

29 June 2000

## **QATAR'S RESPONSE TO THE QUESTION PUT BY JUDGE VERESHCHETIN TO QATAR AND BAHRAIN**

On 15 June 2000, Judge Vereshchetin put the following question to the Parties:

"Before 1971, were there any international agreements concluded by the United Kingdom with Qatar and Bahrain respectively other than those establishing their relationship of protection?

Were there any international agreements concluded by the United Kingdom with third States in the name of or on behalf of Qatar and Bahrain before 1971? If so, what is the status of these agreements for Qatar and Bahrain now?

Qatar will respond to this question with respect to the situation between Qatar and the United Kingdom. Qatar does not express any views regarding the status of any agreements between the United Kingdom and Bahrain.

On 3 September 1971, Qatar and the United Kingdom entered into an agreement which provided under paragraph (2) thereof, as follows:

"The General Treaty of the 3<sup>rd</sup> of November 1916 and the treaties and engagements which the State of Qatar accepted thereunder and all other agreements, engagements, undertakings and arrangements between the United Kingdom and the State of Qatar flowing from the special treaty relations between the two States shall terminate with effect from the same date".

A copy of this document was filed by Bahrain under Tab 49 of its Judge's folder for Bahrain's first round presentation, although it had not been previously submitted as part of the record in the case. A copy of the related correspondence between the United Kingdom and the Ruler of the State of Qatar of the same date, which listed the treaties and other instruments which had been entered into prior to 3 September 1971 between Qatar and Great Britain, was not included in the Judge's folders provided by Bahrain. Qatar is attaching hereto a copy of the relevant correspondence which lists, under Annex A and Annex B, the relevant treaties and other instruments previously entered into between Qatar and Great Britain.

To the best of Qatar's knowledge and belief, these lists include the relevant treaties and other instruments considered by the United Kingdom to have been concluded between the United Kingdom and Qatar prior to 1971. While Qatar does not consider that, strictly speaking, all of the documents so listed constitute international agreements *per se*, Qatar has submitted these lists as representative of the United Kingdom's views on the matter at the time. In this connection, it should be noted that the 1916 Treaty between Great Britain and Qatar referred, in turn, to the 1868 Agreement between Great Britain and the Ruler of Qatar. Consequently, the 1868 Agreement should be included in the list of relevant agreements. This, in fact, was implicitly recognized by paragraph 2 of the United Kingdom's letter to the Ruler of Qatar of 3 September 1971 which specifically referred to the 1916 Treaty "and the treaties and engagements which the State of Qatar accepted thereunder".

The reference to the "State of Qatar" having accepted various treaties and engagements pursuant to the 1916 Treaty is significant. It shows that, despite the fact that Great Britain was in special treaty relations with Qatar, it still considered the State of Qatar to be an independent State with the capacity to enter into international agreements. Indeed, as Rendel of the Foreign Office noted in his memorandum of 5 January 1933 (QR, Annex II.58, Vol. 2, p. 335; Bahrain's Judge's folder, Tab 53), Qatar and Bahrain were not considered to "form part of the British Empire or of India. They are independent States for the conduct of whose foreign relations H.M. Government are at present responsible" (QR, Annex II.58, at p. 342). The same view was endorsed by the Bahraini scholar, Al-Baharna, who observed in his publication on *The Legal Status of the Arabian Gulf States* that: "It appears that the British Government treated the Rulers of these Shaikhdoms with whom it directly established official contact as heads of independent governments" (p. 70).

It should also be pointed out in this context that, even prior to 1971, the State of Qatar had entered into international agreements in its own right. While there are several such agreements, reference may be made here to three examples to which Counsel referred in Qatar's oral pleadings. The first is an agreement with Saudi Arabia with respect to the delimitation of their land boundary and the maritime boundary in the Gulf of Salwah, dated 4 December 1965 (CR 2000/17, p. 13, para. 9). The second is an agreement with Abu Dhabi for the Settlement of the Offshore Boundary and Ownership of Islands dated 20 March 1969 (ST/LEG/SER B/16, p. 483; QM, Annex IV.259, Vol. 12, p. 77). The third is a Continental Shelf delimitation agreement with Iran dated 20 September 1969 (UNTS, Vol. 789, 1971,

p. 172; QM, Annex IV.260, Vol. 12, p. 81). In addition, Qatar signed a multilateral Arabian Gulf Currency Agreement in 1965 (published in the Official Gazette, No. 2, 19 July 1965) and a Currency Agreement with Dubai in 1966 (published in the Official Gazette, No. 3, 26 March 1966).

As for the second part of Judge Vereshchetin's question, to the best of Qatar's knowledge and belief, there are no bilateral agreements concluded by the United Kingdom and third States in the name of or on behalf of Qatar before 1971.

The question whether the United Kingdom may have concluded multilateral agreements with third States in the name of or on behalf of Qatar is more complex. In the limited time available, Qatar has not been able to ascertain the precise position with respect to all of the multilateral treaties that might be relevant. Indeed, a full answer to Judge Vereshchetin's question would necessitate detailed research as to the status of each and every one of a number of multilateral conventions. Such research could be undertaken, but it would take some time.

