is that one of the objects of Prior's intemperate writings was none other than Weightman. In 1940, just before Weightman left Bahrain to be replaced by Alban, Prior communicated the following evaluation of Weightman:

> "He [Weightman] was also unpopular with the local British community which did not appreciate his *de-haut-en-bas* manner [this is *Prior's* French expression] . . . [Weightman] recommended a worthless creature as Defence Officer, who turned out to be not merely a drunkard but probably a pervert as well . . . I hope [Weightman] will consider the award [of Commander of the Indian Empire] as payment in advance and justify it by continued interest in Gulf affairs."[45]

103. A notation in the file from a more senior official receiving this evaluation, identified only as "L", is devastating — for Prior: "I do not propose to waste my time in an attempt to purge Mr. Prior of his bumptiousness. [Bumptious means "conceited," or *suffisant, prétentieux.*] I agree that the victims should be protected." *(Ibid.)*

104. As one of those "victims", Weightman at any rate went on to a far better career than Prior.

105. Weightman left Bahrain in August 1940 for a promotion to the position of Deputy Foreign Secretary and then Joint Foreign Secretary, to the Government of India, where he worked with Nehru, and in due course he received his knighthood. (We now see Prior's bitter comments against Weightman as those of a resentful man whose former subordinate has leapfrogged over him to assume ministerial duties.)

106. As for Mr. Alban — just a word — his was, it seems, the least distinguished career of any official whose name occurs in this case. He joined the army at age 18, became Acting Political Agent in Muscat at age 25, and 17 years later he was back in Muscat in the same position — *Acting*

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[44]10 April 1950.

[45]Rich, p. 234.

Political Agent. In between, he had been *Acting* Political Agent in four places, including Bahrain twice. People always seemed to be wanting to send him someplace else.

107. Perhaps a hint of an explanation is given by Belgrave, once more, in a diary entry for 1941:

> "Alban came over & discussed electric affairs — behaved very strangely down below . . . he shouted some remarks about everyone being anti-English which all the clerks heard. He arrived in my office in a very queer condition and talked about peoples' throat being cut — I tried to calm him down & eventually succeeded. Either he is ill or slightly mental, he looked very ill when he came up."[46]

108. My point is, of course, that these two dissenting voices are not entitled to the slightest weight.

109. I do not need to establish the bona fides of Sir Hugh Weightman, or Sir Trenchard Fowle, or Sir Eric Caroe, or the other various officials in the British and Indian Governments — including the Marquess of Betland and Lord Halifax — who made the decision to recognize Bahrain's title to the Hawar Islands, within the scope of their authority as representatives of their Government. I have already had the occasion to submit to the Court that the charges of bias against Weightman are nothing but speculation on the part of Qatar. I would now only add, before leaving Belgrave's diaries, that there is a curt but rather eloquent entry which undermines Qatar's attacks on Weightman. The entry is on 26 April 1939. This is nearly two years after Qatar's attack on Zubarah. The Naim refugees are camped on the main island of Bahrain. Weightman is Political Agent in Bahrain. Belgrave notes that the Emir and other senior members of the Al-Khalifa came to see him and talked about Zubarah. He writes: "All much upset because Abdulla [Al-Thani of Qatar] is said to be building at Zabara. Wrote a protest — of no use."

110. The protest, of course, was to Weightman, who according to Qatar was biased in favour of Bahrain and who Sir Ian Sinclair says must have for some incomprehensible reason loathed the Al-Thani Sheikh. Well, why did Weightman fail to seize the occasion to come to Bahrain's aid? Why did he not seek to mobilize support for a punitive expedition? Bahrain cannot answer these questions; we only know that he did not, and that his conduct in this matter was a great disappointment to Bahrain.

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[46] 11 Jan. 1941.

111. I know I have spoken too long of these old stories. There is too much hearsay, too many personal grudges and animosities, and interpretations of bits of old records which may be entirely misleading. We have not found Prior's diary, if he kept one. We have not found the diaries of Major Holmes, or of Mr. Skliros, as much as we have tried. And as far as we know, Sheikh Abdullah kept no diary.

