

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING MARITIME DELIMITATION

AND TERRITORIAL QUESTIONS

BETWEEN

QATAR AND BAHRAIN

(QATAR v. BAHRAIN)

REPLY

SUBMITTED BY

THE STATE OF BAHRAIN

(Merits)

VOLUME 1

30 May 1999

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CHAPTER 1

INTRODUCTION

1. This Reply of the Government of the State of Bahrain (hereinafter "Bahrain") is filed pursuant to the Order of the Court of 30 March 1998, as amended by the Order of the Court of 17 February 1999. It demonstrates that the Counter-Memorial of the State of Qatar (hereinafter "Qatar") fails to disturb the legal and factual foundations of Bahrain's title to the territory and maritime areas in dispute. Bahrain's claims are therefore now reiterated with such further evidence as may be useful to clarify positions presented by both Parties in their previous pleadings.

2. Bahrain's arguments have always been based on and consistent with the historical record. Nothing in Qatar's Memorial or Counter-Memorial has displaced them. Since this phase of the proceedings is a "Reply", Bahrain will follow the order of Qatar's presentation in order to address with the greatest clarity and economy the positions and arguments advanced by Qatar. After some introductory comments, Bahrain will take up the territorial issues in this case, considering the Hawar Islands first, and then Zubarah, after which it will address the maritime issues.

SECTION 1.1 Bahrain reserves the right to make subsequent observations on Qatar's arguments, given Qatar's decision to disregard the 82 forged documents

3. As the Court will appreciate, the present state of the pleadings is unusual for the Court and problematic for Bahrain. Bahrain is obliged to reply to a case the contents of which have been fundamentally altered by Qatar's decision to disregard the 82 forged documents which it had produced in its Memorial (81) and Counter Memorial (1). As of now, Qatar has not yet indicated how it will reformulate its case.

4. Bahrain has made its best efforts in its Counter-Memorial and in this Reply to identify and disregard those of Qatar's arguments which are based on the forged documents. Nevertheless, as recognised implicitly by Qatar in its letter to the Court of 1 February 1999, Bahrain at present has no way of knowing the manner in or substance with which Qatar will restate its case. Qatar itself underlined that its previous arguments, particularly those in relation to the Hawar Islands, were dramatically opposed to the authentic evidence in the public domain on which it must now rely.¹ Bahrain has already made available to the Court by way of highlighted versions of Qatar's Memorial and Counter-Memorial its preliminary view of the extensive contamination of Qatar's arguments by the 82 forged documents. Qatar's letter of 1 February 1999 promised to provide a document with its Reply addressing the consequences for its previous written pleadings of its decision to disregard the forged documents. Accordingly, Bahrain must reserve the right to respond fully in writing to any new arguments that Qatar adduces.

SECTION 1.2 Outline of the Reply

5. Section 1.3 of this introductory chapter recalls in summary form Bahrain's arguments in relation to the territorial questions and maritime delimitation involved in the present case. Section 1.4 explains that when the 82 forged documents are disregarded, no evidence other than unsubstantiated assertions remains to support Qatar's territorial pretensions, particularly in relation to the Hawar Islands. Section 1.5 refutes Qatar's belated attempt to question the jurisdiction of the Court in relation to Zubarah.

6. Part I of this Reply is devoted to the territorial issues in dispute.² Chapter 2 demonstrates that, once the 82 forged documents are disregarded, the evidence of Bahrain's sovereignty over the Hawar Islands is unassailable. Chapter 3 exposes how Qatar has overstated the evolution of Al-Thani influence and understated the dominance of the Al-Khalifa on the Qatar peninsula. Chapter 4 records that, with Qatar's abandonment of the 82 forged documents, the evidence demonstrating Bahrain's sovereignty over the Zubarah region is now clearly preponderant.

7. Part II of Bahrain's Reply addresses the maritime issues. Chapter 5 demonstrates that historical and scientific evidence confirms Bahrain's sovereignty over the island of Qit'at Jaradah and over Fasht ad Dibal, and that no allegation of law or fact by Qatar is able to challenge Bahrain's case relating to either the southern or northern maritime sectors.

8. To assist the Court, a map of the region showing the areas in dispute follows page 9 of this Reply. A timeline of key historical events in the Bahrain Islands and the Qatar

peninsula follows immediately thereafter, following which is a series of maps illustrating the evolution of the various spheres of influence in the areas under consideration.

SECTION 1.3 Bahrain's position on the issues remains unchanged

A. The territorial questions

9. The evidence that Bahrain has submitted in its pleadings demonstrates that it has better title than Qatar to the territorial areas in dispute. Not only does Bahrain surpass Qatar's claims, but the evidence before the Court demonstrates that Bahrain easily meets all the requirements for establishing title to territory with respect to the Hawar Islands, the Zubarah region and the other territories in dispute.

10. The two principal territorial issues in this case - the Hawar Islands and the Zubarah region - may seem complicated because of the intricate history of parts of the region and, in particular, the complexities introduced by the actions and ambitions of empires that converged and often conflicted there. The facts were further complicated by the submission by Qatar of 82 forged documents, which, despite their effective withdrawal, continue to contaminate and confuse, precisely because they were so central to Qatar's territorial case. Therefore, before Bahrain undertakes a point-for-point rebuttal of Qatar's contentions, a simple and general statement of the historical facts may restore a useful and clear context for the Court.

11. Over two centuries ago, the Al-Khalifa expelled the Persians from the Bahrain archipelago and moved the seat of their kingdom to the islands from Zubarah, on the Qatar peninsula, while continuing to maintain control over the Qatar peninsula. From that time, the Al-Khalifa controlled both the Bahrain archipelago and the territories around the littoral of the Gulf of Bahrain, including the entire Qatar peninsula. The Al-Thani, from which the dynasty in modern Qatar has emerged, were vassals of the Al-Khalifa. The Al-Thani were confined to the village of Doha on the south-eastern edge of the peninsula, over which village they exercised an often uncertain influence from the mid nineteenth century onwards.

12. The Al-Khalifa lived on the Bahrain Islands, but they summered on the north-western coast of the Qatar peninsula opposite the islands, where many of their subjects continued to live. At the end of the last century, the Al-Thani slowly began to expand their influence over the immediate area around Doha, under the umbrella of the Ottomans who established themselves within Doha. During this brief period, a Government of Qatar did not even exist (a fact recognised by Qatar in paragraphs 2.13 and 2.14 of its Counter-Memorial). Al-Thani authority did not even extend in the Qatar peninsula beyond the confines of Doha and its environs until after 1935. Thus, from 1783 until 1937, Bahrain's title to the Zubarah region was never successfully challenged. Bahrain's title was based on effective occupation by reference to the regional standard of fealty of the inhabitants of Zubarah to the Ruler of Bahrain.

13. In 1937, at a time when conquest was not a valid ground for title, Qatar illegally attacked and displaced the community of loyal Bahraini subjects in Zubarah. Bahrain's subjects refused to swear fealty to the Al-Thani and removed themselves to the islands of Bahrain under the protection of the Ruler of Bahrain. No Al-Thani subjects moved

to Zubarah to take their place. From 1937 onward, Bahrain has protested the aggression against Zubarah and insisted that the region be returned to it. Thus, the legal questions posed to the Court with respect to the Zubarah region are simply whether Qatar's aggression and illegal expulsion of Bahrain subjects from that area in 1937 is to be recognised and remedied.

14. With respect to the archipelago of Bahrain, no part of which has ever been occupied by Qatar, Qatar first lodged a claim to the Hawar Islands in 1938. In response, from 1938 to 1939, Britain conducted a detailed procedure, in which both States voluntarily participated, to determine whether there was any substance to Qatar's pretensions. Both Qatar and Bahrain were given ample opportunity to present their evidence, whereupon Britain made its decision in favour of Bahrain, thus confirming Bahrain's sovereignty over the Hawar Islands, including Janan.

15. Britain referred to the procedure as an arbitration, as has Qatar in its prior pleadings. After the passage of more than half a century, Qatar now claims that the arbitration was flawed and its Award invalid.³ Bahrain insists that if the proceeding was an arbitration, its procedures were consistent with the contemporaneous minimum standards of fairness, the award is valid and *res judicata* as between the parties and, in any case, not open to opportunistic attack after so many decades. If, alternatively, the procedure was a political act by Britain, based on agreements that it had with Bahrain and Qatar, Bahrain submits that the decision was a valid *intra vires* act that is binding on the Parties.

16. The legal questions posed to the Court with respect to the Hawar Islands are whether the British decision was an arbitration, in which case it is *res judicata*, or whether it was a political decision, in which case it is binding on the Parties because it was taken *intra vires*. Either way, Bahrain's sovereignty remains undisturbed. Wholly aside from the issue of the character of the decision in 1939, the Court must inquire as to whether reopening the matter after more than half a century will disturb a "settled state of affairs". With respect to the evidence on which the 1939 decision was taken, all of it shows Bahrain's continuous control over the Hawar Islands. Qatar was unable to marshal a single *effectivité*.

17. Independently of Britain's 1939 arbitral award, Bahrain's title to the Hawar Islands is established by the evidence of its uninterrupted occupation and administration of them from at least the early nineteenth century until the present time, to an extent more than sufficient to establish a valid title in international law. In contrast, Qatar has exercised no such authority there. With respect to events since 1939, the evidence shows that Bahrain has been in continuous and exclusive control of the Hawar Islands and has manifested sovereignty there in manifold ways. In the face of the evidence of Bahrain's long possession of the Hawar Islands and the complete absence of any evidence of Qatar's possession, the proximity of the Hawar Islands to the Qatar peninsula is inconsequential. With the removal of the forged documents from this case, there remain no serious factual questions about the Hawar Islands.

B. The maritime delimitation

18. Bahrain proposes a maritime delimitation achieved by the construction of a median line upon the baselines of the territories appertaining to the two States, taking due

account of the archipelagic character of Bahrain. Qatar's attempt to ignore the archipelagic features of Bahrain, including the island of Qit'at Jaradah and Sitrah Island (of which Fasht Al-Azm is an integral part), is unsupported in fact or law. By ignoring these features, Qatar attempts to disregard the geographical realities of the relevant area.

SECTION 1.4 Qatar's decision to disregard the 82 forged documents leaves it with no evidence to support its territorial claims

19. The importance of the 82 forged documents to Qatar's case is apparent from Qatar's Counter-Memorial, which was submitted just five weeks after Qatar's Agent had told the President of the Court (at the meeting of 25 November 1997) that Qatar "stood behind" the impeached documents. On pages 1 and 2 of its Counter-Memorial, in the initial paragraph containing a "Summary of the *central* elements of the case" (emphasis added), Qatar reviewed what it considered it had proved, as follows:

- "demonstrated" the territorial integrity of Qatar as comprising the whole peninsula and the Hawar Islands;[4](#)
- "showed" that this alleged territorial integrity was recognised "at least" since the mid-19th century by Britain, the Ottoman Empire, local rulers, and indeed Bahrain;[5](#)
- "shown" the worthlessness of Bahrain's evidence in support of its successful defence of the Hawar Islands in the arbitration that resulted in the British award of 1939;[6](#) and
- "provided evidence" of Qatar's own "acts of sovereignty" on the Hawar Islands.[7](#)

20. All the "central elements" of Qatar's case were purportedly "demonstrated" or "shown" by the use of forgeries. For example, summarising its claims to have exercised authority over the Hawar Islands in two paragraphs of its Counter-Memorial,[8](#) Qatar referred to 22 documents, all of which are forgeries, which Qatar has now agreed to "disregard". With the 82 forgeries removed, not one of the "central elements" of Qatar's case can be sustained.

SECTION 1.5 Qatar appears to question the jurisdiction of the Court in relation to the Zubarah region

21. In its Counter-Memorial, Qatar appears to question the jurisdiction of the Court to decide the issue of sovereignty over the Zubarah region,[9](#) despite the fact that it was Qatar that commenced the current proceedings and argued successfully in favour of the Court's jurisdiction, which includes the issue of Zubarah's sovereignty.[10](#) Bahrain rejects Qatar's belated and unfounded attempt to challenge the jurisdiction of the Court.

[MAP 1 : POLITICAL MAP OF THE GULF OF ARABIA](#) (135 KB)

[MAP 2 : TIMELINE OF KEY EVENTS](#) (119 KB)

[MAP 3 : EVOLUTION OF SPHERES OF INFLUENCE - 1820](#) (52 KB)

[MAP 4 : EVOLUTION OF SPHERES OF INFLUENCE - 1868 & 1872](#) (94 KB)

[MAP 5 : EVOLUTION OF SPHERES OF INFLUENCE - 1915 & 1934](#) (84 KB)

[MAP 6 : EVOLUTION OF SPHERES OF INFLUENCE - 1935 & 1938](#) (107 KB)

PART I

THE TERRITORIAL ISSUES

CHAPTER 2

THE ABANDONMENT OF ARGUMENTS BASED ON THE 82 FORGED DOCUMENTS MEANS THAT BAHRAIN'S DEMONSTRATION OF SOVEREIGNTY OVER THE HAWAR ISLANDS IS UNASSAILABLE

SECTION 2.1 Introduction

22. Bahrain's title to the Hawar Islands, including Janan, was finally decided by reference to international law in 1939, whether one characterises that decision as *res judicata* by virtue of the British arbitration of 1938-1939 or as a political and administrative decision based on the political powers that had been assigned to Britain by Bahrain and Qatar. There is no question that the British government made a decision in 1939. Nor is there any question about its content. Nor are there any obscurities that require interpretation. Qatar seeks to impugn its validity. Yet, however Britain's 1939 decision is characterised, it is final because, as an award, it is *res judicata* and, as a political decision, it is final and binding on the parties as an act *intra vires*. Hence, the merits of the case of the Hawar Islands may not be reopened and considered *de novo*. Even if a *de novo* examination were undertaken, Bahrain's valid title is established, as it was in 1939, by:

- evidence of the exercise of sovereign authority in the Hawar Islands by or on behalf of the Ruler of Bahrain;
- recognition of Bahrain's sovereignty over the Hawar Islands by the inhabitants of those islands; and
- the absence of any competing exercise of authority whatsoever by Qatar.

23. Once the 82 forged documents submitted by Qatar are disregarded, Qatar's claim, based on its supposed competing exercise of authority, becomes unsustainable. Qatar's claim based on geographical proximity cannot match Bahrain's *effectivités*.

24. Ignoring Qatar's arguments based on the forged documents, Bahrain's Counter-Memorial contains a comprehensive rebuttal of the remaining arguments raised by Qatar. Accordingly, in the present chapter, Bahrain will reply to only those points

raised by Qatar that require clarification in view of Qatar's submissions, or that have not already been addressed by Bahrain in its previous submissions.

SECTION 2.2 Bahrain's sovereignty over the Hawar Islands has been continuous and uninterrupted from the eighteenth century to the present

25. In Chapter 3 of its Memorial and Chapter 2 of its Counter-Memorial, Bahrain has demonstrated its uninterrupted sovereignty over the Hawar Islands from the eighteenth century until the present. It has shown how the historical genesis of its title to the Hawar Islands stems from the Al-Khalifa's dominance and authority over all the territories in the Gulf of Bahrain and its littoral during this period, including the Qatar peninsula.¹¹ Furthermore, it has established with reference to unimpeachable primary source documents the continuing nexus between the Hawar Islands and the Rulers of Bahrain throughout the nineteenth and twentieth centuries.

26. Bahrain has adduced evidence confirming that from the beginning of the twentieth century, with the increasing development of Bahrain's infrastructure and administration, the Government of Bahrain's activities on the Hawar Islands, as elsewhere in the country, increased. Years before Qatar made its first claim to the Hawar Islands in 1938, the Government of Bahrain was administering and regulating the mining of gypsum and fishing-related activities there, had a regular police force on the islands, and was supervising the health of the inhabitants there.¹² Records from British archives from the first decade of the twentieth century onwards provide evidence of court cases relating to the Hawar Islands, police activities and commonplace government directives. These abundantly testify to Bahrain's administration of the Hawar Islands. Bahrain's rule was supported by a population on the islands that was subject to the Al-Khalifa, survivors of which have given statements describing their lives on the Hawar Islands during the decades before the British arbitration.¹³ Thus, by 1938, when Qatar first laid claim to the islands, Bahrain already had a history of activities on the islands so extensive that it would have been impossible to deny that its occupation was effective. Indeed Qatar has never once done so.

27. In stark contrast to the evidence of Bahrain's sovereignty, neither during the 1938-1939 British arbitration nor at any time subsequently has any genuine evidence been adduced by Qatar of Al-Thani authority being exercised over the Hawar Islands. This is not surprising, given that the Al-Thani power-base of Doha was focused commercially on the Abu Dhabi pearl banks on the far side of the Qatar peninsula. While there was regular traffic and commerce between the Hawar Islands and the other islands of the Bahrain archipelago, there is no evidence that there were any commercial activities between the Hawar Islands and the Qatar peninsula.

SECTION 2.3 Bahrain has submitted evidence of more than 70 examples of Bahrain's exercise of authority over the Hawar Islands during the nineteenth and twentieth centuries

28. An abundance of evidence attests to Bahrain's long-standing exercise of authority over the Hawar Islands. In addition to the recognition in Qatar's Memorial of Bahrain's assertion of its sovereignty over the Hawar Islands during the nineteenth century,¹⁴ in its Memorial¹⁵ and Counter-Memorial¹⁶, Bahrain has submitted evidence of

numerous examples of Bahrain's ownership and control of the Hawar Islands throughout the nineteenth and twentieth centuries, prior to the time of the 1938-1939 arbitration, a sample of which is summarised below:[17](#)

- the Al-Khalifa grant of permission to the Dowasir tribe to settle in the Hawar Islands, following the Al-Khalifa conquest of the islands of Bahrain in the eighteenth century;[18](#)

- British recognition in the 1820s that the Hawar Islands had "two villages on it, and belongs to Bahrain";[19](#)

- the continued presence of the Dowasir on the Hawar Islands, both before and after they received permission from the Ruler of Bahrain to settle on the main island of Bahrain in 1845;[20](#)

- the presence of non-Dowasir Bahrainis on the Hawar Islands;[21](#)

- the rescue in 1873 by the Ruler of Bahrain of Ottoman soldiers shipwrecked on the Hawar Islands;[22](#)

- Ottoman recognition that the Hawar Islands belonged to Bahrain, as evidenced by an 1878 Ottoman survey;[23](#)

- Bahrain court decisions dating from as early as 1909 relating to land rights and fishing traps in the Hawar Islands;[24](#)

- Britain's recognition in 1909, following an on-site inspection of the Hawar Islands by the British Political Agent, that it was the Al-Khalifa who originally granted the Dowasir of Bahrain the right to reside on the Hawar Islands;[25](#)

- the arrest and compelled attendance in Bahrain courts of Hawar Island residents;[26](#)

- the public display of official proclamations by the Ruler of Bahrain and the Government of Bahrain on the Hawar Islands;[27](#)

- Ottoman recognition and British confirmation in 1909 that the Hawar Islands belonged to Bahrain;[28](#)

- British confirmation in 1909 that the Hawar Islands were habitually used by the Bahraini Dowasir;[29](#)

- recognition by the British Political Agent in 1909 that the Dowasir of Bahrain had two villages on the Hawar Islands;[30](#)

- the compelled attendance by the Ruler of Bahrain of a Hawar Island resident in a civil court case at the request of Britain in 1911;[31](#)

- recognition in a 1915 British Admiralty survey of the Gulf that the Hawar Islands were occupied by the Dowasir of Bahrain;[32](#)

- recognition in 1916 by the War Staff Intelligence Division of the British Admiralty that the Hawar Islands were occupied by the Dowasir of Bahrain;[33](#)
- the continued allegiance of the Bahrain Dowasir, who resided in the Hawar Islands, to the Rulers of Bahrain, including being subject to Bahrain's laws and regulations;[34](#)
- the testimony of former Hawar Islands residents, currently living in other parts of Bahrain, of their lives on the Hawar Islands and of the political and economic links between the Hawar Islands and the rest of Bahrain;[35](#)
- a 1932 case before the Bahrain courts in which Hawar Islands residents were subpoenaed;[36](#)
- a 1932 case before the Bahrain courts between two Hawar Islands residents;[37](#)
- the granting and protection of fishing rights off the Hawar Islands' shores by the Ruler of Bahrain;[38](#)
- the exercise of those fishing rights by Hawar Islands residents, including in Janan Island;[39](#)
- trade and movement of livestock between the Hawar Islands and Manama and Muharraq and other locations in Bahrain;[40](#)
- the integration of the Hawar Island settlements in the Bahrain pearling industry, regulated by the Government of Bahrain;[41](#)
- the registration of pearling and fishing boats moored at the Hawar Islands by the Government of Bahrain;[42](#)
- payment to the Government of Bahrain of registration fees and diving licences by Hawar Islanders engaged in the pearling industry;[43](#)
- confirmation by British officials during the 1930s that the Bahrain Dowasir who lived in the two villages on the Hawar Islands were permanent residents of the islands,[44](#) noting the presence there of six cemeteries including a children's cemetery;[45](#)
- construction and maintenance of dams and water cisterns by Hawar Island residents and the Government of Bahrain;[46](#)
- surveying of the Hawar Islands by the Government of Bahrain;[47](#)
- quarrying of gypsum on the Hawar Islands during the nineteenth and twentieth centuries;[48](#)
- licensing of the gypsum industry on the Hawar Islands by the Government of Bahrain at the request of the Hawar Islands residents;[49](#)

- regulation of the trade in gypsum between the Hawar Islands and other Bahraini islands during the 1930s by the Government of Bahrain;[50](#)
- regulation of other natural resources, including fishing, on the Hawar Islands by the Government of Bahrain;[51](#)
- the consistent inclusion of the Hawar Islands in oil concession discussions during the 1930's between Bahrain, Britain and prospective oil concessionaires;[52](#)
- communications by the Ruler of Bahrain to Britain in the context of oil concession negotiations in 1933 to the effect that the Hawar Islands belonged to Bahrain;[53](#)
- recognition by Britain that the Hawar Islands were claimed by Bahrain from the first occasion that they arose as an issue during oil concession negotiations in 1933 (and the lack of any competing claim by Qatar);[54](#)
- reiteration in 1936 by the Ruler of Bahrain to Britain that any oil concession reflect the fact that the Hawar Islands belonged to Bahrain;[55](#)
- recognition in 1936 by the British Political Agent that any claim by Qatar to contest Bahrain's sovereignty over the Hawar Islands would be made at the instigation of the Qatar oil concessionaire as it attempted to expand the area included in its concession;[56](#)
- a written confirmation by the Government of Bahrain in 1936 regarding its sovereignty over the Hawar Islands, setting out details of Bahrain's acts of administration there;[57](#)
- a report by the British Political Agent in 1936 that Bahrain's sovereignty over the Hawar Islands had real substance and that Qatar had never remarked upon, let alone protested, the activities of Bahrain's subjects there;[58](#)
- recognition by Britain in 1936 of the legitimacy of Bahrain's sovereignty over the Hawar Islands, based on the available evidence;[59](#)
- the inclusion by Britain and oil companies of the Hawar Islands (including Janan) in the concession territory to be ceded by the Ruler of Bahrain during the negotiations that took place in the period 1936 to 1939;[60](#)
- geological mapping of the Hawar Islands by the Bahrain oil concessionaire acting under the authority of the Government of Bahrain;[61](#)
- drilling for water on the Hawar Islands as sanctioned by Bahrain during the 1930s;[62](#)
- presence of Bahrain police on the Hawar Islands[63](#) even before the 1930s;[64](#)
- regular visits to the Hawar Islands by the Bahrain Chief of Police;[65](#)
- the existence of an old Bahrain fort on the main island of Hawar[66](#) and the construction of a new Bahrain fort in 1937;[67](#)

- construction of a government pier on the main island of Hawar in 1937;[68](#)
- visits by the Rulers of Bahrain to the Hawar Islands, including annual visits by H.H. Sheikh Isa bin Ali Al-Khalifa, Ruler of Bahrain from 1869 to 1932;[69](#)
- ceremonial display of the Bahrain flag on the Hawar Islands;[70](#)
- the existence of an old mosque (now ruined) on the main island of Hawar and the construction of a modern mosque built by the Government of Bahrain in 1939;[71](#)
- issuing of Bahrain passports to Hawar Island residents;[72](#)
- regulation by Bahrain of immigration into the Hawar Islands;[73](#)
- recognition of Bahrain's jurisdiction and authority over the Hawar Islands by the Ruler of Qatar on several occasions;[74](#)
- the agreement of the Ruler of Bahrain to a request by the Ruler of Qatar made in 1938 - during the arbitration - to permit a Qatari citizen "to land [on Jazirat Hawar] for the purpose of removing [a boat that he claimed], provided that he is in possession of some paper proving his identity and that he gives a receipt for the boat";[75](#) and
- erection and maintenance of maritime markers on the Hawar Islands.[76](#)

29. All of the foregoing manifestations of Bahrain's *effectivité* are supported by evidence from the public record and by the testimony of Bahraini citizens who are still alive and who were born, grew up and lived on the Hawar Islands prior to the 1938-1939 arbitration.

30. There is no dispute that Bahrain - and no other authority - has exercised sovereignty over the Hawar Islands since the British arbitration. In its previous pleadings, Bahrain has also submitted evidence of its exercise of authority over the Hawar Islands subsequently to the Award in the 1938-1939 arbitration, to wit:

- introduction of native Arabian fauna to the islands under a wildlife preservation programme;[77](#)
- creation of an animal wildlife preserve on part of the main Hawar Island in 1996;[78](#)
- regular patrolling of the Hawar Islands, including Janan Island, by the Bahrain Coast Guard;[79](#)
- erection and maintenance of maritime markers on the Hawar Islands;[80](#)
- presence of a defensive military capability on the Hawar Islands and maintenance, since 1941, of a full defensive military complex on the Hawar Islands;[81](#)
- reinforcement of Bahrain's military presence on the Islands following Qatar's last armed attack on Bahraini territory in 1986;[82](#)

- construction and maintenance of a transportation infrastructure on the Hawar Islands;[83](#)
- construction and maintenance of fresh-water infrastructure on the Hawar Islands, including a desalinisation plant;[84](#)
- construction and maintenance of electricity infrastructure on the Hawar Islands integrated with the rest of the Bahrain power grid;[85](#)
- construction and maintenance of a telecommunications system on the Hawar Islands fully integrated with the rest of Bahrain's BATELCO system;[86](#)
- licensing of a tourist complex in the north of the main Hawar Island beside the original North Village;[87](#)
- licensing of an extensive tourist hotel and resort complex in the south of the main Hawar Island not far from the original South Village;[88](#)
- establishment of a twice-daily passenger shuttle-boat service between Manama and the Hawar Islands;[89](#)
- oil prospecting and concession activities;[90](#)
- construction of residences by the Bahrain Ruling Family;[91](#)
- regular visits to the islands by the Bahrain Ruling Family;[92](#)
- production of maps by Britain and the USA showing the Hawar Islands to be part of Bahrain;[93](#) and
- the inclusion of Hawar Island residents in Bahrain censuses.[94](#)

SECTION 2.4 Qatar's attempts to denounce the evidence of Bahrain's sovereignty over the Hawar Islands are baseless

31. Bahrain has demonstrated how the historical genesis of its title to the Hawar Islands lies in its original dominance and authority over all the territories in the Gulf of Bahrain and the Qatar peninsula throughout the nineteenth and well into the first half of the twentieth century. Bahrain has further demonstrated that the Al-Thani had only a restricted area of influence on the south-east coast of the Qatar peninsula in and around Doha and that the land and the waters as well as islands to the west of that area were under Bahrain's authority and control.[95](#) Qatar's attempt to challenge these established historical facts is addressed in Chapter 2 of Bahrain's Counter-Memorial[96](#) and is also discussed in Chapter 3 of this Reply.[97](#) The present section focuses on issues specific to the Hawar Islands.

A. Qatar mischaracterises the nature of the Dowasir tribe's relationship with the Rulers of Bahrain

32. In its Memorial⁹⁸ and Counter-Memorial,⁹⁹ Qatar mischaracterises the true nature of the relationship between the Dowasir tribe and the Ruler of Bahrain as well as the significance of that relationship as a basis for Bahrain's sovereignty over the Hawar Islands. Qatar claims that the Dowasir were not in fact permanent residents of the Hawar Islands, and, in any event, could not be considered to have been subjects of the Ruler of Bahrain.¹⁰⁰ Qatar also complains that Bahrain has cited no evidence at all of any exercise of Bahrain's political authority over, or its acceptance by, the Dowasir.¹⁰¹

33. None of Qatar's assertions is true. Furthermore, regardless of their merits, which Bahrain contends are negligible, all of Qatar's assertions are based on events prior to 1927. It bears remembering that in 1927 those discontented Bahraini Dowasir who had left Bahrain in 1923 returned and expressly affirmed their allegiance to and the authority of the Ruler of Bahrain. Thus, any question as to the relationship of some of the Bahraini Dowasir and the Ruler of Bahrain was put to rest more than 11 years before Qatar made its first claim to the Hawar Islands in 1938. Qatar has adduced no evidence to support its allegations about the Dowasir. This is to be contrasted with the wealth of evidence in Sections 3.5 and 3.6 of Bahrain's Memorial and Section 2.3 of its Counter-Memorial of the long standing relationship of the Bahraini Dowasir to the Ruler of Bahrain and the Hawar Islands, as well as Britain's recognition of the same.

34. For example, Bahrain's evidence demonstrates that, although the presence of some Hawar Islanders was seasonal, the settlement was nevertheless permanent. Bahrain has provided:

- Evidence showing how the Hawar Islands supported a population of Bahraini Dowasir engaged in their traditional livelihoods of fishing,¹⁰² pearling,¹⁰³ animal husbandry¹⁰⁴ and gypsum quarrying;¹⁰⁵

- Descriptions of physical evidence, which can still be seen on the Hawar Islands today, attesting to the existence of a settled and stable population with a pattern of regular habitation, such as water cisterns, cemeteries, the remains of two villages, an old mosque and a replacement mosque built by the Bahrain Government in 1939;¹⁰⁶

- Evidence from the public record of regular habitation of the Hawar Islands by the Bahrain Dowasir dating back to 1821;¹⁰⁷

- Testimony by former residents of the Hawar Islands about their lives there;¹⁰⁸

- British records from 1909, including a trip report by the British Political Agent (Prideaux) describing a recent visit to the Hawar Islands, in which he records having observed "a collection of 40 large huts under the authority of a cousin of the tribal principal Shaikh. This individual is ... related by marriage to Shaikh Isa bin Ali", who at the time was the Ruler of Bahrain;¹⁰⁹

- British records from 1939, including a report of the findings of another British Political Agent (Weightman) following a visit to the Hawar Islands, in which multiple examples are given not only of the continuous occupation of the Hawar Islands by Bahraini subjects and, in particular the Dowasir, but also of Bahraini acts of administration there;¹¹⁰

· Extracts from Lorimer's Gazetteer in which, in recording the Dowasir occupation of the Hawar Islands, it is noted "[t]here are no wells but there is a cistern to hold rainwater built by the Dawasir of Zellaq in Bahrain who have houses at two places on the island..."¹¹¹ In this connection, Bahrain has also provided the testimony of former Hawar Islanders describing how cisterns for collecting water were built on the Islands by the Dowasir and how water was brought to the islands from Muharraq in times of shortage;¹¹²

· The Dowasir were first granted permission to settle in the Hawar Islands by the Al-Khalifa in the late eighteenth century. They settled there around 1800 under the authority of the Ruler of Bahrain;¹¹³

· The political relationship between the Hawar Dowasir and the Ruler of Bahrain was affirmed and reinforced in 1845 when they settled on the main island of Bahrain at the invitation of the Ruler of Bahrain, following which the links between the main island of Bahrain, Muharraq Island and the Hawar Islands were further strengthened;¹¹⁴

· In 1869, the British Political resident ordered "the Chief and Members of the Dowasir Tribe" in Budaiya and Zellaq to conform to an interdiction on smuggling from Bahrain;¹¹⁵

· In 1909, Britain acknowledged the allegiance of the Bahrain Dowasir to the Ruler of Bahrain in the context of the Ottoman claim to Zakhnuniya Island;¹¹⁶

· In 1917, the Gazetteer of Arabia described the Bahrain Dowasir as "the second of all the Bahrain tribes";¹¹⁷

· In 1922, the British Political Agent noted that "[t]he Dowasir have been settled so long in Bahrain that they are recognised as Bahrain subjects";¹¹⁸ and

· Numerous other records of the Bahraini Dowasir consistently recognising the authority of the Ruler of Bahrain, including using the Ruler's flag,¹¹⁹ accepting the jurisdiction of Bahrain's courts and holding positions of influence in the Bahrain Government.¹²⁰

35. Examples such as these amply demonstrate that the Dowasir's relations with the Rulers of Bahrain were far from "uncertain and fluctuating",¹²¹ as Qatar would have the Court believe.¹²²

36. Qatar refers to the Administration Report for the Bahrain Political Agency for the year 1911, in which the Political Agent gives his personal view that "the only generally hostile feeling in the island is, I think, to be sought among the Dosiris ...".¹²³ However, the same report cited by Qatar also records that the Dowasir flew the Ruler of Bahrain's flag.¹²⁴ Rather than being of any unusual significance, the Report simply shows that in 1911 the Dowasir were loyal Bahraini subjects, some of whom were to some degree discontent.¹²⁵

37. Qatar invokes the Dowasir's absence from Bahrain from 1923 to 1927, referred to at the beginning of this Section, to support its contention that the Dowasir were not subject to the authority of the Ruler of Bahrain, and to buttress its allegations that the

Al-Khalifa had limited authority over Bahrain itself.¹²⁶ The incident demonstrates nothing of the sort, as the circumstances surrounding that event, recounted in Chapter 3 of Bahrain's Memorial and Section 2.3 of its Counter-Memorial, demonstrate.

38. First, Qatar fails to mention that not all of the Dowasir departed from Bahrain. Second, those Dowasir who left had, prior to their departure, lived under the authority of the Ruler of Bahrain for over a hundred years. Third, they returned to Bahrain, three and a half years later, after requesting permission to do so from the Ruler of Bahrain.

39. Far from proving Qatar's proposition that the Bahrain Dowasir were not subject to the authority of the Ruler of Bahrain, the departure from and return to Bahrain of certain of the Dowasir tribe proves exactly the opposite.¹²⁷ British records confirm the following:

- When the Dowasir threatened to remove themselves from Bahrain as part of an attempt to resist government administrative reforms, the Ruler of Bahrain "called their bluff" and permitted them to leave. As punishment for their intransigence and insubordination, their properties were confiscated;¹²⁸

- While initially the Dowasir had been attracted by the conditions offered by Ibn Saud, they soon found themselves subject to taxation and deprived of the privileged status they had been accorded when they first arrived.¹²⁹ As a result, almost immediately after departing from Bahrain, as Qatar acknowledges in its Memorial,¹³⁰ the Dowasir began supplicating the Ruler of Bahrain to be allowed to return to Bahrain. Qatar's claim that even though the Dowasir returned to Bahrain, they nevertheless remained "highly reluctant to accept the Ruler of Bahrain's authority over them,"¹³¹ therefore, is without substance;

- Even during their absence from Bahrain, those Dowasir who left continued to acknowledge their allegiance to the Ruler of Bahrain. Furthermore, influential Dowasir, such as the brother of one of the chiefs of the Dowasir, remained in Bahrain as close advisors to the Ruler;¹³²

- The Dowasir who left accepted all of the conditions imposed by the Ruler of Bahrain for their return, including not claiming to be internally autonomous from the Ruler of Bahrain, paying taxes, submitting to the jurisdiction of the local courts, accepting a police post which had been established in one of their chief towns, and accepting that their official headmen would be nominated and could be changed, if necessary, by the Ruler. The Ruler of Bahrain reinstated all of the property rights of the Dowasir who returned, in recognition of their willingness once again to accept his authority as their sovereign.¹³³ There is absolutely no evidence to support Qatar's contention that the Dowasir returned in straitened circumstances;¹³⁴

- When the Dowasir returned to Bahrain in 1927, the British Political Resident:

"informed them categorically that the whole matter rested with their acceptance of the laws of the country, that as long as they realised that they were as subject to law as any other person in Bahrain and had no privileged position Shaikh Hamad would naturally be glad to see them back in Bahrain.

They accepted the condition without reserve and the interview ended amicably";¹³⁵ and

· When the Bahraini Dowasir absented themselves from Bahrain, they went to Damman in Saudi Arabia and not to the Hawar Islands, in order not to be subject to the authority of the Ruler of Bahrain. This demonstrates their belief that the Hawar Islands were under the authority of the Ruler of Bahrain.

40. Qatar also seeks to rebut Bahrain's claim that the Dowasir owed generally uninterrupted and unswerving allegiance to successive Rulers of Bahrain by stressing the ties between Ibn Saud and those of the Dowasir who left Bahrain.¹³⁶ Bahrain does not deny that, for a short time, the Ruler of Saudi Arabia did enjoy a degree of influence over the Dowasir and sought to use them as a way of interfering in the internal affairs of

Bahrain. However, what is of signal importance is that the matter was resolved definitively in 1927, when the Dowasir once again voluntarily and unequivocally subjected themselves to the authority and control of the Ruler of Bahrain. Also significant is the fact that there is no suggestion that the Al-Thani ever had a claim to influence the Dowasir.

41. Qatar has provided no evidence for its claim that the Dowasir did not pay the taxes upon which their return in 1927 had been partially conditioned.¹³⁷ In fact, the evidence shows that, following their return, the Dowasir fully accepted the authority and administration of the Bahrain Government. It is difficult to follow Qatar's attempt¹³⁸ to construct an argument on the basis of a letter from the Political Resident sent to the Rulers of Kuwait and Qatar in April 1923, following the Dowasir's departure from Bahrain, that refers to the Ruler of Qatar's dominions on the Qatar peninsula. The fact that the Dowasir did not remove themselves to nor visit the Hawar Islands during the period 1923 to 1928 had nothing to do with Qatar but, rather, in fact shows that they recognised that the islands were part of the dominions of the Ruler of Bahrain, from which they were displaced.

42. More to the point, Qatar has provided no genuine evidence showing that tribes or persons loyal to Qatar's rulers maintained any sort of presence on the islands at all. In sum, Bahrain has provided incontrovertible evidence showing the strong links between the Rulers of Bahrain, the Dowasir and the Hawar Islands. In contrast, Qatar

has not provided a shred of evidence showing any contact between the Dowasir, the Hawar Islanders or the islands themselves and the Qatar peninsula or of acts of administration by the Rulers of Qatar. Equally significant, Qatar has offered no comment on the fact that for 200 years the Dowasir's social, economic and political orientation was towards the Bahrain archipelago and never towards the Qatar peninsula.

B. The 1878 Ottoman map demonstrates Ottoman recognition of Bahrain's title to the Hawar Islands

43. Bahrain has adduced evidence establishing that the Ottoman Empire recognised that the Hawar Islands belonged to Bahrain, as shown, *inter alia*, by an 1878 Ottoman

Army Survey map.¹³⁹ As discussed in Sections 2.4.C and 2.9.C, *infra.*, other evidence of Ottoman recognition of Bahrain's title to the Hawar Islands is provided by the unratified Anglo-Ottoman Convention of 1913, in which a special provision was included concerning the sale of Zakhnuniya Island by the Ruler of Bahrain to the Ottomans. No mention was made of the Hawar Islands in that Convention whose status as Bahraini was therefore recognised to be unchanged.¹⁴⁰

44. Apart from invoking its Ottoman forgeries, Qatar's sole response to the 1878 Ottoman map is to state the obvious fact that it shows the Hawar Islands as being closer to the Qatar peninsula than to the larger Bahrain islands. That is a geodetic fact that Bahrain has never denied, but which has no legal significance in this case.

45. Significantly, the map shows "Qatar", *i.e.*, the area of Al-Thani influence, as being confined to a small area on the south-eastern coast of the peninsula - a point which Qatar has entirely disregarded.