Qatar would note, however, that with respect to the document entitled "International Agreements to which Bahrain, Qatar and the Trucial States are Bound", communicated to Bahrain by the Treaty Section of the Foreign and Commonwealth Office and attached to Bahrain's letter of 28 June 2000, the document in question does not assist in providing a full answer to Judge Vereshchetin's question. On the face of the document it would appear that, prior to 1971, a number of international conventions may have been entered into by the United Kingdom on behalf of Qatar, or extended to Qatar, for whose international relations the United Kingdom was at the time responsible, normally after consultation with the Government of Qatar. However, apart from being undated (although all the instruments listed thereunder pre-date 1971), the document is incomplete (it omits, for example, GATT, IMF, etc.). Moreover, it does not indicate how, or the extent to which, the United Kingdom may have signed certain agreements on behalf of or in the name of Qatar, or extended them to Qatar, and it lists at least four treaties to which Qatar acceded directly. Nor does it indicate the present status of any such agreements.

Although the document is entitled "International Agreements to which Bahrain, Qatar and the Trucial States are Bound", it does not include treaties or other international agreements which Qatar in its own right may have concluded prior to 1971 with third States, to which reference is made above.

To place the issue in perspective, Qatar has attached to this answer two pages from a publication that is readily available (The Persian Gulf - Historical Summaries - 1907-1953, Vol. II, Archive Editions, 1987) which explain the general position with respect to multilateral conventions. Qatar trusts that this document will be of assistance in response to this aspect of Judge Vereshchetin's question.

Qatar would also point out that it became a member of OPEC in 1961, an Associate Member of UNESCO in 1962, an Associate Member of the WHO in 1964, and an Associate Member of the FAO in 1967. Qatar also acceded to the Universal Postal Union in its own right in 1969.

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CONFIDENTIAL

Your Highness,

I have the honour to refer to the termination of the special treaty relations between the State of Qatar and the United Kingdom of Great Britain and Northern Ireland which takes effect on today's date. It is the understanding of the Government of the United Kingdom that the treaties and other instruments listed in Annex A to this letter will accordingly be regarded as terminated as from that date, to the extent that they give rise to rights, obligations and arrangements as between the United Kingdom and Qatar.

The question of the continued validity, if any, of any such treaties and other instruments as between Qatar and other States is not affected by such termination. The question of the participation of Qatar in certain multilateral international conventions of a general character has been considered separately.

Every effort has been made to ensure that the list in Annex A to this letter is complete. However, it is the understanding of the Government of the United Kingdom that all treaties and arrangements flowing from the special treaty relations between the two states, whether or not included in the list, will be regarded as terminated except for the agreements and other instruments which are listed in Annex B to this letter and which will be the subject of further discussion.

I would ask Your Highness to confirm that the present letter also correctly states the understanding of the Government of Qatar in this matter and hence that this letter and your reply to that effect will place on record the understanding between the two governments in this matter.

I avail myself of this opportunity to renew to Your Highness the assurances of my highest consideration.

Her Britannic Majesty's Political  
Resident

His Highness Shaikh Ahmed bin Ali Al-Thani  
Ruler of the State of Qatar



ANNEX A

- (1) General Treaty of 1916 and the treaties and engagements which Qatar accepted thereunder;
- (2) Civil Air Agreement of 1954;
- (3) Exchange of letters of 1960 on the Accession of His Highness the Ruler;
- (4) Correspondence concerning protection by HMJ, and related matters (1935 and subsequent dates);
- (5) Exchanges of Letters relating to political and agreements between HMJ and oil concessionaire companies;
- (6) Correspondence of 1957, 1958 and 1963 concerning internal security.





ANNEX B

- (1) Sterling Balance Agreement (1968):
- (2) Exchanges of Letters concerning the general retrocession of Her Majesty's jurisdiction and ancillary matters (1971):
- (3) Exchange of Letters concerning Her Majesty's Political Resident (1971).
- (4) Exchange of letters of 1971 in regard to Military Staging and Overflying rights.



THE  
PERSIAN GULF  
HISTORICAL SUMMARIES  
1907-1953

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Volume II  
Historical Summary of Events in the  
Persian Gulf Shaikhdoms and the  
Sultanate of Muscat and Oman  
1928-1953

TEXT AND APPENDICES

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ARCHIVE EDITIONS  
1987



- (ix) The standard of administration and justice in the Shaikhdoms must be constantly improved. In particular an advance must be made in the Trucial States.
- (x) The maintenance of good relations with Saudi Arabia is highly desirable and solutions must be sought to outstanding disputes.
- (xi) The oil companies must be free to develop their concessions. Their relations with the States must be kept under close review at all times.
- (xii) The facilities enjoyed by Her Majesty's forces must be maintained.<sup>(22)</sup>

The question of Anglo-American relations in the Persian Gulf referred to in item (vi) above is dealt with in the chapter on Bahrain (Chapter 2, paragraphs 101-105).

