

STATE OF BAHRAIN

MINISTRY OF STATE FOR LEGAL AFFAIRS
MINISTER'S OFFICEدولة البحرين
وزارة الشؤون القانونية
مكتب الوزير

Ref: _____

الرقم

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التاريخ

Report of the State of Bahrain to the International Court of Justice
on the attempt by the Parties to implement the
Court's Judgment of 1st July, 1994

1. The Government of Bahrain has welcomed the judgment of the International Court of Justice of 1st July, 1994 ("the Judgment") in which it afforded the Parties the opportunity to resume negotiations directed towards the joint submission to the Court of the entire dispute between them. It is a source of great regret to the Government of Bahrain that the negotiations have not been successful. The Government of Bahrain therefore now respectfully tenders to the Court the present Report upon its attempt to implement the Judgment.
2. On the very day of the Judgment, H.E. Shaikh Mohammed bin Mubarak Al-Khalifa, the Foreign Minister of Bahrain, tendered an invitation to Qatar "to a meeting at the earliest possible opportunity in order to work towards the signing of a joint submission in implementation of [the Court's] decision, in a spirit governed by mutual trust and the sincere wish to find a comprehensive solution to the differences which will serve the interests of the two countries, their two brotherly peoples and the whole region".

3. Subsequently, following further correspondence, meetings were held in London between the Agents of the Parties on 6th and 22nd October and 14th November, 1994. For the convenience of the Court, Bahrain annexes to this Report, in a separate volume, a full collection of all the documents which have passed between the two sides from 1st July, 1994 to the present date. Bahrain takes this step in view of the fact that Qatar communicated to the Court on 2nd November, 1994 only those proposals emanating from the meetings on 6th and 22nd October.
4. As the Court will observe from these documents, Bahrain has from the commencement of the discussions between the two sides made plain its willingness to take up the opportunity afforded by the Judgment "to submit to the Court the whole of the dispute". Bahrain has understood the reference by the Court in paragraph 38 of the Judgment to effecting such submission "by a Joint Act by both Parties with, if need be, appropriate annexes, or by separate acts" as reflecting the Court's confirmation that such submission must be consensual in character, that is, a matter of agreement between the Parties. Bahrain has not perceived in the Judgment any indication by the Court that Qatar is entitled unilaterally to dictate the form or content of such submission.
5. Yet Qatar's approach to the discussion has been dominated by two features from which it has resolutely declined to move in any way acceptable to Bahrain.
6. First, the proposals emanating from Qatar have taken the form of documents that can only be read as designed to fall within the framework of the maintenance of the case commenced by Qatar's application of 8th July, 1991. The Agent for Qatar affirmed this expressly in his letter to the Agent for Bahrain of 13th November, 1994, saying: "...Qatar considers that any steps taken by the Parties have to take place within the framework of the present proceedings". The latest expression of this is to be found in the Qatari proposed Joint Act of 14th November, 1994 read together with Qatar's proposal of 19th November, 1994. These documents are clearly intended to form

part of the case which Qatar endeavoured to initiate by its Application of 8th July, 1991.

7. Bahrain, though it has been prepared to show some flexibility as regards form, as can be seen from its draft Joint Act of 12th November, 1994, cannot as a matter of principle permit itself to be manoeuvred into a position in which it appears to be accepting the Qatari Application of 8th July, 1991 as having any continuing effect in relation to the treatment of the substantive matters in contention between the Parties.
8. The Court has identified, in paragraph 36 of the Judgment, the fact that Qatar has acknowledged that its "Application corresponds to only part of the dispute contemplated by the Bahraini formula" and has found, in paragraph 37 of the Judgment, that "the authors of the Bahraini formula conceived of it with a view to enabling the Court to be seised of the whole of those questions, as defined by each of the Parties within the general framework thus adopted". True, the Court has not yet taken what, in the submission of Bahrain, is the next logical step. This would be to find that because Bahrain has only ever consented to a joint submission and because the Application has not covered all matters in dispute, the latter is ineffective for the purpose of initiating any proceedings against Bahrain. But no less is it true that the Judgment has not given any indication that it regards the Application as a valid and effective one.
9. There is, therefore, every reason why Bahrain should decline, at this stage, to commit itself to a form of undertaking which could be used by Qatar to support an argument that Bahrain accepts the validity or effectivity of the Application of 8th July, 1991. Bahrain recalls in this connection that in 1987 it had decided as a matter of policy that it would come to the Court by way of a Special Agreement. That policy was not idiosyncratic, but in fact accords with the view of the majority of States. It remains Bahrain's policy as a matter of sovereign right. Whether such an agreement is reflected in a joint act or in separate acts is entirely subsidiary to that fundamental requirement.

