

STATE OF BAHRAIN

MINISTRY OF STATE FOR LEGAL AFFAIRS  
MINISTER'S OFFICE

دولة البحرين  
وزارة الدولة للشئون القانونية  
مكتب الوزير

Ref: \_\_\_\_\_

Date: 5th December, 1994

الرقم \_\_\_\_\_

التاريخ \_\_\_\_\_

Comments by the State of Bahrain  
on the Qatari "Act" of 30th November, 1994

1. The Government of Bahrain has given careful consideration to the separate Act filed by Qatar on 30th November, 1994.
2. This Act is inherently defective. It purports, by its title, to be in compliance with paragraphs 3 and 4 of operative paragraph 41 of the Judgment of the Court of 1st July, 1994, of which sub-paragraph 4 in particular refers to action by the Parties "jointly or separately". Qatar appears to believe that it was the intention of the Court in thus referring to separate actions by the Parties to permit Qatar unilaterally to pursue, and indeed amend, the Application which it filed on 8th July, 1991. For its part, Bahrain finds it difficult to believe that it would have been the intention of the Court thus to authorise such a departure from the requirement of the consent of both Parties on which the Court's jurisdiction totally depends. Nor does it seem possible that the Court could have intended to authorise Qatar to amend its Application without the agreement of Bahrain.
3. In remitting the matter to the Parties, the Court did not use any words to indicate that it was open to Qatar, by its unilateral action, to cure the defect identified by the Court in the original Qatari Application. Nowhere is the name "Qatar" used alone in this connection. Nor does the Judgment use the words "either of the Parties" to indicate that one Party alone could complete the process of reference to the Court. It is to "the Parties" - and not to either or one of them - that the Court afforded the opportunity to seize it of the Case. This reflects the Court's adherence to the dominant requirement

of the consent of the Parties, no less of the Respondent than of the Applicant.

4. It is the belief of Bahrain that when, in its Judgment, the Court spoke in paragraph 41(4) of "separately", and in paragraph 38 of "separate Acts" (in the plural) by the Parties, the Court had in mind the prospect that the Parties would conclude an agreement submitting the Case to the Court but recognised the possibility that the Parties might decide to express that agreement between them by concordant, and effectively identical, but nonetheless separate Acts. The Court could not, it is suggested, have had in mind a process in which one Party alone could play out the time limit and then by its own separate Act (in the singular) impose upon the other Party a submission to the wording of which the latter had shown its insistent opposition.
5. It is Bahrain's submission that the Court did not declare in its Judgment of 1st July, 1994 that it had jurisdiction in the Case brought before it by virtue of Qatar's unilateral application of 1991. Consequently, if the Court did not have jurisdiction at that time, then the Qatari separate Act of 30th November, even when considered in the light of the Judgment, cannot create that jurisdiction or effect a valid submission in the absence of Bahrain's consent. Clearly, Bahrain has given no such consent.
6. The submission of a Case to the Court requires the full coincidence of the intentions of the Parties - one hundred percent. In the present Case there is manifestly no such coincidence. Bahrain feels compelled to make it clear that it cannot accept that the jurisdiction of the Court has been validly invoked in the present Case as a result of this further Qatari unilateral Act.
7. It has been repeatedly emphasised by Bahrain that it is for it, and for it alone, to decide upon the content and wording of any consent that it may give to the jurisdiction of the Court following the Judgment of 1st July, 1994. Bahrain has in its Report to the Court of 30th November, 1994 explained why, as a matter of principle, it has resisted the pressure put upon it by Qatar to list the issues in dispute between the two sides in terms which satisfy Qatar alone.

8. Every State possesses the sovereign right to determine whether it consents to the jurisdiction of the Court and to determine the limits, conditions and method of implementation of its consent. Every State also possesses the sovereign right to decline to appear before the Court. Bahrain possesses this right in the same measure as any other State. Bahrain has given reasons for its decision not to appear before the Court in the circumstances that have developed only out of respect for, and as an act of courtesy towards, the Court. However, it remains a fact that the absoluteness of Bahrain's sovereign prerogative in this respect cannot be questioned.



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