14. In 1951 His Majesty's Government, in discussing the question of jurisdiction, expressed the view that the ultimate aim in the Shaikhdoms should be to unify the two systems now in existence, *i.e.*, the Courts set up under the Orders in Council and the Rulers' Courts, so that there should be only one set of Courts which would be those of the Rulers, though it was admitted that this was a long-term policy. In the short term it was necessary to encourage the development of the local judicial systems and to improve the Order in Council systems so that both might be better equipped to meet modern requirements. It was proposed that the law existing or evolved for the Courts established under the Orders in Council should be applied in the Joint Courts so that these might become an avenue through which improvements could be achieved in the Rulers' Courts. In the matter of legislation on subjects of common concern to persons subject to both sets of Courts, the view taken was that the Rulers' laws and the Regulations issued under the Orders in Council should be similar in form as well as in subject. A law should first be made by the Ruler and then applied by King's Regulation to persons subject to the Order in Council concerned. As the success of this method was dependent on the acceptance by the Rulers of the assistance of His Majesty's Government in the drafting of their laws it was considered desirable that not only should the tradition of assisting in the drafting of laws be established but that the Rulers should be encouraged to improve their judicial and legislative machinery by such measures as the employment of British legal advisers.<sup>(23)</sup>

15. In 1945<sup>(24)</sup> and again in 1950 the Political Resident raised the question of the right of His Majesty's Government to sign international agreements on behalf of the Rulers without consulting them with special reference to the Chicago Air Agreements, under which it is in fact claimed that the Gulf Shaikhdoms are United Kingdom territory for civil aviation purposes. On the latter occasion the views of His Majesty's Government were that whenever possible the Rulers should be consulted and their consent obtained before any international agreements were entered into on their behalf, because His Majesty's Government's rights in the sphere of internal affairs were limited and because of the embarrassment that might be caused if they went beyond their agreement with the Rulers.<sup>(25)</sup> Prior consultation might not, however, always be possible and His Majesty's Government's position as Protecting Power required that the Rulers should in the last resort be prepared to be guided by them and accept their advice. Legally the validity of the international obligations accepted in respect of the Shaikhdoms was not affected by failure to consult the Rulers first. It was thus held that His Majesty's Government and the Rulers were committed to carry out the terms of the Chicago Agreements in respect of the Gulf Shaikhdoms and indeed the terms of 16 other multilateral agreements signed since 1945 which were deemed applicable to the Shaikhdoms, though subsequently the number of these was reduced to three.<sup>(26)</sup> It was suggested that the position should be explained to the Rulers of Bahrain and Kuwait but the Political Resident was opposed to this. The three agreements other than the Chicago Agreements held to be applicable to the Shaikhdoms were—

- (i) the General Agreement on Tariffs and Trade of 1949,
- (ii) the International Monetary Fund Agreement of 1945, and
- (iii) the Bermuda Telecommunications Agreement of 1945.

In 1951 the Rulers of Bahrain and Kuwait agreed to the extension of

<sup>(22)</sup> F.O. to P.R. Despatch 125 (EA 1053/8) of July 24, 1953.

<sup>(23)</sup> F.O. to P.R. Despatch 76 (EA 1643/75 of November 20, 1950).

<sup>(24)</sup> I.O. to F.O. Ext. 5375/45 of November 22, 1945 (W 15770/1287/802 of 1945).

<sup>(25)</sup> F.O. to P.R. EA 1511/1 of December 19, 1950.

<sup>(26)</sup> F.O. to P.R. EA 1511/4 of September 12, 1951.

the 1926 International Convention on Motor Traffic to their territories.<sup>(21)</sup> They also asked that the 1949 Road Transport Convention should be similarly extended<sup>(22)</sup> but it had not been ratified by Her Majesty's Government by the end of 1953.

In 1952 two officials of the Food and Agriculture Organisation visited Bahrain and approached the local Government without any prior intimation to the British political authorities. The British Middle East Office undertook to advise the Food and Agriculture Organisation Office in Cairo to ask their personnel to get in touch with the Political Residency if they visited Bahrain again.

### III.—The Arab League and the Gulf Shaikhdoms

16. The Arab League has not taken as much interest in the Gulf States as might be expected and has made no frontal attack on the British position there. In 1952 Sir Roger Makins reported that there were no obvious signs in the Gulf States of the influence of the League but that he had no doubt that nationalist feeling was not far below the surface.<sup>(23)</sup> Later in the year Her Majesty's Government considered that they could not ignore the danger that the politicians of the Arab League might turn to the Persian Gulf when they had exhausted the possibilities of Tunisia, Morocco, the Anglo-Egyptian dispute and other similar pretexts for agitation.<sup>(24)</sup> In 1953 the Secretary-General of the League was reported to have stated to the press that it was hoped that the Gulf Shaikhdoms would shortly contribute to the strengthening of the League, and that the legal aspect of the question was being considered so that the obstacles which hindered the Gulf States from having relations with the League might be overcome.<sup>(25)</sup> The Assistant Secretary-General subsequently stated that it was the League's intention to leave all political questions aside and to endeavour to establish closer cultural, educational and similar relations with the Shaikhdoms.<sup>(26)</sup>