C. The Zakhnuniya Island incident confirms Britain's and the Ottoman Empire's recognition of Bahrain's sovereignty over the Hawar Islands

46. In the face of facts to the contrary, Qatar surprisingly refers to the Zakhnuniya incident of 1909 as evidence of Qatar's sovereignty over the Hawar Islands and to support its allegation that neither Britain nor the Ruler of Bahrain viewed the islands as belonging to Bahrain.¹⁴¹

47. The conclusions that are revealed by the evidence related to the Zakhnuniya incident are discussed in Section 3.5 of Bahrain's Memorial and Section 2.3 of its Counter-Memorial. They can be summarised as follows:

- the British Political Agent noted that Zakhnuniya Island was similar to the Hawar Islands in terms of Bahraini sovereignty, and that Britain had to prevent the former's annexation by the Ottomans because otherwise the Ottomans "will then naturally be encouraged to go on to Hawar...";¹⁴²
- a secret declaration annexed to the unratified treaty of 1913 between Britain and Turkey referred to an agreement between the Parties pursuant to which the Ottoman Government was to pay compensation to the Sheikh of Bahrain for the renunciation of his rights to Zakhnuniya; this acknowledgement of Bahrain's rights in Zakhnuniya serves also as an acknowledgement of Bahrain's rights in the Hawar Islands, which were not ceded;¹⁴³
- the Bahrain Dowasir, who also include the Hawar Islanders, clearly recognised the authority of the Ruler of Bahrain;¹⁴⁴
- the Bahrain Dowasir reported foreign interference on the Hawar Islands and Zakhnuniya Island to the Ruler of Bahrain;¹⁴⁵
- the Ruler of Bahrain protested foreign interference on the islands;¹⁴⁶
- Britain acknowledged the allegiance of the Bahrain Dowasir to the Ruler of Bahrain;¹⁴⁷ and

· Britain acknowledged that the relationship supported Bahrain's territorial sovereignty in relation to Zakhnuniya and the Hawar Islands.[148](#)

In sum, despite well-recorded attempts to establish itself on a number of islands in the Gulf of Bahrain and Zubarah, the Ottoman Empire made no attempt to extend its challenge to the Ruler of Bahrain's authority over the Hawar Islands.[149](#) Qatar's reliance on the Zakhnuniya incident is entirely misplaced.

D. Bahrain's positive evidence in support of its continuous authority over the Hawar Islands stands unchallenged

(i) The Brucks survey

48. On the basis of a detailed and comprehensive official survey conducted between 1821 and 1829, Captain George Brucks, a British Indian Navy officer, described the Hawar Islands (referred to as the Warden Islands in Brucks' report) as belonging to Bahrain.[150](#)

49. The principal "evidence" offered by Qatar to rebut the evidence from the Brucks survey are its forged Ottoman maps, which warrant no comment. However, Qatar also attempts to impugn the validity of the Brucks survey on the basis of its claim that "many of the British surveys (including those in the `Gulf Pilot') carried out at the time have been shown to be imprecise if not inaccurate."[151](#) Qatar, however, provides no evidence to substantiate its allegation that the Brucks survey suffered from any inaccuracy. Indeed, given Britain's interest in maintaining the maritime peace during the period in question, it is hardly likely that the surveys being carried out by the British Navy would have been anything but the products of considerable diligence. In fact, Captain Brucks survey report shows the thoroughness of his approach, which involved personal interviews with tribal chiefs and cross-checking for accuracy the information obtained in this manner.[152](#)

(ii) The shipwrecked Ottoman soldiers

50. Bahrain has presented evidence showing that in 1873, while on a visit to the Hawar Islands, the Ruler of Bahrain assisted Ottoman soldiers shipwrecked on the Hawar Islands by transferring them to the main island of Bahrain and then onwards to their intended destination.[153](#) Qatar's only response to the evidence in support of this episode is its now discredited attempt, based on the forged documents, to impugn the character, motivations and actions of Sir Charles Belgrave, the Bahrain Government Adviser. The evidence presented by Bahrain of this event thus remains unchallenged.

(iii) Jurisdiction to serve summons

51. Bahrain has produced a mass of evidence to support its contention that the Ruler of Bahrain exercised his jurisdiction to serve summons on inhabitants of the Hawar Islands and to show that, as far back as 1909, the Hawar Islanders readily accepted the jurisdiction of the courts located on Muharraq Island (just north of Manama) and on the main island of Bahrain.[154](#) Qatar has submitted nothing to rebut Bahrain's evidence.

(iv) Fishing

52. Bahrain has adduced substantial evidence regarding the use of the Hawar Islands by Bahraini fishermen. Qatar has only commented on two marginal facts: that, in the context of the 1938-1939 British arbitration, Bahrain may not have forwarded documentation confirming the fact that fishing rights off the shores of the Hawar Islands were originally granted to the people of the Hawar Islands by the Ruler of Bahrain and also that Bahrain eventually withdrew a preliminary statement to the effect that Hawar fish traps were registered in its Land Department.[155](#)

53. Qatar, however, provides no comment on the other evidence submitted by Bahrain, including:

- the fact that fishing rights around the Hawar Islands were originally granted to the inhabitants of the Hawar Islands by the Ruler of Bahrain and thereafter actively protected by the Ruler of Bahrain;[156](#)

- a protest lodged in 1938 by the Ruler of Bahrain with PCL regarding the theft of fish from the fish traps of Hawar Islanders;[157](#)

- a sworn affidavit from 1938 by inhabitants of the Hawar Islands regarding their longstanding use of the islands as a permanent and seasonal base for fishing and for mending their fish nets;[158](#)

- a wealth of evidence rebutting Qatar's allegation that the fishermen who used the Hawar Islands were not itinerant and did not just use the islands as a temporary base;[159](#) and

- testimony by former inhabitants of the Hawar Islands describing the patterns of fishing life there.[160](#)

(v) Pearling

54. With respect to the evidence submitted by Bahrain regarding pearling activities, Qatar's response is equally inadequate. In its Memorial, Bahrain has provided considerable evidence showing how the pearling industry also linked the Hawar Islands with the main islands of Bahrain; the role of the Dowasir in forging that link; and how the Government of Bahrain regulated the pearling industry in the Hawar Islands in the same way that it did in other parts of Bahrain (*e.g.*, by distributing diving books to pearl divers and log books to pearl boat captains, and requiring the registration of pearling boats).[161](#)

55. While asserting boldly that the picture conveyed by Bahrain of the pearling industry and of the Dowasir's involvement in it is false, Qatar has provided no evidence to suggest that the situation was anything other than as Bahrain has described it.[162](#) Qatar does not challenge, because it cannot, any of the acts evidencing Bahrain's sovereignty over the Hawar Islands. Instead, Qatar confines itself largely to questioning abstractly whether a pearling fleet could be moored at the Hawar Islands and by such speculation trying to refute the first hand observation of the British Political Agent that he had observed pearling boats beached on the Hawar Islands.[163](#)

(vi) Animal husbandry

56. As further proof of the permanent nature of the Dowasir presence on the Hawar Islands, Bahrain has provided evidence that the Hawar Islanders grazed their flocks on Jazirat Hawar, which also led them to build dams to create cisterns in order to improve the grass yield, as well as their water supply.¹⁶⁴ Qatar acknowledges that such animal husbandry did take place, but argues that it could only have been temporary in nature. Again, Qatar provides no evidence to substantiate its assertion.¹⁶⁵

(vii) Gypsum quarrying

57. Bahrain has provided considerable evidence of the regulation of gypsum quarrying by the Bahrain Government on the Hawar Islands. As the quarrying of gypsum increased during the period between 1916 and 1939, so did the Bahrain Government's regulation of the industry, including the imposition of a licensing scheme.¹⁶⁶ Qatar has offered no response to this.

SECTION 2.5 Qatar's claim that prior to 1936 Britain considered the Hawar Islands as belonging to Qatar is false

58. In its Counter-Memorial, Qatar makes much of the fact that Bahrain's Memorial does not focus on the events preceding what Qatar has chosen to characterise as a "provisional decision" by Britain in 1936, as a result of which it claims that the Hawar Islands were awarded to Bahrain.¹⁶⁷ Qatar also criticises what it views as Bahrain's omission to focus on the so-called "provisional decision" itself.¹⁶⁸ Qatar goes on to speculate that this supposed omission was deliberate, because allegedly that decision is not only inconsistent with the Bahrain thesis to the effect that Qatar was the claimant state in the 1938-39 proceedings, but indeed contradicts Bahrain's position on the merits.¹⁶⁹

59. Once again, Qatar's description of Bahrain's pleadings is misleading. In view of the *res judicata* effect of Britain's decision in 1939, in which it awarded the Hawar Islands to Bahrain, and the overwhelming additional evidence Bahrain has adduced in support of its sovereignty over those islands, the events of 1936 hold little relevance and, therefore, were not treated in detail in Bahrain's Memorial. However, given the extent to which Qatar has sought to inflate and then rely on the events occurring in that and the immediately preceding years in its Memorial, and its gross misrepresentation of those events, Bahrain provided the Court in Section 2.3 of its Counter-Memorial with a true and complete record of the relevant historical facts in the years concerned.¹⁷⁰ That discussion establishes that from the early 1930s, when issues regarding the ownership of the Hawar Islands first arose in the context of the negotiations for oil concessions in Bahrain, until the British decision awarding the islands to Bahrain in 1939:

- (1) the Ruler of Bahrain was steadfast in maintaining his historical claim of sovereignty over the Hawar Islands;
- (2) Britain could not deny or minimise the strength of the Ruler of Bahrain's claim, although to have done so would have served Britain's economic interests; and

(3) Britain was careful not to pre-judge the matter and was mindful to protect the interests of the Ruler of Qatar, speculative and undefined as they turned out to be.

60. Qatar is wrong when it claims that, prior to 1936, Britain held the view that the Hawar Islands did not belong to Bahrain, thereby implicitly acknowledging that they must have belonged to Qatar. As Bahrain has shown, Britain first undertook to investigate the issue of the ownership of the Hawar Islands in 1933, in the context of the application of Bahrain Petroleum Company (BAPCO) for an extension of the oil concession it had been awarded by the Ruler of Bahrain.¹⁷¹ These early investigations were not conducted in adversarial form and were not pursued to a definitive answer.

61. Qatar seeks to rely on a letter dated 3 May 1933 from J.G. Laithwaite of the India Office to F.C. Starling at the Petroleum Department to support its contention that Britain did not in 1933 accept that the Hawar Islands were part of the Bahrain archipelago.¹⁷² Far from proving Qatar's thesis, however, Laithwaite's letter shows that, until 1933, Britain had never fully investigated the matter of the extent of the Ruler of Bahrain's territorial sovereignty, especially concerning the Hawar Islands. The reason for this was largely because there had never been any reason for Britain to do so. In view of an American oil company's application for an additional oil concession in Bahrain, however, the situation had changed and such an investigation was required. Moreover, the letter shows that, even at this early stage, Britain was aware that the Ruler of Bahrain's territorial claims extended beyond the centre of the Bahrain archipelago (the main island of Bahrain, Muharraq, Umm Na'assan, Sitrah and Nabi Salih). In addition, and most significantly, the letter establishes that Britain did not recognise any countervailing claim to the Hawar Islands by the Ruler of Qatar; undoubtedly had there been any prior evidence or current indications that such a claim may have existed, it would have been mentioned by Laithwaite, even in the context of these early investigations.

62. As Britain's investigations continued, the fact that the Ruler of Bahrain considered the Hawar Islands to be among his territories became increasingly clear to the British Government and, as a consequence, so also the implications of the broad terms in which the unallotted concession area had been defined by BAPCO. Because the proposed concession was to cover "the whole of that portion of [the Ruler of Bahrain's] Territories - including all the islands and all the Territorial Waters - remaining after excluding and apart from that area already covered" under the 1925 Bahrain concession, Britain was of the view that BAPCO would be in a position to claim that its concession territory extended to areas beyond the main island of Bahrain and the immediately adjoining islands, largely because it was recognised (including by the Al-Thani, see the following paragraph) that the Ruler of Bahrain's dominions extended "to other islands and to areas on the Qatar coast."¹⁷³

63. The continuing investigations also confirmed to Britain that the Ruler of Qatar in all likelihood did not have any rights in connection with the Hawar Islands. Why else would the Political Agent have reported that "the explorers of the Anglo-Persian Oil Company Limited in Qatar have examined places to which the Ruler of Qatar had no right to allow them to go, and which people of Bahrain frequent to this day as a summer resort...", or furthermore, that "indeed, it is said that as late as last year (1932) the Ruler of Qatar admitted in public that certain areas on the Qatar coast pertain to

Bahrain."?¹⁷⁴ In this connection it is important to recall that at this time Britain was also undertaking investigations to determine finally what could be considered the boundaries of Qatar in the context of supervising the concession negotiations between the Ruler of Qatar and Britain's Anglo-Persian Oil Company (Anglo-Persian).¹⁷⁵

64. In June 1933, Anglo-Persian joined the competition for the Bahrain unallotted area concession. This development magnified Britain's interest in ensuring that additional concession rights awarded, if at all, to the American-owned BAPCO be confined to as small an area as possible.¹⁷⁶ Britain thus proposed to the Ruler of Bahrain that any agreement with BAPCO regarding the unallotted area specifically refer to certain of the islands in the Bahrain group, but not including the Hawar Islands.¹⁷⁷

65. The Ruler of Bahrain, however, refused to accept the proposal, precisely because it might have impliedly compromised Bahrain's long-standing sovereignty over the Hawar Islands. The Acting British Political Agent, Capt. K.H. Gastrell, reported:

"As regards the designation of the area, the Shaikh and his son immediately objected to the 'islands' being shown by name. They explained that the islands off Qatar were the cause of this hesitancy (here the Shaikh added that the Foreign Office knew that these islands are the dependencies of Bahrain and that there is a ninety year old agreement somewhere to this effect) and, therefore, to avoid any misunderstanding by the omission of these islands, they would like the area to be called 'Bahrain Islands'."¹⁷⁸

66. The Ruler of Bahrain's counter-proposal was made to ensure that the conclusion of the additional area concession agreement was not delayed and likewise the resulting income stream from the royalties. At the same time, he was confident that by this time the British Government were clear about his position in relation to the Hawar Islands and other areas on the Qatar coast. Accordingly, his counter-proposal was in no way an acknowledgement that the Hawar Islands were not his, as Qatar contends.¹⁷⁹ Rather, it provides further evidence of the strength of the Ruler of Bahrain's conviction concerning Bahrain's sovereignty over the Hawar Islands.

67. The British Government accepted the Ruler of Bahrain's proposal and in so doing implicitly recognised Bahrain's sovereignty over the "islands off Qatar" (*i.e.*, the Hawar Islands). In his report to the Secretary of State for India, Loch, the Acting British Political Resident at the time, described the situation as follows:

"[Shaikh] desires that area be called Bahrain Islands without specifically naming any so that the question of Hawar Island and Qatar will not be made prominent by their omission. I think we may accept this as Hawar Island is clearly not one of the Bahrain group."¹⁸⁰

68. Qatar relies on the last sentence of the above-quoted passage to support its contention that in 1933 Britain was clearly of the opinion that the Hawar Islands were recognised as not belonging to Bahrain; the implication, Qatar finds, is that they were recognised as part of Qatar.¹⁸¹

69. Qatar yet again attempts to present the evidence out of its context. Loch's statement must be understood in the light of the fact that Britain's main concern at this

juncture was with the extent of the concession territory that could be ceded to BAPCO. The Ruler of Bahrain's main interest, on the other hand, was to ensure that his sovereign rights were protected. Thus, for the purpose of the additional area concession that was under consideration, the term "Bahrain Islands" was to be understood to mean the area on the main island of Bahrain apart from the 100,000 acres already covered by the 1925 BAPCO concession, and the islands of Muharraq, Umm Na'assan, Sitrah and Nabi Salih. Read in the light of the Ruler of Bahrain's very clear statement of his rights concerning the "islands off Qatar" and Britain's acceptance of the Ruler's insistence that the islands that were to be included in the concession territory should not be specifically identified by name, it is clear that the Political Resident could not have been opining on the Ruler of Bahrain's claim of sovereignty over the Islands. As shown by the evidence adduced by Bahrain, the more plausible view is that he was simply noting a fact of physical geography.¹⁸²

70. Qatar's reliance on a letter dated 4 August 1933, from the Political Resident to the India Office, forwarding a map (untraceable in British archives) purporting to show what were considered to constitute the Bahrain Islands, provides no support for Qatar's position.¹⁸³ First, the map had been prepared in 1906, even before the Zakhnuniya incident, which, as the Court will recall, had led to Britain's confirmation of the Ruler of Bahrain's rights with respect to the Hawar Islands. Second, based on the Political Resident's description of the map, it appears it did not even include all of the islands that were undisputably considered to belong to the Ruler of Bahrain. Third, even at the time, Britain was aware that there were more current and complete maps showing the Ruler of Bahrain's dominions.

71. It is significant that at no time during the entire discussion in 1933 regarding the definition of the Bahrain unallotted area concession did Britain mention any rights or claim of the Ruler of Qatar to the Hawar Islands.¹⁸⁴ This is all the more significant in view of the fact that Britain was at this time promoting and participating in the negotiations between the Ruler of Qatar and Anglo-Persian for the Qatar oil concession. Had there been any basis for a claim by the Ruler of Qatar, it would surely have been actively supported by Anglo-Persian, and at least some indication of it would have been found in British records. Qatar, however, has produced no evidence to this effect. As discussed below, what the evidence does show is that Britain did not consider the Ruler of Qatar to have any rights with respect to the islands.

72. In November 1933, the negotiations between the Ruler of Bahrain and BAPCO were effectively terminated. While the issue of how to define the Bahrain unallotted concession area was not finally resolved, the episode did have the effect of clarifying the Ruler of Bahrain's position concerning Bahrain's sovereignty over the Hawar Islands insofar as Britain, BAPCO and Anglo-Persian were concerned.

73. In 1936, the issue of the ownership of the Hawar Islands arose for a second time, again in the context of an application for the Bahrain unallotted concession area, this time by Petroleum Concessions Ltd. (PCL).¹⁸⁵ Only three years earlier, in the context of the first round of negotiations for the Bahrain unallotted area concession, the Ruler of Bahrain had sought to ensure that Bahrain's sovereignty over the Hawar Islands could not in any way be compromised as a result of how the concession area was defined. Accordingly, on 28 April 1936, acting on the Ruler's instructions, Charles Belgrave, the Adviser to the Bahrain Government, wrote to the British Political Agent

to confirm Bahrain's position that "the Hawar group of islands lying between the southern extremity of Bahrain island and the coast of Qatar" were "indisputably part of Bahrain." In that letter, the Ruler of Bahrain also confirmed that he had expressed his views concerning his sovereignty over the Hawar Islands to the British Government on previous occasions.¹⁸⁶ The letter set out numerous details establishing the Ruler of Bahrain's sovereignty over the Hawar Islands, including the fact that the islands were permanently occupied by subjects of the Ruler of Bahrain, that the Ruler of Bahrain regulated and administered fishing activities there, that the inhabitants of the islands recognised and subjected themselves to the jurisdiction of Bahrain's courts and described Bahraini law enforcement activities on the islands.

74. Undoubtedly the Ruler of Bahrain's position was already known to PCL when it first expressed an interest, in April 1936, in negotiating for the unallotted area concession. In all likelihood PCL was aware that BAPCO had been advised of PCL's objective. The stakes were quite clear: if, on the one hand, the Hawar Islands were considered to be part of Qatar, then the concession rights for the islands would automatically fall to PCL by virtue of its Qatar Concession. If, on the other hand, they were considered to be part of Bahrain, PCL would find itself confronted with stiff competition from BAPCO.¹⁸⁷ PCL's Managing Director, Mr. J. Skliros, therefore, requested the British Government to advise on the question of sovereignty over the Hawar Islands, making it clear that PCL considered the islands to be part of Qatar.¹⁸⁸

75. The contents of the two letters effectively mirror the Parties' current positions. While on the one hand, the Ruler of Bahrain described numerous acts of administration to confirm the substantive bases of his sovereign rights over the Hawar Islands, PCL, the Ruler of Qatar's oil concessionaire, could only cite to geographical proximity to support what was, in effect, the basis of the Ruler of Qatar's claim to the islands. Qatar alleges that Bahrain fails to cite the following extract from Skliros' letter, supposedly because it puts forward a number of facts which are "wholly at variance with the Bahrain thesis":¹⁸⁹

"The island [Hawar] is about 10 miles long, about 2 miles wide at its widest and is believed to be uninhabited. It is said to be sometimes visited in the winter and to have had in the past some degree of connection with Bahrain subjects, if not, (as the Shaikh of Bahrain now claims) with the Khalifa family itself."

However, far from proving any aspect of Qatar's position, Skliros' letter confirms the facts - however minimised by Skliros in his own interest - that the Hawar Islands were used by subjects of the Ruler of Bahrain and that those connections were widely known.

76. On 6 May 1936, the British Political Agent (Loch), forwarded the Bahrain Adviser's letter to Sir Trenchard Fowle, the British Political Resident, under cover of a letter in which he expressed his views in the following terms:

"Subject to any past correspondence, which is not available to me, I am inclined to think there is real substance in Sheikh Sir Hamad bin `Isa's claim and also that it might in certain circumstances suit us politically to have as large an area as possible included under Bahrain."¹⁹⁰

77. Citing Loch's earlier statement that "Hawar Island is clearly not one of the Bahrain group", Qatar states that it "must remain somewhat of a mystery in the absence of any clear explanation in the British archives" why Loch seems to have changed his views.¹⁹¹ As Bahrain has shown, the British archives, in fact, provide a very clear explanation. In his earlier statement, Loch was expressing nothing more than a view about geography in the context of opining on the extent of the area that was to be ceded as part of the Bahrain unallotted area concession. In 1936, having looked into the matter, even if only cursorily, Loch was setting out his opinion on the legal question of the ownership of the islands raised by the Qatar concessionaire.

78. The British Political Agent went on to clarify that he had not made any efforts to solicit the views of the Ruler of Qatar, principally, it would appear, because there seemed to have been no record of the Ruler of Qatar having ever asserted any sort of claim to the Hawar Islands:

"I do not know what Sheikh Abdullah bin Jasim of Qatar's views about the Islands are, but I have never heard any protest from him against the activities of Bahrain's subjects there."¹⁹²

79. Bahrain cannot understand how Qatar purports to find any support in the above statement for its contention that the British authorities in the Gulf and the relevant oil company executives were aware of Qatar's title to the Hawar Islands.¹⁹³ The above statement proves quite the opposite, namely, that the relevant British authorities had never heard of any Qatari claims to the islands. Thus, in stark contrast to the Ruler of Bahrain's insistence on his rights concerning the Hawar Islands, the Ruler of Qatar apparently had never voiced any views concerning Qatari sovereignty over the islands, more likely than not because he was not even aware that they existed. In any event, the Political Agent's caveat explains the proviso conveyed by the British Government in advising the Ruler of Bahrain and PCL that no final decision concerning the ownership of the Hawar Islands would be possible until the Ruler of Qatar's views had been ascertained.

80. In support of its view that the Hawar Islands belonged to Qatar, PCL submitted additional evidence for the British Political Resident's consideration. It made no mention of any views held by the Ruler of Qatar on the subject of the sovereignty over the Hawar Islands. It is not conceivable that PCL would not have consulted the Ruler of Qatar, who would have been the beneficiary of payments by PCL if the islands belonged to him and contained oil. The absence of any mention of the Ruler's views can only be explained by the fact that the Ruler of Qatar had nothing to contribute to the subject, which is confirmed by the total lack of evidence submitted by him just two years later in the context of Britain's formal arbitration of the matter. Given this reality, PCL's failure to mention any consultations it may have had with the Ruler of Qatar is understandable: to do so would have had a prejudicial and not a positive effect.

81. The British Political Resident now had before him a detailed statement of the evidence on which the Ruler of Bahrain based his claims of sovereignty over the Hawar Islands, the PCL Managing Director's letter and a separate report submitted by PCL. Qatar's contention that the British Political Resident had "relied heavily"¹⁹⁴ in reaching his conclusions on the Bahrain Adviser's letter and its complaint that the

respective claims of Qatar and Bahrain were given only the most "superficial examination" by the Political Agent and the Political Resident are simply without basis.¹⁹⁵ Not only has Qatar provided no support for its assertions but the record shows that, far from being cavalier in his consideration of the matter, the Political Resident carefully considered all of the information that had been submitted to him before finalising his views,¹⁹⁶ including evaluating the relevance of the evidence produced by PCL (*i.e.*, a map attached to the 1935 Qatar Oil concession, which he concluded provided no proof of Qatari ownership), reviewing past British records on the subject (*e.g.*, Prideaux's letter of 1909 and the Gazetteer of the Persian Gulf, on the basis of which he observed that it is "beyond doubt" that the Hawar Islands had "long been occupied by the Dowasir tribe of Bahrain") and assessing that successive Rulers of Bahrain had "exercised active jurisdiction in Hawar down to the present day". On the basis of his enquiries, he concluded that there was no record of any claim to the islands by the Ruler of Qatar.

82. In a letter dated 25 May 1936, to the Secretary of State for India, the Political Resident set out his analysis of the available evidence and on that basis endorsed the view that the Ruler of Bahrain was entitled to sovereignty over the Hawar Islands.¹⁹⁷

83. On 9 July 1936, an inter-departmental meeting was held at the India Office in London, involving representatives of the Foreign Office, the Petroleum Department, the Admiralty and the India Office, to consider, *inter alia*, the issue of the ownership of the Hawar Islands. Despite Britain's incentive to find in favour of the Ruler of Qatar in view of the fact that the American-owned BAPCO had again expressed its interest in the unallotted area, the British Political Resident's conclusions were adopted as the official view of the British Government. ¹⁹⁸

84. The Ruler of Bahrain was informed of the British Government's opinion through his Adviser, Charles Belgrave. Britain, however, was very careful to point out that the opinion being expressed was only provisional, and that no "final ruling" on the matter of sovereignty over the Hawar Islands would be possible until the views of the Ruler of Qatar had been heard.¹⁹⁹ The same proviso was conveyed to PCL.²⁰⁰

85. Qatar submits that once PCL's inquiry had been answered, it took the "hard commercial decision" to pursue directly with the Ruler of Bahrain its negotiations for an oil concession covering the Hawar Islands, on the assumption that, in due course, a formal decision would be forthcoming which would have definitively awarded Hawar to Bahrain.²⁰¹ The logic of Qatar's statement is hard to follow, for, following Britain's "limited" decision, it would have made no sense for PCL to continue to negotiate the prospective concession agreement with anyone else other than the Ruler of Bahrain. Britain had been very careful to ensure that both Bahrain and PCL clearly understood that no final decision could be given concerning the ownership of the Hawar Islands "without knowing whether the Sheikh of Qatar has a claim, and hearing it if he has one."²⁰² The more logical conclusion to be drawn, if, in fact, PCL continued its negotiations with the Ruler of Bahrain on the understanding that a formal decision, following the Ruler of Qatar's submission of any available evidence in support of his claim, would be in Bahrain's favour, is that PCL must have known that the Ruler of Qatar had no evidence to produce.

86. Qatar goes on to state that it "would have been unwise (and indeed contrary to their interests as Qatar's exclusive oil concessionaire) for PCL to inform the Ruler of Qatar that the Ruler of Bahrain had laid formal claim to the Hawar islands and that the British Government had provisionally decided in favour of the Bahrain claim."²⁰³ On the contrary, there was every reason and incentive for PCL to have brought the matter to the Ruler of Qatar's attention: PCL was now competing with BAPCO for an oil concession over territory which, if found to belong to the Ruler of Qatar, would automatically have fallen within PCL's existing Qatar concession. Given the stakes, the most commercially prudent course of action for PCL to have adopted would have been promptly to apprise the Ruler of Qatar of Britain's views and urge him to put forward a claim to the Islands.

87. Finally, Qatar complains that the Ruler of Qatar was "deliberately kept in ignorance" of the events in 1936 by the British Government and the oil companies concerned.²⁰⁴ Qatar has provided no evidence, because there is none, of any deliberate policy by the British Government, the Qatar oil concessionaire and BAPCO to conceal information from the Ruler of Qatar. It fails to provide any credible explanation as to what interests any of these parties might have had in doing so. Rather, as discussed below, British records show clearly that Britain was careful to ensure that the Ruler of Qatar's interests were safeguarded.

88. In May 1937, the Ruler of Bahrain decided to postpone negotiations for the unallotted area concession in order to focus his attention on the crisis developing in Zubarah. Negotiations recommenced in January 1938, setting in motion the events that would ultimately lead to the British arbitration concerning the sovereignty of the Hawar Islands.

89. As discussed above, in 1936 Britain had been careful to point out that a final ruling on the question of the ownership of the Hawar Islands would not be possible until it had been ascertained whether the Ruler of Qatar had a claim, and hearing it if he did. Contrary to Qatar's claims, the record leading up to the arbitration also establishes that Britain had on no previous occasion made a formal ruling concerning the ownership of the Hawar Islands. In addition, it confirms that Britain was also concerned to ensure that the Ruler of Qatar be given a full and fair opportunity to air his views. Finally, it confirms that any views that Britain had expressed previously in 1936 concerning the ownership of the Hawar Islands did not have any significance when it undertook to resolve the matter finally in 1938 and 1939.²⁰⁵

90. In view of the foregoing, Qatar's allegation that British officials in the Gulf and in London, and interested oil company executives, had conspired to create the illusion that Bahrain had an incontrovertible title to the Hawar Islands and to keep the Ruler of Qatar in the dark, is simply unsupported innuendo and cannot be taken seriously.

SECTION 2.6 Qatar's claim that Bahrain illegally occupied the Hawar Islands in 1937 is not supported by the evidence

91. Qatar's allegation that Bahrain illegally occupied the Hawar Islands in 1937 is not supported by the evidence.²⁰⁶ Qatar asserts that following Bahrain's "sudden" claim and Britain's "provisional" decision in 1936, Bahrain "illegally" occupied the Hawar Islands by force sometime following Qatar's armed attack on Zubarah in July 1937,

the primary motive being to increase the territories over which Bahrain could grant an oil concession. Arguing that Bahrain's occupation of the "main Hawar Island" was allegedly "illegal", Qatar also argues that Bahrain's claim to sovereignty over the Islands cannot be sustained.[207](#)

92. Qatar cites the following in an attempt to buttress its allegation:

- the establishment of a Bahrain police garrison on the main Hawar Island;[208](#)
- a statement made by Charles Belgrave on 19 August 1937 to the effect that the Bahrain Government had distributed arms and ammunition to villages on the south coast of Bahrain's main island and to guards who garrisoned the Hawar Islands "when the disturbances in Qatar began",[209](#) and the arresting of persons pursuant to those orders;[210](#)
- a letter from Belgrave to the Head Natur at Hawar ordering that "On no account are any people, European or Arab, from Qattar coast to be allowed on any of the Hawar Islands";[211](#)
- a Police Order issued by the Bahrain Government Adviserate dated 1 February 1938 that anyone cutting wood or pulling grass on Hawar and taking it to Bahrain would be arrested;[212](#)
- a report from a PCL official dated 19 February 1938 describing the firing of shots by the Bahraini police on a dhow from Zekrit that had sailed too close to the Hawar Islands;[213](#)
- the Government of Bahrain's Annual Report for 1937-1938, in which Qatar's attack on Zubarah is described as one of the outstanding events of the year, and in which it is recorded that a decision was made to strengthen the police post on the Hawar Islands "in case of any emergency";[214](#) and
- orders from the Adviser to the Bahrain Government concerning the issuing of signalling devices, such as a mirror, to the police post in the Hawar Islands.[215](#)

93. The most striking aspect of the evidence adduced by Qatar is that none of it shows anything other than legitimate acts of the continuing administration by a sovereign in its own territory. In 1936 Britain expressed the view that the Hawar Islands were part of the concession territories to be ceded by the Ruler of Bahrain. It was therefore natural that the Bahrain Government should increase its administrative activities there in light of the fact that it fully anticipated at the time granting a concession for the territory that included the islands. Furthermore, following Qatar's armed attack on Zubarah, the Bahrain Government was fully justified in increasing its defensive capabilities in the islands in the event of further Qatari aggression. The exodus of many of the inhabitants of Doha and its environs at this time because of the excesses of the Al-Thani rulers would have been sufficient on its own to warrant Bahrain stepping-up the security of its border regions.

94. It is Bahrain's view that Qatar's arguments here are but a transparent attempt to distract attention from the abundant evidence in the record of acts of authority by Bahrain on the Hawar Islands prior to the 1930s.

SECTION 2.7 Qatar has presented no facts or arguments that undermine the legal effect of the British decision of 1938-1939

95. During 1938 and 1939, Britain arbitrated the issue of title over the Hawar Islands. An analysis of the circumstances leading up to the arbitration and of the arbitration itself shows the following:

- Qatar had showed little interest in the Hawar Islands prior to the time it made its formal claim to the islands in May 1938, which came only following its hostile occupation of Zubarah and soon after it was informed that Bahrain had begun discussions with oil companies about expanding Bahrain's oil industry to the Hawar Islands;[216](#)
- the Ruler of Qatar's principal motivations for commencing the proceedings were financial and economic;[217](#) as well as in order to alleviate domestic problems;[218](#)
- the arbitration was commenced by the Ruler of Qatar, following an invitation by the British Government for him to submit a "formal claim";[219](#)
- both Bahrain and Qatar consented without reservation to and participated in the proceedings;[220](#)
- both Bahrain and Qatar submitted to Britain what they expressly considered to be their full and complete claims to the Hawar Islands;[221](#)
- the arbitration adhered to fundamental procedural requirements. The various stages in the arbitration are laid out in paragraph 356 of Bahrain's Memorial and in Chapter 3 of Bahrain's Counter-Memorial;[222](#)
- Britain made its own independent investigations of the claims and evaluated the Parties' submissions during the course of more than one year;[223](#)
- British officials visited the Ruler of Qatar on at least two occasions to consult with him about his claim and to advise him on his submissions;[224](#)
- the basis and substance of Qatar's claim was revealed as nothing more than geographical proximity;[225](#)
- certain of Qatar's erroneous affirmations about the physical characteristics of the Hawar Islands showed that the Ruler of Qatar did not understand which islands he was purporting to claim;[226](#)
- the record of the arbitration comprises a wealth of evidence of continuous occupation of the Hawar Islands by Bahraini subjects and of Bahraini acts of administration;[227](#)

- the record reveals no evidence of Qatari subjects ever having dwelt on the Hawar Islands or of Qatari acts of administration;[228](#)
- the arbitration involved adversarial submissions by the Parties. The competing contentions and evidence were analysed in detail by the British Political Agent;[229](#)
- a comprehensive report, including a record of the proceedings and an analysis of the evidence, was prepared by the Political Agent before the decision was handed down. This analysis was confirmed by two site visits to the Hawar Islands;[230](#)
- the Political Agent's report was considered and approved by the Political Resident, prior to further consideration by and the decision of His Majesty's Government and the yet further assent thereto by the British Government of India;[231](#)
- the result of the arbitration - that Bahrain had sovereignty over the Hawar Islands - was formally communicated to the two Rulers by the Political Resident as a decision of "His Majesty's Government";[232](#)
- the British decision encompassed Janan;[233](#)
- after the adjudication was complete, Qatar sought to adduce no further argument or evidence in support of its claim. It merely questioned the merits of the British decision;[234](#) and
- Qatar's contention that the 1938-39 arbitration was unfair and substantially wrong, and quickly recognised as such by British officials, is flatly contradicted by the record, which shows, *inter alia*, that the British Government's 1947 maritime delimitation was in part explicitly based on the 1938-39 arbitration.[235](#)

Thus, as Bahrain has already described in its Counter-Memorial, Qatar's criticisms of the 1939 Award are unfounded.[236](#)

A. Qatar's claim that the British decision of 1938-1939 was not an adjudication is unsustainable

96. Bahrain has described in detail the procedures implemented by the British in the 1938-1939 arbitration and has established why the decision resulting therefrom must be considered *res judicata*.[237](#) Moreover, Bahrain has demonstrated the clearly adjudicatory nature of the British process,[238](#) to which Qatar consented both explicitly and implicitly by its participation.[239](#) The decision was the result of a careful and impartial legal process embodying all necessary guarantees against bias, pre-judgment and other procedural irregularities and defects on the part of the decision maker.[240](#)

B. Qatar's complaint that the so-called British "provisional decision" of 1936 unfairly placed the onus of proof on Qatar is both unfounded and irrelevant

97. Qatar has claimed that in 1936 Britain reached a "provisional decision" that Bahrain owned the Hawar Islands and, as a result, placed Qatar unfairly in the position of being the claimant in the 1938-1939 arbitration.[241](#) However, given that Bahrain was in occupation of the Hawar Islands and that the historical records even then

showed that Bahrain had long manifested its sovereignty over them, Qatar could not have been anything other than the nominal claimant.

98. Leaving aside the debate as to whether Britain made a "provisional decision", the fact that Bahrain submitted a wealth of evidence to support its claim and Qatar submitted none means that the issue of the burden of proof would have been moot in any event. The balance of evidence was so disproportionately in Bahrain's favour that there was no basis upon which Britain could have concluded that the Hawar Islands belonged to Qatar regardless of which Ruler bore the burden of proof.

C. Qatar's claim of British pre-judgement and bias is unfounded

99. In its Counter-Memorial, Qatar maintains its allegation that Britain, British officials and oil company executives were biased and conspired to ensure Bahrain's ownership of the Hawar Islands.²⁴² Qatar's argument in this respect rests on the forged documents, coupled with misleadingly incomplete extracts from Sir Charles Belgrave's diaries.²⁴³ Bahrain has already demonstrated the completely spurious nature of Qatar's allegation of British bias in favour of Bahrain and its attempts to impeach the motivation and actions of the Adviser to the Bahrain Government.²⁴⁴

100. Aside from the lack of any genuine evidence, Qatar's bias theory is inherently implausible. Qatar had awarded an oil concession to a British company, whereas Bahrain had awarded an oil concession to an American company.²⁴⁵ If the Hawar Islands had been given to Qatar, Britain would have automatically benefited from the Qatar oil concession extending to the islands. Therefore, any pre-disposition on the part of Britain logically would have been towards Qatar, not Bahrain.²⁴⁶

D. The Dubai/Sharjah award supports Bahrain's view of the British decision

101. The Qatar Counter-Memorial attempts to deny that the 1939 Award is *res judicata*.²⁴⁷ Of course, Qatar must do so or risk that its present claims to the Hawar Islands be immediately dismissed as frivolous and vexatious. Qatar presents two arguments to support its contention that the Award has no effect.

102. Qatar asserts that Bahrain must lack confidence in the *res judicata* argument because Bahrain remains confident that its title to the Hawar Islands is supported by the genuine historical evidence regardless of the 1939 Award.²⁴⁸ Bahrain fails to understand the logic of Qatar's assertion. Bahrain's confidence in its continuing ability to demonstrate title to the Hawar Islands is clearly irrelevant to the issue of *res judicata*. The 1939 decision was correct because it confirmed the manifold demonstrations of Bahrain's sovereignty. Even if one ignored the *res judicata*, one would have to reach the same conclusion as Britain did in 1939 because of the evidence on which it was based.

103. Qatar also asserts that the 1938-1939 procedure was flawed.²⁴⁹ Bahrain has described above that Qatar's claims in this respect are contradicted by the genuine historical evidence. Qatar's assertions on this issue once again are predicated on arguments based on the forged documents.²⁵⁰

104. Qatar attempts to characterise the 1939 Award as an administrative, rather than a judicial, decision comparable to the Tripp decisions discussed in the Sharjah/Dubai case.²⁵¹ But in this instance, that alternative characterisation would in no way affect the binding character of the decision. For, as shown in Bahrain's Counter-Memorial, even if the 1939 decision was a political decision, it was taken *intra vires* of international agreements to which Bahrain and Qatar were party. Regardless of how it is viewed by Qatar, the 1939 Award, whether an adjudication or a political decision, is still binding on the Parties.

105. Qatar quotes from the Sharjah/Dubai Award that the Tripp decisions in that case did not constitute arbitral awards because of:

"the lack of opportunity for the Parties to present their arguments and the absence of reasoning for the decisions".²⁵²

106. In invoking this aspect of the Sharjah/Dubai Award, Qatar evidently accepts that an award is binding where there was an opportunity for the Parties to present their arguments and reasons were given for the award.