112. So I have the very real sense that I am wasting the Court's time with subjective reflections about people we have never met, why they might have done what they did years before many of us were even born.

113. That, however, is exactly my point: the judges who in the year 2000 compose the International Court of Justice should not be asked to delve into speculations about the actions and motivations of more or less obscure individuals 60 or 70 years ago. Are we now going to invite the whole world to redraw borders on the basis of speculation about colonial Powers' motivation? Surely not. This is a matter of the most compelling common sense, and fortunately, as Professor Reisman will confirm, it also coincides with the law.

114. May I ask therefore you, Mr. President, to call on Professor Reisman at this time.

Le PRESIDENT : Je vous remercie, Maître Paulsson. I now give the floor to Professor Michael Reisman.

Mr. REISMAN:

REPLY ON *RES JUDICATA*

1. Thank you, Mr. President, Members of the Court. I had the honour of presenting Bahrain's submissions with respect to the 1939 decision in the first round. It is apparent from the amount of time that each Party has devoted to this issue that they share a conviction that it is important and could be dispositive of the question of title to the Hawars. So I beg the Court's indulgence for a rather careful examination of Qatar's final reply on this matter.

The issues in contention

2. As for the issues in contention: the 1939 decision must have some legal characterization. Bahrain submitted that the 1939 decision was either an arbitral award, in which case it is *res*

judicata, or an administrative, political decision, in which case it is final. If it is an arbitral award, then a preliminary question is whether the *special* consent that the Court has deemed necessary to enable it to reopen the *res judicata* of another international tribunal has, in fact, been granted. If that special consent has not been granted, in Bahrain's submission, the Court should confirm the award's finality, based on *res judicata*, and proceed no further on the issue of sovereignty over the Hawars. Only if the Court decides that special consent was granted by Bahrain, must the Court examine the allegations of Qatar that the 1939 Arbitral Award is void because of (i) absence of consent, (ii) bias of the arbitrator, (iii) procedural improprieties, and (iv) absence of reasons. Qatar's various allegations of bias may, however, themselves be inadmissible, as the Parties, I think, now agree that the Government of the United Kingdom was the arbitrator or decision-maker and that allegations of bias against the United Kingdom would require the Court to pass upon the lawfulness of the action of a government that has not consented to its jurisdiction. If the 1939 decision is characterized as an administrative, political decision, then none of the criteria for determining the validity of international arbitration will apply; the only question as to its lawfulness is whether it was authorized, by a specific consent or by a more general authorization in a treaty.

3. Happily, my task is limited by a number of factors. As Qatar has elected not to respond to a number of these points — for example, the issue of Qatar's supposed protest appears to have been abandoned — and seems to have conceded others — for example, the irrelevance of the absence of an oral hearing — I need only comment on the points it has raised. And as my friend Mr. Paulsson has dealt with several of Qatar's allegations of procedural defects in the first round, I need not address them in detail. I will not comment on our adversaries repeated, rather sarcastic characterization of the arbitration in terms of a "so-called arbitration". It is, we submit, incontestable that there was an arbitral procedure, albeit a simple one, with consent, procedure, reasons and an award. If one does not assume that there was an arbitration, then none of Qatar's objections to it are pertinent, since a political decision does not require compliance with the standards of arbitration; once consent is established — and we believe there is no serious factual question as to consent — Bahrain's title to the Hawars becomes incontestable as of 1939. Qatar cannot have it both ways.

4. If it please the Court, I turn to the matters still in issue.

Did the Court receive the special consent necessary to review the *res judicata* of another international tribunal?