17. In 1951 as a result of the attendance of representatives from Bahrain and Kuwait at an Arab League Educational Conference (para. 19 below) it was agreed between the Political Resident and the British Middle East Office that there would be no benefit in requesting the Arab League to pass invitations to the Gulf Rulers through the British authorities, as this might prompt them to take steps intended only to annoy His Majesty's Government, and that it was undesirable to insist on the Rulers passing their replies to such invitations through the British authorities. The Rulers should however be induced to refer all communications received by them from the League to the British authorities and to accept the latter's advice.<sup>(27)</sup>

18. In 1953 Her Majesty's Government issued instructions that the Ruler of Kuwait should be informed with particular reference to the Arab League that it was not their wish to prevent participation by Kuwaitis in any conference or organisation from which Kuwait might derive positive benefits, but that in view of their responsibility for his foreign relations they expected both to be consulted about any invitation which he might receive to send representatives to an international conference or to join any international organisation, and to be given an opportunity to advise him in his own interests to accept or refuse. Replies to such invitations should properly be sent through the Political Agent.<sup>(28)</sup> It was not considered necessary to say anything on the subject to any of the other Rulers, as Bahrain had shown no tendency to disregard the correct procedure and there was no evidence of any contact between the League and the other Shaikhdoms. The Ruler of Kuwait in reply promised to consult the Political Agent regarding any approach from outside on political matters, but said that he did not think a similar approach in medical or social matters warranted such action.<sup>(29)</sup>

19. There is no history of any relations between the Arab League and the Gulf Shaikhdoms until 1950 when both Bahrain and Kuwait accepted invitations to send a representative to an Educational Conference at Alexandria. The Bahrain

<sup>(21)</sup> (EA 1081/36 of 1951.)

<sup>(22)</sup> P.R. to F.O. 1921/39 of September 18, 1951 (GY 6/25 of 1951).

<sup>(23)</sup> Para. 10 at p. 9. Sir R. Makins' Report.

<sup>(24)</sup> F.O. to B.M.E.O. Despatch 234 (EA 1023/3) of September 2, 1952.

<sup>(25)</sup> Tel. from B.M.E.O. to F.O. 114 of February 17, 1953 (EA 1022/3 of 1953).

<sup>(26)</sup> B.M.E.O. to F.O. 10760/01/53 of March 9, 1953 (EA 1022/6 of 1953).

<sup>(27)</sup> P.R. to F.O. Despatch 16 of February 13, 1953 (EA 1022/2 of 1953).

<sup>(28)</sup> Tel. from F.O. to P.R. 12, Saving, of February 19, 1953 (EA 1022/2 of 1953).

<sup>(29)</sup> Tel. from Kuwait to Bahrain. 63 of March 16, 1953 (EA 1022/7 of 1953).

**COMMENTS OF QATAR ON THE QUESTION TO BAHRAIN FROM JUDGE  
VERESHCHETIN**

Judge Vereshchetin's second question was worded as follows:

"The British Note of 1971 concerning the termination of special treaty relations between the United Kingdom and the State of Bahrain refers to Bahrain as 'Bahrain and its dependencies'.

What was and what is now the official denomination of the State of Bahrain? What was the meaning of the term 'dependencies'? What was the legal status of 'the dependencies of Bahrain', in relation to Bahrain proper before 1971?"

Although this question was addressed only to Bahrain, Judge Vereshchetin indicated that comment by Qatar would also be welcome. Qatar therefore comments as follows.

(a) Official denomination of the State of Bahrain

Judge Vereshchetin's question was provoked by the reference to "Bahrain and its dependencies" contained in the agreement of 15 August 1971 concerning the termination of special treaty relations between the United Kingdom and Bahrain<sup>1</sup>. In that agreement, no definition is given of what such "dependencies" might be. Qatar must state, at the outset, that this reference to "dependencies" is not opposable to Qatar, which was not a party to that Agreement. In particular, Qatar cannot be bound by any interpretation that Bahrain might put upon the meaning of that term.

In the early documents in this case, reference was usually made simply to "Bahrain". Thus both the Preliminary Treaty<sup>2</sup> and the General Treaty<sup>3</sup> of 1820 were signed between the British Government and the "Sheikhs of Bahrein". The Preliminary Treaty did however refer to "Bahrain or its dependencies".

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<sup>1</sup> Bahrain Judge's Folder, Document 48.

<sup>2</sup> BM, Annex 1, Vol. 2, p. 1.

<sup>3</sup> QM, Annex II.14, Vol. 5, p. 9.

The 1861 Friendly Convention was signed between the British Government and Sheikh Mahomed bin Khuleefa, described as "independent Ruler of Bahrein"<sup>4</sup>. It provided for British assistance in obtaining reparation for every injury proved to have been inflicted by sea "upon Bahrein or upon its dependencies in this Gulf".

In subsequent treaties with Great Britain, notably those of 1868<sup>5</sup>, 1880<sup>6</sup> and 1892<sup>7</sup>, reference was simply made to "Bahrein" with no mention of any "dependencies". It is noteworthy that these treaties were entered into at the time of, or subsequent to, Britain's first recognition of Qatar as a separate entity from Bahrain.

The Anglo-Ottoman Convention of 1913 referred to "Bahrayn"<sup>8</sup>. The Bahrain Order-in-Council of the same year similarly referred to "Bahrein" and not to any "dependencies" of Bahrain<sup>9</sup>.