10. The second, and more disturbing, feature of the Qatari position has been its insistence upon denying to Bahrain the right to describe, define or identify, in words of its own choosing, the matters which it wishes specifically to place in issue. Qatar has not been prepared to accept Bahrain's right to include in the list of matters in dispute the item of "sovereignty over Zubarah". Instead, Qatar asserts that Bahrain's right to itemise this matter may be expressed only by the word "Zubarah" without the addition of the words "sovereignty over".
11. Qatar's position in this regard is based upon a distinction which it draws between a "definition of issues" and a "description of claims". According to Qatar, the Court, when calling upon the Parties to submit "the entire dispute" to the Court only has in mind the itemisation of "matters of difference" or "disputed matters", which Qatar equates with a "definition of issues" not a "description of claims". At the same time, Qatar contends that the expression "sovereignty over Zubarah" can be viewed only as a "description of claims" and therefore does not fall within the contemplation of the Judgment as the identification of a matter of dispute.
12. To Bahrain it seems both absurd and contrary to the spirit and, indeed, the language of the Judgment to impose upon the words that each Party may use to describe the elements of the dispute, the verbal constraint now insisted on by Qatar. In Bahrain's understanding the words "Sovereignty over Zubarah" are no less a description of a disputed matter or of a matter of difference than they are a description of a claim. Neither the Judgment nor any rule of law prescribes the manner in which a Party may describe a matter that it considers to be in issue. The Court will recall that in paragraph 41 of its unilateral Application, Qatar described its own claim to the Hawar Islands as one of sovereignty. Bahrain cannot therefore see why it should not have the right to claim sovereignty over Zubarah.
13. Bahrain's understanding has been that both it and Qatar have been involved in the discussions on a footing of equality. Bahrain can see

no reason for Qatar rigidly to assert the right to control the manner in which Bahrain expresses not a matter put in issue by Qatar but a matter put in issue by Bahrain.

14. Qatar has suggested, in its proposal of 19th November, that Bahrain's position be met by the addition to Qatar's proposed Joint Act of 14th November, of a sub-paragraph stating that "We understand that Bahrain defines its claim concerning Zubarah as a claim of sovereignty".
15. The inclusion of a specific provision attributing a special character, expressed in unilateral terms, i.e. that Bahrain, not both Parties, defines its claim in a particular way, violates the requirements both of equality and of fairness of expression. Given the equal right of each Party to describe the matters which it wishes to place in issue in words of its own choice, why should Qatar enjoy the right to dictate to Bahrain that the latter may refer to "sovereignty over" Zubarah, only upon terms laid down by Qatar? Bahrain has not sought to tell Qatar how to describe the subject connected with the Hawar Islands which Qatar wishes to place in issue. An issue is no less well identified if it is called "sovereignty over Zubarah" than if it is called simply "Zubarah". This is a matter on which each side is entitled to exercise its own discretion in the wording of the description. Furthermore, Qatar's suggestion that one item in the list of issues be singled out for elaboration or comment places that item in a position of inequality as regards the rest. Such singling out cannot be correct.
16. As a matter of principle, Bahrain will not accept Qatar's attempt thus to control the terms on which the dispute is submitted to the Court. Such has been Qatar's opposition to the exercise by Bahrain of its rights in this connection that it raises in the mind of the Government of Bahrain an apprehension that Qatar has, in this regard, some ulterior motive the nature of which Qatar has not declared.
17. As to the Court's indication in paragraph 38 of the Judgment that the submission of the entire dispute might take place on the basis of