5. With respect to the threshold question of whether Bahrain explicitly consented to waive its rights to the *res judicata* character of the 1939 Award, we assume from the comments of Professor Salmon[1] and the more detailed observations of the Agent[2], that Qatar does not contest that three successive cases, one of the Permanent Court[3], two of this Court[4], have established a *jurisprudence constante* to the effect that even the broadest general submission to jurisdiction, indeed one accepting the widest jurisdiction under Article 36, paragraph 2, of the Statute, does not, in itself, convey the special consent the Court has required before it will undertake to reopen a *res judicata* of another international tribunal. So the question at issue is really reduced to one of fact: did Bahrain agree, in the Doha Minutes, to such a special jurisdiction?

6. Qatar has offered a variety of responses to that question. Sir Ian said the Court's jurisprudence is irrelevant, because the arbitration was not an arbitration[5]. But, as I said, if it was not an arbitration, then all of the arbitral objections that Sir Ian laboured to develop are irrelevant and the 1939 decision is valid as a political decision. Dr. Al-Muslemani said "the British Government agreed, in the 1960s, that its decision could be reopened in an arbitral proceeding . . ."[6]. Sir Ian, too, was impressed by the fact that "the sole 'arbitrator', the British Government, was prepared 35 years ago to see its 1939 and 1947 decisions on Hawar and the maritime delimitation referred to a process of independent arbitration between Qatar and Bahrain"[7]. But is it for a prior arbitrator, long since *functus officio*, to waive the *res judicata* effect of an award? Or is it the parties, and in particular the party that prevailed in the arbitration, that alone can set aside the *res judicata* character? Considering Qatar's unwavering insistence on the need for

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[1]CR 2000/17, p. 20, June 20, para. 18.

[2]CR 2000/ 19, p. 42, June 22, para. 22.

[3]*Société Commerciale de Belgique, 1939, P.C.I.J. (Series A/B) No. 78,* p. 160.

[4]Case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906, Judgment, I.C.J. Reports 1960*, p. 192; case concerning the *Arbitral Award of 31 July 1989, I.C.J. Reports 1991*, p. 53.

[5]CR 2000/19, p. 14, para. 4.

[6]*Ibid.*, p. 43, para. 23.

[7]*Ibid.*, p. 17, para. 8.

its *own* consent to the 1939 arbitral procedure, Dr. Al-Muslemani and Sir Ian are cavalierly dismissive of a corresponding need for Bahrain's consent. Professor Salmon asserts, in a single sentence, that the exchange of letters in 1987 and the Doha Minutes in 1990 conveyed this jurisdiction[8]. Dr. Al-Muslemani asserts, also in a single sentence, that the Court has already decided this issue[9].

7. The question of whether there was a special consent to reopen a *res judicata* is important and difficult, both as a matter of fact and of international policy. It cannot be dismissed with "one-liners". The Court is well aware that Bahrain did not believe that the Doha Minutes constituted a *compromis* at all and, indeed, the Court gave the Parties an opportunity to draft one, by means of which the dispute would then be submitted[10]. When that initiative failed and the Court itself established the terms of jurisdiction[11], Bahrain vigorously opposed it in the first phase, contending that the Doha Minutes were not a submission. The Court has yet to address the specific question of whether Bahrain has granted the special consent necessary for reopening a *res judicata* of another tribunal.

8. Bahrain has submitted that neither the Doha Minutes nor the jurisdictional judgment of the Court addressed this issue. In its prior judgments on this generic problem, the Court has insisted on the most explicit and unequivocal assent to this special jurisdiction. Anything less — and, in particular, a new corollary of "implied" special consent — will encourage all losers to try to move the matter into court and even if they cannot, it will permit them to reject, in the broader political arena, what would otherwise be the unquestionable authority and finality of the award or judgment. In sum, the content of the principle of *res judicata* will suffer a legal and political erosion.

9. When the Court takes up this issue, we ask it to consider whether there is any indication, let alone any hypothetical reason, why Bahrain, a tiny, densely populated country, that prevailed in the 1939 Award, would have simply put aside the *res judicata* that ensures its tenure in virtually one-third of its territory. Bahrain certainly did not *expressly* waive its rights under the *res judicata*.