Subsequently, official Bahraini documents were headed "Government of Bahrain". This is the case, for example, of Bahrain's Seabed Proclamation of 5 June 1949<sup>10</sup>.

Other official documents, such as the Agreement of 22 February 1958 between Bahrain and Saudi Arabia on their continental shelf boundary refer to "The Government of the Shaykhdom of Bahrain"<sup>11</sup>. On the other hand, Bahrain's continental shelf agreement with Iran, concluded on 17 June 1971, *i.e.* before the Agreement with the United Kingdom of 15 August 1971, speaks of the Government of the "State of Bahrain"<sup>12</sup>.

In its application of 15 August 1971 to become a member of the United Nations, Bahrain referred to itself simply as the "State of Bahrain", with no mention of any "dependencies"<sup>13</sup>.

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<sup>4</sup> QM, Annex II.20, Vol. 5, p. 45.

<sup>5</sup> QM, Annex II.26, Vol. 5, p. 75.

<sup>6</sup> QM, Annex II.36, Vol. 5, p. 117.

<sup>7</sup> QM, Annex II.37, Vol. 5, p. 121.

<sup>8</sup> QM, Annex II.44, Vol. 5, p. 151.

<sup>9</sup> BSD, Annex 2.

<sup>10</sup> QM, Annex II.55, Vol. 5, p. 219.

<sup>11</sup> QM, Annex IV.262, Vol. 12, p. 95.

<sup>12</sup> QM, Annex IV.264, Vol. 12, p. 111.

<sup>13</sup> Bahrain Judge's Folder, Document 118.



From time to time during the period prior to 1971, Bahrain may have used a reference to "dependencies" in its correspondence. Nevertheless, this appears to have been done in a totally inconsistent and incoherent manner: in most examples of correspondence, the reference is simply to "Bahrain", and such references as there may be to "Bahrain and its dependencies" are wholly exceptional.

Bahrain's Constitution, adopted on 26 May 1973, is entitled "Constitution of the State of Bahrain". No official denomination is given to Bahrain and no reference to or definition of the term "dependencies" is to be found in the body of the Constitution. It may however be noted that Bahrain's official letters of recent years, such as those that have been communicated to the Court, are headed "State of Bahrain".

(b) Meaning of the term "dependencies"

The term "dependencies" has no precise significance in international law. To the best of Qatar's knowledge and belief, the so-called "dependencies" of Bahrain have not been officially identified under either Bahraini or United Kingdom law. As far as United Kingdom law is concerned, it is significant that the Falkland Island Dependencies, unlike any so-called "dependencies" of Bahrain, were formally identified and declared as dependencies by Letters Patent of 1908<sup>14</sup>. In view of the lack of a precise definition under any of the laws that might be relevant, any answer to the question of the meaning of the term "dependencies" in the present case is necessarily speculative.

As has already been noted, the term "dependencies" does not appear to have been used in treaties involving or concerning Bahrain subsequent to the events of 1867-1868, until the 1971 agreement.

Article 2 of the 1913 Order-in-Council defined the limits of the Order as being "the islands and islets of Bahrein, including the territorial waters thereof, and all other territories, islands, and islets which may be included in the Principality and be the possessions of the ruling Sheikh of Bahrein together with their territorial waters". The use of the wording "which may

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<sup>14</sup> See, Waldock, C.H.M., "Disputed Sovereignty in the Falkland Islands Dependencies", *B.Y.B.I.L.*, 1948, p. 311.

be included in the Principality..." suggests that reference was being made to possible future expansion of the Principality of Bahrain.

It may also have been that in the 1971 agreement, the word "dependencies" was used simply to describe the islands of the Bahrain archipelago other than the main island, which itself is called "Bahrain". In fact, as has been shown in Qatar's written and oral pleadings, Bahrain was consistently described, after 1868, as consisting of a compact group of five islands<sup>15</sup>. For example, in 1933, it was stated by Laithwaite, a high India Office official, that the Sheikh of Bahrain's "dominions may be regarded as consisting of the Bahrein archipelago. The Bahrein archipelago consists of the Island of Bahrein, and of the adjoining islands of Muharraq, Umm Na'assan, Sitrah and Nabi Salih"<sup>16</sup>.

(c) Legal status of "the dependencies of Bahrain" in relation to Bahrain proper before 1971

Given that the term "dependencies" seems no longer to have been used in official documents relating to Bahrain following recognition of Qatar as a separate entity in 1868, it is difficult to answer the question of "the legal status of 'the dependencies of Bahrain' in relation to Bahrain proper before 1971".

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<sup>15</sup> See, for example, QR, paras. 3.22, *et seq.*

<sup>16</sup> QM, Annex III.84, Vol. 6, p. 431.

# STATE OF BAHRAIN

Office of the Minister of State

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دولة البحرين  
مكتب وزير الدولة

ص ب ٢٠٨٨

المنامة - البحرين

هاتف: ٢١٧٧٢١ فاكس: ٢١٥٥٠٨

No: ICJ-QvB/ 315

الرقم:

Date: 29 June 2000

التاريخ:

His Excellency Mr Philippe Couvreur  
Registrar  
International Court of Justice  
Peace Palace  
2517 KJ The Hague  
THE NETHERLANDS

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

Your Excellency,

I have the honour to provide Bahrain's written response to the questions posed by Judge Vereshchetin on 15 June 2000.