"separate acts", Bahrain had assumed that the Court had intended by this to allow for the possibility that the Parties might wish to express their acceptance of the definition of the dispute, and consequently of jurisdiction, separately. But the Court had not intended that there should be jurisdiction without agreement on the definition of the dispute. And, given that Qatar's original Application was defective in not reflecting such an agreement, Bahrain had not understood the Court's reference to "separate acts" as implying that Bahrain should, by its "separate act", somehow rectify or complete Qatar's defective and unilateral Application. It was rather Bahrain's understanding that the Parties should bring their dispute before the Court on the basis of new, and agreed, terms of reference.

18. On 25th November, 1994 the Agent of Bahrain sent a letter to the Agent of Qatar inviting Qatar to agree to and sign with Bahrain the proposed Bahraini Joint Act of 12th November in implementation of the Judgment. The Agent of Qatar responded to this offer by way of a letter dated 27th November in which he rejected, as shown in paragraph 5 of that letter, the offer contained in the Agent of Bahrain's letter of 25th November. The proposed Bahraini Joint Act of 12th November was put forward by Bahrain during the course of the meetings between the two Agents as part of the negotiating process contemplated by the Judgment. Those negotiations have been unsuccessful. With Qatar having now rejected the offer of the Bahraini Joint Act, Bahrain confirms that the said proposed Joint Act has been withdrawn and is therefore no longer available for acceptance.
19. In view of the impasse that has now been reached in the negotiations between the two sides, Bahrain wishes to make the following points:
20. First, Bahrain confirms its submission that the Court does not have jurisdiction in the case commenced by the Qatari Application of 8th July, 1991. One of the principal reasons for this position, in addition to those that have been set out at length in Bahrain's written and oral pleadings, lies in three findings of the Court in the Judgment of 1st July, 1994:

- (i) The 1990 Minutes "placed on record the fact that Qatar had finally accepted the Bahraini formula" (Judgment, para. 32);
- (ii) The Bahraini formula "presupposed that the whole of the dispute would be submitted to the Court" (Judgment, para.33);
- (iii) "The subject matter of Qatar's Application corresponds to only part of the dispute contemplated by the Bahraini formula" (Judgment, para.36).
21. A no less important reason for Bahrain's position is that the Qatari Application was defective because there was no common consent of the Parties to unilateral action by one of them alone; and the Judgment has not said otherwise.
22. As a matter of simple logic, it follows, therefore, that the subject matter of the Application filed by Qatar on 8th July, 1991 did not correspond with the subject matter which the Parties contemplated would be brought before the Court. The Application was, therefore, defective and should be held to be ineffective to confer any jurisdiction upon the Court.
23. Bahrain further submits that it is not open to Qatar to cure the defect by any amendment of its Application. Bahrain will, therefore, object to any application by Qatar to amend its Application of 8th July, 1991 because such an act would again be unilateral and could be validated only if Bahrain were to accept it. There is no provision in the Statute or the Rules of the Court referring to the amendment of applications. In this respect Bahrain observes that in the recent Order of the Court in the *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (ICJ Reports 1994, p.105)* the permission accorded to Cameroon to amend its Application was given as a substitute for the continuation by Cameroon of an Additional Application. The Court noted that "the Agent of Nigeria had indicated that his Government had no objection to the Additional Application.