107. Bahrain has previously described in detail the procedures adopted by Britain to resolve the dispute over the Hawar Islands: the Ruler of Qatar was visited by the Political Agent no less than three times in relation to the preparation of Qatar's claims;

Qatar had the opportunity to submit a Claim and a Rejoinder to Bahrain's Counter-Claim; and Qatar was repeatedly urged by Britain to submit all of the evidence that it had to support its claim. Bahrain notes that despite Qatar's vague statements about a lack of opportunity to present its arguments, Qatar has never once addressed the details of the procedures adopted by Britain. Presumably this is because the genuine historical evidence shows that Qatar was not denied a full opportunity to present its arguments. It simply had no probative arguments to present in 1939, as remains the case today.

108. Thus, the 1939 Award fits the description, given with approval in the Sharjah/Dubai Award, of:

"an arbitral or judicial proceeding, in which independent interested Parties have had a full opportunity to present their arguments ... [In such a case], except in a case of nullity, the principles of ... *res judicata* could be invoked to prevent the boundary so settled being called again into question."

109. Bahrain has also previously refuted Qatar's argument in relation to the alleged lack of reasoning in the 1939 Award.²⁵³ So too has it disproved Qatar's claims in relation to the consent of the parties to participate in the adjudication.²⁵⁴

110. Unless arguments based on the forged documents are given credence, the Sharjah/Dubai case therefore does not support Qatar's arguments but rather the conclusion that the 1939 Award is *res judicata*.

E. Qatar's invocation of the views of Prior and Alban is misplaced

111. Qatar's Counter-Memorial repeated Qatar's reference to the views expressed about the 1939 Award by Lt. Col. Geoffrey Prior and Major R.G.E. Alban, British Political Resident and British Political Agent, respectively, in the years immediately following the 1938-1939 arbitration.²⁵⁵ Qatar has relied on the views of those two British officials in its attempt to find support for the substance of many of Qatar's allegations in relation to the Hawar Islands that were based on the forged documents. Bahrain's Counter-Memorial has already demonstrated that the views of Prior and Alban, when read in the context from which they were extracted by Qatar, were tentative and personal. They were also made on the basis of unverified, inaccurate and incomplete information.⁰

112. Prior and Alban's views were immediately discredited and properly ignored by senior British officials and by the British and Indian Governments.¹ They were thus deprived of any official quality and do not merit being attributed any evidentiary weight.

F. Qatar's attempted explanation of the Ruler of Qatar's erroneous "description" of the Hawar Islands is unconvincing

113. As discussed in Bahrain's Memorial, Qatar's Rejoinder to Bahrain's Counter-claim in the 1938-39 arbitration showed that the Ruler of Qatar was quite ignorant of the Hawar Islands, and probably confused them with another group of islands.² The Ruler of Qatar was wrong about their size, he did not know their location and he was unable to describe their physical features. Indeed, the observations made by the British Political Agent following a visit to the main island of Hawar not only contradict the Ruler of Qatar's description, but are entirely consistent with the one given by the Ruler of Bahrain. Qatar attempts to explain away this error, and at the same to show that the Ruler of Qatar was in fact well-aware of the location of the Hawar Islands, by relying on yet another misstatement: namely, that it is possible to wade from the mainland of Qatar to the main island of Hawar.³

G. In support of its 1939 Arbitration Award recognising Bahrain's sovereignty over the Hawar Islands, Britain noted the overwhelming evidence of Bahrain's sovereignty in contrast to the absence of any evidence of Qatari activities

114. During the Hawar Islands arbitration of 1938-1939, British officials repeatedly recognised that Qatar had submitted no evidence to support its claim and instead relied entirely on geographical proximity:

"The Sheikh of Qatar has been able to produce no evidence whatsoever in support of his claim. He relies solely on an assertion of sovereignty and on geographical proximity."⁴

115. This, despite at least two fact-finding visits to the Ruler of Qatar by the British official conducting the principal examination of the issues. Indeed, after receiving his claim, the Political Agent met directly with the Ruler of Qatar in Doha and "discussed the matter at considerable length with him" and his advisers.⁵ He noted after the meeting that:

"I enquired repeatedly whether [the submissions of the Ruler of Qatar] set out his claim in all the detail which he wished to place before His Majesty's Government or whether he had any other evidence, documentary or otherwise, which he would wish to submit. He replied that he had set out all that he wished to say in these two letters, that he had no other evidence to offer (and saw no need for it) ... No evidence is offered of formal occupation by Qatar, no mention is made of collection of taxes, of sale of fishing rights, of the exercise of judicial authority, or indeed of the performance of any function which might denote sovereign rights."⁶ (Emphasis added.)

116. In contrast, British officials repeatedly recognised that Bahrain had submitted abundant evidence attesting to its long-standing exercise of sovereignty over the Hawar Islands. On 22 April 1939, the British Political Agent submitted his final analysis and evaluation of the evidence that had been submitted by the respective Rulers of Qatar and Bahrain. He summarised his findings as follows:

"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 unidentified persons. On the Bahrain side there is evidence that the original occupation of Hawar by the Dawasir was effected under the authority of the Al-Khalifa, that the Zellaq Dawasir have frequented these islands for a great number of years, that the courts established by the Shaikhs of Bahrain have promulgated decisions in regard to disputes over property there, that questions of ownership of fish traps have been submitted to the decision of the Bahrain Shara Court, that seven years ago Bahrain processes were served in Hawar, that the boats owned by the Dawasir of Hawar are registered in Bahrain and that gypsum or juss is excavated from Hawar under licence from the Bahrain Government."⁷

117. Much of this evidence was independently confirmed by Britain, by, *inter alia*, two on-site visits to the Hawar Islands.

H. Britain continued to recognise the overwhelming nature of the evidence of Bahrain's sovereignty and the continuing absence of any evidence of Qatari activities after the 1939 Award

(i) In the period prior to Britain's 1947 letter, Britain continued to consider the Award as valid and its conclusions as accurate

118. Subsequent to its 1939 Award, Britain consistently affirmed the authority of the arbitration and the strength of Bahrain's sovereign rights over the Hawar Islands:

· in 1941, Sir Olaf Caroe of the Government of India's External Affairs Department, remarking on the 1939 Award, noted that the weight of the evidence was then and remained overwhelmingly in favour of Bahrain;⁸

· in 1941, Sir Olaf Caroe's views were endorsed by other high-ranking officials in the Government of India;⁹

· in 1946, Sir Rupert Hay, the British Political Resident, once again confirmed the definitive nature of the 1938-1939 arbitration, noting that "the ownership of the Hawar Islands was definitively decided in 1939";[10](#)

· from 1946, in the context of considering the division of the seabed between Bahrain and Qatar, the record shows that Britain and British officials recognised Bahrain's sovereignty over the Hawar Islands and the validity of the 1939 Award;[11](#) and

· in 1947, in the letters informing the Rulers of Bahrain and Qatar of Britain's views regarding the division of the seabed between the two States, the British Political Agent confirmed Britain's view that the Hawar Islands were part of the territory of Bahrain.[12](#)

(ii) Britain rejected Qatar's threats in the 1960s to renew its claim to the Hawar Islands

119. In 1961, Qatar threatened to renew its claim to the Hawar Islands unless Bahrain desisted from asserting its claim to sovereignty over the Zubarah region.[13](#) Bahrain, however, refused to be influenced by this threat.[14](#) Britain maintained the view that its 1939 Award was final and binding and recognised Bahrain's sovereignty over the Hawar Islands.[15](#) Qatar's own Counter-Memorial quotes Britain's view, as stated succinctly by the British Political Agent in 1961, that the issue of sovereignty over the Hawar Islands was "at least one problem we managed to get settled".[16](#)

120. As late as June 1964, apparently in anticipation of Qatar's revival of its claim, one of the legal advisers of the British Foreign Office requested an investigation into the issue of the sovereignty of the Hawar Islands. His response to the results of the inquiry sums up Britain's view concisely:

"Thank you for the above excellent summary of the history of the affair. It appears from it that Bahrain can rely for their claim on tribal affiliations of the residents as well as acts of administration of the Bahrain Government ... whereas Qatar can rely on no argument except geographical contiguity ... which is on the whole not a very strong argument. Bahrain therefore wins easily."[17](#)

I. Qatar protested Britain's Award only on three occasions between 1941 and 1965

121. As Bahrain has described in greater detail elsewhere,[18](#) and as is confirmed in Qatar's own pleadings,[19](#) Qatar only protested against Britain's 1939 Award three times between 1941 and 1965.[20](#) Contrary to Qatar's bold assertions, these three protests clearly do not constitute "continuous protests"[21](#) against the Award that "repeatedly asked for its reconsideration".[22](#)

122. Qatar's 1965 claim - which led directly to the present dispute between the Parties over the Hawar Islands - *was nothing more than a tactical counter to Bahrain's continuing claim to the Zubarah Region*. This is shown by the statements of the Ruler of Qatar himself:

· in February 1961, shortly before the revival of Qatar's claim, the Ruler of Qatar informed the British Political Resident that "he did not contest (the British) decision on Hawar";[23](#) and

· later in 1961, the Ruler of Qatar changed his position and told the British Political Agent that "if the (Ruler of Bahrain) persisted in pursuing his claim to Zubarah he for his part would raise the question of Hawar Island."[24](#)

123. Thus, Qatar's current claim to the Hawar Islands must properly be understood as essentially a tactical response to Bahrain's genuine and continuous claim to the Zubarah Region.[25](#)

SECTION 2.8 Qatar's "critical period" argument is fallacious

124. Qatar asserts that activities of Bahrain in or in relation to the Hawar Islands cannot be invoked to establish title if they were motivated by an intent to deceive or occurred after the dispute between Bahrain and Qatar became apparent, *i.e.*, following Britain's so-called "provisional decision" in 1936.[26](#)

125. Bahrain repudiates the innuendo that its actions with respect to any feature of this case were motivated by an intent to deceive. Bahrain also notes the irony that such an intimation should be made by the Party that submitted and then was obliged to withdraw 82 forged documents.

126. With respect to the issue of critical date, Qatar has misstated the law in a number of ways. First, as Judge McNair said in the Argentine/Chile Frontier case of 1966, "the critical date is not necessarily the same for all purposes." When the dispute turns on an arbitral award, the critical date is the date of the issue of the award. As Judge McNair said:

"[i]n so far as the Court is asked to interpret and fulfil the Award of 1902, there is obviously a sense in which the critical date is 1902 itself - or at least the latest 1903, the date of the demarcation. Neither Party is free to put forward a claim that flies in the face of the Award."[27](#) (Emphasis added.)

Judge McNair's dictum is an expression of the more general principle of the *presumptio in favorem validitatis sententiae*.

127. In any event, Bahrain is entitled to adduce facts subsequent to any critical date that demonstrate its continued and exclusive manifestation of sovereignty in the Hawar Islands after 1939. As the Tribunal in the Taba arbitration concluded:

"Events subsequent to the critical period can in principle also be relevant, not in terms of a change of the situation, but only to the extent that they may reveal or illustrate the understanding of the situation as it was during the critical period."[28](#)

128. Indeed, the late Professor Goldie expressed the point:

"Events occurring before the "critical date" have substantive value. They are right-creating facts. Events occurring after the "critical date" have only an evidentiary and probative value, and that of a narrow and dependent category. Their admissibility is dependent on whether they are continuous of, or may effectively throw light on, the substantive events anterior to the "critical date." And subsequent facts are admissible - but only in a subordinate capacity. They do not create or perfect titles; nor may they be adduced directly in proof of title, but only indirectly and to corroborate and explain the probative events occurring before the "critical date."²⁹

Procedural devices are designed to facilitate the search for the truth, not to impede it. Bahrain submits that that is how the critical date doctrine should be applied in the present case.

SECTION 2.9 Qatar has not submitted any non-forged evidence that supports its claim of sovereignty over the Hawar Islands

129. Just as it failed to do during the 1938-1939 British arbitration, Qatar has failed in its Memorial and Counter-Memorial to produce any authentic evidence that it ever exercised authority in the Hawar Islands.³⁰ Aside from the legally specious claim of geographical proximity, Qatar's case on the Hawar Islands is based on nothing more than criticisms of the evidence adduced by Bahrain.

130. Having responded in earlier sections of this submission to Qatar's attempts to impugn the evidence Bahrain has proffered, in this section Bahrain will address the relevance of and the weight to be accorded to the various items of evidence submitted by Qatar, all of which consist of little more than variations on Qatar's main theme of geographical proximity.

A. The agreements entered into by Britain with the Rulers of Bahrain and Qatar in 1868 do not support Qatar's sovereignty over the Hawar Islands

131. As discussed in further detail in Section 3.5, 1868 agreements (and the undertaking by the Al-Thani chief to continue to pay tribute to the Ruler of Bahrain) provide no support for Qatar's contentions concerning the extent of the Al-Thani's

authority in the Qatar peninsula. Qatar's reliance on those agreements to support its claim of sovereignty over the Hawar Islands is discussed below.

132. Once Qatar's convoluted interpretation of the 1868 agreements is disentangled, its thesis appears to be that by virtue of the engagements exacted from the Ruler of Bahrain and the Al-Thani leader in 1868 not to commit any breaches of the maritime peace, Britain, in effect, recognised the separate identities and integrity of the territories of Qatar and Bahrain. Because what was at stake was maintenance of the maritime peace, this necessarily implied Britain's recognition that the territory of Qatar encompassed "the coasts and the islands adjoining mainland Qatar and therefore the Hawar islands, most of which lie within Qatar's territorial waters."³¹

133. Nothing in the text of the 1868 agreements (or the undertaking) provides any support for the surmise proffered by Qatar. Furthermore, there is not one British

record (nor a single reputed commentator) that provides any support for Qatar's singular construction of the agreements. Even the evidentiary support apparently offered by Qatar to support its position - Lorimer's description of Qatar's boundaries in 1908 and a report prepared by the British Political Agent (Prideaux) in 1905 - requires a stretch of imagination, establishing nothing more than the fact that the Qatar peninsula is surrounded by sea.³² Qatar's submissions in respect of the 1868 agreements are thus revealed as nothing more than a disguised variant of its unavailing claim of geographical proximity.

134. The actual relevance of the 1868 agreements lies in showing that the Al-Thani's sphere of influence in the mid-nineteenth century was limited to the area around Doha, a fact amply confirmed by the mass of evidence Bahrain has presented.³³

135. The interpretation Qatar seeks to give to the 1868 agreements runs contrary to known historical facts. By the time the agreements were concluded in 1868, the Dowasir tribe, which owed allegiance to the Ruler of Bahrain, had been settled on the Hawar Islands for almost 70 years. Moreover, based on Captain Brucks' official survey of the Arabian Gulf from 1821 to 1829, Bahrain's ownership of the Hawar Islands was already recognised.

B. Qatar's reliance on Lorimer's description of the Hawar Islands is misplaced

136. The descriptions of Bahrain and Qatar contained in Lorimer's "geographical dictionary" provide no support for Qatar's contention that Britain recognised Qatari sovereignty over the Hawar Islands. Rather, information recorded in Lorimer confirms Bahrain's position regarding the Ruler of Bahrain's territory on the Qatar peninsula (e.g., Zubarah) and shows that Lorimer was aware in 1908 that the Ruler of Bahrain had dominions extending beyond the largest islands of the Bahrain archipelago.³⁴

C. The unratified Anglo-Ottoman Convention of 1913 does not support Qatar's claim to sovereignty over the Hawar Islands

137. Qatar cites the unratified Anglo-Ottoman Convention of 1913 to support its claim that the British and the Ottomans recognised Qatar's sovereignty over the Hawar Islands.³⁵ First, Qatar argues that the references in the Convention to "the peninsula of Qatar" make it quite clear that "what was at stake here was the whole peninsula, without excluding the adjoining Hawar islands."³⁶ The plain language of the text, however, makes no such thing clear at all. On the contrary, the text refers to several islands, but not to the Hawar Islands. Qatar provides no support or reasoning to substantiate its contention, which is manifestly inconsistent with the language it invokes.

138. Second, citing the Zakhnuniya incident,³⁷ Qatar submits that the inclusion in the Convention of special provisions concerning certain islands claimed by Bahrain and the absence of any specific reference to the Hawar Islands in that connection "was obviously because the Hawar islands were recognised and treated as being part of the territories of Qatar...."³⁸ Again, how it is that the omission of the Hawar Islands translates "obviously" into their inclusion is not evident. Nor is Qatar's conclusion supported by any analysis or evidence.

139. In Section 3.4 of its Memorial, Section 2.3(D) of its Counter-Memorial, and Sections 3.5 and 2.4(C) respectively of its Reply, Bahrain has addressed Qatar's submissions regarding the 1913 Convention and the Zakhuniya incident and has shown how neither provides any support for Qatar's claims.

D. The British Admiralty survey of 1915 does not support Qatar's claim to sovereignty over the Hawar Islands

140. Qatar's reliance on the British Admiralty's survey in 1915 as support for its position is also misplaced. Bahrain has shown that the survey was exclusively devoted to geographical description³⁹ and makes no reference to the Hawar Islands as being part of the territory of Qatar as a political entity. It does, however, confirm the use of the Hawar Islands by subjects of the Ruler of Bahrain.⁴⁰

141. Thus Qatar's contention on the basis of the 1915 survey that "the British at the time of signature of the 1913 Anglo-Ottoman Convention and the British-Qatar Treaty of 1916 recognised the Hawar islands as included in the territories of Qatar"⁴¹ is also unfounded.

E. The British Al-Thani agreement of 1916 does not support Qatar's claim to sovereignty over the Hawar Islands

142. Qatar argues that the British Al-Thani agreement of 1916 serves as additional proof that Britain recognised Qatar's sovereignty over the Hawar Islands.⁴² The foundation of Qatar's thesis is its claim that the agreement was based on Britain's understanding that the Al-Thani ruled the entire peninsula and its "adjoining islands". In support of its submission Qatar cites the following provisions of the agreement, which it claims "obviously" establish that it was designed to cover the whole peninsula and the adjoining islands:

- Article 3, placing an obligation on the Ruler of Qatar to forbid the import and sales of arms "into my territories and port of Qatar";
- Article 4, prohibiting the Ruler without British consent from ceding to any other power or its subjects "land either on lease, sale, transfer, gift, or in any other way whatsoever";
- Article 5, containing a prohibition against the grant of pearl fishery concessions or other monopolies, concessions or cable landing rights;
- Article 6, requiring the Ruler to not charge customs duty on British goods at a rate higher than on Qatari subjects; and
- Article 10, setting forth Britain's obligation to protect the Ruler and his subjects and territory "from all aggression at sea".⁴³

143. Bahrain fails to see how any of the foregoing articles of the agreement, which do nothing more than enumerate the parties' respective obligations, "obviously" provide any support for Qatar's position. Qatar argues that "[m]ost significantly, the obligation of the British Government under Article 10 to protect the Ruler and his subjects and

territory 'from all aggression by sea' must necessarily cover the whole peninsula and the adjoining islands including the Hawar islands just as much as did the Agreements of 1868."⁴⁴ As with the 1868 agreements, Qatar bases its conclusion on a presumption that the Hawar Islands were already considered to be under the authority of the Ruler of Qatar; which is the very proposition Qatar seeks to establish by invoking these instruments.⁴⁵

144. What is "obvious" is that there is no mention of the Hawar Islands anywhere in the Treaty. Qatar asserts that there was no need for the islands to be mentioned because the British Government was already of the view that they belonged to Qatar,⁴⁶ but provides no support for its submission. Qatar's purported interpretation of the Treaty is manifestly contrary to the historical record, which evidences that, in the relevant period before the Treaty was concluded, Britain had already acknowledged the Ruler of Bahrain's relationship with the Hawar Islands in the context of the Zakhnuniya incident in 1909, but had not once recognised any such relationship insofar as Qatar's Al-Thani chiefs were concerned. It also bears noting that the Al-Khalifa's rights in respect of the Hawar Islands were again confirmed by Britain in 1915 following a British Admiralty survey of the region.

145. As with the 1868 agreements and the unratified Anglo-Ottoman Convention, Qatar has thus attempted to read into the 1916 Anglo Al-Thani agreement an implication that is neither supported by the text of the Treaty nor the historical circumstances in which it was realised.

F. Qatar mischaracterises certain British documents

146. Bahrain refers the Court to the sections of its Counter-Memorial and Reply where Bahrain has rebutted Qatar's submissions based on the various British documents cited by Qatar.⁴⁷ Those documents, all from 1933, show that when Britain first

undertook to investigate the Ruler of Bahrain's ownership of the Hawar Islands, the evidence available to Britain at that juncture was not dispositive. More significantly, they also show the absence of even the remotest suggestion of a competing claim by the Ruler of Qatar. However, as shown above, when a more detailed enquiry was conducted, the Ruler of Bahrain's rights to the islands became clear.

G. Qatar's interpretation of Anglo-Persian's 1933 geological survey map is unsupported

147. Nor does the 1933 Anglo-Persian geological survey of Qatar cited by Qatar provide any support for its position.⁴⁸ First, the map (which, in any event, only purported to be a sketch) was prepared by Qatar's oil concessionaire, who would have been interested in obtaining as large a concession area as possible. Second, Qatar has provided no evidence to show that the map was accepted by Britain as a definition of the areas over which the Ruler of Qatar would be entitled to grant a concession. Third, the map appears to have been submitted to the British Government because of concerns at the time regarding the proper definition of Qatar's southern boundary with Saudi Arabia. Fourth, the Court will recall that in May 1933, one month after the survey was conducted, the British Political Agent reported that:

"... the explorers of the Anglo-Persian Oil Company Limited in Qatar have examined places to which the Ruler of Qatar had no right to allow them to go, and which people of Bahrain frequent to this day as a summer resort; indeed it is said that as late as last year (1932) the Ruler of Qatar admitted in public that certain areas on the Qatar coast pertain to Bahrain."[49](#)

148. Accordingly, far from supporting Qatar's position, the Anglo-Persian survey demonstrates that Britain was well-aware in 1933 of the Ruler of Bahrain's rights vis-à-vis the Hawar Islands and the fact that the Ruler of Qatar had no rights there.

H. The RAF reconnaissance mission of 1934 does not support Qatar's claims

149. Qatar's reliance on an aerial reconnaissance by the RAF in 1934 is equally misplaced. Qatar seeks to find significance in the fact that only the Ruler of Qatar's consent was apparently sought for the reconnaissance, which was to proceed "over his territory", and the fact that the survey plane's flight path was over the Hawar Islands.[50](#) Thus, Qatar concludes:

"This is eloquent testimony to the fact that, as late as May 1934, Loch was clearly of the view that Hawar was an integral part of the territories of the Ruler of Qatar since only *his* permission (and *not* that of the Ruler of Bahrain) had been sought for overflight of the island."[51](#) (Emphasis in the original.)

150. The most obvious response to this is to note that the reconnaissance flight's path also included parts of Saudi Arabia, the main island of Bahrain, and, in all likelihood also, Muharraq and Sitrah Islands, for none of which, presumably, Qatar supposes its Ruler would have been in a position to give permission. In fact, however, the British Political Agent's report referred to by Qatar indicates very clearly that the Ruler of Qatar was simply "informed" that the reconnaissance was to take place.[52](#) Qatar has presented no evidence to show that the Ruler of Qatar was specifically asked to permit the mission to proceed over the Hawar Islands any more than he was asked permission regarding the other territories over which the flight path was to cross. Nor has Qatar presented any evidence that the Ruler of Bahrain was not informed of the mission or that his permission was not requested. Given that the reconnaissance mission departed from and returned to Bahrain, this assumption by Qatar is suspect.

151. It bears noting that the reconnaissance was conducted in connection with Britain's consideration of the idea of offering the Ruler of Qatar a guarantee of protection against an armed land attack by Saudi Arabia, in return for his granting an oil concession to Anglo-Persian and, in this connection, of defining the southern boundary of Qatar. Its purpose was not to identify territory under the sovereignty of the Ruler of Qatar in sectors not contested by Saudi Arabia, a fact confirmed by the documents Qatar itself has submitted.[53](#)

I. The Anglo-Persian-Qatar Concession Agreement of 1935 is consistent with Bahrain's description of history

152. Bahrain has fully responded to Qatar's attempts to rely on the 1935 Anglo-Persian-Qatar Oil Concession Agreement to support its claim that Britain recognised

the Hawar Islands to be among the territories belonging to the Ruler of Qatar.⁵⁴ For present purposes, therefore, it is sufficient to recall the following:

- When PCL, in April 1936, requested the British Government to clarify whether the Hawar Islands were considered to belong to the Ruler of Qatar or to the Ruler of Bahrain in the context of applying for a concession to the Bahrain unallotted area, it cited the 1935 Concession Agreement, which had been approved by Britain, to support its claim that the Hawar Islands were included in the concession it had been granted by the Ruler of Qatar;⁵⁵

- As a matter of geography, the Hawar Islands were included on the map attached to the agreement north of the line - but so was all of Bahrain. If the map indicated territory Qatar purported to subject to concession, its claim to the Hawar Islands was obviously as baseless as its claim to the other Bahrain islands shown on the map. The only conclusion that can be drawn from the text of the Agreement and the map that would not import that Qatar was engaged in a massive misrepresentation is that the Qatar concession was to operate on such territory north of the line over which the Sheikh of Qatar did in fact rule;⁵⁶ and

- In dismissing PCL's argument, the British Government took the opportunity to explain (as Qatar itself notes) that the purpose of the map attached to the Qatar concession was to define the southern boundary of the Concession and that it in no way constituted proof of the Ruler of Qatar's ownership of the islands.⁵⁷ The fact that Britain made this clarification unequivocally confirms that, contrary to Qatar's allegation, Britain never accepted that the Hawar Islands were part of the territory covered by the 1935 Qatar oil concession.

153. Qatar's sole response to the foregoing has been to invoke the marginal notes of a British official to the record of an informal meeting between India Office officials and PCL representatives held on 12 April 1938 in which that official observes that if enquiries showed that the Hawar Islands belonged to the Ruler of Qatar, they would be included in the Qatar concession which PCL already held by virtue of Article 2 of that concession. Bahrain does not dispute that, had the Hawar Islands been awarded to Qatar following the 1938-1939 arbitration, they would have fallen under PCL's Qatar Concession. However, the fact remains that the Hawar Islands were awarded to Bahrain.

154. In sum, the innuendo, surmise and conjecture proffered by Qatar cannot displace the mass of clear and convincing documentary proof adduced by Bahrain. Stripped to their essence, each of the authentic items of evidence relied upon by Qatar establishes little more than the readily recognisable fact that the Hawar Islands are located closer to the Qatar peninsula than to the main islands of Bahrain - the mainstay of Qatar's claim to sovereignty over the Hawar Islands. Bahrain has already pointed out in Section 4.3 of its Memorial and Section 2.3 of its Counter-Memorial that geographical proximity cannot override evidence of physical possession and administration of a disputed territory by the other party.

SECTION 2.10 Qatar has presented no evidence to justify its claim that Janan is not one of the Hawar Islands

155. Qatar has presented no evidence to challenge Bahrain's sovereignty over Janan Island. Chapter IV of Qatar's Counter-Memorial sets out the bases of Qatar's claim to Janan Island (including Hadd Janan), which can be summarised as follows:

- Bahrain has not shown why, geographically speaking, Janan Island should be considered part of Bahrain. Janan Island is close to the Qatar mainland coast and is a component of the offshore topography and nearshore dynamic system associated with the Qatar coast;[58](#)
- The history of the matter shows the extent of Bahrain's uncertainty about the composition of the Hawar Islands, as demonstrated by the various lists prepared by Bahrain setting out the islands comprising the Hawar "group of islands";[59](#)
- There is no substance to Bahrain's contention that Janan Island should be regarded as one of the Hawar Islands falling within the scope of Britain's 1939 decision;[60](#) and
- The foregoing is confirmed by Britain's 1947 "decision" concerning the division of the seabed between Bahrain and Qatar, which expressly excluded Janan Island from the Hawar Islands.[61](#)

A. Janan Island's proximity to the Qatar peninsula is irrelevant

156. Bahrain has never contested the facts of the physical shape and location of the Hawar Islands, which, as Bahrain has shown in Section 2.3.1 of its Counter-Memorial, include Janan.[62](#) However, as discussed in Section 4.3 of Bahrain's Memorial and in Section 2.3.B of its Counter-Memorial, geographical proximity is not determinative in international law.

B. Bahrain has always considered Janan Island to be one of the Hawar group of islands

157. Contrary to Qatar's assertion, the various lists submitted by Bahrain concerning the composition of the Hawar Islands are neither inconsistent nor do they evidence any uncertainty on Bahrain's part as to the integrality of Janan to the Hawar Islands.

158. As discussed in Bahrain's Counter-Memorial, Bahrain submitted four lists to the British Government. The composition of each of those lists is best understood in the light of the underlying circumstances in which they were submitted.

159. The first list was submitted at the end of April 1936, in the context of the negotiations for an oil concession over the Bahrain unallotted area.[63](#) In order to avoid any confusion concerning the areas under the sovereignty of the Ruler of Bahrain and thus subject to the prospective concession, the Adviser to the Bahrain Government submitted to the British Government a written statement formally confirming the Ruler of Bahrain's sovereignty over the Hawar Islands.[64](#) The statement contained a list of the islands considered by the Ruler at that time to be part of the Hawar Islands. It did not in any way purport to be an exhaustive listing.[65](#)

160. The significance of the 1936 list lies in the fact that Janan Island was included in what appears to be the first formal written statement by Bahrain of its sovereignty over

the Hawar Islands.⁶⁶ When PCL sought the British Government's opinion as to whether the islands belonged to the Ruler of Bahrain or Qatar, Britain did not object to the Ruler's definition of the Hawar Islands. Moreover, during its evaluation of the evidence presented, Britain never considered Janan Island to be separate from the rest of the Hawar Islands, and did not exclude the island from the scope of the opinion it issued. (The Court will recall that if Janan Island had been considered separate from the Hawar Islands, it would automatically have fallen to PCL under its 1935 Qatar Concession.) As discussed below, the 1936 list was ignored by the British Political Agent when making his recommendation in 1947 regarding the seabed delimitation between Bahrain and Qatar.

161. The second list was submitted in August 1937 in response to a request by the British Government for a list setting out the islands the Ruler of Bahrain considered to be among his dominions.⁶⁷ No mention is made specifically of Janan Island in that list. However, neither is any mention made of the other islands that were identified in the previous list, including the main island of Hawar. This obviously cannot be interpreted to mean that the Bahrain Government no longer considered Hawar Island to be among those of the "Howar archipelago". By the same token, it cannot be taken to mean that the Bahrain Government had suddenly decided some 14 months later that Janan Island was also to be excluded from the group. To the contrary, in the light of the clearly demarcated concession area that Bahrain was offering to PCL at the time, with Britain's acquiescence, it is abundantly clear that Janan Island was understood to be one of the "nine" considered to constitute the "Howar archipelago".⁶⁸ Thus, there was no greater need for Bahrain to mention Janan Island than any of the other islands in the Hawar group.

162. The third list was submitted by the Bahrain Government in May 1938, as an attachment to a preliminary statement of evidence submitted in connection with the Hawar Islands arbitration.⁶⁹ In the attachment, the Hawar "group of islands" is said to "consist of one large island ... which is known as Hawar island and also a number of islands and rocky islets which are adjacent to Hawar island."⁷⁰

163. The attachment goes on to provide a listing of those islands or rocks which had been marked with a Bahraini beacon, as of the date the list was submitted. This is made clear by the text that introduces the list ("the beacons are numbered as follows").⁷¹ The Bahraini beacon on Janan was not constructed until sometime after 21 February 1939 (corresponding to 1358 A.H.).⁷² It is also to be recalled that the Bahrain Government

had in the course of approximately 24 months already submitted two lists to the British Government identifying the islands it considered to be under Baharaini sovereignty. Finally, that the list was intended simply to identify those rocks and islands that had been beacons is borne out by the fact that within days of submitting the "preliminary statement", to which the list of beacons islands was attached, Belgrave forwarded to the British Political Agent a concession map clearly showing Janan Island as part of the Hawar Islands concession area being offered by the Ruler of Bahrain to PCL.⁷³

164. The last of the four lists was submitted in July 1946. It was described as a complete list of "the cairns which were erected on the various reefs and islands ... built

during 1357 and 1358 [*i.e.*, 1938 and 1939]." All of the islands numbered 1 through 18 on the list were considered to be part of the Hawar Islands. Janan Island was included on the list as number 15. (This confirms the fact that the 1938 list was only a limited listing of Bahraini beaconsed islands.[74](#))

165. In short, of the four lists submitted by Bahrain, two (the 1936 and 1946 lists) explicitly refer to Janan Island as among the islands belonging to Bahrain; a third (1937 list), viewed in proper context, also included Janan Island within its purview. The only list (the 1938 list) arguably not containing any references to Janan Island was never intended to be a list of all of the islands considered by Bahrain to be among its sovereign territories, but rather was a list identifying islands and rocks that had been beaconsed by Bahrain as of May 1938.

C. Bahrain's sovereignty over Janan Island is *res judicata*

166. Bahrain has demonstrated in Section 2.3(I) of its Counter-Memorial that Bahrain's sovereignty over Janan Island was recognised by Britain in 1936 and confirmed in 1939. Despite Qatar's submissions concerning the views expressed by Britain in the context of proposing a seabed delimitation between Bahrain and Qatar in 1947, Britain's 1939 Award is the only legally binding ruling concerning the ownership of the Hawar Islands. The record of the concession negotiations for the Bahrain unallotted area confirms that when Britain considered and ruled upon the ownership of the Hawar Islands, Janan Island was undoubtedly considered to be one of the islands in the Hawar group. For example:

- The concession area offered to PCL in April 1937, and illustrated by a map, in respect of the "Hawar group of islands" included Janan as among the islands in the group;[75](#)
- In April 1938, just before the commencement of the Hawar Islands arbitration, the India Office endorsed a draft concession agreement in respect of the Ruler of Bahrain's "dominions", which were defined as including "the whole of the Hawar Group of Islands". A map attached to the draft lease showed Janan Island as included within the demarcated concession area, and thus one of the islands making up the "Hawar Group of Islands". Janan Island was thus expressly recognised as falling within the Ruler of Bahrain's dominions;[76](#)
- Even after the Ruler of Qatar had formally submitted his claim to the Hawar Islands on 10 May 1938, Britain continued to acknowledge that the "Hawar group of islands" included Janan Island. Thus on 22 May 1938, in describing the proposed concession area to the Secretary of State for India, the British Political Agent expressly referred to "JENAN island in the Hawar Group of Islands";[77](#)
- A few days after Bahrain had submitted its "preliminary statement" in support of its claim, in a report to the British Political Agent regarding a meeting with PCL to discuss the proposed concession area, the Bahrain Adviser attached a description of the "Hawar group of islands", which clearly included Janan Island;[78](#) and
- A 1939 draft of the concession agreement between PCL and the Ruler of Bahrain, to which the British Government does not appear to have voiced any objection, confirms

that Bahrain and Britain continued to view Janan Island as part of the Hawar Islands in 1939.⁷⁹

167. The foregoing establishes unequivocally that all (the British authorities, PCL (Qatar's oil concessionaire), BAPCO and the Bahrain Government) understood Janan to be part of the Hawar Islands. The terms "Hawar Islands Group", "Hawar group of islands", "Hawar group" and "Hawar Islands" were used synonymously by all concerned. Their draft concession agreements, concession maps and related correspondence unquestionably and consistently included Janan as one of the Hawar Islands. Accordingly, when Britain undertook in 1938 to determine finally the question of the ownership of the Hawar Islands, it was clearly understood that the enquiry included Janan within its purview.

168. British records from before the start of the arbitral proceedings in 1938 confirm that the responsible British officials in India, Bahrain and London were aware that they had to determine the ownership, as between the Rulers of Qatar and Bahrain, of the "Hawar group of islands".⁸⁰ When Britain finally issued its decision awarding the Hawar Islands to Bahrain in July 1939, no reservations were made with respect to Janan Island.⁸¹ Qatar has provided no evidence whatsoever to show that by the time Britain

issued its Award in the Hawar Islands arbitration in 1939, it had resiled from the views it had expressed only three years earlier concerning the composition of the Hawar Islands.

D. Bahrain's ownership of Janan Island is established by acts of sovereignty

169. Bahrain has also established, independently of the 1939 British Award, its sovereignty over Janan Island on the basis of that island's use by Bahraini subjects and the Ruler of Bahrain's exercise of authority over the Island.⁸² Thus for example:

· In 1947, when requesting the British Government to reconsider its position regarding the proposed seabed delimitation, the Ruler of Bahrain proffered evidence demonstrating Bahrain's ownership of Janan Island, including the fact that the island was regularly used by Bahraini fishermen, that they were required to obtain the Ruler of Bahrain's permission before they could erect huts on the island and that the island had been beacons by Bahrain in 1939, following the British decision awarding the Hawar Islands to Bahrain.⁸³ These acts, evidencing as they do Bahrain's sovereignty over Janan Island, were acknowledged in the British Political Agent's report to the British Political Resident of 31 December 1946;⁸⁴ and

· Former Hawar Island residents have testified to the manner and frequency with which they used Janan Island and the fact that they always considered Janan to be among the territories belonging to the Ruler of Bahrain.⁸⁵

E. Qatar's partial reliance on Britain's 1947 seabed delimitation is misplaced

170. Bahrain has demonstrated in Section 2.3(I) of its Counter-Memorial that Britain never decided, whether in 1947 or at any other time, that Janan Island belonged to Qatar. The evidence shows Qatar's reliance on the letters sent by the British Political

Agent in December 1947 to the Rulers of Qatar and Bahrain, informing them of the British Government's views regarding the division of the seabed between the two States, to be grossly misplaced. The purpose of the 1947 letters was not to notify the Rulers of a "decision" which they would be bound to respect. It was merely to inform them that the British authorities would henceforth consider the seabed as being divided by the line described in the letters, particularly in the course of their dealings with the two oil companies, PCL and BAPCO. Qatar conveniently relies on only one part of Britain's so-called 1947 "decision" - the part purportedly awarding Janan Island to Qatar - yet rejects the rest of that "decision" - the part confirming Bahrain's sovereignty over the Hawar Islands, Fasht ad Dibal and Qit'at Jaradah. Qatar's reliance on the 1947 letters is thus not only misplaced, but internally inconsistent. Bahrain has never accepted the 1947 letters as legally binding.

171. As far as Janan Island is concerned, the views expressed by the British Government merit no weight because none of the British Political Agent's reasons for recommending that Janan Island should not be considered part of Bahrain's territories constitutes a valid international legal basis for denying Bahrain's sovereignty over the Island. This conclusion is established by the following facts:

- The British Political Agent failed to take into account the list submitted by the Ruler of Bahrain in 1936, which specifically identified Janan Island and was the first list submitted by Bahrain as part of a formal claim to the Hawar Islands, and instead arbitrarily and mistakenly relied on the list of beacons and rocks submitted in 1938. The 1938 list did not represent Bahrain's, Britain's, or the oil companies' understanding of what islands were included in the Hawar group. In addition, the Political Agent inexplicably interpreted the general reference to the Hawar archipelago in the 1937 list as excluding Janan Island. And he gave no weight to the 1946 list, which was the most recent and complete statement of the islands that Bahrain considered to be part of the Hawar Islands group. The British Political Agent's only justification for choosing the 1938 list appears to be that the Bahrain Government had never explained why the three lists he considered varied from each other. British records, however, contain no indication that he ever made any effort to clarify the matter with Bahrain. Most of all, the 1938 list on its face shows that it was not intended to define the Hawar Islands, but to identify islands on which beacons had been erected;[86](#)

- The Political Agent submitted the unverified observations of a "layman" relating to the geo-morphological features of Janan Island, which the Political Resident and other British officials subsequently accepted as scientific truths. Those observations were ultimately used as one of the grounds for refusing the Ruler of Bahrain's request that the proposed seabed delimitation be re-examined;[87](#)

- The Political Agent's recommendation was also influenced by extraneous considerations, in that he was concerned that if Janan Island were to be considered as belonging to Bahrain, then the possibility would always be present that PCL's landing place at Duhat Az Zagreet (Zikrit) could be blocked by Bahrain or BAPCO;[88](#)

- Although recognising that Janan Island was used by Bahraini nationals and that the island had been marked with a cairn sometime in 1938, the Political Agent gave neither factor any weight;[89](#) and

· In confirming Bahrain's sovereignty over Fasht ad Dibal and Qit'at Jaradah, the Political Agent relied on the following five considerations - (1) acts of sovereignty by the Ruler of Bahrain, as evidenced by the erection of cairns; (2) use of the territory in question by Bahrain; (3) failure by Qatar to assert sovereignty over the territory in question; (4) lack of any protest by the Ruler of Qatar to acts of sovereignty by Bahrain; and (5) recognition by the British authorities in the context of the oil concession negotiations that the territory in question was considered part of Bahrain. The very reasons the Political Agent gave to justify his recommendation with respect to Qit'at Jaradah and Fasht ad Dibal, apply equally to Janan Island. Yet, without any justification, he chose to disregard every one of them.[90](#)

172. At paragraphs 4.1 and 4.2 of Qatar's Counter-Memorial, Qatar raises and then "leaves aside," the question of whether Bahrain's "claim" to Hadd Janan - an appendage of Janan Island - is admissible, but rests its principal objection on what it calls "the geographical facts."[91](#) If the issue of sovereignty over Hadd Janan were not admissible, then it would be Qatar's claim to take it from Bahrain based on proximity, rather than Bahrain's settled title to it based on *res judicata* and *effectivité*, that would be affected. In any event, Bahrain must assume that Qatar's decision to mention and then explicitly "leave aside" the issue of the admissibility of Bahrain's title to Hadd Janan - an appendage of Janan Island - means that Qatar is abandoning that issue. To avoid all misunderstanding, Bahrain rejects the implication that jurisdiction over title to Janan does not extend, whether directly or incidentally, to Hadd Janan. Qatar's belated jurisdictional objection at this stage of the case is simply mischievous. Qatar obviously has no knowledge whatsoever of the island formations in the area and thus must rely on Bahraini charts. Qatar acknowledges that Hadd Janan is clearly marked on Bahraini charts. Whether Hadd Janan is an extension of Janan or an island formation within Janan's territorial waters, the fact remains that it pertains to Bahrain.