## QUESTION 1

- (a) **Before 1971, were there any international agreements concluded by the United Kingdom with Qatar and Bahrain respectively other than those establishing their relationship of protection?**

Yes. These treaties are listed in Annex B to the letter from the Political Resident to the Ruler of Bahrain and its Dependencies dated 15 August 1971. Annex A to the letter lists the treaties establishing the relationship of protection that were terminated as from 15 August 1971. Annex B lists other treaties between the United Kingdom and Bahrain and its Dependencies whose validity was not affected by such termination. This letter is attached as Annex 1.

To the best of Bahrain's knowledge, Annexes A and B contain a complete list of all treaties between Bahrain and the United Kingdom prior to 15 August 1971.

- (b) **Were there any international agreements concluded by the United Kingdom with third States in the name of or on behalf of Qatar and Bahrain before 1971?**

The United Kingdom concluded numerous treaties with third states that applied to Bahrain. These treaties are listed in a United Kingdom Foreign and Commonwealth Office document entitled "International Agreements to Which Bahrain, Qatar and the Trucial States are Bound". This document is attached as Annex 2. It shows the state of treaty relations prior to 15 August 1971.

In addition, by the terms of the *Articles of Agreement of the International Bank for Reconstruction and Development* and the *Articles of Agreement of the International*



*Monetary Fund*, these agreements were extended, upon the United Kingdom's signature, to Bahrain. Under the terms of the *General Agreement on Tariffs and Trade*, GATT applied to all territories for whose international relations the United Kingdom was responsible.

On one occasion, the United Kingdom authorised the Bahrain Government to conclude a treaty directly with Saudi Arabia. On 22 February 1958, Bahrain and Saudi Arabia thus concluded an agreement defining the underwater areas belonging to both states. In a letter dated 2 June 1958, the Deputy Legal Adviser of the Foreign Office stated: "... on 21 April 1958 Her Majesty's Political Agent in Bahrain wrote a letter to the Ruler of Bahrain saying that Her Majesty's Government in the United Kingdom were prepared formally to waive the provisions of the Agreement of 1880 and 1892 in so far as the Agreement between the Ruler and King Saud was concerned, and that so far as Her Majesty's Government were concerned, the Agreement was thereupon given international validity".<sup>1</sup>

**(c) If so, what is the status of these agreements for Qatar and Bahrain now?**

All agreements concluded by the United Kingdom on behalf of Bahrain before 1971, or by Bahrain before 1971 with the approval, prior or subsequent, of the United Kingdom remain in force, to the extent that their terms so require or permit, or unless they have been terminated in accordance with their provisions.

**QUESTION 2**

- (a) The British Note of 1971 concerning the termination of special treaty relations between the United Kingdom and Bahrain refers to the State of Bahrain as "Bahrain and its dependencies".**

**What was and what is now the official denomination of the State of Bahrain?**

The official denomination of Bahrain prior to 1971 was "Bahrain and its Dependencies". Since 15 August 1971, Bahrain has used the denomination "State of Bahrain" to refer to all of its territories.

- (b) What was the meaning of the term "dependencies"?**

There is no established definition of the term "dependencies" as used in relation to Bahrain.<sup>2</sup> However, the word "dependencies" appears in a number of documents prior to 1971 in relation to:

- Article 1 of the *Preliminary Treaty of 1820* between Britain and the Ruler of Bahrain applied to "Bahrein or its dependencies";<sup>3</sup>

<sup>1</sup> Extract from a letter from Deputy Legal Adviser of the Foreign Office, 2 June 1958, published by E. Lauterpacht, "The Contemporary Practice of the United Kingdom in the Field of International Law – Survey and Commentary, VI" (1958) 7 I.C.L.Q. 519.

<sup>2</sup> The term "and its Dependencies" was used by Britain throughout the Gulf to describe the various continental and/or island appurtenances of Gulf States. Of the seven Trucial States, three (Fujairah, Ajman and Sharjah) used the term dependencies as part of their official names and four (Umm al Qaiwan, Abu Dhabi and Ras al Khaimah) did not.

<sup>3</sup> BM Annex 83, Vol.3, pp. 446-447. Treaty text in Aitchison's *Treaties*, Vol. XI, p. 233.