- being treated as an amendment to the initial Application, so that the Court could deal with the whole as one case". Furthermore, Qatar cannot have created for itself a right unilaterally to amend its Application simply by reserving in paragraph 41 of its Application "the right to supplement or amend its requests".
24. Bahrain will not consent to Qatar amending its Application of 8th July, 1991 so as to enable it unilaterally to complete the presentation to the Court of the whole dispute by itself now taking an initiative to bring to the Court the question of "sovereignty over Zubarah". The time for Qatar to act in that way passed on 8th July, 1991.
 25. If Qatar wishes to bring the whole dispute before the Court it must do so in the manner foreseen in the 1987 Agreement and the 1990 Minutes, that is, by an agreement with Bahrain. As Bahrain has made quite clear, it would have been prepared to enter into such an agreement if Qatar had not continued to arrogate to itself the right to impose upon Bahrain the terms and conditions of such an agreement.
 26. Nor is it now open to Qatar to discontinue the proceedings begun by its Application of 8th July, 1991 and, thereafter, to file a fresh Application so expressed as to cover the issue of "sovereignty over Zubarah". Furthermore, Qatar is not permitted to file a further unilateral application, i.e. a separate act. Bahrain would object to any such further application on the basis of paragraph 38 of the Judgment, which speaks of separate acts, in the plural.
 27. Even if Qatar now files an amended or new application including a reference to sovereignty over Zubarah, this would nevertheless not give the Court jurisdiction because (a) such an application, in order to be effective, must be consented to by Bahrain, and (b) such consent has not been given by Bahrain either in 1987 or 1990, nor is it being given now.
 28. Needless to say, Bahrain regrets the present situation, but ventures to emphasize that the problem is not of its making. The case is one which

must be submitted to the Court jointly by the Parties. Bahrain has, particularly in the recent discussions, shown its willingness to be flexible within reasonable limits. But there are necessary limits to this flexibility. These are to be found in the preservation of Bahrain's right to list the particular issue of sovereignty over Zubarah in terms of its own choosing, and to insist that the solution to the problem should not suggest any Bahraini acceptance of the validity of the Qatari Application of 8th July, 1991. Bahrain also feels that the submission should convey to the Court the Parties' agreed views on such important procedural matters as the amount of time to be allowed for the written pleadings and the correct name for the Case.

29. In closing this Report, the Government of Bahrain also ventures to emphasize that nothing it has said herein should be construed as conduct by the Parties creating either a joint submission of the whole dispute to the Court or a consent by Bahrain to a unilateral submission thereof by Qatar. The crucial point that divides the Parties remains a matter of high principle affecting not only the fundamental concept of consent underlying the jurisdiction of the Court, but also the twin concepts of the equality and dignity of States. Bahrain, as a Sovereign State, would like to reaffirm its political and legal objections to the dispute being submitted to the Court either by the initial unilateral application of Qatar or by any amended or new application. Bahrain reiterates its position that the Court is without jurisdiction in this case. Bahrain means no disrespect to the Court in thus explaining why it cannot contemplate being brought to the Court by any unilateral act of Qatar.



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Before the International Court of Justice

30th November, 1994

**REPORT OF THE STATE OF BAHRAIN TO THE INTERNATIONAL
COURT OF JUSTICE ON THE ATTEMPT BY THE PARTIES TO
IMPLEMENT THE COURT'S JUDGMENT OF 1ST JULY, 1994**