[MAP 7 : MASTER PLAN FOR HAWAR ISLAND \(104 KB\)](#)

SECTION 2.11 The Hawar Islands are an integral part of Bahrain's tourist industry, of Bahrain's regional defence and environmental protection commitments, and of Bahrain's future land utilisation plans

173. The map on the opposite page is taken from the archives of the Physical Planning Directorate of the Bahrain Ministry of Housing, Municipalities and Environment. It represents a cartographic depiction of the Government of Bahrain's development plans for the Hawar Islands. These plans are designed to preserve the houses and mosque of the historic North and South Villages on Jazirat Hawar, as well as the existing cemeteries dotted throughout the islands. The plans, many of which are already being implemented or have indeed already been completed, include:

- housing projects;[92](#)
- bird sanctuaries and environmental preserves;[93](#)
- holiday resorts, hotels and campgrounds;[94](#)
- a community centre with elementary schools for girls and boys;

- a second mosque;
- recreational and commercial fishing marinas;
- commercial and light industry centres;
- markets;
- sewage, water and power plants;
- a network of paved roads extending for over 20 kilometres;
- the Bahrain Defence Force base;
- hospitals;
- a domestic airport; and
- a causeway link between the main island of Bahrain and Jazirat Hawar.

174. The Hawar Islands are the cornerstone of Bahrain's future tourist industry, one of Bahrain's most significant industries. In its previous pleadings, Bahrain has described the two tourist resorts on the Hawar Islands.⁹⁵ Since 1997, the largest of these, the Hawar Resort Hotel in the south of the main Hawar Island, has attracted over 15,000 visitors.⁹⁶ In addition, the Hawar Island Resort is fast becoming a highly sought after location for business conferences,⁹⁷ weddings,⁹⁸ and other events.

175. The main Hawar Island is serviced by four jettys. The jettys include the landing points of the twice-daily ferry shuttle service between the main island of Bahrain and the main Hawar Island.

176. Bahrain has a series of defence and security commitments of a bilateral, regional and international character. The Hawar Islands, on which there has been a Bahrain security presence for more than 70 years, are an integral part of Bahrain's commitments.

177. Bahrain makes no attempt to hide the fact that its military presence on the Hawar Islands, some of which has been described in Qatar's submissions to the Court, is deeply entrenched. It was reinforced in response to Qatar's surprise attack in 1986. Bahrain's military capability on the Hawar Islands is entirely defensive.

178. There are currently two 1.65 MW diesel electricity generator units on Jazirat Hawar. A contract to build several more generators to meet the growing demand has been concluded. The water supply system includes several fresh water wells dug in the 1970s and a desalination plant, storage facilities and a distribution system established in 1982-1983. Plans are underway to meet the growing demand for more fresh water. Taxes, water and electricity charges are levied at the same rate in the Hawar Islands as elsewhere in Bahrain.

179. The Hawar Islands are served by a telephone exchange, a GSM mobile telephone station, a paging base station, and digital microwave lines. Public telephones are available in several locations. All of these facilities are connected to the wider Bahrain telephone system.

180. The first phase of Bahrain's Hawar Islands housing project is already well past the design stage. It includes a sub-division of 54 town houses in the north of the main island, to be completed before the end of 1999 (see drawing on facing page [[MAP 8: HAWAR HOUSING SITE PHASE 1](#) (132 KB)]). The Hawar Islands represent a very substantial portion of Bahrain's small territory, and so they are the logical area for its future growth. The overcrowding of Bahrain's population has been described in its previous pleadings.⁹⁹ Bahrain is already the fifth most densely populated State in the world.¹⁰⁰ The UNDP has recently reported that Bahrain's population will double within the next 22 years. ¹⁰¹ Having but approximately 6% of its land and yet a considerably larger population than Qatar, Bahrain requires the use of the Hawar Islands in the immediate future.

SECTION 2.12 Conclusion

181. Qatar's claim to the Hawar Islands was arbitrated by Britain in 1938-1939 at the request of Qatar. The arbitration took account of an abundance of evidence, dating back to the previous century, of Bahrain's occupation and administration of the Hawar Islands. In stark contrast, and despite the fact that it was Qatar that had initiated the proceedings, the arbitration explicitly recorded that Qatar was unable to produce any evidence to support its assertion that the Hawar Islands had always been a part of Qatar. Britain thus concluded in July 1939 that Bahrain had sovereignty over the Hawar Islands. Whether the decision was arbitral and is, hence, *res judicata* or a political and administrative decision and binding by virtue of Britain's competence, it is a final and irreversible decision.

182. Aside from the 1939 British arbitration, Bahrain's sovereignty over the Hawar Islands is supported by the peaceful presence of a population subject to the continuous authority and administration of Bahrain. These facts were confirmed by the British Government in the 1938-1939 arbitration and are now, as they were then, fully demonstrable.

183. Qatar was unable to produce any evidence of specific acts of administration on the Hawar Islands during the course of the British arbitration in 1938-1939. During the intervening 60 years, Qatar has never produced any authentic evidence in support of its claim of sovereignty over the Hawar Islands. Its claims must be dismissed and Bahrain's sovereignty confirmed.

CHAPTER 3

QATAR HAS OVERSTATED THE EVOLUTION OF AL-THANI INFLUENCE AND UNDERSTATED THE DOMINANCE OF THE AL- KHALIFA ON THE QATAR PENINSULA

SECTION 3.1 Introduction

184. In its Memorial, Bahrain described the principal bases for its claim to sovereignty over the Zubarah region in the following terms:

"a) evidence of the exercise of authority and control by or on behalf of the Ruler of Bahrain over the people inhabiting the Zubarah region and thus over the region itself;

b) recognition by the inhabitants of the Zubarah region of the authority of the Ruler of Bahrain over themselves and over the areas in which they lived; and

c) absence of any competing exercise of authority by Qatar in the Zubarah region until its armed attack and forcible expulsion of Bahrainis from the region in 1937."

185. Evidence of items a) and b) have been provided in Bahrain's Memorial¹⁰² and Counter-Memorial.¹⁰³

186. Item c) remains as valid an observation now as it was at the time that the Memorial was written. Qatar's pleadings, while critical of Bahrain's evidence, produce no authentic evidence of Al-Thani or Ottoman exercise of authority in Zubarah. Qatar's pretensions that the Ottomans and the Al-Thani exercised authority in Zubarah during the Ottoman period are expressly contradicted by Ottoman records.¹⁰⁴ Nor has Qatar presented any evidence of specific examples of its purported exercise of authority in the Zubarah region during the period from the end of the Ottoman presence in Doha in 1915 until shortly before the 1937 attack.

187. Bahrain's historic dominance over the Qatar peninsula was deeply rooted in the political economy of the region.¹⁰⁵ Bahrain, one of the three geo-political entities forming the Arab littoral of the Gulf, was traditionally a focal point for trade, agricultural resources and pearling.¹⁰⁶ A network of tribal relationships linked the archipelagic component of the State of Bahrain to its mainland possessions.¹⁰⁷

188. In contrast to the Bahrain Islands, the Qatar peninsula is arid desert. The population in the north-west - the Zubarah region - was an integral part of Bahrain's political and economic system. The rest of the peninsula was virtually empty: in the 1820s a British survey recorded only 400 people living in Doha on the south-east coast.¹⁰⁸ The south-east of the peninsula began to gain importance only after the middle of the nineteenth century with the development of the Abu Dhabi pearling banks to the east of Doha.¹⁰⁹

189. As described in Bahrain's previous submissions, the human geography of the Qatar peninsula from the middle of the nineteenth century to Qatar's attack on Zubarah in 1937 was increasingly divided into three spheres: the Naim-led tribal confederation to the north which recognised the authority of the Al-Khalifa Rulers of Bahrain; the bedouins who seasonally grazed their flocks in the south of the peninsula and were loyal to the Al-Saud; and the pearl merchant enclave around Doha, the Al-Thani-influenced Doha confederation, dominated by both the Al-Khalifa and the Al-Saud.¹¹⁰

190. The historic conflict over the Qatar peninsula until 1935 was between the Al-Khalifa in the north (through the Naim tribal confederation) and the Al-Saud in the south (through Bedouin tribes loyal to them). The Al-Thani-influenced Doha confederation was an observer, not a participant, in this struggle.¹¹¹ Qatar's claims to the contrary¹¹² are in fact a mixture of unsupported assertion, irrelevant fact, forged documents and a quotation from a text by Cordesman that is itself fictitious speculation made entirely without reference to any supporting evidence.

191. In 1935, Britain, in exchange for an oil concession, agreed to guarantee the southern boundary of the territories of the Al-Thani against the Al-Saud. In this new political equation, the Doha confederation, led by the Al-Thani, could finally expand from Doha, extending their authority north along the eastern coastline. In 1936, they reached the Zubarah region.¹¹³

192. The Al-Thani first endeavoured to exercise authority in Zubarah in 1936 by attempting to establish a customs house there and impose taxes on the Naim tribe and its confederates. The Naim resisted and appealed for assistance to the Ruler of Bahrain, their traditional benefactor and suzerain. In 1937, during negotiations between Bahrain and Qatar over this problem, Al-Thani forces attacked Zubarah and ejected the Naim and the Al-Khalifa.¹¹⁴ This unlawful act, the legal consequences of which are considered below, could not even in those days form the basis of a subsequent claim to sovereignty by Qatar.¹¹⁵

SECTION 3.2 The Rulers of Bahrain exercised authority throughout the entire Qatar peninsula during the period 1762-1872

193. Both Arab and Western historians agree, and archaeological evidence confirms,¹¹⁶ that the city of Zubarah was founded around the middle of the eighteenth century by the Al-Khalifa.¹¹⁷ With the assistance of the Naim and other tribes, the Al-Khalifa quickly pacified the local tribes. Situated at the crossroads of the Indian trade routes and beside the Bahrain pearl banks, Zubarah prospered under the governance and protection of the Al-Khalifa.¹¹⁸ Mohammed Ben Khalifa, Sheikh of Zubarah, built the Murair Fort in 1768 in order to defend Zubarah.¹¹⁹

194. In response to attacks from the Persian governor of the islands of Bahrain, the Al-Khalifa and their allies, which now included tribes from throughout the Qatar peninsula, challenged and defeated the Persian garrison on the main island of Bahrain in 1783.¹²⁰ The Al-Khalifa quickly consolidated their control over all the islands of the Bahrain archipelago¹²¹ and appointed a representative to govern them. ¹²²

195. Toward the end of the eighteenth century, the Al-Khalifa decided to establish their court on the main island of Bahrain, and then on the island of Muharraq.¹²³ They appointed a governor in Zubarah to rule the region and the remainder of the Qatar peninsula on their behalf. ¹²⁴ In its Memorial and Counter-Memorial, Bahrain has submitted evidence of more than a dozen examples of the continued exercise of authority by the Al-Khalifa Rulers over the Qatar peninsula until 1872, shortly after the Ottomans placed a garrison in Doha. These examples include the facts that:

- The Naim tribe, which recognised the authority of the Al-Khalifa Rulers, continued to reside in Zubarah;¹²⁵

- In his 1821-1829 survey of the Gulf, Captain Brucks recorded that the population of the entire Qatar peninsula - including the settlements at Zubarah and Doha (then called Bida) - recognised the authority of the Al-Khalifa Rulers;[126](#)
- In January 1823, in the course of his voyage of discovery along the Arabian coast, Lieutenant McLeod, British Political Resident, paid a visit to 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;[127](#)
- During the 1830s, the Al-Khalifa Ruler encouraged certain of his subjects to settle in his dominions in the Qatar peninsula;[128](#)
- During the 1840s, the Al-Khalifa Ruler planned and oversaw the development and expansion of Zubarah in order to concentrate and strengthen his resources in the Qatar peninsula;[129](#)
- During the 1840s, Britain welcomed the appointment of the Al-Khalifa Ruler's new governor in Doha because it considered that this would reduce piracy;[130](#)
- During the 1850s, when some of the tribes around Doha defected to the Wahhabi Emir, the Al-Khalifa Ruler and the Wahhabi Emir reached an agreement that enabled the defectors once more to become vassals of the Ruler of Bahrain, provided that they paid tribute for the return of the Al-Khalifa forts;[131](#)
- An Indian Navy report noted that after the above-referenced agreement was reached, the Al-Khalifa representative went to Doha and: "all the (Doha) people came to (the Al-Khalifa representative) to ask pardon and he pardoned them all except Sheikh Fuldal, the Sheikh of Wukra";[132](#)
- In 1854, the British Political Resident reported to the Government of Bombay that Bahrain's territory included the Qatar peninsula;[133](#)
- In 1859, Britain fined the Ruler of Bahrain two hundred dollars in respect of a piracy committed by the inhabitants of Doha;[134](#)
- During the 1860s, the British Navy's Persian Gulf Pilot noted that the Al-Thani were "under Bahrain";[135](#)
- During the 1860s, the British Political Resident warned the Wahhabi Emir to desist in his intrigues in the Qatar peninsula amongst: "the tribes subject to Bahrain on the Gutter coast" because "the quiet of the Chiefs and people of Bahrain [was] being disturbed". Britain warned that Bahrain would declare war on the Wahhabi Emir in order to "exercise [its] legitimate rights and prerogatives;"[136](#)
- During the 1860s, the Ruler of Bahrain appointed a new governor in the Qatar peninsula with a mandate to prevent piracy. Britain recorded Bahrain's measures against piracy on the east coast of the Qatar peninsula around Doha;[137](#)
- In 1863, the British Political Resident described his proposed tour of the Gulf as starting in Bahrain and then proceeding: "to the southward of that Chief's Country and

passing along the coast line to visit the Chiefs of Abotabhee, Dibaye, Sharga, Asjman Amalajoru and Rasul Khyma."; thus the first chief south of Bahrain was considered to be the Ruler of Abu Dhabi;[138](#) and

- The Al-Khalifa Rulers imposed taxes and tithes on the inhabitants of the Qatar peninsula as a matter of course.[139](#)

196. The historical record is so compelling that even the Qatar Memorial and Counter-Memorial cannot avoid recounting numerous examples of the exercise of authority over the Qatar peninsula by the Rulers of Bahrain during the nineteenth century, including:

- The Rulers of Bahrain arresting individuals on the Qatar peninsula;[140](#)

- Inhabitants of the Qatar peninsula apologising, as subjects of Bahrain, for their misbehaviour to the Al-Khalifa Ruler;[141](#)

- The son of the leader of the Doha merchants supplicating the Ruler of Bahrain in relation to taxes;[142](#)

- The Rulers of Bahrain imposing taxes throughout the Qatar peninsula;[143](#)

- The Rulers of Bahrain defeating and punishing rebellion against their authority in Doha;[144](#)

- The Rulers of Bahrain rejecting Wahhabi interference in the punishment of the Doha rebels;[145](#) and

- _ The Rulers of Bahrain appointing a succession of governors in the Qatar peninsula, including Doha.[146](#)

SECTION 3.3 Qatar's claim that the Al-Thani controlled the entire Qatar peninsula from the middle of the nineteenth century is contradicted by the historical record

197. The historical record clearly shows that the Al-Thani never exercised control over the entire Qatar peninsula in the second half of the nineteenth century. Furthermore, evidence from the historical record that has been submitted by Bahrain does not support the claim of Al-Thani dominance, as Qatar attempts to suggest.[147](#) To the contrary, it demonstrates that:

- By the mid-nineteenth century, the Al-Thani family began to exercise influence in Doha, not as tribal leaders but as pearl merchants and tax collectors (for the Al-Khalifa);[148](#)

- The Ruler of Bahrain received tribute and taxes from all inhabitants of the Qatar peninsula until local chiefs in the Doha region rebelled in 1866. The rebellion was quashed with the assistance of the Ruler of Abu Dhabi, who thus recognised the Ruler of Bahrain's authority over the entirety of the Qatar peninsula. Following the quashing

of the rebellion, Mohammed bin Thani undertook to collect taxes and tributes from the other local chiefs so that payments to the Ruler of Bahrain would be resumed;[149](#)

· The 1864 Persian Gulf Pilot described the Al-Thani chief as having some authority only over the chiefs in the towns of Doha, little Doha and Al-Bida (all located within one mile of each other);[150](#)

· In 1870, Mohammed bin Thani, confronted with troubles from local Qatari tribes, supplicated the Ruler of Bahrain for assistance. In so doing, he described himself as "...your [the Ruler of Bahrain's] subject...";[151](#)

· Internal Ottoman documents show that the Ottomans considered "Qatar" to be the area in the south-east of the peninsula around Doha;[152](#)

· An 1871 Ottoman report described Mohammed bin Thani as a "tax collector" having "no rule over the other villages [outside of Doha]";[153](#)

· Another 1871 Ottoman report confirmed that the Al-Thani had no control over the Qatar peninsula outside of Doha;[154](#)

· In 1871, when the Ottomans presented the Al-Thani with four Ottoman flags to plant on Al-Thani territory, the Al-Thani raised them only in and around Doha, indicating their own recognition of the limited extent of their territory;[155](#)

· In 1873, the subservience of the Al-Thani to the Ottomans was such that the Al-Thani were powerless to prevent Ottoman soldiers committing acts of piracy from Doha;[156](#)

· In 1874, Jasim bin Thani complained to the Ottomans that the Doha merchant confederation remained subject to the effective exercise of Bahraini authority;[157](#)

· Also in 1874, Jasim bin Thani announced publicly the arrival of the Al-Khalifa pretender (Sheikh Nasir bin Mubarak) in Doha and confirmed that Doha remained under the authority of the Al-Khalifa;[158](#) even in 1881, Sheikh Nasir informed British officials that Jasim, as well as Doha and its environs, remained under effective Al-Khalifa (meaning his own) control;[159](#)

· An 1878 Ottoman map described Qatar as a location in the south-east of the Qatar peninsula around present-day Doha.[160](#)

· In 1880, Jasim bin Thani admitted to the British Political Resident that the northern parts of the Qatar peninsula "belong to ... Bahrain";[161](#)

· In 1881, a letter from Jasim bin Thani to the British Political Resident described his father's authority in 1868 as covering only Doha Town and Al-Wakra and described his own position as entailing "...no power over [the Katar coast]";[162](#)

· In 1886 and 1887, British records noted that dissension over the Al-Thani rule in Doha had caused "seceders" to leave the jurisdiction of the Al-Thani and settle in the

north-west of the Qatar peninsula, where they had placed themselves under the protection of the Naim tribe who were loyal to the Ruler of Bahrain;[163](#)

· By 1888, the Al-Thani chief lived in fear of the Ottomans and considered fleeing Doha;[164](#)

· In 1888, Britain described the part of the Qatar peninsula over which the Ottomans and Al-Thani exercised authority to be confined to Doha, where the "Sheikh of el Bidaa (Doha), on the eastern side of El Katr Peninsula ... has allowed the Turks to maintain a small military post ... since 1872"; [165](#)

· In 1893, Jasim bin Thani desired to return to paying tribute to the Ruler of Bahrain in an attempt to escape from his relationship with the Ottoman Empire, and requested to be allowed to reside in the northern part of Qatar "within the [Ruler of Bahrain's] jurisdiction";[166](#)

· In 1893, Jasim bin Thani acknowledged to Britain the rights of Bahrain in the Qatar peninsula and Doha and expressed his willingness to pay tribute as before;[167](#)

· An 1893 Ottoman report described the three principal tribes in the Qatar peninsula as being the Beni Hajir, the al-Munasir and the Naim, of whom the Naim were described as being Bahraini; the Al-Thani were described as having won over only one of the lesser subdivisions of the Beni Hajir tribe and part of the al-Munasir tribe;[168](#)

· In 1898, an attack by the Chief of Doha on the Ottoman garrison stationed there resulted in the Ottomans confiscating the Chief's property;[169](#)

· In 1900, Britain intervened directly to maintain order within the Doha merchant confederation, giving no indication of recognising Al-Thani authority within Doha;[170](#)

· In 1903, the Ottomans proposed to establish their administration in Zubarah. Britain confronted the Ottomans, citing Bahrain's sovereignty over Zubarah, and the Ottomans backed down.[171](#)

· In 1903, the opinion of British officials was that the Al-Thani's already weak position, even within Doha, was likely to continue to deteriorate;[172](#)

· Six attempts by the Ottoman Empire and the Al-Thani to extend their influence to the Zubarah region, in 1874, 1878, 1888, 1891, 1895 and 1903, were all challenged by the Ruler of Bahrain, and resulted in unmitigated failure;[173](#)

· In 1905 Britain considered re-establishing Bahrain's sovereignty beyond Zubarah and over the entire Qatar peninsula except Doha, noting that the Al-Thani controlled only the Doha enclave; and[174](#)

· The Ottomans, throughout the period of their presence in Arabia, considered the "Qatar province" as being the region of Doha, as opposed to the Zubarah and Udaid territories elsewhere on the peninsula, and repeatedly acknowledged that they never

exercised any effective control over the peninsula other than over Doha and its immediate environs.[175](#)

198. The foregoing also confirms the falsity of Qatar's allegation that while the Ottomans were "nominally" in control of the whole peninsula, it was the Al-Thani who wielded the real power in Qatar during the Ottoman period and thus were instrumental in helping the Ottomans to assert their authority over the whole peninsula "despite their limited physical presence".[176](#)

199. Qatar's claims that the Al-Thani controlled the peninsula from the mid-nineteenth century are contradicted, not only by the wealth of evidence submitted by Bahrain, of which the examples cited above and in Bahrain's earlier pleadings are but a sample taken from a mass of evidence, but also by Qatar's own evidence, which includes:

- The Ruler of Bahrain arresting individuals in the Qatar peninsula in 1867;[177](#)
- Inhabitants of the Qatar peninsula apologising to the Ruler of Bahrain for their behaviour;[178](#)
- The son of the leader of the Doha merchants supplicating the Ruler of Bahrain in relation to taxes;[179](#)
- The Ruler of Bahrain imposing taxes throughout the Qatar peninsula;[180](#)
- The Ruler of Bahrain defeating and punishing the Doha rebels;[181](#)
- The Ruler of Bahrain rejecting Wahhabi interference in the affair;[182](#) and
- Britain preventing the Ottomans from appointing administrators for Zubarah and Udaid.[183](#)

200. Qatar describes Mohammed bin Thani as having risen to the position of paramount Sheikh in Qatar by the 1850s.[184](#) However, ignoring Qatar's references to the

forged documents, the only admissible item of evidence cited by Qatar for this contention in fact shows the limited extent of Al-Thani authority at that time and into the 1860s.[185](#) Qatar quotes from Palgrave, at paragraph 2.25 of its Counter-Memorial, who, rather than supporting Qatar's assertion that "even prior to the events of 1867 and 1868, Mohammed bin Thani was acknowledged as head of the entire province of Qatar",[186](#) describes Mohammed bin Thani in 1862-1863 as:

"...governor of Bedaa' [Doha]...[who] has in matter of fact very little authority over the other villages [of the surrounding area]..."; and as

"...only a sort of collector-in-chief or general revenue-gatherer, whose occupation is to look after and bring in the annual tribute on the pearl fishery."

Moreover, Palgrave reported that the Ruler of Bahrain exercised "a sort of control or presidential authority in Katar".[187](#)

201. Bahrain has previously described how Doha only began to gain importance from the mid-nineteenth century when the pearling banks to the east opened.¹⁸⁸ Thereafter, the Al-Thani slowly emerged as the leading family in the Doha merchant confederacy.¹⁸⁹ Nevertheless, even by 1864 the Persian Gulf Pilot recorded that Doha and the Al-Thani remained subject to the authority of the Al-Khalifa.¹⁹⁰

202. Qatar asserts that Britain recognised Al-Thani authority over the peninsula. Yet Qatar also acknowledges that when Britain sought assurances from Jasim bin Thani concerning acts of piracy emanating from the east coast of the peninsula, Jasim expressly disclaimed responsibility, professing that he lacked the power to accede to Britain's requests.¹⁹¹ Qatar attempts to explain this by quoting at length an extract from a book by Rosemarie Zahlan - commissioned by the Government of Qatar entitled The Creation of Qatar - in which the author speculates that this disclaimer *may not* have reflected the "true position".¹⁹² This hypothesis is advanced by Zahlan without reference to any primary sources.¹⁹³ An unsupported hypothesis which contradicts the genuine historical record provides no support for Qatar's fictive rendition of the history of the peninsula.¹⁹⁴

203. Qatar states that by 1905 it was clear that the Al-Thani had established their authority in the south-west of the peninsula.¹⁹⁵ Yet to substantiate its claim Qatar refers only to a list of isolated bedouin raids during the nineteenth century.¹⁹⁶ These provide no evidence of Al-Thani authority over any part of the peninsula. Qatar also states that it had authority over the tribes of the interior,¹⁹⁷ yet refers only to troops that were maintained by the Al-Thani who lived in or around Doha.¹⁹⁸ Qatar cites an 1881 gathering of warriors from various parts of the Qatar peninsula when Doha was under threat from Abu Dhabi, yet acknowledges that, other than the inhabitants of Doha, Jasim bin Thani could only *request* that certain of the tribes of the peninsula come to his aid, not *demand* it.¹⁹⁹ This again demonstrates the lack of Al-Thani authority in the peninsula rather than the exercise of it.

SECTION 3.4 The Ottoman Empire expanded into the south-east of the Qatar peninsula through the Al-Thani chiefs of Doha Town in 1871

204. In 1871, the Al-Thani invited the Ottomans to occupy Doha, hoping thereby to use the Ottoman presence to wrest themselves from the authority of the Al-Khalifa in Doha and eventually to expand the area under their control from Doha and its environs. Examples of the limited extent of the area under the influence of the Al-Thani and the Ottoman Empire during this period can be found in paragraph 197, *supra*. Furthermore, no less than 10 official Ottoman documents originating from the highest levels of the Ottoman government and dating from the last decade of the nineteenth and first two decades of the twentieth centuries acknowledge that the Ottoman Empire never exercised any effective control over the Qatar peninsula apart from Doha and its immediate environs.²⁰⁰

205. Qatar asserts that the arrival of the Ottomans did little to alter the political situation in Qatar, quoting Lorimer (out of context) to that effect.²⁰¹ However, Lorimer's conclusion is not as Qatar would imply, *i.e.*, that the unchanged political situation was one of Al-Thani dominance over the entire Qatar peninsula. As described above, prior to the Ottoman arrival, the Al-Thani were the leading family in the environs of Doha but little more.²⁰² They were still subject to overall Al-Khalifa

authority in the Qatar peninsula. Bahrain agrees with Qatar that the extent of Al-Thani authority did not alter in 1871. The Al-Thani still had no authority over the peninsula outside of Doha. Lorimer's text supports no argument to the contrary.

206. Qatar refers to Sheikh Jasim's appointment in 1876 as *kaimakam* of the *kaza* of Qatar and asserts that this acknowledged Jasim's position of authority over the entire peninsula.²⁰³ Again, Qatar's assertion is unsupported by the historical record, which amply demonstrates that, throughout their occupation of Doha, the Ottomans considered the *kaza* of Qatar to be restricted to the environs of Doha and never considered themselves to be in effective authority over the remainder of the peninsula.²⁰⁴ Furthermore, Qatar is wrong in its assertion that Zubarah and Udaid were considered part of the *kaza* of Qatar. This is most vividly established by the 1878 Ottoman Map submitted by Bahrain with its Memorial.²⁰⁵

207. Qatar quotes at length from a variety of internal British correspondence, asserting that such correspondence supports its claim that the British authorities tacitly recognised Ottoman and Al-Thani control over the entire peninsula.²⁰⁶ The correspondence cited in fact demonstrates quite the opposite.²⁰⁷

208. In attempting to show that the Al-Thani exercised authority in Zubarah, Qatar also cites Saldanha.²⁰⁸ However, the text referred to makes no mention of Zubarah, merely referring to Mohamed bin Thani as one of the "Gwuttur chiefs" who had an influence over events on the "Katar coast" (i.e., around Doha).²⁰⁹ A more relevant extract from that text, included in the same annex to Qatar's Memorial, is an 1874 letter from Colonel Ross made in the context of Ottoman complaints against Bahrain's activities on the mainland:

"The portion of the Naim tribe residing at Zobarah had not either avowed allegiance to Turkey nor been reduced to subjection, so that it is impossible they could be in the position of revolted subjects. 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. Without entering on the Bahrain claim, it is *at least certain that the Turkish Government have never directly or indirectly assumed possession of the place, or openly claimed it.* Their pretensions are put forward for the first time."²¹⁰ (Emphasis in the original.)

209. The phrase "directly or indirectly" rebuts any Qatari claim that the Al-Thani exercised any authority in Zubarah. Rather than amounting to tacit acknowledgement by Britain of Al-Thani or Ottoman authority in Zubarah in the 1870s, this episode constitutes express denial.

210. Qatar points to the instructions provided to the Ruler of Bahrain by the British Political Resident in 1895 to abstain from interfering in the affairs of the mainland as being implicit recognition of Al-Thani rights in Zubarah at that time. As it does so frequently, Qatar again bases its analysis on Zahlan.²¹¹ However, Zahlan's interpretation of history on this point is yet again unsubstantiated by reference to primary sources. It hardly could be, because those sources clearly show that the British policy of non-interference was not a recognition of anything other than the British

desire to maintain maritime peace.²¹² Whenever the Ottomans or the Al-Thani attempted to act in Zubarah they were prevented by Britain and Bahrain.²¹³

211. Following their 1871 expansion into the Arabian peninsula, including Doha, the Ottomans showed no immediate interest in exercising authority in the barren and practically unpopulated Qatar peninsula. Initially, during the 1870s, Britain tolerated the Ottoman's entry into Doha. British officials hoped that the Ottomans would thereby assist in preventing piracies in the Gulf. However, Britain's initial position was quickly reversed when it became evident that the Ottomans were essentially incapable of exercising authority in Doha, let alone more widely in the Qatar peninsula. By the end of the 1870s, the Ottomans had not extended their administration beyond Doha and Britain began its policy - successfully prosecuted until the departure of the Ottoman garrison from Doha in 1915 - of actively opposing Ottoman and Al-Thani attempts to expand beyond Doha.²¹⁴ Indeed, the Ottomans themselves acknowledged Britain's eventual role in preventing their administration of the peninsula beyond Doha.²¹⁵

SECTION 3.5 Qatar's claim that the 1868 personal undertakings, the 1913 Anglo-Ottoman Convention and the 1916 Anglo-Al-Thani agreement demonstrate that its borders were settled and included the entire peninsula and all adjacent islands is contradicted by British, Ottoman, Bahraini, Saudi Arabian and regional history

212. Qatar asserts that the 1868 agreements recognised the separation of Bahrain and Qatar, the latter's territory being the entirety of the Qatar peninsula. Bahrain has already shown this to be false.²¹⁶

213. Qatar acknowledges that the principal object of these agreements was to maintain the maritime peace. Yet Qatar then leaps from that statement to the conclusion that, as both Bahrain and the Al-Thani were party to the agreements and both were bound by the agreements to refrain from acts of maritime aggression, the sea was to act as a buffer between Bahrain and Qatar, thus evidencing Britain's recognition that the entirety of the Qatar peninsula constituted the State of Qatar, while Bahrain was limited to its islands.²¹⁷ The simple fact that both Bahrain and the Al-Thani undertook to refrain from acts of maritime aggression does not support Qatar's conclusion. Qatar's analysis rests on the presumption that the Al-Khalifa's authority extended over only the Bahrain Islands - the very proposition that Qatar is trying (unsuccessfully) to prove. Qatar cites no historical source to evidence its fanciful interpretation of these agreements; no such source exists.

214. Neither the agreements of 6 September and 12 September 1868, which Qatar describes as the "Main Agreements",²¹⁸ nor the undertaking given by the Al-Thani leader to continue to pay tribute to the Ruler of Bahrain, make any specific reference to the extent of Al-Thani territory, thus depriving Qatar of any basis for its assertions that the 1868 agreements evidenced Al-Thani authority over the entire peninsula. Rather, the 12 September 1868 agreement, signed by Mohamed bin Thani and wherein he promised, *inter alia*, to "return to Dawka [Doha] and reside peaceably in that port",²¹⁹ provides an indication of the British view of the limited extent of Mohamed bin Thani's territory. If the agreement contemplated Al-Thani rule over the entire Qatar peninsula, it would not have sought to restrict Mohamed bin Thani to only one

area of his territory. If anything, the agreements necessarily imply that Al-Thani territory was viewed by Britain at that time as being limited to the port of Doha. Furthermore, the fact that Mohammed bin Thani undertook to pay tribute to the Ruler of Bahrain confirms the former's subservience to the latter.

215. Qatar invokes the work of A. de L. Rush to support its interpretation of the events of 1868. However, the cited passages are not based on the historical record. A glance at Rush's book is sufficient to reveal that its analysis of the 1868 events is

essentially unsupported by reference to any authorities. Furthermore, it contradicts the primary sources, of which examples are referred to above, all of which clearly show that the Al-Thani and Doha remained subject to Al-Khalifa authority after the 1868 events, as they had been before.[220](#)

216. Qatar further asserts that the 1913 Anglo-Ottoman Convention demonstrates that Qatar's borders were settled at that time and included the entire peninsula and all adjacent islands.[221](#) Bahrain has already demonstrated that:

- The 1913 Convention was never ratified and is neither legally relevant nor historically determinative;[222](#)
- It was already irrelevant and did not reflect current reality even at the time it was completed;[223](#)
- The negotiations prior to the Convention being drafted evidence Britain's recognition of the continuation of Bahrain's rights on the peninsula;[224](#)
- The final text of the Convention contained decisions not grounded in policy but based on the personal ideas of the Ottoman Minister in London, designed to save Ottoman face;[225](#) and
- The Al-Thani hold over Doha itself was already tenuous at that time.[226](#)

217. Moreover, the 1913 Convention made no reference to the Hawar Islands adjoining the peninsula, although it did refer to other unrelated islands. Qatar's assertion that the Hawar Islands were included within Article 11 of the Convention is thus without substance.[227](#)

218. Qatar in its Counter-Memorial again makes reference to Britain's policy of advising non-interference by Bahrain in the affairs of the peninsula. As has been amply demonstrated elsewhere,[228](#) this did not constitute British recognition of a lack of Al-Khalifa rights on the peninsula, but rather evidenced Britain's intention to safeguard Bahrain's rights itself.

219. Qatar further asserts that the 1916 Anglo-Al-Thani Treaty demonstrates that its borders were settled at that time to include the entire peninsula and all adjacent islands. Qatar's assertions are unsupported by more than its present assertion and are even contradicted by both the text of the Treaty and its historical context. Bahrain has already shown that:

- The 1916 Treaty did not define the extent of the territory of the Sheikh of Qatar, a fact acknowledged by Qatar;[229](#)
- The text of the 1916 Treaty expressly acknowledged Bahrain's rights over the peninsula;[230](#)
- The Sheikh of Qatar admitted to the British Political Resident in 1934 that the 1916 Treaty "does not include the interior but only the coast...";[231](#)
- The British Government shared the Sheikh of Qatar's view;[232](#)
- Following 1916, Al-Thani authority was limited even within Doha;[233](#)
- Both Britain and Qatar continued to recognise Bahrain's rights over the Qatar peninsula, in particular over Zubarah, post 1916;[234](#)
- Following 1916, the Ruler of Qatar paid an annual tribute to the King of Saudi Arabia;[235](#)
- Following 1916, Saudi Arabia considered Qatar's territory as limited to the inhabited towns of the peninsula's east coast, the remainder of the peninsula being part of Saudi Arabia's territories;[236](#) and
- Bahrain continued to exercise authority over the Zubarah region during the period of 1916 to 1937.[237](#)

220. It is also worth noting that none of the genuine historical documents submitted by Qatar support its claim that the 1916 Treaty defined the extent of Qatar's territories in the manner claimed by Qatar.[238](#) Without the forged documents to provide a "context" for Qatar's convoluted interpretation of the historical record, Qatar's claims remain groundless.

SECTION 3.6 Qatar's claim that the Rulers of Bahrain were unable to exercise authority over even the main island of Bahrain during the nineteenth century is not supported by the evidence

221. In an attempt to bolster its claims concerning the extent of Al-Thani influence, Qatar makes various assertions about the Al-Khalifa being in less than full control of Bahrain's main island in the nineteenth century.[239](#) None of these assertions can withstand scrutiny. They are contradicted by reliable historical records.

222. The Al-Khalifa have been in control of the islands of Bahrain since their conquest in 1783. Purportedly relying on Lorimer,[240](#) Qatar claims that, prior to 1923, the Al-Khalifa controlled only the north and centre of Bahrain's main island. However, the extract from Lorimer not only contradicts Qatar's own assertion, but supports Bahrain's continuing rights on the Qatar peninsula. Lorimer states that Sheikh Isa bin Ali (Ruler of Bahrain, 1869-1932) personally ruled the island of Muharraq and the environs of Manama "unless when absent on sporting expeditions to the mainland,"[241](#) while the remainder of Bahrain's main island was primarily ruled by the Shaikh's "brother, sons, nephews and other near relations",[242](#) that is, other

members of the Al-Khalifa family as delegated. Thus, Qatar's evidence, rather than supporting its own assertion, shows that Lorimer understood the entire main island of Bahrain and at least parts of the Qatar peninsula to be under direct Al-Khalifa rule.

