

SEPARATE OPINION OF JUDGE PARRA-ARANGUREN

Qatar's right of innocent passage through all territorial sea under the sovereignty of Bahrain — Sovereignty over Qit'at Jaradah — The decision on Fasht ad Dibal.

1. Although I have voted for the operative part of the Judgement, my favourable vote does not mean that I share all and every part of the reasoning followed by the Court in reaching its conclusion. In particular, I consider it appropriate to make the following comments.

I

2. In paragraph 2 (*b*) of the operative part of the Judgment, the Court

“Recalls that vessels of the State of Qatar enjoy in the territorial sea of Bahrain separating the Hawar Islands from the other Bahraini islands the right of innocent passage accorded by customary international law.”

3. I have voted in favour of this declaration even though it is not necessary. Accordingly, to avoid any misunderstandings based on an *a contrario* argument, I would like to make it clear that in my opinion Qatar enjoys the right of innocent passage accorded by customary international law not only in the territorial sea indicated in paragraph 2 (*b*) of the operative part of the Judgment, but also through *all* the territorial sea under the sovereignty of Bahrain.

II

4. Paragraph 197 of the Judgment states:

“197. The Court first notes that Qit'at Jaradah is a very small island situated within the 12-mile limit of both States. According to the report of the expert commissioned by Bahrain, at high tide its length and breadth are about 12 by 4 metres, whereas at low tide they are 600 and 75 metres. At high tide, its altitude is approximately 0.4 metres.

Certain types of activities invoked by Bahrain such as the drilling of artesian wells would, taken by themselves, be considered controversial as acts performed *à titre de souverain*. The construction of navigational aids, on the other hand, can be legally relevant in the

case of very small islands. In the present case, taking into account the size of Qit'at Jaradah, the activities carried out by Bahrain on that island must be considered sufficient to support Bahrain's claim that it has sovereignty over it."

5. An artesian well is a well drilled through impermeable strata to reach water capable of rising to the surface by internal hydrostatic pressure. The drilling of an artesian well must accordingly be considered an act of a private character, unless special reasons justify a different conclusion. The Judgment does not give such reasons. Therefore, even assuming that Bahrain has established the fact of well-drilling, in my opinion, this cannot constitute an act of sovereignty over Qit'at Jaradah. Nonetheless, I voted in favour of paragraph (4) of the operative part of the Judgment finding that Bahrain has sovereignty over Qit'at Jaradah, because of my general agreement with the maritime delimitation line between Qatar and Bahrain drawn in its paragraph (6), which locates Qit'at Jaradah on the Bahraini side.

III

6. Nor does the construction of navigation aids constitute acts of sovereignty, as the Court stated in its Judgment of 17 November 1953. In that case, the Court considered the significance of the lighting and buoying of the Minquiers by the French Government, concluding that:

"The Court does not find that the facts, invoked by the French Government, are sufficient to show that France has a valid title to the Minquiers. As to the above-mentioned acts from the nineteenth and twentieth centuries in particular, including the buoying outside the reefs of the group, such acts can hardly be considered as sufficient evidence of the intention of that Government to act as sovereign over the islets; nor are those acts of such a character that they can be considered as involving a manifestation of State authority in respect of the islets." (*Minquiers and Ecrehos (France v. United Kingdom)*, Judgment, *I.C.J. Reports 1953*, p. 71.)

7. Paragraph 199 of the Judgment states that "Similar acts of authority have been invoked by Bahrain in order to support its claim that it has sovereignty over Fasht ad Dibal". However, for the above-stated reasons such acts, even if proved, cannot support the sovereignty claimed by Bahrain over Fasht ad Dibal. For this reason, in my opinion, it is not necessary to take a stand on the question examined by the Judgment as to whether, from the point of view of the establishment of sovereignty, low-tide elevations can be fully assimilated with islands or other land territory.

(Signed) Gonzalo PARRA-ARANGUREN.