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[8]CR 2000/17, p. 20, para. 18

[9]CR 2000/19, p. 43, para. 23.

[10]Case concerning *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 125, para. 38.

[11]Case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995.*

Is it reasonable to assume that Bahrain *impliedly* waived its confirmed title to one-third of its territory — assuming, of course, that the law allows an implied waiver here? We make three submissions. First, that Bahrain never gave the special consent necessary to reopen the *res judicata*. Second, that international *ordre public* is served if the degree of explicitness of this special consent requirement is kept as high as it has been. And third, that in the absence of such a special consent here, the Court should, consistent with its own jurisprudence, confine itself to declaring the finality of the 1939 Award, which had confirmed Bahraini sovereignty over the Hawars.

Did Qatar consent to the 1939 procedure?

10. The Parties are in total agreement that consent is a prerequisite for a valid international arbitration. International law allows consent to be expressed in many forms, explicit as well as implicit. And indeed, Mr. Ian Sinclair, as he then was, in a Foreign Office minute of 9 May 1962, dealing with the Bahrain/Qatar dispute, said, "the only real legal basis for our [the British Government] making 'awards' of territory in the Persian Gulf was the implied consent of the Rulers in question to our doing so . . ."[12]

11. Mr. President, Members of the Court. Since counsel for Qatar seem to be having some difficulty understanding our submission here, may I put on the screen, once again, the pertinent sections of the two letters sent by the Ruler of Qatar on 10 May 1938 and 27 May 1938, in which he expressly stated his consent — black on white — to the arbitration. The letters are in your folders (tab 121) so I will not read them to the Court again. Yet, in the face of these letters, Sir Ian on 22 June concluded Qatar's position on this point, by saying, "Qatar entirely denies the Bahraini assertion that, by virtue of his letters of 10 and 27 May 1938, the Ruler of Qatar *indirectly* consented to a process of arbitration with the British Government as sole arbitrator."[13]

12. Mr. President, Members of the Court, the Universal Declaration of Human Rights instructs us that each person is entitled to his or her opinion, but they are not entitled to their own

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[12]Minute dated 9 May 1962 by Sinclair (F.O. 371/162824), Memorial of Qatar, Ann. IV.240, Vol. 11, p. 385.

[13]CR 2000/19, p. 20, para. 15.

facts. And the facts are that the Ruler of Qatar not only *expressly and in writing* consented to the 1939 arbitration procedure, but that he initiated the process. There was nothing indirect about it!

13. The Court will recall that Sir Ian earlier had acknowledged that these letters may have constituted consent, but not to arbitration[14]. But of course the invocation of the words "justice and equity" as the criteria of decision disproves that, so Qatar's dubious argument has apparently been abandoned in favour of a new one: the need for "*informed* consent"[15]. According to Sir Ian, on 22 June, the Ruler of Qatar may have consented, but would not have consented if he had known, first, that Bahrain had claimed the Hawars in connection with negotiations for an oil concession, and, second, that in 1936, the British Government had stated that it "appears to them that Hawar belongs to the Sheikh of Bahrain, and that the burden of disproving this claim would lie on any other potential claimant"[16]. *Pace* Sir Ian, if the Ruler of Qatar had only known these things, he would not have consented.

14. Mr. President, Members of the Court, are we now to believe that the Ruler of Qatar, busily trying to sign oil concessions for as much territory as he could, did not know that he could not sign concessions for the Hawars? Are we to believe that he did not know that Bahrain, with British approval, was giving concessions over the Hawars, an island group we are told by our friends he thought was his? Are we now to believe that he did not know that his own concessionaire was negotiating with Bahrain over rights to work in the Hawars because the Ruler of Qatar could not grant them? Are we now to believe that the Ruler did not know that Britain was reviewing all of his — and Bahrain's — concession negotiations and approving or disapproving them? Are we now to believe that he did not know of the intense activity — over several years — on the Hawars, his cherished islands, at only 80 miles from Doha? Sir Ian may have forgotten that two weeks ago, he himself quoted the Ruler's letter in 1939 in which the Ruler stated that he knew of the activities on Hawar prior to February 1938 and that he complained of them[17]. Despite Sir Ian's prior statement and the evidence carefully marshalled by Mr. Shankardass of a very astute

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[14]CR 2000/7, p. 47, para. 6.