223. Qatar claims that, prior to the 1860s, there were internal struggles amongst the Al-Khalifa for supremacy over all of Bahrain's territories. Bahrain notes that even Qatar does not claim that dynastic struggles within the ruling family ever challenged overall Al-Khalifa control. Qatar's assertions in fact acknowledge that overall Al-Khalifa authority was never in doubt.[243](#)

224. Qatar claims that Bahrain's description of the history of Al-Khalifa control over the Qatar peninsula ignores various internal dynastic struggles and regional rivalries. This is incorrect. Bahrain's submissions have fully addressed the few incidents noted by Qatar.[244](#) Bahrain has never claimed that the rule of the Al-Khalifa was without its challenges or that there were no isolated internal Al-Khalifa dynastic struggles and regional rivalries. [245](#) The critical point, however, is that there is no evidence that the dominance of the Al-Khalifa over the Qatar peninsula prior to the Ottoman arrival in Doha in 1871 met with any successful or sustained challenge; certainly none originating from within the Qatar peninsula itself.[246](#)

225. Qatar's comment to the effect that Bahrain makes no mention in its Memorial of Al-Khalifa control over Dowasir villages on the main island of Bahrain is surprising, to say the least. It inexplicably ignores the mass of evidence adduced by Bahrain establishing the loyalty of the Dowasir to the Al-Khalifa from the eighteenth century onwards.[247](#)

226. Persia was never a genuine threat to Bahrain following the Al-Khalifa's consolidation of their authority over the Bahrain islands in the late eighteenth and early nineteenth centuries. Qatar states that Persia/Iran maintained a claim to the main island until 1970,[248](#) but does not explain that this claim was a result of Persia having occupied the main island only for a brief time until it was expelled by the Al-Khalifa in 1783; and

that this claim was maintained thereafter for formal reasons of prestige rather than realistic ambition. Despite occasional verbal reiterations in the nineteenth and twentieth centuries, the claim was never supported by relevant action, whether diplomatic or military, and was dismissed out of hand by both Britain and Bahrain whenever it was made.[249](#)

227. The Muscat threats to Bahrain's islands in the late eighteenth and early nineteenth centuries were swiftly repelled. Qatar correctly states that the Rulers of Muscat and the Al-Khalifa vied for control over the islands.[250](#) However, the fact that the Al-Khalifa, who continued to use Zubarah as a base for counter-attacks against Muscat during that period,[251](#) were always able to re-establish their authority is evidence of the overall supremacy of the Al-Khalifa over the islands of Bahrain at that time.[252](#)

228. Qatar is correct in asserting that the Wahhabi's made various threats to Bahrain's territories in the early nineteenth century.[253](#) However, the fact that the Al-Khalifa were always ultimately successful in repelling these threats yet again emphasises

rather than detracts from Bahrain's overall supremacy of the region during that period.²⁵⁴

229. Egypt never exercised any authority over Al-Khalifa territory. Qatar describes Egyptian activities and what it calls Bahrain's payment of "tribute" to Egypt in 1839.²⁵⁵ Bahrain has already shown that Egypt's foray into the Arabian peninsula lasted for only one year (from 1839 to 1840), during a brief time when Egypt was independent from the Ottomans. Bahrain did on one single occasion pay a modest sum to the Egyptian forces in order that they not approach Bahrain. Rather than demonstrating Bahrain's subservience or a threat to its authority, however, this sum was designed to neutralise an ephemeral menace to Bahrain's peaceful enjoyment of its territory.⁰

230. Qatar's claim that the Rulers of Bahrain were unable to exercise authority over even the main island of Bahrain during the nineteenth century can therefore only be seen as a feeble attempt to distract attention from the Al-Thani's tenuous position around Doha.

231. Finally, Bahrain notes that Qatar has included a section in its Counter-Memorial entitled "The myth of Bahrain's maritime supremacy and the failure of its expansionist policies".¹ Bahrain is uncertain how to respond to this gratuitous and rather vitriolic section. Aside from idle and unsubstantiated speculation in its introduction, it merely recounts the results of negotiations whereby the Ottoman Empire purchased Bahrain's sovereignty over Zakhnuniya Island and whereby Saudi Arabia and Bahrain resolved two conflicting territorial claims and agreed on a joint revenue sharing scheme over certain maritime areas. The relevance of these matters to the present dispute is not apparent. Nor is it explained by Qatar.

CHAPTER 4

THE EVIDENCE OF BAHRAIN'S SOVEREIGNTY OVER THE ZUBARAH REGION IS PREPONDERANT

SECTION 4.1 The Rulers of Bahrain exercised authority over the north-west of the Qatar peninsula and the Zubarah region until 1937

232. Bahrain has submitted evidence in its Memorial and Counter-Memorial that the Rulers of Bahrain continued to exercise authority over the north-west of the Qatar peninsula until 1937.² This contrasts starkly with the lack of any reference by Qatar to any Qatari exercise of authority over the Zubarah region.

233. Qatar asserts that the town of Zubarah was empty after 1811.³ Not only is no evidence provided for that allegation, but some of Qatar's own evidence, such as that noted in the immediately preceding paragraph, demonstrates the contrary. Moreover, during the 1820s, British officials encountered a settlement there whose inhabitants acknowledged that they were subjects of the Ruler of Bahrain.⁴ The north and west of the Qatar peninsula continued to be populated by members of the Naim-led tribal confederation throughout the nineteenth and early twentieth centuries, a situation which only changed when they were forced out of the Zubarah region by Qatar's 1937 invasion.⁵

234. The Naim and the Al-Khalifa had a mutually beneficial relationship which permitted the Al-Khalifa to maintain control over their territories in the Qatar peninsula and at the same time enabled the Naim to consolidate their leadership of the confederation of tribes in the north of the peninsula. The system of *ikrimiyyah*, whereby benefits were received by important Arab tribes from their rulers, was integral to the Al-Khalifa-Naim relationship. In return for such support, the Naim paid taxes and provided services to the Ruler of Bahrain.⁶ The public record provides evidence of numerous examples of this relationship, including:⁷

- The Naim's assistance in the 1848 defeat of a challenger to the Al-Khalifa Ruler;⁸
- The Naim chief's designation by the Ruler of Bahrain as his tax collector for the monies agreed to be paid to him in 1868 by the Al-Thani-led Doha confederation;⁹
- The Naim's entitlement to keep part of the taxes levied from the Doha confederation;¹⁰
- Reports from the period 1869 to 1887 showing the Ruler of Bahrain giving annual gifts to the Naim tribe;¹¹
- In 1870, British despatches reported that the Naim had defeated the Beni Hajir tribe that had been plotting against the Ruler of Bahrain;¹²
- British evidence from 1873 of the original permission given by the Al-Khalifa to the Naim to live in Zubarah;¹³
- Subsequent British evidence of affirmations of fealty from the Naim to the Al-Khalifa;¹⁴
- Britain's recognition on several occasions during the last quarter of the nineteenth century that Zubarah was a feudal dependency of the Al-Khalifa by virtue of their relationship with the Naim;¹⁵
- In 1878, following the Ottoman and Al-Thani attack on Zubarah, many of the Naim who had been left homeless took refuge on the main island of Bahrain;¹⁶
- Britain's recognition on several occasions during the last quarter of the nineteenth century that the Naim were dependants of the Al-Khalifa;¹⁷
- During the last quarter of the nineteenth century, Jasim bin Thani's express acknowledgement to Britain of the nature of the relationship between the Naim and the Ruler of Bahrain;¹⁸
- British reports of unrest under Al-Thani rule in Doha, noting that dissenters left Al-Thani jurisdiction and travelled north until they were "under the protection of the Noeym tribe who maintain intimate friendly relations with the Chief of Bahrain";¹⁹
- An 1893 Ottoman report identifying the Naim tribe as one of the principal tribes of the Qatar peninsula and expressly recognising their allegiance to the Al-Khalifa;²⁰

- The Naim sending their cattle to the main island of Bahrain for protection in times of trouble;[21](#)
- The Ruler of Bahrain distributing money, provisions and cattle to the Naim;[22](#)
- The Ruler of Bahrain using Naim tribesmen as soldiers;[23](#)
- In 1906, Captain Prideaux of the Royal Navy, while investigating a shipwreck off the north coast of the Zubarah region, reporting to his superiors on the allegiance of the Naim to the Al-Khalifa;[24](#)
- In 1907, the Naim defeating the Beni Hajir tribe, who had been plotting against the Ruler of Bahrain;[25](#)
- The Naim's integration into the political economy of Bahrain. Until the 1937 attack, the Naim customarily travelled between the Zubarah region and Bahrain's islands and many Naim families had homes in both places;[26](#)
- Bahrain Government civil lists from the 1920s and 1930s showing members of the Naim tribe, including the chief of the Al-Jabr (dominant) branch;[27](#)
- The Al-Khalifa on a number of occasions giving military and material assistance to the Naim tribe to defend the Zubarah region, including in 1936 and 1937;[28](#)
- On a number of occasions the Naim opposing the invasion of the islands of Bahrain from the Zubarah region by external forces;[29](#)
- Britain's recognition of the relationship between the Naim and the Ruler of Bahrain when Qatar laid claim to the Zubarah region in 1936 and 1937;[30](#) and
- The departure of the majority of the Naim to Bahrain in the aftermath of Qatar's attack in 1937 on Zubarah, following their refusal to acquiesce in the Ruler of Qatar's demand that they swear allegiance to him.[31](#)

235. Qatar's assertion that there is no evidence, following the Al-Khalifa's removal to the Bahrain Islands at the turn of the nineteenth century, of any control or authority by the Al-Khalifa in Zubarah is thus belied by the historical record.

236. International law recognises that the extent of the authority exercised by a sovereign may vary according to the nature of the territory in question.[32](#) Qatar's own submissions recognise the existence and validity of traditional tribal patterns of governance in Bahrain and Qatar into the mid-twentieth century.[33](#) Seen in this historical context, the evidence submitted by Bahrain amounts perforce to more than a personal relationship between the Ruler of Bahrain and the Naim tribe, as claimed by Qatar.[34](#) It constitutes evidence of the exercise of political and public authority over the Zubarah region by the Rulers of Bahrain. The allegiance of the Naim-led confederacy of tribes that inhabited the north-west of the Qatar peninsula and who remained loyal to Bahrain and the Al-Khalifa throughout the relevant time period, confirms unassailably the legitimacy of Bahrain's sovereign rights over the Zubarah region.

SECTION 4.2 Qatar's claim that the Ottoman Empire exercised authority over the Zubarah region cannot withstand scrutiny and is contradicted by the Ottoman evidence admitting that they never exercised authority there

237. The evidence shows that neither the Ottomans nor the Al-Thani ever exercised authority over Zubarah and the surrounding region. Qatar's unsupported submissions concerning Ottoman activities in the Qatar peninsula do not dispel this conclusion:

"although the Ottomans did not establish a permanent garrison in Qatar elsewhere than in Doha, they ... did from time to time go to other parts of the peninsula".[35](#)

238. The events referred to by Qatar as supposed proof of Al-Thani authority over the Zubarah region are revealed, on closer inspection, to be nothing more than isolated incidents - acknowledged to be such by Qatar - in which tribes were sent by the Ottomans and Al-Thani to the Zubarah region during one or other of their unsuccessful attempts to impose authority there by force.[36](#) It is irrelevant to argue, as Qatar does, that the tribes that were in such brief transit through Zubarah were acting under the direction of the Ottomans or the Al-Thani.

239. On each attempt, Bahrain and Britain prevented the Ottomans and the Al-Thani from realising their plans in Zubarah. This fact is not contested by Qatar.[37](#) Instead, Qatar attempts to re-characterise the Ottoman and Al-Thani activities in Zubarah as something other than attempts to exercise authority.[38](#) In effect, therefore, Qatar has denied that its activities in Zubarah were related to the exercise of authority.[39](#)

240. Nonetheless, Qatar has maintained its unsubstantiated claim that the Ottoman Empire exercised authority over the Zubarah region.[40](#) In doing so, Qatar relies almost exclusively on British correspondence taken out of context and dating from the 1870s.[41](#) That correspondence reflects an internal British view, held temporarily during that decade in anticipation of the eventuality that the Ottomans might attempt to exercise authority outside Doha. Such prognostications of potential future Ottoman activity are not a reflection of any actual exercise of Ottoman authority. The fact that the Ottomans had not ventured beyond Doha by 1879, when Britain reversed its view and subsequently opposed any Ottoman attempt to exercise authority outside Doha, is reflected in the texts of the 1870s British correspondence quoted in Qatar's own submissions:

· "... it would be rather an advantage than otherwise to establish a firm Turkish rule along the coast ..." (emphasis added);[42](#)

· "... Lord Cranbrook does not see any sufficient reason for objecting to the establishment of such relations between the Turkish authorities in El Hasa and the tribes of the Guttur peninsula to the north of Odeid, as may be agreeable to the parties concerned ..." (emphasis added);[43](#) and

· "The Turkish government may ... argue that their present actual position ... does involve, constructively, domination over the entire [Qatar peninsula] ... We have, in fact, rather prepared the way for recognition of the eventual establishment of Turkish rule [there] ..." (emphasis added).[44](#)

241. The historical record establishes that Britain quickly adopted a policy of opposing any attempt to extend Ottoman authority beyond Doha. The evidence from the British and Ottoman archives demonstrates that Bahrain and Britain rebuffed the Ottomans and the Al-Thani no less than six times in their attempts to exercise authority over the Zubarah region, starting in the 1870s.⁴⁵ Indeed, the Ottomans acknowledged Britain's role in preventing its administration of the Qatar peninsula and that Britain acted as it did so as to effect Bahrain's rights.⁴⁶ This is also expressly recognised - vis-à-vis the Zubarah region - by Qatar in its Counter-Memorial.⁴⁷

242. Bahrain has elsewhere described the overwhelming evidence from the Ottoman archives which confirms the limited authority exercised by the Ottomans.⁴⁸ The evidence includes more than 20 documents showing that Ottoman officials and government bodies at the highest levels recognised that the Ottoman Empire, and thus the Al-Thani, never exercised authority outside of Doha and its environs during the Ottoman presence in Doha from 1871 to 1915. It is therefore not surprising that Qatar has submitted no authentic Ottoman evidence in support of its assertions, for there is none. Indeed, Qatar contradicts its own arguments on this issue when it admits:

"It is also apparent ... that the British intervened with the Porte and prevented the implementation of Ottoman plans to rebuild Zubarah in 1891 because they had declined to admit the claim of Turkey over the Qatar coast where Zubarah was located."⁴⁹

243. Qatar has submitted no direct evidence that the Ottomans ever extended their authority beyond Doha. Rather, Qatar appears to acknowledge the limited extent of Ottoman influence on the Qatar peninsula when it concludes that they were able "via the authority personally exercised by Sheikh Jasim, their *kaimakam*, to claim jurisdiction over all the areas where he exercised such authority."⁵⁰ As Bahrain has established, Al-Thani authority in the period 1871 - 1915 never extended much beyond the confines of Doha.

244. The Ottoman government and high-level Ottoman officials admitted that they never exercised authority over the Zubarah region. Bahrain has cited no less than 10 examples, drawn from evidence in the Ottoman archives, of high-level Ottoman officials or government bodies recognising that the Ottoman Empire never exercised authority outside of Doha and its environs,⁵¹ including:

"[Britain] does not recognise that the Ottoman State has any rights of control over these shores [Zubarah]" (Ottoman Ministerial Report on Bahrain 1895);⁵²

"England claims that Zubarah is under the control of Bahrain" (Ottoman Foreign Ministry Report on Zubarah 1897);⁵³

"England insists that the Ottoman State has no rights of sovereignty over [Zubarah]." (Ottoman Foreign Ministry Report 1897);⁵⁴

"England will not give up claims on Zubara" (Ottoman Council of Ministers, the Ottoman Cabinet, 1900);⁵⁵ and

"[I]t is vital to end disagreements (with Britain) by putting an end to fruitless efforts to impose sovereignty in the Katar peninsula." (Ottoman Council of Ministers, the Ottoman Cabinet, 1913).[56](#)

245. These observations were in fact endorsed by none other than Jasim bin Thani himself. In 1880, referring to Fuwairat and the northern part of the Qatar peninsula in a letter to the British Political Resident, he confirmed unambiguously:

"I have nothing to do with ... the northern countries, for they belong to the parts of Bahrain."[57](#)

246. Again, in 1893, Jasim bin Thani, seeking to leave Doha and thus escape from the Ottomans, appealed to the British Political Resident for protection and asked the Ruler of Bahrain:

"for permission to reside in the northern part of Qatar within the latter's jurisdiction."[58](#)

247. Contrary to the unfounded assertions by Qatar in its Memorial and Counter-Memorial,[59](#) the British public archives make it clear that neither Britain nor Bahrain recognised or consented to any Ottoman or Al-Thani claim to control over the entire Qatar peninsula.[60](#) Indeed, in its Memorial and Counter-Memorial, Bahrain has referred to evidence that Bahrain's rights in Zubarah were recognised by Britain during the Ottoman presence in Doha.[61](#) Bahrain's previous submissions contain no less than eight examples of Britain recognising and even promoting Bahrain's rights in the Zubarah region during the first decade of the twentieth century alone.[62](#)

248. The final and definitive pronouncement on the subject was an Ottoman government report on the Qatar peninsula dated 1917. It concluded that there was never a time when the Ottoman Empire ever exercised genuine control over the Qatar peninsula.[63](#)

SECTION 4.3 Qatar's claim that the allegiance of the Naim tribe is irrelevant to establishing Bahraini sovereignty over the Zubarah region is undermined by Qatar's own evidence

249. Qatar insists that Bahrain's explanations about the allegiance of the Naim and the Naim-led confederation, and its relevance to the issue of sovereignty over the Zubarah region, have no basis in fact or law.[64](#) Qatar's arguments will be dealt with in turn.

250. Qatar claims that the allegiance of the Naim towards the Ruler of Bahrain is not proved. However, the historical record of the connection of the Naim to the Al-Khalifa is clear and unambiguous. Section 4.1 above lists more than 20 examples from the public archives of the Bahraini-Naim *ikrimiyyah* during the nineteenth and twentieth centuries. So clear is the evidence from the public archives - both British and Ottoman - on the subject of the allegiance of the Naim tribe[65](#) that Qatar has been unable to avoid referring to and recognising this relationship.[66](#) The Qatar Counter-Memorial alone contains no less than nine express references to this relationship, based on evidence from the public archives during the nineteenth and twentieth centuries.[67](#) For example, Qatar unwittingly describes the traditional *ikrimiyyah* system of reciprocal

obligations of Arab rulers and allied tribes when it criticises the nature of the Al-Khalifa-Naim relationship:

"The so-called "allegiance" of the Naim was "purchased" and nourished with gifts over a long period, having regard to the same concern for the security of Bahrain. The Ruler of Bahrain was anxious that the Naim should not aid anyone in attacking Bahrain. Consistent with this, the British authorities also ... expressed the view that for the security of Bahrain it was necessary that Zubarah was either kept uninhabited or peopled only by those friendly to the Ruler of Bahrain, a view amply exploited by Bahrain."[68](#)

Thus, Qatar's own pleadings confirm Bahrain's arguments.

251. Qatar tries to limit the effect of the historical record by arguing that Bahrain maintained the relationship because the allegiance of the Naim prevented Zubarah from being used to attack the main island of Bahrain.[69](#) Conjecture about why the Rulers of Bahrain maintained the relationship is as irrelevant to the issue of sovereignty over the Zubarah region as conjecture about why Britain maintains sovereignty over the Channel Islands, or France over Guyana, would be with respect to issues of title to those territories.

252. Significantly, Qatar does not deny the relationship between Bahrain and the Naim, although it attempts to defy history in order to mischaracterise the relationship to suit its purposes. Nor can Qatar deny that for Bahrain the foundation, object and purpose of the allegiance was the effective control of the Zubarah region. For example, referring to an 1874 incident, Qatar itself observed:

"The Sheikh of Bahrain sought nevertheless to take advantage of the situation by seeking leave from the British Resident to reinforce the Naim at Zubarah, whom he considered to be in great danger. Although he was initially allowed by the resident to dispatch reinforcements 'as a purely defensive measure', the Government of India disapproved the Resident's action."[70](#)

253. And, again, Qatar quotes the following passage from a letter written by the Ruler of Bahrain in 1875:

"(Bahrain's) connection with Zobarah and the Naeem tribe, whom we have ordered to dwell there, was, for various reasons, an imperative obligation and necessity, as you are aware."[71](#)

254. The Qatar Counter-Memorial contains a section devoted entirely to an attempt to show that Bahrain maintained its relationship with the Naim because the latter controlled Zubarah and thereby enabled Bahrain to protect its island territories from attack.[72](#) The evidence from that part of its pleadings negates unequivocally the antithetical assertion made elsewhere in the Qatar Counter-Memorial that there is no evidence to support what Qatar characterises as Bahrain's "extravagant assertions" that the Naim ever exercised authority over Zubarah.[73](#)

255. At two points in its Counter-Memorial, Qatar attempts to minimise the Bahrain-Naim relationship by implying that the Naim were mercenaries acting for both

Bahrain and Qatar in protecting the Sheikhdoms.⁷⁴ However, Lorimer (the British reference work dated 1908 that is quoted at both points as authority for the proposition) appears merely to be describing, in ignorance of its proper appellation, the traditional system of *ikrimiyyah*.⁷⁵ The reference even fails to distinguish between the Naim of the north and west of the Qatar peninsula (allied to the Al-Khalifa) and the smaller group of Naim who moved to Wakra, near Doha, during the mid-nineteenth century, a confusion that Qatar has seen fit not to clarify.⁷⁶

256. Qatar also asserts that the Naim did not regularly occupy the Zubarah region.⁷⁷ To substantiate this claim, Qatar selects evidence of four occasions when the Naim were present in the Zubarah region and then, with nothing further, concludes that the Naim were present in Zubarah only on those four occasions.⁷⁸ Self-evidently, there is no logical basis for such a conclusion based on that evidence. While Bahrain is not in a position to demonstrate that the Naim were present in the Zubarah region at every moment throughout the preceding two centuries, given the nature of the territory and the historical records kept, the evidence provided by both Bahrain and Qatar is sufficient to establish a regular and consistent Naim presence in the Zubarah region at the very least for the eighty years preceding Qatar's 1937 armed attack. Despite Qatar's wishful speculation, there is no record of these Naim having emigrated from their tribal territory.

257. Finally, Qatar claims that the relationship between the Naim and the Rulers of Bahrain was only a personal one and cannot sustain a claim to sovereignty over territory.⁷⁹ To support its view, Qatar claims, once more without any substantiating evidence, that there was no aspect of the relationship that was linked to authority over territory or people. In response, Bahrain refers again to the list of evidence provided in Section 4.1 above that contradicts the bald assertion and arguments from Qatar's pleadings described above.

258. Bahrain reminds the Court of its submissions on the applicable law, included in Sections 4.2 and 4.4 of its Memorial. International law recognises that in certain territories that are possessed of exceptional circumstances such as low habitability, of which the Zubarah region is one, a ruler might establish and maintain title to his territory by manifestations of dominion or control through tribes who gave him their allegiance and looked to him for assistance.⁸⁰ The Rulers of Bahrain did this in relation to the Zubarah region through the Naim. The Al-Thani never did this.

259. In an attempt to preclude this argument, which is based on the award in the Dubai-Sharjah arbitration, Qatar tries to distinguish that arbitration from the case at hand in the following manner:

"The Court will of course appreciate that what is said in the *Dubai/Sharjah* arbitration about the allegiance of the Bani Qitab to the Ruler of Sharjah is wholly dependent upon the facts of that particular case. The region in which the Bani Qitab lived was largely desert and sparsely populated".⁸¹

260. Although it does not complete the thought, apparently Qatar would have the Court infer that the Zubarah region was not largely desert or sparsely inhabited and thus the reasoning in the award does not apply in the present case. However, Qatar has

not even attempted to disprove the plain fact that the Zubarah region, like most of the Qatar peninsula, is largely desert and was sparsely inhabited.

261. The Naim tribe and the other populations included in the Naim-led tribal confederation of the north of the Qatar peninsula lived a traditional life until well into the middle of the twentieth century, based on traditional tribal relationships, concepts of government and sovereignty. Even Qatar's own pleadings recognise the enduring primacy of tribal relationships on the political structures of Bahrain and, until recently, of Qatar. Under the heading "The internal context: existence of a tribal system", Qatar's Counter-Memorial observes that:

"until 1923 for Bahrain and after World War II for Qatar, the type of government was "traditional" (tribal), as opposed to the "modern" type." [82](#)

262. Thus, Bahrain's submissions and, ironically, significant parts of Qatar's submissions confirm the allegiance to Bahrain of the Naim tribe in the Zubarah region and its relevance to Bahrain's sovereignty there.

SECTION 4.4 Unlike Bahrain, Qatar has submitted no post-Ottoman evidence of Al-Thani activities in the Zubarah region until shortly before the 1937 attack

263. Qatar has failed to make any comment whatsoever specifically concerning the Zubarah region in relation to the critical years of 1896-1910.[83](#) This can only be because the evidence from the public record is so unambiguously and uniformly consistent with Bahrain's description of history. Qatar compounds this omission by making no reference to, or providing any evidence of, any specific Ottoman or Al-Thani activity in the Zubarah region from 1895 until March 1937, shortly before Qatar's armed attack.[84](#)

264. Thus, for the 42 year period between the Al-Thani attack of 1895 and the Al-Thani attack of 1937, Qatar has been unable to provide any evidence of Al-Thani or Ottoman activities in the Zubarah region.

265. It is understandable that Qatar has not offered any such genuine evidence: none exists. To the contrary, for example, as late as 7 June 1932 a report to the Foreign Secretary of India from the Political Resident discussing negotiations for emergency aviation landing rights in Al-Thani territory noted of the Al-Thani Ruler that:

"in return for these facilities he hope that the British Government will afford him their support in the event of these measures bringing upon him the hostility of his relations or people. I would reply thanking him for the permission granted and say that in return the British Government undertake to support his authority within the town of Dohah should his apprehensions prove true."[85](#)

266. Thus, Britain's view was that the authority of the Al-Thani was limited to Doha and its environs. As further confirmation that the Al-Thani did not exercise authority over the Zubarah region, British officials concluded in 1932 to 1933 that if they were unable to obtain emergency landing rights from the Al-Thani Sheikh in his territory around Doha then Britain, which already had

such permission from Bahrain within Bahrain's territory, would establish emergency landing facilities in Zubarah or Dohat Faisakh, some 30 miles to the south of Zubarah.⁸⁶ This last evidence highlights sharply the contrast between the evidence of Bahrain's exercise of authority and the utter lack of any corresponding evidence of Qatari activities in Zubarah during this period.

SECTION 4.5 Only Qatar's attack on the Zubarah region in 1937 displaced Bahrain

267. Bahrain's Memorial and Counter-Memorial have already described the details and effects of the Al-Thani attack on the Naim tribe and the Zubarah region in 1937.⁸⁷ It was only then that the Al-Thani physically displaced - but did not replace the authority of - the Al-Khalifa in the Zubarah region. This unlawful dispossession provides no basis for Qatar's subsequent claims to sovereignty over the Zubarah region.⁸⁸

268. Bahrain recalls and repeats its submission that the Court should repair the illegality that Qatar committed in 1937 by acknowledging Bahrain's title to the Zubarah region.

SECTION 4.6 Qatar attempts to ignore the 24 officially recorded protests made by Bahrain between 1937 and 1971 and its own threat to resuscitate Qatar's claim to the Hawar Islands if Bahrain persisted in its claim to sovereignty over the Zubarah region

269. In its Counter-Memorial, Qatar repeatedly claims that Bahrain's claim to sovereignty over the Zubarah region has somehow lapsed following Qatar's 1937 armed attack.⁸⁹ Bahrain's persistent efforts to have its grievance over the Zubarah region heard have been described in its Memorial⁹⁰ and Counter-Memorial.⁹¹ In Section 2.1 of the Bahrain Memorial, the consistent sovereign nature of Bahrain's claim to the Zubarah region has been detailed by reference to the historical record.

270. The following list summarises the 24 officially recorded protests and claims in relation to the Zubarah region made by Bahrain to Britain and Qatar from 1937 until the mid-1960s:

- The 6 July 1937 protest by Bahrain to Britain against the Al-Thani attack on Zubarah and the Naim-led tribal Confederation;⁹²
- Bahrain's embargo of Qatar from 1937 to 1944 in protest against Qatar's 1937 armed attack;⁹³
- Further protests and sovereignty claims by Bahrain to Britain during 1939;⁹⁴
- Bahrain's participation in the mediation of the Zubarah dispute by Britain during 1943 and 1944 following Bahrain's repeated protests and claims;⁹⁵
- Bahrain's signature of the ultimately unsuccessful 1944 Bahrain-Qatar Agreement on the Zubarah Region;⁹⁶

- Negotiations with Qatar from 1944 to 1946 regarding the implementation of the 1944 Agreement and the Zubarah dispute itself;[97](#)
- Bahrain's repeated sovereignty claims with respect to Zubarah to Britain and Qatar during 1944 and 1945;[98](#)
- Protests and sovereignty claims made by Bahrain in 1946, 1947, and 1948 in relation to Zubarah;[99](#)
- Bahrain's direct overtures to the British Government on the Zubarah issue through its London lawyer in 1948;[100](#)
- Bahrain's direct communications to the British Foreign Minister on the Zubarah issue in 1948;[101](#)
- Britain's effort to mediate another solution with Qatar from 1949 and 1950 prompted by Bahrain's repeated protests and claims;[102](#)
- The unsuccessful 1950 Bahrain-Qatar oral agreement on the status of Zubarah;[103](#)
- Bahrain's 1950 protest over Qatar's breach of the 1950 oral agreement;[104](#)
- Bahrain's insistence on further British involvement in the dispute in 1952;[105](#)
- Bahrain's March 1953 protest against Qatar's activities in Zubarah;[106](#)
- The June 1953 claim presented by Bahrain to the British Minister of State for the Foreign Office;[107](#)
- Bahrain's protest and assertion of sovereignty in relation to Zubarah in November 1953;[108](#)
- Bahrain's claim to Zubarah in January 1954;[109](#)
- Bahrain's participation in May 1954 in a meeting on the Zubarah issue between the Ruler of Bahrain and the British Political Resident;[110](#)
- Bahrain's participation in the unsuccessful British mediation of May 1954;[111](#)
- Bahrain's claim to Zubarah in May 1957;[112](#)
- Bahrain's continuous reference to and pressing of its claim to Zubarah from 1957 to 1960, as officially recognised by Britain;[113](#)
- Bahrain's continued claim against Zubarah in the context of the seabed discussions that started in 1960;[114](#) and
- Bahrain's claim to Zubarah in 1961.[115](#)

271. As Bahrain has previously described,¹¹⁶ the issue was joined with Britain and Qatar after the mid-1960s on a non-confrontational basis. This ample record of Bahrain's efforts to have its rights to the Zubarah region restored - rights of which it has never been deprived by any legal process - contrasts sharply with the mere six objections raised by Qatar in relation to the Hawar Islands Arbitral Award (three of them in the months immediately following the Award).¹¹⁷

272. Thus, Qatar has failed to undermine the facts of Bahrain's continuous exercise of sovereignty over the Zubarah region from the eighteenth century until 1937. Similarly, Qatar has not denied the fact that Bahrain's sovereignty over the Zubarah region was internationally recognised. Co-ordinately, Qatar has failed to produce any evidence that it manifested sovereignty over Zubarah during this period or that its pretensions were internationally recognised. Qatar invaded the Zubarah region in 1937 and displaced Bahraini authority by forcibly ejecting its Naim inhabitants because they remained loyal to the Ruler of Bahrain.¹¹⁸ Bahrain submits that the invasion was an act of aggression and was internationally unlawful and as such cannot be internationally recognised. Since 1937, Qatar has not manifested sovereignty in the Zubarah region. Hence the Zubarah region remains Bahrain's and Bahrain prays the Court to order its return.

PART II

THE MARITIME ISSUES

CHAPTER 5

BAHRAIN'S MARITIME BOUNDARY

INTRODUCTION

273. Bahrain's position with respect to the maritime delimitation has been set out in detail in Part II of its Memorial. In its Counter-Memorial, Bahrain reaffirmed its position without burdening the Court by repeating it in detail. Part II of Bahrain's Counter-Memorial was dedicated to a critical analysis of the position taken by Qatar in its own Memorial with respect to the maritime delimitation. Qatar, for its part, set out its position with respect to the maritime delimitation in Part IV of its Memorial and Part IV of its Counter-Memorial, where it repeated its position, with certain modifications which will be examined below, and undertook to criticise the position taken by Bahrain in its Memorial.

274. Qatar's recitation of its arguments on the British letters of 1947 to the Rulers of Bahrain and Qatar raises no significant new points. In its Memorial, Qatar's maritime boundary arguments rested principally on the 1947 British letters. Indeed, its entire argument with respect to the area that it defined as the southern sector¹¹⁹ (Chapters X and XI, pages 215 to 264) turns on the 1947 letters. In its Counter-Memorial, Bahrain demonstrated that the 1947 letters were no more than a statement of British policy. Indeed, even Qatar has acknowledged that the 1947 letters are not binding *vis-à-vis* the Parties to this case and has tried to transform the letters into an "important factor"¹²⁰ a "special circumstance"¹²¹ and a "relevant circumstance".¹²² Qatar's objective in so doing is to circumvent the fact that the British letters did not and do not bind the

Parties - and yet still use those parts of the putative British line that it finds congenial to its case while conveniently ignoring those parts that it finds inimical. In its own Counter-Memorial, Bahrain demonstrated the impossible contradictions into which Qatar's argument led it and showed that a letter by a third State is not a "special" or "relevant" circumstance, both of which are terms of art in international law.

275. Qatar's argument in its Counter-Memorial on the southern sector is based on a "mainland-to-mainland" theory. The predicate of Qatar's actual delimitation proposal in its Counter-Memorial is, therefore, the question of the legal validity of this theory. Bahrain will show that, even assuming that, *arguendo*, the mainland-to-mainland theory is valid - which it is not - it does not apply to the geography of the present case. This part of Bahrain's Reply will focus on the mainland-to-mainland theory. When that has been exposed as fallacious, the delimitation exercise purporting to base itself on that theory must also fall.[123](#)

SECTION 5.1 The geographical archipelagic character of Bahrain is incontrovertible

276. The essential and inescapable geographical fact of this case is that an archipelagic State faces a mainland State. That fact has many important implications. In its Counter-Memorial, Qatar acknowledges that Bahrain is a *de facto* archipelago,[124](#) but insists that the Hawar Islands are not part of the archipelago. Wholly apart from their physical and socio-political integration within the archipelago, Bahrain's title to the Hawar Islands is based on long-term manifestation of sovereignty, consistent with the ecological potentialities of the islands, amply sufficient to establish title *jure gentium*. That fact was confirmed by the 1939 Arbitral Award, which constitutes either a *res judicata* as between the Parties or a binding administrative and political decision.

277. Thus, Qatar's contention that "from a geographical point of view . . . it is not possible to include the Hawar Islands in the Bahrain archipelago"[125](#) is not pertinent. It makes no difference whether the Hawar Islands pertain to Bahrain because they are part of the Bahrain archipelago (in fact, they are) or that the Hawar Islands are conceived as another archipelagic system that pertains to Bahrain on other legal grounds. The Hawar Islands are still part of an archipelagic State, for an archipelagic State is "a State constituted wholly by one or more archipelagos and may include other islands,"[126](#) (Emphasis added.) Thus, there can be no dispute over the archipelagic character of the State of Bahrain. Wholly apart from Part IV of the 1982 Law of the Sea Convention (hereinafter "1982 Convention"), the geographical or *de facto* character of Bahrain cannot be ignored in a maritime boundary delimitation. Wholly apart from Part IV of that Convention, in the case at hand, a State that is geographically archipelagic confronts a mainland State.

A. Bahrain qualifies for archipelagic status under the Law of the Sea Convention

278. In its Memorial, Bahrain has shown why it qualifies for archipelagic status under Part IV of the 1982 Convention, in that it fulfils all the criteria prescribed by the Convention. In its Counter-Memorial, Qatar simply asserts that:

"in Qatar's view Bahrain does not meet the requirements set out in the 1982 Convention on the Law of the Sea, and is thus precluded from validly claiming archipelagic baselines."[127](#)

279. Qatar does not provide any basis whatsoever for its assertion that Bahrain does not meet the requirements of the 1982 Convention. Legal argument cannot be based on *ipse dixit*. Bahrain reaffirms, for the legal reasons already stated in its Memorial,[128](#) that it meets all the geographical requirements of Part IV that qualify it as an archipelagic State within the meaning of the 1982 Convention.

B. Bahrain is not precluded for any reasons *ratione temporis* from availing itself of the options available to archipelagic States under the Law of the Sea Convention

280. With respect to the separate question of whether Bahrain may avail itself of the options available to States qualifying under Article 46 of the 1982 Convention and exercise such of the baseline privileges of Article 47 that are appropriate to its situation and its wishes, Qatar implies[129](#) that Bahrain is somehow now estopped from asserting the options under Part IV of the Convention and that, in any case, Part IV is not part of "present-day customary international law."[130](#) Once again, Qatar vouchsafes no authority for either proposition. Both are unfounded. Neither the language of Part IV of the 1982 Convention nor anything in its legislative history indicates any time limit whatsoever with respect to exercising the options under Part IV. It could hardly be otherwise, given that many States must carefully consider all of the implications of exercising the option before making their decision. States have exercised the option in the course of negotiating bilateral maritime boundaries, without it being protested. In fact, Bahrain explained precisely why the matter of the declaration of its archipelagic status had to be deferred.[131](#)

C. Archipelagic status is now customary international law and applies *erga omnes*

281. Nor is there any authority for Qatar's assertion that Part IV is not expressive of customary international law, such that Qatar, as a non-party to the 1982 Convention, would not be bound to accept the archipelagic status of Bahrain. Since the conclusion of the Montego Bay Convention, it has been accepted that, with the arguable exception of the original Part XI, the entirety of the Convention is customary, a matter of international consensus to which Qatar itself hitherto joined. An alternative conclusion with respect to Part IV of the 1982 Convention is scarcely conceivable. International law abhors "manifestly absurd or unreasonable interpretations."[132](#) The very chaos that would ensue if an archipelagic State, party to the 1982 Convention, were not archipelagic *erga omnes* itself compels the conclusion that it is part of customary international law.

D. Because the essential purpose of archipelagic status under the modern law of the sea is for purposes of maritime boundary delimitation, the contention that the status is to be ignored in delimitation exercises is absurd on its own terms and wholly without foundation

282. Having acknowledged that Bahrain is an archipelago, Qatar's Counter-Memorial nonetheless strains to deprive Bahrain of the legal consequences of its geographical

nature in two ways. First, Qatar purports to establish that archipelagos are not archipelagos in maritime boundary delimitation. Second, Qatar invents a purportedly imperative mainland-to-mainland theory under which one of the *furthermost* islands of the archipelago may be selected at the discretion of the other party and used as the "coast", while all the other insular components of the archipelagic State are ignored. The mainland-to-mainland fiction is taken up in the following section. Qatar's assertion that archipelagic baselines have been ignored in negotiated settlements between archipelagic and mainland States is also discussed below.

E. Qatar cannot adduce a single post-1982 example, let alone a trend in State practice, in which archipelagic boundaries have been ignored in bilaterally negotiated maritime boundary agreements

283. Unlike reasoned judgments, which must provide an explicit *ratio decidendi* for their decision, negotiated settlements do not. Thus, it is difficult to seek to infer a practice, let alone a transcending principle of law, from the complex packages of swaps, deals and compromises that constitute each agreement; the smaller the number of agreements, the more difficult it is to make the inference. It is especially difficult in the present case because the principle that Qatar seeks to establish is *contra legem*: under international law, archipelagic status is centrally a matter of maritime boundaries. To argue, after 1982, that archipelagos are not archipelagos for boundary purposes is a contradiction in terms. All of Part IV of the 1982 Convention is about maritime boundaries and their consequences.

284. Hence, the complete failure of Qatar to sustain this part of its thesis comes as no surprise. Six of the seven examples that Qatar submits as evidence of State practice were negotiated *before* the conclusion, let alone entry into force, of the 1982 Convention. It is not possible that they could be probative of the effects of archipelagic baselines before archipelagic baselines had become law. Given the innovation of Part IV of the 1982 Convention, not a single one of the six examples is on point.

285. The only example submitted by Qatar which was negotiated *after* the 1982 Convention (though before its entry into force) actually takes account of archipelagic baselines in a significant way. The Fiji-French agreement of 1983, far from disregarding archipelagic baselines, adjusted the boundary in one of the three segments on account of the archipelagic baseline,¹³³ a fact which Qatar itself acknowledges.

286. Thus, Qatar's effort to "demonstrate the existence of a trend according to which, in a maritime delimitation involving an archipelagic State and another 'mainland' coastal State, no effect is given to archipelagic baselines in the drawing of the boundary line",¹³⁴ is neither logical, plausible, nor based on authority. It must fail.

SECTION 5.2 The mainland-to-mainland fiction

287. Despite its acknowledgement of the archipelagic character of Bahrain, Qatar also strains to persuade the Court that the "coasts" to be used in fashioning a delimitation in the southern sector should be the coast of the peninsula which (with the exception of

the Zubarah region), Qatar lawfully occupies, and the largest (and not coincidentally, one of the furthest) of the islands that comprise the Bahrain archipelago.