- In January 1823, Lieutenant McLeod, Political Resident, visited Doha. Lorimer states that McLeod found the place to be a dependency of Bahrain and under the administration of a Shaikh of the Al Bu Ainain;<sup>4</sup>
- Article 3 of the *Friendly Convention* of 1861 between the United Kingdom and Bahrain provides that the Ruler should receive reparation "for every injury proved to have been inflicted, or in the course of infliction by sea upon Bahrein or upon its dependencies in this Gulf";<sup>5</sup>
- Paragraph 5 of Qatar's Application to the Court in the present case states: "Until 1868, the Qatar peninsula was considered by the British as a dependency of Bahrain";
- In 1873, the Ruler of Bahrain reaffirmed his rights over Zubarah in the following terms:  

Zobareh is a property under the rule of Bahrein and which belonged to the Uttoobees [i.e., the tribe of the Al-Khalifa]. On referring to the [1868] Treaty you will perceive that Zobareh is a dependency of this Island.<sup>6</sup>
- In describing an attack on Zubarah in 1874, the Political Resident stated:  

Zobarah is held by the Naim Tribe who are allies and in some degree dependants of the Bahrain Chief. The sovereignty over all this Coast is undefined, but the Chiefs of Bahrain have always looked on Zobarah as a feudal dependency of Bahrain.<sup>7</sup>
- In a letter to the Political, Lieutenant-Colonel Ross, dated 17 December 1874, the Ruler of Bahrain emphasised that "Zobarah ... belongs to us and is one of our dependencies."<sup>8</sup>
- A letter from Colonel Ross in 1874 made in the context of Ottoman complaints against Bahrain's activities on the Qatar Peninsula states:  

"As regards Zobarah, that place has been hitherto considered by the Sheikhs of Bahrain, past and present, as a dependency of the Island, and used as a summer residence";<sup>9</sup>
- In 1933, in context of oil concession negotiations, the Political Agent reported that the Rule of Bahrain had stated "that the Foreign Office knew these

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<sup>4</sup> QM Ann. II.5, Vol. 3, p.143 at 200.

<sup>5</sup> Terms of Friendly Convention between Ruler of Bahrain and British Govt., 31 May 1861 (Aitchison's Treaties, Vol. XI, pp. 234 to 236), BM Annex 8, Vol. 2, p. 112.

<sup>6</sup> Translated purport of Ruler of Bahrain's statement of 2 September 1873, BM Annex 19, Vol. 2, p. 173.

<sup>7</sup> Letter from Political Resident to the Secretary to the Govt. of India Foreign Department 12 September 1874, BM Annex 21, Vol. 2, p. 180.

<sup>8</sup> Letter from Ruler of Bahrain, to Lt. Col. Ross, Political Resident, 17 December 1874, Ann. 26, Vol. 2, p. 190.

<sup>9</sup> QM Annex II.7, Vol. 4, p. 62. (See BR, para. 208).



islands [the Hawar Islands] are the dependencies of Bahrain and that there is a ninety year old agreement somewhere to this effect",<sup>10</sup> and

- In 1950, the Political Agent clarified that it was the United Kingdom's, and not Bahrain's role, to issue visas for travel to Qatar. The letter stated that there was no visa requirement for Bahrainis travelling to Zubarah, thus impliedly acknowledging that Zubarah was a dependency of Bahrain.<sup>11</sup>

Given the practice established by and reflected in these and similar items, Bahrain took the reference to "Bahrain and its Dependencies" in the Exchange of Notes Concerning the Termination of Special Treaty Relations dated 15 August 1971 as including the Hawar Islands; the Zubarah Region; the islands and low-tide elevations in the waters of the Gulf of Bahrain and Bahrain's pearling banks.<sup>12</sup>

(c) What was the legal status of the "dependencies of Bahrain", in relation to Bahrain proper before 1971?

Before 1971, there was no legal distinction between "Bahrain proper" and "its dependencies".

Accept, Sir, the assurance of my highest consideration.

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

<sup>10</sup> Letter from the Political Agent to the Political Resident dated 30 July 1933, QM III.87, Vol. 6, p.448.

<sup>11</sup> Submitted to the Court by letter dated 21 June 2000. These documents are discussed at CR2000/22, p.55, paras.15-16.

<sup>12</sup> It will be observed that Qatar did not have dependencies. The Ruler of Qatar claimed that the Hawar Islands were his dependencies. (Letter from Ruler of Qatar to Political Agent dated 27 May 1938, BM Annex 260, Vol. 5, p. 1102). This position was conclusively rejected in the 1939 Award.



BRITISH RESIDENCY,  
BAHRAIN,

15 August 1971

Your Highness,

I have the honour to refer to the termination of the special treaty relations between the State of Bahrain and its Dependencies and the United Kingdom of Great Britain and Northern Ireland which takes effect on today's date. It is the understanding of the Government of the United Kingdom that the treaties and other instruments listed in Annex A to this letter will accordingly be regarded as terminated as from that date, to the extent that they give rise to rights, obligations and arrangements as between the United Kingdom and Bahrain.

The question of the continued validity, if any, of any such treaties and other instruments as between Bahrain and other States is not affected by such termination. The question of the participation of Bahrain in certain multilateral international conventions of a general character has been considered separately.

Every effort has been made to ensure that the list in Annex A to this letter is complete. However, it is the understanding of the Government of the United Kingdom that all treaties and arrangements flowing from the special treaty relations between the two States, whether or not included in the list, will be regarded as

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terminated except insofar as it has been decided otherwise in the course of the discussions which we have had about matters arising in connection with the termination of the special treaty relations and in particular except for the agreements and other instruments which are listed in Annex B to this letter and which will be the subject of further discussion.

I would ask Your Highness to confirm that the present letter also correctly states the understanding of the Government of Bahrain in this matter and hence that this letter and your reply to that effect will place on record the understanding between the two Governments in this matter.