[15]CR 2000/19, p. 20, para. 15. Italics in original.

[16]Memorial of Qatar, Ann. III.110, Vol. 7, p. 47, quoted in CR 2000/19, p. 20, para. 15.

[17]CR 2000/8 at p. 46, para. 23, quoting the Ruler of Qatar's letter of 4 Aug. 1939 in Memorial of Qatar, Ann. III.21.

and informed political leader, Sir Ian would now have us believe that the Ruler was a most uninformed man, indeed, utterly, totally ignorant of everything about him. Everything.

15. Mr. President, Members of the Court, these arguments strain credulity to the point of being frivolous. If there is one thing that is clear beyond peradventure or doubt, it is that the Ruler of Qatar solicited the 1938-1939 arbitration, expressly and "directly" consented to it and participated in it and that both Rulers understood the concept and essentials of arbitration. These are facts, not matters of opinion.

The allegations of bias against the United Kingdom

16. Mr. President, Members of the Court, Bahrain has submitted that allegations of bias against the United Kingdom are inadmissible, because they would require the Court to adjudicate the lawfulness of the behaviour of a State that has not accepted the Court's jurisdiction. In the past four weeks, Qatar has not contested this point of law but has tried to evade the inevitable jurisdictional impediment to its argument by adjusting the facts. The Court has witnessed a continuing refocusing of allegations. Initially in the Memorial, they were specifically against the United Kingdom[18], they refocused to "only" individuals in the Reply[19], to individuals engaged in a "sordid . . . and shameful" tale[20] in Sir Ian's first oral argument, and to "a very limited number of British officials in the Gulf and in London [who] acted with less than full impartiality and objectivity in setting up and participating in the procedures applied between 1936 and 1939 . . ."[21] in Sir Ian's second-phase argument. They were finally reformulated as individuals who are no longer conspirators in a shameful and sordid tale, but guilty only of being "economical with the truth", or, a tad more generously, "being engaged in an exercise of self-deception"[22].

17. I will spare the Court more of Qatar's spiral of escalating euphemisms. Mr. President, Members of the Court, governments can only operate through their officials. The actions of their officials are the actions of the government. The 1938-1939 arbitration was not a "rogue operation".

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[18]Memorial of Qatar, para. 6.251.

[19]Reply of Qatar, para. 4.295.

[20]CR 2000/7, p. 45, para. 3.

[21]CR 2000/19, p. 17, para. 9.

[22]*Ibid.*, at p. 13, para. 2.

It was an action of the British Government, effected, as must be every governmental action, through its authorized officials. The action was reviewed and approved at higher levels of government in London, as Sir Ian himself acknowledges[23]. Qatar's allegations of bias are necessarily allegations about the lawfulness of official action by the United Kingdom and they are not admissible.

18. My friend Mr. Paulsson has shown how fanciful, in fact, are all the "conspiracy theories", so there is no need to view them again, but I must observe the absurdity of one of the allegations that was repackaged by Qatar on 22 June. I refer to the alleged prejudice and bias caused by the British response to PCL's request in 1936 regarding the Hawar Islands. Happily, four weeks of oral argument have clarified a number of issues. Qatar no longer contends that the British response in 1936 was an arbitration. So the contention that the parties did not participate is not relevant. There were no parties in 1936. Qatar also now appears to agree that the British response, by its own terms, was provisional and, upon Qatar's formal request, the entire issue was reconsidered in the procedure in 1938-1939. Bahrain would have thought that this was the end of this rather artificial contention. But the argument has now been recycled. Now, says Sir Ian, "that 'provisional decision' obviously created an expectation among British officials dealing with this matter that the eventual final decision would be in Bahrain's favour"[24].