288. It is not easy, on its face, to argue that an archipelagic State, whose territory is made up of all of its insular components, must be treated as a non-archipelagic State for purposes of maritime boundary delimitation. Qatar tries to accomplish this feat by (i) simply revising the facts that it has (and must) acknowledged and (ii) inventing a legal principle. In Qatar's revisionist version, Bahrain is not an archipelagic system, but now a single island State off whose shores there are "countless maritime features";¹³⁵ all of which the Court is urged to ignore by consigning them to a juridical limbo and to which the Court is urged to apply an all-purpose mainland-to-mainland delimitation principle, using a Bahraini coast that Qatar selects for its own convenience. According to Qatar, Bahrain's insular components are to be ignored, without regard to geographical reality, prior title, demonstrations of *effectivités*, or *res judicata*. Bahrain will consider each of the postulations of this curious argument *seriatim*.

A. Qatar's attempt to "dearchipelagise" Bahrain is inconsistent with the facts and with its own admissions

289. Bahrain, as was explained in the Memorial, is not a single island State, but is an archipelago: "a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such."¹³⁶

290. In rational discourse, one cannot speak of the archipelagic reality of the State and, at the same time, insist on ignoring it. Archipelagos are recognised by international law and their legal consequences simply cannot be denied. Yet Qatar tries to deny them by presenting an artificial image of Bahrain as a single island rather than the integrated network of islands, which is the essential nature of an archipelago, that it is. The absurdity of the position may be grasped if one were to insist on conceiving of Indonesia, for purposes of maritime boundary delimitation, as Java or Sumatra and nothing else, or the Philippines as Luzon and nothing else.

B. Qatar's purported mainland-to-mainland principle has no basis in law and, by its own terms, does not apply to the geographical situation that exists

291. Having conceived a caricature of the State of Bahrain, Qatar's second step is to invent an all purpose mainland-to-mainland delimitation line. Qatar tries to accomplish this by a nominalistic and a purportedly geographical argument. In its nominalistic argument, Qatar quotes Professor Weil to the effect that coastal geography "is the leading factor" in maritime delimitation. Bahrain does not dispute this. The question in the present case, however, is what constitutes the "coast". Qatar says it is always the "actual coast",¹³⁷ by which it means not at all Bahrain's "actual coast" but only the coast that Qatar wishes to select, in this case of the second-furthest island of the Bahrain archipelago.

292. Qatar's only purported authority for this proposition, which is not even on point, is a definition by the International Hydrographic Organisation, which speaks of the

"sea shore". The question, however, is what the term "coast" means in *international law*. Since 1951, when the International Court held in the Anglo-Norwegian Fisheries case, with respect to Norway, that "what really constitutes the Norwegian coast line, is the outer line of the "*skjærgaard*"",¹³⁸ determination of the international *legal* concept of the coast has always been sensitive to case and context, as well as informed by history and by patterns of human usage. Wholly aside from these developments that have been at the very heart of the evolution of the modern law of the sea, the hydrographers' definition, were it governing, would prevent a tribunal from even using a closing line as part of the coast for maritime boundary delimitation. Qatar's nominalistic argument thus fails.

293. Nor is Qatar's geographical argument any more successful. In this argument, Qatar takes a relatively unremarkable proposition and tries to attach to it one that contradicts it entirely. In its Counter-Memorial, Qatar says that there are "probably two situations where the delimitation between two opposite coasts should *prima facie* be a median line calculated from mainland-to-mainland".¹³⁹ The first situation is when the maritime area to be delimited does not include any island or any other similar feature, a situation which Qatar says "speaks for itself and is self-explanatory". This tautologous

statement is unexceptionable, precisely because it is a tautology: where the two opposite coasts are, in fact, mainlands and where no insular formations occur between them, the median line is *prima facie* the boundary and is, moreover, the first provisional step in delimitation. The second situation that Qatar tries to marry to this "self-explanatory" proposition is the exact opposite: when the maritime area between two opposite States is "dotted with a great number of small islands, islets, rocks, reefs and shoals".¹⁴⁰

C. Qatar conflates "coastal opposition" with mainland opposition, by assuming that they are the same

294. Qatar's confusion here, intentional or otherwise, is a conflation of two quite separate propositions. The first is the unremarkable proposition that, in circumstances of *coastal opposition*, a preliminary step in maritime boundary delimitation is the determination of a *provisional* median line, every point of which is equidistant from the opposite coasts. The second is the fallacious proposition that coastal opposition always imports two opposite mainlands and that if one does not exist, the law seeks a facsimile. That second proposition ignores all the developments since Anglo-Norwegian Fisheries, the 1958 Convention on the Law of the Sea and the 1982 Convention.

D. The geographical configuration in the southern sector is one of coastal opposition, but not a "mainland-to-mainland" confrontation

295. There are a number of glaring problems with Qatar's submission. First, and most obvious, this case does not present two opposite mainlands, but rather a mainland and an archipelagic system. Thus, Qatar's assertion that "[i]n no case has a small islet been given the same effect as the mainland coast in drawing a median line vis-à-vis an opposite mainland coast",¹⁴¹ is irrelevant when one is not dealing with opposite mainlands, but rather with a State manifesting an archipelagic formation confronting a

land-based State and the question is: what is, as a legal and factual matter, the international legal coast of the archipelagic State?

E. This case does not require decision by the Court with respect to "countless" islands, islets and rocks

296. Second, and just as obvious, this case does not present to the Court a requirement to make decisions about "countless maritime features"¹⁴² (all of which, one may add, pertain to Bahrain). While Bahrain is, like many other archipelagos, "dotted with a great number of small islands, islets, rocks, reefs and shoals",¹⁴³ the principal smaller insular formations that require consideration for purposes of the maritime boundary in the present case are Fasht al Azm, Fasht ad Dibal and Qit'at Jaradah; the only questions that fall to be decided are whether they are islands, parts of islands or low-tide elevations, and to whom they pertain.

297. Thus, even were Qatar's alleged mainland-to-mainland principle the norm of international law, which it is not, it could not, by the terms Qatar itself specifies, apply to the geographical configuration presented in this case. Indeed, Qatar immediately concedes, by necessary implication, that its second situation is not the one which obtains in the area between Bahrain and Qatar. For, Qatar continues:

"[t]he second one [geographical situation] renders it impossible to rely on countless maritime features for the drawing of a boundary line which would satisfy both the requirement of simplicity and the aim of arriving at an equitable result."¹⁴⁴

It is transparent that Qatar's suggestion that the geography of the Gulf of Bahrain other than the main island of Bahrain should be ignored is based on its own recognition of its inability, in contrast to Bahrain's, to establish that the "countless maritime features" belong to it.

F. Qatar misstates relevant international law in insisting that the self-serving concept of "simplicity" that it has invented takes priority over the securing of an "equitable result"

298. Bahrain would draw the Court's attention to the curiously inverted priorities in the preceding quotation. Qatar's proposed conception of "simplicity", a term to which Qatar assigns its own preferred meaning, has become a "requirement" in this formula, while "arriving at an equitable result" has been reduced to a mere "aim". Bahrain has no objection to a simplifying decision and, indeed, the method developed by the International Court since 1969, *i.e.*, emphasising the securing of an equitable result by reference to a consideration of all relevant factors, has gone a long way toward simplifying its decision calculus. But the essential position of the International Court has been, since the North Sea Continental Shelf Cases, that:

"Delimitation is to be effected by agreement in accordance with equitable principles and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the Continental Shelf that constitute a natural prolongation of its land territory into and under

the sea, without encroachment on the natural prolongation of the land territory of the other."[145](#)

299. Article 74 of the 1982 Convention, which the Parties accept as expressive of customary international law, provides in paragraph 1:

"The delimitation of the Exclusive Economic Zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

300. Article 83, paragraph 1 of the 1982 Convention provides

"the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

301. It is notable that, in these legal formulae, the requirement is to secure an equitable result. The mainland-to-mainland delimitation, which Qatar has presented as an imperative principle, is in fact only a technique which is used when it will achieve an equitable result. Moreover, in the circumstances in which it is appropriate to use it, this technique is used *after* determinations of territorial sovereignty have been made, *i.e.*, after the coast has been authoritatively determined.

G. Qatar's purported mainland-to-mainland principle reverses the mandatory sequence of first determining territorial sovereignty and only then effecting maritime boundary delimitations

302. As elaborated in its Bahrain's Memorial and Counter-Memorial, the essential progression in maritime boundary delimitation is to identify sovereignty over the land and, on the basis of those findings, to effect an appropriate maritime boundary delimitation. This is so for the basic constitutive principle, the virtual *grundnorm*, expressed as early as the Anglo-Norwegian Fisheries case, is that the land dominates the sea: "It is the land which confers upon the coastal State a right to the waters off its coasts." [146](#)

303. In its pleadings, Qatar reverses this necessary relationship. Qatar's proposal is a transparent effort to elevate one of a number of *techniques* available to achieve an equitable result, to a *principle* that pre-empts the finding of territorial sovereignty. For Qatar, islands and other insular formations are "insignificant" and "distorting" rather than important parts of the territorial base and socio-economic life of the archipelagic state. As noted above, Qatar's recognition of its inability to establish its sovereignty over the insular features of the Gulf of Bahrain, and Bahrain's corresponding ability to do so, presumably influences its wish for the Court to ignore those features. For an archipelagic state such as Bahrain, whose people live in an integral relationship with the sea, islands and other insular formations are not insignificant and distorting, but are important for many reasons - including survival itself. For the people of an archipelagic state, each island and insular formation will have a name and probably an historic narrative. Qatar's rather contemptuous characterisation of these same islands

as "insignificant" and "distorting" tellingly reveals its land-based perspective and takes no account of the actual and potential socio-economic use of these features by Bahrain.¹⁴⁷ From that perspective, Qatar asserts that "no account is to be taken of tiny islets, rocks and shoals scattered in a relatively restricted area of shallow sea."¹⁴⁸ In short, as Qatar would have it, archipelagos are not to be treated as archipelagos.

H. Qatar's assertion that security considerations require its mainland-to-mainland principle does not arise under the facts of the present case

304. The ostensible justification for Qatar's radical inversion of logical and mandatory normative sequence and its elevation of a technique to the level of a primary principle is "security". Qatar asserts rather portentously in its Counter-Memorial that "[t]he basic reason for a mainland-to-mainland delimitation lies in the security interests of the two States concerned."¹⁴⁹

305. Bahrain would not contest the fact that security is one of a range of factors to be taken into account in effecting an equitable result, but in no case has a court or tribunal "reshaped" geography for security.

SECTION 5.3 The determination of sovereignty over islands and low-tide elevations must precede the maritime boundary delimitation¹⁵⁰

306. Because the land dominates the sea, one can hardly determine maritime boundaries until the territorial sovereignty over any formations that are entitled to and/or generate maritime zones has first been determined. The imperative priority of this intellectual decision task is clear. The specific issue in contention here is not, one must emphasise, "countless islands, islets and rocks," but essentially the status and sovereignty of three formations: Fasht al Azm, Fasht ad Dibal and Qit'at Jaradah.

307. In its Memorial¹⁵¹ and its Counter-Memorial,¹⁵² Bahrain demonstrated that in addition to Al-Awal (the largest island), Sitrah, Muharraq, Rabad al Gharbiyah, Rabad ash Sharkiyah, Al Mu'tarid, Jazirat Mashtan and Umm Jalid incontestably qualify as islands in accordance with Article 121(1) of the 1982 Law of the Sea Convention. Nothing in Qatar's submissions has challenged that. Rather, Qatar has only tried to depreciate their juridical value with its putative mainland-to-mainland theory, the specious nature of which has been demonstrated above.

308. In its Counter-Memorial, Qatar indicates, as a point of disagreement, the status of Fasht ad Dibal and Qit'at Jaradah. Qatar insists that they are low-tide elevations and that their status is therefore governed by the Law of the Sea. Bahrain, for reasons elaborated in both its Memorial and Counter-Memorial, contests Qatar's submission as a matter of law and as a matter of fact. As a matter of law, Bahrain confirms its position with respect to low-tide elevations. Recent developments that provide additional authority for that position are set out elsewhere in this Reply.¹⁵³ With respect to the facts, Bahrain confirms its submission that Qit'at Jaradah qualifies as an island under Article 121(1) of the Law of the Sea Convention. This is an objective finding and is not a question of appreciation or appraisal.

A. Fasht al Azm is part of Sitrah Island, whose drying line incorporates the entire length of Fasht al Azm

309. Qatar asserts that Fasht al Azm is a separate feature from Sitrah Island.¹⁵⁴ The basis for its conclusion is Qatar's claim that Sitrah Island is separated from Fasht al Azm by a natural channel just to the east of Sitrah Island. Qatar suggests that this channel was filled in during land reclamation conducted in 1982 during the building of the petroleum plant now located on the site. Qatar therefore proposes that the relevant basepoint of Sitrah Island for delimitation purposes does not include the low water line of Fasht al Azm.

310. Qatar's claim is without factual foundation. It is based on conjecture rather than fact and is contradicted by charts and photographs which clearly illustrate that, prior to the land reclamation process of 1982, there was no channel separating Sitrah Island from the Fasht. Fasht al Azm is a natural extension of Sitrah Island, which incorporates its low water line.

311. Qatar referred to Bahrain Chart 1502 (published in 1984) and British Chart 3790 (new edition published 1993), claiming that it is clear from these charts, that there must have been a natural channel where the petrochemical plant now stands.¹⁵⁵ However, both charts were produced after the construction of the petrochemical plant. They do not show the area underneath the plant. They show a channel that was dredged to the east

of the plant in 1982, but they do not indicate that there was ever a natural channel, as suggested by Qatar. Qatar's claim is therefore not supported by these charts. Qatar has thus not produced any evidence illustrating such a channel. Qatar's desire for such a channel to have existed does not mean that there "must" have been one.

312. Qatar also referred to a document entitled "Technical Circular No. 12. Dredging and land reclamation activities along Bahrain coasts",¹⁵⁶ which Qatar states:

"provides evidence of a natural navigable channel, traditionally used by Bahraini fishermen and separating Fasht al Azm from Sitrah and, as a corollary, of the need to dredge an alternative fishermen's channel."¹⁵⁷

The reference taken from this document, however, is simply referring to an inlet that ran half-way across the Fasht before terminating abruptly, as shown on the photographs reproduced on the following pages. The document does not support Qatar's assertion: it does not state that the channel ran all the way through the Fasht and it gives no indication that it was navigable. Qatar's assertion is no more than hopeful conjecture, without any factual basis.

313. Clearly contradicting Qatar's fanciful conjecture are aerial photographs from the 1950s, 1960s, 1970s and 1980s, reproduced on the pages that follow. These photographs clearly show that no channel ever separated the Fasht from Sitrah Island. Rather, they show the existence of an inlet in the southern side of the Fasht which abruptly ends half-way across the Fasht. The natural connection of the Fasht to Sitrah Island is clearly illustrated. In addition, fish traps are clearly visible at the terminus of the inlet, which further proves that the inlet did not cut right through the Fasht, as Qatar hypothesises. Qatar's speculation would place these fish traps in the middle of a maritime thoroughfare, thus hindering any vessels in their passage. This is plainly not the case. The most recent photograph, taken in 1983, post-dates the construction of the

petrochemical plant, which is clearly shown on the north side of the Fasht to the north of the inlet. The artificial channel, dredged in 1982, is also clearly visible on the 1983 photograph, at a site where no channel existed previously.

[PHOTO 1 : AERIAL PHOTOGRAPH OF SITRAH ISLAND/FASHT AL AZM 1955](#)
(119 KB)

[PHOTO 2 : AERIAL PHOTOGRAPH OF SITRAH ISLAND/FASHT AL AZM 1958](#)
(104 KB)

[PHOTO 3 : AERIAL PHOTOGRAPH OF SITRAH ISLAND/FASHT AL AZM 1966](#)
(97 KB)

[PHOTO 4 : AERIAL PHOTOGRAPH OF SITRAH ISLAND/FASHT AL AZM 1977](#)
(92 KB)

[PHOTO 5 : AERIAL PHOTOGRAPH OF SITRAH ISLAND/FASHT AL AZM 1980](#)
(112 KB)

[PHOTO 6 : AERIAL PHOTOGRAPH OF SITRAH ISLAND/FASHT AL AZM 1983](#)
(107 KB)

314. These photographs are consistent with charts and survey data of the area dating back to the last century. Commander Chris Carleton, Head of the Law of the Sea Department at the United Kingdom Hydrographic Office, conducted a review of all relevant historical data, including Admiralty charts and available satellite imagery, in order to illustrate the physical continuity of Fasht al Azm and Sitrah Island.¹⁵⁸ He concluded as follows:

"An extensive search of historical records dating back to the first British Admiralty Chart published in 1862 and all associated reports and descriptions of this part of the coast of the Gulf of Arabia reveals no mention of a natural passage separating Sitrah Island from Fasht al Azm (although there is repeated mention of a natural passage on the other side of Sitrah Island separating Sitrah Island from Al Awal, the largest island of the archipelago).

The charted channel that presently exists through the reef is very clearly a man-made feature, dredged in 1982, that does not alter the status of the Fasht as a natural prolongation of Sitrah Island.

Modern land reclamation work in the region of Sitrah Harbour and the petrochemical plant, rather than creating a new connection of the Fasht to Sitrah, has in fact reduced the connection of Fasht al Azm to Sitrah in this area. Historic charts show a much more extensive continuity of land connecting the two features prior to the modern dredging and land reclamation activities."¹⁵⁹

315. Commander Carleton also conducted a review of available infra-red satellite imagery in order to establish the extent of Fasht al Azm's drying line. He concluded as follows:

"Satellite imagery shows the natural connection of Sitrah to Fasht al Azm and clearly illustrates the extent of the Fasht's drying line. Broken only by the dredged channel, it stretches from Sitrah Island to the eastern extremity of the Fasht..."

My conclusion, therefore, is that Fasht al Azm is a natural extension of Sitrah Island, drying (with the exception of the channel dredged in 1982) along the entire length of its northern edge. The entire area of Fasht al Azm is thus the coast of Sitrah Island and, as such, may be used as a basepoint or straight baseline point for the calculation of seaward maritime zones." [160](#)

B. The future of Fasht al Azm

316. Fasht al Azm is an integral part of Sitrah Island. This geographical and geological fact affords Bahrain sovereignty over the Fasht as far as its eastern extremity. Fasht al Azm also has a significant socio-economic role for Bahrain's future.

317. Qatar denies that Fasht al Azm is an integral part of Sitrah Island and proposes a maritime boundary which would cut across it. Were Qatar's proposal to be adopted, this would result in a maritime boundary between Bahrain and Qatar that cuts across land territory. From Bahrain's side, it is possible to walk to the proposed maritime boundary between the two states without ever crossing water.

318. As stated above, Bahrain is the fifth most densely populated State in the world and its population is growing to the extent that it is expected to double over the next 22 years. [161](#) To cope with this rapid increase in population and the increase in infrastructure which must necessarily accompany it, Bahrain has for many years now conducted major land-reclamation schemes throughout its territory and built industrial, housing, hotel and leisure facilities on the reclaimed land. Fasht al Azm is part of Bahrain's land-reclamation programme. Feasibility studies have been taking place there since the 1980s. Attached to this Reply at Annex 4 is the Executive Summary of one such study, published in June 1987, entitled "Fasht Al Adhm, Urban Development Study". At page 7 of that Report, under the heading "Development of Fasht Al-Adhm" and subheading "The Capacity of Fasht Al-Adhm", is written:

"The reclamation of Fasht Al Adhm will provide between 9,000 and 12,000 hectares of land which could accommodate 320,000 people. This could satisfy the Ministry [Housing]'s housing programmes for over 30 years..."

Also, it can accommodate 128,000 jobs by the year 2031. This is 28 per cent of Bahrain's total employment at this time."

319. Under the subheading "Other benefits of developing Fasht Al Adhm" it is noted that:

- Administrative advantages would be gained, and economies of scale achieved, by concentrating housing development in one major location, rather than in several dispersed locations on the mainland;
- Infrastructure can be provided economically because it is concentrated in one location;
- Capital savings are available, with the costs of reclaimed land on Fasht estimated to be BD7 per m² compared with acquisition prices of BD30 per m² for land in the vicinity of Manama;
- A new focus of urbanisation of high environmental quality could be formed, providing opportunities for private sector development associated with waterfront sites, which may not be a feature of available mainland locations;
- Significant economic activity can be generated by manufacturing industry, fisheries, education, tourism and recreation. Also port facilities and shipping channels can be provided; and
- International transport links can be improved by allowing a causeway between Fasht Al-Adhm and Qatar."

320. This report clearly illustrates that Fasht al Azm, rather than being an area of little socio-economic value to Bahrain, could in the early twenty first century become a major focus for Bahrain's population and economy.

321. In stark contrast to the role it may play in Bahrain's future, Fasht al Azm is of no socio-economic relevance to Qatar at all. The maritime spaces of the Gulf of Bahrain separate Fasht al Azm from the west coast of the Qatar peninsula. Thus, even were Qatar to adopt a policy of land reclamation, Fasht al Azm could play no part in it. In addition, Qatar's west coast is, as has amply been demonstrated by Bahrain in its pleadings,¹⁶² unpopulated desert. Qatar remains as focused to the east today as historically it has always been.

322. Thus, Fasht al Azm is an area of significance to Bahrain. It will play no role of any significance in the future of Qatar.

C. Qit'at Jaradah is an island and pertains to Bahrain

323. With respect to Fasht al Azm, Fasht ad Dibal and Qit'at Jaradah, there are two questions to be addressed: their status under international law and the identity of their sovereign. Bahrain's submission with respect to the first question in relation to Qit'at Jaradah has a factual and legal component.

324. In its Counter-Memorial, Qatar complains that "[t]he rules asserted by Bahrain are taken from the law on acquisition of *land* territories."¹⁶³ (Emphasis in the original.) Bahrain does this, of course, because both logically and legally the first issue to be addressed is land territories. Qatar then asserts that "[t]hese rules do not in principle apply to maritime features other than islands (and in particular do not apply to low-tide elevations)."¹⁶⁴ Thus the Parties agree that these rules do apply to islands

and that an island is defined authoritatively by Article 121 of the Law of the Sea Convention. Qit'at Jaradah is an island, as is described more fully in the succeeding Sub-section of this Reply, and thus the rules with respect to acquisition of territory must apply.

D. The historical record and independent scientific studies confirm that Qit'at Jaradah is a naturally formed island despite Qatar's attempt to eradicate it in the aftermath of Qatar's 1986 attack

325. Bahrain's pleadings demonstrate that the historical record confirms Qit'at Jaradah's status as an island. Bahrain's evidence includes:

- a 14 August 1937 letter from Charles Belgrave to the British Political Agent referring to Qit'at Jaradah as "an island";[165](#) and

- a detailed report from the Political Resident to the India Office dated 18 January 1947, describing the Political Agent's findings that Qit'at Jaradah was above the water level and bore the appearance of having not recently been submerged.[166](#)

326. The conclusion that Qit'at Jaradah is permanently dry at all tide levels and thus an island is confirmed by the evidence submitted by Qatar in its Memorial and Counter-Memorial, including:[167](#)

- a 26 March 1940 communication from the British Political Agent to the British Political Resident;[168](#)

- a 20 March 1956 report from the British Political Resident to the Foreign Office;[169](#)

- a 21 April 1956 minute from Ewart-Biggs of the Eastern Department, Foreign Office;[170](#)

- a report by the Commander of H. M. S. Loch Fada dated 14 April 1959;[171](#)

- a 20 August 1959 letter from the British Political Resident to the Arabian Department of the Foreign Office;[172](#) and

- a 1959 opinion of a British Hydrographic Officer[173](#) that Qit'at Jaradah "might turn back into a low-tide elevation". Two points can be drawn from this statement: first, that Qit'at Jaradah's status as an island was explicitly recognised by Britain; secondly, that any question that Qit'at Jaradah might not remain an island in the future was mere conjecture.

327. Qatar acknowledges its military intervention on Qit'at Jaradah in 1986,[174](#) as a result of which bulldozers removed that part of Qit'at Jaradah which was exposed at high tide.[175](#) Despite this destruction, the bulldozing could not halt the process of natural accretion by which Qit'at Jaradah maintained its character as an island. Over the course of the next few years, the localised process of natural accretion once more made Qit'at Jaradah an island; today it stands above water at all states of tide.

328. Professor Lewis Alexander, who observed Qit'at Jaradah at High Water Spring Tide at intervals throughout 1998 confirms that Qit'at Jaradah is once more an island.[176](#)

His report concludes:

"Article 121(1) of the 1982 [Law of the Sea] Convention stipulates three criteria for a feature to qualify as an island. The first is that it must be a naturally formed area of land. Jaradah fits this description; it is a cay, i.e. a sandbank atop a coral reef. The second criteria is that it is surrounded by water. My observations confirm that Jaradah fits this description also. The third and final criteria is that the feature is above water at high tide. My observations confirm that the highest areas of Qit'at Jaradah are above water at monthly high water springs. Jaradah thus fits the description of an island in Article 121(1)."[177](#)

329. Confirming this conclusion, a survey of Qit'at Jaradah and its environs was conducted by the Bahrain Survey Directorate under the personal supervision and in the physical presence of Professor Alexander.[178](#) The survey report concludes:

"It should be noted that the maximum height observed on Jaradah during the survey is 1.8 metres and that this is 0.4 metres above the HAT (Highest Astronomical Tide) calculated from tidal observations for the area."[179](#)

330. The most up-to-date survey data is therefore consistent with the historical record: Qit'at Jaradah is an island.

E. Qatar's submission that Qit'at Jaradah is not an island is unsupported

331. Qatar suggests that Qit'at Jaradah is not an island but rather a low-tide elevation. However, in making this claim, Qatar admits to "some hesitation" and goes no further than stating that Qit'at Jaradah "may not be dry at all states of the tide along its southern edge". (Emphasis added.)[180](#) Qatar's speculation that Qit'at Jaradah is a low-tide elevation is thus tentative at best. In any event, it is unsupported.

332. Qatar has produced nothing that successfully challenges the evidence that Qit'at Jaradah is an island. The evidence that Qatar does present is based on equivocal information that clearly contradicts the consistent evidence from the 1940s onwards, much of it included indirectly in Qatar's own Annexes,[181](#) that confirms the island status of Qit'at Jaradah.[182](#)

333. As stated elsewhere,[183](#) following Qatar's attack in 1986, Qit'at Jaradah was bulldozed, artificially reducing it to a low-tide elevation. It would be offensive to any notion of law or equity to allow Qatar to benefit from this intentionally unlawful act. Qit'at Jaradah was an island before the Qatari armed intervention and cannot be deemed to have lost its status as a result of illegal activities.

334. It is worth emphasising that the photograph of Qit'at Jaradah reproduced in Qatar's Memorial[184](#) was taken at the end of July 1986, only two months after the bulldozers had razed the island. More recent photographs of Qit'at Jaradah taken at

spring high-tide confirm the process of natural accretion and Qit'at Jaradah's status as an island.[185](#)

F. The historical record confirms that Bahrain exercised authority over Qit'at Jaradah and there is no evidence that Qatar ever exercised authority there

335. Bahrain's numerous acts of sovereignty over Qit'at Jaradah, both historical and present-day, have been well-documented in its Memorial and Counter-Memorial. These include:

- conducting surveys and granting oil concessions over Qit'at Jaradah;[186](#)
- erecting a beacon on Qit'at Jaradah in 1939;[187](#)
- ordering the drilling of an artesian well on Qit'at Jaradah in the 1940s;[188](#)
- the activities of Bahrain's coastguard patrols around the area of Qit'at Jaradah;[189](#) and
- Bahraini fishermen working the areas around Qit'at Jaradah.[190](#)

336. In addition, Bahrain's inhabitants have traditionally and exclusively used Qit'at Jaradah as a weekend retreat for recreational purposes and continue to do so as illustrated by the photograph reproduced on the opposite page.[191](#)

PHOTO 7 : BAHRAIN'S INHABITANTS USING QIT'AT JARADAH AS A WEEKEND RETREAT FOR RECREATIONAL PURPOSES (119 KB)

337. Bahrain's authority over Qit'at Jaradah was recognised by Britain. For example, in 1947 the Political Resident informed the India Office that the Bahrain Government was responsible for the cairn and artesian well on Qit'at Jaradah.[192](#) The Political Resident further informed the India Office that Qit'at Jaradah must be regarded as belonging to Bahrain:

"With regard to the ownership of [Qit'at Jaradah] I reluctantly agree with the Political Agent that if it is possible for anybody to establish a claim over shoals of the kind described, they must be regarded as belonging to Bahrain. They have been treated by the Bahrain Government as their property and beacons have been erected and wells bored without any kind of protest by the Shaikh of Qatar. In fact, as the Political Agent points out, the Shaikh of Qatar is a late arrival on the scene."[193](#)

338. Qatar can offer no evidence of any acts of Qatari authority over Qit'at Jaradah.[194](#) Instead, consistent with its *modus operandi*, Qatar unsuccessfully attempts to criticise Bahrain's genuine acts of authority:

- Qatar baldly challenges the relevance of the evidence that during the 1930s and 1940s Bahrain erected beacons on, *inter alia*, Qit'at Jaradah[195](#) and that Bahrain drilled an artesian well on Qit'at Jaradah.[196](#) Qatar omits to relate that

when Bahrain built the beacon and drilled the artesian well on Qit'at Jaradah, Bahrain considered these acts as evidence of its sovereignty over the island.¹⁹⁷ Moreover, Britain recognised that these activities were consistent with and further evidence of Bahrain's sovereignty over Qit'at Jaradah;¹⁹⁸ and

· Qatar baldly challenges the relevance of evidence of activities carried out by Bahrain's oil concessionaire on Qit'at Jaradah. Qatar notes that in 1946, Britain refused to allow BAPCO to carry out structural drillings in the area of Jaradah.¹⁹⁹ Qatar omits to relate that this refusal was not permanent nor was it evidence of Britain's view as to Bahrain's sovereignty over Qit'at Jaradah. It was made during the process leading to Britain's maritime boundary proposal.

339. Qatar states that its concessionaire surveyed the area around Fasht ad Dibal and Qit'at Jaradah during 1950 to 1952, that the 1947 line had been used by each side's concessionaire as the limit of its territories and that the whole area was surveyed by the Qatar concessionaire in during 1973 to 1974. Qatar states that BAPCO in 1952 and Continental Oil Co. of Bahrain in 1965 were both notified that they had to respect the

1947 line. However, Qatar has produced no evidence to support any of these assertions and the Bahrain Ministry of Oil and Industry has no record of any of these events having taken place. Even were these allegations factually correct (and there is no evidence to support Qatar's assertions), they have no significance with respect to the question of sovereignty over Fasht ad Dibal and Qit'at Jaradah.

340. Qatar first made a claim to Fasht ad Dibal and Qit'at Jaradah in 1946. Even then, in contrast to the evidence presented by Bahrain at the same time of Bahrain's extensive use and exercise of authority over these features, Qatar could only base its claim on geographical proximity and its desire to be "compensated" for Britain's 1939 decision to recognise Bahrain's sovereignty over the Hawar Islands.²⁰⁰ Qatar did not and does not even assert, let alone submit any evidence, that it has ever exercised authority over Qit'at Jaradah.

341. Qatar's proximity claim to Qit'at Jaradah is premised on its unsubstantiated and erroneous assumption that Qit'at Jaradah is a low-tide elevation and thus governed by the law of the sea.²⁰¹ The function of this premise is to avoid having to contest Bahrain's acquisition of title over Qit'at Jaradah by showing acts of sovereignty.²⁰² Qatar's attempt to argue that sovereignty is irrelevant is clearly necessary for its claim, given that Qatar does not claim ever to have exercised authority over Qit'at Jaradah. However, now that Qit'at Jaradah's status as an island is confirmed, Qatar is left without a positive case for Qit'at Jaradah; in marked contrast to Bahrain.

G. Fasht ad Dibal is a low-tide elevation within Bahrain's territorial waters

342. Fasht ad Dibal is incontestably a low-tide elevation and, equally incontestably, well within twelve miles of both Qit'at Jaradah and Fasht al Azm. The former is an island and the latter forms an integral part of Sitrah

Island, sharing its low water line (see Sub-sections A and E, *supra*). Qatar contends that Fasht ad Dibal, being a low-tide elevation, is subject to the law of the sea rather than the law on acquisition of land territories.²⁰³ Bahrain has already demonstrated that Qatar's contention is mistaken and that the law governing sovereignty over low-tide elevations is the law governing territorial sovereignty.²⁰⁴ Article 13(1) of the Law of the Sea Convention clearly authorises the use of Qit'at Jaradah's and Sitrah's low-water lines as baselines for purposes of delimitation. Bahrain submits that the status of Qit'at Jaradah and Fasht al Azm and the geographical relationship of Qit'at Jaradah, Fasht al Azm and Fasht ad Dibal are matters of fact on which there can be no controversy.

343. Qatar has alleged that some of the low-tide elevations in the contested area are as close to Qatar as to Bahrain and/or are within 12 miles of each. In this regard, Bahrain would note the importance of the archipelagic factor. Surely when an archipelagic State confronts a mainland State, the only pertinent question is whether the maritime feature is part of the archipelago: proximity to the neighbouring State has no relevance at all.

344. Both parties are in agreement that Fasht ad Dibal is a low-tide elevation. However, the parties disagree about which of them exercises sovereignty over it.

345. As in the case of Qit'at Jaradah and Sitrah Island, Bahrain has historically exercised authority over Fasht ad Dibal. Bahrain has submitted evidence of the exercise of Bahrain's sovereignty over Fasht ad Dibal, including:

- conducting surveys and granting of oil concessions;²⁰⁵
- constructing a cairn;²⁰⁶
- constructing an artesian well;²⁰⁷
- granting licences in respect of permanent fish traps;²⁰⁸
- resolving navigational difficulties concerning Fasht ad Dibal;²⁰⁹
- providing assistance during maritime emergencies;²¹⁰ and
- the activities of Bahrain's coastguard patrols around the area of Fasht ad Dibal.²¹¹

346. Qatar itself has submitted evidence of Bahrain's acts of sovereignty over Fasht ad Dibal, including:

- a 10 May 1928 letter from the Director of Customs, Bahrain, concerning "port lighting", in which the Director reported to Charles Belgrave that "A stone beacon [had] recently been erected on the Fesht al Djebal" and recommended that a light be affixed to it to warn mariners of the danger of the shoal";²¹²

- the 1932 Persian Gulf Pilot, which refers to the beacon;[213](#)
- official British correspondence referring to the construction of the beacon;[214](#)
- a 20 July 1940 letter from the Political Agent, Bahrain, to the British Political Resident, providing details of BAPCO structure drilling on Fasht ad Dibal[215](#) and a 1950 BAPCO memorandum concerning the same;[216](#)
- a 10 July 1946 letter from Charles Belgrave to the Political Agent, Bahrain, listing the cairns erected by Bahrain and including specific reference to the artesian well on Fasht ad Dibal (and Qit'at Jaradah also);[217](#)
- an 18 January 1947 letter from the Political Resident to the Secretary of State for India reporting the existence on Fasht ad Dibal of "...a cairn and an artesian well bored by BAPCO on behalf of the Bahrain Government through a contractor"[218](#);
- the 1947 British maritime boundary proposal, which found that Bahrain exercised sovereignty over Fasht ad Dibal;[219](#)
- a December 1950/January 1951 Admiralty survey referring to the well;[220](#)
- official British correspondence from 1950 and 1951 describing the constructions on Fasht ad Dibal;[221](#)
- British Admiralty Charts 2830 (1953), 2886 (1957), 2886 (1972), all of which refer to the constructions on Fasht ad Dibal;[222](#)
- further construction work by Bahrain on Fasht ad Dibal which the 1986 Qatari military intervention subsequently removed, thus preventing Bahrain from exercising its sovereign rights on Fasht ad Dibal;[223](#)
- a 3 July 1991 incident where a Qatari naval boat approached Fasht ad Dibal and was confronted by a Bahraini boat. The Qatari vessel withdrew. This Qatar incursion into Bahraini waters was the subject of Bahraini official protests, both to Qatar and the GCC;[224](#)
- a 3 August 1991 incident, in which a Qatari vessel approaching Fasht ad Dibal was confronted by two Bahraini coastguard boats, a Bahraini helicopter and a Bahraini missile boat. The Qatari vessel was escorted from Bahraini water. Again, Bahrain protested to Qatar and to the GCC;[225](#)
- a 15 August 1991 incident, in which a Qatari gun-boat to the west of Fasht ad Dibal was approached by Bahraini naval vessel and forced to withdraw;[226](#) and
- a 17 August 1991 incident, in which a Qatari vessel to the west of Fasht ad Dibal was confronted by two Bahraini coastguard vessels and escorted from the area.[227](#)

347. In marked contrast, Qatar can offer no evidence of any Qatari acts of authority over Fasht ad Dibal. Instead, Qatar only attempts to criticise Bahrain's genuine acts of authority:

- Qatar challenges the relevance of the evidence that Bahrain erected a beacon on Fasht ad Dibal in 1928²²⁸ and that Bahrain built an artesian well on Fasht ad Dibal.²²⁹ However, when Bahrain built the beacon and the artesian well on Fasht ad Dibal, Bahrain considered these acts as evidence of its sovereignty over Fasht ad Dibal.²³⁰ Not only that, but Britain recognised that those activities were consistent with and further evidence of Bahrain's sovereignty over Fasht ad Dibal;²³¹

- Qatar challenges the relevance of BAPCO's construction of the artesian well on Fasht ad Dibal in the 1930s. However, Qatar omits to note that BAPCO was acting pursuant to the concession granted by Bahrain;

- Qatar refers to the fresh water flowing through the well on Fasht ad Dibal as being "...provided by nature... and not by the Government of Bahrain."²³² Bahrain does not dispute that fresh water is produced naturally. However, the structure through which the water flows was built by and is under the authority of the Government of Bahrain;

- Qatar disputes Charles Belgrave's authority to sanction drilling on Fasht ad Dibal.²³³ However, Bahrain's sovereignty over the feature was not the issue in the correspondence Qatar refers to; rather, the issue was whether Belgrave acted outside of his authority in providing such authorisation without first having consulted the Political Agent;

- Qatar refers to Britain's refusal to allow drilling around Fasht ad Dibal and Qit'at Jaradah in 1946. This refusal was entirely unrelated to the issue of sovereignty (as explained in para. 334 above). As referred to in paragraph 335 above, Qatar states its concessionaire surveyed the area around Fasht ad Dibal and Jaradah in 1950-52, that the 1947 line has been used by each side's concessionaire as the limit of its territories, that the whole area was surveyed by the Qatar concessionaire in 1973-74 and that BAPCO in 1952 and Continental Oil Co. of Bahrain in 1965 were both notified that they had to respect the 1947 line. However, Qatar has provided no evidence to support these assertions. Further, the Bahrain Ministry of Oil and Industry has no record of any of these events having taken place. Even assuming that these allegations are factually correct (and there is no evidence to suggest they are), they have no significance with respect to the question of sovereignty over Fasht ad Dibal and Qit'at Jaradah; and

- Qatar denies that Fasht ad Dibal is used exclusively by Bahraini boats or that Bahrain exercises exclusive coastguard control over it, but provides no evidence to substantiate its denials. Rather, as shown above, the evidence Qatar adduces in fact provides details of numerous instances of the Bahrain coastguard preventing Qataris from interfering on Fasht ad Dibal.²³⁴

348. In conclusion, both Bahrain and Qatar agree that Fasht ad Dibal is a low-tide elevation and both have provided ample evidence of the historical and present-day exercise of authority over it by Bahrain. There is no evidence of the exercise of Qatari authority over Fasht ad Dibal.

H. The future of Qit'at Jaradah and Fasht ad Dibal

349. While the historical exercise of sovereignty over Bahrain's offshore features forms the basis for its title to those features, the potential significance of Qit'at Jaradah and Fasht ad Dibal to Bahrain's future cannot be ignored.

350. For the same reasons that Bahrain has commissioned feasibility studies concerning the reclamation of Fasht al Azm, Bahrain has similar plans for other components of its archipelago, including Qit'at Jaradah and Fasht ad Dibal. Given the shallow waters around the Bahrain archipelago, in particular around Fasht al Azm, Qit'at Jaradah and Fasht ad Dibal, as illustrated in the photographs reproduced on the opposite page, these areas have potential for future economic development. Also reproduced on the opposite page is a map entitled "The proposed reclamation of the Bahrain archipelago", prepared by the Bahrain Ministry of Housing. It illustrates the potential of the different features of Bahrain's archipelago, for housing, industry, tourism, infrastructure, communications, leisure and wildlife, and provides an insight into how Bahrain could look in the twenty-first century.