**LIST OF ALL DOCUMENTS WHICH HAVE PASSED BETWEEN THE
TWO SIDES SINCE 1ST JULY, 1994 TO THE PRESENT DATE**

1. Statement of H.E. Shaikh Mohammed bin Mubarak Al-Khalifa, Minister of Foreign Affairs of the State of Bahrain, 1st July, 1994; Arabic and English versions.
2. Letter from H.E. Shaikh Mohammed bin Mubarak Al-Khalifa, Minister of Foreign Affairs of the State of Bahrain to H.E. Shaikh Hamad bin Jasim bin Jaber Al-Thani, Minister of Foreign Affairs of the State of Qatar, 5th July, 1994; Arabic original and English translation.
3. Letter from H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, to H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, 6th July, 1994.
4. Letter from H.E. Dr Husain Al-Baharna Agent of the State of Bahrain, to H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 15th July, 1994.
5. Letter from H.E. Shaikh Hamad bin Jasim bin Jaber Al-Thani, Minister of Foreign Affairs of the State of Qatar, to H.E. Shaikh Mohammed bin Mubarak Al-Khalifa, Minister of Foreign Affairs of the State of Bahrain, 16th July, 1994; Arabic original plus English translation.
6. Letter from H.E. Shaikh Mohammed bin Mubarak Al-Khalifa, Minister of Foreign Affairs of the State of Bahrain to H.E. Shaikh Hamad bin Jasim bin Jaber Al-Thani, Minister of Foreign Affairs of the State of Qatar, 30th July, 1994; Arabic original plus English translation.
7. Letter from H.E. Shaikh Hamad bin Jasim bin Jaber Al-Thani, Minister of Foreign Affairs of the State of Qatar, to H.E. Shaikh Mohammed bin Mubarak Al-Khalifa, Minister of Foreign Affairs of the State of Bahrain,

8. Letter from H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, to H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, 5th September, 1994.
9. Letter from H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, to H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 12th September, 1994.
10. Letter from H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, to H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, 13th September, 1994.
11. Letter from H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, to H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 14th September, 1994.
12. Letter from H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, to H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 27th September, 1994 [This request was refused orally by the Agent of the State of Qatar at the meeting on 6th October].
13. Papers exchanged at the meeting between the Agents of the State of Bahrain and the State of Qatar on 6th October, 1994 at the Dorchester Hotel, London:-
 - (a) Statement by H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 6th October, 1994;
 - (b) State of Qatar's draft Proposal, 6th October, 1994;
 - (c) State of Bahrain's draft Special Agreement, 4th October, 1994.
14. Papers exchanged at the meeting between the Agents on 22nd October, 1994 at the Intercontinental Hotel, London:

- (a) Letter from H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, to H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, 12th October, 1994;
 - (b) State of Qatar's Memorandum, 12th October, 1994;
 - (c) Memorandum from H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, to H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar;
 - (d) State of Bahrain's draft Joint Act;
 - (e) Statement of H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 22nd October, 1994;
 - (f) Annex to the Statement of H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 22nd October, 1994;
 - (g) State of Qatar's draft proposal, 22nd October, 1994.
15. Letter from the Ministry of Foreign Affairs of the State of Qatar to the Ministry of Foreign Affairs of the State of Bahrain, 30th October, 1994; Arabic original, Qatar's translation, and Bahrain's translation.
16. Letter from Ministry of Foreign Affairs of the State of Bahrain to Ministry of Foreign Affairs of the State of Qatar, 12th November, 1994; Arabic original plus Bahrain's translation.
17. Papers exchanged at the meeting between the Agents on 14th November, 1994 at the Dorchester Hotel, London:
- (a) Observations by the State of Bahrain on the documents presented by the State of Qatar, together with Appendices; 12th November, 1994.
 - A) Draft Special Agreement of 4th October, 1994,
 - B) State of Qatar's draft Joint Letter of 6th October, 1994,
 - C) State of Bahrain's draft Joint Act of 12th November, 1994;
 - (b) Statement by H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 14th November, 1994;

- (c) Letter from H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, to H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, 13th November, 1994;
 - (d) State of Qatar's draft letter of 14th November, 1994;
 - (e) State of Qatar's draft Joint Act of 14th November, 1994.
18. Letter from H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, to H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, 19th November, 1994 together with the State of Qatar's fourth proposal - Joint Act, 19th November, 1994;
19. Letter from H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, to H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 25th November, 1994.
20. Letter from H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, to H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, 27th November, 1994.
21. Letter from H.E. Dr Husain Al-Baharna, Agent of the State of Bahrain, to H.E. Dr. Najeeb Al-Nauimi, Agent of the State of Qatar, 29th November, 1994.