19. If one reads the memorandum of law and fact of April 1939 on which the British award was based, one finds no evidence of prejudgment; the memorandum is entirely straightforward, an examination of the facts and the law. Indeed, how could it be otherwise? The law was clear and Qatar produced no evidence. So, is Qatar's argument in effect that provisional administrative decisions that precede final legal decisions by their nature invalidate the final legal decision, because the provisional ones "create an expectation" in favour of the beneficiary? Do interim measures of this great Court, especially interim measures *sua sponte*, indicate a bias on the part of the Court and invalidate a final decision, if that final decision happens to confirm the interim measures?

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[23] *Ibid.*, p. 16, para. 6.

[24] CR 2000/19, p. 18, para. 13.

20. The wheels of justice grind fine, but often slow, and life, more and more, just cannot wait. The technique of provisional decisions is widely used in all developed systems and performs an indispensable function. Bahrain submits that the provisional administrative response of 1936 was exactly what it called itself: "provisional". As such, it was reasonable in terms of the circumstances, cogent in terms of the evidence available and, as is clear from the April 1939 memorandum, played no prejudicial role in the subsequent arbitration.

Mr. President, if I may ask, I would need about 15 minutes to conclude and, if the Court would indulge me, I could conclude this presentation by about, I believe, 1.10 p.m. In any case, I should say that Bahrain will in no circumstance use all of its time on Thursday, so an indulgence now would not create a procedural disequilibrium.

Le PRESIDENT : Si le temps que vous prenez en plus aujourd'hui est compensé un autre jour, vous pouvez terminer, Professeur Reisman.

Mr. REISMAN:

Is there any basis to the alleged absence of reasons?

21. On the matter of the alleged absence of reasons, once again happily, four weeks of pleading have considerably narrowed the issues. From our study of the *compte rendu* and what Qatar said — and not said — Bahrain takes it that both Parties now agree, first, that the 1939 decision was, indeed, supported by reasons, clearly expressed in the memorandum of law and fact, but that, second, only the *dispositif,* without the reasons, was notified to the parties on 11 July 1939. In the second round, Mr. Shankardass and Sir Ian challenged the validity and accuracy of the reasons, and Sir Ian argued that Britain's failure to transmit the reasons to the parties invalidated the Award.

22. Bahrain submits that it is impermissible to challenge an arbitral award on the grounds that the reasons are not correct and submits that the Court's holdings in *King of Spain* and *Guinea-Bissau* v. *Senegal*[25] — to the effect that review is not appeal — are dispositive of this issue. But even if, in spite of the absence of Bahraini special consent, the Court were to decide that it

[25]Case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906, Judgment, I.C.J. Reports 1960,* p. 192; case concerning the *Arbitral Award of 31 July 1989, Judgment, I.C.J. Reports 1991*, p. 53.

could review the award, it could not, we submit, consistent with its own jurisprudence, admit an appeal on the correctness of the reasons of the award.

23. As for the substance of Qatar's criticism of the reasons, they derive from Captain Prior's letter of 1941. My friend, Mr. Paulsson, has raised a number of questions about the general credibility of this particular witness.

24. That aside, what is the criticism Prior makes? "The Hawar Islands case has been decided according to western ideas, and no allowance has been made for local custom and sentiment."[26] "Western ideas", international law. And what was wrong with that? After all, Qatar has spent two weeks of the past four weeks contending that it had been a State since the middle of the nineteenth century. So what law is to be applied to a State if not international law?