[PHOTO 8 : AREAS OF THE BAHRAIN ARCHIPELAGO WITH POTENTIAL FOR LAND RECLAMATION - FASHT AL AZM - QIT'AT JARADAN - FASHT AD DIBAL](#) (81 KB)

351. Land reclamation is seen as the most viable solution to the dilemma posed by Bahrain's rapidly increasing population. This necessarily includes potentially all of Bahrain's islands and low-tide elevations. As has been explained in relation to Fasht al Azm in Sub-section B above, Qatar, in contrast to Bahrain, does not need to reclaim land to meet its population or other requirements. Nor would it be in a position to reclaim land from any islands or low-tide elevations off its west coast even were the maritime boundary to be redrawn and those features were to be taken from Bahrain and assigned to Qatar. The many features of Bahrain's archipelago are irrelevant to the future of Qatar regardless of where the maritime boundary is drawn. Undoubtedly this is one reason why Qatar considers these features to be irrelevant in delimiting the maritime boundary.

[MAP 9 : PROPOSED RECLAMATION OF THE BAHRAIN ARCHIPELAGO](#) (218 KB)

I. Low-tide elevations are subject to territorial sovereignty whether as a matter of law or adjudication on an agreed principle

352. With respect to the remaining low-tide elevations in the contested maritime area, there is no controversy as between the Parties that they are low-tide elevations and that, as such, they are susceptible to acquisition and

sovereignty. Qatar itself implicitly acknowledged this principle of law in claiming for itself Fasht ad Dibal (which indisputably is a low-tide elevation) and Qit'at Jaradah (which Qatar alleges is a low-tide elevation, although it is in fact an island), though its claims had to be based on asserted proximity, since it can demonstrate no *effectivités*. A necessary corollary of Qatar making such claims to what it acknowledges to be low-tide elevations is that it must perforce accept as a matter of law that they are susceptible to acquisition. In this respect, the susceptibility of the acquisition of low-tide elevations may be taken as part of an adjudication on an agreed principle in the case at hand.

353. Since the Counter-Memorials in the present case were exchanged, a Tribunal sitting in the Eritrea/Yemen arbitration has rendered its award in the first stage of the proceedings.²³⁵ While the geographical facts are different (Eritrea and Yemen are two coastally opposite mainland States), some of the holdings of the Tribunal are pertinent to this discussion. Of particular interest is the fact that the Tribunal unanimously found that low-tide elevations both within and beyond the territorial sea may be subject to the territorial sovereignty of a State,²³⁶ effectively dismissing Qatar's insistence that "[t]he law of the sea does not permit a State to acquire sovereignty over low-tide elevations beyond the outer limits of its territorial sea."²³⁷ And the Tribunal held, as a matter of

law, that "[r]epute is also an important ingredient for the consolidation of title."²³⁸ Thus, Britain's recognition of Bahrain's sovereignty over the low-tide elevations confirms that title.

354. In its Counter-Memorial, Bahrain demonstrated that the fact that low-tide elevations give rise to a territorial sea entitlement indicates that they form part of the territory of a State and are subject to its territorial sovereignty.²³⁹ Wholly apart from that general proposition, it is clear that the Parties recognised that, in the southern sector, in the unique circumstances obtaining in the region and given the archipelagic nature of Bahrain, Bahrain had title to the low-tide elevations by virtue of what was, in effect, a local usage or *lex specialis*.

355. Qatar, anxious to rely on certain aspects only of the delimitative consequences of the 1947 British letters, resists Britain's prior recognition of Bahrain's sovereignty over Fasht ad Dibal and Qit'at Jaradah. Qatar argues plaintively, "the decision of the British Government in 1947 to allocate sovereign rights over the Fasht ad Dibal and Qit'at Jaradah shoals to Bahrain appears to have been mistaken."²⁴⁰ The fact (which Qatar wishes to dismiss) that Britain properly and on the basis of sound evidence and analysis recognised Bahrain's sovereignty over certain low-tide elevations is very significant evidence, for repute is an important indicator of title in international law.

J. Qatar's claims to the low-tide elevations are based on alleged proximity, unfounded in law or in fact

356. While Qatar purports to reject the susceptibility of low-tide elevations to appropriation by the rules of territorial acquisition, as a matter of law, it implicitly acknowledges, as noted above, that they are susceptible to acquisition by itself claiming them. Because Qatar is unable to demonstrate any *effectivités*, however, it is obliged to base its claim to the low-tide elevations entirely on asserted proximity.²⁴¹

357. Even assuming, *arguendo*, that proximity alone could defeat the superior claim if not title of another State, Qatar's reference point was not the nearest Bahraini island to the low-tide elevation in question, as would be appropriate for an archipelagic State, but the *second-furthest* possible Bahraini island, *viz.* Al-Awal, the main island. In fact, there are Bahraini islands that are closer to the low-tide elevations in question, hence any argument of title based upon proximity must redound to Bahrain's benefit. Even were some of the maritime features closer to Qatar than to Bahrain, they would still pertain to Bahrain based on its manifestations of sovereignty and on the fact that an archipelagic State is confronting an exclusively mainland State. Bahrain will return to the relevance of relative distance to sovereign title in its consideration of Qatar's arguments with respect to sovereignty below.

K. Bahrain's sovereign title to the insular formations in dispute is firmly based on continuous and contextually appropriate manifestations of sovereignty as well as on repute

358. In modern international law, the root of territorial sovereignty is, in Max Huber's words, "effective apprehension",²⁴² which is determined by legal history and demonstrations of *effectivités*. The requisite standard of demonstration of occupation takes account of the habitability and accessibility of the territory in question, such that relatively uninhabitable or inaccessible areas require a lower level of demonstration.²⁴³

359. As the Court has used the term in Frontier Dispute²⁴⁴ and Gulf of Fonseca,²⁴⁵ the test of occupation, especially in ecologies that are less hospitable to continuous human habitation, is one of demonstrating *effectivités*. Where two States contend for the same area, the decision-maker must compare the quantity and quality of the *effectivités* adduced by each. The juridical value of the alleged factual events is determined, as will be elaborated below, by reference to a legal code that can be derived from international jurisprudence.

Bahrain's demonstration of its sovereignty over the insular formations in dispute, as described above, meets this legal test.

L. Only in the absence of a preponderance of *effectivités* - not applicable in the present case - may a tribunal resort to presumptions that take account of the location of the insular formations in question

360. In the first stage of the Eritrea/Yemen award, the Tribunal was constrained to rely on two rather innovative presumptions because the Tribunal held that neither of the Parties was able to muster a legal history in support of its claims, something that does not obtain in the present case. The Tribunal's

first presumption was that "islands within the twelve-mile coastal belt will belong to the coastal State, unless there is a fully-established case to the contrary ...".²⁴⁶ The second presumption was that "islands off a coast will belong to the coastal State, unless another, superior title can be established."²⁴⁷ Even assuming that both of these presumptions, each of which imposes a different evidentiary burden, are accepted as *lex lata*, it is clear that neither comes into operation in the present case, for the contingency that the Tribunal required does not obtain here. In the present case, Bahrain has marshalled extensive evidence of *effectivités*, which will be reviewed briefly below. Discounting the forged evidence, which has been withdrawn by Qatar, Qatar has only one example of a purported *effectivité*, viz. the military intervention on Qit'at Jaradah on 26 April 1986. This will also be dealt with below.²⁴⁸ Hence a critical issue which falls to be decided in the present case in order to determine the coasts of the Parties for purposes of the delimitation of their maritime boundary is the preponderance of *effectivités* over the insular formations in the contested maritime areas.

M. Effectivités have a legal and factual dimension

361. Manifestations of sovereignty for purposes of establishing or consolidating title to territory in international law have a legal as well as a factual component. Not every factual event qualifies as an *effectivité*; moreover, a factual event in one context may be an *effectivité*, yet not constitute an *effectivité* in another context. As the Chamber in the Frontier Dispute case said:

"The role played in this case by such *effectivités* is Chamber will have to weigh carefully the legal force of these in each particular instance. It must however state forthwith, in general terms, what legal relationship exists between such acts and the titles on which the implementation of the principle of *uti possidetis* is grounded. For this purpose, a distinction must be drawn among several eventualities. Where the act corresponds exactly to law, where the administration is additional to the *uti possidetis juris*, the only role of *effectivité* is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The *effectivités* can then play an essential role in showing how the title is interpreted in practice."²⁴⁹

362. International jurisprudence supplies many examples of lawful *effectivités*. For example, overflight of an uninhabited island that is inhospitable to human habitation has not been deemed a manifestation of sovereignty. Nor would naval movement in the waters around a contested island be deemed a manifestation of sovereignty over it. Arrests of fishing vessels for violations of regulations would constitute a manifestation of sovereignty. Publication of

notices to mariners or pilotage instructions relating to the waters of contested islands may constitute manifestations of sovereignty. The establishment and maintenance of lighthouses have been held in Grisbadarna²⁵⁰ to be an *effectivité*, but, as will be seen below,²⁵¹ recent jurisprudence has appraised the juridical value of this factual event in the specific context in which it occurred. Oil exploration licenses over waters, without reference to the islands concerned are not deemed to be manifestations of sovereignty over those islands. Permanent military posts will be considered to be manifestations of sovereignty. The exercise of legislative, criminal and civil jurisdiction is a manifestation of sovereignty over islands.

363. The *leitmotif* in all of the lawful examples of *effectivités* is "an intentional display of power and authority over the territory, by the exercise of jurisdiction and State functions."²⁵² All of these examples manifest a common juridical method that is highly sensitive to context and circumstance and that is applied flexibly to the necessarily wide diversity of geographical and historical circumstances presented for decision.

N. Bahrain's *effectivités* on the insular features establish its title to them

364. In its Memorial, Bahrain provided evidence of the historical exercise of its sovereignty over the insular features.²⁵³ Much of this evidence is confirmed by the

testimony of retired sailors, fishermen and pearl-fishers from Bahrain and Saudi

Arabia.²⁵⁴

365. In its Counter-Memorial, Qatar challenges five categories of Bahraini acts of sovereignty: the erection of beacons or cairns; activities of oil companies; aids to fishermen; exclusive use of fashts; navigational safety and police; and the pearling and fishing industries. Bahrain will comment briefly on these challenges *seriatim*, but will take up pearling in its discussion of the northern sector, below.

366. In its Memorial, Qatar reviews, in some detail, Bahrain's beaconing and the erection of cairns on the contested maritime features.²⁵⁵ These activities are of course well known, as Qatar unintentionally shows. Thus, there is no need to enter into a discussion of the facts. It is acknowledged that this is a Bahraini activity and that there is no corresponding Qatari activity whatsoever. As far as law is concerned, Qatar simply says "the erection of markers or beacons has never been recognised as a means of acquisition of territory."⁰

367. As a mainland State, one can understand why Qatar sees no particular significance in the beacons and cairns. For sea-going and archipelagic peoples, however, these are extremely important structures, vital for navigation and sometimes for survival itself. Hence, at the very least, the erection of the beacons and cairns by Bahrain (without any corresponding activity by Qatar)

shows a strong interest in the maritime features. In Grisbadarna, the Tribunal said

"Whereas, a demarcation which would assign the Grisbadarna to Sweden is supported by all of several circumstances of fact which were pointed out during the discussion and of which the following are the principal ones:

a) The circumstance that lobster fishing in the shoals of Grisbadarna has been carried on for a much longer time, to a much larger extent, and by much larger number of fishers by the subjects of Sweden than by the subjects of Norway.

b) The circumstance that Sweden has performed various acts in the Grisbadarna region, especially of late, owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty; whereas Norway, according to her own admission, showed much less solicitude in this region in these various regards. . . ." 1

368. More recently, as the Tribunal in Eritrea/Yemen said of Yemeni lighthouses, the construction of lighthouses has "implications":

"The erection and maintenance of lights, outside of any treaty arrangements and for the indefinite future, had certain implications. The acceptance of Yemen's offer did not constitute recognition of Yemen sovereignty over islands. But it did accept the reality that Yemen was best placed and was willing, to take on the role of providing and managing lights in that part of the Red Sea; and that when the time came finally to determine the status of those islands Yemen would certainly be a party concerned." 2

369. Bahrain submits that the fact that, for many decades, it has established and maintained beacons and cairns while Qatar has not, demonstrates the acceptance and discharge of the maritime responsibility of an archipelagic State, continued interest, and the exercise of jurisdiction through assistance to mariners. In context, Bahrain submits that these facts constitute an *effectivité*.

370. With respect to activities by oil companies, once again, the facts are not disputed. Qatar, however, submits in its Counter-Memorial:

"[S]urvey work by private oil companies operating out of Bahrain, and even the drilling of structure holes on a low-tide elevation, particularly when carried out in the circumstances just described, constitutes [sic] no evidence of "acts of sovereignty" by Bahrain over Fasht ad Dibal and Qit'at Jaradah." 3

371. Bahrain submits that, in international law, activities undertaken in a territory by private actors under license from a State claiming that territory do indeed constitute manifestations of sovereignty. Once again Bahrain has submitted evidence of such activities; Qatar can submit none.

372. Aids to fishermen (without reference to the beacons and cairns discussed above), wells drilled by an oil company under license of Bahrain or by Bahrain nationals using the islands in question are manifestations of Bahraini sovereignty. Once again, Bahrain would draw the Court's attention to the fact that there are no corresponding activities by Qatar.

373. With respect to the use of the fashts by Bahraini boats, the issue is not whether the nationals of other States used the fashts, but which State exercised jurisdiction over them. Bahrain has adduced ample evidence of its legislative, regulatory and administrative jurisdiction. Qatar has submitted none. Bahrain will take up this aspect in its discussion of the pearling areas, below.

O. Qatar's alleged *effectivités*, their arguable effectiveness notwithstanding, do not meet the test of the aforementioned legal dimension for manifestations of sovereignty and hence are devoid of juridical significance

374. Excluding the mass of fraudulent evidence that Qatar has been constrained to abandon, Qatar can adduce virtually no *effectivités* with respect to the various insular formations and maritime features that are pertinent to the delimitation of the southern sector. That should occasion no surprise, as Qatar, in its short history, has been a land-based and land-oriented State and its continental thrust to the sea, such as it was, has been eastward from the eastern coast of the peninsula, where its population has historically clustered. As a result, Qatar has been forced to invent a theory of the inherent insusceptibility of Bahrain's insular formations in the southern sector to *effectivités*; a theory that archipelagic components are to be ignored in maritime delimitation; and a theory that they are then to be assigned to the proximate "mainland." The covert objective of these various contrived theories is to evade a comparative assessment of the *effectivités* of the parties.

375. The one, glaring exception to Qatar's absence of *effectivités* over any of the insular formations is Qatar's military invasion of Qit'at Jaradah on 26 April 1986. The ostensible Bahraini "sin" that Qatar used to justify the invasion was that Bahrain had erected a lighthouse on Qit'at Jaradah. A lighthouse is, of course, critical for navigation and only a State that has an interest in it would assume the substantial investment involved in establishing and maintaining one. Qatar has established no lighthouses in the southern sector. If Bahrain had not had title to Qit'at Jaradah, any juridical value from the construction and maintenance of a lighthouse would have been precluded by the doctrine of critical date. If a lighthouse is an *effectivité*, then Bahrain's action is an important event for purposes of title, whether on Qit'at Jaradah or on the other formations on which Bahrain has maintained lighthouses.

376. If the establishment and maintenance of a lighthouse on Qit'at Jaradah was an *effectivité*, then Qatar is obliged to acknowledge that all of Bahrain's lighthouses are manifestations of sovereignty. In its Memorial and Counter-Memorial, Bahrain has insisted that, in any case, Qatar's illegal action can have no effect on Bahrain's title. It is significant that, once the fraudulent evidence was purged from its case, the only *effectivité* to which Qatar can point is this single violation of the United Nations Charter.

SECTION 5.4 Qatar's new allegations with respect to the southern sector

377. The Parties agree that the delimitation must be effected in two distinct sectors, but disagree on the exact location of the division and the legal implications of effecting a division. They agree that the northernmost point of each of their coasts is the proper terminus of the line dividing the southern and northern sectors but they disagree as to where those points are.

A. Qatar's proposed dividing line is inconsistent with law and fact

378. Because Qatar insists that coast means the coast of the mainland, it rejects Bahrain's characterisation of its northernmost point as Ras Rakan and proposes instead Point RK:

"having regard to the necessity of relying strictly on the actual coast and . . . out of a desire to be consistent with Qatar's position in the present case, that no account should be taken of islets, rocks and low-tide elevations. Thus, in Qatar's view, and contrary to what has seemingly been Bahrain's choice, the low-water line on Ras Rakan islet cannot be regarded as representing the northern tip of the Qatar peninsula and as a relevant point for that purpose."⁴

379. This self-righteous assertion on Qatar's part is rather surprising, for in Qatar's Memorial, it described "the relevant coast of Qatar" as extending from R'as Uwaynat in the south "to the northernmost point of the coast of Qatar located east of the light of Ras Rakan",⁵ thereby acknowledging the validity of the coastal theory submitted by Bahrain. Without regard to the inconsistency between its formulations in its Memorial and its Counter-Memorial or the legal accuracy of the theory of coast Qatar is using in this part of its argument, Bahrain will defer to a State's competence to describe its own coast, as long as the description is *infra legem*, and will henceforth take Qatar's preference as the northernmost point of the Qatari coast. As the Court said in the Anglo-Norwegian Fisheries case, "the coastal State would seem to be in the best position to appraise the local conditions dictating the selection."⁶

380. With respect to the northernmost point of Bahrain's coast, Bahrain, as an archipelago, has designated Fasht ad Dibal, the basepoint of Qit'at Jaradah Island. This is the northernmost point of Bahrain's coast facing Qatar in a configuration of coastal opposition. Qatar, choosing to ignore the archipelagic character of Bahrain, has arbitrarily selected a point on Muharraq Island as Bahrain's northernmost point. Because Qatar's submission is completely

inconsistent with the archipelagic character of Bahrain (which it itself acknowledges) and the international law relating thereto, Bahrain rejects it.

B. Because the co-ordinates from which Qatar has generated its proposed provisional median line in the southern sector are unfounded in fact and law, the resulting line is equally unfounded in fact and law

381. The parties are in agreement, as a matter of law, that the *praxis* for maritime boundary delimitation in situations of coastal opposition calls, as a first step, for the projection of a provisional median line every point of which is equidistant from the opposite coasts. However, Qatar chooses to ignore the archipelagic character of Bahrain and selects instead a coastline on part of the archipelago that discriminates in its own favour. Bahrain rejects the factitious provisional line produced in Qatar's exercise.

C. Qatar's proposed criteria for adjustment of the median line are either incorrect or misapplied

382. A second step, after the description of a provisional median line between the coasts of parties in a configuration of coastal opposition, is to inquire whether any adjustments are called for, in the circumstances of the case, in the provisional median line. Qatar proposes two reasons for adjusting the fictitious line it has created. The first is the alleged disparity in the lengths of the coastlines of each of the States. The second is the British letters of 1947. Neither of those assertions has any basis in law or fact.

D. There is no disparity between the legal coasts of the two States in the southern sector

383. Significantly, Qatar elects to compute only what it characterises as Bahrain's "relevant coast."⁷ That imaginary construct excludes the archipelagic coast of Bahrain and the Hawar Islands. If Bahrain's coast and the Hawar Islands are taken into account, there is no significant disparity in the lengths of coastline in the southern sector. Hence, there is no need for an adjustment of an appropriately described provisional median line in the southern sector, due to the effective parity of the lengths of the opposite coasts of each State in that sector.

E. The British letters of 1947 do not constitute a factor under international law that calls for an adjustment in a properly described provisional median line

384. Qatar's second proposed reason for adjustment is the 1947 British letters. As Qatar has already acknowledged that they do not constitute an agreement and are not binding on the Parties, as explained earlier, there is no basis for their application. At that, the Court will note how capricious and inconsistent Qatar is in using the British line. It ignores it entirely with respect to the Hawar Islands (other than Janan and Hadd Janan), because Britain had confirmed Bahrain's sovereignty in accord with the 1939 award (other than Janan and

Hadd Janan), but only uses it in those circumstances in which it believes that it will discriminate in its favour.

SECTION 5.5 Qatar's allegations in the northern sector

385. In its Counter-Memorial, Bahrain demonstrated the manifold factual and legal errors in Qatar's submission with respect to the single maritime boundary in the northern sector. In this Reply, Bahrain will, insofar as possible, confine itself to responding to Qatar's assertions in its Counter-Memorial about the Bahraini submission with respect to the northern sector, focusing on the significant points of disagreement and restating parts of its own position only when it is necessary to clarify matters already before the Court. Geographical facts, *e.g.*, that Qit'at Jaradah is an island and that Fasht ad Dibal is an appropriate basepoint of that island, need not be restated, even though Qatar devotes a great deal of time to them in the presentation of its case with respect to the northern sector. Facts such as these are inconvenient for Qatar, but they are facts nevertheless.

A. The parties agree on the law that applies

386. Despite Qatar's assertions,⁸ Bahrain agrees entirely that, here as in the southern sector, the law that governs is customary international law. Bahrain and Qatar apparently disagree only on the application of that law to the facts of the present case and, in particular, the weight to be given to different factors in the unique features of this, as indeed of every other, maritime delimitation. The principles of delimitation must be applied differently rather than mechanically in each particular configuration. That is one reason why maritime boundary delimitation is such a challenging task for international decision makers.

B. Qatar misconceives the purpose of sectoralisation, transforming it into an illogical and often meaningless exercise

387. The Parties agree that there should be a sectoralisation, separating the northern and southern sectors. But Qatar submits that "the northern sector is quite clearly a prolongation of the southern sector, which is an obvious case of delimitation between States with opposite coasts."⁹ If that were the case, there would be no point to the sectoralisation suggested. One sectoralises when the relevant geographical features are so different in the two sectors that, without treating them separately, an equitable result in one sector would produce an inequitable result in another.

388. Moreover, when one sectoralises, one does not "double-count." If a sectoral line is an appropriate step in delimitation here - and both parties agree that it is - then the relevant coasts in the southern sector are not counted again in the northern sector. In the present case, the relevant coast in the northern sector is the dimension created by the sectoral line, *viz.*, Fasht ad Dibal to point RK, the point selected by Qatar as its northernmost extremity. The resulting configuration approximates one of coastal adjacency; coastline ratio is computed by reference to that constructive coastal line.

C. Qatar's contention that Bahrain's maritime boundary encroaches upon Qatar's "natural prolongation" is incorrect

389. Despite Qatar's contention, Bahrain also agrees that a delimitation based upon equitable principles must allow for "the normal seaward projection of Qatar's coasts"¹⁰ and agrees with the principle enunciated in Guinea/Guinea-Bissau, upon which Qatar relies in theory.¹¹ Bahrain submits that its line in the northern sector does precisely this. The purpose of sectoralisation is to enable the Court to treat each of the distinct and different geographical situations differently. Without a sectoralisation line, equitable treatment in one sector would be compromised in the other, because of the different geographical configuration existing there. The sectoral line - which is, as Bahrain has demonstrated, not a "closing line" - separates the southern and northern sectors and enables a delimitation to be effected in each that responds to its particular geographical features.

390. Bahrain's southern line in no way compromises Qatar's seaward extension in that sector; it stops it at the point where Bahrain's ocean space in the southern sector commences. In the northern sector, Bahrain's delimitation line *in no way obstructs* Qatar's northern thrust seaward; Bahrain's line between O-R allows Qatar full access to the sea. There is absolutely no basis to Qatar's claim that the vector established by O-R in any way fails an equitable principles (or equitable result) test on this ground. Qatar may argue that the lines R-S-T-U-Z, which depart from the O-R vector to take account of Bahrain's historic title to the pearling banks, take maritime space it would otherwise enjoy were the O-R vector continued *vers le large*. That assertion is correct. But the validity of the R-S-T-U-Z line is based on a historic title to the pearling grounds, a pre-existing title which must be recognised if Bahrain's claim to the pearling grounds is sustained. That finding, whether affirmative or negative, has no effect on the lawfulness of the vector produced by the coordinates O-R, which in no way limits Qatar's seaward projection northward.

D. Bahrain's historic title to the pearling banks is based on continuous, peaceful exercise of imperium, through legislative, judicial and administrative action

391. Bahrain claims a historic title to the pearling banks in the northern sector, the existence of which requires an adjustment in the boundary line.¹² Bahrain bases its title on the exercise of jurisdiction and control over the pearling banks by Bahrain through acts of legislation, administration and adjudication. The fact that pearling is now substantially reduced cannot affect a title that has vested and against which no other claimant can demonstrate the contextually appropriate manifestation of sovereignty.

392. Bahrain's administration of the waters around its pearling banks continues today. Its coastguard vessels patrol those areas, as they always have.¹³ In addition, the Bahrain coastguard has no record of Qatari coastguards patrolling these areas.

393. Qatar, in its Counter-Memorial, does not address any of those legislative, administrative or judicial actions. Indeed, Qatar acknowledges them. Dr. Bhandarker's testimony demonstrates that Bahrain provided, at government expense, health services on the banks. Qatar alleges that its coastguard engaged in patrols in the area, but provides no data for the assertion.

394. Qatar contends that the historic fishing rights of Bahrain are undermined by the fact that some nationals of other States in the area also used the pearl fishing grounds. Bahrain does not contest that fact. To the contrary. Qatar fails to distinguish between acts of *imperium* and acts of *dominium*. There is no question but that Bahrain alone exercised the acts of *imperium* over the pearling banks in dispute. Qatar does not challenge that.

395. The question here, as in other bilateral disputes with respect to sovereignty over territory, is comparative and not absolute. In this regard, it is significant that Qatar can invoke no legislation, administration or adjudication whatsoever with respect to the pearling banks.

396. Qatar invokes the Bahraini Proclamation of 5 June 1949 as well as its own Proclamation issued four days thereafter. In the final paragraph of the Bahrain Proclamation (the Qatari Proclamation is identical), the Ruler of Bahrain, Sheikh Salman bin Hamed Al-Khalifa, stated that nothing in the Proclamation was to be considered as affecting, *inter alia*, "traditional pearling rights in such waters". This is no more than an assurance to private users, who had pearled subject to Bahraini jurisdiction and control, that they may continue to do so. That authorisation in no way compromises the sovereignty of the State allowing the traditional activity to continue. Indeed, the Eritrea/Yemen Tribunal stated:

"In finding that the Parties each have sovereignty over various of the Islands the Tribunal stresses to them that such sovereignty is not inimical to, but rather entails, the perpetuation of the traditional fishing regime in the region."¹⁴

397. The Proclamation is, in no way, an admission that Bahrain lacked sovereignty over the pearling banks in question.

398. Nor does the British letter of 19 December 1960, to which the Ruler of Bahrain responded on 16 August 1961, indicate acquiescence on the part of Bahrain to the British position. It need hardly be stated that the British position, dictated by its own political interests, could hardly be dispositive of the international legal rights of Bahrain, which fall to be decided by the International Court of Justice. Nor, as the International Court has said in Jan Mayen,¹⁵ does a negotiated agreement between two States import an acceptance of a principle of law with respect to third party States. It is obvious that a wide variety of non-maritime political factors as well as idiosyncratic maritime and geographic factors would be weighed in the negotiation of a bilateral maritime boundary delimitation.

399. Qatar contends that Bahrain has inaccurately described the location of the pearling banks.¹⁶ In support of its contention, Qatar refers to British charts of the area.¹⁷ These charts are intended for navigational purposes only; they make no reference to pearling banks. Bahrain notes that Qatar has not disputed the fact that the twelve principal Bahrain pearling banks described in Bahrain's pleadings¹⁸ belong to Bahrain.

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FOOTNOTES

1 When initially presenting the 81 astonishing documents in its Memorial, Qatar referred to:

"the glaring gap between appearance and reality. The *appearance* is reflected in the official documents in the British archives ... The unpleasant *reality* is reflected in a number of documents dating from the mid-1930s which are in the Qatari archives." See Qatar Memorial (hereinafter "QM") para. 6.63.

Now that the documents have been exposed as forgeries, Qatar's assertion ironically confirms Bahrain's position.

2 The discussion of sovereignty over all the various islands and other features of the Bahrain archipelago belongs properly in the part devoted to territorial issues (Part I). However, as in its previous pleadings, because of their effect on the maritime delimitation, Bahrain will address these issues (except for those relating to the Hawar Islands) in the maritime part of the Reply (Part II).

3 Qatar both acknowledges and challenges the arbitration. *See* QM para. 6.122.

4 Qatar Counter-Memorial (hereinafter "QCM") para. 1.2.

5 QCM para. 1.2.

6 QCM para. 1.4.

7 QCM para. 1.4.

8 QCM para. 2.39 to 2.40.

9 QCM para. 5.1.

10 The Court needs no reminding that it expressly included Zubarah as an issue in the dispute between the Parties in its Judgment of 15 February 1995.

11 Bahrain Memorial (hereinafter "BM") Section 1.4(A); Bahrain Counter-Memorial (hereinafter "BCM") para. 159. *See also* Chapter 3 of this Reply.

12 BM Section 3.6(A) (D) and (F).

13 *See e.g.*, BM paras. 442 to 444 and 448.

14 BCM paras. 159 to 161; QM para. 5.8.

15 BM Sections 3.5 to 3.7.

16 BCM Section 2.3.

17 Except where additional evidence has been adduced by Bahrain in its Counter-Memorial, all references are to the BM.

18 BM paras. 413 and 424.

19 Brucks survey p. 113, BM Annex 7, Vol. 2, p. 92 at p. 101. BM paras. 116 and 415.

20 BM para. 417.

21 BM para. 347.

22 BM para. 432.

23 BM paras. 21, 410 and 425.

24 BM paras. 433 to 436, 476 to 478 and 480 to 482.

25 BM para. 424.

26 BM paras. 479 and 480.

27 BM para. 479.

28 BM paras. 410 and 424 and paras. 426 to 431.

29 BM para. 427.

30 BM para. 424.

31 BM para. 436.

32 BCM paras. 169 to 173; QM para. 5.44.

33 BCM paras. 169 to 173; QM para. 6.218.

34 BCM paras. 159, 190 and 191.

35 BM Anns. 313 to 316.

36 BM Ann. 242, Case No. 264/1351 (1932).

37 BM Ann. 243, Case No. 6/1351.

38 BM para. 439.

39 BM paras. 418, 442 and 443.

40 BM paras. 418, 440 and 452.

41 BM paras. 444 to 446.

42 BM paras. 447 and 466.

43 BM para. 466.

44 See, e.g., BM paras. 445 and 459.

45 BM paras. 460 to 463.

46 BM paras. 451 and 484.

47 BM para. 483.

48 BM paras. 454 to 457.

49 BM paras. 455 to 457.

50 BM para. 457.

51 BM paras. 440 and 472.

52 BCM paras. 196 and 197.

53 BCM paras. 217 and 218.

54 BCM para. 207.

55 BCM paras. 237 to 241.

56 BCM paras. 237 to 241.

57 BCM para. 242.

58 BCM paras. 243 and 244.

59 BCM paras. 246, 247 and 251 to 255.

60 BCM Sections 2.3(b)(iv) and (v).

61 BM para. 483.

62 BM para. 473 and 483.

63 BM para. 458.

64 BM para. 471.

65 BM para. 472.

66 BM para. 460.

67 BM para. 472.

68 BM para. 484.

69 BM para. 466.

70 BM para. 475.

71 BM para. 464.

72 BM paras. 466 and 474.

73 BM para. 467.

74 BM paras. 468 and 469.

75 BM para. 469.

76 BM para. 487.

77 BM paras. 453 and 498; see also Extracts from Gulf Daily News, Annex 7, Vol. 2, p.50.

78 BM para. 498.

79 BM para. 487; see also Bahrain Coastguard Report, Annex 24, Vol. 2, p. 148.

80 BM para. 487.

81 BM para. 488.

82 BM para. 489.

83 BM paras. 488 and 490.

84 BM paras. 488, 490 and 497.

85 BM paras. 488 and 490.

86 BM para. 488.

87 BM para. 491.

88 BM para. 491; see also Extracts from Gulf Daily News, Annex 6, Vol. 2, p. 34.

89 BM para. 491.

90 BM paras. 492 to 496.

91 BCM para. 159.

92 BM para. 466.

93 BM para. 358.

94 BM para. 41.

95 BM paras. 406 to 411.

96 BCM Sections 2.2.E to 2.2.F, 2.2.H to 2.2.J and 2.3.

97 See paras. 197 to 203, *infra*.

98 QM paras. 5.60 to 5.68.

99 QCM paras. 3.82 to 3.95 and 3.105 to 3.118.

100 QCM para. 3.107.

101 QCM para. 3.106.

102 BM Section 3.6.A.

103 BM Section 3.6.B.

104 BM Section 3.6.C.

105 BM Section 3.6.D.

106 BM Section 3.6.E.

107 BM paras. 415, 417, 422, 424, 427, 432 and 436; BCM para. 184.

108 BM paras. 440, 442, 444, 448, 456, 459, 462, 471, 475 and 482.

109 BM para. 424.

110 BM paras. 447, 455, 477 and 481.

111 BM para. 422.

112 BCM para. 186

113 BM paras. 413 to 414.

114 BM para. 417.

115 BCM para. 191.

116 BM paras. 410, 426 to 431.

117 BCM para. 191; see also, Lorimer, J.G., Gazetteer of the Persian Gulf, Oman and Central Arabia, Gregg, Farnborough, 1970. BM Ann. 74, Vol. III, p. 371 at p. 378.

118 BCM para. 193.

119 BM paras. 427 and 429.

120 BM paras. 433 to 437.

121 QCM para. 3.86.

122 In its efforts to impugn Bahrain's evidence of the extent of the Al-Khalifa's authority and control over the Dowasir, Qatar selectively quotes from a letter dated 4 April 1909 from the British Political Agent (Prideaux) concerning the Ottoman claim to Zakhnuniya Island: "... the Dowasir regarded Hawar as their own independent territory" QCM para. 3.86. When read in full and in context, however, the statement actually shows that the Hawar Islands were viewed by Prideaux as belonging to Bahrain in view of the fact that the Dowasir had originally been granted permission to reside there by the Al-Khalifa.

123 QCM para. 3.88.

124 BM para. 429.

125 Qatar also quotes from a statement by another British Political Agent (Alban) some thirty years later, in a document entitled "Ownership of Hawar" see QCM para. 3.87. Bahrain has addressed the views expressed by Alban and the then Political Resident, Prior, and refuted Qatar's misplaced reliance on them, in section 2.3(H) of its Counter-Memorial. For present purposes, it is sufficient simply to recall that Alban's comments concerning his views on the ownership of the islands had been prepared on a hurried basis, without any opportunity to investigate the extent of the Ruler of Bahrain's relationship with the Dowasir and without any prior knowledge of that relationship. Moreover, when he expressed his view he had just been appointed Political Agent in Bahrain and, indeed, had not even visited the Hawar Islands. BCM para. 299. The circumstances and substance of Alban's comments are to be contrasted with the findings of Alban's predecessor, Weightman, in the context of Britain's arbitration of Qatar's and Bahrain's claims to the Hawar Islands. BM para. 383.

126 QCM para. 1.34.

127 Qatar advances the curious argument that if the Dowasir's temporary presence in Hasa provided no basis for the Ruler of Bahrain to claim sovereignty in Hasa, then the Dowasir's presence in the Hawar Islands cannot provide a basis for Bahrain's sovereignty over the Hawar Islands. QCM para. 3.90. Qatar's argument is contradicted by the fact that the two situations are entirely distinguishable. There can be no equating the Dowasir's established presence on the Hawar Islands for more than 200 years and their steadfast relationship with the Ruler of Bahrain during the entirety of that time with the three and a half years during which the Dowasir absented themselves from Bahrain's territorial jurisdiction.

128 BCM para. 193.

129 Khuri, F.I., *Tribe and State in Bahrain*, University of Chicago Press, Chicago 1980. QCM Annex III. 55, Vol. 3, p. 319.

130 QM para. 6.54.

131 QCM para. 3.86.

132 Khuri, F.I., *op. cit.*, p. 97.

133 QM para. 6.54.

134 BCM para. 195.

135 BCM para. 193.

136 QCM paras. 3.84 to 3.86.

137 QCM paras. 3.91 and 3.92.

138 QCM paras. 3.94 and 3.95.

139 BM paras. 21 and 410.

140 BM para. 410.

141 QCM paras. 2.67 *et seq.*, para. 3.121.

142 BM paras. 410 and 427; BCM paras. 174 and 175.

143 BM para. 410.

144 BM paras. 427, 429, 431, 433 to 437; BCM para. 193.

145 BM paras. 426 and 431.

146 BM paras. 426 and 431.

147 BM para. 431.

148 BM paras. 410, 426 to 431.

149 BM para. 431.

150 BM paras. 415 and 416.

151 QCM para. 3.122.

152 BM para. 416.

153 BM para. 432.

154 BM paras. 433 to 437.

155 QCM para. 3.147.

156 BM para. 430.

157 BM para. 439.

158 BM paras. 440 to 442.

159 BM para. 441.

160 BM para. 442.

161 BM paras. 444 to 447.

162 QCM para. 3.148; BCM para. 189.

163 QCM para. 3.149.

164 BM para. 448 to 453.

165 QCM para. 3.154.

166 BM paras. 455 to 457.

167 QCM para. 3.60.

168 QCM para. 3.60.

169 QCM para. 3.60. The legal significance that Qatar has attempted to draw from the views expressed by Britain in 1936 is discussed in Section 2.7(B), *infra*.

170 BCM Section 2.3(b).

171 BCM paras. 212 to 226. In December 1925, with Britain's approval, the Ruler of Bahrain had awarded an oil concession in Bahrain to the Eastern and General Syndicate (EGS), a British registered company, covering an area of 100,000 acres on the main island of Bahrain. The remainder of the Ruler of Bahrain's territories not covered by the 100,000 acres came to be known as the "Bahrain Additional Area" or "unallotted area". EGS assigned its concession in 1928 to BAPCO, a wholly owned subsidiary of Standard Oil Company of California (SOCAL). The establishment in Bahrain of an American oil company had a significant effect on the British Government's policies concerning future oil concession negotiations, in the context of which Britain would do its utmost to promote the interests of British oil companies. See BCM paras. 204 and 205.

172 QCM para. 3.61.

173 BCM paras. 213 to 216.

174 BCM para. 215.

175 BCM paras. 223.

176 BCM para. 217.

177 BCM para. 217.

178 Despatch from the British Political Agent to the British Political Resident, 30 July 1933. QM Ann. III.87, Vol. 6, p. 445.

179 QM para. 6.20.

180 Telegram from the British Political Resident to the Secretary of State for India, 31 July 1933. QM Ann. III.88, Vol. 6, p. 449.

181 QCM para. 3.61.

182 BCM paras. 218 to 220.

183 QCM para. 3.46.

184 BCM para. 226.

185 In 1935, Anglo-Persian was awarded an oil concession by the Ruler of Qatar, which it assigned that same year to PCL, a subsidiary of the Iraq Petroleum Company, in which Anglo-Persian was a major shareholder. The significance of the 1935 Qatar Concession for Qatar's claim to the Hawar Islands is discussed in paras. 152 and 153, *infra*; see also BCM paras. 227 to 236.

186 BCM para. 242.

187 BCM para. 239.

188 BCM para. 233.

189 QCM para. 3.74.

190 BM Ann. 247, Vol. 5, p.1074; QM Ann. III.106, Vol. 7, p.27.

191 QCM para. 3.62.

192 BM Ann. 247, Vol. 5, p. 1074; QM Ann. III. 106, Vol. 7, p. 27.

193 QCM para. 3.67.

194 QCM para. 3.72.

195 QCM para. 3.62.

196 BCM paras. 244 to 249.

197 BCM para. 236.

198 See BCM paras. 251 to 255 (concerning Britain's views regarding the implications of the Hawar Islands being considered as part of Bahrain and efforts to pressure the Ruler of Bahrain to favour PCL over BAPCO).

199 BCM para. 253.

200 BCM para. 254.

201 QCM para. 3.73.

202 BCM para. 253.

203 QCM para. 3.73.

204 QCM para. 3.73.

205 BCM para. 257.

206 QCM, paras. 3.49 to 3.59.

207 Bahrain agrees with Qatar that the illegal occupation of territory cannot form the basis of a legitimate claim to sovereignty. Thus, Qatar's armed attack on and illegal occupation of the Zubarah region in 1937 cannot form the basis for Qatar's claim to sovereignty over that region. See Chapter 4, *infra*.