I avail myself of this opportunity to renew to Your Highness the assurances of my highest consideration.

A handwritten signature in dark ink, appearing to read 'Geoffrey Armitage', written in a cursive style.

Her Britannic Majesty's Political Resident

His Highness Shaikh Isa bin Sulman al Khalifah, KCMG  
Ruler of Bahrain and its Dependencies.

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Annex B

- (1) Air Navigation Agreement (1954) and the related exchange of letters of 3/4 August 1954.
- (2) Correspondence and memorandum of understanding on land and facilities for defence purposes (1934, 1966 and 1967).
- (3) Sterling Balance Agreement (1968).
- (4) Exchange of letters on arrangements for the British Post Office to act as intermediary between the Universal Postal Union and the Bahrain Postal Administration (1968).
- (5) Exchange of letters concerning the general retrocession of Her Majesty's jurisdiction (1971).

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INTERNATIONAL AGREEMENTS TO WHICH BAHRAIN, QATAR AND THE TRUCIAL STATES ARE BOUND

Title	Date & Place of signature	Date of application	Treaty Series and F.O. reference
Constitution of the Food and Agricultural Organization of the United Nations	Quebec 16 Oct., 1945	Bahrain } 6 Nov., 1967 Qatar } <i>Associate Membership</i>	<u>TS 47/1946</u> <u>Cmd. 6955</u>
Constitution of the U.N. Educational, Scientific and Cultural Organisation	London, 16 Nov., 1945	Bahrain Qatar Associate Members 12 Nov., 1962	<u>TS 50/1946</u> <u>Cmd. 6963</u>
Conventions for the Protection of War Victims (Red Cross) :		These Conventions apply to	
Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field		Bahrain Qatar Trucial States	<u>TS 39/1958</u> <u>Cmd. 550</u>
Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea	Geneva 12 Aug., 1949	"to the extent of Her Majesty's Powers in relation to those territories"	
Convention relative to the treat- ment of Prisoners		as from 23 Sept., 1957	
Convention relative to the Protec- tion of Civilian Persons in Time of War			
International Sanitary Regulations and Additional amending Regulations	Adopted by W.H.O. 25 May 1951 26 May, 1955 23 May, 1956	Bahrain Qatar Trucial States	see <u>TS 22/1962</u> <u>Cmd. 1704</u>

Agreement between U.K. and UNICEF  
for the rendering of Assistance in  
any Territory for whose International  
Relations the Government of the U.K.  
are responsible

London,  
7 Oct., 1953

Protocol to the above

New York  
7 July, 1959

Convention on the Abolition of  
Slavery, the Slave Trade and  
Institutions and Practices similar  
to Slavery, Supplementary to the  
International Convention signed at  
Geneva on 25 Sept., 1926

Geneva,  
7 Sept., 1956

Agreement between U.K. and the U.N.  
Special Fund concerning Assistance  
from the Special Fund

New York  
7 Jan., 1960

Agreement between the U.K. on the one  
part and the U.N., certain Specialized  
Agencies of the U.N. and the Int.  
Atomic Energy Agency of the other part  
for the Provision of Technical Assis-  
tance to the Trust, Non-Self-Governing  
and other Territories for whose  
International Relations the U.K. are  
responsible

New York  
8 July, 1960

Exchange of Notes between the U.K. and  
the Technical Assistance Board of the  
U.N. modifying the Agreement of  
8 July, 1960

New York,  
10 May, 1963

{ Bahrain 9.4.1968  
TS 71/1968 Cmd. 3733

TS 75/1953  
Cmd. 8981

{ Qatar 9.4.1968  
TS 70/1968 Cmd. 3732

{ Trucial States 7.4.1969  
TS 75/1969 Cmd. 4102

NB 2/1(1969  
TS 78/1959  
Cmd. 888

Bahrain }  
Qatar } 6 Sept. 1957  
Trucial States }

TS 59/1957  
Cmd. 257

TS 73/1957 Cmd. 386

Bahrain 18.1.1968  
See TS 77/1968 Cmd. 3741  
Qatar 18.1.1968  
See TS 78/1968 Cmd. 3742

TS 15/1960  
Cmd. 995

TS 63/1960  
Cmd. 1178

TS 46/1964  
Cmd. 2447

Convention against Discrimination in Paris  
Education 15 Dec., 1960

*Applied by U.K. to*  
Bahrain 11 Apr., 1962

TS 44/1962  
Cmd. 1760

Constitution of the Universal Postal  
Union with Final Protocol, General  
Regulations & Final Protocol Thereto

TS 70/1966  
Cmd. 3141

Universal Postal Convention with  
Final Protocol and Detailed  
Regulations

Qatar acceded with various  
reservations on 31 Jan., 1969  
See TS 102/1969 Cmd. 4209

TS 71/1966  
Cmd. 3142

Agreement concerning Insured Letters  
and Boxes with Final Protocol and  
Detailed Regulations

Vienna,  
10 July, 1964

TS 72/1966  
Cmd. 3143

Agreement concerning Postal Parcels  
with Final Protocol, Detailed  
Regulations & Final Protocol  
Thereto

TS 73/1966  
Cmd. 3144

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