25. Because both Parties now acknowledge that there were reasons supporting the 1939 Award, Sir Ian's principal objection here is to the fact that the reasons were not transmitted to either of the parties, and this is correct. In my presentation to the Court on 9 June, I reviewed the practice of public international arbitrations in which governments acted as sole arbitrator and I showed that, for this genre of arbitration, the transmission of elaborate reasons, such as those that would have been prepared by a body of jurists, was neither expected nor demanded[27]. Indeed, the boundary case between Bolivia and Peru of 1909 produced an award by the President of the Republic of Argentina of one half of a page. Nor was this particular practice unknown to the region that is subject to this case: *Qatar Petroleum Company* v. *Qatar* in an Award of 1950 "is limited", as the note in the International Law Reports puts it, "to a bare decision without any indication of the reasoning on which it is based"[28]. Qatar has not responded to any of this and, I might add, has carefully avoided all mention of the *Halul Island* decision of 1962 between Qatar and Abu Dhabi, by which Britain awarded Halul Island to Qatar. In that proceeding as well, all that was sent to the parties was the *dispositif*; 38 years later, the parties are yet to receive the reasons. Qatar, which won that case, has never, to our knowledge, protested that decision or claimed its validity, because its reasons were not transmitted to the parties.

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[26]Memorial of Qatar, Ann. III.229, Vol. 8, p. 127 at p. 129.

[27]CR 2000/12, p. 56, para. 38.

[28]Petroleum Development (Qatar) Ltd. *v.* Ruler of Qatar, Award, April 1950, 18 *ILR*, p. 161, at 164.

26. Sir Ian entirely ignores these practices of the period and region, but states, for the first time, that "[t]he justification for the rule that arbitral awards must be reasoned is to ensure that the losing party is made aware of the grounds on which the decision has been taken"[29]. With respect, I disagree. The function of the reasons requirement is to enforce the discipline and non-arbitrariness in the decision-maker seised of the case. And Bahrain submits that a reading of the award's memorandum of law and fact and the evidence of its review by higher levels in London will establish beyond doubt that this function was fully served.

27. Bahrain submits that Qatar's objections to the award on the basis of allegedly mistaken reasons are both wrong and inadmissible and its claim to annul on the basis of the non-transmittal of the reasons to the parties is groundless.

The alleged procedural violations

28. Because Mr. Paulsson thoroughly reviewed Qatar's allegations of procedural violations in the first round, I will limit myself to very few remarks. Sir Hugh Weightman, who was not a lawyer, conducted the arbitration under the oversight of the Foreign Office. When he took a procedural misstep, it was brought to his attention by the oversight mechanism and he corrected it, just as a hypothetical failure of an official, say, of the Registry of this great Court to transmit a document would be noted by a superior and promptly corrected. So when a mistake was made and a document was not initially transmitted to the other side, Qatar states that it was "deliberately" withheld[30]. But there is no evidence in the record to support this attribution of intentional malfeasance.

29. Sir Ian would have the Court impeach the award also because Sir Hugh took account, in addition to the submissions of the parties, of three other matters. First, statements in Lorimer's *Gazetteer*, which at that time was a confidential document; second, agency archives dating from 1909; and third, his own knowledge derived from two brief trips to Hawar in 1938 and 1939[31]. But this was perforce the nature of a procedure in which a government acted as arbitrator. A British official in this sort of arbitration could hardly ignore the collective memory of his

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[29]CR 2000, p. 22, para. 18.

[30]CR 2000/19, p. 24, para. 21.

[31]*Ibid.*, p. 24, para. 23.

government, nor would he, as arbitrator chosen by the Ruler of Qatar, have been expected to. Most important, and I emphasize this, none of these actions by Sir Hugh was prejudicial for or against the interests of either Bahrain or Qatar.

30. In this respect I agree with Sir Ian that what is important in the evaluation of the fairness of the procedure is what he calls the "principle of equality of arms"[32], but Bahrain submits that any objective reading of the record shows that that equality was in no way disturbed. Each party presented its evidence and was aware of the other party's evidence; Qatar was given a further opportunity to add to its evidence, but did (or could) not. In the context, there were no procedural violations nor, for that matter, any procedural events that would have warranted setting aside the award.

Is *Dubai/Sharjah* relevant to this case?