208 QM para. 3.50.

209 QCM para. 3.53.

210 QCM paras. 3.56 to 3.59.

211 QCM para. 3.53.

212 QCM para. 3.53.

213 QCM para. 3.53.

214 QCM para. 3.53.

215 QCM para. 3.53.

216 BM paras. 370 to 376.

217 BM paras. 370 to 376.

218 BM paras. 377 to 380.

219 BM paras. 354 to 356.

220 BCM Section 3.5A.

221 BM paras. 389 and 547.

222 BM paras. 381 to 403; BCM paras. 423 to 427.

223 BCM para. 374.

224 BCM para. 374.

225 BM paras. 357.

226 BM paras. 359 to 369.

227 BM Section 3.5.

228 BM paras. 406 to 411.

229 BCM para. 374.

230 BM para. 548.

231 BM para. 354.

232 BM para. 357.

233 BM para. 357.

234 BM para. 552.

235 BM para. 357.

236 BCM Sections 3.2 and 3.5.

237 BCM Chapter 3.

238 BM Section 3.3 and BCM Section 3.2.

239 BCM Section 3.5.A.

240 BM paras. 381 to 403; BCM Sections 3.1 and 3.5.

241 QM paras. 6.83(1) and 6.87; QCM para. 3.60.

242 QCM para. 3.71.

243 In this respect, Bahrain feels compelled to point out to the Court the pervasive use of selective misquotations by Qatar throughout its pleadings. Bahrain has elsewhere described certain of the most egregious examples of this. In relation to the allegations by Qatar of British bias in the conduct of the 1938-1939 adjudication, Bahrain notes that the description of BM Annex 292 in Qatar's Counter-Memorial (at paras. 3.13 to 3.142) is highly fanciful. As is so often the case in Qatar's pleadings, its credibility is undermined not only by the unsupported innuendos and suppositions that Qatar strains to attach to innocent words but by Qatar's description being predicated on its conspiracy theory and forged documents.

244 See, e.g., BCM Section 3.5.B.

245 BCM Section 2.3.G.

246 BCM para. 197.

247 QCM paras. 3.163 to 3.171.

248 QCM para. 3.171.

249 QCM para. 3.163.

250 See, e.g., QCM paras. 3.164, 3.165, 3.168 and 3.170.

251 QCM paras. 3.165 to 3.170.

252 QCM para. 3.166.

253 BCM Section 3.5.F.

254 BCM Section 3.5.A.

255 QCM para. 3.87.

0 BCM Section 2.3.H.

1 See, in particular, the opinion of Sir Olaf Caroe of the Government of India's External Affairs Department found at BCM paras. 302 to 305. The recent decision of the Tribunal in the Eritrea/Yemen arbitration held that internal memoranda of government officials do not necessarily represent the view or policy of any government and may not have been more than an expression of a personal view of a civil servant at any particular moment. Award of the Arbitral Tribunal in the First Stage of the Proceedings (Territorial Sovereignty and Scope of the Dispute) in the Matter of an Arbitration Pursuant to an Agreement to Arbitrate Dated 3 October 1996 (Eritrea/Yemen Arbitration), 9 October 1998, (hereinafter "Eritrea/Yemen Award of 1998") paras. 94, 97 to 100.

2 BM paras. 359 to 369.

3 QCM para. 3.145.

4 India Office minute, 7 June 1939, BM Ann. 283, Vol. 5, p. 1174 at p.1175.

5 Letter from Hugh Weightman, British Political Agent, to Sir Trenchard Fowle, British Political Resident, 3 June 1938, BM Ann. 262, Vol. 5, p. 1112.

6 Letter from Hugh Weightman, British Political Agent, to Sir Trenchard Fowle, British Political Resident, 3 June 1938, BM Ann. 262, Vol. 5, pp. 1112 to 1114.

7 Letter from H. Weightman, British Political Agent, to the British Political Resident in the Persian Gulf, 22 April 1939. BM Ann. 281, Vol. 5, p. 1165; QM Ann. III.195, Vol. 7, p. 497.

8 Letter from O.K. Caroe, External Affairs Department, Government of India, to R. Peel, External Affairs Department, Government of India, 19 November 1941. QM Ann. III.230, Vol. 8, p. 133. See also BCM paras. 302 to 305.

9 See, e.g., hand-written annotation by R. Peel, External Affairs Department, Government of India in the memorandum found at BCM Ann. 107, Vol. 2, pp. 331 to 332.

10 Express letter, W.R. Hay, British Political Resident, to Retaxandum, London, 4 June 1946. BCM Ann. 108, Vol. 2, pp. 333 to 334.

11 BM paras. 354 *et. seq.*; BCM Section 3.5.

12 Letter from British Political Agent to the Ruler of Bahrain, 23 December 1947. QM Ann. III.257, Vol. 8, p. 269. Letter from British Political Agent to the Ruler of Qatar. BM Ann. 297, Vol. 5, p. 1208; QM Ann. III.256, Vol. 8, p. 265. See also BCM paras. 314 to 343 and Section 2.10, *infra.*, for a discussion of the inclusion of Janan island as one of the Hawar Islands in the 1939 Award.

13 Confidential Annex to Qatar Diary No. 2 for period 2 February to 1 March 1961, BM Ann. 300, Vol. 5, p. 1214 at pp. 1216 to 1217. See also BM paras. 499 to 504.

14 BM paras. 499 to 504, BM Section 2.14.

15 BCM para. 442.

16 QCM paras. 3.178 to 3.179.

17 Foreign Office minute dated 15 June 1964 (FO 371 174526, in division BB 1081/6). Annex 2, Vol. 2, p. 2.

18 BCM Section 3.8.

19 QM para. 6.242.

20 July 1946, February 1948, April 1965. Qatar itself claims to have made only three other protests to the British Award, in August 1939, November 1939 and June 1940. Thus, three protests were made within the first year following the Award. Of the remaining three, two were made during 1946-1948 as part of Qatari responses to British inquiries related to the 1947 British letters. Paragraph 6.245 of Qatar's Memorial makes vague and unsubstantiated reference to "further protests" from the two Rulers (in the context of the 1947 British letters) in the early 1950s. The final protest noted by Qatar was in 1965, again in response to British inquiries related to the maritime delimitation.

21 QM para. 6.243.

22 QM para. 6.243.

23 BM para. 501.

24 BM para. 502.

25 For descriptions of Bahrain's claim to the Zubarah region, see BM Section 2.14 and BCM Chapter 4.

26 QCM paras. 3.96 to 3.101.

27 16 UNRIAA para. 167.

28 20 UNRIAA para. 175, at p.45.

29 Goldie, *The Critical Date*, 12, ICLQ (1963) 1251 at 1254.

30 Qatar's Memorial contends that one of the Rulers of Qatar visited the Hawar Islands. QM para. 6.194. The evidence cited for this claim is the unsubstantiated assertion in the Qatar counter-claim of 30 March 1939 that this was the case. Qatar's Memorial also makes reference to "other evidence" - supposed witness statements submitted by Qatar in 1939 in one handwriting with no signatures or thumbprints. QM para. 6.200. Qatar acknowledges that this "was not as compelling as it might otherwise have been." Britain dismissed this "evidence" as unsubstantiated assertions that merited - and were given - no credence in 1939. Their weight has not increased with time.

31 QCM para. 3.31.

32 QCM para. 3.30.

33 See Section 3.5, *infra.*; see also, BM paras. 421, 425, 539 and 540 and BCM paras. 35, 36, 104 to 106, 122.

34 BCM para. 170.

35 QCM paras. 3.40 to 3.43.

36 QCM para. 3.41.

37 QCM para. 3.42.

38 QCM para. 3.42.

39 BCM para. 171.

40 BCM para. 171.

41 QCM para. 3.46.

42 QCM paras. 3.44 and 3.45.

43 QCM para. 3.44.

44 QCM para. 3.44(5)

45 Indeed, Qatar's pleadings often try to present untenable arguments that fly in the face of evidence by replacing logic or analysis with a claim that the conclusion or interpretation proposed is "obvious".

46 QCM para. 3.44(2).

47 British India Office report of 1928: Qatar Memorial Jurisdictional Admissibility, Annex I.18.

India Office letter of 3 May 1933, see BCM para. 203 and para. 61, *supra*.

Telegram from the acting Political Resident to the Secretary of State for India dated 31 July 1933, see BCM paras. 218 to 219 and para. 67, *supra*.

Map requested by the Secretary of State for India and supplied by the Political Resident on 4 August 1933, see para. 70, *supra*.

48 QCM para. 3.8.

49 BCM para. 215.

50 QCM para. 3.72(6).

51 QCM para. 3.72(6).

52 QCM Annex III.43, Vol. 3, p. 237 at p. 239.

53 QM Annex III.94, Vol. 6, p. 479; QCM Annex III.43, Vol. 3, p. 237.

54 BCM paras. 227 to 236.

55 BCM para. 233.

56 BCM para. 234.

57 BCM paras. 235 and 236.

58 QCM para. 4.3.

59 QCM paras. 4.5 to 4.8.

60 QCM paras. 4.6 and 4.13.

61 QCM paras. 4.7 to 4.12.

62 The fact that Janan has always been considered to be one of the Hawar group of islands is acknowledged by Qatar when it cites Lorimer's description in 1908 of the Hawar Islands. See QM para. 5.38: "The island [Jazirat Hawar] is adjoined on the north by Jazirat Rubadh and on the south by Jazirat Janan...".

63 BCM paras. 322, 323 and 330.

64 BCM para. 322.

65 BCM para. 322.

66 See para. 171, *infra*.

67 BCM para. 324.

68 BCM paras. 242 and 325.

69 BCM para. 326.

70 BCM para. 326.

71 BCM para. 327.

72 BCM para. 327.

73 BCM para. 328.

74 BCM para. 329.

75 BCM para. 347.

76 BCM paras. 348 and 349.

77 BCM paras. 350 and 351.

78 BCM para. 352.

79 BCM para. 353.

80 BCM paras. 355 to 361.

81 BCM para. 362.

82 BCM paras. 363 and 364.

83 BM para. 207; BCM para. 364.

84 BCM para. 364.

85 BM para. 405.

86 BCM para. 330.

87 BCM paras. 331 and 332.

88 BCM paras. 334 and 335.

89 BCM paras. 337 and 338.

90 BCM paras. 341 to 343.

91 QCM paras. 4.1 and 4.2.

92 See, in addition, Extracts from Gulf Daily News, Annex 8, Vol. 2, p. 60.

93 See, in addition, Extracts from Gulf Daily News, Annex 7, Vol. 2, p. 50.

94 See, in addition, Extracts from Gulf Daily News, Annex 6, Vol. 2, p. 34.

95 BM para. 491; BCM para. 159.

96 See Extracts from Gulf Daily News, Annex 6, Vol. 2, p. 34.

97 Annex 10, Vol. 2, p. 70.

98 Annex 12, Vol. 2, p. 75.

99 BM para. 54.

100 BM para. 54.

101 Annex 11, Vol. 2, p. 72.

102 BM paras. 104 to 130; 195 to 214; 224 to 233 (evidence of item a); paras. 73 to 103 (evidence of item b).

103 BCM paras. 70 to 76; 95 to 97 (evidence of item a); paras. 42 to 57 (evidence of item b).

104 BCM paras. 88 to 97.

105 BCM para. 56.

106 BCM para. 32.

107 BCM para. 32.

108 BCM para. 33.

109 BCM paras. 32 and 33.

110 BCM paras. 39 to 41. A series of maps illustrating the evolution of the spheres of influence on the Qatar peninsula can be found following page 9 of this Reply.

111 BCM para. 68.

112 QCM Chapter 2.

113 BM para. 233; BCM para. 41.

114 BM Section 2.13.

115 A legal proposition with which Qatar itself agrees: see para. 91, *supra*.

116 BCM para. 64.

117 BM para. 106 and BCM para. 63. Qatar's claim that Zubarah is older is based on the forged documents in combination with a mis-translation of the Arabic "Al Zara" as "Al Zubarah" in an Arab history text, and a mis-translation of that same text to imply that Zubarah was founded before the arrival of the Al-Khalifa (the text in fact says the opposite): see BCM paras. 58 to 62.

118 BM paras. 104 to 107.

119 BM para. 108.

120 BM para. 109.

121 BM para. 110.

122 BM para. 110.

123 BM para. 112.

124 BM para. 112.

125 Section 4.1 of this Reply.

126 BM para. 117.

127 Lorimer Vol. I, Pt.1, p.793, *op. cit.*, QM Ann. II.5, Vol. 3, p.143 at 200.

128 BM para. 120.

129 BM para. 120.

130 BM para. 120.

131 BM para. 120.

132 BM para. 120.

133 BCM para. 73.

134 BCM para. 73.

135 BM para. 122.

136 BM para. 123.

137 BM para. 124.

138 BCM para. 73.

139 BM para. 126.

140 QM para. 3.30.

141 QM para. 3.30..

142 QM para. 3.30.

143 QM para. 3.32.

144 QM paras. 3.31 and 3.33.

145 QM para. 3.31.

146 BCM paras. 81 to 82 and QM Ann. II.74, Vol. 5, p. 399.

147 Qatar states that Bahrain acknowledged "...that the Al-Thani family had attained predominant influence in Qatar by 1868". QCM para. 3.20. This is not the case. Qatar is again mistakenly and misleadingly equating references to "Qatar" as a political entity with references to "Qatar" as a geographic entity (the peninsula). Bahrain's "acknowledgement" is a quotation from Lorimer who is referring to Qatar the political entity, being no more than Doha town and its environs. BM para. 131.

148 BM para. 132; BCM para. 35.

149 BM para. 127; BCM para. 19.

150 BM para. 132.

151 BM para. 134.

152 BM paras. 20, 118 and 145.

153 BM paras. 133 and 158; BCM para. 19.

154 BCM para. 19.

155 BCM para. 90.

156 BM para. 143.

157 BCM para. 95.

158 BCM para. 96.

159 BCM para. 96.

160 BM para. 163.

161 BCM para. 106.

162 BM para. 133; BCM para. 19.

163 BCM para. 92.

164 BM para. 146.

165 BCM para. 108.

166 BM para. 148; BCM paras. 19 and 107.

167 BM para. 164; BCM para. 19.

168 BCM para. 35.

169 BM para. 149.

170 BCM para. 117.

171 BCM para. 117.

172 BM para. 155; BCM para. 118.

173 BM paras. 167 to 187; BCM paras. 19 and 95.

174 BCM para. 120.

175 BM Section 2.6, Section 2.2.H.(i); BCM para. 19.

176 QCM paras. 2.10 and 2.29.

177 QM para. 3.30.

178 QM para. 3.30.

179 QM para. 3.30.

180 QM para. 3.32.

181 QM paras. 3.31 and 3.33.

182 QM para. 3.31.

183 QM para. 3.49.

184 QM para. 3.22; QCM para. 2.22.

185 QM para. 2.19.

186 QCM para. 2.26.

187 QCM para. 2.25.

188 BM para. 34; BCM para. 38.

189 BCM para. 31.

190 BM para. 132.

191 QCM para. 2.34.

192 QCM para. 2.34.

193 QCM para. 2.34.

194 It is worthwhile noting Qatar's heavy reliance on Zahlan's commentary. Qatar quotes at length or cites to Zahlan no less than six times in its Memorial and Counter-Memorial to support its various contentions, but in each instance the citation is to a view of history offered by Zahlan which is unsupported by reference to the historical record.

195 QCM para. 2.45.

196 QCM paras. 2.45 and 2.50. Here again, the Zahlan text cited by Qatar provides no support for Qatar's position.

197 QCM para. 2.48.

198 QCM para. 2.48.

199 QCM para. 2.49.

200 BCM paras. 93 and 94.

201 QCM para. 2.29.

202 BM paras. 35 to 38.

203 QCM para. 2.29.

204 BM paras. 162 to 166.

205 Map of the *Vilayet* of Basra prepared by Captain Izzet of the Imperial Army of the Ottoman Empire (1878), reproduced in the BM following page 6.

206 QCM paras. 2.30 to 2.38.

207 For example, Qatar refers to a 28 August 1873 letter from the British Political Resident (Ross), in which it is indicated that the Turkish authorities had established an influence on the Qatar coast as far as the Udeid boundary. This is uncontroversial, until Qatar adds its interpretation to the effect that "in other words, from the south-west of the Qatar peninsula (in the vicinity of Dawhat Salwa) as far as the extreme south east of the peninsula." Qatar offers nothing to support its expansionist interpretation. The correspondence cited shows nothing other than British acknowledgement that Turkey now had a foothold on the peninsula. It contains no indication that Britain considered that influence to incorporate the entire peninsula. Further, the correspondence makes no mention of the Al-Thani. See QCM para. 2.31.

208 QCM para. 2.42.

209 QM Annex II.7, Vol. 4, p. 59.

210 QM Annex II.7, Vol. 4, p. 62.

211 QCM para. 2.44.

212 BM Section 2.4.

213 BM Section 2.7.

214 BM Sections 2.6 and 2.7.

215 BCM para. 94.

216 BCM paras. 83 to 87.

217 QM para. 5.6; QCM para. 3.20 *et seq.*

218 QCM para. 3.29.

219 BM, Annex 12, Vol. 2, p. 156.

220 Section 3.3 *supra.*

221 QCM paras. 3.40 to 3.43.

222 BCM para. 126.

223 BCM para. 127.

224 BCM para. 124.

225 BCM para. 125.

226 BCM para. 127.

227 Indeed, if the Convention were as definitive of the extent of Al-Thani territory as Qatar suggests, this omission would evidence a clear lack of intent to include the Hawar Islands within Al-Thani territory.

228 See, e.g., BM Section 2.7.

229 BCM para. 131.

230 BM paras. 219 to 220.

231 BCM para. 132.

232 BCM para. 132.

233 BCM para. 136.

234 See, e.g., BCM paras 144, 147 to 149.

235 BCM para. 137.

236 BCM paras. 140 to 141, 144 and 145.

237 BM paras. 224 and 233.

238 QCM paras. 3.44 and 3.45.

239 QCM paras. 2.4 to 2.12 and 2.51.

240 QCM paras. 2.20 and 2.21.

241 QCM para. 2.21.

242 QCM para. 2.21.

243 QM paras. 3.26 to 3.29; QCM para. 2.51.

244 BM paras. 120 to 123; BCM paras. 66 and 67.

245 BM para. 120; BCM paras. 66 to 69.

246 BCM para. 68.

247 See, e.g., BM paras. 36, 417 to 419, 426 to 431, BCM para. 159.

248 QCM para. 2.12.

249 See, e.g., extracts from Lorimer at QM Annex II.5, Vol. 3, p.143 at pp. 256 to 257, including an 1822 statement from the Bombay Government criticising an agreement reached with Persia by the British Political Resident, who was removed from his post as a result of signing it, and the Bombay Government's criticism of the agreement including that: "It acknowledges the King of Persia's title of Bahrain of which there is not the least proof...".

250 QCM para. 2.51.

251 See, e.g., extracts from Lorimer at QM, Annex II.5, Vol. 3, p.143 at pp. 248 to 249.

252 See, e.g., extracts from Lorimer at QM, Annex II.5, Vol. 3, pp. 248 to 249.

253 QCM para. 2.51.

254 See, e.g., extracts from Lorimer at QM, Annex II.5, Vol. 3, p. 143 at pp. 249 to 250, 263 to 264.

255 QCM para. 2.51.

0 BCM para. 67.

1 QCM paras. 2.4 to 2.77.

2 BM Sections 2.2, 2.9 and 2.11; BCM Section 2.2.

3 QCM para. 5.48.

4 BM para. 116.

5 Section 4.5 of this Reply. The dominant Al-Jabr branch of the Naim tribe remained in the Zubarah region and recognised the authority of the Al-Khalifa Rulers, notwithstanding the drift of smaller groups of Naim elsewhere in Arabia including a group that moved to Doha.

6 BCM paras. 47 to 52.

7 For details of the following list, see BM paras. 25, 75, 77 to 88 and BCM paras. 47 to 57.

8 BCM para. 43.

9 BCM para. 85.

10 BCM para. 50.

11 BCM para. 51.

12 BCM para. 43.

13 BM para. 77.

14 BM para. 77.

15 BM paras. 79 and 210.

16 BM para. 207.

17 BM paras. 79 and 210.

18 BCM para. 53.

19 BCM para. 92.

20 BCM paras. 45 and 49.

21 BM para. 81.

22 BM para. 82.

23 BM para. 82.

24 BCM para. 54.

25 BCM para. 43.

26 BCM para. 56.

27 BM para. 86.

28 BM para. 87.

29 BCM para. 48.

30 BM para. 87.

31 BM para. 88.

32 BM Section 4.4.

33 QCM paras. 2.13 to 2.15.

34 QCM paras. 5.58 to 5.61.

35 QCM para. 2.28.

36 QCM paras. 2.42 to 2.44. Once again, the text of Zahlan cited by Qatar provides no evidence for its bald assertions.

37 BM Section 2.7.

38 QM paras. 8.7 to 8.30, 8.57; QCM paras. 5.41 and 5.58.

39 In its attempts to criticise the evidence submitted by Bahrain, Qatar claims that one motivation of Bahrain and Britain for preventing the Ottomans or the Al-Thani from exercising authority over the Zubarah region was to protect the islands of Bahrain from an attack launched from there. (QCM paras. 5.17 to 5.18.) This is irrelevant. The motivation for preventing Bahrain's authority from being replaced by the Ottomans' authority neither diminishes the fact of Bahrain's authority nor creates an Ottoman authority where none existed. Nor does the issue of motivation detract from the fact that Bahrain and Britain did act to rebuff the Ottomans and the Al-Thani in Zubarah.

40 See, e.g., QCM paras. 2.8 to 2.10, 2.28 to 2.38 and Chapter V.

41 At paragraph 2.34 of its Counter-Memorial, Qatar reproduces an extensive quotation taken from a secondary source, the book by Rosemarie Zahlan. Zahlan provides no citations or evidence whatsoever for her bald statement that there was "no doubt" that the Al-Thani authority extended throughout the Qatar peninsula during the Ottoman period. As described in para. 197, *supra*, the evidence shows just the opposite.

42 QCM para. 2.32.

43 QCM para. 2.33.

44 QCM para. 2.33.

45 BM Section 2.7.

46 BCM para. 94.

47 QCM para. 5.17.

48 BM Section 2.6; BCM Section 2.2.H(i).

49 QCM para. 5.17.

50 QCM para. 2.30.

51 BCM paras. 93 and 94.

52 Ottoman Report on Bahrain, 16 September 1895. BCM Ann. 26, Vol. 2, p. 90.

53 Ottoman Report on the Zubarah Affair, 3 May 1897. BM Ann. 63, Vol. 2, pp. 269 to 272.

54 Ottoman Report on the Zubarah Affair, 3 May 1897. BM Ann. 63, Vol. 2, pp. 269 to 272.

55 Ottoman Report on Bahrain from the Council Chamber, 22 April 1900. BCM Ann. 28, Vol. 2, pp. 96 to 97.

56 Projected Ottoman decision concerning Katar, 11 March 1913. BCM Ann. 40, Vol. 2, p. 125.

57 Letter from Sheikh Jasim Al-Thani to the British Political Resident, 24 November 1880. BCM Ann. 15, Vol. 2 pp. 37 to 38.

58 Saldana J.A., *Precis of Qatar Affairs*, Simla, 1904, p. 39. BM Ann. 70, Vol. 2, p. 327; QM Ann. II.7, Vol. 4, pp. 59 to 61.

59 See, e.g., QM para. 8.15 and paras. 3.49 *et seq.*

60 BM Sections 2.5, 2.6 and 2.7 and BCM Section 2.2.H (iv).

61 BM paras. 183 to 186, 297 to 301 and BCM Section 2.2.H (iii).

62 BCM paras. 117 to 122.

63 BCM para. 94.

64 QCM para. 5.43.

65 BM Sections 2.1, 2.9 and 2.2.13; BCM Sections 2.1 B, C and K, and Section 4.1, *supra*.

66 See, e.g., QCM para. 5.17.

67 QCM paras. 5.19 and 5.51.

68 QCM para. 5.19. This is a remarkable admission by Qatar, inconsistent with its claims about Britain's views of authority over the Zubarah region, no less than its claims about Bahrain's activities there.

69 QCM para. 5.19.

70 QCM para. 5.17.

71 QCM para. 5.19.

72 QCM paras. 5.19 and 5.20.

73 QCM paras. 5.46 and 5.47.

74 QCM paras. 5.19 and 5.47.

75 QCM paras. 5.19 and 5.47.

76 The reference to the "northern Naim" is used to distinguish the Naim of the Qatar peninsula from their southern cousins on the Arabian mainland.

77 QCM paras. 5.48 and 5.52.

78 QCM para. 5.52.

79 QCM paras. 5.58 to 5.63.

80 BM Section 4.4.

81 QCM para. 5.62.

82 QCM para. 2.13.

83 BCM Section 2.2.H (v).

84 BCM Section 2.2.J.

85 BCM Annex 56, Vol. 2, p. 195.

86 Decypher of telegram from British Political Resident to Secretary of State for India, 18 August 1932, FO 371/16000. Annex 1, Vol. 2, p.1.

87 BM Sections 2.13 to 2.14 and BCM Section 2.2.K.

88 It should be noted that Qatar agrees that the illegal occupation of territory cannot form the basis of a legitimate claim to sovereignty. See para. 91, *supra*.

89 QCM paras. 5.38 to 5.40.

90 BM paras. 295 to 336.

91 BCM paras. 450 to 454.

92 BM para. 296.

93 BM para. 304.

94 BM para. 303.

95 BM para. 304.

96 BM para. 304.

97 BM paras. 306 to 308.

98 BM paras. 306 to 308.

99 BM paras. 310 to 314.

100 BM para. 312.

101 BM para. 313.

102 BM para. 315.

103 BM para. 316.

104 BM para. 317.

105 BM para. 317.

106 BM para. 318.

107 BM para. 319.

108 BM para. 320.

109 BM para. 321.

110 BM para. 322.

111 BM paras. 323 to 325.

112 BM para. 325.

113 BM paras. 328 and 330.

114 BM paras. 329 and 330.

115 BM para. 331.

116 BM para. 336.

117 Section 2.7(I) *supra*.

118 Although Qatar interprets them differently, the Parties are essentially agreed as to the facts relating to the events of 1937.

119 As will be explained below, the Parties agree that the delimitation must be conceived and effected in two sectors, one northern, one southern, but they disagree as to the exact location of the divider between the sectors and the legal implications and consequences of the sectoralization.

120 QM para. 11.3.

121 QM para. 11.20.

122 QM para. 11.20.

123 Bahrain demonstrated the inconsistency between Qatar's proposed delimitation exercise in its Counter-Memorial. BCM para. 628.

124 QCM para. 6.60.

125 QCM para. 6.61.

126 1982 Law of the Sea Convention, Article 46(a).

127 QCM para. 6.70.

128 BM paras. 657 to 681.

129 QCM para. 6.64.

130 QCM para. 6.65.

131 BM para. 68Q.

132 Vienna Convention on the Law of Treaties, Article 32.

133 International Maritime Boundaries, Ed. John Charney and Lewis Alexander (Martinus Nijhoff) 1993, Vol. 1, p. 997. Annex 5, Vol. 2, p. 32.

134 QCM para. 6.69.

135 QCM para. 7.24.

136 1982 Convention, Article 46(b).

137 QCM para. 6.94.

138 Anglo-Norwegian Fisheries case 1951 I.C.J. Rep. 116, 127.

139 QCM para. 7.24.

140 QCM para. 7.24.

141 QCM para. 7.27.

142 QCM para. 7.24.

143 QCM para. 7.24.

144 QCM para. 7.24.

145 1969 I.C.J. Rep. 3 at 54.

146 1951 I.C.J. Rep. 116 at para. 133.

147 See e.g. Section 5.3(B), *infra*.

148 QCM para. 7.26.

149 QCM para. 7.25.

150 The following discussion relates to Bahrain's territorial sovereignty over certain islands and low-tide elevations in the Bahrain archipelago. It goes without saying that such issues more properly belong with the discussion of the other territorial issues in dispute between the Parties. Bahrain wishes to emphasise to the Court that the discussion of these territorial issues in the Maritime part of its pleadings thus far has simply been for convenience of presentation.

151 BM paras. 622 to 624.

152 BCM para. 510.

153 paras. 328, 329 and 334, *infra*.

154 QCM paras. 8.47 to 8.48.

155 QCM paras. 8.47 to 8.48.

156 QCM para. 8.49, referring to QCM Annex IV. 24, Vol. 4, p. 165.

157 QCM para. 8.49.

158 Commander Carleton's report is attached at Annex 14, Vol. 2, p. 99.

159 Annex 14, Vol. 2, p. 99 at p. 102.

160 Annex 14, pp. 107 and 108. The satellite image establishing the factual basis for Commander Carleton's conclusion is annexed to his report, at page 124.

161 See para. 180, *supra*.

162 BM para. 337.

163 QCM para. 6.15.

164 QCM para. 6.15.

165 BM para. 581.

166 BM para. 586; BM Annex 344, Vol. 6, p. 1478 at pp. 1480 and 1481.

167 BCM paras. 512 to 520.

168 QM Appendix 5, Vol. 15, p. 136.

169 QM Appendix 5, Vol. 15, p. 139.

170 QM Appendix 5, Vol. 15, p. 139.

171 QM Appendix 5, Vol. 15, p. 140.

172 QM Appendix 5, Vol. 15, p. 140.

173 Letter from R. Kennedy, Hydrographic Department, Admiralty to A. R. Walmsley, Foreign Office, 25 August 1959. QM Ann. IV. 223, Vol. 11, p. 301.

174 QCM paras. 6.89 to 6.91.

175 BM para. 623; BCM paras. 515 and 519.

176 At high water spring tide, on 20 April, 26 June, 11 August, 8 September, 7 October, 5 November.

177 Annex 13, p. 77 at p. 82.

178 Professor Alexander, having observed the Survey Directorate's work, stated:

"I was present during the entire survey and can attest that, to the best of my knowledge, it was carried out in conformance with the highest standards of maritime surveying. I believe that if the survey had been carried out in the United States, it would have been found to conform with the standards of the American Congress on Surveying and Mapping." (Annex 13, p. 77)

179 Annex 13, p. 77 at p. 93.

180 QM Appendix 5, Vol. 15, p. 141.

181 QM Appendix 5, Vol. 15, p. 141.

182 Qatar cites two British sources, from 1901-02 and 1932, (QM Appendix 5, Vol. 15, p. 135) the first of which indicated that Qit'at Jaradah dried at low tide and the second of which indicated that Qit'at Jaradah "almost dries". This evidence is, at best, inconclusive. Furthermore, it is clearly and forcefully contradicted by the consistent evidence since the 1940s that Jaradah has been and is an island (paras. 325 to 330, *supra.*);

Qatar cites a letter dated 10 January 1951 from Sir Rupert Hay (British Political Resident) to Rose (of the Foreign Office), which states that no part of Qit'at Jaradah is permanently above water. QM Appendix 5, Vol. 15, p.135. This letter is, however, inconsistent with the historical

record of observations from the 1940s onwards, including recent official surveys (paras. 325 to 330, *supra*) which establish that Qit'at Jaradah is an island;

Qatar cites the Persian Gulf Pilot (QM Appendix 5, Vol. 15, pp. 135 to 141). However, the Persian Gulf Pilot does not purport to be based on contemporaneous evidence. It is based on the most recent available survey data, rather than up-to-date data, and contains material for some areas which is many years old. In the case of Qit'at Jaradah, the statement in the Persian Gulf Pilot that it "dries in places" (First stated in its 1955 edition and repeated in its 1967, 1982 and 1994 editions, all cited to by Qatar. QM Appendix 5, Vol. 15, pp. 138, 140, 141) is based on the questionable interpretation of a survey that is 50 years out of date, (British Admiralty survey of December 1950/January 1951; cited in QM Appendix 5, Vol. 15, p. 137) which is inconsistent with the evidence from the 1940s onwards that establishes that Qit'at Jaradah is an island;

Qatar cites British Admiralty chart 3798. QM Appendix 5, Vol. 15, p. 141. This shows the sandy southern part of Qit'at Jaradah as being 1.2 metres above lowest astronomical tide (LAT). However, the information on Qit'at Jaradah in the chart is based on equivocal data gathered 45 years ago. As stated, later surveys confirmed that it is an island (For example, the Bahrain Survey Directorate Survey 1998, attached at Annex 13 (c)); and

Qatar cites a 1959 list of features in the Gulf of Arabia prepared for Aramco by Hudson and Young, which describes Qit'at Jaradah as a "reef, ... a sandbar on the south-eastern side of the reef rises seven feet above the water at low-tide... A masonry beacon is *reported to stand* on the southern edge of the reef" see QM Appendix 5, Vol. 15, p.140. This last comment exposes the report to be not a first-hand account and thus based on conjecture.

183 BM para. 623; BCM paras. 515 and 519, para. 327 *supra*.

184 Opposite p. 238.

185 Annex 25, Vol. 2, p. 163.

186 BM para. 576.

187 BM para. 582.

188 BM para. 584.

189 BM paras. 598 and 599.

190 BM paras. 595 to 597.

191 Taken on 7 May 1999. See also Annex 25 Vol. 2, p. 163. See also Gulf Daily News, 11 August 1986, Annex 3, Vol. 2, p.5.

192 BM para. 586. See, in addition, Bahrain Coastguard Report, Annex 24, Vol. 2, p. 148.

193 BM para. 586.

194 Qatar asserts without providing any evidence that Qatari coastguard boats patrol the area around Jaradah (QCM para. 6.35). However, Bahraini coastguard vessels are stationed permanently off Qit'at Jaradah and have no record of such patrols (See Bahrain Coastguard Report, Annex 24, Vol. 2, p. 148 at p. 151.) Furthermore, Qatar itself has admitted that whenever Qatari vessels have approached Bahrain's waters, they have been met and turned away by Bahrain's coastguards (QM Appendix 1, Vol. 14, p.1).

195 QCM para. 6.21.

196 QCM para. 6.31.

197 BM paras. 582 to 584.

198 BM para. 586.

199 QCM para. 6.23.

200 BM paras. 584 and 585.

201 QCM para. 6.9.

202 QCM para. 6.15.

203 QM paras. 10.59, *et seq.*, QCM para. 6.16.

204 BCM paras. 525 to 535.

205 BM para. 576.

206 BM para. 582.

207 BM para. 577.

208 BM para. 577.

209 BM paras. 577 to 579.

210 BM paras. 577 to 579.

211 See Bahrain Coastguard Report, Annex 24, Vol. 2, p. 148.

212 QM Appendix 5, Vol. 15, p. 128.

213 QM Appendix 5, Vol. 15, p. 128.

214 QM Appendix 5, Vol. 15, p. 128.

215 QM Appendix 5, Vol. 15, p. 129.

216 QM Appendix 5, Vol. 15, pp. 129 to 130.

217 QM Appendix 5, Vol. 15, p. 130.

218 QM Appendix 5, Vol. 15, p. 130.

219 QM Appendix 5, Vol. 15, p.137.

220 QM Appendix 5, Vol. 15, p. 131.

221 QM Appendix 5, Vol. 15, p. 131 to 133.

222 QM Appendix 5, Vol. 15, p. 132 to 133.

223 QM Appendix 5, Vol. 15, p. 134.

- 224 QM Appendix 1, Vol. 14, p. 2.
- 225 QM Appendix 1, Vol. 14, pp. 2 to 3.
- 226 QM Appendix 1, Vol. 14, p. 3.
- 227 QM Appendix 1, Vol. 14, pp. 3 to 4.
- 228 QCM para. 6.21.
- 229 QCM para. 6.31.
- 230 BM paras. 582 to 584.
- 231 BM para. 586.
- 232 QCM para. 6.31.
- 233 QCM para. 6.22.
- 234 QM Appendix 1, Vol. 14, pp. 1 to 12.
- 235 Eritrea/Yemen Award of 1998.
- 236 Eritrea/Yemen Award of 1998, para. 527.
- 237 QCM para. 6.16.
- 238 Eritrea/Yemen Award of 1998, para. 516.
- 239 BCM paras. 529 *et. seq.*.
- 240 QCM para. 6.19. The refrain of "mistake", without any supporting evidence or substantive analysis, as the Court will by now appreciate, is Qatar's *leitmotif* with respect to those parts of every British action it now finds inconvenient but which it otherwise wishes to adopt.
- 241 QM para. 10.73.
- 242 Island of Palmas, 2 U.N.R.I.A.A. para. 839.
- 243 Sovereignty over Clipperton Island (France v. Mexico), Award rendered at Rome, January 28, 1931, 26 AJIL 390 (1932); Legal Status of Eastern Greenland, P.C.I.J. ser. A/B, No. 53, p. 22.
- 244 1986 I.C.J. Rep. 586 to 587.
- 245 1992 I.C.J. Rep. 398.
- 246 Eritrea/Yemen Award of 1998, para. 474.
- 247 Eritrea/Yemen Award of 1998, para. 480.
- 248 Sub-Section O, *infra*.
- 249 1986 I.C.J. Rep., para. 63 at 586 to 587.

250 "Grisbadarna, The Maritime Boundary between Norway and Sweden", 4 AJIL 226 (1910).

251 para. 368, *infra*.

252 Eritrea/Yemen Award of 1998, para. 239.

253 BM Sections 6.1.A and 6.2.B.

254 See statements of Ibrahim bin Irhama Al Binali, Ann. 15, Vol. 2, p. 125; Ahmad bin Mohamad Al Shayji, Ann. 16, Vol. 2, p. 127; Mohamad bin Abdalla Al Thawadi, Ann. 17, Vol. 2, p. 129; Saleh bin Abdalla bin Mohamad, Ann. 18, Vol. 2, p. 132; Mubarak Ahmad al Naaimi, Ann. 18, Vol. 2, p.134; Mubarak bin Salman Al Ghatam, Ann. 20, Vol.2, p. 136; Ali bin Ahmad Shaheen Al Dosari, Ann. 21, Vol. 2, p.139; Majed bin Abdalla bin Thamer Al Dosari, Ann. 22, Vol. 2, p. 142; Abdallah bin Ali bin Thamer Al Dosari, Ann. 23, Vol. 2, p. 144; Salim bin Mohammed Salim Al-Omairi, Ann. 26, Vol. 2, p. 176; Khalil bin Ibrahim Al-Khaldi, Ann. 27, Vol. 2, p. 179; Abdullah bin Thazaa Al-Majdal, Ann. 28, Vol. 2, p. 182; Sulaiman bin Sagr bin Salman Al-Majdal Al-Khaldi, Ann. 29, Vol. 2, p. 184; Bader bin Mohammed Al-Majdal Al-Khaldi, Ann. 30, Vol. 2, p. 186; and Mubarak bin Saad, Ann. 31 Vol. 2, p. 188.

255 QM paras. 6.41 to 6.45.

0 QCM para. 6.21.

1 4 AJIL 226, 233 (1910).

2 Eritrea/Yemen Award of 1998, para. 237.

3 QCM para. 6.29.

4 QCM para. 6.98.

5 QM para. 9.4.

6 [1951] I.C.J. 131.

7 QCM para. 7.45.

8 QCM, paras. 8.14 to 8.16.

9 QCM para. 8.19.

10 QCM para. 8.5.

11 QCM para. 8.5.

12 BM Section 6.2B.

13 See Bahrain Coastguard Report, Annex 24, Vol. 2, p. 148, Bahrain informs the Court that Map Number 7 of its Memorial is inaccurate insofar as it describes the north-west "usual" coastguard patrol area. Bahrain clarifies that the relevant usual coastguard patrol area is as described in the map included in the Bahrain Coastguard Report at Annex 22, Vol. 2, p. 148, at p. 152. This patrol line reflects the description of the patrol routes as described in the Bahrain coast guard logs, samples of which are provided in the same annex.

14 Eritrea/Yemen Award of 1998, para. 526.

15 Delimitation of the Maritime Border in the Area between Greenland and Jan Mayen, I.C.J. Reports 1993, pp. 76-77, paras. 85-86.

16 QCM paras 6.43 to 6.48.

17 British Admiralty Charts 2837, 2847, 2886, 3788, and 3790. QCM para. 6.43.

18 BM para. 647 and Map 9; BCM Map 1.