31. Finally, Mr. President, and parenthetically, I must respond to Qatar's brief references in its ultimate Reply to the 1981 *Dubai/Sharjah* Award, a case which is, incidentally, discussed thoroughly in our written submissions[33]. In *Dubai/Sharjah,* a majority held that a series of decisions taken in 1956 and 1957 by Tripp, then the Political Agent there, in response to the respective Rulers' requests for arbitration, did not constitute arbitral awards[34], on two grounds: first, "the lack of opportunity for the Parties to present their arguments and the absence of reasoning for the decisions"[35]. With respect to the need for an opportunity to present arguments, the *Dubai/Sharjah* Tribunal found that representatives of Dubai never spoke to the functionary who was gathering evidence[36].

32. Now neither of these grounds apply to the 1939 Award. The Award is fully reasoned, a point on which the Parties no longer seem to disagree, and the Ruler of Qatar himself had two opportunities to address the arbitrator. On the other hand, two other findings may have some pertinence for our case: first, the Tribunal found consent, for, as it said, "the Court is of the view

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[32]*Ibid.*, p. 24, para. 21.

[33]See Reply of Bahrain, pp. 59-61, paras. 101-110.

[34]Dubai-Sharjah Border Arbitration, *Award 19 October 1981, ILR*, Vol. 91 (1993), p. 543 at 577.

[35]*Ibid.*

[36]*Ibid.*, at 576.

that international law does not require here an excessive formalism. It is not the form but the reality of consent which is important."[37] Second, the Tribunal rejected the contention that Tripp, as Political Agent, lacked independence[38].

33. Despite the fact that *Dubai/Sharjah* could be cited in favour of Bahrain's position, Bahrain has been reluctant to rely upon it, among other reasons, due to what one may call its "anachronism". Because the procedures under review in that case had taken place in 1956 and 1957, by which time, to quote that Tribunal, "the modern concept of arbitration became quickly understood in the area of the Gulf"[39], the majority applied as its standard the International Law Commission's "Model Rules of International Arbitration" of 1958. Our arbitration took place in 1938-1939, some two decades earlier, a period in which the "Model Rules", indeed, the International Law Commission itself, had not even been conceived. Most important, as I said on 9 June,

> "the idiosyncratic procedures of public international arbitration were not yet part of the regional legal culture nor familiar to the Rulers of Qatar and Bahrain. It might well have been unfair to have imposed them."[40]

Hence, as I said then, the 1939 procedure was "[a] simple arbitration, given that neither ruler was greatly familiar with international procedure. But an arbitration nonetheless, with all the requisites."[41]

Conclusion

34. Mr. President, Members of the Court. For all of the above reasons, Bahrain submits that the Court should confirm the *res judicata* of the 1939 Award, which held that Bahrain has sovereignty over the Hawars. More generally, Bahrain respectfully suggests that the Court appreciate that Qatar's claim here puts the very principle of *res judicata* into jeopardy. Its importance cannot be overstated for a region in which there are many boundary and territorial settlements, some from colonial arbitrations and impositions, that still arouse anger and passion.

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[37] *Ibid.*, at 576.

[38] *Ibid.*

[39] *Ibid.*, at 575.

[40] CR 2000/12, p. 55, para. 34.

[41] *Ibid.*, at p. 45, para. 6.

Qatar itself should be aware of the importance of *res judicata*, for the tenure it enjoys in Halul Island is based on the award of that name. It is no exaggeration to say that the principle of *res judicata* is an indispensable strut upon which the political boundary structure of a sometimes precarious regional order rests.

35. Mr. President, Members of the Court, thank you for your attention.

36. Mr. President, I appreciate the indulgence in permitting me to complete. May I ask that tomorrow, if it pleases the Court, Sir Elihu be invited to address it. Thank you.

The PRESIDENT: Thank you very much Professor Reisman. La séance de la Cour est levée et la Cour se réunira à nouveau demain matin à 10 heures.

L'audience est levée à 13 h 10.